

Legal Bulletin

A summary of developments in the law

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Allen & Gledhill LLP also publishes the monthly Financial Services Bulletin. To view the September 2009 issue, please [click here](#).

Articles

Government implements measures to ensure stable and sustainable property market

On 14 September 2009, the Ministry of National Development (the “MND”), the Ministry of Finance, the Ministry of Law and the Monetary Authority of Singapore (the “MAS”) issued a joint press release whereby Mr Mah Bow Tan, the Minister for National Development, announced that the Government will take measures to ensure a stable and sustainable property market. These measures are briefly set out below.

Reinstatement of the Confirmed List

In the first half of 2010, the Government will reinstate the Confirmed List for the Government Land Sales (“GLS”) Programme as demand for incomplete private housing units has increased since the beginning of 2009. The Government noted that while there are 16 residential sites in the current list that can be triggered for sale by developers, the MND will also replenish the supply when drawing up the First Half 2010 Reserve List (the “List”) in order to meet a possible increase in demand. Details of the List will be provided towards the end of 2009.

Interest Absorption Scheme and Interest-Only Housing Loans

From 14 September 2009, the MAS disallowed the Interest Absorption Scheme (“IAS”) and Interest-Only Housing Loans (“IOL”). The IAS and the IOL apply to all private residential projects with the only exception being incomplete private residential projects where the units have already been offered for sale under the IAS prior to 14 September 2009.

The IAS and the IOL were offered to buyers of incomplete private residential properties to encourage property speculation in a buoyant market as they are forms of housing loans that entirely eliminate or substantially lower regular instalment payments for property purchasers in the first few years prior to completion of the properties when a Temporary Occupation Permit is issued.

The discontinuance of the IAS and the IOL will encourage prospective home-buyers to carefully consider their ability to afford the properties over the long term which will in turn promote a healthy and sustainable property market. Genuine home-buyers can still avail themselves of the standard payment scheme to purchase private housing.

Property-related Budget 2009 assistance measures

In January 2009, the Government announced several measures in its Budget which sought to stabilise the property market given the sharp fall in demand and considerable uncertainty in the economic outlook at that time.

Given the recent increase in demand for private housing as well as the improved conditions of the property market, these measures will not be extended once they expire. The measures affected are as follows:

- (i) Allowing one-year extension of the project completion period.
- (ii) Allowing re-assignment of GLS sites and private land owned by foreign developers.
- (iii) Giving developers up to four years to dispose of all private residential units in the development.

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- (iv) Allowing developers to rent out unsold private residential units for a maximum of four years.
- (v) Allowing up to two years of property tax deferral for land under development.

Measures (i) to (iv) above will expire on 21 January 2010 while measure (v) will expire on 21 January 2011.

Reference materials

Please [click here](#) to access the MND Press Release, which can be found on both the MND website www.mnd.gov.sg and the MAS website www.mas.gov.sg

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Income Tax (Amendment) (Exchange of Information) Bill 2009: Changes to implement international standard for exchange of information

On 14 September 2009, the Income Tax (Amendment) (Exchange of Information) Bill 2009 (the "Bill") was read for the first time in Parliament.

Background

A draft version of the Bill had earlier been released for public consultation by the Ministry of Finance between 29 June 2009 and 28 July 2009. The Bill incorporates important changes arising from feedback received from the public consultation.

The Bill is intended to make changes to the Income Tax Act to enable the implementation of an international standard for the exchange of information for tax purposes developed by the Organisation for Economic Co-operation and Development.

Scope of new legislation

Broadly, the new legislation introduced by the Bill will enable the Inland Revenue Authority of Singapore to obtain information from persons in Singapore to satisfy a request for information made by a foreign tax authority, including information that is protected from unauthorised disclosure under the Banking Act and the Trust Companies Act.

The new legislation will only apply to requests made by a foreign tax authority under a double taxation agreement that has been prescribed by the Minister for Finance for the purpose of exchange of information. Among other things, the Bill provides for the procedure for requesting information.

Reference materials

To read the full text of the Bill which is posted on the Singapore Parliament website www.parliament.gov.sg, please [click here](#).

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Parliament introduces Income Tax (Amendment) Bill 2009: Implementing Budget 2009 changes and other changes

The Income Tax (Amendment) Bill 2009 (the “**Bill**”) was introduced in Parliament on 14 September 2009. The Bill will amend the Income Tax Act to implement the tax changes announced in the Government’s 2009 Budget Statement as well as to make certain other amendments to the Income Tax Act.

Background

The Ministry of Finance (the “**MOF**”) conducted a public consultation on a draft Income Tax (Amendment) Bill 2009 (the “**draft Bill**”) from 22 June 2009 to 14 July 2009. On 21 August 2009, the MOF issued its response to the feedback received from the public consultation. The draft Bill contains proposed amendments to the Income Tax Act which are principally to cater for the tax changes announced in Budget Statement 2009, as well as other changes arising from a periodic review of the income tax system.

Highlights of proposed changes

The following are highlights of the proposed changes:

- **Tax exemption of foreign sourced income:** There will be exemption from tax on all types of foreign sourced income derived by resident taxpayers on or before 21 January 2009 and received in Singapore during the period from 22 January 2009 to 2 January 2010, subject to conditions.
- **Tax exemption of income of approved entity from funds managed by prescribed fund manager:** The new provision will provide for tax exemption on prescribed income derived by an approved company, a partner of an approved limited partnership or a trustee of an approved trust fund from funds managed in Singapore by a prescribed fund manager, subject to conditions.
- **Amalgamating companies:** A new provision will be introduced to provide for the tax treatment applicable, on election, to two or more amalgamating companies and an amalgamated company in a qualifying amalgamation.
- **Arm’s length principle:** The Income Tax Act will be amended to clarify the arm’s length principle. Where conditions are made or imposed between two related parties (including between a person and its permanent establishment) in their commercial or financial relation that are other than arm’s length terms, the Comptroller of Income Tax may make adjustments to the profits for income tax purpose.
- **Rate of tax upon companies and others:** Changes will be made:
 - (a) to reduce the tax rate from 18 per cent. to 17 per cent. for companies;
 - (b) to allow, for the purpose of granting tax transparency, the distribution (out of specified income) by a trustee of a real estate investment trust to be made in the form of units of the trust instead of in cash, if certain conditions are satisfied (including that the distribution must be made during the period from 1 July 2009 to 31 December 2010);

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- (c) to clarify that for the purpose of granting tax transparency to a trustee of a real estate investment trust or of an approved sub-trust of a real estate investment trust, any distribution out of qualifying income to unitholders has to be in cash.

Reference materials

Please [click here](#) for the full text of the Bill which is posted on the Singapore Parliament website www.parliament.gov.sg

An article about the response of the MOF to the feedback received from the public consultation was featured in a previous issue of the Allen & Gledhill Legal Bulletin (August 2009). To read the article entitled "*MOF issues response to feedback received on draft Income Tax (Amendment) Bill 2009*", please [click here](#).

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SGX initiatives in pipeline to strengthen corporate governance

In a speech delivered by Mr Hsieh Fu Hua, Chief Executive Officer of Singapore Exchange Limited (the "SGX"), at the Invest Fair 2009 on 22 August 2009, it was disclosed that the SGX is looking into additional corporate governance initiatives as follows:

- Having all newly-listed companies appoint governance advisors for an initial period of two years post initial public offering ("IPO"). This will help companies to institute robust framework of reporting, accountability, internal controls and other components of good corporate governance very early on.
- Chief Financial Officers and independent directors should be appointed at least six months prior to IPO submissions so that they have adequate time to perform proper due diligence on an IPO candidate's suitability.
- Requirement for a joint sign-off by a local auditor if the company is audited by an accounting firm from a foreign jurisdiction. The SGX will consult the market about this initiative.
- Proposal that controlling shareholders disclose their share pledging arrangements if the amount pledged is large enough to cause a change in control, or if the enforcement of the pledge may cause a breach of loan covenants by the listed company.
- Requiring controlling shareholders of listed companies to custodise their shares in Singapore so that during an investigation of irregularities involving the controlling shareholder, there would be greater regulatory purchase over them. The SGX will discuss this initiative with the relevant authorities.

Please [click here](#) for the full text of the speech, which is posted on the SGX website www.sgx.com

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SGX requires companies seeking delisting to provide reasonable exit offer to shareholders

On 4 September 2009, the Singapore Exchange Limited (the “**SGX**”) posted a release in the Regulator’s Column on its website stating that companies seeking delisting must provide a reasonable exit offer to shareholders. The Regulator’s Column piece elaborates on the delisting requirements.

Delisting requirements in Listing Manual

A company may seek to delist from the Singapore Exchange Securities Trading Limited (the “**SGX-ST**”). The company’s directors are obligated to ensure the delisting complies with the SGX-ST Listing Manual (the “**Listing Manual**”).

As provided in the Listing Manual, the SGX-ST would only consider a delisting application if:

- it is approved by at least 75 per cent. of shareholders present and voting on a poll for the delisting resolution with not more than 10 per cent. voting on a poll against the resolution;
- a reasonable exit alternative, which should normally be in cash, is offered to shareholders; and
- an independent financial adviser (“**IFA**”) is appointed to advise on the exit offer.

Elaboration on delisting requirements

The release in the Regulator’s Column states that the board of directors (the “**Board**”) should take into account the interests of shareholders, and ensure that the exit alternative is not prejudicial to shareholders as a whole. In making the recommendation for a delisting of a company, the Board is responsible for ensuring that the exit alternative for the delisting proposal is reasonable to all shareholders.

The Board is required to appoint financial advisers to provide an independent view on the reasonableness of the exit alternative. In doing so, the Board should satisfy itself that the appointed IFA has the requisite experience and expertise, and that the IFA applies its professional expertise and judgment in the assessment of all relevant factors. The Board is required to ensure that the IFA’s opinion is clear and unequivocal. For example, opinions qualified by diverse investment horizons do not meet the requirements of the rules.

The IFA’s opinion on the reasonableness of the exit offer must be included in the company’s submission to the SGX-ST and clearly disclosed in the shareholders’ circular. The IFA’s advice should be given to shareholders as early as possible in order to provide them sufficient time to make an informed decision on the delisting proposal.

The Listing Manual stipulates that the exit offer should normally be in cash. The release in the Regulator’s Column states that if an exit offer is in the form of securities or assets, a cash alternative is required and that cash offer must be reasonable as attested by the IFA. The purpose of a cash alternative is to allow shareholders to exit their investment without incurring additional costs or bearing additional risks.

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These recent developments were highlighted in the Allen & Gledhill Arbitration Alert of 25 September 2009. If you would like to be on our arbitration related electronic communications mailing list, please e-mail us at publications@allenandgledhill.com

Shareholders' approval is not required for exit offers made under directed delistings. However, such exit offers are required to meet the same standards as voluntary delistings including providing a reasonable cash alternative.

Reference material

Please [click here](#) to read the full text of the release in the Regulator's Column of the SGX website www.sgx.com

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Ministry of Law clarifies provision in International Arbitration (Amendment) Bill 2009 concerning curial support of arbitration proceedings

On 14 September 2009, the International Arbitration (Amendment) Bill 2009 (the "**Bill**") was introduced in Parliament.

A draft version of the Bill had earlier been released for public consultation by the Ministry of Law (the "**Ministry**") between 27 July to 17 August 2009. The Bill and its accompanying Explanatory Statement incorporate important changes arising from feedback received from the public consultation.

Fine-tuning of section 12A

The feedback which the Ministry received was generally supportive and related primarily to fine-tuning the proposed provision which deals with curial support of arbitration proceedings, that is, section 12A of the International Arbitration Act (the "**IAA**").

Section 12A applies to arbitrations seated outside Singapore and provides that the Singapore court may order interim measures in support of such arbitrations in certain circumstances.

In response to feedback received in relation to this provision, the Ministry made, amongst others, the following points:

- Parties should not be allowed to contract out of section 12A as it is intended to be a default provision providing for curial assistance to arbitration proceedings.
- The Ministry agreed that neither the High Court nor a Judge thereof should have the power under section 12A(2) to make orders for discovery, interrogatories and security for costs, as these are procedural matters for the arbitral tribunal to decide.
- As regards section 12A(3), which provides that the High Court or a Judge thereof may refuse to make an order under section 12A(2) if the "*fact that the place of arbitration is outside Singapore or likely to be outside Singapore when it is designated or determined makes it inappropriate to make such order*", the Ministry disagreed that it was necessary to provide guidelines as to when it would be "inappropriate" to issue such an order. In this connection, the Ministry had received feedback that the following guidelines should be expressly inserted into section 12A(3):

- (i) Whether the order would offend against the principle of comity;
- (ii) Whether the High Court or Judge thereof has personal jurisdiction over the respondent to the application for the order; and
- (iii) Whether the plaintiff has a justifiable cause of action against the respondent under the laws of Singapore.

With regard to (i) above, the Ministry opined that the principle of comity was one which the courts should adhere to without the need for it to be expressly articulated in the legislation. In relation to (ii) above, the discretion allowed to the court under established case law would operate as a sufficient safeguard. Further, introducing an additional element of whether the issue is justiciable before the Singapore court is likely to lead to further litigation as it is not entirely clear what “justiciable” means. Lastly, the Ministry opined that section 12A(3) was meant to be wider than the UK House of Lords decision in *Channel Tunnel Group Ltd v Balfour Beatty Construction Ltd* [1993] AC 334 where it was held that the English court has the power to grant Mareva injunctions in aid of a foreign court or arbitral proceedings if the substantive claim was justifiable in an English court.

- The Ministry clarified that the ambit of section 12A(4), which provides that the High Court or a Judge thereof may make an order under section 12A(2) as “*it thinks necessary for the purpose of preserving evidence or assets*”, includes choses in action and rights under a contract.
- In relation to the automatic lapsing of the court order upon the arbitral tribunal making an order which expressly relates to the whole or part of the court’s order under section 12A(7), the Ministry rejected the suggestion that the court should decide whether its orders lapse. The Ministry stated that the policy intent was to give primacy to the arbitral tribunal. As regards orders of the court which the arbitral tribunal itself had no power to make (such as orders binding on third parties), the Ministry stated that parties in such situations would need to go back to the courts.

In addition to dealing with the proposed section 12A of the IAA, the Ministry also clarified that the extended definition of an “arbitration agreement” (which under the proposed amendment to section 2 of the IAA includes agreements made by electronic communications) would apply to both the IAA and the Arbitration Act (the latter generally applies to arbitrations which are not considered “international” under the IAA).

Reference materials

Further resources concerning this development can be found as follows:

- [International Arbitration \(Amendment\) Bill 2009](#)
- [Ministry of Law’s Response to Public Feedback on the Draft International Arbitration \(Amendment\) Bill](#)
- [Ministry of Law Consultation Paper on the Draft International Arbitration \(Amendment\) Bill](#)

The International Arbitration (Amendment) Bill 2009 is available on the Singapore Parliament website www.parliament.gov.sg, while the other resources are available on the Ministry of Law’s website www.minlaw.gov.sg

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New statutory framework for nomination of beneficiaries under Insurance Act in force from 1 September 2009

The new statutory framework under the Insurance Act for the nomination of beneficiaries under a life policy or accident and health policy which is effected by the policy owner on his own life came into force on 1 September 2009.

New sections 49L to 49M in the Insurance Act introduce a new framework for nomination of beneficiaries in respect of insurance policy proceeds. Under the new framework, insurance policy owners may choose whether or not to make nominations. If they choose to nominate, they then have the option of making either a revocable or an irrevocable (trust) nomination. Nominations may be made at any time. Only life and accident and health policies with death benefits will be eligible for nomination as only such policies have a savings and investment element for which nominations will be meaningful. The new framework will not apply retrospectively.

The Insurance (Nomination of Beneficiaries) Regulations 2009, which are also effective from 1 September 2009, have been issued to facilitate implementation of the new framework.

Enabling inclusion of life insurance policies in trust structures

Aside from the introduction of a new statutory framework for the nomination of beneficiaries, the Insurance Act was amended with effect from 1 March 2009 to clarify the insurable interest requirement in the Insurance Act relating to life insurance policies. To facilitate the inclusion of life insurance policies in trust structures, the Insurance Act was amended to enable a life policy insuring the life of a settlor or beneficiary of a trust to be effected by the trustee of the trust, if certain conditions are satisfied.

Reference material

An article about the changes to the Insurance Act when it was amended to enable inclusion of life insurance policies in trust structures was featured in a previous issue of the Allen & Gledhill Legal Bulletin (March 2009). To read the article entitled "*Insurance (Amendment) Act 2009 partially in force from 1 March 2009: Enabling inclusion of life insurance policies in trust structures*", please [click here](#).

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Copyright (Amendment) Bill 2009 passed in Parliament: Changes to the jurisdiction and operational aspects of the Copyright Tribunal

On 15 September 2009, the Copyright (Amendment) Bill 2009 (the “**Bill**”) was passed in Parliament. When in force, the Bill will amend the Copyright Act (the “**Act**”) to effect changes relating to the jurisdictional and operational aspects of the Copyright Tribunal (the “**Tribunal**”). The Bill will be operative after it has been gazetted as an Act and a commencement date is published in the *Government Gazette*.

Updating the Copyright Act

The key objective of the Bill is to update the Act so as to maintain its relevance in the face of advancing technologies which have given rise to new ways of accessing and using copyright works. Key amendments, as highlighted by Senior Minister of State for Law Associate Professor Ho Peng Kee in the Second Reading Speech, include the following:

- The Tribunal will be able to hear licence disputes relating to all types of copyright works, including disputes relating to the reproduction and storage of digital sound recordings in hard disks for commercial use.
- The jurisdiction of the Tribunal will be expanded to cover licensors who are in the business of collectively administering copyright licences for different copyright owners. This development ensures that the Tribunal acts as a check against licensors imposing unreasonable licensing fees and terms. The Intellectual Property Office of Singapore (the “**IPOS**”) intends to enact further regulations in relation to this provision. Following the approach in Australia and the United Kingdom, individual copyright owners will not fall under the Tribunal’s jurisdiction.
- The Tribunal may substitute a licence scheme.
- Operationally, the Tribunal will expect an increase in the number of appointed Deputy Presidents and members.

Background

As a matter of background, the IPOS conducted a public consultation to seek feedback on the proposed changes to the jurisdiction and operational aspects of the Tribunal in February/March 2008. In August 2009, the Bill was introduced in Parliament.

The Allen & Gledhill Legal Bulletin has been following closely these legislative developments. To read previous articles on the subject, please click on relevant titles below:

- [Parliament introduces Copyright \(Amendment\) Bill 2009: Changes to the jurisdiction and operational aspects of the Copyright Tribunal](#) (August 2009)
- [IPOS conducts public consultation on changes to the jurisdiction and operational aspects of the Copyright Tribunal](#) (February 2008)

Reference materials

The full text of the Bill is available on the Singapore Parliament website www.parliament.gov.sg. Please [click here](#) to read.

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The Second Reading Speech delivered by Senior Minister of State for Law Associate Professor Ho Peng Kee is available on the website of the Ministry of Law www.minlaw.gov.sg, please [click here](#) to read.

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IPOS not considering graduated response systems or “three strikes” law for online infringement

In August 2009, the Intellectual Property Office of Singapore (the “IPOS”) announced on its website www.ipos.gov.sg that there are no immediate plans to introduce the graduated response systems, or the “three strikes” law as a measure to deter on-line infringement of copyright works. Noting that such measures have not been introduced in many countries, the IPOS stated that it will continue to monitor international developments before proposing the introduction of such a law in Singapore. To read the IPOS announcement, please [click here](#).

What is the “three strikes” concept?

If the “three strikes” concept were implemented in Singapore, users caught repeatedly downloading content illegally will receive up to three warnings. The fourth offence will result in a termination of Internet access from the Internet service provider (ISP).

As a matter of background, the “three strikes” concept has been adopted in South Korea but only proposed in Britain, France and New Zealand.

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Parliament passes Casino Control (Amendment) Bill 2009: Changes affecting casino tax and persons excluded from casinos

On 15 September 2009, the Casino Control (Amendment) Bill 2009 (the “Bill”) was passed in Parliament. The Bill was introduced on 18 August 2009.

Strengthens tax administrative powers and simplifies social safeguard casino exclusion process

Principally, the Bill will amend the Casino Control Act (the “Act”) with regard to matters concerning casino tax and persons to be excluded from casinos. The Bill aims to align the administrative powers granted to the Inland Revenue Authority of Singapore, or IRAS, under the Act with those granted under the Income Tax Act, the Goods and Services Tax Act and other tax statutes. On the issue of social safeguards on casino gambling, the Bill will provide a simplified and shorter exclusion process so as to more efficiently and effectively protect those who are vulnerable towards problem gambling.

Amendments in force by 15 October 2009

According to the Second Reading Speech by Second Minister for Finance Mrs Lim Hwee Hua, the amendments to the Act will come into force by 15 October 2009.

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Reference materials

The full text of the Bill is available on the Singapore Parliament website www.parliament.gov.sg. Please [click here](#) to read.

To read the Second Reading Speech, please [click here](#). This speech is posted on the website of the Ministry of Finance www.mof.gov.sg

An article about the Bill when it was introduced in Parliament was featured in a previous issue of the Allen & Gledhill Legal Bulletin (August 2009). To read the article entitled "*Parliament introduces Casino Control (Amendment) Bill 2009: Changes affecting casino tax and persons excluded from casinos (August 2009)*", please [click here](#).

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Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd & Anor and Another Suit [2009] SGHC 197

The Singapore High Court decision in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd & Anor and Another Suit* is instructive for the court's guidance on steps which banks may take to verify the *bona fides* of certified extracts of documents.

Facts

Chia Teck Leng ("**Chia**") was the Finance Manager of the defendant ("**APBS**") and deceived the Singapore branch offices of five international banks by using the name of APBS to obtain substantial loan facilities purportedly made to APBS which he misappropriated.

Four international banks brought civil proceedings against APBS for the frauds Chia practised on them. The four banks, as victims of Chia's fraud, had understood that they were dealing with Chia as an employee of APBS. Only two banks continued with their actions, Skandinaviska Enskilda Banken AB (Publ) ("**SEB**") and Bayerische Hypo-Und Vereinsbank Aktiengesellschaft ("**HVB**") (collectively referred to as the "**banks**").

The banks claimed the repayment of the misappropriated loans on the following basis:

- (a) Chia had actual or ostensible authority to enter into the loan facilities on behalf of APBS, and as such, APBS was contractually liable to repay the outstanding loans and interest;
- (b) damages on the basis that APBS as Chia's employer was vicariously liable for his fraud;

- (c) damages in tort for negligence against APBS (claim by HVB only); and
- (d) claim against APBS in restitution (claim by SEB only).

The banks failed in all their claims. This case summary focuses on claims (a) and (b).

An important feature of the case was the banks' standard requirement that its corporate borrowers provide certified extracts of the relevant minutes that recorded the board resolution approving the particular transaction and authorising execution of the contractual documentation including giving individuals signing delegated authority to sign it (the "**condition precedent**"). This condition precedent was imposed by the banks for the facilities granted by SEB (the "**SEB Facilities**") and that granted by HVB (the "**HVB Facility**").

It was common ground that Chia provided false documents and forged certified extracts of the different board resolutions to the banks to obtain loan facilities. It was not disputed that the banks relied on the forged mandates thinking that they were genuine. The series of fraud on the banks involved the creation of credit and loan facilities that were not recorded or reflected anywhere in the books and balance sheet of APBS.

The banks focused on two APBS internal documents, namely, the "Position Description" for the job of Finance Manager and the Group Treasury Policy (collectively referred to as the "**internal documents**"), to argue that the internal documents, as a matter of construction, did not limit the scope of Chia's authority to enter into the SEB Facilities and the HVB Facility.

Actual authority (express or implied)

Actual authority

As highlighted above, the banks imposed the condition precedent for the SEB facilities and the HVB Facility. The court found that the imposition of the condition precedent in and of itself carried the implication that the banks appreciated and knew that Chia had no actual authority to bind the company, and that the power to give approval to an application for a loan and to execute the documents necessary to give effect to the transaction was the domain of the APBS board of directors. The banks had also asked for and were given certified copies of APBS's Memorandum and Articles of Association. It was clear from the Articles of Association that the borrowing powers were to be exercised only by the directors. It was not disputed that, without a board resolution, the banks would not have gone ahead with the transaction.

In reality, there was no actual board approvals as the certified extracts provided by Chia were forged. The court held that, in the absence of express authority, there was no implied actual authority.

Internal documents: General authority of Finance Manager

The banks argued that the internal documents, as a matter of construction, allowed Chia to commit APBS to the SEB Facilities and the HVB Facility without the sanction of the APBS board.

The court disagreed, pointing to the fact that the banks uncompromisingly imposed the condition precedent to cover the SEB Facilities and the HVB Facility. As such, the court was of the view that the banks could not validly make an argument that Chia had general authority under the internal documents to enter into the SEB Facilities and HVB Facility and bind APBS.

In the court's opinion, Chia's fraud on his employer and the banks determined the banks' authority debate. This was because Chia's actual authority (express or implied), if any, was impliedly subject to a condition that it was to be exercised honestly and on behalf of the principal.

Ostensible authority

Ostensible or apparent authority is the outward appearance of the authority of the agent as others see it. The nub of the banks' case on ostensible authority was the alleged representation or holding out by APBS that it was within Chia's apparent authority to warrant the genuineness of the documents presented to them, or to communicate the board's approval of the transactions. The dispute under consideration had two parts to it as follows:

- whether a forged document is a nullity for all purposes, or is estoppel an exception to the forged document still having legal effect.
- if estoppel was an exception, the question was whether Chia as Finance Manager would ordinarily have had apparent authority to communicate board approval, or to represent or warrant the board resolution as genuine.

Forgery and apparent authority

The court held that a principal may in appropriate circumstances be bound by the fraudulent acts of his agent where there is evidence of ostensible authority. On the evidence before the court, it was clear that the banks only dealt with one senior employee of APBS, and that was Chia. Hence, no authorised person in APBS had held out Chia as having authority to enter into and execute the SEB Facilities and HVB Facility. As such, there was a lack of representation and APBS was not estopped from denying the forgery.

Apparent authority to represent or warrant certified extracts of board resolutions as genuine

The banks also argued that, by reason of Chia's very position as Finance Manager, APBS was holding out, on apparent authority, that he was the person who would ordinarily have authority to warrant the genuineness of the board resolutions.

The court held that Chia's appointment as Finance Manager in itself did not assist the banks unless there was evidence that Chia was usually authorised to confirm the veracities of the board resolutions and the other related documents, and the banks could and did reasonably rely on his office for the inference as to Chia's apparent authority. Hence, the relevant inquiry was as to the powers usually enjoyed by such a finance manager in general. Evidence of the usual authority of someone in the same position as Chia must be led by the banks, but the banks did not lead evidence on this. In the absence of evidence, Chia plainly had no apparent authority to make the alleged representation.

Banks' verification of certified extracts of board resolutions

The court held that Chia's forgery of the mandate was inextricably linked to the banks' verification of the certified extracts of the board resolutions they received. If the banks did not make reasonable inquiries to verify the agent's authority as they ought to, the rules of apparent authority would not apply in their favour.

On the evidence, the banks willingly took the risk of forgery and Chia's lack of authority. Hence, the banks could not now claim to be misled. The court found that the banks had given loans of millions of dollars without following their own manuals and normal banking procedures, and regardless of the

multitude of discrepancies and irregularities in the documents. Hence, it could be inferred that the banks deliberately chose to forgo making reasonable inquiries as they valued a banking relationship with APBS, and Chia was the contact person for the banks. The misfortune that materialised was the consequence of the risks the banks were prepared to take and did assume.

Verification of documents

As mentioned above, this decision is instructive for the court's guidance on steps which banks may take to verify the *bona fides* of certified extracts of documents.

What is verification of the condition precedent documents about? In the court's view, a convenient starting point is the bank's manual which basically reminded the bank officers to ensure that important documents creating a legal relationship between the bank and customer like the contract and certified extract of the board resolution were properly executed by the authorised persons.

The court was of the opinion that verification of documents is simply a common sense principle to look after and safeguard the banks' own interests. It calls for the exercise of common sense and ordinary prudence of a reasonable person, rather than the skill of a signature expert. In this case, it meant that the banks had to check (i) the Memorandum and Articles of Association to ensure that the board resolution complied with, *inter alia*, the provisions on powers and duties of directors and proceedings of directors, and (ii) the identity, designation and signature of the signatories to the contract and certified extract of the board resolution. Such checks were obviously necessary as discrepancies and irregularities in the documentation, if serious enough, might undermine and vitiate the transaction to the detriment of the banks when it came to enforcement. In the context of apparent authority, the evidential value of verification of the documents was in determining the question whether or not the banks were put on notice of the employee's lack of authority, and the reasonable inquiries that were required to be made. Where the banks had willingly accepted the risk of the employee's lack of authority, the banks could not claim to be misled and no estoppel would arise in their favour.

In the court's view, the present case highlights the need to verify the identity and signature of the corporate officers certifying as true the copy of the relevant minutes that recorded the resolution passed in order to safeguard the banks' own interests. In the court's judgment, reasonable steps which may be taken to ensure the *bona fides* of the certification include:

- contacting a third party like the company secretary to confirm the board resolution;
- contacting the director to confirm that he had certified as true the extract of the relevant minutes that recorded the resolution passed;
- having a bank officer verify the signature against the bank's record if the signature of the signatory is already on the bank's record on the account; and
- checking the subject signature against documents already filed with the Accounting & Corporate Regulatory Authority such as the Directors' Report of APBS where the signatures of the directors appear.

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This recent development was highlighted in the Allen & Gledhill Arbitration Alert of 8 September 2009. If you would like to be on our arbitration related electronic communications mailing list, please e-mail us at publications@allenandgledhill.com

In the court's view, the banks' impression that the certified extracts were genuine and consequently the validity of Chia's authority to act on behalf of APBS, was founded purely on the banks' own narrow and limited verification and acceptance of the condition precedent documents, having chosen to forego inquiry as to authority.

Vicarious liability

The banks also contended that APBS was vicariously liable for Chia's deceit in that the tort of deceit was in forging the certified extracts of the board resolutions, and the tort was committed in the course of Chia's employment.

As the court had already found that Chia did not have authority to enter into a binding agreement, or was not held out as having apparent authority to communicate approval of the transaction on the part of the board of APBS, or to warrant the genuineness of the extracts of the board resolutions, the act of deceit which was the false representation was not practised in the course of Chia's employment. Accordingly, the banks' claims in tort based on vicarious liability failed.

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Dispute resolution

Singapore Court of Appeal maintains pro-arbitration stance and considers meaning of "dispute" in arbitration agreement

Tjong Very Sumito & Ors v Antig Investments Pte Ltd [2009] SGCA 41

The recent Court of Appeal decision in *Tjong Very Sumito & Ors v Antig Investments Pte Ltd* reiterates the Singapore courts' pro-arbitration stance. In this case, the Court of Appeal stressed that it was fundamental that parties be held to their contractual bargain to refer their disputes to arbitration. The court will not readily find that there is no dispute referable to arbitration unless the defendant has clearly admitted to the plaintiff's claim in terms of both liability and quantum.

In *Tjong Very Sumito*, the parties entered into a Shares Sale and Purchase Agreement (the "SPA") under which the appellants agreed to sell, and the respondent agreed to buy, 72 per cent. of the entire paid-up share capital of a certain company. Section 11.06 of the SPA required the parties to resolve their "*disputes, controversies and conflicts arising out of or in connection with*" the SPA by arbitration if negotiations were unsuccessful. The parties subsequently entered into four further supplemental agreements. The fourth supplemental agreement stated that it was "*supplemental to and an integral part of the SPA*" and also incorporated the terms of the SPA.

A dispute arose over the amount payable under the fourth supplemental agreement by the respondent and the appellants commenced court proceedings against the respondent. In turn, the respondent wrote to the appellants' solicitors stating, *inter alia*, that the appellants' suit was "*without merit and misconceived*", and sought a stay of the court proceedings in favour of arbitration.

Judicial policy towards arbitration

As a starting point, the Court of Appeal first addressed the judicial policy towards arbitration. It opined that “*the need to respect party autonomy (manifested by their contractual bargain) in deciding both the method of dispute resolution (and the procedural rules to be applied) as well as the substantive law to govern the contract, has been accepted as the cornerstone underlying judicial non-intervention in arbitration*”. Given all the circumstances of the case, the court would give effect to the “*parties’ contractual choice as to the manner of dispute resolution unless it offends the law*”.

Obtaining a stay in favour of arbitration

The Court of Appeal then addressed the issue of whether there was a “difference”, “dispute” or “controversy” which fell within the arbitration agreement under the SPA such that a stay of the court proceedings could be ordered pursuant to section 6 of the International Arbitration Act (the “**IAA**”). Section 6 provides, *inter alia*, that (emphasis added):

- “(1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court against any other party to the agreement *in respect of any matter which is the subject of the agreement*, any party to the agreement may, at any time after appearance and before delivering any pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.
- (2) The court to which an application has been made in accordance with subsection (1) shall make an order, upon such terms or conditions as it may think fit, staying the proceedings so far as the proceedings relate to the matter, *unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.*”

The court opined that in order to obtain a stay of proceedings in favour of arbitration, the party applying for a stay must show that he is party to an arbitration agreement and that the proceedings instituted fall within the terms of the arbitration agreement. The proceedings would fall outside the arbitration agreement should, for example, the agreement provide only for arbitration of “disputes” or “differences” or “controversies” which exist, but there was in fact no “dispute”, “difference” or “controversy” between the parties. In this connection, it was “*sufficient*” for a defendant to “*simply assert that he disputes or denies the claim in order to obtain a stay of proceedings in favour of arbitration*”. The court will not look into the respective merits of the parties’ cases.

A matter would not, however, be referable to arbitration if the defendant had clearly admitted to the plaintiff’s claim in terms of both quantum and liability. In such a case, the plaintiff may proceed to apply for summary judgment against the defendant in court. However, the Court of Appeal cautioned that the plaintiff should be armed with “*compelling evidence of the defendant’s admission, because once that admission is challenged by the defendant with any semblance of credibility, the court will ordinarily be inclined to decide that a ‘dispute’ has arisen and order a stay of proceedings for the arbitral tribunal to resolve the ‘dispute’*”. Silence by the defendant *per se* and a failure to

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respond may be insufficient to constitute a clear and unequivocal admission of the plaintiff's claim. On the other hand, non-admission may be inferred from previous inconclusive discussions between parties, prevarication and even silence.

The Court of Appeal also acknowledged that there may be cases where a party applying for a stay may have waived or may be estopped from asserting his right to insist on arbitration. In this regard, normal contractual analysis of estoppel and/or waiver would apply and the court will not stay the proceedings on the basis that the arbitration agreement is "*inoperative*".

On the facts, it was undisputed that the fourth supplemental agreement was "*supplemental to and an integral part of the SPA*" which provided for all disputes, controversies and conflicts to be resolved by arbitration. The Court of Appeal also opined that the insertion of the words "controversies" and "conflicts" in section 11.06 of the SPA "*obviously affirm[ed] a broad intention to refer all manner of contentious matters to arbitration*". This, coupled with the fact that the respondent had made a positive assertion challenging the appellants' claim, warranted a stay of proceedings in favour of arbitration.

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Intellectual property & technology

Singapore Court of Appeal confirms that "Rooster" is not a common name in cordyceps trade

Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd & Anor and Another Appeal [2009] SGCA 9

The decision of the Singapore Court of Appeal in *Wing Joo Loong Ginseng Hong (Singapore) Co Pte Ltd v Qinghai Xinyuan Foreign Trade Co Ltd & Anor and Another Appeal* is instructive in that the court has clarified and reinstated several important fundamental concepts relevant to the law of trade marks in Singapore.

In this case, both the plaintiff and the defendants had appealed to the Court of Appeal against the decision of the Judge in the High Court below (the "**Judge**") in relation to the first defendant's "Rooster" mark. The plaintiff appealed against:

- the Judge's refusal to revoke the registration of the "Rooster" mark;
- the Judge's refusal to invalidate the registration of the "Rooster" mark; and
- the Judge's ruling that sections 22(1) and 23(1) of the Trade Marks Act (the "**Act**") gave the court and the Registrar of Trade Marks a discretion not to revoke or invalidate the registration of a trade mark even though the grounds for revocation or the grounds for invalidation specified in the respective provisions have been established.

In upholding the High Court's decision that the "Rooster" mark should not be revoked under sections 22(1)(a), (b) and (c) of the Act, the Court of Appeal agreed with the Judge that the "Rooster" mark had not become customary within the meaning of section 7(1)(d) of the Act. However, the Court of Appeal was of the opinion that the "Rooster" mark was clearly capable of distinguishing the cordyceps of the first defendant's predecessor from that of other suppliers and overruled the High Court's finding that the "Rooster"

mark did not satisfy the definition of a trade mark. The Court of Appeal also expressed the view that the Judge had erred in holding that the court had the discretion to retain the mark even when the grounds for revocation or invalidation are established.

Facts

The “Rooster” mark was first registered in Singapore in respect of cordyceps in 1995 by Qinghai Medicines & Health Products Import & Export Corp of Qinghai, China (“**Qinghai Meheco**”). Ownership of the mark was subsequently assigned to the first defendant, Qinghai Xinyuan Foreign Trade Co in 2003. In 2005, the first defendant granted an exclusive licence to Yu Ceng Trading Pte Ltd (“**Yu Ceng**”) to use the mark. In 2006, Yu Ceng’s licence was novated in favour of the second defendant, YCT Import & Export Pte Ltd.

The plaintiff commenced the action in the High Court in retaliation to a raid conducted on the plaintiff’s premises pursuant to search warrants obtained by Yu Ceng, during which quantities of cordyceps bearing alleged counterfeit “Rooster” trade mark were seized.

Decision of the High Court

The High Court had decided that although the “Rooster” mark had not become customary in Singapore to denote cordyceps from China, it was not capable of distinguishing Qinghai Meheco’s cordyceps from that of other suppliers using the same mark and thus did not satisfy the definition of a trade mark. Departing from the consistent rulings of three earlier High Court decisions in Singapore, the Judge further ruled that he had the discretion to allow the registration to continue notwithstanding that the grounds of invalidation had been duly satisfied, and dismissed the plaintiff’s application to revoke and/or invalidate the registration of the “Rooster” mark.

Application for revocation

The plaintiff’s first ground for revocation was premised on the lack of genuine use of the “Rooster” mark under sections 22(1)(a) and 22(1)(b) of the Act. The Court of Appeal agreed with the Judge that the plaintiff’s contention that the “Rooster” mark did not actually *function* as a trade mark after being registered should not be considered under this ground as such a contention does not relate to the use or non-use of the mark, but pertains instead, to the *effect* of the use of that mark. As there was clear evidence showing that the “Rooster” mark was put to genuine use during the relevant period, the Court of Appeal dismissed the plaintiff’s application for revocation on this ground.

The plaintiff’s other ground for revocation was on the premise that the word “Rooster” had become a common name in the trade for cordyceps as a result of the acts or inactivity of the first defendant or its predecessor. The Court of Appeal opined that it would be insufficient for the plaintiff to simply show that the “Rooster” mark was a *popular* mark used to denote cordyceps from China. The mere fact that a mark is popular, or even the only brand used to market a particular product or service, does not in itself render that mark a generic name and thus undeserving of protection. On the evidence, the Court of Appeal held that as the plaintiff had failed to discharge its burden of proving that the “Rooster” word had become the generic name for referring to all cordyceps from China, there was no basis to grant revocation on this ground.

Application for invalidation

The plaintiff argued that it had become customary in the trade to use the “Rooster” sign to denote cordyceps from China at the time of trade mark application. This would make the “Rooster” mark non-registrable under

section 7(1)(d) of the Act, which constituted a ground for invalidation. The Court of Appeal held that to succeed on this argument, the plaintiff would have to prove that the sign had become the generic name among the general public or among the trade, and become incapable of distinguishing the cordyceps of one supplier from that of other suppliers. Having found that the plaintiff failed to discharge this heavy burden, the Court of Appeal dismissed the application for invalidation on this ground.

As for the plaintiff's argument that the "Rooster" mark was not capable of distinguishing the cordyceps of one supplier from that of other suppliers and thus did not satisfy the definition of a trade mark within the definition of section 2(1) of the Act, the High Court had earlier preferred the approach taken in *Bach and Bach Flower Remedies Trade Marks* [2000] RPC 513, which was to consider the mark as well as the surrounding circumstances including its use at the time of application for registration. The Court of Appeal declined to follow the approach adopted by the Judge and reverted to the position set out in *Philips Electronics NV v Remington Consumer Products Ltd* [1999] RPC 809. Generally accepted by the Singapore IP community, the position in *Philips Electronics* is that the capacity to distinguish must arise from the inherent features or characteristics of the mark, and not from the result of its use. In concluding that the "Rooster" sign (as opposed to a picture of cordyceps) clearly has the capability to distinguish, the Court of Appeal granted the defendant's appeal and dismissed the plaintiff's application for invalidation on this ground.

The Court of Appeal also considered the plaintiff's allegation of bad faith, fraud and misrepresentation and ruled that the plaintiff had failed to discharge its burden of establishing each of these allegations.

Discretion not to grant relief

Notwithstanding that the Court of Appeal had found that the plaintiff had not established its case for revoking or invalidating the registration of the "Rooster" mark, the court went on to provide its view on this issue. Referring to and relying on legislation and parliamentary intention, Singapore case law as well as academic authorities, the Court of Appeal was of the opinion that the word "may" in section 22(1) and section 23(1) of the Act does not confer any residual discretion on the part of the court and the Registrar of Trade Marks not to revoke or invalidate the registration where the specified grounds for revocation in section 22 or invalidation in section 23 have been made out.

Comment

Although the outcome of the High Court decision was essentially unchanged by the Court of Appeal's ruling, i.e. that the registration of the "Rooster" mark was allowed to remain on the register, the Court of Appeal has clarified and reinstated several important fundamental concepts relevant to the law of trade marks, much to the benefit of the Singapore IP community.

Reference materials

An article about the High Court decision in this case was featured in a previous issue of the Allen & Gledhill Intellectual Property & Technology Review (No. 2 of 2008). Please [click here](#) to read the article entitled "*Singapore High Court considers whether "Rooster" has become customary for cordyceps in Singapore*".

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General

Contract

Singapore High Court sets out law regarding admissibility of extrinsic evidence when interpreting contractual documents

Tiger Airways Pte Ltd v Swissport Singapore Pte Ltd [2009] SGHC 178

In *Tiger Airways Pte Ltd v Swissport Singapore Pte Ltd*, the Singapore High Court considered the admissibility of extrinsic evidence in relation to the interpretation of a contract.

Facts

The plaintiff, Tiger Airways Pte Ltd (“**Tiger**”), a low-cost airline, contracted Swissport Singapore Pte Ltd (“**Swissport**”), a ground handling services provider, to provide ground handling services at Changi Airport for five years, from 26 March 2006 to 25 March 2011 (the “**agreement**”). At the time, Swissport held a licence to provide ground handling services, issued by the Civil Aviation Authority of Singapore (the “**CAAS**”), which allowed it to provide such services at Changi Airport (the “**licence**”).

On 15 December 2008, Swissport gave notice to the CAAS that it intended to terminate the Ground Handling Services Agreement (the “**GHSA**”) concluded with the latter as Swissport intended to leave the Singapore market. The notice was accepted by the CAAS resulting in the termination of the GHSA which would, in turn, result in the cancellation of Swissport’s licence.

In January 2009, Swissport gave Tiger notice of its intention to terminate the agreement relying on a clause of the agreement (“**clause 9.3**”) which provided, inter alia, that if either party’s licence to carry on its services were “revoked, cancelled or suspended ... either party may terminate the agreement ... upon the giving to the other party of at least 24 hours written notice”.

Tiger alleged that Swissport was in breach of contract for the wrongful termination of the agreement concluded between the parties. The issue before the court was whether a proper construction of clause 9.3 allowed Swissport to serve notice to terminate the agreement after it had, effectively, terminated its own licence. Tiger contended that clause 9.3 did not apply to a situation where the licence was voluntarily terminated by the licence holder itself. Swissport countered that clause 9.3 served as an “exit clause” which gave both parties the right to terminate the agreement unilaterally.

Admissibility of extrinsic evidence

As both parties sought to rely on the surrounding circumstances and the object of the agreement in advancing their respective interpretations of clause 9.3, the court considered the law in Singapore on the admissibility of extrinsic evidence when interpreting contractual documents. In so doing, the court relied heavily on the judgment of the Singapore Court of Appeal in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR 1029 (“**Zurich Insurance**”).

The Court of Appeal in *Zurich Insurance* found that there is no absolute rule to exclude the admission of extrinsic evidence for the purpose of interpreting a contract. For extrinsic evidence to be admitted, the evidence must be

relevant to determining the context of the contract and must have been reasonably available to all the parties to the contract. The Court of Appeal added a threshold requirement concerning the admissibility of extrinsic evidence - such evidence must point to a clear or obvious context before the court can say with any certainty that the evidence is of assistance.

The High Court here noted that if the context is found to be clear and obvious, extrinsic evidence could lead to an interpretation which is different from the construction placed on the plain language of the contract. The court also made mention of the objective approach which is to be employed throughout the process of determining if extrinsic evidence should be admissible for the purpose of ascertaining the parties' intentions.

Interpretation of clause 9.3

Swissport contended that, given a literal reading, clause 9.3 provided it with the right to serve notice within 24 hours to terminate the agreement as its licence was in fact cancelled by the CAAS. It stated that as its licence had been issued by the CAAS, only the CAAS had the authority to cancel it. Swissport argued that, in effect, clause 9.3 was an "exit clause" which allowed a party who could no longer continue its operations in Singapore to prematurely terminate the agreement by giving notice of at least 24 hours. In support of this argument, Swissport stated that both parties were new companies which faced "various uncertainties and imponderables" so that it was good business to include an exit clause in the agreement.

The court was unconvinced, even considering clause 9.3's literal meaning. It noted that Swissport was unable to point to any evidence or circumstance which would objectively demonstrate that both parties were concerned with preserving an exit clause as so argued before the court. The fact that both parties were new companies at the time of the agreement was insufficient to point to a clear or obvious context that would allow it to be taken into account as relevant background information.

Tiger argued that given the scale and complexity of ground handling services and the significant costs involved in switching service providers, it would have been "unthinkable" for it to have agreed to an exit clause. In support of its argument, Tiger was able to rely on the rest of the contract, specifically clause 9.1 of the agreement and the recitals to the agreement. Clause 9.1 of the agreement provided for a five-year term for the agreement, subject to a probationary period of six months. This clause also listed in detail the events that were required to occur before the right to terminate could arise during the six-month probationary period. It was also noted that should one of the events envisaged occur during the probationary period, a material breach was required and the parties were thereafter enjoined to resolve problems in good faith if possible, failing which the agreement could then be terminated with two months' notice. The court noted that these requirements in clause 9.1 were inconsistent with Swissport's contention that clause 9.3 would operate as a unilateral exit clause, stating that the probationary period would have been rendered unnecessary if the parties could unilaterally terminate the agreement by serving notice within 24 hours.

Tiger also brought the recitals of the agreement to the court's attention as it was stated therein that the purpose of the agreement was to "commit to an open and transparent long-term relationship at Changi Airport". The court noted that while recitals do not impose legal obligations on the parties, they can often be of assistance to the courts in the interpretation of the contract itself.

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Judgment

The court, having construed the agreement as a whole and reading clauses 9.1 and 9.3 together with the recitals, found that it was reasonable that the parties had intended to contract for a fixed term of five years subject only to the satisfactory performance of Swissport within the first six months and the occurrence of specific events as provided for in the agreement. The court's interpretation was consistent with the business purpose of the agreement which was to create a long-term relationship between the parties.

Swissport's contention that clause 9.3 was an exit clause was unsustainable and once it had requested the CAAS to cancel its licence, it could not then rely on clause 9.3 as it could not have been reasonably intended by the parties for the clause to apply in such an event.

The court accepted Tiger's interpretation of clause 9.3 and found Swissport to be in breach of the agreement.

The successful plaintiff was represented by Allen & Gledhill LLP.

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In brief

MAS responds to feedback on proposals to enhance regulatory framework for unlisted investment products

On 12 March 2009, the Monetary Authority of Singapore (the "MAS") released a consultation paper on proposals to further safeguard consumers' interests and enhance the regulatory framework for unlisted investment products. The proposals focused on promoting effective disclosure by improving the quality of information available to investors, strengthening fair dealing in the sale and advisory process and enhancing the powers of the MAS under the Financial Advisers Act.

Please [click here](#) to read an article about this development in the September 2009 issue of the Allen & Gledhill Financial Services Bulletin.

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News

CitySpring Infrastructure Trust's one-for-one renounceable rights issue to raise S\$235.2 million

CitySpring Infrastructure Management Pte Ltd ("Trustee-Manager" or "CSIM"), the manager of CitySpring Infrastructure Trust ("CitySpring"), has announced a fully underwritten one-for-one renounceable rights issue to raise gross proceeds of approximately S\$235.2 million. The rights issue is fully underwritten by DBS Bank Ltd and UBS AG, acting through its business division, UBS Investment Bank, which have also been appointed as Joint Financial Advisers and Lead Managers of the rights issue.

CitySpring's largest unitholder, Temasek Holdings (Private) Limited ("Temasek"), holds through its wholly-owned subsidiaries, CSIM, Bartley

Investments Pte Ltd and Napier Investments Pte Ltd ("**Napier**") (collectively, "**Temasek Entities**"), approximately 27.77 per cent. of the total number of issued units of CitySpring.

Napier has provided an irrevocable undertaking to the Trustee-Manager and the underwriters that the Temasek Entities would subscribe and pay in full for their respective pro rata entitlements under the rights issue. Napier has also entered into a sub-underwriting agreement with the underwriters pursuant to which Napier agreed to subscribe for up to 32.01 per cent. of the rights issue to the extent that such rights units are not validly subscribed for under the rights issue.

Allen & Gledhill LLP Partners Prawiro Widjaja and Bin Wern Sern, Senior Associate Jane Wong and Associate Rachel Koh advised the Trustee-Manager while Allen & Gledhill LLP Partners Lim Mei and Lee Kee Yeng, and Senior Associate Zahedah Abdul Rashid advised Temasek.

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Fortune Real Estate Investment Trust's rights issue and acquisition of three properties in Hong Kong

ARA Asset Management (Singapore) Limited (the "**Manager**"), as manager of Fortune Real Estate Investment Trust ("**Fortune REIT**"), announced a fully underwritten and renounceable one-for-one rights issue, of 824,879,427 new units of Fortune REIT to raise gross proceeds of approximately HK\$1,889 million, of which HK\$1,591 million will be used to fund the acquisitions of Metro Town, Carribean Bazaar and Hampton Loft which are located in Hong Kong. This is the first fund raising in the capital markets by a real estate investment trust to finance acquisitions in this financial crisis.

Fortune REIT is acquiring Metro Town from a wholly-owned subsidiary of Cheung Kong (Holdings) Limited (the "**Sponsor**"), the sponsor of Fortune REIT, and a third party, Carribean Bazaar from MTR Corporation Limited and Hampton Loft from Global Coin Limited, a wholly-owned subsidiary of the Sponsor. The acquisitions which amount to approximately HK\$2,039 million will be funded through the rights issue and bank financing.

Allen & Gledhill Partners Jerry Koh, Chua Bor Jern and Foong Yuen Ping, Senior Associate Long Pee Hua and Associate Wu Zhiyou acted as transaction counsels and legal advisors to the Manager and Sponsor.

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PSA International Pte Ltd issues US\$500 million 4.625 per cent. Notes due 2019 under its US\$3.5 billion Global Medium Term Note Programme

PSA International Pte Ltd ("**PSAI**") has issued US\$500 million 4.625 per cent. Notes due 2019 under its US\$3.5 billion Global Medium Term Note Programme.

Advising PSAI as to Singapore law are Allen & Gledhill LLP Partners Tan Tze Gay and Glenn Foo and Senior Associate Bernie Lee.

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Acquisition of Chartered Semiconductor Manufacturing

ATIC International Investment Company LLC (the “**Acquiror**”) and Chartered Semiconductor Manufacturing (“**CSM**”) have entered into an implementation agreement to effect the proposed acquisition of all the issued ordinary shares in the capital of CSM by the Acquiror by way of a scheme of arrangement. The transaction represents an equity value of approximately S\$2.5 billion. The total value of the transaction, which includes the debt and convertible redeemable preference shares, is approximately S\$5.6 billion. Temasek Holdings (Private) Limited (“**Temasek**”), which owns approximately 62.28 per cent. of all the shares, has given an irrevocable undertaking to vote in support of the transaction.

Advising CSM are Allen & Gledhill LLP Partners Prawiro Widjaja and Song Su-Min and Associates Chua Si Wei, Phang Liying, Timothy Goh and Sylvia Taslim and advising CSM on competition law aspects of the transaction is Partner Daren Shiau who is assisted by Senior Competition Economist Elsa Chen.

Advising Temasek are Allen & Gledhill LLP Partners Lim Mei and Lee Kee Yeng and Senior Associate Zahedah Abdul Rashid.

Advising Citigroup Global Markets Singapore Pte Ltd, one of the joint financial advisors to CSM, are Partners Andrew M. Lim and Hilary Low and Associate Goh Weiliang.

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Indiabulls Properties Investment Trust’s rights issue

Indiabulls Property Management Trustee Pte Ltd (“**Indiabulls Property Management Trustee-Manager**”), as trustee-manager of Indiabulls Properties Investment Trust (“**IPIT**”), announced a proposed underwritten 53-for-100 renounceable rights issue of 1.25 billion new units in IPIT to raise gross proceeds of approximately S\$200.1 million.

Advising as transaction counsels and counsels to Indiabulls Property Management Trustee-Manager are Allen & Gledhill LLP Partners Jerry Koh, Foong Yuen Ping, Chua Bor Jern, Senior Associate Henry Tan and Associates Louis Lim and Melissa Chong.

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First Ship Lease Trust’s placement of new units

FSL Trust Management Pte Ltd (“**FSLTM**”), as trustee-manager of First Ship Lease Trust (“**FSL Trust**”), has undertaken a placement of 80,000,000 new units in FSL Trust raising net proceeds of approximately S\$40.9 million. This is the first placement of new units in a business trust involving the declaration of a stub distribution.

Advising FSLTM are Allen & Gledhill LLP Partner Leonard Ching, and Associates Goh Li Hui and Alvin Zhuang.

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Genting Singapore PLC's one-for-five rights issue

Genting Singapore PLC has launched a one-for-five rights issue of up to 2,043,716,094 new shares to raise gross proceeds of up to S\$1.63 billion. The transaction, which is one of the largest rights issue announced in Singapore this year, is expected to be completed in October 2009. The rights issue involves nine financial institutions acting as joint financial advisers, joint lead managers and joint lead underwriters.

Advising Genting Singapore PLC are Allen & Gledhill LLP Partners Tan Tze Gay, Bin Wern Sern and Wong Sook Ping, Senior Associate Neda Namazie and Associate Lu Zhu An.

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Disposal of shares in Quayside Gem Limited

LaSalle Asia Opportunity II S.A.R.L. has signed a share purchase agreement for the disposal of 100 per cent. of Quayside Gem Limited, the holding company of Merchant Quay Pte Ltd which owns Swissotel Merchant Court Singapore, for approximately S\$260.04 million.

LaSalle Asia Opportunity II S.A.R.L. was advised by Allen & Gledhill LLP Partner Steven Seow and Associate Tay Ser Bee.

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Allen & Gledhill is top Asian-Counsel Singapore Firm of the Year 2009 for five practice areas

Allen & Gledhill LLP has been awarded Singapore Firm of the Year 2009 for five out of 17 practice areas by *Asian-Counsel* in its third annual "Representing Corporate Asia" survey, being named top in the most number of practice areas in Singapore.

The Firm was named *Asian-Counsel* Singapore Firm of the Year 2009 for the following five practice areas:

- Banking & Finance (including Securities/Structured Products)
- Capital Markets
- Project Finance
- Real Estate
- Regulatory/Compliance

The selection of *Asian-Counsel's* Firms of the Year 2009 was based on votes and testimonials by hundreds of senior in-house counsel across Asia and the United Arab Emirates. Participants were asked which law firms were their preferred external partners for each area of practice in the various jurisdictions.

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Allen & Gledhill named Asian Legal Business Leading M&A Firm in Singapore

Allen & Gledhill LLP has been named as a leading M&A Firm in Singapore by *Asian Legal Business* in their Asia's Leading M&A Firms report. This award has been given to local leaders in Hong Kong, Korea, Singapore, Taiwan, and Japan for being the best local counsel on mega-M&A. Our success has been due in no small measure to both the trust and unstinting support given to us by our clients.

Managing Partner Lucien Wong has also been named as one of Asia's top 25 M&A lawyers. He is the only lawyer in Singapore to be listed.

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