LAW WATCH

MARCH 2022

In Brief

DEALS

WONGPARTNERSHIP LLP ACTED IN…
The first listing of a special purpose acquisition company (SPAC) in Singapore

WongPartnership advised Credit Suisse (Singapore) Limited, DBS Bank Ltd. and Morgan Stanley Asia (Singapore) Pte., the joint global coordinators and underwriters in the initial public offering of Vertex Technology Acquisition Corporation Ltd ("**VTAC**") on the Main Board of the Singapore Exchange Securities Trading Limited ("**SGX-ST**"). VTAC raised S$200 million from its initial public offering.

VTAC, sponsored by Vertex Venture Holdings Ltd ("**Vertex Holdings**"), is the first special purpose acquisition company to be listed on the SGX-ST. VTAC will focus on looking for potential business combination targets within the following six sectors:

- Artificial intelligence
- Cyber security and enterprise solutions
- Consumer internet and technologies
- Financial technologies (FinTech)
- Autonomous driving and new-energy vehicles
- Biomedical technologies and digital healthcare

Vertex Holdings is a Singapore-based global venture capital platform, which provides anchor funding and operational support to a proprietary global network of venture capital funds, through a master fund structure.

Partners involved in the transaction were Gail Ong and James Choo from the Equity Capital Markets Practice.

Gail ONG
Head – Equity Capital Markets
d: +65 6416 8205
e: gail.ong
@wongpartnership.com
Click here to view Gail's CV.

James CHOO
Partner – Equity Capital Markets
d: +65 6416 2418
e: james.choo
@wongpartnership.com
Click here to view James's CV.

Connect with WongPartnership.

Other recent matters that WongPartnership was involved in were:

DESCRIPTION	PRACTICE AREAS
Acting in the transaction between the vendors and Lendlease Global Commercial REIT in the REIT's acquisition of the remaining stake interest in Jem mall at an agreed property value of S$2.08 billion.	Corporate Real Estate Banking and Finance Corporate/Mergers & Acquisitions Intellectual Property, Technology & Data
Acted in the investment by a global investment company and EDBI in the US$100 million Series A funding round of Next Gen Foods, the creator of plant-based chicken alternative TiNDLE. The funding round represents the largest Series A deal size to date in the plant-based meat category globally.	Start-up / Venture Capital Private Equity Intellectual Property, Technology & Data Antitrust & Competition
Acting in the mandatory conditional cash offer for Keong Hong Holdings by the offeror, LJHB Capital (S) Pte. Ltd.	Corporate/Mergers and Acquisitions China
Acted in the seven-year contract renewal (from 2022 until 2028) between the Formula One Group and Singapore GP for the Formula One Singapore Grand Prix hosted in Singapore. The Singapore Tourism Board and Singapore GP will work together to reduce the Singapore race's carbon footprint as part of a transition to more sustainable business models and as part of Formula One's sustainability goals.	Corporate/Mergers and Acquisitions Intellectual Property, Technology & Data
Acted in the private placement by The Straits Trading Company Limited to raise gross proceeds of approximately S$80.9 million.	Equity Capital Markets
Acted in the purchase by an investment firm of convertible notes of a principal amount of US$80 million issued by Carsome Group Pte. Ltd., as part of a late stage funding round of US$290 million in Carsome. The funding round placed Carsome at a post-money valuation of US$1.7 billion and the funds will be invested in its talent, product and technology businesses.	Corporate/Mergers and Acquisitions Equity Capital Markets

DESCRIPTION	PRACTICE AREAS
Acted in the sale by ESR-REIT of an industrial building at 28 Senoko Drive to Tat Seng Packaging Group. The net proceeds will be used to repay borrowings and to fund asset enhancements, acquisitions, unit buy-backs and working capital requirements.	Corporate Real Estate
Acted in the transaction involving the takeover of Sime golf course at the Bukit location of Singapore Island Country Club by Keppel Club. Keppel Club will operate the new hybrid members-public facility until 31 December 2030.	Corporate Real Estate
Acted in the US$99.5 million funding round of One Championship by a global investment firm. The fundraise met the condition for One Championship to turn approximately 42 per cent of its new shares, worth US$174 million, from redeemable convertible loan notes to preference shares. Upon release of its new shares, One Championship's valuation has increased to US$1.2 billion.	Private Equity Start-up / Venture Capital

INSOLVENCY & RESTRUCTURING

Singapore High Court Rules That Lock-Up Agreements Will Not Generally Fracture Scheme Classes

Authored by Partners Daniel Liu and Tan Kai Yun with contribution from Senior Associate Clayton Chong

In the first reported Singapore decision of its kind, the General Division of the Singapore High Court ("**High Court**") held, subject to certain caveats, that creditors who enter into lock-up agreements generally need not be placed in a separate class from other creditors for the purpose of voting on a scheme of arrangement (i.e., the lock-up agreements would generally not fracture the class of creditors for the purposes of voting): *Re Brightoil Petroleum (S'pore) Pte Ltd* [2022] SGHC 35 ("***Brightoil***").

Our Comments

Lock-up agreements are a crucial and useful part of any multi-lender/multi-creditor restructuring. Under a lock-up agreement, a lender or creditor that supports a debtor company's restructuring proposal provides an irrevocable undertaking to vote in favour of a scheme of arrangement. These lock-up agreements, by design, typically provide some form of material inducement for lenders or creditors to commit to their voting positions early. One common mechanism is to include the payment of a consent fee (in addition to the scheme distributions it would receive) to supporting lenders or creditors, if the scheme of arrangement is later approved by the requisite majorities of creditors and sanctioned by the court.

These creditor lock-up arrangements help to facilitate an effective and efficient restructuring process, as they enable the debtor company to gradually build up support for its proposed scheme, and confer greater certainty and visibility as to whether and when the requisite creditor approval thresholds have been met. If a debtor company does not know whether the requisite creditor approval thresholds have been met, it may end up wasting time and costs in calling for a scheme meeting that would ultimately prove futile. If the debtor company is able to "lock-up" the requisite majorities of creditors for the scheme, it might be able to obtain sanction of the scheme through an expedited pre-pack scheme process.

Without lock-up arrangements, creditors may prefer to reserve their positions and only express affirmative support for a scheme when the proposed scheme is put up for a vote at a scheme meeting convened by the court. Collective action problems may also arise, as some creditors may choose to "free-ride" in the restructuring process, leaving other creditors to consider and vote on the scheme proposal. Lock-up agreements help to incentivise creditors to commit their resources and attention to actively consider the proposed scheme and to make an affirmative decision at an earlier stage, thereby avoiding a prolonged restructuring process.

Lock-up agreements have been used in recent years in Singapore restructurings, such as in the cases of Pacific International Lines and Miclyn Express Offshore, but *Brightoil* is the first decision which analyses in detail classification issues relating to lock-up agreements. The High Court's clarification that lock-up agreements do not generally fracture a class of creditors, subject to certain safeguards, is very valuable as it gives debtors greater confidence in the use of lock-up agreements in restructuring. If lock-up agreements providing for consent fees could fracture a class of creditors in every case, it would render such agreements largely meaningless, as the creditors who were not locked up would form their own class for the purposes of scheme voting, and would then have a veto against the scheme. This may result in the fracturing of classes even where there is no clear dissimilarity of rights resulting from the lock-up agreements, such that minority dissenting creditors form a class of their own, with a disproportionate right of veto.

The High Court's decision and clarification in *Brightoil* is hence a welcome addition to the Singapore restructuring and insolvency jurisprudence.

This update takes a look at the High Court's decision.

Background

In 2018, Brightoil Petroleum (S'pore) Pte Ltd ("**BPS**"), together with its ultimate holding company, Brightoil Petroleum (Holdings) Limited ("**BOHL**"), and other related companies, embarked on a major debt restructuring exercise.

BPS eventually managed to resolve a significant part of its liabilities totalling exceeding US$390 million, and proposed a scheme of arrangement to restructure the remaining debts owed by BPS to its unsecured creditors.

Under the scheme, the scheme creditors would receive payments fixed at US$6 million to be distributed on a *pari passu* basis, with a potential recovery of about 12% of the debt value, compared to 0.2% in a liquidation. Liquidation was the most likely alternative outcome if the scheme was not sanctioned by the court.

Additionally, all the scheme creditors were offered the opportunity of entering into a lock-up agreement with BOHL, by which they would undertake to vote in favour of the scheme in return for a consent fee of 1% of their admitted debt.

Only three of the scheme creditors ("**Locked-in Creditors**") entered into the lock-up agreements.

Of these three, one Locked-in Creditor's lock-up agreement was modified such that, in addition to the consent fee, its support for the scheme was also conditional on BOHL paying a further US$1.25 million in part satisfaction of BOHL's guarantee obligations linked to loan facilities extended by that Locked-in Creditor to BPS.

Voting forms for the scheme were issued to the 12 scheme creditors eligible to vote, to determine the notional votes in favour of the scheme if a creditors' meeting had been held. 11 of the 12 scheme creditors (representing US$50,143,082.20 in value) cast votes, and of the votes cast, ten scheme creditors (representing US$47,269,535.04 or 94.26% in value) voted in favour of the scheme while one (representing US$2,873,547.16 or 5.74% in value) voted against.

BPS then sought the court's sanction of the scheme under section 71 of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**").

A key question which arose was whether the Locked-in Creditors should have been placed in a separate class from other creditors when voting (instead of being allowed to vote in a single class with the other non-locked-in creditors). If the Locked-in Creditors should have been classed separately, the reliability of the vote conducted would be in question.

The High Court's Decision

The High Court held that there was no need to place the Locked-in Creditors in a separate class from the other creditors for the purpose of determining whether the notional voting outcomes satisfied the statutory majority requirements. It also found that the reliability of the notional majority vote was not compromised.

Following a review of English and Hong Kong authorities, the High Court found, as a general position, that creditors who enter into lock-up agreements generally need not be placed in a separate class from other creditors for the purpose of voting on a scheme of arrangement, subject to the following non-exhaustive requirements:

- The benefit conferred on the creditors who enter into the lock-up agreement must not be so sizeable that it would have a significant influence on the decision of a reasonable creditor when voting for the proposed scheme. In determining whether there was significant influence, it is not sufficient to consider in the abstract, the absolute value of the consent fee, or even the percentage of such fee in respect of the face value of the debt held. Instead, one relevant factor may be how the size of the consent fee (or benefit) compares against the forecasted returns to creditors under the implemented scheme and the estimated recovery in liquidation (or another appropriate comparator), and whether such consent fees are sufficiently material to induce creditors to commit to vote for a scheme that they would otherwise have rejected.

- The lock-up agreement must have been made available to all scheme creditors within the relevant class, such that they were all given the equal right to enter into the agreement, and the agreement made with each creditor must be on substantially the same terms. Beyond that, whether a creditor chooses to exercise that right to enter into the lock-up agreement is beyond a scheme company's control.

- The use of the lock-up agreement must be done *bona fide* (e.g., the creditors must not be misled). The court will not sanction a scheme if the company and/or its majority creditors are not acting *bona fide* and this applies with equal force in the context of section 71 of the IRDA.

The High Court observed that some English authorities suggest that lock-up agreements should include a provision allowing a signatory to terminate the agreement and cease to support the scheme in the event of a "material adverse change" to the company's financial position. This is to ensure that a creditor would not be irrevocably bound in all circumstances. The High Court, however, was of the tentative view that such a provision, while going towards the *bona fides* and fairness of the arrangement, should not be mandatory – but noted that a conclusive pronouncement on this point would have to await full arguments in an appropriate case.

The assessment in each case is not one that is based purely on numerical comparisons, but must be done contextually, bearing in mind the specific facts of each case (e.g., whether creditors were given accurate information on the function of the lock-up agreements, and whether there was parity of information across different groups of creditors).

Here, the High Court noted that:

(a) The scheme creditors whose votes were solicited for the notional voting outcomes were fairly representative of the class of creditors to which they belonged.

(b) The consent fee offered in this case (being 1% of the scheme creditor's admitted debt) was not so sizeable that it would have a significant influence on the decision of a reasonable creditor when voting for the proposed scheme. By acceding to the scheme compared to recovery in liquidation, there was a potential 60-fold recovery of the admitted debt value which would have been sufficient commercial justification alone for the scheme creditors to vote in favour of the scheme. As such, even without the additional consent fee of 1.0%, it was foreseeable that a reasonable creditor would have voted in favour of the scheme in any case. There was little reason to think that the voting outcomes were distorted.

(c) The lock-up agreements were offered as a *bona fide* attempt to introduce certainty into the restructuring process:

  (i) BPS had informed the scheme creditors of this application to sanction the scheme under section 71 of the IRDA and there had been no objections; and

  (ii) the expected recovery under the scheme was described in the lock-up agreements to be "between 8.8% and 18.1%" of the admitted debt, whereas it was stated that there would be "no recovery" in liquidation. This is not too far off from the eventual 12.0% and 0.2% recovery estimated in the respective scenarios.

(d) The lock-up agreements were made available and sent to all the scheme creditors, who had an equal right to enter into the lock-up arrangement on the same terms.

(e) As to the Locked-in Creditor who had entered into a modified lock-up agreement, the High Court took the view that the additional payment by BOHL in respect of BOHL's guarantee obligations, would not change substantively the Locked-in Creditor's legal rights *vis-à-vis* BPS. Accordingly, the Locked-in Creditor's rights were not so dissimilar with the other scheme creditors' such that it could not be classed together with them for voting.

The High Court therefore found that the notional voting outcome satisfied the statutory majority requirements and the reliability of the majority vote was not compromised due to any improper classification of creditors, and sanctioned the scheme.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

Daniel LIU
Partner – Restructuring & Insolvency
d: +65 6416 2470
e: zhaoxiang.liu@wongpartnership.com
Click here to view Daniel's CV.

TAN Kai Yun
Partner – Restructuring & Insolvency
d: +65 6416 6869
e: kaiyun.tan@wongpartnership.com
Click here to view Kai Yun's CV.

Connect with WongPartnership.

RESTITUTION

Singapore Court of Appeal Provides Important Guidance On Claims In Unjust Enrichment

The Singapore Court of Appeal's decision in *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] SGCA(I) 1 ("***Esben Finance***") has provided important guidance on claims in unjust enrichment. First, the Court of Appeal clarified that claims in unjust enrichment would not fall within the ambit of the Limitation Act. Second, the Court of Appeal laid down definitive guidance that lack of consent on the part of the plaintiff would not be available as an unjust factor in cases where an alternative (and established) cause of action is already available to the plaintiff concerned.

Our Comments

Any doubts as to whether section 6 of the Limitation Act applies to restitutionary claims have now been dispelled by the Court of Appeal in *Esben Finance* — claims in unjust enrichment and restitution for wrongs are *both* not time-barred under the Limitation Act. The Court of Appeal observed that the Limitation Act sets out limitation periods based on specific causes of action but does not include restitutionary claims. In so doing, it declined to follow the view of the UK courts that a restitutionary claim is a cause of action founded on simple contract within the meaning of section 5 of the UK Limitation Act 1980 (the equivalent of section 6 of the Limitation Act).

The Court of Appeal emphasised that it was not the function of the courts to act as "*mini-legislatures*" by reading into the Limitation Act a statutory limitation period for a claim which the legislature did not intend to impose, and took the opportunity to sound a clarion call for Parliament to consider rectifying a "*lacuna in the Limitation Act*" to cover common law claims for which no statutory time-bar is presently prescribed.

Noting that there were previous authorities expressing different views on whether lack of consent was an unjust factor in the context of the law of unjust enrichment, the Court of Appeal held that it was not prepared at this stage to endorse the blanket and unattenuated recognition of lack of consent as an unjust factor in the law of unjust enrichment, although it also recognised that there may be cases involving lack of consent where restitution on the ground of unjust enrichment may, in principle, be justified. While the Court of Appeal was prepared to recognise lack of consent as an unjust factor in exceptional cases where no alternative cause of action is available to the plaintiff and where the defendant is not entitled to retain the property or value transferred, a plaintiff should take care to consider whether there is the possibility of such alternative causes of action instead of limiting his claim in unjust enrichment on the basis of lack of consent.

Background

The appellants, two companies incorporated in the British Virgin Islands and two companies incorporated in the Republic of Liberia, were related to the WTK Group of companies ("**WTK Group**") founded by a Malaysian businessman who had three sons, WKY, WKN and WKC. The respondent was WKN's son.

After WKN's death, effective control of the WTK Group and the appellants passed to WKY and WKC. It was then revealed that over some 11 years between January 2001 and November 2012, WKN had instructed some 50 payments amounting to US$20,278,565.41 and S$4,473,100.52 ("**50 payments**") to be made from the appellants' bank accounts to the respondent allegedly without WKY and WKC's knowledge. The respondent refused to comply with the appellants' demand to repay the monies in respect of the 50 payments.

In November 2017, the appellants brought claims against the respondent in unjust enrichment, dishonest assistance, knowing receipt, and unlawful means conspiracy to recover the 50 payments from the respondent.

The respondent did not dispute that he had received all 50 payments but claimed that of the 50 payments, 11 were "gifts" from WKN ("**11 payments**"); three were directors' fees and shareholder dividends to which he was entitled and/or gifts from WKN ("**three payments**"); and the remaining 36 concerned an alleged "practice" involving an illegal split fee arrangement between companies in the WTK Group and/or controlled by the respondent to evade taxes under Malaysian law ("**36 payments**" including "**Payment No 50**"). The respondent also argued that all the claims were time-barred under the Limitation Act.

The Singapore International Commercial Court's Decision

The Singapore International Commercial Court ("**SICC**") dismissed the appellants' claims and held that the appellants' claims in unjust enrichment, apart from Payment No 50, were time-barred under section 6 of the Limitation Act.

On the facts of the case, the SICC found that the respondent did not discharge the evidential burden of proving that the 11 payments and the three payments (collectively, "**14 payments**") were gifts or made for legitimate reasons such that, but for the time-bar, the appellants would have been entitled to recover the 14 payments from the respondent. In so finding, the SICC accepted that the appellants' lack of consent to the 14 payments constituted an unjust factor for the purposes of the appellants' claim in unjust enrichment. The SICC further held that as the remaining 36 payments were made in connection with the "practice" by which companies in the WTK Group, including the appellants, entered into "split fee" arrangements which permitted their taxable revenues to be split into "onshore" and "offshore" components for the purpose of evading Malaysian tax ("**Illegal Practice**"), the appellants were not entitled to recover these 36 payments.

As for the appellants' alternative claims based on dishonest assistance, knowing receipt and unlawful means conspiracy, the SICC dismissed the claims on the basis that the appellants did not satisfy the legal and evidential burden in establishing key elements of these causes of action.

The appellants appealed to the Court of Appeal against the SICC's decision. They also obtained leave from the Court of Appeal to introduce a new point on appeal, namely whether section 6 of the Limitation Act applies to claims in unjust enrichment.

The respondent contended, among other things, that the appellants' claims were time-barred, that the appellants' lack of consent to the 50 payments should not be recognised as an unjust factor, and that the entire unjust enrichment claim should fail.

The Court of Appeal's Decision

The Court of Appeal dismissed the appeal.

While the Court of Appeal found that the appellants' claims in unjust enrichment were not time-barred under the Limitation Act and the equitable doctrine of laches did not apply to bar the appellants' claims, it found that: (a) in respect of the 14 payments, lack of consent was not an unjust factor on which claims in unjust enrichment could be made out on the facts of the case; and (b) in respect of the 36 payments, the claims in unjust enrichment were not made out because the respondent was not enriched at the appellants' expense.

Section 6 of the Limitation Act not applicable to claims in unjust enrichment or for restitution of wrongs

The Court of Appeal held that, in light of the statutory wording and legislative history of the Limitation Act, claims in both unjust enrichment and for restitution for wrongs are not covered under the Limitation Act.

It noted, in particular, that:

(a) The Limitation Act sets out limitation periods based on specified causes of action, such as actions brought in contract, which do not include and should not be extended to restitutionary claims. Claims in quasi-contract are not founded on a contract, as any notion of there being a promise to pay was merely a fiction implied by the courts to provide the claimant with a remedy. In any event, claims which were once characterised as quasi-contractual are now primarily grounded in unjust enrichment and are entirely separate and distinct from those in both contract and tort.

(b) In *Lipkin Gorman (a firm) v Karpnale Ltd* [1991] 2 AC ("***Lipkin Gorman***"), the House of Lords formally recognised the principle of unjust enrichment in English law. Since the decision in *Lipkin Gorman*, the UK Courts have rejected the line of reasoning that the cause of action for moneys had and received was based on an implied contract. *Lipkin Gorman* was accepted as good law by the Court of Appeal in *Seagate Technology Pte Ltd v Goh Han Kim* [1994] 3 SLR(R) 836 and since then, the law of unjust enrichment has been routinely applied by the Singapore courts. Since the implied contract theory was no longer the underlying basis for claims in unjust enrichment following the decision in *Lipkin Gorman* (which was accepted as good law by the Singapore Court of Appeal), the limitation period which applied to contractual claims could no longer apply to claims in unjust enrichment.

(c) A claim in quasi-contract is conceptually different from a contractual claim, and the implied contract theory had been used in circumstances where any implied promise to pay was entirely fictitious. It would be artificial to construe a claim in unjust enrichment as one in quasi-contract so as to give it a limitation period.

(d) As for restitution for wrongs, the Limitation Act applies where the restitutionary claim brought is founded on a civil wrong for which a limitation period is provided (for instance, in tort, contract), but not otherwise. This is because restitution for wrongs is the remedial response to a civil wrong, and that the claim is founded on the civil wrong itself.

As for the legislative history of the Limitation Act, the Court of Appeal observed that the law of restitution and unjust enrichment is a developing branch of the law of obligations and that most claims in this particular area of the law would not have been contemplated by the legislature at the time of drafting the Limitation Act or its predecessor legislation. Hence, restitutionary claims, including those in unjust enrichment, do not fall within the Limitation Act. Until the lacuna in the law is addressed by the legislature, restitutionary claims are not time-barred.

The Court of Appeal therefore held that the appellants' claims in unjust enrichment were not time-barred under section 6 of the Limitation Act.

However, the Court of Appeal held that the appellants' other claims were statutorily time-barred: the claims in unlawful means conspiracy, were time-barred under section 6(1)(a) of the Limitation Act, and the equitable claims in dishonest assistance and knowing receipt under section 6(7). In this connection, the Court of Appeal held that section 29 of the Limitation Act (which provides that the period of limitation in relation to an action based on a fraud will not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence have discovered it) did not apply to extend the limitation period for the appellants' claims in dishonest assistance, knowing receipt and unlawful means conspiracy, and these claims were accordingly time-barred:

(a) The limitation period under section 29 begins to run only when there are circumstances that would give rise to a desire to investigate. The court will undertake an objective inquiry as to whether a reasonable person in the claimant's position had knowledge of sufficient information such that he ought to have undertaken further inquiry. The law would not expect a claimant to look further if he or she had no knowledge of information that would trigger investigations. Equally, it would be too high a threshold for the claimant to have to be put on inquiry of the fraud itself before time would begin to run.

(b) In this case, WKY had failed to exercise reasonable diligence and section 29 of the Limitation Act did not apply to extend the limitation periods for the appellants' claims in dishonest assistance, knowing receipt and unlawful means conspiracy, which were thus time-barred. The Court of Appeal observed that WKY should have been put on notice to further investigate the 25 telegraphic transfer forms, as well as the appellants' business in general, and that if WKY had done so, he would have discovered the payments by March 2011 at the latest.

Whether lack of consent constitutes an unjust factor – a "never say never" judicial posture

The Court of Appeal noted that in a lack of consent case, where an action in unjust enrichment is the *only* cause of action which is available on the facts, there is, *in principle*, no reason why it ought not to be available, on the authority of *Lipkin Gorman*. However, the Court of Appeal was not prepared to go as far as to recognise a blanket principle that unjust enrichment will always be available in all instances of unauthorised transfers of value or lack of consent. The most significant caveat to the recognition, in principle, of an available claim in unjust enrichment on the basis of lack of consent is that such a claim in unjust enrichment would not be available where there is an existing alternative cause of action on the same facts. A "paradigm example" provided by the Court is where property has been transferred from the claimant to the defendant without the claimant's consent, but the claimant retains title to the property and may enforce that title against the defendant by means of a proprietary claim.

A blanket and uncircumscribed recognition of lack of consent as an unjust factor would result in "unacceptable encroachments" on other areas of law, denuding them of their legal significance. Moreover, legally valid transfers of the claimant's property or value without his consent, or the retention by the defendant of the claimant's property or value to which the defendant is legally entitled cannot be said to have been unjust.

Thus, an unjust enrichment action on the basis of the unjust factor of lack of consent would generally not be available where:

(a) The transfer of the property or value in question from the claimant is a legally valid one;

(b) The defendant is legally entitled (under a legal principle, rule or defence to any claim) to retain the property or value which is the subject matter of the claim; and

(c) The claimant has any other available cause of action for recovery of the property or value in question under established areas of law (for example, the vindication of property rights).

The Court of Appeal stressed that the law of unjust enrichment ought to be developed incrementally on a case-by-case basis and thus left the issues of whether there may be lack of consent situations in which a claim in unjust enrichment ought to be allowed, and whether there are other limits to recognising novel unjust factors, for a future appropriate case, as it was unnecessary for the Court of Appeal to decide on those points.

Here, the Court of Appeal found that, as the 14 payments were made without any valid basis, the appellants retained property to the monies transferred to the respondent's bank account. Hence, the appellants had a *proprietary* claim against the respondent for the 14 payments, which should not be interfered with by recognising an unjust enrichment claim on the same facts. The appellants' claim in unjust enrichment for the 14 payments therefore failed. However, as the appellants did not plead an alternative cause of action a claim based on the vindication of the appellants' proprietary rights, the Court of Appeal did not go on to deal with such a claim.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partners:

LIN Chunlong
Partner – Commercial & Corporate Disputes
d: +65 6416 8119
e: chunlong.lin@wongpartnership.com
Click here to view Chunlong's CV.

Joel QUEK
Partner – Commercial & Corporate Disputes
d: +65 6416 8124
e: joel.quek@wongpartnership.com
Click here to view Joel's CV.

Connect with WongPartnership.

LEGAL HIGHLIGHTS

MARCH 2022	
7 March 2022	**Recent updates to the PSA sheds light on the treatment of stable coins** Recent updates by the Monetary Authority of Singapore ("**MAS**") to its Payment Services Act ("**PS Act**") FAQs has shed light on the treatment of stablecoins under the PS Act – in particular that they will generally not be considered as "e-money" for purposes of the PS Act ("**E-Money**"). In particular, while the value of single currency stablecoins ("**SCS**") is purportedly fixed with reference to a single currency, the exchange rate of SCS to the currency is not fixed and can vary when traded on exchanges. In addition, holders of a SCS can often use the SCS *via* third-party service providers (e.g., digital payment token exchanges) or with their own private digital wallets, without the involvement of the SCS issuer, unlike holders of E-Money who would typically have contractual relationships or accounts with the E-Money issuer and can only use the E-Money through the issuer. Besides SCS, MAS also clarified that other types of stablecoins (for example, stablecoins whose values reference a basket of multiple currencies or other assets, as well as stablecoins that aim to maintain stable values through algorithms that adjust the supply of the stablecoins in response to changes in demand) also do not meet the definition of E-Money, as such stablecoins are neither denominated in nor pegged to a single currency by its issuer. MAS therefore expects that in general, stablecoins will not meet the definition of E-Money, but may meet the definition of "digital payment tokens" under the PS Act. Nevertheless, MAS will continue to review industry developments relating to stablecoins and assess its appropriate regulatory treatment accordingly. **Related information**: FAQs – Payment Services Act 2019 **Contact our Partners**: Elaine Chan | Tian Sion Yoong | Chan Jia Hui
FEBRUARY 2022	
14 February 2022	**Response to feedback on the proposed introduction of the new Omnibus Act** The Monetary Authority of Singapore ("**MAS**") has issued its response to feedback that was received during its consultation on the proposed introduction of a new omnibus Act which would apply to the financial sector. On the same day, the Financial Services and Markets Bill 2022 was moved for First Reading in

	Parliament. The key aspects of the Bill include: (1) conferring on MAS a harmonised and expanded power to issue prohibition orders, including to any persons carrying on key functions for financial institutions; (2) a licensing / anti-money laundering (**AML**) / countering the financing of terrorism (**CFT**) regulatory regime for virtual asset service providers; and (3) consolidation and harmonisation of MAS' powers to issue technology risk management related requirements to all financial institutions. **Related information**: • Consultation Paper on the New Omnibus Act for the Financial Sector • Explanatory Brief for Financial Services and Markets Bill 2022 **Contact our Partners**: Elaine Chan | Tian Sion Yoong | Chan Jia Hui
JANUARY 2022	
17 January 2022	**Guidelines on Provision of Digital Payment Token Services** On 17 January 2022, the Monetary Authority of Singapore ("**MAS**") issued its "Guidelines on Provision of Digital Payment Token Services", which sets out MAS' expectations that digital payment token (**DPT**) service providers should not be promoting their services to the general public in Singapore. In particular, MAS has made clear that such DPT service providers should not market or advertise their services in public areas in Singapore (e.g., advertisements on public transport or public transport venues, public websites, social media platforms, broadcast or print media, provision of ATMs) or promote their services to the general public through engagement of third parties such as social influencers. DPT service providers may, however, market or advertise their services *via* their own websites, mobile applications or official social media accounts. **Related information**: Guidelines on Provision of Digital Payment Token Services to the Public **Contact our Partners**: Elaine Chan | Tian Sion Yoong | Chan Jia Hui

SOME OF OUR OTHER UPDATES

DATE	TITLE
15 March 2022	Special Update: Fraud and Asset Recovery: Cryptoassets Guide to Tracing, Freezing and Recovering Stolen Cryptoassets
9 Feb 2022	LegisWatch: Competition Law Update (Q1 2022) – New Guidelines Take Effect, Looking Ahead in 2022
11 Jan 2022	LegisWatch: Update on SGX's Responses to Comments on Consultation Papers: (1) Climate and Diversity: The way forward (2) Starting with a Common Set of Core ESG Metrics ("SGX Responses to Consultation Papers")
10 Jan 2022	Special Update: Data Protection Quarterly Updates (October - December 2021)

RECENT AUTHORSHIPS

DATE	AUTHORSHIPS	CONTRIBUTORS / PARTNERS
8 March 2022	The Life Sciences Law Review, 10th Edition - Singapore Chapter	Melanie Ho | Alvin Lim
7 March 2022	The Legal 500: Corporate Governance Country Comparative Guide 2022 (Singapore)	Kevin Ho | Jayne Lee
13 February 2022	Butterworths Journal of International Banking and Financial Law (Jan 2022) - DeFi: a game-changer or just a passing fad?	Elaine Chan | Tian Sion Yoong
24 Jan 2022	The Guide to Investment Treaty Protection and Enforcement: Accessing Investment Treaty Protection: The Investor's Perspective	Alvin Yeo, Senior Counsel | Koh Swee Yen, Senior Counsel | Chou Sean Yu
19 January 2022	International Comparative Legal Guide to: Private Client 2022 - Singapore Chapter	Sim Bock Eng | Tan Shao Tong

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-
WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-
WongPartnership LLP
Shanghai Representative Office
Unit 1015 Link Square 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-
WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-
Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

MALAYSIA

-
Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

-
Al Aidarous Advocates and Legal Consultants
Abdullah Al Mulla Building, Mezzanine Suite 02
39 Hameem Street (side street of Al Murroor Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com
-
Al Aidarous Advocates and Legal Consultants
Oberoi Centre, 13th Floor, Marasi Drive, Business Bay
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

-
ZGLaw
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw

wongpartnership.com