WONG PARTNERSHIP

LAW WATCH

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In Brief

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CONFLICT OF LAWS I JURISDICTION CLAUSES

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DEALS

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A private placement by ESR-LOGOS REIT to raise approximately S$150 million

ESR-LOGOS REIT is a leading new economy and future-ready Asia Pacific Singapore real estate investment trust (S-REIT) listed on the Singapore Exchange Securities Trading Limited since 25 July 2006. ESR-LOGOS REIT invests in quality income-producing industrial properties and holds interests in a diversified portfolio of logistics properties, high-specifications industrial properties, business parks and general industrial properties with total assets of approximately S$5.7 billion.

In February 2023, ESR-LOGOS REIT issued 454,545,000 new units pursuant to a private placement to raise approximately S$150 million. The private placement was approximately three times subscribed, with two thirds of the private placement allocated to quality long-only institutional investors, real estate specialists and existing investors. Citigroup Global Markets Singapore Pte. Ltd., DBS Bank Ltd., and United Overseas Bank Limited were the joint bookrunners and underwriters for the private placement. ESR-LOGOS REIT also undertook a non-renounceable preferential offering to raise an additional approximately S$150 million. The aggregate proceeds of approximately S$300 million from the private placement and the preferential offering will be used to fund future acquisitions, redevelopments and asset enhancement initiatives.

The partners involved in the transaction were Long Chee Shan and Ong Kuan Chung from the Equity Capital Markets Practice.

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DESCRIPTION	PRACTICE AREAS
Acted in the issuances by Rigco Holding Pte. Ltd. of vendor notes and perpetual securities to a subsidiary of Keppel Corporation Limited.	Debt Capital Markets
Acting in the voluntary unconditional cash offer by OSC Capital, an investment holding company owned by Lian Beng Group Ltd's controlling Ong family, of S$0.68 per share to the shareholders of the company. The offeror intends to make the company its wholly-owned subsidiary and delist it from the Singapore Exchange.	Corporate/Mergers & Acquisitions
Acted in Heeton Holdings Limited's invitation to the holders of its 6.8 per cent fixed-rate notes due November 2023, to exchange their outstanding S$62.7 million of existing notes for new notes. For each S$180,000 of the existing notes and a cash top-up of S$20,000, Heeton Holdings Limited offered S$200,000 of new notes at a coupon rate of 7 per cent which mature on 3 November 2026 (**New Notes**). The exchange offer was coupled with a further offering of New Notes, which resulted in an aggregate principal of S$53,800,000 New Notes being issued on 3 May 2023.	Debt Capital Markets
Acting in the series seed funding round of Proxtera, a Singapore-based metahub platform for business-to-business (B2B) businesses and small and medium enterprises (SMEs) with Ant Group as lead investor. The funding will be used as working capital to further develop the company's innovative digital cross-border trade and financial services enabled by trusted credentials.	Corporate/Mergers & Acquisitions
Acting for Keppel Land Limited and its subsidiary in the divestment of Greenfield Development Pte. Ltd. which indirectly owns Sedona Hotel, a five-star 789-room hotel in Yangon, Myanmar.	Corporate/Mergers & Acquisitions
Acting in the US$30 million investment by Northstar Group in the pre-series C funding round of Una Brands.	WPGrow: Start-up / Venture Capital Intellectual Property, Technology and Data
Acting in the establishment by CapitaLand Investment Limited of a China Development Fund which is committed to investing in two hyperscale data centre development projects in the Greater Beijing area. The total equity committed to the new fund is S$530 million.	Asset Management and Funds China Practice
Acting for IOI Properties Group in the leasing of Central Boulevard Towers.	Corporate Real Estate

CRIMINAL LAW I CORRUPTION

Singapore High Court Extends Sentencing Framework for Specific Private Sector Corruption Offences under Section 5 of Prevention of Corruption Act

In the recent case of *Teo Chu Ha (alias Henry Teo) v Public Prosecutor and other appeals* [2023] SGHC 130, the General Division of the High Court (**High Court**) set out the circumstances under which the revised sentencing framework that it had laid down last year in *Goh Ngak Eng v Public Prosecutor* [2022] SGHC 254 (***Goh Ngak Eng***) – a case dealing with corrupt transactions by an agent under section 6 of the Prevention of Corruption Act (**PCA**) – applied to certain offences brought under section 5 of the PCA. It declined to apply the framework wholesale to all section 5 corruption offences.

Our Comments

Most prosecutions in Singapore arising out of corrupt business conduct are brought under either section 5 or section 6 of the PCA. Section 5 targets corrupt transactions more generally, i.e., where the gratification was solicited/received or given/offered by any person "*in respect of any matter or transaction whatsoever*". Section 6 is specifically directed at instances where an agent is corruptly offered or corruptly accepts gratification in relation to the performance of a principal's affairs or for the purpose of misleading a principal, such that the agent subordinates his loyalty to his principal in furtherance of his own interests.

In a move towards increasing consistency in sentencing, the High Court has now made it clear that the sentencing framework applicable to section 6 offences, which it had propounded in *Goh Ngak Eng*, can also be applied to a case brought under section 5 where the factual matrix is similar to the typical section 6 prosecution, such that the case, although brought under section 5, could have been brought under section 6 as well but for other considerations. At the same time, the High Court made it clear that it was not endorsing the *Goh Ngak Eng* framework as being applicable to all section 5 cases, but only for the specific category of section 5 offences that overlap with the scope of section 6.

The likely practical effect of the High Court's decision is to extend the trend towards increasingly punitive imprisonment sentences for corruption offences, save perhaps in instances where the culpability and/or harm occasioned by the corrupt behaviour can be said to be relatively low, and even where the corruption does not involve the public sector. Seen in this light, the case serves as yet another reminder of the severity with which the Singapore courts view corrupt commercial conduct.

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

Background

The appellants, Mr Teo Chu Ha @ Henry Teo (**Henry**) and Ms Judy Teo Suya Bik (**Judy**), are brother and sister.

Henry was the Senior Director of Logistics at Seagate Technology International (**Seagate**) and also a member of the Seagate committee which oversaw two tenders for the provision of transportation services to ferry Seagate's goods in China in 2006 and 2009.

Henry provided to Judy confidential information which he acquired in his positions at Seagate. Judy then used the information to help two Chinese companies (**Companies**) secure tenders with Seagate.

For the assistance given to the Companies, Judy received payments in excess of S$2 million *via* an intermediary, of which Henry used S$703,480 to buy a condominium unit in Judy's name.

The District Court's Decision

The prosecution alleged that the appellants had conspired to corruptly receive gratification from the Companies. Each appellant was convicted, after trial, of 50 charges under section 5(a)(i) read with section 29(a) of the PCA and one charge under section 44(1)(a), punishable under section 44(5)(a) of the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act, read with section 109 of the Penal Code.

The District Judge sentenced Henry and Judy to 50 months' imprisonment and 41 months' imprisonment respectively, and also ordered Judy to pay a penalty of S$2,320,864.10 under section 13 of the PCA, in default of which Judy was to serve an additional 18 months' imprisonment.

Henry and Judy appealed, contending that their respective convictions were unsafe and their custodial sentences were manifestly excessive. The prosecution cross-appealed, submitting rather that the appellants' sentences were manifestly inadequate, and should be increased.

The High Court's Decision

The High Court dismissed the appellants' appeal and partially allowed the prosecution's appeal. In coming to its decision, the High Court considered arguments made as to the applicability of the sentencing framework in *Goh Ngak Eng*.

Sentencing framework in Goh Ngak Eng should not apply wholesale

The High Court observed that the court in *Goh Ngak Eng* had declined to extend the sentencing framework for offences under section 6 of the PCA to all offences brought under section 5, since offences under these sections are directed at distinct mischiefs and could engage different considerations in the sentencing exercise. The High Court further noted that section 5 encompassed a wide range of *other* cases for which a framework for section 6 would not be adequate. Classification of the severity of offending conduct for section 5 cases would be "unworkable" under a framework shared with section 6 because there could be many offence-specific factors that do not apply to all section 5 cases.

For these reasons, the High Court held that it would be inappropriate to extend the *Goh Ngak Eng* framework wholesale to offences under section 5 of the PCA. A sentencing framework for section 6 offences would not be appropriate for *all* offences under section 5.

The High Court, however, noted that this situation was one where a case that had been brought under section 5 could have been brought under section 6 as well. This is because the case involved Henry, an agent, subordinating his loyalty to his principal (Seagate) in furtherance of his (and Judy's) interests instead, and would have otherwise been a typical case under section 6 but for the recipient of the payment being Judy rather than Henry. The High Court held that the different identity of the recipient was not particularly material given the close familial ties between Judy and Henry, and the way that they had acted in close concert. Under the circumstances, the court ruled that it was appropriate to apply the *Goh Ngak Eng* sentencing framework in deciding whether the original sentences were manifestly excessive or inadequate.

The High Court then set out the approach to the calibration of the case, being one which fell within the category of section 5 cases that overlap with section 6:

(a) First, the court considers the relevant aggravating and mitigating factors on the facts of the case, including both offence-specific and offender-specific factors.

(b) Second, the court considers relevant sentencing precedents, having regard to the nature and factual circumstances of the offence. Pre-*Goh Ngak Eng*, this would have involved surveying sentencing precedents under both sections 5 and 6. Post-*Goh Ngak Eng*, this would involve applying the *Goh Ngak Eng* framework to the facts of the case, in addition to looking at relevant section 5 and post-*Goh Ngak Eng* section 6 cases.

(c) Third, the court considers the relative weight to be given to relevant precedents and the notional sentence under the *Goh Ngak Eng* framework, taking into account both the helpfulness of the available precedents and the limitations of the *Goh Ngak Eng* framework, such as whether there are offence-specific factors that are not captured within the framework.

The High Court emphasised that the application of *Goh Ngak Eng* in sentencing was not an endorsement of the general applicability of the *Goh Ngak Eng* framework for section 5 cases at large. The basis for applying such a framework was that for the specific category of section 5 offences which overlap with the scope of section 6, it was relevant to consider sentences imposed for similar cases under section 6.

As an aside, the High Court also rejected Henry and Judy's argument that the court had no jurisdiction over a person who had abetted (i.e., aided) from outside Singapore, corrupt conduct that also took place outside Singapore. In its analysis, the court referred to section 37 of the PCA, which captures "*all corrupt acts by Singapore citizens outside Singapore, irrespective of whether such corrupt acts have consequences within the borders of Singapore or not*".

Sentencing considerations for charges under section 5 of the PCA

The High Court took into account the following factors in sentencing the appellants. Save for the final factor of delay, many of the other factors were aggravating:

(a) The total amount of gratification of approximately S$2.3 million was significant, and indicated that Henry and Judy's culpability was not low. The high quantum would presumptively indicate a greater subversion of the public interest.

(b) The corrupt conduct had consequences that directly implicated the interest of the principal, Seagate. There was good reason to suppose that the disclosure of confidential information would have prejudiced the value of the bids that Seagate would have received compared to where no disclosure had taken place.

(c) Indeed, Henry abused his role as a Senior Director of Logistics and member of the tender committees by disclosing confidential information to the Companies, excluding other contenders from the tender process, and rigging one of the two tenders. This was a serious compromise of the duty he owed to Seagate.

(d) Both Henry and Judy were motivated by personal gain.

(e) Henry and Judy's conduct reflected a high degree of premeditation and sophistication. The cumulative inference from their actions was that both Judy and Henry exercised a high level of scheming in tandem with one another to avoid detection of their offences.

(f) The duration of offending reflects an offender's determination and is tied to the recalcitrance of the offender and the need for specific deterrence. Henry and Judy received at least 50 bribes between 2007 and 2012, showing the longevity of their criminal enterprise.

(g) The scheme involved a transnational element. Henry, based in Singapore, sent confidential information to Judy, based in China. This enabled Chinese companies to win contracts with Seagate. The Companies' payments were eventually transferred to Judy, who deposited a sum into her bank account in Singapore which was used to purchase a property in Singapore. The transnational nature of the case increased the difficulty of investigating and prosecuting Henry and Judy, resulting in substantial delay. This was why offences with a transnational character are considered more serious.

(h) There had been a prejudicial delay in prosecution, as the prosecution had to request mutual legal assistance from the Chinese authorities. This was of some mitigating value.

Global sentences imposed by District Judge not manifestly excessive

Given the absence of relevant precedents under section 5 of the PCA, and the fact that most of the offence-specific sentencing considerations in the present case were captured under the *Goh Ngak Eng* framework, the High Court was inclined to ascribe significant weight to the sentencing indication based on the *Goh Ngak Eng* framework. No further modification to the notional sentence under the framework was necessary for both appellants before consideration of the totality principle and the global sentence. The High Court was also satisfied that the sentences were appropriate having regard to those imposed in *Goh Ngak Eng* itself. As the facts of this case were more serious than in *Goh Ngak Eng*, there was good reason for a comparative uplift of sentences in the present case.

The High Court held that the appellants' advanced ages were mitigating factors. Henry and Judy were aged 73 and 70 respectively at the time of the hearing in February 2023. It was therefore appropriate to moderate somewhat the number of consecutive sentences, resulting in aggregate terms of 84 months' imprisonment and 56 months' imprisonment for Henry and Judy respectively.

It will be apparent that the High Court's decision represents a fairly significant increase over the original sentence for the two septuagenarians, and means that they will both remain behind bars for at least the next few years. The message remains clear: In Singapore, corrupt conduct does not pay. Robust procurement protocols and strong compliance training would serve businesses well, and especially where a company's business operations involve foreign jurisdictions with their own business climates. It bears reminding that the PCA has extra-territorial application, and corrupt conduct by Singapore citizens outside Singapore may still render them liable to criminal prosecution here, even in a situation where the conduct may not be punishable in the country where it occurred.

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RESTRUCTURING & INSOLVENCY

Further Enhancing Singapore's Judicial Management Regime

At the Debt Restructuring in the Asia-Pacific seminar on 22 September 2022 co-organised by the Singapore International Commercial Court and INSOL International Asia Hub, Mr Edwin Tong SC, Singapore's Second Minister for Law, announced that Singapore will be undertaking "*a root-and-branch study*"[1] of the judicial management regime in Singapore. The judicial management regime historically has not had a stellar track record, with the Insolvency Law Review Committee in 2013 observing that judicial management was often invoked as a precursor to liquidation.[2]

Following on the heels of the substantial reforms to the debt restructuring regime in Singapore (including the introduction of super-priority rescue financing, pre-packs, automatic moratorium protection and the UNCITRAL Model Law on Cross-Border Insolvency), Singapore seems poised to revamp its judicial management regime to enhance its usefulness as a debt restructuring tool.

This paper opines on some of the reforms that may be considered.

Introduction

The judicial management regime in Singapore is akin to the more widely known administration regime in the United Kingdom (**UK**) and Australia. Judicial management involves the appointment of a judicial manager (either by a court order or through a creditors' resolution) who displaces the existing management of the debtor and takes control of the business and affairs of the debtor.[3]

As judicial management involves displacement of the existing management, creditors usually seek a judicial management process where there may be reason to suspect fraud and/or other irregularities within the debtor organisation. Debtors tend to not prefer replacement of their management, and would also prefer to avoid the negative stigma associated with judicial management. However, debtors may opt for the judicial management route to: (a) put in place a third party who is seen by creditors and other stakeholders as providing legitimate oversight of the debtor's operations and financials; and (b) manage a fragmented and/or disoriented group of creditors in a restructuring process.

In carrying out their functions, judicial managers are given wide powers under the Insolvency, Restructuring and Dissolution Act 2018 (**IRDA**), including all the powers of the directors. The IRDA also grants judicial managers powers beyond those available to directors, such as the ability to sell assets of the debtor without needing to first obtain a resolution of members, sell charged assets of the debtor under specified conditions, and pursue clawback actions for unfair preferences and undervalue transactions.

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1 Edwin Tong SC, Second Minister for Law, Ministry of Law, "Opening Remarks by Second Minister for Law Edwin Tong SC, at SICC INSOL seminar", opening remarks at Debt Restructuring in the Asia-Pacific seminar (22 September 2022) at [25].

2 Singapore, *Report of the Insolvency Law Review Committee*, 2013, (Chairman, Lee Eng Beng SC), at [11].

3 For details, please see WongPartnership LLP special update, Alvin Chia & Tan Kai Yun, *Non-Performing Corporate Loan Toolkit for Banks* (April 2022).

Possibility for Improvement of Judicial Management Regime to Enable Effective Restructurings

Broadly, the judicial management regime has, in the last five years, been enhanced by giving judicial managers wider powers, and enabling a wider scope of companies to be placed into judicial management.[4]

In spite of this, as indicated by the Minister,[5] judicial management has in the recent past not necessarily been used effectively as a restructuring tool. In fact, it appears that companies that enter judicial management often end up in liquidation. This is in contrast to the UK, where administration (the equivalent of judicial management) appears to play a more central role in restructurings or business preservation as around 29% of them are for pre-pack administrator sales that facilitate business sales which were negotiated pre-administration.[6]

To enhance the judicial management regime in Singapore, the root-and-branch review can consider various aspects from restructuring regimes across the globe, in particular, the United States of America (**US**) and the UK, which may be worth adapting to the judicial management regime.

From a restructuring practitioner's perspective, there are at least three such areas which would enhance the Singapore judicial management regime:

(a) Granting judicial managers powers akin to a trustee in US Chapter 11 proceedings to cure defaults for executory contracts;

(b) Providing express powers and statutory guidelines for when a pre-packaged sale can be undertaken by judicial managers. In doing so, lessons can be drawn from the UK pre-pack administration sale process; and

(c) Granting judicial managers powers to apply for payment of fees of creditor committees from the assets of debtor companies, where the creditor committees have made a "*substantial contribution*" to the restructuring, drawing on section 503(b)(4) of the US Bankruptcy Code.

Assuming or Rejecting Executory Contracts

When a company is undergoing judicial management, counterparties are already restricted from terminating their contracts with the debtor company merely on the basis of the debtor's insolvency or entry into judicial management.[7] These restrictions on so-called "*ipso facto*" termination clauses were introduced under the

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4 See WongPartnership LLP Legiswatch, Smitha Menon, Clayton Chong, Muhammed Ismail, *Insolvency, Restructuring and Dissolution Act – Key Changes from the Financiers' Perspective* (22 February 2021); WongPartnership LLP Legiswatch, Joel Chng, Stephanie Yeo, Muhammed Ismail, *Singapore's enhanced corporate debt restructuring mechanisms – One year on* (30 April 2018); WongPartnership LLP and REDD update, Tan Mei Yen, *Overview of Singapore's New Restructuring Framework* (10 August 2017).

5 Edwin Tong SC, Second Minister for Law, Ministry of Law, "Opening Remarks by Second Minister for Law Edwin Tong SC, at SICC INSOL seminar", opening remarks at Debt Restructuring in the Asia-Pacific seminar (22 September 2022) at [24].

6 See Adam Plainer, Kay Morley and Ola Majiyagbe, "Legislative Developments: The New Pre-Pack Regulations" in *The Art of the Pre-Pack - Edition 2* (Global Restructuring Review, 2nd Ed, 2022).

7 Section 440 of the IRDA; see also Clayton Chong, "Section 440 Of The Insolvency, Restructuring And Dissolution Act 2018: Restrictions On Ipso Facto Clauses", [2019] SAL Prac 27.

IRDA as it was thought that the uninhibited exercise of such clauses upon a debtor's filing would cause a domino effect that exacerbates the debtor's financial position.

While the *ipso facto* restrictions are a major step in the right direction, there are significant limitations on what they can achieve. In particular, the *ipso facto* protection lasts only for the duration of the relevant proceedings, leaving it open (in principle) for a counterparty to exercise its termination rights *after* the conclusion of the proceedings (i.e., after the judicial manager has successfully ensured the survival of the business as a going concern, or obtained the court's sanction of a scheme of arrangement). The *ipso facto* restrictions under the IRDA do not invalidate *ipso facto* termination clauses, but merely impose a temporary stay on their exercise. Compounding this problem, case law is also fairly clear that a scheme of arrangement cannot affect the proprietary interests of lessors such as their rights of forfeiture.[8] The combined effect of these legal principles is that a counterparty or lessor of the debtor could, unless a consensual agreement is reached, exercise its termination rights or rights of forfeiture post-judicial management, which would significantly undermine the intended rehabilitation of the debtor's business.

In this regard, Singapore can consider adopting and adapting the default-curing provisions under section 365 of the US Bankruptcy Code. Broadly, these provisions stipulate that, if a debtor assumes an executory contract, the debtor must:[9]

(a) Cure or provide adequate assurance of a prompt cure of any defaults under the contract or lease;

(b) Provide compensation to the counterparty for any actual pecuniary loss resulting from the default, or provide adequate assurance of prompt compensation; and

(c) Provide adequate assurance of future performance under such contract or lease.

At first blush, these curative powers cut against the contractual bargain to the counterparty. However, it is important to recognise that, when exercising the power to cure past defaults, benefits accrue to the counterparty. The main such benefit is a priority claim which can be paid out from the assets of the debtor ahead of other creditors. Further, the counterparty is given assurances of future performance of the contract by the debtor, which is beyond what would be available in any ordinary commercial agreement.

This ability to cure past defaults under an executory contract would effectively allow the judicial manager, upon curing the defaults, to compel a counterparty to continue providing services to the debtor. This would be a reversal of the current approach of a counterparty to an executory contract being able to insist on exercising its powers of repossession of the assets pursuant to the contract for breaches other than insolvency or commencement of a judicial management or scheme process (i.e., other than as prohibited by the *ipso facto* restrictions).

Such a reversal of status would prevent the debtor from being deprived of crucial contracts or leased assets that are necessary for its operational and/or financial restructuring.

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8 See *Discovery (Northampton Limited) v Debenhams Retail Limited* [2019] EWHC 2441 (Ch), *Lazari v New Look* [2021] EWHC 1209 (Ch), *Re Regis UK Limited* [2021] EWHC 1294.

9 See Charles Jordan Tabb, *Law of Bankruptcy*, West Academic Publishing, 4th Ed, 2016 at p 843. There are some carve-outs for the defaults that need to be cured, such as not needing to pay "penalty rates" in contracts.

Statutory Framework for Pre-packaged Judicial Management Sale

Another aspect of judicial management that can aid a restructuring is the ability to facilitate a quick change of ownership through a "pre-packaged" sale. This is often seen in the UK, but rarely seen in Singapore possibly due to the lack of well-defined practices and/or regulations in Singapore.

In the UK, pre-packaged administration sales are carried out where an administrator, upon appointment, effects a sale that was negotiated and finalised prior to his appointment. Such pre-packaged administration sales are based on the power available to administrators to sell assets of the debtor without needing to seek approval of the court (or in fact, creditors) even before their statement of proposals has been approved by a creditors' meeting.[10] Though how such pre-packaged administration sales are to be done is not extensively provided for in statute, best practices have been established in the UK for carrying them out.[11]

These best practices have developed with awareness of some of the key drawbacks of such a quick sale process conducted by administrators: (a) lack of transparency; and (b) lack of checks on the administrator's sale decision and price achieved. An example of the best practices developed is the use of a "pre-pack pool" made up of business people who can assess the proposed sale and issue a statement of opinion on it. This approach provides some level of independent scrutiny of the intended sale while retaining the efficiency and the privacy afforded by the pre-pack sale process.[12]

Through such best practices, and more recently, regulations on dealing with pre-pack administration sales to "connected persons",[13] the pre-pack administration sale process has been honed such that it can effect swift pre-agreed sales while maintaining checks on the sales with a layer of oversight to avoid abuse.

In contrast, judicial managers in Singapore normally go through the process of putting out a statement of proposals to creditors and thereafter conducting the judicial management based on the approved statement of proposals. Though, theoretically, the same powers as relied on in the UK for pre-packaged administration sales are available to judicial managers in Singapore under the IRDA, practitioners have been slow to adopt the approach of a pre-agreed sale being effected by a judicial manager shortly after his appointment. This may be a result of lack of maturity in the market in Singapore, as best practices have not developed or been proposed by any body for such a sale process.

Given the nascency of the "pre-packaged" sale process in Singapore, its adoption would require legislative amendments to make clear that pre-packaged sales in judicial management are available, and guidelines on when such a sale can be done.

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10 See *Re T & D Industries plc* [2000] 1 WLR 646.

11 See South Square Digest, Marcus Haywood & Stefanie Wilkins, *Pre-Packs: The New Regulations* (July 2021).

12 See South Square Digest, Marcus Haywood & Stefanie Wilkins, *Pre-Packs: The New Regulations* (July 2021).

13 See Adam Plainer, Kay Morley and Ola Majiyagbe, "Legislative Developments: The New Pre-Pack Regulations" in *The Art of the Pre-Pack - Edition 2* (Global Restructuring Review, 2nd Ed, 2022).

With the benefit of such guidance and clear legislative language, professional appointees would more likely utilise their powers as judicial managers to carry out pre-agreed sales rather than re-open sales agreements after their appointment in what they perceive to be a fulfilment of their obligations as judicial managers.

Enabling such swift sale mechanisms under the watchful eye of a judicial manager would have the twin benefits of allowing debtors (with acute awareness of their business) to negotiate agreements with sellers on commercial terms and having oversight of the sale process by a professional (answerable to the court as judicial manager) that can speak broadly to the veracity of the commercial terms. This would leverage the authority and independence of the judicial manager to give a layer of oversight of the debtor. Concurrently, pre-packaged judicial management sales would facilitate stakeholders viewing judicial management as one of the tools to be employed in a broader restructuring process rather than a precursor to liquidation.

Creditor Committee Advisor Fee Payments

A further aspect of the restructuring process to consider is the fees of advisors that are necessarily incurred.

In judicial management, creditor committees can be formed under the existing statutory framework in Singapore. Naturally, such a creditor committee would expect to be advised. However, there are no express powers that enable the appointment of such advisors. Nor are there express powers for the payment of such advisors' costs out of the debtor's assets. Though in practice such appointments may be made (generally following applications to court for sanction), putting the power to appoint advisors for creditor committees on a statutory footing would aid in improving the efficiency of the judicial management process.

It should be noted that, in a judicial management in Singapore, there is statutory provision for appointment of an optional creditor committee. Any such creditor committee is required by regulation 54 of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020 to have one representative each from the shareholders and employees.[14] This may be less than ideal where the debtor needs a restructuring and the shareholders' positions should be taking a backseat in negotiations. Employees who are key to the debtor's operations would already have their interests looked after in any effective restructuring, and involvement of other employees may slow down the restructuring.

To work around this, judicial managers who are looking to carry out a restructuring may look to appoint *ad hoc* committees of creditors that represent different creditor stakeholder groups. However, as with statutory creditor committees, payment of their costs will need to be provided for to avoid lethargy on their part and minimise deadlock within the committees.[15]

To facilitate the formation of well-advised creditor committees (*ad hoc* or otherwise), jurisdictions such as the US have provisions for payment of their fees out of the debtor's assets. In addition to scrutiny of the cost incurred, the general pre-condition for such payment is that the committee has made a "*substantial contribution*" to the restructuring.[16]

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14 Regulation 54 of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020.

15 See establishment of *ad hoc* committees in *Morris, H., Van de Graff, S., Peck J. (eds.), The Art of the Ad Hoc* (Global Restructuring Review, 2nd Ed, 2020).

16 See section 503(b)(4) of the US Bankruptcy Code.

This principled and practical approach to creditor committees' advisors' fees can be adapted to Singapore by introducing a power for the judicial manager to apply to the Singapore courts for creditor committees' advisors' fees to be paid out of the debtor's assets. To obtain approval, the judicial manager can be required to show how, in his view, the creditor committee provided "*substantial contribution*" to the restructuring of the debtor. Whether the "*substantial contribution*" requirement is met would be determined by the court in its discretion, with guidance from a non-exhaustive list of factors prescribed in legislation. Such factors may be distilled from the extensive body of US case law on what constitutes "*substantial contribution*", which include:

(a) Whether the committee's actions fostered and enhanced, rather than inhibited or interrupted, the progress of the debtor's restructuring;

(b) Whether the claimed expenses were duplicative of other parties' expenses;

(c) Whether the professional's services were provided for the benefit of the committee and only "*incidentally benefit[ed] the estate*", or conferred a direct and demonstrable benefit on all parties in the restructuring;

(d) Whether the committee's contribution had a demonstrable positive effect on the estate;

(e) Whether the benefits conferred by the committee were diminished by selfish motivations;

(f) Whether the benefit the committee conferred though "*substantial contribution*" exceeds the cost the party seeks to assess against the debtor;

(g) Whether the committee's conduct caused a negative effect on the case that offset the value of the *ad hoc* committee's contribution; and

(h) Whether the committee would have proceeded the same way it did in the case, had it not had an expectation of compensation from the debtor.

Given their interest in the matter, the creditor committees can put in their own evidence in support of the judicial manager's application. The application should, however, be made only by the judicial manager as it empowers the judicial manager to play a filtering role for those creditor committees which did not play a constructive role in the restructuring process. If such approval is obtained from the courts, then the creditor committees' advisors can proceed to have their fees scrutinised by the court and approved for payment out of the debtor's assets as the judicial managers' and their advisors' fees would.[17]

This approach would not only allow creditor committees to have the benefit of advice, but would also incentivise their advisors to work constructively in the restructuring process. This would in turn allow the judicial manager to be better positioned to mediate an agreement between the various factions of stakeholders.

[17] See *Kao Chai-Chau Linda v Fong Wai Lyn Carolyn* [2016] 1 SLR 21 and rules 170–176 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020.

Conclusion

The additional powers discussed above would enhance the existing judicial management process in Singapore by bringing in powers afforded to similar office-holders in other jurisdictions that have seen success as restructuring hubs. These additional powers would give practical benefits to judicial management, and are worth consideration when the Singapore government conducts its root-and-branch review of the judicial management process to become a more effective restructuring tool.

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CONFLICT OF LAWS I JURISDICTION CLAUSES

"Extended *Fiona Trust* Principle" Accepted into Singapore Law by Singapore Appellate Division

In *Allianz Capital Partners GmbH, Singapore Branch v Goh Andress* [2023] SGHC(A) 18, the Appellate Division of the Singapore High Court (**Appellate Division**) accepted as part of Singapore law the "extended *Fiona Trust* principle" (**Principle**), under which a jurisdiction clause in one contract may be construed as applying to a dispute arising out of another contract.

This update considers the Appellate Division's decision.

Background

The appellant (**ACP-S**) was the Singapore branch of Allianz Capital Partners GmbH (**ACP**), a German asset manager for alternative equity investments. The respondent, Ms Andress Goh (**Ms Goh**), was a Singapore-based employee of ACP-S.

Contractual provisions

The terms of Ms Goh's employment with ACP-S were contained in two documents: (a) an employment contract dated 19 October 2009 (**Employment Contract**); and (b) the "Allianz Global Investors – Employee Handbook for Singapore" (version 1.0) (**Employee Handbook**), the contents of which were incorporated by reference into the Employment Contract.

Under the Employment Contract:

(a) Clause 2.5 provided that Ms Goh could participate in "*the carried interest program of ACP subject to the details to be provided in **separate agreements and notices** by ACP with regard to such carried interest program*" (emphasis added).

(b) Clause 7.3 provided that "*Singapore law shall be the sole and applicable law of this Agreement and any dispute arising from it*".

(c) Clause 7.3 also stated that "*The Courts in Singapore shall be the **sole forum to which any dispute shall be referred to** (sic) **and Singapore shall be the sole jurisdiction for such determination***" (emphasis added) (**EJC**).

Pursuant to clause 2.5 of the Employment Contract, Ms Goh participated in the Allianz Capital Partners Incentive Plan for Indirect Private Equity Investments (**Incentive Plan**) during her employment. The Incentive Plan (which parties agreed was a "*carried interest program*") was administered by ACP and provided eligible directors and/or employees with the opportunity to participate in returns generated by investments made by ACP in the private equity sector. Participants in the Incentive Plan (including Ms Goh) were issued periodic "Award Notices" notifying them of ACP's decision to allocate each of them a certain percentage of ACP's investment returns (**Incentive Award**). To accept the allocation, participants had to sign the Award Notices acknowledging that they would be bound by terms set out in the "Allianz Capital Partners Incentive Plan for

Indirect Private Equity Investments" (**Plan Terms**). The Appellate Division referred to the agreements formed in relation to each such Award Notice signed by Ms Goh (in 2018, 2019 and 2020) as the "**LTIP**" collectively.

As part of the LTIP:

(a) Clause 5.2 of the Plan Terms provided that, if Ms Goh ceased employment before the vesting period for an Incentive Award ended (an Incentive Award vested annually in tranches over a period of four years), her entitlement to the unvested and vested portions would depend on whether she was classified as a "Good Leaver", "Normal Leaver", or "Bad Leaver". "Good Leavers" were entitled to keep all vested portions and all unvested portions would "*fully vest immediately*", whereas "Normal Leavers" were allowed to keep vested portions only ("Bad Leavers" are not relevant for present purposes).

(b) "Good Leaver", "Normal Leaver" and "Bad Leaver" were terms defined in the Plan Terms. "Good Leavers" included "*any Plan Participant who Leaves Employment either (i) by reason of death, disability, retirement or termination of the employment because of downsizing, reorganization or termination of its business*…". "Normal Leavers" referred to "*any Plan Participant who Leaves Employment and is neither a Good Leaver or a Bad Leaver*".

(c) Clause 8.9 of the Plan Terms provided that the LTIP was governed by German law, "*excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG) and the German conflicts of laws rules*".

The LTIP notably did not contain any jurisdiction clause (unlike the Employment Contract which contained the EJC).

Dispute and commencement of action

In June 2021, Ms Goh gave notice of her intention to retire and resign from employment, and was notified by ACP that she had been deemed a "Normal Leaver" for purposes of the LTIP (and thus not entitled to her unvested Incentive Awards) – a decision Ms Goh disputed.

In November 2021, ACP-S commenced action in the General Division of the Singapore High Court (**Action**) seeking (among other things) declarations to the effect that Ms Goh was a "Normal Leaver" for purposes of the LTIP as (among other things) she had not reached the retirement age of 62 specified in the Employee Handbook when she resigned.

Ms Goh applied to stay the Action, arguing that Germany was the more appropriate forum to hear the dispute. In response, ACP-S's primary case was that the dispute fell within the scope of the EJC and that there was no strong cause for a stay to be granted in breach of the EJC.

The High Court Judge's Decision

Ms Goh's stay application failed at first instance before the Assistant Registrar, but succeeded on appeal to the High Court Judge (**Judge**). The Judge considered that the dispute (which concerned parties' differing interpretations of the term "*retirement*" as used in the LTIP, and the manner in which ACP had exercised its discretion to determine Ms Goh's "leaver" status) arose out of the LTIP, which was a "*separate agreement, distinct and independent from the Employment Contract*", and accepted the in-principle applicability of the

Principle (as formulated in *Terre Neuve SARL (a company incorporated in France) and Ors v Yewdale Ltd and Ors* [2020] EWHC 772 (Comm) (***Terre Neuve***)) which the Judge summarised as follows:

(a) As a matter of contractual interpretation, the wording of the clause in Contract A must be fairly capable of applying to disputes in Contract B.

(b) The Principle normally applies where:

(i) The parties to Contract A and Contract B are the same;

(ii) Contract A and Contract B are interdependent;

(iii) Contract A and Contract B were concluded at the same time as part of a single package or transaction; and/or

(iv) Contract A and Contract B dealt with the same subject matter (if concluded at different times).

(**Summary Framework**)

On the facts, however, the Judge concluded that the Principle could not be relied upon to broaden the ambit of the EJC in the Employment Contract such as to cover the dispute arising under the LTIP, reasoning that:

(a) The EJC was not, as a matter of contractual construction, fairly capable of applying to disputes arising under the LTIP, as clause 7.3 of the Employment Contract referred to "***this*** *Agreement*" (i.e., the Employment Contract), and clause 2.5 of the Employment Contract made clear that issues and disputes concerning the Incentive Plan were to be governed by "***separate*** *agreements and notices*".

(b) The Employment Contract (entered into in October 2009) and the LTIP (subsequently entered into in 2018, 2019 and 2020) were not part of a "*single package or transaction*" as: (i) they were not concluded at the same time; and (ii) the reference in clause 2.5 of the Employment Contract to the LTIP and Award Notices as "***separate*** *agreements and notices*" effectively "*delinked and excised matters relating to the LTIP from the Employment Contract*".

(c) The LTIP dealt with "*entirely different subject matter*" from the Employment Contract. While the former arose out of Ms Goh's employment with ACP-S, the subject matter of the former governed only a specific part of that employment relationship (matters concerning the administration of the Incentive Plan and the Incentive Awards awarded thereunder).

(d) The Employment Contract and the LTIP were not interdependent – they were both independent and legally binding, concerned different subject matters, and neither derived from nor was ancillary to the other.

(e) The parties to the Employment Contract (ACP-S and Ms Goh) were not the same as the parties to the LTIP (ACP and Ms Goh). While it is trite that a local branch office like ACP-S is considered an extension of its foreign parent company and is not considered a separate legal entity, "*the Employment Contract itself appears to treat ACP and [ACP-S] as separate parties*".

The Appellate Division's Decision

The Judge's decision was reversed on further appeal to the Appellate Division. The Appellate Division accepted that the Employment Contract and the LTIP were separate agreements and also accepted the Principle (as formulated in *Terre Neuve* and summarised by the Judge, *per* the Summary Framework) as part of Singapore law, but ultimately disagreed with the Judge's application of the Principle to the facts of the case.

On questions of principle:

(a) The Appellate Division noted that, while Singapore courts have applied what is commonly referred to as the "*Fiona Trust* presumption" (namely, that in construing the ambit of a jurisdiction clause, parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal) in "single contract scenarios" (i.e., where the ambit of the jurisdiction clause in a single contract is expanded to apply to disputes not arising directly out of any contract) and apparently also in "multi-contract situations" (which form the basis of the Principle), Singapore courts have not had the chance to consider the Principle as formulated in *Terre Neuve* and summarised by the Judge.

(b) The Appellate Division considered that there was **good reason to accept the Principle as part of Singapore law – it is a logical extension of the *Fiona Trust* presumption which has been endorsed by Singapore Courts, and provides a sound and useful framework for determining the proper ambit of a jurisdiction clause in multi-contract scenarios**.

(c) The Appellate Division stressed that the factors in the Summary Framework only served as "***guides***" to ascertain the parties' intentions as to how disputes arising under separate agreements should be resolved. **In the final analysis, the court is concerned with "*whether the outcome that results from the application of the Principle was one that the parties, as rational business people, had sensibly envisaged in the context of their commercial relationship*"**.

(d) **The Appellate Division also excluded from its analysis situations where the two agreements contained *competing* jurisdiction clauses** (noting that it would, as a matter of contractual interpretation, be difficult to conclude in such a scenario that the jurisdiction clause in one contract could be said to apply to disputes arising from the other, while reserving further comments).

Addressing each of the factors in the Summary Framework, the Appellate Division concluded on the facts that the parties must have intended the EJC to apply to disputes arising out of the LTIP:

(a) **The text of the EJC was capable of applying to disputes under the LTIP**: Clause 7.3 of the Employment Contract notably had two parts – the first part addressing parties' choice of law, and the second part being the EJC. The phrase "*this Agreement*" (which the Judge placed emphasis on) is found in the first part, but not in the EJC. The scope of the EJC (which referred to "*any dispute*" without limitation) was therefore not necessarily limited to disputes arising out of the Employment Contract, particularly when (under clause 2.5 of the Employment Contract) Ms Goh's participation in carried interest programmes such as the Incentive Plan was contemplated at the time of entry into the Employment Contract.

(b) **The Employment Contract and the LTIP were interdependent agreements negotiated as part of the same overall package**: Both agreements pertained to the employment relationship between Ms Goh and ACP-S, and in particular, Ms Goh's compensation package as an ACP-S employee. Ms Goh's participation in the Incentive Plan was conditional upon her continued employment under the Employment Contract (which contemplated the parties' entry into agreements such as the LTIP), and her entitlement to retain vested and accrue unvested incentive awards was dependent on her classification as a "Good leaver", "Normal leaver", etc. which was dictated at least in part by the circumstances surrounding the termination of her employment. The phrase "*separate agreements and notices*" in clause 2.5 of the Employment Contract did not (contrary to the Judge's view) "*delink*" the two agreements – clause 2.5 instead made clear that the overall employment relationship would be governed by the Employment Contract, but *details* of specific parties of that same relationship would be fleshed out in separate agreements.

(c) Flowing from (b) above, **the Employment Contract and the LTIP traversed the same subject matter, i.e., Ms Goh's compensation package**.

(d) **The Employment Contract and the LTIP were concluded between the same parties**: "*[N]o legal or meaningful distinction*" could be drawn between ACP and ACP-S since the latter was a branch of the former; ACP and ACP-S were therefore one and the same entity. The parties also did not appear to make any distinction between ACP and ACP-S in practice, and it was furthermore clear from the Plan Terms that employees of ACP-S were treated as employees of ACP for purposes of the Incentive Plan.

The Appellate Division did not consider its analysis to be affected by the fact that the Employment Contract and the LTIP contained different choices of law; while it would have been "*odd*" for there to be two choices of law in the *same* contract, the Employment Contract and the LTIP were separate, albeit interdependent, agreements.

The fact the each of the Employment Contract and the LTIP contained an entire agreement clause also did not affect the Appellate Division's analysis. The Appellate Division observed that the effect of an entire agreement clause is ultimately a matter of construction, and the entire agreement clause in the LTIP, properly construed, did not preclude the application of the EJC to disputes arising under the LTIP.

The Appellate Division therefore held that the EJC was capable of applying to disputes from the LTIP, and further concluded that there was no strong cause to justify departing from the EJC. The appeal was thus allowed and the Action allowed to proceed.

Concluding Observations

The Appellate Division's acceptance of the Principle brings the position in Singapore broadly in line with that in England, and enhances certainty for business parties where jurisdiction "gaps" may exist in related or interdependent contracts.

As the factors listed in the Summary Framework are "guides" only, the door is meanwhile left ajar for future arguments concerning the applicability of the Principle where the listed factors are present but where there is some other aspect of parties' relationship which would render the outcome of an application of the Principle contrary to what was "*sensibly envisaged*" by "*rational business people*". An obvious example might be a scenario where Contract B contains a competing jurisdiction clause (a scenario which the Appellate Division excluded from its analysis), or where there is an appropriately worded entire agreement clause in Contract B.

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PODCAST

APRIL 2023	
14 April 2023	Our Co-Head of Sustainability & Responsible Business and Commercial & Corporate Disputes Partner Tiong Teck Wee recently shared his views on the trends and developments in climate-related disputes in Singapore and Asia in a podcast episode with 39 Essex Chambers as part of their Outlook podcast series. Titled “Contracting for the Climate – Sustainability and Responsibility”, the podcast was moderated by Camilla ter Haar and Ruth Keating. To listen to the podcast, click here. **Contact our Partner:** Tiong Teck Wee

LEGAL HIGHLIGHTS

MAY 2023	
12 May 2023	**Proposed Amendments to Payment Services Regulations 2019** Amendments to the Payment Services Act 2019 were passed in January 2021 to, among other things, expand the scope of domestic and cross-border money transfer services, as well as digital payment token services. The Monetary Authority of Singapore (**MAS**) has issued a consultation paper on proposed amendments to the Payment Services Regulations and existing notices applicable to payment service providers to operationalise these amendments. Other notable proposals include: (a) an amendment which would allow payment service providers to contractually agree with corporate customers on the timelines for transmission of moneys – such timelines are currently prescribed in a notice (Notice PSN07); and (b) amendments to another notice (Notice PSN04) which would expand the scope of information required to be submitted by payment service providers periodically to the MAS. Separately, the MAS has also proposed a transitional period exemption for payment service providers who would be impacted by the expanded scope of such regulated payment services. **Related information**: Proposed Amendments to Payment Services Regulations 2019, Notices issued under the Payment Services Act 2019 or MAS Act, and Proposed New Regulations on Exemptions for a Specified Period **Contact our Partners**: Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong
4 May 2023	**Financial Services and Markets Act 2022** The Financial Services and Markets Act 2022 (**FSMA**), which was passed in April 2022, is an omnibus piece of legislation for sector-wide regulation of financial services and markets. The FSMA will be implemented in phases, and as part of the first phase, sections of the FSMA which port over provisions from the Monetary Authority of Singapore Act 1970 will come into force on 28 April 2023. These provisions relate to the MAS' general powers over financial institutions, the framework for anti-money laundering and countering the financing of terrorism and the framework for the Financial Disputes Resolution Schemes.

	The MAS has indicated that the remaining sections of the FSMA are targeted to come into force between the second half of 2023 and 2024. These other sections include a new licensing regime for digital token service providers, as well as consolidation of the power to issue prohibition orders in the financial services sector. **Related information**: Financial Services and Markets Act 2022 **Contact our Partners**: Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong
APRIL 2023	
28 April 2023	**MAS Proposes Enhanced Safeguards for Prospecting and Marketing of Financial Products** The MAS has published two consultation papers with proposals to enhance safeguards for the prospecting and marketing of financial products. The MAS' proposals seek to enhance existing safeguards and introduce new measures to strengthen market conduct, particularly with the resumption of roadshows and the increasing use of social media and other digital media for prospecting and marketing activities. The proposals regarding: (a) prospecting activities at public places and *via* telemarketing; and (b) prospecting activities *via* digital applications and social media are separately set out in each of the two consultation papers. For physical prospecting at public places, the proposals include making existing safeguards such as disclosure of representatives' identities and the financial institutions they represent mandatory, limiting the conduct of prospecting activities to commercial premises, requiring financial institutions to provide customers additional time to consider whether to make a purchase, and limiting the use of gift offers which may influence decision-making. For digital marketing, the proposals include strengthening controls over online advertisements to avoid misleading content, and tightening practices when appointing third-party service providers to generate leads online. It is proposed that amendments will be made to the Guidelines on Standards of Conduct for Marketing and Distribution Activities (**Guidelines**) issued by the MAS on 23 December 2016 to include new practices relating to prospecting activities at public places and that new Notices will be issued by the MAS to legislate these enhanced safeguards following feedback on the consultations. The proposed safeguards for digital marketing are set out in draft Guidelines on Standards of Conduct for Digital Prospecting and Marketing Activities set out in the consultation paper. It is proposed that the

	new Notices and revised Guidelines for prospecting activities at public places and *via* telemarketing and the new Guidelines on Standards of Conduct for Digital Prospecting and Marketing Activities will be effected six to nine months from their issuance date. **Related information**: MAS Proposes Enhanced Safeguards for Prospecting and Marketing of Financial Products **Contact our Partners**: Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong
20 April 2023	**Corporate Finance Thematic Inspection - Good Practices and Key Findings** The MAS has published an Information Paper on its Corporate Finance Thematic Inspection, which covers Good Practices and Key Findings. This information paper sets out the MAS' supervisory expectations for financial institutions carrying out corporate finance (**CF**) advisory activities for initial public offerings and follows the MAS' thematic inspections conducted between June 2018 and September 2021. The paper sets out the good practices and weaknesses that the MAS has observed in its thematic inspections, and also covers: (a) the MAS' expectations of issue managers (**IMs**) when conducting due diligence on issuers; (b) governance, compliance, and audit measures IMs should take in respect of CF activities; (c) reliance on the findings and opinions of experts and advisers by IMs; and (d) record keeping by IMs. The MAS has stated that it expects all IMs to incorporate these expectations and, where appropriate, the good practices into their conduct of CF advisory and placement activities. IMs should also periodically review their internal controls and policies and procedures, and strengthen management oversight and control over such activities, given the important role which IMs play as gatekeepers for potential companies seeking a listing in Singapore. Finally, the MAS states that it will continue to provide further guidance to improve industry practice for the CF advisory sector in Singapore, where appropriate. **Related information**: Corporate Finance Thematic Inspection - Good Practices and Key Findings **Contact our Partners**: Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong

13 April 2023	**Consultation Paper on Notice on Identity Verification** The MAS recently published its Response to Feedback Received on the Consultation Paper on Notice on Identity Verification, alongside its Circular on Addressing Risks that Arise from Theft and Misuse of an Individual's Personal Information. In its initial Consultation Paper on this matter, the MAS had proposed to issue a Notice on Identity Verification and sought feedback on the types of information that financial institutions (**FIs**) should be mandated to use to verify the identity of an individual initiating financial transactions through non-face-to-face communication channels. Following this consultation exercise, the MAS has assessed that the types of information used for such identity verification need not be mandated at present, to give FIs flexibility to assess different technologies, processes, and controls which may be used for such purposes. As such, the MAS will not proceed to issue the proposed Notice. At the same time, the MAS has issued the Circular on Addressing Risks that Arise from Theft and Misuse of an Individual's Personal Information, which sets out the security principles and best practices that should be adopted by FIs in their identity verification processes. In particular, the Circular sets out certain type(s) of information which can be used in the customer authentication process and also indicates that FIs should implement additional authentication measures for certain high-risk activities, e.g., high value funds transfers and revision of funds transfer limits. The MAS has also reiterated that FIs are ultimately responsible and accountable for ensuring that an individual is who he or she claims to be before undertaking any transactions for the individual, or acting on instructions from the individual, and should continue to ensure that the identity verification measures that they have adopted are commensurate with the risks posed by the theft and misuse of personal information. **Related information**: Consultation Paper on Notice on Identity Verification **Contact our Partners**: Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong

OTHER UPDATES

DATE	TITLE
22 June 2023	MAS Issues FAQs on Notice on Business Conduct Requirements for Corporate Finance Advisers
16 June 2023	No Privacy Orders for Court Proceedings if Confidentiality of Arbitration is Lost, Singapore Court of Appeal Rules
5 June 2023	Antitrust & Competition: Potential Risks Arising From Use of Algorithmic Pricing Tools
30 May 2023	Crypto Spring – Will the Recognition of the Administrative Convenience Class in *Zipmex* Pave the Way for Crypto Restructurings in Singapore?
3 May 2023	Crypto Debt Not Money Debt For Purposes of Statutory Demand, Singapore High Court Rules
28 April 2023	Data Protection Quarterly Updates (January – March 2023)
25 April 2023	*Viva la* Singapore Trusts: Lessons from *La Dolce Vita*
31 March 2023	Singapore High Court Orders Specific Performance to Compel Compliance With Obligation to Mediate Disputes
30 March 2023	PRC Measures on Standard Contract for Outbound Transfer of Personal Information

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