

Legal Bulletin

A summary of developments in the law

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Articles

Highlights of 2007 Budget Statement

On 15 February 2007, the Second Minister for Finance Mr Tharman Shanmugaratnam delivered the Budget Statement for Financial Year 2007 (the "**Budget**") in Parliament. The Budget is aimed at preparing Singapore for the future and for the world, and to help ensure that the dynamism of the Singapore economy is retained. Among other things, the Budget aims to reduce direct taxes and raise additional revenues, including goods and services tax ("**GST**").

This article provides highlights from the 2007 Budget Statement. For more detailed information about the tax changes, please [click here](#).

The tax changes are broadly categorised as follows:

- General tax changes;
- Promoting legal services;
- Promoting financial services;
- Philanthropy services and non-profit organisations;
- Promoting logistics, maritime, aviation services;
- Extension of stamp duty relief under section 15 of the Stamp Duties Act;
- Rise in GST tax rate; and
- Increase in employer CPF contribution rate.

For the full text of the Budget Speech, please [click here](#).

General tax changes

Reduction in corporate tax rate

With effect from year of assessment ("**YA**") 2008, the corporate tax rate will be reduced from 20 per cent. to 18 per cent.

In line with the reduction in corporate tax rate to 18 per cent., the following tax rates which are presently pegged at 20 per cent. will also be correspondingly reduced to 18 per cent. with effect from YA 2008:

- (a) tax rate for non-resident persons (other than non-resident individuals and non-resident Hindu joint families, which will remain at 20 per cent.);
- (b) rate at which tax is withheld for payments (other than those subject to the 10 per cent. or 15 per cent. final withholding tax) to non-resident persons other than non-resident individuals/Hindu joint families;
- (c) tax rate for trustees (other than trustees of incapacitated persons) and executors;
- (d) rate of deduction of tax from Singapore franked dividend paid during the period from 1 January 2007 to 31 December 2007; and

- (e) rate of tax to be used to compute the effective company tax rate for a body of persons.

One-tier corporate tax system/payment of Singapore franked dividends in 2007

Under the one-tier corporate tax system which took effect on 1 January 2003, companies were given five years from that date till 31 December 2007 to use up their unutilised section 44A tax credits to frank dividends. After 31 December 2007, the unutilised balances will be nullified. To mitigate the adverse effects of the one-tier corporate tax system, concessions were introduced that effectively allowed the interest expense attributable to one-tier exempt dividends to be deducted while companies restructured their operations. These concessions are also available up to 31 December 2007.

It was announced in the Budget that there will not be further extension to the five-year transitional period for utilisation of the section 44A tax credits, the transitional concessions, and utilisation of the section 44 charges.

Tax deduction for borrowing costs

With effect from YA 2008, specified borrowing costs, other than interest, which are incurred on a borrowing that is used to acquire a capital asset used to produce income will be deductible for tax purposes, provided these costs are paid as a substitute for interest or to reduce interest costs. The Inland Revenue Authority of Singapore (“IRAS”) will release more details by May 2007.

This tax development follows the public consultation conducted by the IRAS in November 2006 when it issued a consultation paper entitled “*Consultation Paper on proposed list of other borrowing costs to be allowed for income tax purposes*”. An article discussing the consultation paper was featured in a previous issue of the Allen & Gledhill Legal Bulletin (December 2006). To view the article, please [click here](#).

Increased threshold under Partial Tax Exemption scheme

At present, under the Partial Tax Exemption (“PTE”) scheme which is generally available to all companies, 75 per cent. of the first S\$10,000 of normal chargeable income, and 50 per cent. of the next S\$90,000 of a company’s normal chargeable income is tax exempt.

With effect from YA 2008, the threshold for PTE will be increased to S\$300,000, as follows:

- 75 per cent. exemption of the first S\$10,000 of normal chargeable income; and
- 50 per cent. exemption of the next S\$290,000 of normal chargeable income.

Lifting the sunset date for income tax exemption scheme for new exempt private companies

Currently, a tax resident exempt private company incorporated in Singapore is granted full income tax exemption on the normal chargeable income (excluding Singapore franked dividend) up to S\$100,000. The tax exemption is only applicable to the new company’s first three consecutive YAs falling within YAs 2005 to 2009.

It was announced in the Budget that the sunset date of YA 2009 is lifted. A tax resident exempt private company incorporated in Singapore will be granted tax exemption on its normal chargeable income up to S\$100,000 for the full three consecutive YAs regardless of whether any of these first three YAs falls beyond YA 2009.

Extension of writing down allowance under section 19B of the Income Tax Act

The writing down allowance available under section 19B of the Income Tax Act for capital expenditure incurred to acquire intellectual property rights by a company will be extended by another five years till 31 October 2013.

Enhancement to Investment Allowance scheme

Currently, under the Investment Allowance (“IA”) scheme administered by the Standards, Productivity and Innovation Board Singapore (“SPRING”) and the Economic Development Board (the “EDB”), the period within which the fixed capital expenditure must be incurred in order to qualify for the IA (the “qualifying period”) is five years from the investment day specified in the certificate issued. For companies that purchase equipment on hire purchase, any hire purchase instalments made beyond the qualifying period will not qualify for the IA.

It was announced in the Budget that the maximum qualifying period for companies that purchase equipment on hire purchase will be extended from five years to eight years. This change will take effect for equipment purchased on or after 15 February 2007.

Promoting legal services

A new tax incentive will be introduced to boost international arbitration activities in Singapore. Law firms will be granted a 50 per cent. tax exemption on qualifying incremental income derived from international arbitration work. The incentive will be available from 1 July 2007 to 30 June 2012. The Ministry of Law will release more details by May 2007.

Promoting financial services

Removal of the 80/20 rule under tax exemption scheme for non-resident funds

It was announced in the Budget that the 80/20 rule under tax exemption scheme for non-resident funds under section 13C of the Income Tax Act will be removed, subject to conditions.

Enhancements to the tax exemption schemes for income from funds managed for foreign investors

At present, tax exemption is granted on specified income derived by a foreign investor from funds (both resident and non-resident) managed by any fund manager in Singapore in respect of designated investments.

With effect from 15 February 2007, the list of designated investments will be expanded to include the following:

- (a) qualifying loans; and
- (b) commodity derivatives (both over-the-counter and exchange-traded) and physical commodities where:

- the trade volume of physical commodities does not exceed 15 per cent. of the total trade volume of commodity derivatives and physical commodities for each year of assessment throughout the incentive period; and
- the trading of physical commodities is in connection with and incidental to any related commodity derivatives trading.

Specified income derived on or after 15 February 2007 by a foreign investor from the types of designated investments stated in paragraphs (a) and (b) will be tax exempt.

In addition, the tax exemption schemes will also be expanded to cover Collateralised Debt/Loan Obligations.

The Monetary Authority of Singapore (the “**MAS**”) will release details by May 2007.

Enhancement to Financial Sector Incentive (“FSI”)

Fees and commissions derived by a FSI-(fund management) company or FSI-(standard-tier) company from the following activities are taxed at a concessionary tax rate of 10 per cent.:

- managing the funds of foreign investors for the purpose of designated investments;
- providing investment advisory services to foreign investors in relation to designated investments; and
- arranging on behalf of foreign investors any loan of designated securities under a securities lending arrangement in writing to another FSI (fund management) company or FSI (standard-tier) company.

It was announced in the Budget that fees and commissions derived on or after 15 February 2007 by a FSI (fund management) company or FSI (standard-tier) company from providing investment advisory services in relation to a foreign investor or to a foreign fund manager under a fund delegation arrangement will qualify for the concessionary rate of tax of 10 per cent.

The MAS will release details by May 2007.

Enhancements to the Finance and Treasury Centre Incentive

Under the Finance and Treasury Centre (“**FTC**”) tax incentive scheme, an approved FTC enjoys a concessionary tax rate of 10 per cent. on its income derived from the provision of qualifying services to its approved offices and approved associated companies, and from qualifying activities carried out on its own account.

With effect from 15 February 2007, the list of FTC qualifying activities will be expanded to include transacting and investing in the units in any qualifying unit trust. For the purposes of the scheme, a qualifying unit trust is one that engages wholly in qualifying activities that an FTC can carry out on its own account under the FTC incentive. The MAS will release details by May 2007.

Extension of the tax exemption on over-the-counter financial derivative payments made to a non-resident

Currently, tax exemption is granted on payments related to financial derivatives in any currency that are traded over-the-counter (“**OTC**”), made to persons who are neither residents of, nor permanent establishments in, Singapore. The exemption applies to payments that:

- (a) a financial institution (“**FI**”) in Singapore is liable to pay to non-residents from 27 February 2004 to 19 May 2007 (both dates inclusive); and
- (b) an approved special purpose vehicle which engages in asset securitisation transactions is liable to pay to non-residents from 27 February 2004 to 19 May 2007 (both dates inclusive).

The following changes were announced in the Budget:

- (a) **Financial Institutions.** The tax exemption will be extended by another five years to 19 May 2012. In addition, tax exemption will be applied to all payments made on contracts that are entered into from 15 February 2007 to 19 May 2012 (both dates inclusive). The tax exemption will apply to OTC financial derivative payments made by FIs to non-residents for the entire duration of such contracts.
- (b) **Approved Special Purpose Vehicle (“ASPV”).** The tax exemption will be extended to 31 December 2008, to coincide with the expiration of the ASPV scheme. The tax exemption will be applied on a contract basis i.e. for contracts entered into during the period from 15 February 2007 to 31 December 2008 (both dates inclusive). The tax exemption will apply to OTC financial derivative payments made by an ASPV to non-residents for the entire duration of the contracts.

The MAS will release details by May 2007.

Enhancement to qualifying debt securities scheme

The Qualifying Debt Securities Scheme (the “**QDSS**”) accords tax exemption or concessionary tax rates on interest and discounts derived by investors from Qualifying Debt Securities (“**QDS**”), subject to conditions. With effect from 15 February 2007, the QDSS will accord tax exemption or concessionary tax rates on prepayment fees, redemption premiums and break costs that are derived by investors from QDS, subject to conditions. This is applicable to all QDS issued on or after 15 February 2007. The MAS will release details by May 2007.

Philanthropy services and non-profit organisations

Income tax exemption for registered charities

Presently, in order to be exempt from income tax, charities are required to spend at least 80 per cent. of their annual receipts on charitable objects in Singapore within two years. It was announced in the Budget that registered charities will enjoy income tax exemption without having to meet the 80 per cent. spending rule. It was also announced that the 80/20 fundraising rule, which requires any organisation seeking to raise funds for any foreign charitable purpose to spend in Singapore at least 80 per cent. of the funds raised, will be relaxed provided that the funds are raised from private donors and not from the general public.

Double tax deductions for donors to foundations and grantmakers

Individuals and companies can obtain double tax deductions for donations to organisations with institutions of public character (“**IPC**”) status. It was announced in the Budget that individuals and companies that donate to foundations and grantmakers will be eligible for double tax deductions, if the donations are channeled to IPC in Singapore within a specified timeframe. Details will be announced by September 2007.

Tax exemption scheme for not-for-profit organisations

It was announced in the Budget that, with effect from 15 February 2007, not-for-profit organisations (“**NPOs**”) approved by the EDB will be granted income tax exemption for an initial period of not more than 10 years. The incentive may be renewed subject to approval by the EDB. Examples of eligible NPOs are those that promote the economic development of Singapore, such as standards organisations and research bodies.

Promoting logistics, maritime, aviation services

- ***Enhancement to the Approved Shipping Logistics Enterprise Scheme (ASL)***. Presently, ship agencies, ship management companies and shipping logistics companies under the Approved Shipping Logistics Enterprise Scheme (“**ASL**”) enjoy a 10 per cent. concessionary tax rate on qualifying income for five years. With effect from 15 February 2007, the incentive period for ASL companies will be extended from five years to 10 years. The Maritime Port Authority (“**MPA**”) will release details by May 2007.
- ***Enhancement to the Approved Aircraft Leasing Scheme***. Aircraft leasing companies which are approved under the Approved Aircraft Leasing Scheme (“**ALS**”) enjoy a concessionary tax rate of 10 per cent. for a period of five years on income from offshore leasing of aircrafts. The 10 per cent. concessionary tax rate is also granted on income derived from the performance of ancillary activities such as management of aircraft leases and advisory and agency services relating to the sale or leasing of aircraft. With effect from 1 March 2007 to 29 February 2012, the ALS will be enhanced as follows:
 - (a) Granted a concessionary tax rate of 5 per cent. (in addition to existing 10 per cent. rate) on qualifying lease income for a period of five years;
 - (b) Extension of the concessionary tax rates to registered business trust or an approved company under an aircraft or aircraft engine financing arrangements; and
 - (c) Expansion of the scope of income qualifying for the concessionary tax rate to include:
 - (i) income from leasing of aircraft engines; and
 - (ii) income from leasing of aircraft or aircraft engines to any person in Singapore i.e. onshore leasing.

Details will be released by the EDB by May 2007.

- ***Zero-rating of GST for servicing, sale and lease of containers***. With effect from 1 April 2007, the supply of servicing, sale and lease of sea or air containers will be recognised as international services and will be

zero-rated. The IRAS will be issuing a guide on the new treatment in March 2007.

Extension of stamp duty relief under section 15 of Stamp Duties Act

Currently, relief from stamp duty under section 15 of the Stamp Duties Act is only available in respect of intra-group transfers of assets involving companies with limited liability and registered business trusts. Effective from 15 February 2007, the relief under section 15 will be extended to statutory boards, unlimited companies, and limited liability partnerships where all the partners are companies. To view a guide issued by the IRAS entitled "*Extension of Relief Granted under Section 15(1)(b) of the Stamp Duties Act to Statutory Boards, Unlimited Companies and Limited Liability Partnerships*", please [click here](#).

Raise in GST tax rate

Effective from 1 July 2007, the GST rate will be raised from 5 per cent. to 7 per cent. To assist in the implementation of the new GST rate, the IRAS has issued the following e-Tax guide and press statement:

- [2007 GST Rate Change – A Guide for GST registered Businesses](#)
- [IRAS Helps Traders Prepare for GST Rate Change](#)

Increase in employer CPF contribution rate

The employer component of CPF contribution rates will be increased by 1.5 per cent. from 1 July 2007. This change will not apply to older low-wage workers, i.e. those who earn S\$1,500 or less and are also above 35 years old.

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Changes to the capital adequacy requirements for Singapore-incorporated banks

On 8 February 2007, the Monetary Authority of Singapore (the "**MAS**") disclosed that it will make changes to the capital adequacy requirements for Singapore-incorporated banks and the financial holding companies of the banks (collectively referred to as the "**Banks**" in this Article).

A Bank is required under the Banking Act to have a minimum capital adequacy ratio of 10 per cent. (the "**total CAR**"). The capital a Bank must set aside to meet all risks is called regulatory capital. The regulatory capital of a Bank is made up of core capital (Tier 1 capital) and supplementary capital (Tier 2 capital). The total CAR is a ratio of the regulatory capital to risk weighted assets (a measure of risk faced by the Bank).

Currently, a Bank needs to maintain at least 7 per cent. of the minimum 10 per cent. total CAR as Tier 1 capital. From 1 March 2007, this will be reduced from 7 per cent. to 6 per cent. Tier 1 capital includes retained earnings and equity.

The total CAR of a Bank will, however, remain at 10 per cent. The MAS also announced that it would give a broader definition as to what can be included as Tier 2 capital. Tier 2 capital may consist of revaluation reserves, unencumbered general provisions, and funds raised from the issuance of subordinated debt instruments. From 1 March 2007, the Banks will be able to

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hold up to 50 per cent. of Tier 2 capital in instruments that have a shorter maturity than previously required. These instruments do not necessarily have to provide deferment of coupons or write down of principal.

The MAS will also clarify the rules on redemption and the repurchase of these capital instruments.

The revised rules are set out in the MAS Notice on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore (MAS Notice 637), which is available on the MAS website. Please [click here](#) to view the Notice.

Please [click here](#) to read the MAS press release of 8 February 2007 in relation to the above development.

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Statutes (Miscellaneous Amendments) Act 2007: Shorter record keeping periods mainly from 1 March 2007

The Statutes (Miscellaneous Amendments) Act 2007 (the “**Amendment Act**”), which was passed in Parliament on 22 January 2007, has come into operation pursuant to the Statutes (Miscellaneous Amendments) Act (Commencement) Notification 2007 issued on 15 February 2007.

Among other things, the Amendment Act effects changes to the following statutes to shorten the period for record keeping to five years:

- Building Maintenance and Strata Management Act 2004
- Business Trusts Act
- Charities Act
- Companies Act
- Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act
- Customs Act
- Financial Advisers Act
- Income Tax Act
- Limited Liability Partnerships Act 2005
- Money-changing and Remittance Businesses Act
- Moneylenders Act
- Pawnbrokers Act
- Securities and Futures Act
- Trust Companies Act

Save for the Charities Act and the Income Tax Act, the Amendment Act amends the record keeping provisions of the Acts listed above with effect from 1 March 2007.

The amendments to the Charities Act with respect to record retention are effective for the financial year ending on any date in 2007 and subsequent financial years, while the amendments to the Income Tax Act are effective for records in respect of the basis period relating to the year of assessment 2008 and records in respect of the basis period relating to each subsequent year of assessment.

On 15 February 2007, the following rules and regulations were issued under some of the Acts listed above for the purposes of shortening the record keeping period provided for in the rules and regulations to five years so as to ensure consistency with the requirements in the principal Acts:

- Financial Advisers (Amendment) Regulations 2007 (S58/2007)
- Securities and Futures (Approved Holding Companies) (Amendment) Regulations 2007 (S59/2007)
- Securities and Futures (Clearing Facilities) (Amendment) Regulations 2007 (S60/2007)
- Securities and Futures (Markets) (Amendment) Regulations 2007 (S61/2007)
- Moneylenders (Amendment No 2) Rules 2007 (S63/2007)
- Pawnbrokers (Amendment) Rules 2007 (S64/2007)

The reduction in the record keeping period was first announced in the 2006 Budget Statement. To view the relevant segment of the 2006 Budget Statement, please [click here](#).

For an article featuring the Statutes (Miscellaneous Amendments) Bill 2006 when it was passed in Parliament on 22 January 2007, please [click here](#) to view an article entitled "*Parliament passes Statutes (Miscellaneous Amendments) Bill 2006: Changes to record keeping periods*" which appeared in a previous issue of the Allen & Gledhill Legal Bulletin (January 2007).

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Income Tax (Amendment) Act 2007 in force: Implementation of income tax changes announced in 2006 Budget Statement

The Income Tax (Amendment) Act 2007 has been gazetted and its provisions come into force from various dates. The Income Tax Act is amended primarily to implement the income tax changes announced in the 2006 Budget Statement.

The following are some of the changes arising from the Income Tax (Amendment) Act 2007:

- **New section 13Q with effect from 17 February 2006:** Tax exemption on certain income of a prescribed locally administered trust and of a

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prescribed holding company established for the purposes of such trust. Where such income is exempt from tax, the share of such income to which a beneficiary of the trust is entitled to receive is also exempt;

- **New section 13S with effect from 1 March 2006:** Tax exemption on income derived by an approved shipping investment enterprise from the chartering or finance leasing of ships for use outside the limits of the port of Singapore and acquired by the enterprise during its period of approval;
- **New section 14P with effect from YA 2007 and subsequent YA (except in relation to section 14P(8)):** Deduction allowed to a company for the cost of acquiring treasury shares when it transfers such shares to any person under a stock option scheme or share award scheme by reason of any office or employment held in Singapore by that person;
- **New section 34A with effect from 1 January 2005:** Changes to the basis of computing profits of financial instruments arising from the adoption of FRS 39 by companies in Singapore;
- **New section 34B with effect from 17 February 2006:** New section 34B provides for the tax treatment of prescribed Islamic financing arrangements. Sections 10, 12, 13, 14, 15 and 45 and regulations made under section 43Q will apply to such arrangements as if a reference to interest were a reference to the prescribed return in lieu of interest (the effective return) under such arrangement. The effective return is to be excluded in determining the consideration for the sale and purchase of any asset under such arrangement;
- **Amended section 43N with effect from 17 February 2006:** Extends the 10 per cent. concessionary tax rate to a discount derived by a company from qualifying debt securities which are issued during the period from 17 February 2006 to 31 December 2008 and which have a tenure of more than one year, subject to conditions; and
- **New section 43W with effect from 1 March 2006:** New section 43W enables regulations to be made to levy a concessionary tax rate of five per cent. upon specified income derived on or after 1 March 2006 by an approved shipping investment manager from managing an approved shipping investment enterprise or from other prescribed services or activities carried out for such enterprise, subject to conditions.

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Parliament introduces Land Acquisition (Amendment) Bill 2007: Compensation computed based on market value

On 12 February 2007, Parliament introduced the Land Acquisition (Amendment) Bill 2007 (the “**Bill**”) for first reading.

It is stated in the Explanatory Statement to the Bill that the Bill seeks to amend the Land Acquisition Act “to abolish the use of a statutory date in determining the basic compensation for land that is compulsorily acquired on or after 12 February 2007 and to provide that the basic compensation will instead be the market value of the land as at the date of its acquisition”.

Under the new compensation regime, the market value of the acquired land cannot exceed the price which a *bona fide* purchaser might reasonably be willing to pay for the land after taking into account the zoning and density requirements and any other restrictions imposed by or under the Planning Act and any other restrictive covenants in the title of the acquired land as at the date of acquisition. No account will be taken of any potential value of the land for any other use more intensive than that permitted by or under the Planning Act as at the date of acquisition.

The Land Acquisition Act will also be amended so that when assessing the market value of acquired land, it will no longer be prohibited to take into account an increase in market value of the land as a result of:

- (a) any improvement to the land within two years before the date the land is declared under section 5 of the Land Acquisition Act to be required for a public purpose (the “**date of declaration of intended acquisition**”); and
- (b) development in the neighbourhood by the provision of roads, drains, electricity, water, gas or sewerage or social, education or recreational facilities within seven years preceding the date of declaration of intended acquisition.

There will also be removed the special compensation provisions for the acquisition of:

- land that is devastated or affected, directly or indirectly, by fire, explosion, thunderbolt, earthquake, storm, tempest, flood or any act of God; and
- land which is used as a burial ground.

When in force, the new scheme for compensation for acquired land will not apply to any land in respect of which a declaration of intended acquisition under section 5 of the Land Acquisition Act has been published before 12 February 2007. In such a case, the acquisition will continue to be governed by the existing law.

Apart from the changes relating to compensation for acquired land, the Bill will also make improvements and establish new procedures for the compulsory acquisition of land to simplify the acquisition process.

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Parliament introduces Spam Control Bill 2007

The Spam Control Bill (the “**Bill**”) was introduced in Parliament on 12 February 2007 following two public consultations in 2004 and 2005. When the Info-communications Development Authority of Singapore (the “**IDA**”) and the Attorney-General’s Chambers (the “**AGC**”) conducted the first public consultation in 2004, the proposal was to control only e-mail spam. In the second public consultation in 2005, it was proposed that mobile spam be included.

The long title of the Bill states that the Bill is to “provide for the control of spam, which is unsolicited commercial communications sent in bulk by electronic mail or by text or multi-media messaging to mobile telephone numbers, and to provide for matters connected therewith”. The Bill, as introduced in Parliament, regulates the sending of “electronic messages”

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defined as messages sent to either an e-mail address or a mobile telephone number (irrespective of whether the e-mail address or mobile telephone number exists or whether the message reaches its intended destination). In short, the Bill regulates the sending of electronic messages *per se* as well as the sending of “spam”, defined in the Bill as the sending of unsolicited commercial electronic messages in bulk.

Key features of the Bill are as follows:

- The Bill applies only to electronic messages with a Singapore link. The Bill provides for circumstances when an electronic message has a Singapore link. For instance, an electronic message is considered to have a Singapore link if:
 - the message originates in Singapore, the sender/recipient of the message is an individual physically in Singapore when the message is sent/accessed;
 - the sender is an entity whose central management and control is in Singapore when the message is sent; or
 - the recipient is an entity that carries on business or activities in Singapore when the message is accessed.
- The Bill does not apply to electronic messages the sending of which is authorised by the Government or a statutory board in the event of a public emergency, in the public interest or in the interests of public security or national defence.
- The Bill prohibits the sending of electronic messages (whether or not amounting to the sending of spam) to e-mail addresses or mobile telephone numbers obtained or generated through the use of a dictionary attack or address harvesting software. A dictionary attack refers to an automated means of generating possible e-mail addresses or telephone numbers by combining names, letters or numbers into numerous permutations. Address harvesting software refers to software designed to search the Internet for e-mail addresses and telephone numbers and collect, compile, capture or harvest those e-mail addresses and telephone numbers.
- The Bill sets out several requirements which must be complied with in relation to the sending of electronic messages which are (i) unsolicited (ii) commercial, and (iii) sent in bulk (i.e. spam). The requirements include providing for an unsubscribe facility (which must be valid and capable of receiving a reasonable number of unsubscribe requests at all times for at least 30 days), providing an accurate and functional e-mail address or telephone number by which the sender can be readily contacted, and various labelling requirements. For example, the Bill provides that a title must be provided in the subject field of a message and must not be false or misleading as to the content of the message and the letters “<ADV>” must appear in the subject field or, if there is no subject field, in the words first appearing in the message. Where an unsubscribe request is sent using the unsubscribe facility, no further unsolicited commercial electronic messages may be sent after the expiration of 10 business days after the day on which the unsubscribe request is submitted.
- An electronic message is a commercial electronic message if the primary purpose of the message falls within the categories specified in the Bill which include to offer to supply or provide, advertise or promote goods,

services, land, an interest in land or a business or investment opportunity (irrespective of whether such goods, services, land, interest or opportunity exists or whether it is lawful to acquire such goods, services, land or interest or to take up the opportunity) or to assist or enable a person, by deception, to dishonestly obtain property belonging to or a finance advantage or gain from another person.

- An electronic message is unsolicited if the recipient did not request to receive or consent to the receipt of the message. Electronic messages are deemed to have been sent in bulk if the number of messages containing the same or similar subject-matter sent by a person exceeds any of the thresholds set out in the Bill (based on the number of such messages in a 24-hour, 30-day or one-year period).
- The Bill provides that a civil action may be commenced by any person who suffers loss or damage as a direct or indirect result of either a breach of (i) the prohibition against the sending of electronic messages to e-mail addresses or mobile telephone numbers obtained or generated through the use of a dictionary attack or address harvesting software, or (ii) the requirements which must be complied with in relation to the sending of unsolicited commercial electronic messages in bulk. The civil action may be commenced against (a) the sender, or (b) a person who aids, abets, procures, induces or is knowingly concerned in or a party to, or conspires with others to effect a contravention of such prohibition or such requirements.
- The types of relief which the court may order include an injunction and, at the election of the plaintiff, damages or statutory damages. The court may also order the defendant to pay the plaintiff's costs and expenses of and incidental to the proceedings (including legal costs of the proceedings). Where the plaintiff elects statutory damages, the Bill provides for a limit of S\$25 for each electronic message sent and S\$1 million in aggregate unless the plaintiff proves that his actual loss exceeds S\$1 million. In awarding statutory damages, the matters which the court will take into account include whether the contravention was wilful, the loss or damage suffered by the plaintiff and the benefit accrued to the defendant.
- Internet access service providers and telecommunications service providers may, with the approval of the IDA, issue a code of practice in connection with minimum standards of technical measures to effectively control the sending of unsolicited commercial electronic messages and such other matters as the IDA may require, which code of practice shall be complied with by all Internet access service providers and telecommunications service providers.

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To view the full text of the Bill, please [click here](#).

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Parliament passes Health Products Bill 2007

The Health Products Bill 2007 (the "Bill") was passed in Parliament on 12 February 2007. The Bill was first introduced on 22 January 2007. The Bill has not been gazetted and is not in operation yet.

The Bill aims to amalgamate the existing controls for regulating medicines, which currently reside in various pieces of legislation, into one omnibus Act.

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The Bill is enacted following industry feedback that having the regulatory controls fragmented and spread out in different legislation is confusing and difficult to understand. There are also areas where the various legislation overlap. The overlapping of controls in some areas sometimes makes compliance with the legal requirements unnecessarily complicated.

Medicines and health-related products are currently regulated under the following legislation:

- the Medicines Act;
- the Medicines (Advertisement and Sale) Act;
- the Poisons Act; and
- the Sale of Drugs Act.

When the Health Products Bill 2007 was first tabled in Parliament on 22 January 2007, there was an article featured in the Allen & Gledhill Legal Bulletin (January 2007) which discussed in more detail the changes in the Bill. To view this article, please [click here](#).

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MAS issues response to feedback received from consultation on proposed minimum asset maintenance requirements for foreign banks

On 14 February 2007, the Monetary Authority of Singapore (the “**MAS**”) issued a response to the feedback received (the “**Response**”) for the consultation paper on the proposed MAS Notice 640, which sets out the minimum asset maintenance requirements of foreign bank branches in Singapore (the “**Notice**”). The consultation took place in September/October 2006.

By way of background, the Banking (Amendment) Act 2007 (the “**Amendment Act**”) will require foreign bank branches to maintain a minimum level of eligible assets in Singapore in proportion to their liabilities. Among other things, foreign banks will be required to hold not less than S\$5 million of assets in Singapore.

The Response sets out comments that are of general interest to the industry, together with the MAS’ responses. These comments involved:

- **Assets used to meet minimum cash balance/minimum liquid assets requirement.** The MAS clarified that assets maintained for liquidity and those for depositor protection should be met separately. For full banks and wholesale banks, the same assets cannot be used to meet both minimum cash balance/liquid assets and minimum asset maintenance requirements simultaneously.

However, the MAS will make clear in the proposed Notice that offshore banks will be allowed, subject to a minimum asset maintenance requirement of S\$5 million, to use the same asset for both of the above mentioned requirements.

- **Encumbered deposits.** The MAS had informed banks that they may exclude encumbered deposits from the non-bank deposit liabilities that are subject to minimum asset maintenance coverage. The MAS clarified the definition of encumbered deposits, to include deposits which are subject to a contractual set-off agreement, subject to certain conditions. Banks would be given the flexibility to decide whether to exclude encumbered deposits from minimum asset maintenance coverage as some banks may find it operationally easier to include all deposits. Banks should however either exclude or include all encumbered deposits consistently and not selectively.
- **Reference date for deposit liabilities.** The Notice proposes that for the purpose of complying with its minimum asset maintenance requirement, a bank shall use its deposit liabilities as at 31 December of the preceding year. The MAS will retain this single point-in-time approach, but will also give banks the flexibility to adopt a moving point-in-time approach based on deposit liabilities at the end of every quarter. Banks may adopt either approach and once adopted, would have to apply its approach consistently.
- **Accrued interest.** Under the proposed Notice, banks are required to include accrued interest in the deposit liabilities that are subject to minimum asset maintenance coverage. The MAS clarified the extent of the includible accrued interest, such being the amount of interest which has been accrued but not paid, up to the reference date used. In the event of bank insolvency, sums due from the depositor of a bank (such as his outstanding credit facilities) would generally be netted off against sums due to him from the bank, including accrued interest on his deposit.
- **Effective date.** The Amendment Act was gazetted on 13 February 2007 but there is no commencement date yet. In the Response, the MAS stated that it intends for the Amendment Act to come into force by the end of the first quarter of 2007 and the proposed Notice would take effect six months thereafter.

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To view the Response, please [click here](#).

The public consultation on the draft Notice was featured in an article in a previous issue of the Allen & Gledhill Legal Bulletin (September 2006). To view the article entitled "*MAS releases Draft MAS Notice 639: Exposures to Single Counterparty Groups and Draft MAS Notice 640: Minimum Asset Maintenance Requirements for Foreign Banks for consultation*", please [click here](#).

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SGX issues consultation paper on proposed amendments to the Futures Trading Rulebook in relation to SGX-DT market error trade policy

The Singapore Exchange Ltd (the "SGX") conducted a public consultation from 25 January 2007 to 15 February 2007 on its proposed amendment to the Singapore Exchange Derivatives Trading Ltd (the "SGX-DT") market error trade policy.

The current Rule 4.1.8 and Regulatory Notice 4.1.8(A) of the Future Trading Rules empowers the SGX to intervene in relation to an error trade which is substantially inconsistent with the last traded price of the contract (or alternative determination of the contract's fair value). Such erroneous trades may be cancelled, in full or in part, if the error trade price falls outside the Non-Cancellation Range for the Contract provided the parties to the contract agree to its cancellation.

In its proposal, the SGX recommends the following revisions:

- Other than transactions in listed strategies, trades involving implied orders as a result of strategy matching and most option trades, the error trade price may be adjusted to the nearest limit of the designated error trade price range. The agreement of the counterparties is not required;
- Error trades which are not eligible for trade price adjustments may be cancelled, either partially or fully, at the SGX's discretion, if the counterparties agree to the cancellation; and
- For certain designated contracts, the error trade price range will be dynamic. This will allow trade price adjustments to a price which is closer to the real price.

The proposed amendments to the SGX-DT market error trade policy seek to enhance trade and market certainty and mitigate systemic risk arising from error trades.

To read the full text of the Consultation Paper, please [click here](#).

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MAS issues response to feedback received on consultation paper on proposed modifications to regulatory requirements for trade credit and political risk insurance business

On 1 November 2006, the Monetary Authority of Singapore (the "MAS") issued a consultation paper entitled "Proposed Modifications to Regulatory Requirements for Trade Credit & Political Risk Insurance Business" (the "Consultation Paper"). The Consultation Paper contains proposed amendments to be made to the Insurance (Valuation and Capital) Regulations 2004 (the "Regulations") which set out the capital requirements that insurance companies have to maintain in respect of trade credit and political risk insurance ("TCP") business.

On 25 January 2007, the MAS issued its response (the "MAS Response") to feedback received in respect of the Consultation Paper. The three areas which raised comments are as follows:

- the C1 (Insurance Risk) requirements for TCP business;
- contingency reserves; and
- recognition of internal modelling for capital provisioning purposes.

At present, a TCP insurer is required to establish Component 1 ("C1") requirements relating to insurance risks in the manner prescribed in the

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Regulations. The Consultation Paper proposed aligning the volatility category for TCP business written from Offshore Insurance Funds with those written from the Singapore Insurance Fund. In response to concern that the proposed C1 (insurance risk) requirements imposed on TCP businesses were high, the MAS explained that the C1 factors as set out in the Consultation Paper were derived from statistical analyses performed on the actual loss experiences of TCP businesses operating in Singapore over a period of five years. The proposed insurance risk factors, therefore, reflect the actual loss experiences of TCP businesses in Singapore.

In relation to the necessity of requiring additional contingency reserves to be set up for TCP business, the MAS Response states that contingency reserves are necessary as a buffer against potential surges in losses arising from widespread default on accounts receivables during times of cyclical economic downturns or adverse political developments.

The MAS Response also states that it will follow the developments of the European Union's Solvency II framework closely in relation to the possible recognition of internal modelling systems of TCP insurers for capital provisioning purposes as an alternative to the existing approach of imposing statutory requirements.

To view the full text of the MAS Response, please [click here](#).

The November 2006 consultation was discussed in a previous issue of the Allen & Gledhill Legal Bulletin (November 2006). To view the article entitled "*MAS issues consultation paper on proposed modifications to regulatory requirements for trade credit and political risk insurance business*", please [click here](#).

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MAS and MinLaw issue responses to feedback on proposed changes to unsecured credit rules

On 1 February 2007, the Monetary Authority of Singapore (the "**MAS**") and the Ministry of Law (the "**MinLaw**") jointly issued their responses to feedback received from a public consultation on the proposed changes to the unsecured credit rules and the proposed application of these rules to moneylenders. The joint public consultation was conducted from 7 August 2006 to 7 September 2006.

By way of background, the proposed changes have a two-fold aim: to update the unsecured credit rule imposed on financial institutions to address developments within the industry, and to extend the unsecured credit rules to moneylenders in line with the Government's social policy of discouraging individuals from spending beyond their means. Notwithstanding this, the new rules do not seek to deny individuals who may have occasional genuine borrowing needs from all access to unsecured credit. The changes attempt to maintain a balance between allowing responsible borrowing and the Government's social policy of discouraging individuals from spending beyond their means.

After careful consideration of views from all respondents, the MAS and MinLaw have decided on the following policy changes:

- A measured step of lowering the minimum annual income threshold for unsecured credit facilities from S\$30,000 to S\$20,000. A more

conservative maximum credit limit of twice the borrower's monthly income will be set for individuals in this S\$20,000 to S\$30,000 income group, with no access to credit cards.

- To continue to set an aggregate maximum credit limit (inclusive of any credit card limit with respect to financial institutions) for unsecured credit at four times an individual's monthly income for individuals earning at least S\$30,000.
- Create appropriate modifications to the moneylenders regime. For instance, for unsecured loans of S\$3,000 and below, no minimum income requirement would be imposed but such loans would be subject to an interest rate cap.

The MAS and MinLaw will make the relevant legislative changes to the Unsecured Credit Regulations and the Moneylenders Rules respectively by mid-2007.

Please [click here](#) to view the responses of MAS and MinLaw to the feedback received.

Please [click here](#) to view the MAS press release relating to the above development.

To view an article entitled "*MAS and Ministry of Law consult on proposed changes to unsecured credit rules and similar rules for moneylenders*" featured in a previous issue of the Allen & Gledhill Legal Bulletin (August 2006) which discusses the joint public consultation, please [click here](#).

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Cases

Corporate & financial services

High Court of Australia: Shareholder's claims rank together with debts and claims of general body of creditors

Sons of Gwalia Ltd v Margaretic, ING Investment Management LLC v Margaretic [2007] HCA 1

Recently, in the case of *Sons of Gwalia Ltd v Margaretic, ING Investment Management LLC v Margaretic*, the High Court of Australia (Australia's highest court) had to deal with the essential issue of proof and ranking of claims against an insolvent company, between the general body of creditors and shareholders in the company having claims against the company for alleged misleading and deceptive conduct contrary to federal legislation. The general creditors asserted that the shareholders' claims should be postponed to rank after the satisfaction of the creditors' claims. The court held that the shareholders' claims for damages against the company ranked equally with the claims of the general creditors and should not be subordinated to them. This decision, from the highest court in Australia, may be of great persuasive authority should a similar issue arise before the Singapore courts because the key statutory provision in the Australia Corporations Act 2001 (the "Act") which was considered has its equivalent in the Singapore Companies Act.

Relevant facts

Sons of Gwalia Ltd (“**SOG**”) was a publicly listed gold mining company on the Australian Stock Exchange. In August 2004, Mr Margaretic (the “**Shareholder**”) bought 20,000 shares in SOG, the value of which became zero when the directors of SOG, being of the opinion that the company was insolvent or was likely to become insolvent, appointed administrators of the company. A deed of company arrangement was subsequently made pursuant to the Act. Under the deed, a fund was to be set aside by the administrators and distributed (subject to some immaterial exceptions) in the same order of priority as would apply if SOG were being wound up.

The Shareholder alleged that, in breach of the stock exchange listing rules, SOG had failed to notify the Australian Stock Exchange that its gold reserves were insufficient to meet its gold delivery contracts and that it could not continue as a going concern. As such, the Shareholder submitted that he was a victim of misleading and deceptive conduct and claimed to be entitled to compensation. The Shareholder claimed against SOG for damages or compensation under statute, or at common law or in equity, in respect of fraud, misrepresentation, or other acts or omissions of SOG. He also intended to submit his claim for proof in the deed of company arrangement of SOG. The Shareholder was claiming for the difference between the cost of his shares and their value (nil). There were many other shareholders with similar claims.

At the lower courts

SOG’s administrators applied to the Federal Court of Australia for, among others, a declaration that payment of the Shareholder’s claim be postponed until all debts owed to, or claims made by, persons otherwise than in their capacity as members of SOG have been met. ING Investment Management LLC (the “**Creditor**”), a company which was not a shareholder but a creditor of SOG, was named as second respondent to that application. The Shareholder cross-claimed for a declaration that he was a creditor of SOG and was entitled to all the rights of a creditor under the relevant provisions of the Act. The judge at first instance in the Federal Court of Australia held in favour of the Shareholder. Both SOG and the Creditor appealed to the Full Court of the Federal Court. Those appeals were dismissed.

At the High Court of Australia

SOG and the Creditor appealed to the High Court of Australia. The principal issue before the High Court was whether the Shareholder’s claim was postponed to the claims of other creditors. The resolution of the issue turned upon the meaning and effect of section 563A of the Act, which is in Division 6 (concerning proof and ranking of claims) of Part 5.6 (concerning winding-up) and which was incorporated in the deed of company arrangement.

Section 563A provides that “*Payment of a debt owed by a company to a person in the person’s capacity as a member of the company, whether by way of dividends, profits or otherwise, is to be postponed until all debts owed to, or claims made by, persons otherwise than as members of the company have been satisfied*”.

The question presented for analysis effectively boiled down to the interpretation of the phrase “in the person’s capacity as a member of the company”. SOG and the Creditor argued that the Shareholder’s claim was for a debt owed to him as a member of SOG. As such, the payment of the Shareholder’s claim would be postponed until all debts owed to, or claims made by, persons otherwise than in their capacity as members of SOG have been met.

The High Court dismissed the appeals by SOG and the Creditor. In the court's judgment, it was pointed out that section 563A requires a line to be drawn between a shareholder claiming in the capacity of a member and a shareholder claiming otherwise than in the capacity of a member. As such, it was necessary to analyse the nature of a claim and not just describe its effect on other creditors. Debts owed to a member by way of dividends or profits are given in section 563A, as in its predecessors, as examples of debts owed by a company to a person in the person's capacity as a member. What determined the present case was that the Shareholder's claim was not founded upon any rights he obtained or any obligations he incurred by virtue of his membership of SOG. He did not seek to recover any paid-up capital, or to avoid any liability to make a contribution to SOG's capital. The foundation of the Shareholder's claim against SOG was that it did not conform to the applicable federal legislation requiring disclosures to be made, and obliging the avoidance of misleading and deceptive conduct, which could deceive the very persons, that is, potential shareholders, who were contemplating the acquisition of shares in, and membership of, SOG. His claim would be no different if he had ceased to be a member at the time it was made, or if his name had never been entered on the register of members. The Shareholder's membership of SOG was not definitive of the capacity in which he made his claim. Further, the specification of "dividends" and "profits" in the express wording of section 563A suggests that what is involved in the postponement are sums constituting the ordinary revenue (and possibly the capital) of the company and not claims of an extraordinary and exceptional kind for false and misleading conduct.

Conclusion

The relevant provision in the Singapore Companies Act which might warrant a consideration of this case should similar issues arise before a Singapore court is section 250(1)(g) of the Singapore Companies Act. However there is the question of whether anything might turn on the differences in

phraseology between the Singapore and Australian provisions. Singapore uses the words "character of a member" as opposed to "capacity" in the Australian provision.

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Dispute resolution

Canadian Supreme Court recognises that time is ripe to change common law rule against enforcement of foreign non-monetary judgments

Pro Swing, Inc v Elta Golf, Inc [2006] SCC 52

In *Pro Swing, Inc v Elta Golf, Inc*, the Supreme Court of Canada has ruled in favour of changing the traditional common law rule that restricts the recognition and enforcement of foreign judgments to final monetary judgments. At the same time, it stated that such changes must be made cautiously and with appropriate judicial discretion, and held that the present case was not the right one for implementing such changes.

The decision is notable for depicting the state in which the enforceability at common law of foreign non-monetary judgments is evolving, particularly with respect to equitable orders such as injunctions, which are key to an effective modern-day remedy.

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The facts

The dispute originated as an action for trade mark infringement in the United States District Court for the Northern District of Ohio of Ohio Eastern Division (the “**Ohio court**”). The plaintiff, Pro Swing, Inc., a manufacturer and seller of golf clubs and golf club heads, owned the Trident trade mark in the United States. It sued the defendant, Elta Golf, Inc., an Ontario resident, for selling three golf clubs and golf club heads on its website under the infringing trade mark Rident.

In a settlement agreement between the parties, the president of the defendant declared that he would discontinue the marketing and selling of clubs and club heads bearing the mark Rident, or similarly confusing marks, that he would deliver all such clubs, club heads and marketing material to the plaintiff’s counsel, and that he would modify his website. The settlement agreement was endorsed by a consent decree issued by the Ohio court.

The plaintiff brought a motion for contempt of court, alleging that the defendant had violated the consent decree by failing to surrender the merchandise and by continuing to advertise and sell the merchandise under the infringing trade mark. The Ohio court issued a contempt order.

Subsequently, the plaintiff filed a motion for recognition and enforcement of the consent decree and the contempt order in the Ontario Superior Court of Justice (the “**Superior Court**”). The defendant objected on the grounds that the two orders did not meet the common law requirements of being final money judgments and that the contempt order was excluded from recognition and enforcement because it was quasi-criminal in nature.

While acknowledging that the common law rule required that the judgment be for a fixed sum of money, the judge in the Ontario Superior Court of Justice found that the approach to the recognition and enforcement of foreign non-monetary judgments would appear ripe for reappraisal. On appeal, the Court of Appeal agreed, but found that the terms of the orders in question did not merit the implementation of such changes to the case at hand.

The issues on appeal

Presiding over the appeal, the Canadian Supreme Court was faced with two issues: whether foreign non-money judgments can be recognised and enforced, and whether such a change to the existing common law rule entailed additional considerations reflecting the new needs created by expanding judicial assistance to foreign countries and litigants.

Changing the common law rule: rationale and considerations

Citing *Morguard Investments Ltd v DeSavoye* [1990] 3 S.C.R. 1077, the Canadian Supreme Court acknowledged that modern-day commercial transactions have so far departed from the concerns on which the traditional rule, which was developed in the 19th century, is based. The operation of the business community in a world economy, and the advent of the Internet, call for prompt reactions and effective remedies that flow across state lines, and this puts additional pressure on the courts to revisit the parochial approach to the recognition and enforcement of foreign judgments.

At the same time, the court recognised that to allow for the recognition and enforcement of non-money orders would be to open the door to a number of equitable orders, such as specific performance and injunction, and that the specific nature of such orders made it necessary to view enforcement from a new perspective.

Under the traditional common law rule, the role of the domestic court is clear: it treats the foreign judgment as evidence of a debt and lends its judicial assistance to the foreign litigant by allowing him to use its administrative machinery to enforce the judgment. The court's role is non-discretionary and the cost of enforcement is largely borne by the parties. In contrast, equitable orders are awarded at the judge's discretion. Courts of equity do not apply strict rules, but follow general ethical guidelines that may be applied with flexibility in accordance with the specific circumstances of each case. In doing so, courts also need to consider whether granting the relief sought could lead to extended and complex litigation and repeated requests for judicial intervention, a cost that may no longer be proportionate to the importance of the order. As such, the change from the traditional common law rule to the recognition and enforcement of foreign non-money judgments should be accompanied by the incorporation of flexible factors that reflect the specific and varied nature of equitable orders.

The court did not find it appropriate, at this point in the evolution of the law, to define criteria to determine the kind of foreign non-money judgments that should be allowed recognition and enforcement. It was sufficient, the court stated, to underscore the need to incorporate the very flexibility that infuses equity. However, the court expressed the view that the conditions for recognition and enforcement of equitable orders could be generally expressed as follows:

- The judgment must have been rendered by a court of competent jurisdiction and must be final, and
- The judgment must be of a nature that the principle of comity requires the domestic court to enforce.

Comity, in the sense used by the court, entails a balanced approach, that is, not only recognition of the acts of another state, but due regard too for both the convenience of the enforcing state and the protection of its judicial system, i.e. the rights of its own citizens or of other persons who are under the protection of its laws. Comity, the court declared, does not require receiving courts to extend greater judicial assistance to foreign litigants than it does to its own litigants, and the discretion that underlies equitable orders can be exercised by Canadian courts when deciding whether or not to enforce one.

Application to the case at bar

The court proceeded to apply these considerations to the attendant circumstances of the instant case.

Quasi-criminal nature of the contempt order

The court held that in contrast to the approach by United States courts, where a civil contempt order is remedial only, a contempt order in Canadian law carries a penal element for which the person against whom such an order is sought incurs criminal sanctions and is entitled to criminal law protections. Due to its criminal component, a contempt order should not be enforceable in Canada.

The court did not approve of the approach employed by the Superior Court judge of separating the injunctive relief parts of the order from the declaration of contempt. Such severance, the court stated, required the receiving court to consider the merits of the order and risked affecting its substance.

Integrity of the justice system

The court declared that considerations of judicial economy must be taken into account when considering whether the remedy is convenient in accordance with comity. If a plaintiff had a choice between courses of action and one of them is less burdensome for the receiving court, the plaintiff can rightly be asked to take the less burdensome one.

In the instant case, the denial of recognition and enforcement did not leave the plaintiff without a remedy. The Court of Appeal cited two other options available to the plaintiff: a separate action before an Ontario Court, and letters rogatory, i.e. obtaining testimonial or documentary evidence for use in proceedings before foreign courts. Whilst a separate action would be burdensome to the plaintiff and would not give full faith and credit to the Ohio judgment, letters rogatory were available under Canadian law and should have been considered.

In addition to considering alternate means to reach a particular outcome, a court may consider whether the matter merits the involvement of the Canadian court. The receiving court's willingness to extend its judicial resources may depend on the importance of the case compared to the damage the plaintiff would suffer if his request were refused. When the circumstances give rise to legitimate concerns about the use of judicial resources, the litigant bears the burden of reassuring the court that the matter is worth pursuing.

Familiarity with the foreign law

When faced with the need to interpret a foreign order in light of domestic law, the receiving court must ensure that no conflict results from the nature attributed to the order after the enforcement judgment is rendered. As discussed above, there was a real conflict between the approach of United States courts and Canadian courts with regard to contempt orders.

The court cautioned that differences in laws might trigger different obligations. The receiving court must not venture into uncertain territory to interpret orders the terms of which are based on rules with which the court is not familiar. The court further stated that courts should not expose litigants to consequences to which they would not be exposed under the foreign law. Receiving courts should be aware of their limitations and should use their discretion to refrain from enforcing orders that subject the litigants who are their nationals to unforeseen obligations.

Extraterritoriality

The issue of extraterritoriality bore importance in the present case because the transactions were made over the Internet and because the trade mark was protected only in the United States. The court found that there was an absence of explicit terms to indicate the intended territorial scope of the injunctive relief in the consent order. The court added that while the Internet poses new challenges to trade mark holders, extraterritoriality and comity cannot serve as a substitute for a lack of worldwide trade mark protection. In the future, judges considering cases that are likely to result in proceedings in a foreign jurisdiction will no doubt be alerted to the need to be clear as regards territoriality.

Public policy

The last point discussed by the court was not one raised by the defendant, but the court deemed it important to highlight that public policy and constitutional requirements may also be at stake when the rights of parties

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not represented in the action are potentially affected by an order. In the case at hand, the court was concerned that parts of the contempt order which required the disclosure of personal information could potentially violate privacy rights, particularly when the persons, i.e. the sales contacts of the defendant, to whom the information belonged were not parties to the case.

Conclusion

In sum, whilst acknowledging that the time is ripe to change the common law rule against the enforcement of foreign non-monetary judgments, the Canadian Supreme Court found that the orders in the case at hand to be problematic in too many aspects to merit the use of the court's equitable jurisdiction. The case did not discuss the defences particular to the nature of equitable orders, nor define the finality requirement in the context of equitable orders, which the court deemed better left to future cases or further commentary.

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UK House of Lords refers to Singapore as a leading centre of arbitration

West Tankers Inc v RAS Riunione Adriatica di Sicurta SpA & Ors
[2007] UKHL 4

The House of Lords (the UK's highest court), in the very recent decision of *West Tankers Inc v RAS Riunione Adriatica di Sicurta SpA & Ors* [2007] UKHL 4, referred to Singapore as a leading centre of arbitration in its decision to refer the matter at hand to the European Court of Justice.

The question for the European Court of Justice was whether a court of a European Union Member State may grant an anti-suit injunction against a person bound by an arbitration agreement in order to restrain him from commencing proceedings in breach of the agreement in a court of another Member State which has jurisdiction to entertain the proceedings under EC Regulation 44/2001 (the Brussels I Regulation).

Lord Hoffmann referred to Singapore at paragraph 21 of the judgment: "Finally, it should be noted that the European Community is engaged not only with regulating commerce between Member States but also in competing with the rest of the world. If the Member States of the European Community are unable to offer a seat of arbitration capable of making orders restraining parties from acting in breach of the arbitration agreement, there is no shortage of other states which will. For example, New York, Bermuda and Singapore are also leading centres of arbitration and each of them exercises the jurisdiction which is challenged in this appeal. There seems to me to be no doctrinal necessity or practical advantage which requires the European Community handicap itself by denying its courts the right to exercise the same jurisdiction".

For the full text of the judgment, please [click here](#).

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If you would like to discuss the impact of this case on your business, please contact:

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News

STT Communications Ltd and Qatar Telecom (Qtel) Q.S.C. enter into joint venture relationship

STT Communications Ltd (“**STTC**”), a wholly-owned subsidiary of Singapore Technologies Telemedia Pte Ltd (“**ST Telemedia**”), has entered into a joint venture relationship with Qatar Telecom (Qtel) Q.S.C. (“**Qtel**”). As part of the agreement, a wholly-owned subsidiary of Qtel will invest up to US\$635 million in Asia Mobile Holdings Pte Ltd (“**AMH**”), which holds ST Telemedia’s stake in StarHub Ltd and PT Indosat Tbk. AMH will be the parties’ preferred vehicle for future mobile telecoms investments in selected key markets in the Asia-Pacific region.

Advising STTC are Allen & Gledhill Partners Prawiro Widjaja, Song Su-Min, Tan Wee Meng and Oh Hsiu Hau and Associate Loh Kai Loon.

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Establishment of US\$8 billion retail secured note programme for Jubilee Global Finance Limited

Merrill Lynch (Singapore) Pte Ltd (“**Merrill Lynch**”) has established a US\$8 billion secured note programme for Jubilee Global Finance Limited (“**Jubilee Global Finance**”) and issued the first series of notes under the programme. The credit-linked notes were issued in two tranches, a SGD-denominated tranche and a USD-denominated tranche. The notes are principal protected and are linked to a portfolio of the credits of 135 reference entities. The notes will pay a coupon of up to 125 per cent. for the SGD-denominated tranche and up to 200 per cent. for the USD-denominated tranche upon their respective maturity dates with the actual coupon payable being dependent on the number of credit events that occur to the 135 reference entities throughout the tenor of the notes. No coupon is payable prior to the respective maturity dates of the notes. The notes may also be redeemed early by the issuer upon the exercise of its call option. The notes have a tenor of approximately 10 years.

Advising Jubilee Global Finance and Merrill Lynch are Allen & Gledhill Partner Margaret Chin and Senior Associate Tan Ngee Hao.

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Initial public offering of CitySpring Infrastructure Trust

CitySpring Infrastructure Management Pte Ltd (the “**Trustee-Manager**”) has offered 321,750,000 units in CitySpring Infrastructure Trust, raising approximately S\$350 million after the greenshoe option is exercised. This is Singapore’s first infrastructure business trust to be registered with the Monetary Authority of Singapore (the “**MAS**”) and the first listed group to utilise the qualifying project debt securities incentive introduced by MAS on 1 November 2006, which is one among a package of tax incentives to stimulate the growth of the project finance industry through Singapore’s

capital markets. Temasek Holdings (Private) Limited is the sponsor of the offering.

Allen & Gledhill advised the Trustee-Manager and the sponsor on the offering, as well as various other parties involved in the transaction. On this transaction, Allen & Gledhill's advice ranged from conceptualising the transaction structure, advice on trust law, infrastructure project work (including advice to regulators and negotiation of amended and restated project documents), financing work (including advice to senior lenders and on the innovative qualifying project debt securities) to the offering and listing.

Allen & Gledhill's lawyers involved in the transaction include Partners Prawiro Widjaja (overall transaction), Ronnie Quek and Kelvin Wong (infrastructure projects), Kok Chee Wai (financing), Yeoh Lian Chuan (tax and trusts), Hoo Sheau Farn (real estate), Stanley Lai (intellectual property) and Shawn Chen (listing and restructuring), and Associates Michelle Fum, Lim Wei Ting, Loh Kai Loon, Long Pee Hua, Mark Loy, Eunice Ng, Vincent Seah and Shirleen Tan.

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