

Legal Bulletin

A summary of developments in the law

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Editorial Team

Margaret Chew

Elizabeth Wong

Soo Seong Theng

Hong Farn Ling

Jo-Ann Tabing

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These recent developments were highlighted in the Allen & Gledhill KnowledgeShare Alert of 5 January 2006. If you would like to be on our KnowledgeShare Alert mailing list, please e-mail us at publications@allenandgledhill.com

Articles

Companies (Amendment) Act 2005 comes into force on 30 January 2006

The Companies (Amendment) Act 2005 (the “**Amendment Act**”) takes effect on 30 January 2006. The Amendment Act was passed in Parliament on 16 May 2005 and gazetted on 6 June 2005.

The Companies Act (Cap 50) (“**CA**”) will be amended to adopt several changes recommended in the final report of the Company Legislation and Regulatory Framework Committee (“**CLRFC**”) that was published on 22 October 2002.

The key amendments arising from the Amendment Act include:

- abolishing the concepts of “par value” and “authorised capital”;
- introducing an alternative capital reduction process which does not require court sanction;
- liberalising the financial assistance restrictions to allow financial assistance to be provided in additional circumstances, e.g. where not more than 10 per cent. of the company’s paid-up capital and reserves is involved, or where it is approved by a unanimous resolution of shareholders;
- allowing share-buybacks to be funded out of profits as well as capital so long as the company is solvent;
- allowing repurchased shares to be held as treasury shares; and
- introducing a more effective and efficient statutory form of merger and amalgamation process.

The Amendment Act also amends the CA to facilitate the enforcement of injunctions granted under the Trade Marks Act. The Registrar of Companies will be empowered under the amended sections 27 and 28 of the CA to direct a company to change its name if the use of the name has been restrained by an injunction granted under the Trade Marks Act.

For a discussion about the scope of the changes arising from the Amendment Act, please [click here](#).

ACRA News Update

In line with the amendments arising from the Act, the Accounting and Corporate Regulatory Authority (“**ACRA**”) has issued a news update stating that new e-forms will be introduced and amendments will be made to the following current e-forms:

- (a) Apply for a new company name
- (b) Incorporate a private company
- (c) Incorporate a public company – Limited by shares
- (d) Summary of returns by local company having a share capital

For further information, please contact:

Christine Chan
Tel: +65 6890 7647
christine.chan@allenandgledhill.com

Sharmini Chitran
Tel: +65 6890 7600
sharmini@allenandgledhill.com

Lee Kim Shin
Tel: +65 6890 7699
lee.kimshin@allenandgledhill.com

Lim Mei
Tel: +65 6890 7732
lim.mei@allenandgledhill.com

Christina Ong
Tel: +65 6890 7700
christina.ong@allenandgledhill.com

Vemala Raja
Tel: +65 6890 7645
vemala.raja@allenandgledhill.com

Patricia Seet
Tel: +65 6890 7650
patricia.seet@allenandgledhill.com

Tan Su May
Tel: +65 6890 7606
tan.sumay@allenandgledhill.com

Melissa Teo
Tel: +65 6890 7608
melissaanne.teo@allenandgledhill.com

Karen Tiah
Tel: +65 6890 7741
karen.tiah@allenandgledhill.com

Lucien Wong
Tel: +65 6890 7702
lucien.wong@allenandgledhill.com

Yap Lune Teng
Tel: +65 6890 7665
yap.luneteng@allenandgledhill.com

- (e) Main return by local company having a share capital
- (f) Notice by local company of alteration in share capital other than increase in capital
- (g) Return of allotment of shares
- (h) Notice of redemption of redeemable preference shares
- (i) Notice by local company of transfer of shares / list of shareholders
- (j) Notice of purchase or acquisition of ordinary shares / stocks
- (k) Notice of purchase or acquisition of non-redeemable preference shares
- (l) Conversion of company type

To view the news update issued by the ACRA, please [click here](#).

ACRA Practice Direction No 1 of 2006

On 12 January 2006, the ACRA issued Practice Direction No 1 of 2006 – Companies (Amendment) Act 2005 (the “PD”). Matters dealt with in the PD are as follows:

- Bizfile unavailability
- Treatment of share capital on or after 30 January 2006
- Pending applications
- Changes to Bizfile forms
- New forms
- Forms deleted
- Companies (Filing of Documents) (Amendments) Regulations
- Fees – Amendments to the Second Schedule to Companies Act
- Amendments to Eight Schedule to the Companies Act
- Batch filing

Treatment of share capital on or after 30 January 2006

In relation to the treatment of share capital by the ACRA on or after 30 January 2006, it is stated in the PD that on 30 January 2006, the Registrar of Companies will adopt as the share capital of the company, the aggregate nominal value of the shares issued by the company which appears in ACRA’s record immediately before 30 January 2006 as the value pursuant to the new section 62B(8). This value will continue to be referred to as the “Issued Capital” in Bizfile records and reports. The term “paid-up capital” will continue to be used by ACRA in Bizfile to denote the amount paid on the shares issued.

Companies that have received share premiums and have capital redemption reserves may update these amounts to the share capital using the new form called “Notification of Share Capital under section 62B(7)” within six months

These recent developments were highlighted in the Allen & Gledhill KnowledgeShare Alert of 9 January 2006. If you would like to be on our KnowledgeShare Alert mailing list, please e-mail us at publications@allenandgledhill.com

after 30 January 2006 or before confirming their Summary of Returns. No fee will be imposed for lodging this Notification, though penalties may be payable for lodgment made after the six months period.

Companies may also add any amount which have been previously called and paid up in the Notification if these amounts have not yet been reported. Upon lodgment, the amount submitted will be added to the company's issued and paid up capital and the records of the companies maintained by ACRA will be updated accordingly.

To view the full text of Practice Direction No 1 of 2006, please [click here](#).

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Trust Companies Act 2005 operative from 1 February 2006

The Trusts Companies Act 2005 (the "**Act**") will repeal the current Trust Companies Act and introduce a new regulatory framework for trust companies operating in Singapore. The Act seeks to establish a sound regulatory framework for trust companies to ensure high standards of business conduct, professionalism and competence in the trust services industry in Singapore.

In order to enable the Monetary Authority of Singapore (the "**MAS**") to supervise the complementary activities of trust services, private banking and wealth management, the MAS will replace the Accounting and Corporate Regulatory Authority as the regulator of trust companies under the Act.

The Act imposes mandatory licensing for all corporations that carry on or hold themselves out as carrying on any "trust business" in Singapore. "Trust business" is defined widely to include acting as trustee for an express trust, administering an express trust, creating an express trust, and arranging for any person to act as a trustee for an express trust. The new licensing regime also extends to the carrying on of any trust business from Singapore even where a trust is established outside Singapore.

Due to the breadth of the definition of "trust business", the Act provides for exemptions and exclusions from licensing where the risk of abuse or inadequate professional standards are low, or to avoid duplication with other regulations.

The Act also sets out the licensing requirements for a trust company and the conduct of business rules that a licensed trust company must comply with.

The following regulations have been gazetted and will also be operative from 1 February 2006:

- **Trust Companies Regulations 2005:** These Regulations provide for various matters including those regarding the licensing of a trust company, financial requirements, and conduct of business rules that licensed trust companies have to comply with, and the duties of resident managers and directors of a licensed trust company.
- **Trust Companies (Transitional and Savings Provisions) Regulations 2005:** These Regulations provide for the transition of those currently engaging in trust business to the new regime. In particular, regulation 9 provides for the return of the deposit that has been placed

with the Accountant-General under section 7 of the current Trust Companies Act.

- **Trust Companies (Exemption) Regulations 2005:** Section 15(1)(d) provides that prescribed persons shall be exempt from the requirement to hold a trust business licence in respect of the carrying on of trust business. The Trust Companies (Exemptions) Regulations sets out a list of such prescribed persons, e.g. a private trust company, lawyers and accountants, and a trustee of a collective investment scheme. These regulations also describe the relevant provisions of the Act and the Trust Companies Regulations 2005 that will apply to exempt persons.
- **Trust Companies (Appeals) Regulations 2005:** These Regulations set out the appeals process for an appellant who wishes to appeal a decision of the MAS under the Act. Matters addressed include the composition of the Appeals Advisory Committee, the conduct of the hearing, and the treatment of confidential information submitted to the Appeals Advisory Committee.

In conjunction with the commencement of the Trust Companies Act on 1 February 2006, the Monetary Authority of Singapore (the “MAS”) has issued the following Notices and Guidelines:

- **Notice on Effecting Arrangements through Licensed Trust Companies or Exempt Persons under Section 15(1)(a) and 15(1)(b) of the Act:** This Notice places due diligence obligations on licensed trust companies, banks and merchant banks, when they allow non-licensed persons to effect arrangements between them. This Notice is effective from 1 February 2006.
- **Notice on Qualifying Assets and Reduction Percentages:** This Notice applies to all licensed trust companies incorporated outside Singapore. It provides for how licensed trust companies that are branches of foreign companies must comply with the qualifying assets requirements under regulations 11 and 12 of the Trust Companies Regulations 2005. This Notice is effective from 1 February 2006.
- **Guidelines on Licence Application and Payment of Fees:** These Guidelines provide guidance on licence application procedures and payment of licence fees under the Trust Companies Act.
- **Guidelines on Criteria for the Grant of a Trust Business Licence:** These Guidelines provide guidance on the licensing admission criteria for persons applying for a trust business licence under the Trust Companies Act.
- **Guidelines on Standards of Conduct for Licensed Trust Companies:** These Guidelines provides guidance on the standards of conduct that the MAS expects of licensed trust companies. Guidance is provided in relation to several issues including integrity, competence, due care and diligence, and complaints handling.
- **Guidelines on Scope of Regulation:** These Guidelines provide guidance on the activities that may be considered to be trust business as defined in the First Schedule of the Act, as well as the scope of the exemption for banks and merchant banks under section 15 of the Act. Specifically, guidance is provided on the interpretation of “creation and arranging”, “administration” and “procedural and non-discretionary”.

For further information, please contact:

Leonard Ching
Tel: +65 6890 7730
leonard.ching@allenandgledhill.com

Jerry Koh
Tel: +65 6890 7770
jerry.koh@allenandgledhill.com

Emily Low
Tel: +65 6890 7736
emily.low@allenandgledhill.com

Francis Mok
Tel: +65 6890 7786
francis.mok@allenandgledhill.com

- **Forms:** Various forms called for by the Act, the Trust Companies Regulations, and the Trust Companies (Exemption) Regulations have also been issued. These forms include those for application for trust business licence, application to be a significant shareholder, an auditor's statement, and various forms for exempt persons.

Please click on the hyperlinks provided to view the full Notices and Guidelines.

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CPF salary ceiling lowered from S\$5,000 to S\$4,500 effective 1 January 2006

Pursuant to the Central Provident Fund Act (Amendment of First Schedule) Notification 2005, the First Schedule to the Central Provident Fund Act will be amended effective from 1 January 2006 to lower the ceiling on salaries on which CPF contributions must be made from S\$5,000 to S\$4,500.

Effective from 1 January 2006, an employer must make contributions to the Central Provident Fund (the "CPF") at the rate of 33 per cent. of the employee's monthly salary subject to a maximum of S\$1,485.

Of the 33 per cent, employers may recover from the employee's salary 20 per cent. of the employee's monthly salary subject to a maximum of S\$900.

In line with the lowering of the salary ceiling, the maximum amount of wages that will attract CPF contributions has also been lowered from S\$85,000 to S\$76,500. The maximum quantum of additional wages on which CPF contribution must be made is determined by subtracting from the sum of S\$76,500 the total ordinary wages which is subject to CPF contribution.

These changes implement a measure to reduce business costs in Singapore that was first announced on 28 August 2003. An article discussing these measures was featured in a previous issue of the Allen & Gledhill Legal Bulletin (August 2003). To view the article entitled "*Retuning Singapore CPF scheme to improve cost competitiveness*", please [click here](#).

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Competition Act: Prohibition against anti-competitive agreements and abuse of dominance operative with effect from 1 January 2006

With effect from 1 January 2006, the provisions relating to the prohibition against anti-competitive agreements and abuse of dominant positions under the Competition Act (the "Act") are operative.

The Act seeks to prohibit anti-competitive activities that unduly prevent, restrict or distort competition. There are three main prohibited activities under the Act:

- anti-competitive agreements, decisions and practices
- abuse of a dominant position; and
- mergers and acquisitions that substantially lessen competition.

For further information, please contact:

Chan Hian Young
Tel: +65 6890 7813
chan.hianyoung@allenandgledhill.com

Sophie Lim
Tel: +65 6890 7696
sophie.lim@allenandgledhill.com

Melissa Anne Teo
Tel: +65 6890 7608
melissaanne.teo@allenandgledhill.com

Kelvin Wong
Tel: +65 6890 7644
kelvin.wong@allenandgledhill.com

As a matter of background, the Act is intended to be implemented in three main stages. On 1 January 2005, only the provisions in the Act relating to the establishment and incorporation of the Competition Commission of Singapore (the “CCS”) became operative. In view of their complex nature, the prohibition provisions relating to mergers and acquisitions has not come into force yet and is expected to be operative in 2007.

In the light of the coming into force of the prohibition against anti-competitive agreements and abuse of dominant positions under the Act on 1 January 2006, the CCS has also issued numerous guidelines to guide businesses on how the CCS will interpret and give effect to the provisions of the Act. The guidelines are intended to provide transparency and greater clarity to businesses on the competition law regime. To view the guidelines, please [click here](#).

The following related amendments, regulations and order also became operative with effect from 1 January 2006:

- Competition (Amendment) Act 2005 which amends the Act on issues of self-incrimination not being an excuse for non-disclosure of information in an investigation under the Act, enhanced powers of the officers of the CCS in an investigation and the empowering of certain officers of the CCS to prosecute offences under the Act;
- Competition Regulations 2005 which relate to issues such as notifications for guidance or decision;
- Competition (Composition of Offences) Regulations 2005;
- Competition (Fees) Regulations 2005;
- Competition (Transitional Provisions for Section 34 Prohibition) Regulations 2005; and
- Competition (Amendment of Third Schedule) Order 2005 relating to the definition of vertical agreements and agreements with net economic benefit.

The following articles which have been featured in the Allen & Gledhill Legal Bulletin follow closely the developments of the Act and the CCS guidelines:

- *Competition Commission completes issuance of all guidelines under Competition Act 2004* (December 2005). To view, please [click here](#).
- *CCS to propose block exemptions for liner agreements in the maritime industry* (December 2005). To view, please [click here](#).
- *Competition (Amendment) Bill 2005 passed: Self-incrimination not excuse for non-disclosure to Competition Commission of Singapore* (November 2005). To view, please [click here](#).
- *Competition Appeal Board established with effect from 1 September 2005* (September 2005). To view, please [click here](#).
- *Gazetting and partial commencement of Competition Act* (December 2004). To view, please [click here](#).

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For further information, please contact:

Christopher Anand Daniel
Tel: +65 6890 7888
christopheranand.daniel@allenandgledhill.com

Daren Shiao
Tel: +65 6890 7612
daren.shiao@allenandgledhill.com

Tan Wee Meng
Tel: +65 6890 7518
tan.weemeng@allenandgledhill.com

Yeo Wico
Tel: +65 6890 7775
yeo.wico@allenandgledhill.com

Stamp Duties (Amendment No 2) Act 2005 in force from 1 January 2006: Relief under section 15 for transfer of mortgages

The Stamp Duties (Amendment No 2) Act 2005 (the “Act”) is operative from 1 January 2006. The Act was passed in Parliament on 21 November 2005.

The Stamp Duties Act is amended to give legislative effect to the following measures:

- (a) to extend relief from *ad valorem* stamp duties under section 15 on restructuring and merger of companies to business trusts;
- (b) to expand the scope of stamp duty relief from *ad valorem* stamp duties under section 15 to include transfer of mortgages when companies enter into restructuring or merger exercises
- (c) to require companies amalgamating under the new section 215 of the Companies Act to pay *ad valorem* stamp duties
- (d) to repeal the seller’s stamp duty on sale of residential properties within three years of purchase; and
- (e) to extend stamp duties exemption to transfers of foreign stocks by way of gift.

For more information about the changes effected by the Act, please refer to an article featured in a previous issue of the Allen & Gledhill Legal Bulletin (October 2005) when the Act was first introduced as a Bill. To view the article entitled “*Parliament introduces Stamp Duties (Amendment No 2) Bill 2005: Section 15 relief for transfer of mortgages*”, please [click here](#).

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Goods and Service Tax (Amendment) Act 2005 in force from 1 January 2006: Minister for Finance prescribes new international services

The Goods and Services Tax (Amendment) Act 2005 (the “Act”) takes effect from 1 January 2006. It was passed in Parliament on 21 November 2005.

The following are the changes that arise from the Act:

- repayment of input tax upon failure to make payment to the supplier;
- enabling the Minister for Finance to prescribe the types of services comprising the repair, maintenance, broking or management of any ship or aircraft which are to be treated as international services under the Goods and Services Tax Act;
- empowering the Minister for Finance to prescribe the types of services in connection with the provision of an electronic system relating to the import of goods into, or the export of goods out of, Singapore which are to be treated as international services for the purposes of the Act; and
- compulsory filing of returns under the Goods and Services Tax Act.

For further information, please contact:

Nand Singh Gandhi
Tel: +65 6890 7838
nand.gandhi@allenandgledhill.com

Andrew Lim
Tel: +65 6890 7706
andrew.lim@allenandgledhill.com

Yeoh Lian Chuan
Tel: +65 6890 7720
yeoh.lianchuan@allenandgledhill.com

For further information, please contact:

Nand Singh Gandhi
Tel: +65 6890 7838
nand.gandhi@allenandgledhill.com

Yeoh Lian Chuan
Tel: +65 6890 7720
yeoh.lianchuan@allenandgledhill.com

An article discussing the scope of the Bill was featured in a previous issue of the Allen & Gledhill Legal Bulletin (October 2005). To view the article entitled "*Goods and Services Tax (Amendment) Bill 2005 introduced in Parliament*", please [click here](#).

Pursuant to the power of the Minister for Finance to prescribe the types of services comprising the repair, maintenance, broking or management of any ship or aircraft which are to be treated as international services under the Goods and Services Tax Act (the "**prescribed services**"), the Goods and Services Tax (International Services) Order 2005 has been amended with effect from 1 January 2006 to provide for the prescribed services in the new Sixth Schedule and Seventh Schedule.

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Parliament passes Workplace Safety and Health Bill 2005: New legislative framework for occupational safety and health

On 17 January 2006, the Workplace Safety and Health Bill 2005 (the "**Bill**") was read a second time and passed in Parliament. The Bill was first introduced on 17 October 2005. The Bill is not in force yet.

When gazetted as an Act and effective as law, the Bill will repeal the Factories Act. The Bill will be administered by the Commissioner for Workplace Safety and Health and will constitute the legal framework for the new occupational safety and health ("**OSH**") regulatory system.

The key reforms are as follows:

- allows a gradual increase in scope to cover all workplaces;
- allocates responsibility to a range of stakeholders at the workplace along lines of control;
- focuses on workplace safety and health systems and outcomes;
- provides for more effective enforcement through issuance of "remedial orders"; and
- provides for higher penalties for non-compliant and risk-taking behaviour to prevent accidents upfront.

Scope of the Bill

Unlike the current Factories Act, which only applies to factories, the Workplace Safety and Health Act will cover all workplaces. The term "workplace" is defined to mean any premises where a person is at work or is to work, for the time being works, or customarily works. The term "workplace" includes a factory.

However, coverage under the Bill will be rolled out in phases. In the first phase, coverage will be limited to existing coverage under the Factories Act (Section 2 read with the First Schedule to the Bill).

Following phases will be rolled out upon the Minister for Manpower exercising his power under the Bill to extend the scope of the Bill to cover other workplaces.

For further information, please contact:

Chan Hian Young
Tel: +65 6890 7813
chan.hianyoung@allenandgledhill.com

Sophie Lim
Tel: +65 6890 7696
sophie.lim@allenandgledhill.com

Melissa Anne Teo
Tel: +65 6890 7608
melissaanne.teo@allenandgledhill.com

Kelvin Wong
Tel: +65 6890 7644
kelvin.wong@allenandgledhill.com

Shifting mindsets to comprehensive risk management systems

The Bill adopts a performance-based approach by requiring stakeholders to take all reasonably practical measures to ensure the safety and health of their workers and the public. Under this approach, the burden is on the party responsible to show that he has taken such reasonably practicable measures. In order to ensure companies internalise this approach, they will be required to conduct risk assessments, and take steps to eliminate or minimise identified risks, and disseminate this information. The requirement for risk assessments will be contained in new Regulations to be issued.

Higher penalties and remedial orders

The penalties under the Bill will be enhanced in an effort to ensure that the penalties for non-compliance are sufficiently high to effect a cultural change towards OSH. The penalties are set at a level that reflects the true cost of poor safety management, including the cost of disruptions and inconvenience to members of the public that workplace accidents may cause.

In addition, the Commissioner for Workplace Safety and Health will be empowered to make a remedial order compelling a person to remove any workplace risk or comply with a safe work practice, whether or not any imminent danger is posed. Rather than impose penalties upfront, the Ministry for Manpower will use remedial orders to require employers to improve the quality of their risk assessments if they are found to be lacking.

To read the Parliamentary Speech delivered by Dr Ng Eng Hen, Minister for Manpower, at the second reading of the Bill, please [click here](#).

The Ministry of Manpower has issued a fact sheet on the Bill on 17 January 2006. To view the press release, please [click here](#).

An article discussing the Bill when it was first introduced in Parliament was featured in a previous issue of the Allen & Gledhill Legal Bulletin (October 2005). To view the article entitled "*Workplace Safety and Health Bill 2005 introduced in Parliament on 17 October 2005*", please [click here](#).

To view a copy of the Bill, please [click here](#).

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Parliament passes Payment Systems (Oversight) Bill 2005: New regulatory framework for payment systems and stored value facilities

The Payment Systems (Oversight) Bill 2005 (the "**Bill**") was read a second time and passed in Parliament on 16 January 2006. The Bill was first introduced on 21 November 2005. The Bill is a new piece of legislation that provides for the new regulatory framework for payment systems and stored value facilities ("**SVF**") in Singapore.

Payment systems

A payment system is a funds transfer system or other system that facilitates the circulation of money and includes any instrument and procedure that relates to the system.

For further information, please contact:

Francis Mok
Tel: +65 6890 7786
francis.mok@allenandgledhill.com

Karen Tiah
Tel: +65 6890 7741
karen.tiah@allenandgledhill.com

The Bill will allow the Monetary Authority of Singapore (“**MAS**”) to adopt a risk-based approach by providing the MAS with powers to designate payment systems that are important in terms of financial stability or public confidence. The Bill will provide for the MAS’ oversight powers over the operators of designated payment systems in various ways including approval of appointment of chief executive officer and directors, and control of substantial shareholding in the operator.

Stored value facilities

The Bill will also provide for the liberalisation of the SVF market in Singapore. Currently, the issuance of any form of multi-purpose SVF is restricted to banks only. To encourage competition and innovation among smaller-scale SVF, the Bill will permit any entity to hold stored value in respect of SVF, as long as the amount of stored value does not exceed S\$30 million. Where the stored value is above the threshold, the holder of the SVF must be approved by the MAS as an approved holder.

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Casino Control Bill 2006 introduced for first reading

On 16 January 2006, the Casino Control Bill (the “**Bill**”) was introduced in Parliament following a public consultation on the draft version of the Bill in October / November 2005. An article on the public consultation of the draft Casino Control Bill was featured in a past issue of the Allen & Gledhill Legal Bulletin (October 2005). To view the article entitled “*Ministry of Home Affairs issues draft Casino Control Bill for public consultation*”, please [click here](#).

Based on the feedback received during the public consultation period, there is general public confidence in the Government’s ability to manage the potential law and order issues associated with casinos. The Government, through the Ministry of Home Affairs and the Ministry of Community, Youth and Sports, issued an official response to the feedback received. An article on the Government’s response to the public’s feedback was featured in a past issue of the Allen & Gledhill Legal Bulletin (December 2005). To view the article entitled “*MHA issues response to feedback received on draft Casino Control Bill*” please [click here](#).

Essentially, the Bill provides for the establishment of a new statutory body to be known as the Casino Regulatory Authority of Singapore (the “**Authority**”), and the operation and regulation of casinos and gaming in casinos. The Authority will maintain and administer systems for the licensing, supervision and control of casinos to ensure, among other things, that the management and operation of a casino will be free from criminal influence or exploitation, and to protect minors, vulnerable persons and society at large from the potential of a casino to cause harm.

The following are some of the key provisions in the Bill:

- **Two casinos only.** There will not be more than two casino licenses in force at any particular time during the period commencing ten years from the date on which a second site for a casino is designated by an order.
- **Control of main shareholder of casino operator.** The main shareholder of a casino operator shall not, without the prior written approval of the Authority, transfer or dispose of any part of his stake in the casino operator to the extent that, the percentage of the total votes attached to his stake in the casino operator is less than 20 per cent. of

the total votes attached to all voting shares in the casino operator, or is equal to or less than the percentage of the total votes attached to the stake of any other stakeholder in the casino operator. Further, the main shareholder of a casino operator is restricted, at any time when there are two casinos in Singapore, from acquiring or holding any stake in the other casino operator, participate in the management or operation of the other casino operator, or enter into any agreement for the management or operation of the other casino.

- **Application for casino licence.** Only the owner of a designated site on which a casino is intended to be located, or a person nominated by that owner with the approval of the Authority, may apply for a casino licence.
- **Grant of licence to suitable person.** The Authority must be satisfied that the applicant, and each associate of the applicant, is a suitable person to be concerned in or associated with the management and operation of a casino before granting an application for a casino licence.
- **Transfer, mortgage of casino licence.** No casino licence may be transferred, charged, mortgaged or otherwise encumbered except with the prior written approval of the Authority.
- **Control of substantial shareholders in casino operator.** No person shall become a substantial shareholder of a casino operator, or act together with any other person with respect to the acquisition, holding or disposal of, or the exercise of rights in relation to, their interests in voting shares of an aggregate of five per cent. or more of the total votes attached to all voting shares in a casino operator, without first obtaining the approval of the Minister for Home Affairs (the “**Minister**”).
- **Control of shareholdings and voting power in casino operator.** No person shall become a 12 per cent. controller, or a 20 per cent. controller, or an indirect controller of a casino operator without first obtaining the approval of the Minister. The Bill defines a 12 per cent. controller to mean a person who, alone or together with his associates holds or has interests in 12 per cent. or more but less than 20 per cent. of the total number of issued shares in a casino operator, or who is in a position to control voting power of 12 per cent. or more but less than 20 per cent. in a casino operator. A 20 per cent. controller refers to a person who, alone or together with his associates holds or has interests in 20 per cent. or more of the total number of issued shares in a casino operator, or is in a position to control voting power of 20 per cent. or more in a casino operator.
- **Requirements for controlled contracts.** A casino operator cannot enter into a contract that is a controlled contract unless the casino operator has notified the Authority in writing of the details of such contract and only if the Authority has no objection or requires no further time to conduct its investigations.
- **Entry levy.** The entry levy for a citizen or permanent resident of Singapore will be S\$100 (inclusive of goods and services tax) for every consecutive period of 24 hours, or S\$2,000 (inclusive of goods and services tax) for a valid annual membership of the casino.
- **Exclusion orders by casino operator.** A casino operator may give a written exclusion order to a person, whether on the voluntary application of the person or otherwise, prohibiting the person from entering or remaining on the casino premises.

For further information, please contact:

Lee Kim Shin
Tel: +65 6890 7699
lee.kimshin@allenandgledhill.com

Kelvin Wong
Tel: +65 6890 7644
kelvin.wong@allenandgledhill.com

- **Minors.** Persons below the age of 21 years will be prohibited from entering or participating in any gaming on any casino premises. The minor will be guilty of an offence if the prohibition is breached.
- **Enforceability of gaming contracts.** A contract for gaming or betting will be valid and enforceable by reason of exemptions under certain statutes.

Apart from the above key features, the Bill also provides for, among other things, the establishment of the National Council on Problem Gambling, casino internal controls, casino tax, and the licensing of casino employees.

The full text of the Bill is available on the Parliament's website. To view, please [click here](#).

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Residential Property (Amendment) Bill 2006: Policy changes affecting foreign ownership of property

The Residential Property (Amendment) Bill 2006 (the “**Bill**”) was introduced in Parliament on 16 January 2006. Among the changes proposed, the Bill seeks to amend the Residential Property Act as announced in Parliament by the Minister for National Development on 19 July 2005.

On 19 July 2005, the Minister for National Development, Mr Mah Bow Tan, delivered a ministerial statement on policy changes affecting the property market. The ministerial statement was made following a review in three major areas, one of which related to restrictions on foreign ownership of lands and properties. Specifically, it was announced that foreigners would be permitted to purchase apartments in non-condominium developments of less than six levels without the need to obtain prior approval.

In order to implement this change, section 4 of the Residential Property Act will be amended to allow any foreign person to purchase or acquire any of the following non-restricted residential property:

- (a) any flat (which is not a landed dwelling-house) that is comprised in a building permitted to be used for residential purposes;
- (b) any unit in a condominium development;
- (c) any unit in an executive condominium.

The following are some of the other key amendments:

- **Enhanced penalty.** Section 23 (residential property not to be purchased or acquired by a citizen or an approved purchaser as a nominee of a foreign person) will be amended by providing a higher penalty for the offence where a citizen or approved purchaser purchases or acquires residential property as a nominee for a foreign person, or where a foreign person appoints a citizen or approved person as his nominee to acquire or purchase residential property. The new penalty will be a fine of up to S\$50,000 (currently S\$5,000) or imprisonment for a term of up to three years or both.
- **Confiscation orders.** A new section 23A will be introduced empowering a court to make a confiscation order in respect of benefits derived by any person convicted of any offence under section 23 if the

For further information, please contact:

Penny Goh
Tel: +65 6890 7901
penny.goh@allenandgledhill.com

Hoo Sheau Farn
Tel: +65 6890 7941
hoo.sheaufarn@allenandgledhill.com

Eudora Tan
Tel: +65 6890 7971
eudora.tan@allenandgledhill.com

court is satisfied that such benefits have been so derived. The benefits derived are defined as the value of the estate or interest in residential property held in contravention of section 23 or, if the property is disposed of before conviction, the proceeds of such disposition. The court must make a confiscation order on the application of the Public Prosecutor, and the new section 23A prescribes the method by which the value of those benefits is to be assessed. Once made, a confiscation order is to be enforceable as if it were a fine. The new section 23A will have no retrospective effect and confiscation orders may be made only in respect of offences committed on or after the Bill comes into operation;

- **Controller of Residential Property to administer Residential Property Act.** Section 28A (approval for residential development on land deemed non-residential) will be amended by transferring the administration of the provision from the Controller of Housing to the Controller of Residential Property. Applications by foreign persons who wish to develop their non-residential land for a residential purpose will be required to be made to the Minister for Law through the Controller of Residential Property.
- **Licensed trust company may purchase residential property.** Section 33 will be amended to enable a foreign company (which is also a trust company licensed under the Trust Companies Act 2005) to purchase and hold any residential property in trust for beneficiaries who are citizens of Singapore or approved purchasers.

To view the Residential Property (Amendment) Bill 2006, please [click here](#).

To view the full text of the ministerial statement on policy changes affecting the property market, please [click here](#).

An article discussing the changes announced in the ministerial statement was featured in a previous issue of the Allen & Gledhill Legal Bulletin. To view the article entitled "*Minister for National Development announces policy changes affecting the Singapore property market*", please [click here](#).

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CCDG calls public consultation on quarterly reporting requirement

From 13 January 2006 to 28 February 2006, the Council on Corporate Disclosure and Governance (the "CCDG") will solicit public feedback on its review of the quarterly reporting requirement. Mandatory quarterly reporting is required of listed companies with market capitalisation above S\$75 million.

Listed companies, users of quarterly reports, and other interested parties are invited to share their views and experiences relating to the requirement. The feedback process is assisted by a consultation paper and questionnaire, prepared by the Review Committee established by the CCDG, whereby key issues and arguments for and against keeping the requirement are set out. These issues include:

- benefit to investors
- benefit to companies
- cost of quarterly reporting

- short-termism
- volatility of share prices; and
- alignment with global standards

The CCDG also invites public feedback to suggested alternatives and options to quarterly reporting, such as:

- a properly policed requirement to make ad-hoc disclosures of price-sensitive information;
- clarification that companies need not hold briefings or issue publicity statements for quarterly announcements;
- waiver of quarterly reporting based on shareholders' decision that the costs outweigh the benefits of more frequent reporting;
- shortening of timeframes for half-yearly and annual reports, in lieu of quarterly reports;
- allowing companies to hold quarterly meetings in place of quarterly reports; and
- adoption of a simplified format for quarterly reports.

Lastly, the public consultation explores the feasibility of extending the requirement to companies with market capitalisation of S\$75 million or below, which are currently exempt. Cost and efficiency considerations mitigate against imposing the requirement; on the other hand, more frequent reporting may better inform the public of the operating status of these smaller firms, who are otherwise less subject to public scrutiny.

To view the CCDG press release on 13 January 2006 please [click here](#).

To view the consultation paper and questionnaire please [click here](#).

On 17 November 2005, the CCDG issued a press statement of its intention to review the quarterly reporting requirement and make recommendations to the Government in this regard. An article featuring this development was featured in a previous issue of the Allen & Gledhill Legal Bulletin (November 2005). To view the article entitled "*CCDG to review Singapore's quarterly reporting requirement*", please [click here](#).

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MAS public consultation on draft Deposit Insurance Agency Rules

On 27 December 2005, the Monetary Authority of Singapore (the "**MAS**") issued a consultation paper seeking feedback on the draft Deposit Insurance Agency Rules (the "**draft Rules**"). These Rules are to be issued under the Deposit Insurance Act 2005 (the "**Act**"), which came into effect on 18 October 2005.

An article entitled "*Deposit Insurance Act 2005 operative from 18 October 2005*" was featured in a previous issue of the Allen & Gledhill Legal Bulletin (October 2005). To view the article, please [click here](#).

For further information, please contact:

Christine Chan
Tel: +65 6890 7647
christine.chan@allenandgledhill.com

Christina Ong
Tel: +65 6890 7700
christina.ong@allenandgledhill.com

The Act establishes a deposit insurance scheme (the “**DI Scheme**”), the primary objective of which is to provide an adequate level of protection to depositors in the event of a failure of a bank or finance company, and to dispel public misconception of an implicit government guarantee of deposits placed with banks and finance companies. The DI Scheme is expected to be operative on 1 April 2006. In this regard, a deposit insurance agency (the “**DI Agency**”) will be established under the Act to administer the DI Scheme and it is empowered to issue rules for any matters relating to its functions. The draft Rules are to be issued by the DI Agency pursuant to the Act. Essentially, the draft Rules cover matters such as premium contribution, payment of compensation to insured depositors, method of payout and disclosure. The draft Rules will apply to all members of the DI Scheme (the “**Scheme Members**”).

According to the draft Rules, a Scheme Member shall pay the amount of premium contribution assessed for that premium year on or before 1 April of that premium year. Late payment fees are chargeable if a Scheme Member delays payment of the premium contribution. Such late payment fee imposed shall be computed at an annual rate of 10 per cent. above SIBOR, calculated per day on the amount of premium contribution due and owing by the Scheme Member after the date specified up to a maximum of the amount of premium contribution, which is due and owing. The draft Rules define SIBOR to mean the three months’ S\$ Singapore Interbank Offer Rate fixed by the Association of Banks in Singapore, as at the payment due date. The method of payment of premiums and late payment fees will be by way of a direct debit of the Scheme Member’s account with the MAS. Any premium contribution collected will be credited into the DI Agency’s account maintained by the MAS for the Deposit Insurance Fund (the “**DI Fund**”). However, alternative arrangements may be made with the MAS if the Scheme Member does not maintain a current account with the MAS.

In relation to payment of compensation to insured depositors, the draft Rules require a failed Scheme Member to exhibit at all its offices and branches in Singapore, a notice of the decision by the MAS to pay compensation out of the DI Fund to insured depositors of the Scheme Member. The DI Agency may pay compensation to insured depositors by either issuing cheques to individual insured depositors for the amount of compensation due to them, or depositing the amount of compensation due into new accounts opened for the insured depositors with one or more other Scheme Members which have been appointed as the DI Agency’s agent under the Act for the purposes of payment of compensation.

The consultation closed on 27 January 2006.

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

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For further information, please contact:

Andrew Lim
Tel: +65 6890 7706
andrew.lim@allenandgledhill.com

Francis Mok
Tel: +65 6890 7786
francis.mok@allenandgledhill.com

Yeoh Lian Chuan
Tel: +65 6890 7720
yeoh.lianchuan@allenandgledhill.com

Cases

Corporate & financial services

Divestment of assets at an undervalue was not necessary to justify piercing the corporate veil, holds UK High Court

Kensington International Ltd v Republic of Congo (Defendant) and Glencore Energy UK Ltd & Ors (Third Parties) 2005 EWHC 2684 (Comm)

The UK High Court recently held that divestment of assets at an undervalue is not necessary to justify piercing the corporate veil in relation to particular transactions.

Following a series of judgments holding the Republic of Congo (the “**Congo**”) liable under various loan and credit agreements, the plaintiff Kensington International Ltd (“**Kensington**”) sought to intercept some US\$39 million payable by Glencore Energy UK Ltd (“**Glencore**”) to Sphynx (BDA) Ltd (“**Sphynx Bermuda**”), one of the Third Parties to this case. Kensington claimed that this amount, in consideration of two consignments of Congolese oil, was in reality payable to the Congo, as the parties to the chain of sale transactions that led up to the sale to Glencore were companies controlled by the president of the Congo state-owned oil company, who was also a special adviser to the Congolese President.

Glencore’s position on the issue was neutral, having been willing to pay the money as the court directed.

The evidence before the court established that Cotrade SA, a wholly-owned subsidiary of the Congo state-owned oil company, sold the Congolese oil cargo to Africa Oil & Gas Corporation (“**Africa Oil**”), which in turn sold it to Sphynx Bermuda. Glencore purchased the cargo from Sphynx Bermuda. The court found, from a perusal of the contracts and testimonies on record, that the contracts representing these sales were all backdated and executed after the Third Parties’ principal officers knew of the court’s issuance in favour of Kensington of interim Third Party Debt Orders over the Glencore payables. Also, the sales proceeds, which were in Sphynx Bermuda bank accounts, were withdrawn after the debt orders were issued. The court was of the view that this series of actions was clearly aimed at evading attachment of the Glencore payables.

The court was faced with the issue of whether to “pierce the corporate veil” and whether to hold that the debt due from Glencore that Kensington was seeking to attach was in fact owed to the Congo or should be treated as owed to the Congo, for the purpose of enforcement of judgments by Third Party Debt Orders.

The Third Parties argued that the separate legal personality of corporate entities should be upheld in the absence of exceptional circumstances, such as sale of the property under value, pointing to a need to pierce the corporate veil.

The court agreed with the Third Parties that it was only appropriate to pierce the corporate veil where special circumstances showed that the questioned transactions were a mere façade concealing the true facts. Conversely, transactions or structures that had no legal substance, and which were set up with a view to defeating existing claims of creditors could, if they were purely deceitful, be treated by the court as lacking validity.

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

Michele Foo
Tel: +65 6890 7614
michele.foo@allenandgledhill.com

Suresh Nair
Tel: +65 6890 7897
suresh.nair@allenandgledhill.com

The court held that a divestment of assets at an undervalue was not necessary to justify piercing the corporate veil in relation to particular transactions. In the instant case, the structure and sale transactions of the Third Parties were clearly calculated and exercised to conceal Congolese assets and defeat the claims of creditors of the Congo. The state-owned oil company was simply part of the Congolese state and had no existence separate from the state. This was equally true of its subsidiary, Cotrade SA. The president of the state-owned oil company had control over Cotrade SA (this being a subsidiary of the oil company) and over Africa Oil and Sphynx Bermuda, which were his private oil trading vehicles. Thus, it may be fairly stated that it was the Congo, through its oil company and subsidiary, under the control of its oil company president, that was selling the oil in the international market and receiving the proceeds for it.

The court pierced the corporate veil and recognised the Glencore payables as due to the Congo. Kensington was therefore entitled to final Third Party Debt Orders in respect of the purchase price of the oil cargo.

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Intellectual property & technology

Singapore High Court considers legal status of shape marks

Nation Fittings (M) Sdn Bhd v Oystertec Plc and Another Suit
[2005] SGHC 225

In the recent Singapore High Court decision of *Nation Fittings (M) Sdn Bhd v Oystertec Plc and Another Suit*, Andrew Phang J had to consider an important threshold issue of whether or not registered trade marks that were originally registered under the previous Trade Marks Act (Cap 332, 1993 Rev Ed) (the “**previous Act**”) as two-dimensional marks could automatically be treated as three-dimensional marks / shape marks under the present Trade Marks Act (Cap 332, 2005 Rev Ed) (the “**present Act**”) by reason of the transitional provisions in the present Act.

During a raid executed under a search warrant, Oystertec Plc (“**Oystertec**”) seized pipe fittings supplied by Nation Fittings (M) Sdn Bhd (“**Nation Fittings**”) at the premises of Best Ceramic Pte Ltd (“**Best Ceramics**”), a retailer of, *inter alia*, pipe fittings. After having its goods seized under a search warrant, Nation Fittings commenced action (the “**first action**”) against Oystertec for groundless threat of infringement proceedings. Oystertec denied that the threats were groundless alleging that the sale of the (seized) pipe fittings had infringed its registered trade marks. Subsequently, Oystertec commenced its own action (the “**second action**”) against Best Ceramic for alleged trade mark infringement and passing off. Best Ceramic denied the allegations and counterclaimed for a groundless threat as well as for the revocation of Oystertec’s trade marks and / or invalidation of the registered trade marks. For the purposes of trial, it was later ordered by the court that the first and second action be treated as one action. These are in fact the actions before the court in the present proceedings. To avoid unnecessary confusion, Andrew Phang J referred to Oystertec as “the plaintiff” and Best Ceramic as well as Nation Fittings as (collectively) “the defendants”. The same references shall also be used for the remainder of this case note.

The plaintiff alleged, among other things, that the defendants had infringed its registered trade marks in relation to pipe fittings which were sold and supplied by the defendants. On the other hand, the defendants alleged that

the plaintiff was making groundless threats and sought a revocation and invalidation of the plaintiff's registered trade marks. All these allegations were made pursuant to the relevant provisions in the present Act. However, the plaintiff's marks were registered under the previous Act as two-dimensional marks and the issue which then required addressing was whether or not the transitional provisions in the present Act operated to render or "convert" the plaintiff's registered marks into three-dimensional (shape) marks under the present Act, without the need for the plaintiff to make a fresh application under the present Act. Shape marks are registrable under the present Act but not under the previous Act. The plaintiff argued that the relevant transitional provisions under the present Act had "*converted*" the original two-dimensional marks into three-dimensional ones.

The relevant transitional provision (the "**transitional provision**") in the present Act which the court had to consider reads as follows: "*Any existing registered mark, whether registered in Part A or B of the register kept under the repealed Act, is a registered trade mark for the purposes of this Act.*"

The learned judge noted that a literal reading of the transitional provision would at the first instance suggest that the plaintiff's marks registered as two-dimensional marks under the previous Act would be automatically registered as "*a trade mark for the purposes of [the present Act]*", which by definition would include three-dimensional marks.. Such an interpretation would confer additional rights under the present Act. Hence the court decided that for such an interpretation to be accepted, the plaintiff must establish that the clear language and intent in the transitional provisions themselves confer such additional rights. The learned judge noted that a literal reading of the statutory text could lead to a dry, brittle literalness that would do no justice to the enterprise of the law in general and the text concerned in particular. The judge preferred to adopt the purposive approach when interpreting statutory text. According to the judge, the purposive approach towards the statutory text would complement its literal meaning by ensuring that the purpose and intent of the statutory text itself would be achieved.

Adopting a purposive interpretation, the court held that the transitional provision is intended to allow existing trade marks under the previous Act to continue as registered trade marks in the form they were *originally* registered for the purposes of the present Act. The transitional provision is intended to avoid having to re-register marks already registered under the previous Act when the present Act came into force. The transitional provision is not intended to confer retrospectively, additional rights under the present Act. Hence, trade marks already registered under the previous Act as two-dimensional marks would be treated as continuing as registered (two-dimensional) trade marks under the present Act without the need for the additional, and practically otiose, step of re-registration under the present Act. However, for a registered two-dimensional mark under the previous Act to be treated as a three-dimensional mark under the present Act, a fresh registration would be required.

Andrew Phang J added that the application for a shape mark under the present Act was in itself not merely a formality or a forgone conclusion by any means. It would not be sufficient to merely show an unusual or attractive shape. There must be trade mark significance inasmuch as the shape concerned must perform the function of identifying origin. Further, the learned judge stated that the criteria for assessing the distinctiveness of three-dimensional shapes of product marks would be the same as those to be applied to other categories of trade marks. However, due to the need to identify the origin of the product and the need to take into account the perception of the consumers of the goods concerned, it might be more difficult in practice to establish distinctiveness in relation to a shape of product mark than a word or figurative trade mark. The judge also

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

Stanley Lai
Tel: +65 6890 7883
stanley.lai@allenandgledhill.com

Low Pei Lin
Tel: +65 6890 7516
low.peilin@allenandgledhill.com

Elaine Tan
Tel: +65 6890 7507
elaine.tan@allenandgledhill.com

commented that the rights of trade mark holders should not be permitted to either blatantly or subtly develop into disguised monopolies which stifle or stymie the general public interest and welfare.

The court held that the plaintiff's claim failed at the threshold. In addition to finding that the plaintiff's case had failed at the threshold, the learned judge went on to consider several other important issues concerning the invalidation and revocation of a registered trade mark on grounds of non-use. The judge found that the plaintiff had not used the marks "*in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered*" (section 22(2) of the present Act) within the relevant period and ordered that the plaintiff's marks be revoked on grounds of non-use. Further, the judge agreed with the defendants that the plaintiff's marks did not satisfy the definition of a trade mark and was devoid of distinctive character. The judge therefore further ordered that the plaintiff's marks also be invalidated. Having found that the plaintiff's marks were invalid and ought to be revoked, the Judge proceeded to give judgment to the defendants on its counterclaim for groundless threat of infringement proceedings and awarded an injunction and damages to the defendants.

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General

Income tax

Singapore High Court finds loan related expenses to be of a revenue nature and deductible

IA v Comptroller of Income Tax [2005] SGHC 229

The Singapore High Court in the recent case of *IA v Comptroller of Income Tax* had to consider whether certain expenses incurred by a taxpayer to obtain a loan and, subsequently, to fund a repayment of the loan, were revenue in nature and therefore deductible as an expense.

IA was a property development company. It purchased a parcel of land (the "**Land**") for development into a condominium project (the "**Condo Project**") for sale. To finance the purchase of the Land and the development costs of the Condo Project, IA obtained a loan from a syndicate of banks (the "**Syndicated Loan**"). The Syndicated Loan was to be repaid 48 months from the date of first drawdown or 30 June 1997, whichever was earlier, but there was provision to allow early repayment.

In addition to the interest payable under the Syndicated Loan, IA also incurred borrowing expenses in connection with the Syndicated Loan (the "**Borrowing Expenses**") comprising underwriting fee, agency fee, facility fee, solicitors' fee and property valuer's fee.

As at 30 September 1994, IA had revenue receipts amounting to approximately S\$170 million from progress payments made by purchasers of the apartments in the Condo Project. This sum, which was more than sufficient to repay the entire outstanding amount under the Syndicated Loan, was quarantined in the Project Account for the Condo Project (the "**Project Account**") as required under the Housing Developers (Project Account) Rules. At that time, it could only be withdrawn if IA furnished a bank guarantee to the Urban Redevelopment Authority (the "**URA**") for an amount equivalent to the amount to be withdrawn.

IA obtained two bank guarantees for an aggregate sum of S\$100 million to secure the release of S\$100 million from the Project Account which was used to pay the Syndicated Loan earlier than the due date for payment. This released IA from its obligation to pay substantial interest under the loan.

As the Syndicated Loan was repaid on a date earlier than the next interest payment date, IA incurred a prepayment penalty (the “**Prepayment Penalty**”).

In order to obtain the bank guarantees, IA incurred expenses (the “**Guarantee Expenses**”) comprising bank commission, agency fees, and solicitors’ fees.

IA claimed deductions under section 14(1) of the Income Tax Act (the “**ITA**”) for the Borrowing Expenses, the Prepayment Penalty, and the Guarantee Expenses (collectively, the “**Relevant Expenses**”) against its taxable income for certain years of assessment. The claims were disallowed by the Comptroller of Income Tax (the “**CIT**”) who took the view that the Relevant Expenses were capital in nature and therefore not deductible. IA then appealed to the Income Tax Board of Review (the “**Board**”), which dismissed IA’s appeals. IA then appealed to the High Court.

Relevant provisions in the ITA

The provisions in the ITA which were relevant were sections 10(1)(a), 14(1)(a) and 15(1)(c).

Section 10(1)(a) of the ITA imposes income tax upon the income of any person accruing in, or derived from Singapore, or received in Singapore, from outside Singapore in respect of gains or profits from any trade, business, profession or vocation.

Section 14(1)(a) of the ITA provides that, for the purpose of ascertaining the income of any person, there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of income, including any sum payable by way of interest upon any money borrowed by that person where the Comptroller is satisfied that the interest was payable on capital employed in acquiring the income.

Section 15(1)(c) of the ITA provides that, for the purpose of ascertaining the income of any person, no deduction shall be allowed in respect of any capital withdrawn or any sum employed or intended to be employed as capital except as provided in section 14(1)(h).

The Borrowing Expenses

It was not disputed by the CIT that the Land and the apartments of the Condo Project formed part of IA’s trading stock.

The Board said that it was not in dispute that the Syndicated Loan was incurred in the production of income and that, therefore, the Borrowing Expenses were “wholly and exclusively incurred” in acquiring the income under section 14(1) of the ITA. The issue was whether the Borrowing Expenses were prohibited from deduction under section 15(1)(c).

Woo Bih Li J was of the view that under the ITA, interest is not treated as an exception to section 15(1)(c). Instead, it is treated as a specific illustration of outgoings and expenses mentioned in section 14(1). Indeed, the learned judge pointed out that under section 14(1)(a), interest is referred to as interest “payable on capital employed in acquiring the income”. Therefore, interest payable on such capital cannot be the capital employed which is

referred to in section 15(1)(c). Accordingly, Woo Bih Li J took the view that section 15(1)(c) applies only to the principal loan itself. It followed that none of the Relevant Expenses was caught under section 15(1)(c).

Although the finding that none of the Relevant Expenses was caught under section 15(1)(c) was conclusive of the issues in this case, in view of the importance of the issue, the court went on to consider whether or not the Relevant Expenses were of a revenue nature.

In the court's view, the true purpose of the Syndicated Loan was to acquire the Land and also to pay for part of the development costs. The loan was used as such. The CIT had accepted that the Land and the apartments were part of IA's trading stock. Therefore, it was not open to the Board to treat the Land as something else other than trading stock. The loan was an integral part of the profit-earning activities of IA. The Land was acquired not as an enduring asset to be kept in IA's possession but to be sold as part of common property with the apartments.

As the purpose of the Syndicated Loan was revenue in nature, the Borrowing Expenses were also revenue in nature and are deductible under section 14(1) of the ITA.

Although IA had developed one project only, the court was of the view that the absence of recurrence of the loan was not determinative. The nature of a property developer's business is such that a loan to it is not likely to be temporary but for a number of years. Further, the fact that the loan enlarged IA's financial capacity to undertake a bigger project or that the loan was of an amount larger than its capital was not determinative. It did not make a material difference if the amount of the loan was less than IA's capital.

Prepayment Penalty

In view of the conclusion that the purpose of the Syndicated Loan was revenue in nature, the court held that the Prepayment Penalty was also revenue in nature. There was a loan to be repaid and that loan was needed to purchase the Land and pay part of the development costs. The loan attracted the recurring liability to pay interest. The Prepayment Penalty was incurred to avoid paying further interest and was therefore deductible under section 14(1) of the ITA.

Guarantee Expenses

In relation to the Guarantee Expenses, the court noted that it was not disputed that IA would have used the progress payments from the sale of apartments to pay the Syndicated Loan directly but for the statutory requirement that such proceeds have to be deposited into a project account. In order to obtain the release of S\$100 million from the progress payments, IA obtained bank guarantees for an equivalent amount. In so doing, IA incurred the Guarantee Expenses.

In the court's view, while it was true that there was, strictly speaking, no second loan as such in the present case, the bank guarantees nevertheless constituted a second facility. They amounted to a refinancing which enabled the release of funds to pay the Syndicated Loan. The main components of the Guarantee Expenses were based on interest calculations as well. Accordingly, as the learned judge had concluded that the purpose of the Syndicated Loan was revenue in nature as it was to acquire trading stock, he was also of the view that the Guarantee Expenses were deductible under section 14(1) of the ITA.

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

Nand Singh Gandhi
Tel: +65 6890 7838
nand.gandhi@allenandgledhill.com

Yeoh Lian Chuan
Tel: +65 6890 7720
yeoh.lianchuan@allenandgledhill.com

Conclusion

In the circumstances, Woo Bih Li J allowed the appeal of IA in respect of the Borrowing Expenses, the Prepayment Penalty, and the Guarantee Expenses, all of which were deductible under section 14(1) of the ITA.

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News

Allen & Gledhill advised on FinanceAsia award-winning deals

FinanceAsia, a leading financial markets magazine in Asia, announced the winners of the *FinanceAsia* best deal awards for 2005 in December last year. Two deals which Allen & Gledhill was involved in won the *FinanceAsia* best deal awards. They are Hongkong Land's S\$700 million bond for the Best Local Currency Bond award and Colony Capital's US\$700 million stapled financing for the Best Structured Loan award. The latter was also named the Best Singapore Deal.

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Singapore Telecommunications Limited divestment of Singapore Post Limited shares

Singapore Telecommunications Limited ("**SingTel**") sold 95 million ordinary shares in the capital of Singapore Post Limited ("**SingPost**") for approximately S\$105 million. Following the sale, SingTel's interest in SingPost has been reduced from 30.85 per cent. to 25.87 per cent.

Advising SingTel are Allen & Gledhill Partners Lucien Wong, Steven Lo and Prawiro Widjaja.

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Acquisition of MCL Land Limited

HKL (Morpheus) Pte Ltd ("**HKL**") has made a voluntary conditional cash offer for all the ordinary stock units in the capital of MCL Land Limited ("**MCL Land**"). The making of the offer was conditional on the passing of a resolution by the shareholders of Jardine Cycle & Carriage Limited ("**JC&C**") at an extraordinary general meeting of JC&C to approve the pro-rata distribution of all stock units held by JC&C to its shareholders through a dividend in specie. Following the completion of the dividend, JC&C will no longer hold any MCL Land stock units.

Allen & Gledhill advised HKL on the acquisition of MCL Land and JC&C on the dividend. The Allen & Gledhill lawyers involved are Partners Lim Mei and Christine Chan and Senior Associates Koh Shang Yun and Hilary Low.

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Acquisition and subsequent disposal of shares in Del Monte Pacific Limited

MCI, Inc. (“MCI”), a wholly-owned subsidiary of Macondray & Co, Inc., exercised its pre-emption rights and accepted an offer from Del Monte Holdings Limited (“DMH”) to purchase all of DMH’s 310,772,467 shares in Del Monte Pacific Limited (“DMPL”) representing approximately 28.73 per cent. of the issued share capital of DMPL as at 30 September 2005 for an aggregate purchase price of approximately US\$118.65 million. On 2 December 2005, MCI exercised its put option to require NutriAsia Pacific Limited (“NPL”) to purchase from MCI an aggregate of 538,240,429 shares in DMPL (including the 310,772,467 shares in DMPL purchased from DMH on 1 December 2005), representing approximately 49.76 per cent. of the issued share capital of DMPL as at 30 September 2005 for an aggregate purchase price of approximately US\$206.5 million.

Allen & Gledhill advised MCI on the acquisition of DMPL shares from DMH and the subsequent disposal of MCI’s shares in DMPL to NPL. The Allen & Gledhill lawyers involved are Partners Prawiro Widjaja and Tan Jessie and Senior Associate Elaine Ho.

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Takeover offer of Del Monte Pacific Limited

Following the acquisition of 538,240,429 shares in Del Monte Pacific Limited (“DMPL”) from MCI, Inc, NutriAsia Pacific Limited was required to make a mandatory conditional cash offer for all the shares in DMPL it does not own, control or agree to acquire, pursuant to the Singapore Code on Take-overs and Mergers.

Advised DMPL are Allen & Gledhill Partner Lim Mei and Senior Associates Koh Shang Yun and Hilary Low.

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Contact Partners

Managing Partner	Lucien Wong	6890 7702	lucien.wong@allenandgledhill.com
Corporate & Commercial	Christine Chan Christian Chin Sharmini Chitran Michele Foo Su Mei Lee Kim Shin Sophie Lim Pauline Ng Yoke Ping Vemala Rajamanickam Patricia Seet Steven Seow Daren Shiau Tan Su May Tan Wee Meng Melissa Anne Teo Tham Kok Leong Kelvin Wong Wilson Wong Yap Lune Teng Richard Young	6890 7647 6890 7616 6890 7600 6890 7614 6890 7699 6890 7696 6890 7641 6890 7645 6890 7650 6890 7610 6890 7612 6890 7606 6890 7518 6890 7608 6890 7526 6890 7644 6890 7529 6890 7665 6890 7635	christine.chan@allenandgledhill.com christian.chin@allenandgledhill.com sharmini@allenandgledhill.com michele.foo@allenandgledhill.com lee.kimshin@allenandgledhill.com sophie.lim@allenandgledhill.com pauline.ng@allenandgledhill.com vemala.raja@allenandgledhill.com patricia.seet@allenandgledhill.com steven.seow@allenandgledhill.com daren.shiau@allenandgledhill.com tan.sumay@allenandgledhill.com tan.weemeng@allenandgledhill.com melissaanne.teo@allenandgledhill.com tham.kokleong@allenandgledhill.com kelvin.wong@allenandgledhill.com wilson.wong@allenandgledhill.com yap.luneteng@allenandgledhill.com richard.young@allenandgledhill.com
Corporate Real Estate	Noraini Aziz Penny Goh Ho Kin San Hoo Sheau Farn Margaret Soh Eudora Tan Ernest Teo Lyn Wee	6890 7910 6890 7901 6890 7928 6890 7941 6890 7912 6890 7971 6890 7967 6890 7919	noraini@allenandgledhill.com penny.goh@allenandgledhill.com ho.kinsan@allenandgledhill.com hoo.sheaufarn@allenandgledhill.com margaret.soh@allenandgledhill.com eudora.tan@allenandgledhill.com ernest.teo@allenandgledhill.com lyn.wee@allenandgledhill.com
Financial Services	Au Huey Ling Bin Wern Sern Chua Bor Jern Margaret Chin Leonard Ching Foong Yuen Ping Nand Singh Gandhi Mark Hudspeth Christopher Koh Jerry Koh Kok Chee Wai Gina Lee-Wan Andrew M. Lim Lim Mei Lim Pek Bur Steven Lo Long Jek Aun Emily Low Francis Mok Jafe Ng Christina Ong Eugene Ooi Harold Or Tan Jessie Tan Tze Gay Karen Tiah Prawiro Widjaja Lucien Wong Yeo Wico Yeoh Lian Chuan	6890 7749 6890 7624 6890 7772 6890 7718 6890 7730 6890 7622 6890 7838 6890 7722 6890 7768 6890 7770 6890 7724 6890 7582 6890 7706 6890 7732 6890 7096 6890 7756 6890 7714 6890 7736 6890 7786 6890 7731 6890 7700 6890 7708 6890 7566 6890 7823 6890 7712 6890 7741 6890 7717 6890 7702 6890 7775 6890 7720	au.hueyling@allenandgledhill.com bin.wernsern@allenandgledhill.com chua.borjern@allenandgledhill.com margaret.chin@allenandgledhill.com leonard.ching@allenandgledhill.com foong.yuenping@allenandgledhill.com nand.gandhi@allenandgledhill.com mark.hudspeth@allenandgledhill.com christopher.koh@allenandgledhill.com jerry.koh@allenandgledhill.com kok.cheewai@allenandgledhill.com gina.leewan@allenandgledhill.com andrew.lim@allenandgledhill.com lim.mei@allenandgledhill.com lim.pekbur@allenandgledhill.com steven.lo@allenandgledhill.com long.jekaun@allenandgledhill.com emily.low@allenandgledhill.com francis.mok@allenandgledhill.com jafe.ng@allenandgledhill.com christina.ong@allenandgledhill.com eugene.ooi@allenandgledhill.com harold.or@allenandgledhill.com jessie.tan@allenandgledhill.com tan.tzegay@allenandgledhill.com karen.tiah@allenandgledhill.com prawiro@allenandgledhill.com lucien.wong@allenandgledhill.com yeo.wico@allenandgledhill.com yeoh.lianchuan@allenandgledhill.com
Intellectual Property & Technology	Jason Chan Stanley Lai Low Pei Lin Jo-Ann See Elaine Tan Winnie Tham	6890 7514 6890 7883 6890 7516 6890 7511 6890 7507 6890 7527	jason.chan@allenandgledhill.com stanley.lai@allenandgledhill.com low.peilin@allenandgledhill.com joann.see@allenandgledhill.com elaine.tan@allenandgledhill.com winnie.tham@allenandgledhill.com
Litigation & Dispute Resolution	Ang Cheng Hock Vivian Ang Muthu Arusu Andrew Chan Chan Hian Young Christopher Daniel Ho Chien Mien Ashok Kumar Lim Wee Ming Bernice Loo Mak Wei Munn Suresh Sukumaran Nair William Ong Mark Benjamin Ortega Kenneth Jerald Pereira Ronnie Quek K. Shanmugam, SC Corina Song Christopher Tan Edward Tiong Edwin Tong Leona Wong Kenny Yap Yap Yin Soon Andrew Yeo Andy Yeo	6890 7832 6890 7564 6890 7865 6890 7556 6890 7813 6890 7888 6890 7502 6890 7873 6890 7504 6890 7868 6890 7885 6890 7897 6890 7894 6890 7568 6890 7815 6890 7639 6890 7805 6890 7570 6890 7845 6890 7887 6890 7867 6890 7849 6890 7572 6890 7598 6890 7833 6890 7850	ang.chenghock@allenandgledhill.com vivian.ang@allenandgledhill.com muthu.arusu@allenandgledhill.com andrew.chan@allenandgledhill.com chan.hianyoung@allenandgledhill.com christopherand.daniel@allenandgledhill.com ho.chienmien@allenandgledhill.com ashok.kumar@allenandgledhill.com lim.weeming@allenandgledhill.com bernice.loo@allenandgledhill.com mak.weimunn@allenandgledhill.com suresh.nair@allenandgledhill.com william.ong@allenandgledhill.com mark.ortega@allenandgledhill.com kenneth@allenandgledhill.com ronnie.quek@allenandgledhill.com shanmugam@allenandgledhill.com corina.song@allenandgledhill.com christopher.tan@allenandgledhill.com edward.tiong@allenandgledhill.com edwin.tong@allenandgledhill.com leona.wong@allenandgledhill.com kenny.yap@allenandgledhill.com yap.yinsoon@allenandgledhill.com andy.yeo@allenandgledhill.com andrew.yeo@allenandgledhill.com
Knowledge Management & Communications	Margaret Chew	6890 7500	margaret.chew@allenandgledhill.com

Allen & Gledhill
One Marina Boulevard #28-00
Singapore 018989

Telephone	+65 6890 7188
Facsimile	+65 6327 3800
EFS mailbox Id	ale7001
	ale7003
E-mail	inquiries@allenandgledhill.com
Website	www.allenandgledhill.com
