

Legal Bulletin

A summary of developments in the law

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Benefits of using the LP structure and establishing a LP

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Articles

Limited Partnerships Act 2008 commences operation on 4 May 2009

The Limited Partnerships Act 2008 (the “**Act**”) and the subsidiary legislation made under the Act commenced operation on 4 May 2009. The Act introduces a new business vehicle in Singapore - the limited partnership. A limited partnership (“**LP**”) is a structure consisting of at least one general partner and one or more limited partners. A general partner is liable for all debts and obligations of the LP incurred while he is a general partner of the LP. A limited partner will not be liable for the debts and obligations of the LP beyond the amount of his agreed contribution, solely by reason of his being a limited partner. An individual or a corporation may be a general partner. While limited partners enjoy limited liabilities, they are prohibited from taking part in the management of the LP and will not have power to bind the LP.

Please [click here](#) to view the full text of the Act and the subsidiary legislation made pursuant to the Act, which are also available on the ACRA website www.acra.gov.sg.

For more information about LPs on the ACRA website www.acra.gov.sg, please [click here](#).

An article about the Limited Partnerships Act 2008 when it was passed in Parliament was featured in a previous issue of the Legal Bulletin (November 2008). To read the article entitled “*Parliament passes Limited Partnerships Bill 2008: New business vehicle*” please [click here](#).

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Bankruptcy (Amendment) Act 2009 in force on 18 May 2009: Implementation of Debt Repayment Scheme

The Bankruptcy (Amendment) Act 2009 (the “**Amendment Act**”), Bankruptcy (Amendment) Rules 2009 and the Bankruptcy (Debt Repayment Scheme) Rules 2009 have come into operation on 18 May 2009, implementing the Debt Repayment Scheme (the “**DRS**”) under the Bankruptcy Act.

As a matter of background, the Amendment Act which sets out the DRS framework, was passed in Parliament on 19 January 2009 and gazetted on 24 February 2009, following two public consultation exercises conducted by the Ministry of Law (the “**MinLaw**”) and the Insolvency & Public Trustee’s Office (the “**IPTO**”) in 2007 and 2008.

Essentially, the DRS provides debtors an opportunity to avoid bankruptcy by repaying their debts in accordance with the DRS. The DRS will be applicable to debtors faced with bankruptcy proceedings with unsecured debts not exceeding S\$100,000 (excluding contingent liability).

Instead of making a bankruptcy order pursuant to a bankruptcy application, the court will adjourn the application for a period of six months or such other period as the court may direct and refer the matter to the Official Assignee (the “**OA**”) to determine whether a debtor is suitable for a DRS, provided the following qualifying criteria are satisfied:

- The debt or the aggregate of the debts must not exceed S\$100,000 or such other amount as may be prescribed;
- The debtor is not an undischarged bankrupt, and has not been a bankrupt at any time within the period of five years immediately preceding the date on which the bankruptcy application is made;
- A voluntary arrangement in respect of the debtor is not in effect, and was not in effect at any time within the period of five years immediately preceding the date on which the bankruptcy application is made;
- The debtor is not subject to any DRS, and has not been subject to any such DRS at any time within the period of five years immediately preceding the date on which the bankruptcy application is made; and
- The debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act, or a partner in a limited liability partnership.

Once a DRS commences during the period of adjournment of a bankruptcy application, the bankruptcy application is deemed withdrawn from the effective date of the DRS. The OA will administer the DRS and may charge such fees as may be prescribed.

During the period beginning with the effective date of a DRS and ending with the date on which the DRS ceases, no creditor will be allowed to commence or proceed with any action against the debtor for any outstanding debt, except with the court's permission. Further, a creditor is not entitled to retain the benefit of any execution against the goods or land of a debtor to whom a DRS applies, or attachment of any debt due or property belonging to such debtor, unless the execution or attachment is completed before the effective date of the DRS. However, the moratorium does not affect a secured creditor's right to deal with his security.

The IPTO has set up a designated website www.drs.gov.sg which provides useful information about the DRS. Further, the following reference materials are available from the MinLaw website www.minlaw.gov.sg:

- [Media release dated 5 May 2009](#)
- [DRS Press Release Annexes](#)

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

- [Ministry of Law and Insolvency & Public Trustee's Office consult on proposed debt repayment scheme](#) (April 2007)
- [Ministry of Law issues response to feedback received on public consultation on proposed debt repayment scheme](#) (February 2008)
- [MinLaw and Insolvency & Public Trustee's Office consult on draft Bankruptcy \(Amendment\) Bill: Introducing the Debt Repayment Scheme](#) (September 2008)
- [Bankruptcy \(Amendment\) Bill 2008 tabled for first reading: Implementation of Debt Repayment Scheme](#) (November 2008)
- [Bankruptcy \(Amendment\) Bill 2009 passed in Parliament: Implementation of Debt Repayment Scheme](#) (January 2009)

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Business Registration (Amendment) Act 2009 in force on 1 May 2009: Registration of professionals under Business Registration Act and facilitation of enforcement of injunctions granted under Trade Marks Act

The Business Registration (Amendment) Act 2009 (the “**Amendment Act**”) has come into force on 1 May 2009.

The Amendment Act amends the Business Registration Act (the “**Act**”) to:

- empower the Minister for Finance (the “**Minister**”) to register certain professionals or professional firms which are currently exempted from registration; and
- facilitate the enforcement of injunctions granted under the Trade Marks Act.

Registration of professionals and professional firms

Section 4(1)(g) of the Act exempts “any person carrying on any business consisting solely of the exercise of any profession which under the provisions of any written law can be exercised only by those who possess certain qualifications prescribed by the written law and whose names are registered or otherwise recorded in the manner prescribed by any written law” from the purview of the Act.

As a result, before the Amendment Act came into force, professional practices (e.g. of lawyers, doctors and architects) that are partnerships or sole proprietorships were not required to register with the Accounting and Corporate Regulatory Authority (the “**ACRA**”). On the other hand, professional practices which are set up as corporations or limited liability partnerships are required to register with the ACRA under the Companies Act and Limited Liability Partnerships Act respectively.

The Amendment Act amended section 4 of the Act by inserting new sections 4(1A) and 4(1B) to empower the Minister to register certain professionals or professional firms which are currently exempted from registration. Pursuant to new section 4(1A), the Minister issued the Business Registration (Application of Act to Exercise of Profession) Regulations 2009 (the “**Regulations**”) which also came into force on 1 May 2009.

The Regulations provide that section 4(1)(g) of the Act shall not apply to the following:

- an individual who is the sole proprietor or a partner of a Singapore law practice;
- a firm which is a Singapore law practice;
- an individual who is, or corporation that is, the sole proprietor or a partner of a foreign law practice that provides any legal services in Singapore; or
- a firm which is a foreign law practice that provides any legal services in Singapore;

- an individual who is, or a corporation which is, a partner of a Joint Law Venture; or
- a firm which is a Joint Law Venture.

Details for the implementation of the changes are set out in the Regulations.

Enforcement of injunctions under the Trade Marks Act

The Amendment Act also amended section 13 of the Act to empower the Registrar of Businesses to direct a person who has been registered to carry on business under a name to change that name if the use of the name is restrained by an injunction granted under the Trade Marks Act.

Earlier stages of this development was covered in a previous issue of the Allen & Gledhill Legal Bulletin (January 2009). To read the article entitled "*Business Registration (Amendment) Bill 2009 passed in Parliament: Registration of professionals under Business Registration Act and facilitation of enforcement of injunctions granted under Trade Marks Act*", please [click here](#).

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MOM issues updated guidelines on managing excess manpower to further help companies lower costs and save jobs

On 17 May 2009, the MOM issued a press release announcing the release of updated Tripartite Guidelines on Managing Excess Manpower (the "**Guidelines**") by the Ministry of Manpower (the "**MOM**"), the Singapore National Employers Federation (the "**SNEF**") and the National Trades Union Congress (the "**NTUC**").

The Guidelines have been revised as the economic situation has changed considerably since the guidelines were first issued in November 2008, and the downturn is expected to be prolonged. The updated guidelines contain additional recommendations and incorporate feedback from consultations with industries and unions over the last few months.

The Guidelines strongly encourage companies to implement alternative ways to manage their excess manpower and consider retrenchment only as a last resort.

Key refinements to the Guidelines include:

- Updates to schemes such as Jobs Credits, SPUR (Skills Programme for Upgrading and Resilience) and SPUR-related schemes such as Professional Skills Programme (PSP).
- Refinements to recommendations on a shorter work week, and flexible work arrangements. In relation to a shorter work week, employers are encouraged to implement the reduction in work week such that it does not exceed 3 days (previously 2 days) in a week and does not last more than 3 months (previously 2 months) at any one instance subject to review.

- Recommendation for companies which have not implemented the Monthly Variable Component (the “**MVC**”), to convert part of the existing basic salary into MVC, when they effect wage cuts.
- Guidelines on other cost cutting measures such as no pay leave. The Guidelines recognise that companies may have to consider implementing no pay leave in order to save jobs as the downturn prolongs. In implementing no pay leave:
 - Companies should have considered / implemented other measures, and after consulting workers and unions (if the company is unionised);
 - Companies should recognise its impact on rank-and-file workers in determining the extent and duration of the measure;
 - Senior management to lead by example, by accepting earlier and/or deeper cuts in cost cutting measures;
 - If business conditions warrant it, companies could apply no pay leave in conjunction with other cost cutting measures.

During the no pay leave period, management are encouraged to send the affected workers on SPUR training. This will help upgrade workers’ skills and employability for the benefit of both the workers and the company in the long run.

- If retrenchment is inevitable and the retrenchment exercise follows shortly after a wage cut, the salary prior to the wage cut should be used to compute the retrenchment benefit, so that wage cuts are not implemented just to reduce retrenchment payments.

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Please [click here](#) to read the updated Guidelines.

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

Both resources are available at the MOM website at <http://www.mom.gov.sg>

An article discussing the Guidelines when they were first issued in November 2008 was featured in a previous issue of the Allen & Gledhill Legal Bulletin. To read the article entitled “*Ministry of Manpower and Tripartite Partners issue Guidelines on Managing Excess Manpower*”, please [click here](#).

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MAS public consultation on proposed definitions of “carrying on insurance business” and “soliciting insurance business” in Insurance Act

From 11 May 2009 to 12 June 2009, the Monetary Authority of Singapore (the “MAS”) is conducting a public consultation and inviting views and comments on the proposed definitions of “carrying on insurance business” and “soliciting insurance business” for the Insurance Act as set out in the consultation paper.

Definition of “carrying on insurance business”

Currently, section 2(5) of the Insurance Act provides that references in the Insurance Act to the carrying on of insurance business in Singapore mean “the receipt of proposals for, or issuing of, policies in Singapore or the collection or receipt in Singapore of premiums on insurance policies”. The MAS is proposing changing the definition of “carrying on insurance business” in recognition of the fact that the business model of insurance business has changed over the years with increased fragmentation in the insurance value chain such that auxiliary service providers may be caught within the definition even though there is no assumption of risk by these entities. Conversely, an entity which has assumed risk may fall beyond the definition if it does not carry out any of the three activities comprising carrying on insurance business.

To better reflect its policy intent, the MAS proposes to revise the existing definition by adopting the common law principle of the assumption of insurance risk or the undertaking of insurance liability in defining “carrying on insurance business”. The following must be present in order for an activity to be considered “carrying on insurance business” under common law:

- (a) The insured becomes entitled to something upon the occurrence of an event that the insurer is liable for;
- (b) The event must be one that involves some element of uncertainty;
- (c) The insured must have an insurable interest in the subject matter of the contract; and
- (d) The risk must be a pure risk.

In relation to insurable interest, the MAS will conduct a separate review on the requirement for insurable interest in relation to life insurance policies.

The MAS recognises that the proposed definition of “carrying on insurance business” may capture activities that pose no or little regulatory risk and therefore would not be necessary for the MAS to regulate. The MAS proposes that these activities be carved-out from the coverage of the Insurance Act.

The MAS will also be reviewing the definitions of “insurance agent”, “insurance broker” and “insurance intermediary” in the Insurance Act as these are currently linked to the definition of “carrying on insurance business”. In this regard, the MAS will be reviewing these definitions after the proposed amendments to the definition of “carrying on insurance business” is finalised and will conduct a public consultation on this at a later date.

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Definition of “soliciting insurance business”

The MAS is further proposing to define “solicitation” in the Insurance Act. Currently, the Insurance Act is silent on what exactly constitutes soliciting insurance business as well as the extent of solicitation permitted under the Act. The MAS proposes to define “solicitation” as the act of offering, inviting or issuing any advertisement containing any offer or invitation to the public or any section of the public in Singapore with regard to entering into an agreement which constitutes as carrying on insurance business. A person whose business is to publish or arrange for the publication of advertisements will be specifically carved out from the Insurance Act.

Please [click here](#) for the consultation paper released by the MAS on 11 May 2009, which is available from the MAS website www.mas.gov.sg

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Cases

Corporate & financial services

Singapore High Court declines piercing corporate veil to hold sole shareholder/director liable for company’s repudiation of contract

Sitt Tatt Bhd v Goh Tai Hock [2009] 2 SLR 44

In *Sitt Tatt Bhd v Goh Tai Hock* [2009] 2 SLR 44, the Singapore High Court declined to pierce the corporate veil to hold a sole shareholder/director liable for a company’s repudiation of contract.

Facts of the case

Prime (an Australian company) signed a memorandum of understanding with KTR (an Indonesian company) in relation to a project to exploit and produce oil and gas from wells located in East Kalimantan, Indonesia (the “**Project**”). The defendant, who was the sole director and sole shareholder of Prime approached the plaintiff company in connection with the Project because Prime and KTR required funding for the Project.

In July 2005, KTR, Prime and the plaintiff entered into a Tripartite Joint Venture Agreement (“**TJVA**”) to record the parties’ intention to enter into a further joint venture agreement (the “**Final JVA**”) to define their complete roles and responsibilities in the Project.

The parties had different versions of the purpose of an upfront payment of US\$1 million remitted by the plaintiff to the defendant’s personal account in Singapore. The defendant claimed that the executive deputy chairman of the plaintiff agreed that Prime would receive a sign-on fee if it succeeded in getting the plaintiff involved in the Project by signing agreements with KTR, whereas the plaintiff claimed that the sum was not a sign-on fee but was advanced for purposes connected with the Project with a view to advancing the Project.

The Final JVA was signed in August 2005. It provided for, *inter alia*, the incorporation of a joint venture company (the “**JV Company**”). Thereafter, problems arose. First, the parties could not agree on the third-party expert or technical partner. The plaintiff signed a letter of intent with Asian Oil Company without informing Prime. Secondly, the JV Company was not set up because there were disputes as to how much paid-up capital was required and the plaintiff who was to fund the establishment of the JV Company would not provide the necessary capital until these disputes were resolved. In February 2006, Prime withdrew from the Final JVA. The plaintiff wrote to Prime and asserted that the latter’s withdrawal from the Project amounted to abandoning the Project in its entirety and it further demanded the immediate refund of the US\$1 million payment made to Prime. Prime did not repay the money and this action was commenced against the defendant.

Causes of action

The plaintiff pleaded that on the basis of the parties’ conduct (negotiations which resulted in the plaintiff paying the defendant an upfront payment of US\$1 million to secure the Project), it was to be inferred that a contract parallel to the TJVA and Final JVA came into being between itself and the defendant pursuant to which the defendant was legally obliged to use his best efforts to make Prime fulfill its obligations under the Final JVA.

Under the claim in trust, the plaintiff argued that the defendant received the sum of US\$1 million as an agent of Prime for purposes of advancing the Project. The plaintiff claimed that defendant had breached the trust and was liable to the plaintiff for the sum of US\$350,511.71 (which was the balance in the defendant’s bank account) after Prime withdrew from the Project.

Alternatively, the plaintiff argued that the defendant was liable for breach of trust as the *alter ego* of Prime. It argued that in the circumstances of the case, it would be appropriate for the court to pierce Prime’s corporate veil and hold the defendant personally liable for Prime’s final repudiation of the Final JVA.

Piercing the corporate veil

The court noted that from time to time the courts have ignored the corporate separate personality claim and have ascribed the companies’ rights and/or liabilities to another person. This has been referred to as lifting or piercing the corporate veil but there are only limited circumstances in which this course can be taken.

The general proposition in law is that parties are entitled to protect themselves by creating companies even if these are effectively one man companies and that those dealing with such companies can protect themselves by requiring personal guarantees from the party who runs the companies.

In this case, all parties knew that the defendant was the controlling mind behind Prime. They also knew that they were contracting with Prime and not the defendant. The mere fact that he held all the shares in Prime would not make him liable for Prime’s debts. There was no assertion of any impropriety in the defendant or Prime’s dealings and Prime had not been used by the defendant to further any improper purpose. Prime’s venture with the plaintiff and KTR was a *bona fide* commercial transaction. Thus there was no evidence that Prime had been created as a sham or a façade to shield the defendant from responsibility for nefarious transactions. In these

circumstances, whilst the plaintiff might have been aggrieved that its contractual recourse was only against Prime, a company with few assets, the court could not hold the defendant personally liable for that breach simply on the basis that he being the only director of Prime was instrumental in Prime's breach of contract.

The contractual claim

The court held that the circumstances that existed in this case did not provide a basis to imply that a parallel contract existed between KTR, the plaintiff and the defendant personally. The plaintiff had only contracted with Prime and KTR and those contracts were documented and the terms that each party had to abide by were freely expressed in the documents. There was no void that needed to be filled by an implied contract.

Subsequent events did not disclose any evidence of a collateral contract either. All correspondence sent by or on behalf of the plaintiff and by or on behalf of KTR regarding the Project were addressed to Prime and not to the defendant. None of the plaintiff's internal documents made any reference to a collateral contract or understanding that the defendant had undertaken personal obligations.

The claim in trust

After taking all evidence into account, the court accepted that the plaintiff paid the US\$1 million to Prime for it to be used to advance the Project and not simply as a sign-on fee which was due upon KTR signing the TJVA. The court therefore accepted that the defendant was aware that the US\$1 million in his possession was only to be used to advance the Project and that he was not entitled to utilise it for his or Prime's benefit.

Alternatively, the court held since the fee was paid for a specific purpose, when that purpose failed, the balance of the money would be held on a resulting trust for the plaintiff.

The court also held that Prime's unreasonable conduct in refusing to agree to the letter of intent with Asian Oil Company and its subsequent unilateral withdrawal from the Final JVA had undermined the entire Project and eventually brought it to an end. There was nothing in the Final JVA which prevented the joint venture partners from signing a non-binding letter of intent with Asian Oil Company pending the formation of the JV Company. Additionally, the plaintiff and KTR were not in breach of the Final JVA because the JV Company was not set up or because the plaintiff had not provided funding for the capitalisation of the JV Company.

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Singapore High Court finds oppression and orders majority shareholders to buy up shares of minority shareholder

Tan Choon Yong v Goh Jon Keat & Ors [2009] SGHC 106

In *Tan Choon Yong v Goh Jon Keat & Ors* [2009] SGHC 106, the Singapore High Court held that it has an unfettered discretion under section 216 of the Companies Act ("**the Act**") to make such orders as it thinks fit to bring to an end or to remedy the matters complained of by the petitioners if there had

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been oppression. In this case, the court made an order for the defendants to purchase the shares of the plaintiff, failing which the company was to be wound up.

Facts of the case

The plaintiff, Tan Choon Yong (“**Dr Tan**”) was the managing director of a company when the first defendant, Goh Jon Keat (“**Mr Goh**”) and the husband of the second defendant, Ms Tan Hui Kiang (“**Ms Tan**”) interested him in joining a company to be set up to provide a comprehensive range of consultancy services in the engineering and construction industries.

Alphomega Research Group Ltd (the “**Company**”) was eventually set up and Dr Tan was appointed its Chief Executive Officer (“**CEO**”). The board of directors at that time consisted of Dr Tan, his wife, Ms Perlyn Sim Sock Lee (“**Ms Sim**”), Mr Goh and Ms Tan. Dr Tan and Ms Sim held 25.3 per cent. and 0.8 per cent. of the shares of the Company respectively. Mr Goh and Ms Tan held the remaining 50.6 per cent. of the shares of the Company.

To raise capital for the Company’s business, the Company applied for listing on Phillip Securities’ Over-The-Counter Capital (“**OTC Capital**”) and was listed on OTC Capital.

The Company became dysfunctional within weeks after listing. Although Dr Tan and his specialist team were crucial to the Company’s business, Mr Goh and Ms Tan planned to remove him from the Company. Dr Tan complained that he faced numerous obstructions in running the company. He was denied access to important company accounts and human resources records and despite his repeated requests, the employment contracts that Mr Goh and Ms Tan had allegedly signed with the Company were not shown to him. He was also not given sufficient co-operation to enable him to address OTC Capital’s serious concerns about the manner in which the Company had utilised investors’ funds.

Eventually, Mr Goh and Ms Tan appointed two new directors to garner control of the board. Thereafter, Dr Tan was summarily dismissed as CEO at a board meeting in respect of which the removal of the CEO was not even on the agenda.

At the Company’s annual general meeting chaired by one of the new directors, Dr Tan and Ms Sim were not re-elected as directors even though together they held more than 25 per cent. of the shares of the Company.

Dr Tan claimed to be the victim of oppression by the majority shareholders and directors, including Mr Goh and Ms Tan. Among the remedies sought by Dr Tan under section 216 of the Act was an order that the Company be wound up on just and equitable grounds.

Whether there was oppression

For the purpose of section 216 of the Act, the alleged oppressive act must affect a member in his capacity as a member.

As a guide for determining what is generally considered as oppression or a disregard of minority interests under section 216 of the Act, the court referred to the case of *Re Jermyn Street Turkish Baths Ltd* [1971] 1 WLR 1042 where the English Court of Appeal expressed the view that oppression referred to a situation when the oppressed were being constrained to submit to something which is unfair to them as the result of some overbearing act or attitude on the part of the oppressor.

The court held that the circumstances under which a petitioner became a member of a company may be relevant when determining whether or not there was oppression. Further, the exclusion of a member from the

management of a company in breach of an express or an implied understanding to allow him to so participate in the management would justify relief under section 216.

After taking all relevant circumstances into account, the court found that Dr Tan became a member of the Company with a legitimate expectation that he would be the Company's director and CEO, and the attempts by Mr Goh and Ms Tan to renege on this arrangement without just cause would be regarded as oppressive conduct against him.

The court found that the majority shareholders and directors had abused their voting power to advance their own agenda to the detriment of the Company and its minority shareholders, including Dr Tan, who had been deliberately excluded from the management of the company in contravention of an understanding that he would be allowed to participate in such management. Furthermore, the main object of the Company, which was to provide laboratory testing for the construction industry, had been departed from. In the circumstances, the court found that Dr Tan was entitled to relief under section 216 of the Act.

In the present case, court noted that the trust between the parties had completely broken down. It was also important to note that the Company was no longer in the business of providing consultancy services in the engineering and construction industries, as originally envisaged. The court was of the view that had Dr Tan known that the business he was asked to take charge of would be changed shortly after the listing of the company, he would not have agreed to become a member of the company.

Bearing in mind that a winding-up order should not be made if there are other ways to remedy the situation, the court considered that the best way forward was for Mr Goh and Ms Tan to purchase the shares of Dr Tan at an agreed price or at a price determined by a jointly appointed valuer which was not to take into account any discount for minority shareholdings. If there is no agreement between the parties on the price or on the mechanism and other relevant details for determining the price of the shares within 30 days, the court would order that the company be wound up.

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Dispute resolution

European Court of Justice holds EU courts may not issue anti-suit injunctions in favour of arbitration against another EU court

Allianz SpA and Generali Assicurazioni Generali SpA v West Tankers Inc (C-185/07)

The European Court of Justice in *Allianz SpA and Generali Assicurazioni Generali SpA v West Tankers Inc* (C-185/07) has held that it would be incompatible for a European Union ("EU") court to grant an anti-suit injunction supporting arbitration against another EU court. In the light of this decision, parties to an arbitration agreement, particularly where one of them is based in the EU, should choose their arbitral seat wisely.

Facts of the case

In August 2000, the *Front Conor*, a vessel owned by West Tankers Inc (“**West Tankers**”) and chartered by Erg Petroli SpA (“**Erg**”), collided in Italy with a jetty owned by Erg thereby damaging the jetty. The charterparty was governed by English law and contained a clause providing for arbitration in London. Erg claimed compensation from its insurers Allianz SpA (“**Allianz**”) and Generali Assicurazioni Generali SpA (“**Generali**”) up to the limit of its insurance cover.

The collision spawned three sets of proceedings:

- (a) Erg brought arbitration proceedings in London against West Tankers for the amount not recovered under the insurance covers;
- (b) Allianz and Generali commenced civil proceedings based on their rights in subrogation against West Tankers in the Tribunale di Siracusa (Italy); and
- (c) West Tankers applied to the English High Court for:
 - (i) a declaration that the dispute between itself, Allianz and Generali should be settled by arbitration pursuant to the charterparty; and
 - (ii) an anti-suit injunction restraining Allianz and Generali from pursuing any proceedings other than the London arbitration proceedings thereby requiring the discontinuation of the Italian proceedings (the “**Anti-Suit Injunction**”).

The English High Court granted West Tankers the Anti-Suit Injunction. Allianz and Generali appealed against this decision to the UK House of Lords arguing that the Anti-Suit Injunction was incompatible with Council Regulation (EC) No 44/2001 (the “**EC Regulation**”) on jurisdiction, recognition and enforcement of judgments in civil and commercial matters.

The EC Regulation facilitates the free movement of decisions by providing a complete set of uniform rules on the allocation of jurisdiction between the courts of the EU states, which must trust each other to apply those rules correctly.

While acknowledging that EU courts adopting the anti-suit injunction in support of arbitration would make the “*European Community more competitive vis-à-vis international arbitration centres such as New York, Bermuda and Singapore*”, the House of Lords stayed the proceedings before them and referred to the European Court of Justice (the “**ECJ**”) the question whether the Anti-Suit Injunction granted by the English High Court was compatible with the EC Regulation.

ECJ decision

The ECJ noted that the objective of the EC Regulation is the unification of the rules of conflict of jurisdiction in civil and commercial matters and the free movement of decisions. The ECJ was of the view that the use of an anti-suit injunction to prevent a EU court from resolving a dispute amounted to stripping that court of the power to rule on its own jurisdiction. In its opinion, the EC Regulation did not authorise the jurisdiction of a EU court to be reviewed in another EU state. Hence, it would be incompatible with the EC Regulation for a EU court to grant an order to restrain a person from commencing or continuing proceedings before the courts of another EU state on the ground that such proceedings would be contrary to an arbitration agreement.

Effect of the ECJ decision

By declaring that the national courts in the EU had no power to grant an anti-suit injunction against court proceedings commenced in another EU state in breach of an arbitration agreement, the ECJ effectively took away one of the chief weapons by which parties could enforce their arbitration agreements.

Hence, parties to an arbitration agreement (where one or more of the parties are from a EU state), have to be mindful about the choice of the seat of arbitration. The parties may wish to choose to seat the arbitration in a non-EU State, as the courts of a non-EU State would not be bound by the EC Regulation and restrained from granting an anti-suit injunction. However, the remedies available for the enforcement of arbitration agreements vary from jurisdiction to jurisdiction. The anti-suit injunction may not be available in the chosen jurisdiction and it would be prudent for a party to obtain legal advice from the chosen jurisdiction.

Illustration

The following example illustrates the importance of the location of the seat of arbitration.

Party A is from Italy. Party B is from Spain. They enter into an arbitration agreement for any disputes arising between them to be resolved by arbitration in London under the International Chamber of Commerce (the “**ICC**”) Arbitration Rules of Arbitration. A dispute arises between them. In breach of the arbitration agreement, Party B commences court proceedings in Italy, seeking an injunction to freeze the assets of Party A.

Party A takes steps to commence an arbitration in London pursuant to the arbitration agreement. Party A also applies to the English courts (which would have jurisdiction over the matter since the arbitration is seated in England) to enforce the arbitration agreement. By reason of the ECJ’s ruling, the English courts will not be able to grant an injunction ordering Party B to cease the court proceedings in Italy.

However, if the parties had chosen to seat the arbitration in a non-EU jurisdiction, (such as Singapore), the curial court is not bound by the EC Regulation or the ruling of the ECJ, and would be free grant an anti-suit injunction against the court proceedings in Italy.

ECJ decision considered by English High Court in *National Navigation Co v Endesa Generacion SA*

The effect of the ECJ’s ruling was recently confirmed in the English High Court decision of *National Navigation Co v Endesa Generacion SA* [2009] EWHC 196 (Comm). In that case, a Spanish company, Endesea Generacion SA (“**Endesea**”) arrested a vessel in Spain owned by an Egyptian company, National Navigation Co (“**NNC**”) for an alleged breach of the terms of a bill of lading. Endesea also commenced substantive proceedings in Spain. NNC commenced court proceedings in England first, and then arbitration in London pursuant to an arbitration clause incorporated by reference into the bill of lading. NNC applied to the English High Court for an anti-suit injunction against the proceedings in Spain, but before the matter could be resolved, the ECJ released its ruling in *Allianz SpA and Generali Assicurazioni Generali SpA v West Tankers Inc* (C-185/07). In the light of the ECJ decision, NNC accepted that its application for the anti-suit application had to fail and Justice Gloster noted that this concession was correct.

However, Justice Gloster went on to find that the arbitration clause had been validly incorporated into the bill of lading and made a declaration that the arbitration clause was binding on the parties. Justice Gloster held that the English courts had the jurisdiction to make such a declaration, although it would conflict with the judgment of the Spanish courts.

However, the decision of the English High Court begs the question of how NCC would effectively enforce the declaration - a breach of the declaration would (presumably) not amount to a contempt of the English court, unlike the breach of an anti-suit injunction. If the breach were compensable by damages, there would be the tricky question of whether the Spanish courts would allow NCC to enforce the damages award in Spain (where Endesea was domiciled), when the damages arose out of a declaration which was incompatible with the decisions of a Spanish court.

Arbitration in Singapore - Supportive pro-arbitration system

Singapore's status as an international arbitration hub has grown tremendously in recent years. In 2005, Singapore was the most frequently selected city in Asia for ICC administered arbitration and sixth most frequently selected in the world (behind Paris, Geneva, London, Zurich, New York, in that order). Parties seeking to seat their arbitration in a non-EU State may therefore wish to consider seating the arbitration in Singapore.

The legal framework in Singapore is firmly pro-arbitration. Where it is shown that an international arbitration agreement exists and that the dispute before the courts is covered by the arbitration agreement, it is mandatory under section 6(2) of the Singapore International Arbitration Act for the Singapore courts to grant a stay of those court proceedings. The court also has a duty to direct the parties to proceed to arbitration. The sole burdensome ground upon which a stay application may be resisted is if it can be shown that the arbitration agreement itself is "null and void, inoperative or incapable of being performed".

The Singapore courts are also ready and willing to grant anti-suit injunctions against proceedings commenced in the courts of other jurisdictions where it is clearly established that an arbitration agreement existed and that those proceedings in the foreign court were instituted in breach of the arbitration agreement.

A case that demonstrates the supportive stance of the Singapore courts towards international arbitration in Singapore is the Singapore High Court decision of *WSG Nimbus Pte Ltd v Board Of Control for Cricket in Sri Lanka* [2002] 3 SLR 603. In that case, the Singapore High Court granted an anti-suit injunction against court proceedings commenced in Sri Lanka in breach of an arbitration agreement. In arriving at its decision, the court observed that one major purpose of the Singapore International Arbitration Act is to promote Singapore as an international centre for arbitration by facilitating arbitrations that are held here.

For further information about Singapore as a venue for arbitration, please [click here](#) to read an article entitled "*Uniquely Singapore: The Development of an International Arbitration Hub*", which is available on the Allen & Gledhill LLP website www.allenandgledhill.com

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Intellectual property & technology

Singapore High Court holds flower device on watches infringes trade mark

Louis Vuitton Malletier v City Chain Stores (S) Pte Ltd and Another Matter [2009] SGHC 24

The Singapore High Court has decided that a range of watches bearing a flower device sold by City Chain under the “*Solvil*” brand, infringed the registered trade mark rights of Louis Vuitton in their Flower Quatrefoil trade mark. Apart from infringement, the court also found the claims of passing off and dilution of a well-known trade mark made out and granted Louis Vuitton the injunction sought. Interestingly, the court held that the fact that the flower device was used by City Chain as mere decoration or embellishment on the watches was not a valid defence to a claim of infringement recognised by the Trade Marks Act (the “**Act**”).

Background facts

The plaintiff is part of the LVMH Group which owns the world-famous Louis Vuitton brand. The plaintiff’s product line includes fashion and travel items, luggage, handbags, leather goods, footwear, jewellery and watches. The plaintiff started applying the Flower Quatrefoil trade mark to its watches in 2002, and has been selling its watches under the Flower Quatrefoil trade mark in Singapore since 2004.

The defendant is part of the City Chain watch retail chain of stores selling watches and clocks, of which “*Solvil*” was a house brand. In November 2006, the defendant launched a range of watches bearing the “*Solvil*” trade mark and a flower device (the “**Solvil watches**”) which were made available for sale in their retail outlets in Singapore.

Taking the view that the flower device on the Solvil watches (the “**Solvil flower device**”) was identical with or similar to its Flower Quatrefoil trade mark, the plaintiff proceeded to file complaints with the Magistrate Court and raided four of the defendant’s retail outlets in Singapore with the search warrants obtained. Shortly after criminal charges were filed against the defendant, the plaintiff commenced the present suit against the defendant for trade mark infringement, passing off and dilution of its well-known trade marks.

Trade mark infringement

To establish infringement, the court must first consider whether the Solvil flower device on the Solvil watches was identical with or similar to the plaintiff’s Flower Quatrefoil trade mark.

The court had no difficulty in deciding that the Solvil flower device was identical with the Flower Quatrefoil. The Flower Quatrefoil consists of a flower design with four pointed petals of equal length and a circle at the centre of the motif. The Solvil flower device had the same attributes with slightly different proportions, and appeared in a random repeat pattern with the individual device incomplete in some way. Although it acknowledged that there were some differences in the two designs, the court took the view that those differences were not of any real significance and were hardly noticeable when comparing the two designs holistically. As the goods in question were clearly identical, infringement within the scope of section 27(1) of the Act was found.

With regard to the alternative claim that the two designs were confusingly similar, the court observed that people do not generally scrutinize another person's watch at close range. The court accepted that owing to the remarkable resemblance of the designs, the public could be confused into believing that the defendant's Solvil watches emanated from the same undertaking or were somehow linked economically to the plaintiff, and it was no defence that the "Solvil" trade mark also appeared on the Solvil watches. Accordingly, the court found infringement within the scope of section 27(2) of the Act.

The defendant argued that as the Solvil flower device was used as mere decoration or embellishment on the watches, it did not constitute trade mark use. The court however readily rejected this argument for two reasons. First, such a defence is not found in section 28 of the Act which sets out instances of acts not amounting to infringement. Secondly, multiple usage of a trade mark on one product does not bring the case out of the realm of trade mark use. The court highlighted that the important consideration is whether use was "*in the course of trade*", and such was the case with the Solvil watches.

The defendant also raised the ingenious argument that because the quatrefoil flower has been used as an ornament, embellishment or a decorative device for various objects for several centuries, it does not inherently act as a trade mark indicating trade origin of goods. In support of its argument, the defendant produced evidence of such use on architectural works such as the Milan Cathedral and the Doge's Palace in Venice, on jewellery pieces and in artistic works such as the Santa Maria Polyptych painting. The court rejected this argument and held that such use does not emaciate the Flower Quatrefoil trade marks and allow their free use in the course of trade. The defendant was entitled to take action to expunge or cancel the Flower Quatrefoil trade marks on the relevant bases, but until the defendant successfully does so, the Flower Quatrefoil trade marks stand in law. The court further explained that the fact that others may also be infringing the Flower Quatrefoil trade marks does not confer a licence on another person to do the same. The proprietor of a trade mark may not be aware of other infringements, and even when he is aware, may not find it feasible to go after every infringer.

Passing off

The tort of passing off is established when the plaintiff can show goodwill or reputation, misrepresentation by the defendant and damage or the likelihood thereof.

The court found that the goodwill and reputation of the plaintiff was easily established. Although misrepresentation need not be intentional, the court was of the view that there were facts in this case pointing to the likelihood that the defendant copied the plaintiff's Flower Quatrefoil for its watches. In any event, the court found that misrepresentation had been established for the same reasons that a likelihood of confusion was found under the claim of infringement.

The court also found that by virtue of the remarkable resemblance, the Solvil watches were likely to damage the plaintiff's brand name. The exclusivity of the plaintiff's watches is evidenced by the fact that they are not meant for the mass market. The court took judicial notice of the fact that people do get put off by certain luxury brands simply because there are too many fakes and cheap look-alikes in the market. Accordingly, the court accepted that the likelihood of damage to the plaintiff was very real if the defendant carried on using the Solvil flower device on its Solvil watches.

Dilution of well-known trade mark

Given the findings on infringement and passing off, it was strictly not necessary to consider the plaintiff's claim based on dilution of a well-known trade mark.

The court, in *obiter*, found that the Flower Quatrefoil, as individual elements of the plaintiff's monogram canvas design, is distinctive in its own right, as it is clear and conspicuous in design and would be easily recognisable by the public at large in Singapore. The Flower Quatrefoil therefore qualifies as a well-known trade mark under the Act, and was diluted by the use of the flower device on the defendant's Solvil watches. The court granted the plaintiff injunctive relief under section 55(3) of the Act. In coming to this conclusion, the court remarked that, "cheapening the image of a luxury brand is as much tarnishing as associating that brand with unwholesome connotations".

Commentary

The judgment is interesting, and perhaps controversial, in a number of ways. First, the court categorically rejected the argument that use of a sign as a decoration or embellishment qualifies as a valid defence under the Act. The court appeared to have taken a strict reading of the Act and having found that no such specific defence was available under section 28, readily dismissed such an argument. This approach however left open the wider question of whether the infringing use must necessarily be a "trade mark use" (as articulated by Justice Andrew Phang in the High Court decision of *Nation Fittings (M) Sdn Bhd v Oystertec Plc* [2006] 1 SLR 712; [2005] SGHC 225). It is therefore still open to a defendant to argue in a similar proceeding that decorative use is not a "trade mark use" and hence does not even constitute an infringement. If this is accepted, then there is no need to even consider whether any defence applies.

Secondly, the court seemed very willing to find the goodwill and reputation necessary for the passing off claim. The court did not appear to require goodwill to attach to the particular mark and products in question (i.e. the Flower Quatrefoil mark on watches) despite the defendant's contention that the plaintiff's flagship store in Singapore only opened in 2007 after the defendant's launch of the Solvil watches in late 2006.

Thirdly, the court in granting the injunctive relief under section 55(3)(b)(i), found the Flower Quatrefoil to be a trade mark "well known to the public at large in Singapore" without hesitation. It is curious how the court arrived at the conclusion or conviction that *all* sectors of the public recognise the Flower Quatrefoil as a trade mark belonging to the plaintiff.

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Real estate

Singapore High Court decides registered owner holding residential property on trust for foreigner is beneficial owner

Koh Joo Ann v First Grade Agency Pte Ltd [2009] SGHC 87

In *Koh Joo Ann v First Grade Agency Pte Ltd* [2009] SGHC 87, the Singapore High Court held that a registered owner holding residential property on trust for a foreigner in contravention of the Residential Property Act (the “RPA”) is the beneficial owner.

Facts of the case

Tay Juhana (“**Tay**”) was the President of the Sambu Group. He was the second maternal uncle of the plaintiff, Koh Joo Ann (“**Koh**”). Koh worked for Tay between the years 1976 to 1994.

In the early 1980s, Inhil Investment Pte Ltd (“**Inhil**”), a company within the Sambu Group, developed units in an apartment project (the “**Project**”) for commercial sale. The units were not sold and were eventually transferred to various members of the Tay family without consideration. The legal title of the residential property in issue (the “**Property**”), was transferred to Koh with a stated consideration of S\$700,000 in the transfer documents. Koh was not given the title deeds nor keys to the Property. He did not pay for the property tax, management fees and utilities. The Property was used to secure loans made to First Grade Agency Pte Ltd (“**First Grade**”), another company in the Sambu Group.

Koh and Tay had a falling out in their relationship. Koh indicated that he was resigning from his positions in the Sambu Group and would return everything to the family, including transferring the legal title of the Property to First Grade. Koh sought to obtain a written undertaking from Tay to support him financially in exchange for signing the transfer instrument. Tay refused to meet him until the transfer instrument was signed.

First Grade then lodged a caveat against the Property on the basis that Koh was not the beneficial owner of the Property and held the Property on trust and that the legal title to the Property was to be transferred by Koh upon demand.

In this action, Koh sought the removal of the caveat. Koh claimed the Property was transferred to him as a gift and not on trust for anyone else.

The existence of a trust

The court found to be unsatisfactory Koh’s evidence in support of his claim that the Property was given to him as a gift.

In concluding that Koh held the Property on trust, the court took into consideration the various factors including the following:

- Koh did not pay for the property tax and maintenance charges for the Property.
- Koh did not rent out the Property although he did not reside there.
- Koh did not keep the title deeds to the Property and did not have a set of the keys to it.

- He did not move his girlfriend (who became his second wife) into the Property.

Beneficiary of the trust

On the facts, the court was of the view that the true beneficiary of the trust over the Property was Tay. The evidence suggested that it was Tay who had provided the money for the purchase of the Property.

The court also found that the disposal of the Property along with the other units of the Project was a sham as it was made to circumvent the RPA which provided that transferees of the residential properties could not be “foreign persons” and as a result, the transfers were made to look as if they were done pursuant to genuine sales.

Residential Property Act

It was not disputed that Tay was a foreign person within the meaning of the RPA and was not allowed to hold any interest in the Property at the material time.

The court found that the trust under which Koh held the Property for Tay was null and void pursuant to the RPA.

The court held that although Koh would not have had beneficial ownership of the Property, but for the RPA, the result was that he ended up with the beneficial ownership. If he did not have beneficial ownership and Tay could not enforce the trust, it would mean that no one was entitled to deal with the Property which could not be right. The consequence of the breach of the RPA was that the loss lay where it fell and since Koh was the registered owner, he was entitled to the beneficial ownership as well.

In the circumstance, the court ordered First Grade to remove the caveat.

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General

Contract

Singapore Court of Appeal considers relationship between implied terms and entire agreement clauses, and implication of term based on doctrine of good faith

Ng Giap Hon v Westcomb Securities Pte Ltd & Ors
[2009] SGCA 19

In *Ng Giap Hon v Westcomb Securities Pte Ltd & Ors* [2009] SGCA 19, the Singapore Court of Appeal had to consider the relationship between implied terms and what are commonly called “entire agreement clauses”. The court also considered, for the first time in Singapore, whether or not a term based on the doctrine of good faith can be implied into a contract.

Facts of the case

The appellant worked as a remisier and the first respondent was a well-known stockbroking company. The appellant and the first respondent entered into an agency agreement under which the first respondent appointed the appellant as its agent to trade and deal in securities. The agency agreement included an entire agreement clause.

A dispute arose between the appellant and the first respondent. Specifically, the appellant claimed that the first respondent had “hijacked” certain transactions from him thereby depriving him of the opportunity to earn commission from those transactions.

The issues before the court were:

- Whether the entire agreement clause in the agreement between the parties precluded the implication of terms into that agreement; and
- Whether terms ought to be implied into the agency agreement in favour of the appellant.

Relationship between implied terms and entire agreement clauses

The entire agreement clause in the present case provided that the agreement “embodies the entire understanding of the parties and there are no provisions, terms, conditions or obligations, oral or written, expressed or *implied*, other than those contained herein”.

The court held that the entire agreement clause did not preclude the implication of terms into that agreement between the parties as the clause itself contemplated the existence of implied terms. The clause referred expressly to implied terms, as the italicised words in the clause clearly demonstrated.

However, the court observed that, even if there is no reference to implied terms in an entire agreement clause, it is arguable that the presence of such a clause in a contract would not, as a matter of general principle, exclude the implication of terms into that contract for several reasons. First, an implied term, by its very nature (as an implied term), would not, *ex hypothesi*, have been in the contemplation of the contracting parties to begin with when they entered into the contract. Secondly, if a term were implied on, so to speak, a “broader” basis “in law” (as opposed to on a “narrower” basis “in fact”), it would follow, *a fortiori*, that such a term would not have been in the contemplation of the parties for a term which is implied “in law” (unlike a term which is implied “in fact”) is not premised on the presumed intention of the contracting parties as such. Thirdly, it is clearly established law that a term cannot be implied if it is inconsistent with an express term of the contract concerned. Finally, it is arguable that where it is necessary to imply a term in order to make the express terms work, such an implied term may not be excluded by an entire agreement clause because it could be said that such a term is to be found in the document or documents forming part of the contract.

That having been said, the court was not prepared to state that an entire agreement clause can never exclude the implication of terms into a contract. However, for an entire agreement clause to have this effect, it would need to express such effect in clear and unambiguous language. Further, if the effect of the language used renders the entire agreement clause, in *substance*, an exception clause, the clause would be subject to both the relevant common law constraints on exclusion clauses as well as the Unfair Contract Terms Act.

Implication of term based on doctrine of good faith

The appellant argued that there was an implied duty of good faith between the appellant and the first respondent as between agent and principal (the “**First Implied Term**”).

With regard to the First Implied Term, the court held that a duty of good faith could not be implied as a term implied in law into the agency agreement in the present case. The implication of such a term into a contract would entail implying the same term in the future for *all* contracts of the *same* type. This would, in and of itself, require that caution should be exercised on the part of the court before implying a term implied in law. Moreover, in the present case, the *content* of the First Implied Term (with its correspondingly broad implications) involved the doctrine of good faith, a concept which was itself controversial.

After considering the position in several Commonwealth jurisdictions, the court observed that the doctrine of good faith continues to be a fledgling one in the Commonwealth. Much clarification is required, even on a theoretical level. The court was of the view that until the theoretical foundations as well as the structure of this doctrine are settled, it would be inadvisable to even attempt to apply it in the practical sphere. In the present appeal, this was the strongest reason why the court could not accede to the appellant’s argument that the court should endorse an implied duty of good faith in the Singapore context. Accordingly, the court held that the First Implied Term should not be implied into the agency agreement.

Implication of term that first respondent would not deprive appellant from earning commission

The appellant also argued that it was an implied term of the agency agreement that the first respondent would not do anything to deprive the appellant from earning his commission (the “**Second Implied Term**”).

Based on the precise factual matrix of the present appeal, the court declined to imply the Second Implied Term into the agency agreement.

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In brief

Banking (Amendment) Act Regulations 2009: Permitting diminishing *musharaka* financing and spot *murabaha* transactions by banks from 7 May 2009

From 7 May 2009, banks in Singapore may enter into diminishing *musharaka* financing and spot *murabaha* transactions.

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

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MAS issues consultation paper on proposed revisions to the MAS Notices on the Prevention of Money Laundering & Countering the Financing of Terrorism

On 21 May 2009, the Monetary Authority of Singapore (the “**MAS**”) issued a consultation paper on proposed revisions to the MAS Notices on Prevention of Money Laundering & Countering the Financing of Terrorism. The consultation exercise is undertaken following Singapore’s ratification of the United Nations Convention Against Corruption, which underscores Singapore’s commitment to global efforts to combat money laundering, transnational organised crime and corruption.

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

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SGX issues response to feedback received from public consultation on proposed revision of SGX-DC Clearing Fund structure

In January 2009, the Singapore Exchange Limited conducted a consultation paper proposing to revise the Clearing Fund structure of the Singapore Exchange Derivatives Clearing Limited (the “**SGX-DC**”). The proposed revision is intended to allow the SGX-DC Clearing Fund to scale with the amount of risk faced by the clearing system and to introduce an equitable allocation of contributions among the various stakeholders.

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

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News

FCT MTN Pte Ltd’s multicurrency medium term note programme

FCT MTN Pte Ltd (“**FCT MTN**”) has established a S\$500 million Multicurrency Medium Term Note Programme. The notes issued under the programme will be unconditionally and irrevocably guaranteed by HSBC Institutional Trust Services (Singapore) Limited (in its capacity as trustee of Frasers Centrepoint Trust (“**FCT**”)) (the “**FCT Trustee**”). FCT MTN is a wholly-owned subsidiary of the FCT Trustee and FCT is a REIT listed on the Singapore Exchange Securities Trading Limited.

Allen & Gledhill LLP was the adviser to FCT MTN and separately the FCT Trustee. Partner Au Huey Ling, Senior Associates Bernie Lee and Ong Kangxin were the advisers to FCT MTN and Partner Jerry Koh and Associate Ng Siu Fang were the advisers to the FCT Trustee.

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KCC Corporation's Exchangeable Bonds

KCC Corporation has issued US\$58.3 million Zero Coupon Exchangeable Bonds due 2014 exchangeable into shares of common stock, par value Won 5,000 per share, of Hyundai Mobis, which are listed on the Singapore Exchange Securities Trading Limited. Merrill Lynch Far East Limited ("**Merrill Lynch**") acted as placement agent for the issue.

Advising Merrill Lynch as to Singapore law and acting as listing agent are Allen & Gledhill LLP Partner Tan Tze Gay and Senior Associate Bernie Lee.

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Delisting of C K Tang Ltd

Tang UnityThree LLP ("**Tang UnityThree**") is seeking a voluntary delisting of C K Tang Ltd ("**CKT**") from the Official List of the Singapore Exchange Securities Trading Limited. Under the delisting proposal, Oversea-Chinese Banking Corporation Limited for and on behalf of Tang UnityThree, will make an exit offer to acquire all the shares in CKT for S\$0.83 per share.

Advising Tang UnityThree are Allen & Gledhill LLP Partners Andrew M. Lim, Ronnie Quek and Christopher Ong, Senior Associate Adeline Yee, and Associates Tenny Toh and Boey Shao Qiang.

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