

Legal Bulletin

A summary of developments in the law

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These recent developments were highlighted in the Allen & Gledhill KnowledgeShare Alert of 26 October 2006. If you would like to be on our KnowledgeShare Alert mailing list, please e-mail us at publications@allenandgledhill.com

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Articles

Competition Commission of Singapore consults on proposed merger control regime

On 20 October 2006, the Competition Commission of Singapore (the “**CCS**”) released details of the proposed merger regime under the Competition Act (the “**Act**”) for public consultation. The public consultation closes on 10 November 2006. This development follows the announcement by the Minister of State for Trade and Industry Mr S Iswaran (the “**Minister**”) on 27 September 2006 that the merger provisions under the Act will be operative with effect from 1 July 2007. For the full speech of the Minister, please [click here](#).

Key features of the proposed merger regime include the following:

- Prohibits any merger that is found to substantially lessen competition in a market in Singapore, unless the economic efficiencies it brings about can be shown to outweigh the anti-competitive detriment.
- Notification regime will be on a voluntary basis. It is up to businesses to decide if they want to seek the CCS’ clearance of their mergers. The regime sets down indicative notification percentage thresholds, and a two-phase notification and review process.
- Allows for notification of anticipated mergers. The CCS’ views on the competitive effects of anticipated mergers will provide merger parties with certainty before they invest significant resources in implementing the merger and obviate possible significant costs in unravelling a merger. It is proposed that the CCS accepts notifications of anticipated mergers that have been made public.
- Allows for commitments to be accepted, so that a merger can be allowed to proceed on condition that parties undertake specific actions to address the competition concerns identified. It is hoped to allow for speedy clearances of anticipated mergers/mergers.
- Excludes ancillary restrictions from the sections 34 and 47 prohibitions. Ancillary restrictions refer to arrangements that are anti-competitive in nature, but which are directly related and necessary to the implementation of the merger. For example, non-compete obligations, licensing arrangements, and purchase and supply obligations.
- Changes the criterion of joint ventures subject to the merger regime. The present criterion of “an indefinite basis” is to be replaced with “a lasting basis”. Hence the section 54 prohibition now applies to the creation of a joint venture to perform on “a lasting basis” (instead of “an indefinite basis”) all the functions of an autonomous economic entity.

The proposed merger regime is provided for in the following documents which have been released as part of the public consultation exercise:

- **Draft CCS Guideline on the Substantive Assessment of Mergers:** Outlines the manner in which the CCS will interpret and give effect to the provisions of the Act when assessing mergers. It covers the analytical framework for assessing the competitive effects of mergers, and the principles that the CCS will use in considering commitments and remedies;

- **Draft CCS Guideline on the Merger Procedures:** Sets out the proposed procedures for notification and investigation under the merger regime; and
- **Draft Competition (Amendment) Bill:** Sets out the proposed amendments to the Act.

Please click on the relevant document titles above to view.

For the consultation paper, please [click here](#).

For the CCS' media release, please [click here](#).

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SGX proposes to amend SGX-ST Business Rules to empower the SGX-ST to impose restrictions on trading of Global Depository Receipts

On 13 October 2006, the Singapore Exchange Ltd (the "SGX") released a public consultation paper (the "Consultation Paper") on a proposed amendment to the Business Rules of the Singapore Exchange Securities Trading Ltd (the "SGX-ST Business Rules").

The proposed amendment relates to the inclusion of a new Rule 3.1.3(3) in the SGX-ST Business Rules to empower the SGX-ST to impose restrictions on the offer and trading of securities listed on the SGX-ST, such as those in relation to Global Depository Receipts ("GDRs").

By way of background, the SGX offers the listing of GDRs on the SGX-ST with effect from 22 June 2006. New provisions providing for the listing facility of GDRs are available in Part XII of Chapter 2 and Practice Note 2 of the Listing Manual of the SGX-ST.

GDRs are to be offered or traded solely to and by institutional investors, accredited investors or such other persons as contemplated under section 274 or 275 of the Securities and Futures Act (the "SFA"). An offeror of GDRs is not required to lodge a prospectus with the Monetary Authority of Singapore for the offer of GDRs.

An offeror who is seeking to list its GDRs on the SGX-ST has to comply with certain documentation requirements and ongoing listing obligations as set out in the Listing Manual of the SGX-ST.

The Consultation Paper proposes to insert a new Rule 3.1.3(3) in the SGX-ST Business Rules to empower the SGX to impose trading restrictions in order to ensure the observance of the above requirements applicable to GDRs listed on the SGX-ST.

All comments on the Consultation Paper must be submitted to the SGX by 27 October 2006.

Please [click here](#) to view the Consultation Paper.

Please [click here](#) to view the SGX's press release in relation to the above development.

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To read more about the listing requirements of GDRs on the SGX-ST, please [click here](#) to read an article entitled "SGX releases new rules for the listing of Global Depository Receipts" which was featured in a previous issue of the Legal Bulletin (June 2006).

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MAS proposes regulatory framework for mortgage insurance business

Mortgage insurance protects residential mortgage lenders against losses on mortgage loans arising from default by borrowers. In July 2005, the Monetary Authority of Singapore (the "MAS") announced an increase in the "loan-to-value" ("LTV") limit for housing loans granted by banks from 80 per cent. to 90 per cent. In conjunction with this increase, the MAS also announced that it is prepared to consider mortgage insurance as an alternative risk mitigant to higher capital charge on loans with LTVs exceeding 80 per cent. The MAS stated that it would study the appropriate regulatory framework for mortgage insurers.

In October 2006, the MAS issued a consultation paper (the "**Consultation Paper**") setting out the proposed regulatory framework for mortgage insurance business.

The MAS proposes to regulate mortgage insurance business based on the insurance regulatory framework applicable to general direct insurers with additional requirements to address risks specific to mortgage insurance business. These additional requirements include:

- Mortgage insurers will be required to operate as mono-line insurers, i.e. to have mortgage insurance as the only line of business;
- Certification of mortgage insurers' policy liabilities will have to be carried out by actuaries approved by the MAS;
- Mortgage insurers will be subjected to the insurance risk-based capital requirements under the Insurance (Valuation and Capital) Regulations 2004 with mortgage insurance being treated as a business with medium volatility. In addition, they will be subjected to an annual contingency reserve requirement to address the cyclical nature of mortgage insurance business;
- Mortgage insurers will not be allowed to deal directly with borrowers in the loan origination process. This prohibition includes, but is not limited to, solicitation of business from and entering into contracts with borrowers; and
- Adequate disclosure by banks to borrowers when their loans are covered by mortgage insurance.

The Consultation Paper also describes how mortgage insurance will be treated in the calculation of the capital requirements for Singapore-incorporated banks, including proposed criteria for allowing banks to recognise the credit risk mitigation effects of mortgage insurance for a mortgage loan with a LTV of more than 80 per cent. but not more than 90 per cent.

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All comments on the proposed regulatory framework should be submitted to the MAS by 15 November 2006.

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

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MOM conducts public consultation on draft workplace safety and health regulations

From 27 September to 31 October 2006, the Ministry of Manpower (the "**MOM**") conducted a public consultation on three draft workplace safety and health ("**WSH**") regulations, namely:

- (a) draft Workplace Safety and Health (Construction) Regulations;
- (b) draft Workplace Safety and Health (Workplace Safety and Health Officers) Regulations; and
- (c) draft Workplace Safety and Health (Workplace Safety and Health Auditors) Regulations.

By way of background, upon the commencement of the Workplace Safety and Health Act on 1 March 2006, 11 factories subsidiary legislation were repealed as most of them were re-enacted as new WSH subsidiary legislation (e.g. Workplace Safety and Health (General Provision) Regulations). There remains 18 factories subsidiary legislation that are still in force by virtue of section 67(14) of the Workplace Safety and Health Act. The MOM will be reviewing the 18 factories subsidiary legislation over the next few months to update and align the provisions to the Workplace Safety and Health Act.

The consultation on the three WSH regulations listed above are part of this review process.

In reviewing the subsidiary legislation, the MOM will take the following steps:

- (a) Review the original intent of the subsidiary legislation to establish whether it is still valid under the new regime;
- (b) Update the provisions and where possible, make it less prescriptive;
- (c) Update all relevant terminologies (e.g. from Chief Inspector to Commissioner);
- (d) Clarify the intended duty holder for the provision; and
- (e) Introduce offences and penalties provisions for the breach within the regulations.

Draft Workplace Safety and Health (Construction) Regulations

When in force, the draft Workplace Safety and Health (Construction) Regulations (the "**draft Construction Regulations**") will replace the Factories (Building Operations and Works of Engineering Construction) Regulations. The major policy changes reflected in this draft includes:

- (a) Requiring all worksites to implement a safety and health management system. However, unlike the current position, the draft Construction Regulations will not prescribe the various elements which must be addressed by the safety management system. Instead, the format of the safety and health management system will be outlined based on prevailing codes of practices that can be updated regularly;
- (b) Implementing the recommendations of the MOM-MND (Ministry of National Development) Joint Review committee which includes:
 - (i) Duties on professional engineers undertaking temporary works;
 - (ii) Requiring safety and health training for all supervisors;
 - (iii) Instituting regular site safety coordinating meetings; and
 - (iv) Implementing permit-to-work system for selected work.
- (c) The draft Construction Regulations will not include prescriptive provisions from the legislation which will be transferred into codes of practices to serve as guidelines for the industry.

Draft Workplace Safety and Health (Workplace Safety and Health Officers) Regulations

The draft Workplace Safety and Health (Workplace Safety and Health Officers) Regulations (the “**draft Safety and Health Officers Regulations**”) will replace the following:

- Factories (Qualifications and Training of Safety Officers) Notification;
- Factories (Registration and Duties of Safety Officers) Regulations; and
- Factories (Safety Officers) Order.

The MOM has retained in the draft Safety and Health Officers Regulations the mandatory appointment of a WSH officer for selected factories. However, the distinction between a part-time and a full-time WSH officer will be removed. Factories listed in the First Schedule to the draft Safety and Health Officers Regulations will be expected to appoint a WSH officer to help manage their workplace safety and health risks.

In order to facilitate greater flexibility in updating the qualifications of the WSH Officers, the draft Safety and Health Officers Regulations will not prescribe the qualifications of the WSH Officers. Instead, the qualification criteria will be promulgated as administrative guidelines following inputs from the industry.

Under the draft Safety and Health Officers Regulations, the duties of the WSH Officers will be simplified to focus more on management of safety and health risks at the workplace.

Draft Workplace Safety and Health (Workplace Safety and Health Auditors) Regulations

The Draft Workplace Safety and Health (Workplace Safety and Health Auditors) Regulations (the “**draft Auditors Regulations**”) will be new regulations issued with the objective of strengthening the safety and health auditing regime. It consolidates the requirements for audit into a single set of regulations and will specify the categories of workplaces that will be required to implement safety and health management systems (“**SMS**”).

Under the draft Auditors Regulations, the audits will no longer be limited to SMS, but will encompass risk assessments, work processes, or the workplace itself as provided under section 30 of the Workplace Safety and Health Act. The draft Auditors Regulations will also prescribe the duties and powers of the WSH auditors.

Remaining factories subsidiary legislation that are still enforceable

The 18 remaining factories subsidiary legislation that are still enforceable are as follows:

- (a) Factories (Building Operations And Works Of Engineering Construction) Regulations
- (b) Factories (Qualifications And Training Of Safety Officers) Notification
- (c) Factories (Registration And Duties Of Safety Officers) Regulations
- (d) Factories (Safety Officers) Order
- (e) Factories (Safety Training Courses) Order
- (f) Factories (Shipbuilding And Ship-Repairing) Regulations
- (g) Factories (Scaffolds) Regulations 2004
- (h) Factories (Abrasive Blasting) Regulations
- (i) Factories (Asbestos) Regulations
- (j) Factories (Explosive Powered Tools) Regulations
- (k) Factories (Noise) Regulations 1996
- (l) Factories (Medical Examinations) Regulations
- (m) Factories (Certificate Of Competency ? Examinations) Regulations
- (n) Factories (Persons-In-Charge) Regulations
- (o) Factories (Safety Committees) Regulations
- (p) Factories (Operation Of Cranes) Regulations
- (q) Factories (Industrial Safety Helmets And Footwear) Notification
- (r) Factories (Singapore Standards And Codes Of Practice) Order

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

An article about the Workplace Safety and Health Act 2006 when it came into force on 1 March 2006 was featured in a previous issue of the Allen & Gledhill Legal Bulletin (March 2006). To view the article entitled "*Workplace Safety and Health Act 2005 comes into force on 1 March 2006: New legislative framework for occupational safety and health*", please [click here](#).

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MOF accepts 28 suggestions on drafting of draft Income Tax (Amendment) Bill 2006

From 9 June to 8 July 2006, the Ministry of Finance (the “**MOF**”) conducted a public consultation on the draft Income Tax (Amendment) Bill 2006 (the “**draft Bill**”). The draft Bill seeks to amend the Income Tax Act in relation to Budget 2006 tax changes as well as other tax changes.

The MOF had sought comments and views on the draft Bill which sets out proposed legislative amendments to the Income Tax Act. In particular, the MOF sought feedback on areas of the draft legislation that required greater clarity or which would facilitate compliance.

On 28 September 2006, the MOF announced that it had accepted 28 out of 49 suggestions related to the drafting of the draft Bill.

The comments received from the public consultation related mainly to the following areas:

- (a) Corporate tax deduction for the cost of treasury shares used to satisfy obligations under employee equity-based remuneration schemes;
- (b) Tax treatment of financial instruments arising from the adoption of Financial Reporting Standard 39;
- (c) Tax treatment of gains from employee stock options granted prior to 1 January 2003;
- (d) Tax treatment of trusts;
- (e) Enhancements to the claim for Industrial Building Allowance; and
- (f) Maritime Finance Incentive scheme (“**MFI**”).

According to the MOF, the comments which have not been accepted include those which suggested changes that are inconsistent with drafting convention or terms used in other tax legislation. Others went beyond the purpose of the exercise. They covered changes in tax policy and administration.

To view the press release issued by the MOF on 28 September 2006, please [click here](#).

To view the MOF’s Summary of Responses to the comments received from the public consultation, please [click here](#).

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

An article about the draft Income Tax (Amendment) Bill 2006 when the consultation paper was first issued was featured in a previous issue of the Allen & Gledhill Legal Bulletin (June 2006). To view the article entitled “*MOF conducts public consultation on draft Income Tax (Amendment) Bill 2006 to implement Budget 2006 tax changes*”, please [click here](#).

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DPM Jayakumar announces plan to develop an integrated arbitration complex in Singapore

In a keynote address delivered at the *Institutional Arbitration in Asia* conference on 3 October 2006, Deputy Prime Minister and Minister for Law Professor S Jayakumar (the “DPM”) emphasised the commitment of the Singapore Government to support the growth of international arbitration in Singapore and to strengthen the attractiveness of Singapore as an international arbitration venue. The conference was organised by the Singapore International Arbitration Centre jointly with the American Arbitration Association and the International Chamber of Commerce.

In his speech, the DPM discussed the Government’s plan to develop an integrated dispute resolution complex that will provide specialised facilities to cater to the specific needs of high-end arbitration and other dispute resolution work. The new complex, which is targeted to be up and running by late 2008, will house both state-of-the-art hearing room facilities and major international arbitration institutions under one roof.

The DPM stated that “the aim is to develop the complex into the premiere international arbitration venue in the region, for both ad-hoc and institutional arbitration cases”.

The key features of the complex will include:

- Custom-designed hearing room layouts suited for arbitration work
- Provision of caucus rooms for short breakout sessions and working rooms for legal teams to prepare their cases
- World-class telecommunications and teleconferencing equipment
- Secure document storage facilities
- 24-hour operating hours for users that need to work overnight
- Rest and refreshment areas
- Concierge services for foreign users of hearing rooms
- Co-located international arbitral institutions to provide one-stop arbitration services

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

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Cases

Corporate & financial services

Singapore Court of Appeal views winding up as the last resort in minority shareholders' action under section 216 of Companies Act

Lim Swee Khiang & Anor v Borden Co (Pte) Ltd & Ors
[2006] SGCA 33

The case of *Lim Swee Khiang & Anor v Borden Co (Pte) Ltd & Ors* concerned an appeal from the minority shareholders (the “**Appellants**”) of Borden Company (Private) Limited (“**Borden**”) against the Singapore High Court’s decision to dismiss their application under section 216(1) of the Companies Act (the “**CA**”) to wind up Borden on the ground that the majority shareholders (namely the second to tenth Respondents) had oppressed or disregarded their interests as minority shareholders.

Borden was incorporated in 1960 by six families and was described by the court as starting up as a “family-owned quasi-partnership”.

The Appellants’ complaint in the present matter centred on the conduct of the fourth Respondent, Madam Halim, which the Appellants claimed had put her in a conflict of interests situation.

Madam Halim was the director of Borden and the Appellants alleged that, at the same time, she was also a shareholder and commissioner of an Indonesian company, PT Eagle Indo Pharma (“**PT Eagle**”). PT Eagle was owned and controlled by Madam Halim’s son. Among other things, PT Eagle was involved in a dispute in Malaysia with Borden over the use of Borden’s trademark. PT Eagle and Borden were also business rivals competing with each other for the market share of the same types of product in the region.

The Appellants alleged that the Respondents had, in various occasions, acted against the interests of Borden and had caused, *inter alia*, Borden to make an unjustified payment of US\$900,000 to PT Eagle in order to settle PT Eagle’s action against Borden. In addition, the Appellants claimed that the Respondents’ acts of oppression also included the taking away of the first Appellant’s (Lim See Khiang’s) executive powers in order to prevent him from continuing his investigations into the suspected conflict of interests of Madam Halim.

In the High Court, the Respondents had chosen not to respond at all to the allegations of the Appellants. The Respondents submitted that there was no case to answer at the close of the Appellants’ case. The trial judge dismissed the Appellants’ claim and held that the Appellants had failed to establish a *prima facie* case of oppression.

Burden of proof of plaintiff where defendant submits no case to answer

Before considering the issue of whether there was indeed oppression against the Appellants, the Court of Appeal set out the principles governing the burden of proof of a plaintiff in a case where the defendant submits that there is no case to answer. The court held that, in such circumstance, so long as there is some *prima facie* evidence that supports the essential limbs of the plaintiff’s claim, the failure by the defendant to adduce evidence on his own behalf would be fatal to the defendant. In the present matter, the Court of

Appeal commented that the Respondents would have to be supremely confident of the absence of any merits in the Appellants' claims of oppression, either on the facts or on the law, to resort to a submission of no case to answer.

The Court of Appeal held that, as the Respondents had not adduced any evidence to rebut the Appellants' allegations, the burden on the Appellants was merely to prove a *prima facie* case. The Court of Appeal then found, on the facts, that the Appellants had discharged their burden of proof.

Remedy of winding up

Having concluded that the Appellants had proven their claims, the Court of Appeal proceeded to consider the remedy to be granted to the Appellants. The Appellants had clearly stated their desire that Borden be wound up on the ground that the familial and close-knit management that was originally conceived was no longer possible and Borden's business would only continue to be exploited by the Respondents for their own advantage.

The Court of Appeal explained that the court's discretion under section 216 of the CA should be exercised with a view to bringing to an end or remedying the matters complained of. If the state of affairs in a particular case can be remedied by an order other than winding up, there is no reason for a court to wind up the company. Further, the Court of Appeal was of the view that winding up should only be ordered if, having taken into account all the circumstances of the case, it is the best solution for all the parties involved. In general, the courts are not minded to wind up operational and successful companies unless no other remedy is available.

Accordingly, the Court of Appeal ordered the Respondents to purchase the Appellants' shares in Borden in accordance with the terms and conditions laid down in the judgment.

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Singapore High Court expounds on principles concerning cure of irregularity under the Companies Act

Golden Village Multiplex Pte Ltd v Golden Harvest Films Distribution (Pte) Ltd & Anor [2006] 3 SLR 599; [2006] SGHC 110

The Singapore High Court in the present matter was called upon to determine the validity of a resolution passed in a board meeting which was alleged to have been improperly chaired.

Golden Village Multiplex Pte Ltd (the "**Plaintiff**"), was formed by Village Cinemas Australia Pty Ltd ("**Village**") and Golden Screen Limited ("**Golden Harvest**") as a joint venture vehicle, *inter alia*, to operate cinema complexes in Singapore.

The terms of the joint venture were set out in a shareholders' agreement dated 24 February 2000 (the "**Shareholders' Agreement**") entered into, *inter alia*, between Village and Golden Harvest.

The board of the Plaintiff comprised six directors, three (namely, Graham William Burke, Peter Edwin Foo and Kirk Senior) were Village nominees while the others (namely, Raymond Chow, Phoon Chiong Kit ("**PCK**") and Roberta Chin Chow) were Golden Harvest nominees.

Disputes arose from a commercial transaction entered into between the Plaintiff and some companies of the Golden Harvest conglomerate (the “**Defendants**”) and the Plaintiff commenced the present action against the Defendants.

The Defendants took out an application to strike out the Plaintiff’s action on the ground that the solicitors for the Plaintiff in the action did not have the capacity to act for the Plaintiff because the warrant to act granted by the Plaintiff to them (the “**warrant to act**”) was invalid. PCK, who was one of the six directors of the Plaintiff as well as a director of the Defendants, filed two affidavits in support of the Defendants’ application. With a finding that PCK was in breach of his fiduciary duties as a director of the Plaintiff for filing the two affidavits in support of the Defendants’ striking out application, the court ordered, *inter alia*, that the Plaintiff was to obtain a resolution by its board of directors ratifying the warrant to act and that PCK was to abstain from voting as a director of the Plaintiff for the purposes of that resolution.

The current appeal concerned a dispute between the parties as to whether a valid board resolution had been passed ratifying the warrant to act.

Validity of board resolution

The articles of association of the Plaintiff (the “**Articles of Association**”) permitted directors’ meetings to be held via a conference telephone line or video-conference line or similar means. Therefore, a meeting of the directors of the Plaintiff by conference telephone was convened (the “**Board meeting**”) to ratify the warrant to act.

The Board meeting was attended by Raymond Chow, Roberta Chin Chow and PCK as the Golden Harvest-nominated directors of the Plaintiff, and by Simon Phillipson (“**Phillipson**”) (alternate to Graham William Burke), Peter Edwin Foo and Kirk Senior as the Village-nominated directors. There was therefore more than the quorum of two required under the Articles of Association, when the Board meeting proceeded to business.

The Village-nominated directors then proposed Phillipson for the chair while the Golden Harvest nominees voted against him and proposed Raymond Chow instead. This latter proposal was, likewise, opposed by the Village-nominated directors. In the result, there was a stalemate.

When Phillipson nevertheless sought to proceed with the Board meeting on the basis that he was in the chair, PCK threatened to call off the meeting to which Phillipson’s response was that PCK was not in a position so to do and that the meeting would continue even if he chose to hang up the phone.

PCK then declared that the Board meeting was invalid and hung up, thereby also cutting off Raymond Chow and Roberta Chin Chow who were with him. The remaining directors then passed a resolution ratifying the warrant to act.

Upon the conclusion of the Board meeting, the minutes thereof were signed by Phillipson as the chairman of the Board meeting and entered in the minute book of the Plaintiff.

The Plaintiff submitted that the Board meeting had been properly convened via telephone conference and proceeded to business with all six directors on the line. The Articles of Association only required a quorum of two. It further submitted that the departure of the Golden Harvest-nominated directors thereafter, even if it had the effect of reducing the directors present to less than the quorum, did not affect the validity of the resolution passed.

The Defendants challenged the validity of the Board meeting on the ground that the Village-nominated directors were not entitled as of right to appoint a chairman of the Board meeting. The Defendants submitted that the Village-nominated directors' right to appoint a chairman of the Board meeting was merely provided in clause 5.1(i) of the Shareholders' Agreement and this right had not been incorporated in the Articles of Association. Hence, the Articles of Association which required the chairman of the Board meeting to be elected by the directors should prevail.

The High Court rejected the Defendants' argument and was of the view that whether or not Phillipson was properly appointed to chair the Board meeting was of no significance to the validity of the resolution passed unanimously by the three remaining directors. This was because Phillipson did not purport to exercise any casting vote. Therefore, the High Court held that the board resolution passed in the Board meeting by the three remaining directors to ratify the warrant to act was valid as the meeting remained quorate in compliance with the Articles of Association despite the Golden Harvest directors hanging up the phone.

Irregularity in appointment of chairman

The High Court went on to discuss whether, assuming *arguendo* that Phillipson's taking on the role of chairman was an irregularity, such irregularity could be cured by section 392(2) of the Companies Act. Section 392(2) of the Companies Act provides that a proceeding under the Companies Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

In the High Court's opinion, an irregularity in the appointment of a chairman is regarded as a procedural irregularity for the purpose of section 392(2) of the Companies Act.

To invoke section 392(2), it is not necessary that the irregularity arose from inadvertence. For a court to hold that such irregularity could not be cured by section 392(2), it must be shown that "the irregularity has caused or may cause substantial injustice". In other words, there must be a nexus between the irregularity and the substantial injustice.

Applying these general principles in the present facts, the court commented that the Defendants had failed to show that there was such a nexus. Assuming that the alleged injustice was the passing of the resolution to ratify the warrant to act, there was no nexus between the passing of the resolution and Phillipson being in the chair of the Board meeting. This is because the passing of the resolution was pursuant to the unanimous vote of all three Village-appointed directors; it did not depend on Phillipson being in the chair and he did not exercise any casting vote as chairman. If Phillipson had purported to exercise a casting vote as chairman, it would then have been open to the Defendants to contend that the resultant resolution was obtained on the back of an irregularity.

The court also added that the injustice referred to in section 392 of the Companies Act must refer to more than the irregularity itself.

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Dispute resolution

Arbitration

Singapore High Court expounds on the requirements for enforcement of foreign arbitral awards under the New York Convention

Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd & Anor
[2006] SGHC 78

The case of *Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd & Anor* is highly instructive on the issues involving the enforcement of a foreign arbitral award against an alleged non-party to the arbitration agreement. The case demonstrates the importance of obtaining sound legal advice before agreeing to an arbitration clause particularly if the clause adopts a foreign law.

The plaintiff, an American company, entered into an exclusive distributorship agreement (the “**Agreement**”) with the first defendant, a Singapore-incorporated company. The second defendant, Steven Chiew (“**Chiew**”), signed the Agreement on behalf of the first defendant. Chiew was not expressly stated to be a contracting party. The Agreement was governed by the law of Arizona, USA and provided for disputes to be arbitrated in Arizona.

Following the termination of the Agreement, the plaintiff commenced arbitration proceedings in Arizona. Chiew took the position that he was not a party to the Agreement and had not agreed to arbitration or to the law of Arizona applying to him personally. The US arbitrator made a preliminary order that he had jurisdiction over Chiew because Chiew was properly a party to the arbitration under the broad definition provided in the Agreement. Thereafter, Chiew took no part in the proceedings.

In the final award, the US arbitrator made a finding that Chiew was at all material times the president, a director and shareholder of the first defendant. He further found that the first defendant was the *alter ego* of Chiew and all its acts and obligations were the acts and obligations of Chiew.

The plaintiff obtained leave from the Singapore High Court to enforce the final award against the defendants. Chiew applied to set aside the order by contending that the plaintiff had not established that there was an arbitration agreement between the parties. Alternatively, Chiew argued that he met the requirements for one or more of the grounds set out in section 31(2) of the International Arbitration Act (the “**Act**”) which provided the bases for refusing to enforce a foreign arbitration award. The assistant registrar dismissed Chiew's application, and Chiew appealed.

Definition of “arbitration agreement”

Chiew argued that the plaintiff had not crossed the preliminary hurdle of establishing that there was an arbitration agreement between the parties. He argued that under section 19 of the Act, it is a condition precedent that there must be a written arbitration agreement between the parties which is signed by the parties. The court stated that the term “arbitration agreement” as used in section 19 had to be understood together with section 2 of the Act which defines an arbitration agreement as that referred to in the United Nations Commission on International Trade Law's Model Law on International

Commercial Arbitration (the “**Model Law**”). The Model Law provides that an agreement is in writing if, *inter alia*, it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.

Counsel for the plaintiff argued that the applicable definition of “arbitration agreement” is that provided in section 27 of the Act, which refers to agreements in writing of the kind referred to in the “Convention on the Recognition and Enforcement of Foreign Arbitral Awards concluded on 10th June 1958” (the New York convention; hereafter, the “**Convention**”). The definition in the Convention is wider than in the Model Law and in such context it is more difficult to argue that an arbitration agreement only exists when there is a document between the parties that been signed by the parties as such.

Prakash J, speaking for the High Court, endorsed the view that one must take a pragmatic approach towards the definitions in the Convention and the Act in order to give effect to arbitral awards granted outside Singapore. Where the award was made by a foreign arbitral tribunal and where the law governing the arbitration was not Singapore law, the applicable part of the Act is Part III which contains section 27 and is entitled “Foreign Awards”. “Foreign awards” are defined as arbitral awards made in pursuance of an arbitration agreement in the territory of a country other than Singapore which is a party to the Convention, such as the USA. Section 19 of the Act, on the other hand, generally applies only to arbitration proceedings with their seats in Singapore and which are “international arbitrations” within the meaning of that term in section 5 of the Act.

Fulfilling the requirement of producing the arbitration award

The court next dealt with the issue of what is entailed by the requirement of producing the arbitration agreement. Section 30 of the Act requires a person seeking to enforce a foreign award to produce to the court a copy of the arbitration agreement.

Counsel for Chiew contended that a two-step substantive examination was required for the purpose of enforcement of the award in Singapore. Not only would the court have to see duly authenticated copies of the arbitration agreement and of the award but it would also have to be satisfied that the award was correctly made against the party as *prima facie* a party to the arbitration agreement. The assistant registrar rejected these arguments and considered that it was sufficient for the plaintiff to prove that Chiew was mentioned in the Agreement and that the foreign arbitral tribunal had made a finding that he was a party to the Agreement.

After considerable deliberation, Prakash J upheld the approach taken by the assistant registrar and held that the enforcement process is a mechanistic one which does not require judicial investigation by the court of the jurisdiction in which enforcement is sought. The mechanistic nature of the enforcement process is also supported by section 31(1) of the Act, which states that enforcement may be refused in the cases specified in section 31(2) and 31(4) of the Act but not otherwise. The language of the Act indicates that such grounds are meant to be exhaustive and that the court has no residual discretion to refuse enforcement if one of the grounds is not established.

A party seeking to challenge a Convention award had two courses of action open to him: he could apply to the supervising court to set aside the award and he could also apply to the enforcement court to set aside any leave granted to the opposing party to enforce the award. As the enforcement court in this case, the Singapore High Court can only permit Chiew to resist

enforcement if he is able to establish one of the grounds set out in section 31(2) of the Act. Except to the extent permitted by these grounds, the court cannot look into the merits of the award and allow Chiew to re-litigate issues that he could have brought up either before the US arbitrator or the supervisory court.

Whether there was ground to resist enforcement

Chiew sought to resist enforcement under one or more of the following grounds in section 31 of the Act:

- that there was no valid arbitration agreement,
- that the award went beyond the scope of the submission to arbitration,
- that the subject matter of the difference between the parties to the award was not capable of settlement by arbitration, and
- that the enforcement of the award would be contrary to the public policy of Singapore.

The court held that Chiew failed to adduce expert evidence on the law of Arizona as it applied to the award, and that the US arbitrator's findings were incorrect under Arizona law. As such, there are no extraordinary circumstances to warrant a review of the award on this ground.

Chiew also failed to establish that the award went beyond the scope of the submission to arbitration. The court upheld the plaintiff's argument that section 31(2)(d) relates to the scope of the arbitration agreement rather than to whether a particular person was a party to that agreement.

Neither had Chiew proven that the subject matter of the dispute was not capable of settlement by arbitration. The determination of whether a matter is arbitrable or not is governed by Singapore law. The court held that as far as Singapore law is concerned, the issue of alter ego would generally be arbitrable, for it does not have a public interest element and it normally arises in a commercial transaction in which one party is trying to make an individual responsible for the obligations of a corporation.

Finally, Chiew had not shown that the enforcement of the award would be contrary to Singapore public policy.

Accordingly, the court dismissed the appeal.

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Insolvency

Singapore Court of Appeal orders winding up of quasi-partnership company

Sim Yong Kim v Evenstar Investments Pte Ltd
[2006] 3 SLR 827; [2006] SGCA 23

In *Sim Yong Kim v Evenstar Investments Pte Ltd*, the Singapore Court of Appeal granted the petition to wind up a quasi-partnership company under section 254(1)(i) of the Companies Act and also exercised its ancillary powers under section 257(1) of the same Act, subjecting the winding up to

several conditions and directions in the hope of achieving a fair resolution between the parties. This is a noteworthy case which deals with some interesting issues such as the conclusiveness of a company's memorandum of association in a quasi-partnership arrangement whereby a company is set up as a vehicle for an agreed object and also the "just and equitable" jurisdiction under section 254(1)(i) and its relationship with section 216 of the Companies Act.

The relevant facts of this case are that the petitioner and his brother ("**Mike**") pooled their shares in a company ("**Sinwa**") in a dormant company ("**Evenstar**"). Following the injection of the Sinwa shares into Evenstar, Mike and the petitioner became Evenstar's only directors and shareholders, holding respectively 86.5 per cent. and 13.5 per cent. of its issued share capital. As such, the petitioner was the sole minority shareholder in Evenstar while Mike was the sole majority shareholder. Subsequently, Evenstar transferred a parcel of Sinwa shares to another company, KS Tech in exchange for KS Tech shares. However, the shareholdings in Sinwa and KS Energy (the former KS Tech) continue to form the bulk of Evenstar's assets although Evenstar did acquire other assets.

The petitioner petitioned before the High Court for Evenstar to be wound up under section 254(1)(i) of the Companies Act. Section 254(1)(i) provides that a company may be ordered to wind up if the court thought it just and equitable to do so. In support of his petition, the petitioner argued, among others, that:

- there had been a change in the original objective of setting up Evenstar which was to hold Sinwa shares because Mike has used Evenstar to make other investments; and
- Mike had agreed to buy out the petitioner should he "want to pull out [his] shares from the Company", and that the petitioner would "give Mike the first right of refusal".

The petition was dismissed. Consequently, the petitioner filed this present appeal.

Conclusiveness of memorandum of association

One of the issues which the Court of Appeal had to determine was the objective of setting up Evenstar. Based on the facts, the Court of Appeal found that the initial object of Evenstar was to hold the brothers' Sinwa shares as an investment block that would allow Mike to retain majority control of Sinwa. The court at first instance found that the original scope of Evenstar's business was broader according to its objects clause in the memorandum of association and empowered it to make other investments in Singapore and abroad. Although the Court of Appeal agreed that a company's memorandum of association would be conclusive evidence of its objects *vis-à-vis* third parties, it is not necessarily so as between shareholders, such as the brothers here, who had entered into what was substantially a quasi-partnership using the company merely as a vehicle for an agreed object. As between the brothers, what they had agreed upon as the object or objects of Evenstar would be determinative. The inconclusiveness of Evenstar's memorandum of association was *a fortiori* given that Evenstar was initially incorporated as a dormant or shelf company.

However, the Court of Appeal also found that the petitioner, by his actions, had acquiesced to Evenstar holding investments other than Sinwa shares. The Court of Appeal agreed with the High Court that in so far as the petitioner's case was based on a change in the original objective of Evenstar, it had to fail.

Promise to buy out petitioner's shares

The Court of Appeal also had to deal with the question of whether Mike did promise to “buy out” the petitioner as a condition for the petitioner’s agreement to the pooling of Sinwa shares in Evenstar and if so, whether Mike had breached that promise. If Mike had indeed promised to “buy out” the petitioner from Evenstar, which was what the evidence clearly showed, it could not be that he was only given a right of first refusal. A promise to buy would be a direct contradiction of a right not to buy, which would be what the right of first refusal meant. The Court of Appeal’s view was that the “first right of refusal” in this case was not meant to negate or override the fundamental promise to pull the petitioner’s Sinwa shares out of Evenstar, but was intended to explain what would happen after these shares had been taken out of Evenstar. In that event, if Mike exercised his right of first refusal to buy the petitioner’s Sinwa shares, the petitioner would be free to sell his Sinwa shares in the market. Mike’s assurance would only be assuring to the petitioner if it guaranteed the petitioner’s right to exit Evenstar but not if it only gave Mike an option to purchase the petitioner’s Evenstar shares. It would also make perfect sense for Mike, as he could cause Evenstar to return the petitioner’s Sinwa shares in exchange for the petitioner’s Evenstar shares, and then decide whether or not to exercise his right of first refusal with respect to those shares.

The Court of Appeal decided that Mike did assure the petitioner that he could exit from Evenstar by pulling out his Sinwa shares whenever he wanted, provided that Mike was given a right of first refusal on these shares. According to the brothers’ agreement, Mike had two options open to him: he could either exercise the right of first refusal and give the petitioner his Sinwa shares by way of an *in specie* capital reduction of Evenstar, or choose not to exercise the right of first refusal and buy the petitioner out from Evenstar. Mike did neither and could not explain why. On the facts, the Court of Appeal found that Mike was in breach of his promise to allow the petitioner to exit from Evenstar.

Whether just and equitable to wind up Evenstar

The next question which the Court of Appeal had to consider was whether, by reason of Mike’s breach, it was just and equitable to wind up Evenstar under section 254(1)(i) of the Companies Act. In this regard, the Court of Appeal felt it necessary to set out the framework within which the court’s “just and equitable” jurisdiction operates. The Court of Appeal noted that the notion of unfairness lies at the heart of the “just and equitable” jurisdiction in section 254(1)(i) and that unfairness can arise in different situations and from different kinds of conduct in different circumstances.

The Court of Appeal was asked to also consider the relationship between sections 216 and 254(1)(i) of the Companies Act by reference to English jurisprudence. Section 216 provides for personal remedies in cases of oppression or injustice. The Court of Appeal did not think that the provisions of the Singapore Companies Act support any suggestion that the “just and equitable” jurisdiction under section 254(1)(i) is necessarily a subset of the “oppression” jurisdiction under section 216. The two provisions should be treated as prescribing different grounds to warrant winding up, rather than raising the threshold of the “just and equitable” jurisdiction to allow winding up as a higher order remedy for the more severe “oppression” cases. However in overlapping situations, the degree of unfairness required to invoke the “just and equitable” jurisdiction should be as onerous as that required to invoke the “oppression” jurisdiction, although the ultimate remedy might differ.

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On the present facts, the Court of Appeal decided that the “just and equitable” jurisdiction in section 254(1)(i) left room for equity to impose contemporary standards of corporate responsibility on errant members. In the court’s view, majority shareholders in quasi-partnership companies, such as Evenstar, are expected to keep their promises and assurances to minority shareholders. They are expected to take a broader and more generous view of their obligations having regard to what is fair to minority shareholders. As such, the Court of Appeal felt that the winding up of Evenstar would restore to the petitioner what Mike had promised to restore when they agreed to pool the Sinwa shares.

The Court of Appeal allowed the petitioner’s appeal. The court also made ancillary orders under section 257(1) of the Companies Act. In the court’s view, the sub-section allowed it to direct how the winding up should be conducted and also to defer the winding up until the parties had been given adequate opportunity to reach a compromise or an alternative arrangement.

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Shipping

Singapore High Court considers practice and procedure relating to pilot transfer arrangements in a personal injury case at sea

The “Emma Maersk” [2006] SGHC 180

The case of *The “Emma Maersk”*, concerns claims made by a harbour pilot who suffered injuries when disembarking from a ship. This is an interesting case to note as it is the first time that issues relating to the practice and procedure, and regulations governing pilot transfer arrangements are being considered in the Singapore courts. Pilot transfer arrangements basically refer to the safety precautionary measures which are put in place to ensure that a pilot embarks and disembarks safely from a ship. According to section 2 of the Merchant Shipping Act, a pilot means any person who does not belong to, but has the conduct of, a ship.

In the present case, the plaintiff, a harbour pilot, suffered injuries when he was in the process of disembarking from the ship, Emma Maersk (the “**Ship**”). He was using the Ship’s port side gangway to disembark onto the pilot launch which came alongside the Ship. While the plaintiff was still on the gangway, the bow of the pilot launch went under and lifted the gangway with considerable force, causing the plaintiff to be thrown from the gangway into the sea.

The plaintiff asserted that the accident was caused by the negligence and/or breach of duty and/or breach of statutory duty of the owner of the Ship (the “**defendant**”) whether by itself or its servants or agents.

The court had to first, determine the defendant’s duty in respect of a pilot’s disembarkation from the Ship. In this regard, it was accepted that the defendant had a duty to provide the plaintiff with a safe method of embarkation and disembarkation from the ship pursuant to Regulation 23 of the Merchant Shipping (Safety Convention) Regulations (“**Regulation 23**”) and Shipping Circular No 10 of 1999 (“**Circular No 10**”) which the Maritime

Port Authority of Singapore issued for the purpose of drawing the attention of shipowners, masters and other relevant persons to the applicable international regulations and good practices relating to pilot transfer arrangements.

Next, the court addressed the question of whether the defendant was negligent in relation to the disembarkation process based on the plaintiff's various allegations. One of the allegations was that the Ship had failed to ensure that the gangway was lowered to a safe height. However, the court agreed with the defendant's submissions that the job of determining how high the gangway had to be in order to ensure a smooth transfer to the pilot boat was the responsibility of the pilot boat. The accepted and established practice was for the pilot boat to determine and guide the height of the gangway and relay the appropriate signals to the Ship which should in turn follow the signals. It was reasonable for the Ship to have assumed that if it followed the instructions given by the pilot boat and the plaintiff, the gangway would be where it was supposed to be or at least where the pilot boat wanted it. It was not necessary for the Ship to inform the pilot boat or the pilot that it was relying on their instructions in relation to the lowering of the gangway as that was the accepted procedure. It was not for the Ship to lower the gangway to a height that was below the height of the pilot boat before the pilot boat approached. As such, the court found that the plaintiff has not established that the Ship or any of its crew was negligent in the manner in which the gangway was provided for the plaintiff's disembarkation.

Another of the plaintiff's allegation was that the defendant was in breach of its statutory duties imposed by Regulation 23 and Circular No 10, by failing to provide the plaintiff with a combination ladder or an equivalent safe method to disembark from the Ship. The issue to be decided was whether the defendant was in breach of duty when it provided only the gangway and not the pilot ladder in combination with the gangway for the plaintiff's disembarkation. The defendant did not dispute that the combination ladder was generally, and usually, the best method of disembarkation. The defendant submitted, however, that since the regulations allowed for some flexibility in embarkation/disembarkation methods as long as the alternative provided was "equally safe and convenient", in the circumstances that existed in this case, the gangway had been an equally safe and convenient method and therefore the defendant had provided a safe method of disembarkation and was not in breach of its statutory duty. The court agreed with the defendant and based on the evidence given, held that the provision of the gangway for disembarkation instead of the combination ladder, was not a breach of the defendant's statutory duty. The court also held it was normal practice in Singapore for pilots who were disembarking from vessels underway to use the gangway by itself provided that the weather conditions were, as they were in this case, suitable for the use of this method.

The court then moved on to deal with the plaintiff's contention about the extra precautions that the Ship had to observe in order to fulfil its duty to provide a safe method of disembarkation when the gangway alone was being used. The plaintiff submitted that a responsible officer should accompany the plaintiff down to the bottom platform of the gangway. Regulation 23(b)(ii) in Chapter V of the Merchant Shipping (Safety Convention) Regulations ("**Regulation 23(b)(ii)**") provides that the duties of the responsible officer are to supervise the rigging of the pilot transfer arrangements, to arrange for the escort of the pilot by a safe route to and from the navigation bridge and to supervise the embarkation of the pilot. The defendant counter-argued that Regulation 23(b)(ii) did not require a responsible officer to go onto the gangway with the plaintiff but it was agreed that the pilot's disembarkation must be supervised. On the evidence, the court held that the defendant had

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complied with its obligation to have a responsible officer supervise the disembarkation and that it is not required under Regulation 23(b)(ii) for the officer to be on the gangway itself. As such, the defendant was found not to have breached any statutory duty.

The plaintiff also alleged that the telescopic metal cylinder at the end of the gangway, which was supposed to prevent the pilot launch from going under the gangway, was not extended or sufficiently extended. However, the court found on the evidence that there is no law or rule in Singapore that requires a gangway to be fitted with a telescopic cylinder. The court accepted the defendant's submission that the cylinder was not designed to protect a pilot from an impact caused by a pilot boat which comes in improperly and in an unsafe manner. It was highly material that the cylinder is an optional extra and not a statutorily prescribed item. As such, the defendant did not breach any statutory duty.

Apart from the above, the plaintiff also claimed on the basis of *res ipsa loquitur* and that the defendant breached its duty as occupier of the Ship. However, the court dismissed these claims.

In conclusion, it was held that the plaintiff had failed to establish that his injury was due to any breach or neglect of duty on the part of the defendant. His claim was dismissed with costs.

Allen & Gledhill represented the successful defendant.

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General

Moneylending

Singapore High Court considers whether arrangement to provide letters of credit constitutes moneylending

Panjaj s/o Dhirajjal v Donald McArthy Trading Pte Ltd & Ors
[2006] 4 SLR 79; [2006] SGHC 131

In *Panjaj s/o Dhirajjal v Donald McArthy Trading Pte Ltd & Ors*, the Singapore High Court had to consider whether the plaintiff was an illegal moneylender under the Moneylenders Act as he had arranged for his bankers to issue letters of credit to be used to pay for goods purchased by the first defendant who then paid the plaintiff commission and interest in addition to the principal sum under the letter of credit.

The parties in this case had an arrangement whereby the plaintiff would get his bankers to issue letters of credit which were used to pay for goods the first defendant purchased. When the letter of credit was issued and the goods were paid for, they would be taken by the first defendant. For the benefit of the service, the first defendant agreed to pay the plaintiff the principal sum of the letter of credit, a commission charge, and interest.

Upon the first defendant's failure to pay the plaintiff under the arrangement, the plaintiff commenced proceedings claiming from the first defendant a sum of money including continuing contractual interest, and alternatively, damages.

The first defendant pleaded that the agreement was unenforceable as it infringed the Moneylenders Act. The first defendant alleged that there was a system and continuity in the plaintiff's moneylending activities as evidenced by the high volume of letter of credit transactions which had been made from 1997 to 2002. The first defendant argued that since the plaintiff was an unlicensed moneylender, his claims for outstanding sums due under the letter of credit arrangement would be unenforceable.

After pleadings closed, the first defendant applied for and obtained an order for the trial of the preliminary issue of whether the plaintiff was a moneylender within the meaning of the Moneylenders Act.

Whether the plaintiff was a moneylender

In approaching the question whether the plaintiff was a moneylender, the Singapore High Court presided by Kan Ting Chiu J first addressed the basic question whether the plaintiff was lending money.

The Singapore High Court held that the lending of money is a common form of financial assistance, but it is by no means the only form of financial assistance, and not all forms of financial assistance involves the lending of money.

The court noted that some businessmen who do not have their own funds or banking facilities to pay for their purchases have to rely on such arrangements to finance the purchases, and businessmen with ready facilities offer the service for a profit.

Kan Ting Chiu J referred to the case of *Nissho Iwai International (Singapore) Pte Ltd v Kohinoor Impex Pte Ltd* [1995] 3 SLR 268 ("Nissho") where Lim Teong Qwee JC stated that:

"This is a practice well known to those concerned with the import and export trade and I think not a few importers who use the available letter of credit lines of banking facilities of their business associates from time to time would be surprised if they were told that they were borrowing money by doing that and that their business associates would require a licence under the Moneylenders Act ... In my judgment there is no loan here at all ... [Such] transactions are not loans in nature or in form."

Kan Ting Chiu J agreed with the conclusion in *Nissho*. In his view, like the purchase of book debts and the discounting of bills, the provision of letters of credit facilities is distinct from moneylending. It is a form of financial assistance that one party offers to another, usually for a profit. Unless all forms of financial assistance for a profit are to be taken as moneylending, the arrangement between the plaintiff and the first defendant was not moneylending because no money was lent.

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News

Delisting of Raffles Holdings Limited

CapitaLand Limited (“**CapitaLand**”) is seeking to delist Raffles Holdings Limited (“**RHL**”) from the Official List of the Singapore Exchange Securities Trading Limited. Under the delisting proposal, CapitaLand will make a conditional cash offer to acquire all the issued ordinary shares in the capital of RHL, other than those already held, directly or indirectly, by CapitaLand.

Advising RHL are Allen & Gledhill Partner Lim Mei, Senior Associates Christopher Ong and Hilary Low and Associate Lee Sue Ann.

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CapitaCommercial Trust and CapitaMall Trust issue new units and CMBS

CapitaCommercial Trust (“**CCT**”) and CapitaMall Trust (“**CMT**”) have issued new units to fund the approximately S\$2.19 billion acquisition of Raffles City through RCS Trust, an unlisted special purpose sub-trust, which is held 60:40 by CCT and CMT, respectively. Through the equity fund raising, CCT raised net proceeds of approximately S\$789.2 million and CMT raised net proceeds of approximately S\$391.7 million. Additional borrowings of S\$132.5 million were incurred by the CMT manager to finance CMT’s 40 per cent. share of the acquisition cost. The balance of the acquisition cost, which amounted to S\$866 million, was financed by borrowings incurred by RCS Trust, through the issue of rated commercial mortgage-backed securities from a bankruptcy-remote special purpose vehicle secured by the rental cashflows of Raffles City (“**CMBS**”).

Advising CCT and CMT for the equity fund raising are Allen & Gledhill Partners Jerry Koh and Chua Bor Jern and Associates Merissa Quek and Teh Hoe Yue. Advising CCT and CMT for the CMBS are Allen & Gledhill Partners Margaret Chin and Jerry Koh and Associates Linda Cheng and Tan Ngee Hao.

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Publication on Real Estate Investment Trusts

Globe Business Publishing Ltd has recently launched *Real Estate Investment Trusts: A Global Analysis*, which is the only volume to cover real estate investment trusts (“**REITs**”) and significant property funds in 12 jurisdictions. Each chapter of the book is written by specialists in the field and covers key concepts such as tax, investor limitations, distribution requirements, gearing, conversion charge, treatment of offshore investors and related issues. Allen & Gledhill Partner Jerry Koh, who is noted for his expertise in REITs, contributed the Singapore chapter. For more information on the publication, please visit <http://www.gbplawbooks.com/REIT>.

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