Morgan Lewis Stamford

Issue 40 - September 2015

CHRONICLE

IN THIS ISSUE

Morgan Lewis Stamford LLC
10 Collyer Quay #27-00 Ocean Financial Centre Singapore 049315
T: +65 6389 3000 F: +65 6389 3099
www.morganlewis.com

Vietnam Liberalises Its Market to Securities Investment

Vietnam is currently undertaking substantial simplification and liberalisation of its legal environment. The most recent initiative is the development and reform of its securities legislation, currently mainly governed under the Law on Securities 70-2006-QH11. In this article, we look at two recent decrees: Decree 60-2015-ND-CP dated 26 June 2015 (**Decree 60**), which came into force on 1 September 2015 and raises the limit of investment in public companies for foreign investors, and Decree 42-2015-ND-CP dated 5 May 2015 (**Decree 42**), which came into force on 1 July 2015 and establishes a new derivatives market. These new decrees build upon the recent legislative reform seen with the enactment of the Law on Investment (67-2014-QH13) and the Law on Enterprises (68-2014-QH13), which were passed to reduce administrative bureaucracy, simplify the legal framework applicable to investors, and mobilise more foreign and local capital into production.

Overview of the current financial markets

Vietnam's new derivatives market will be introduced in 2016, and it currently has three financial platforms: the Ho Chi Minh City Stock Exchange (**HOSE**), the Hanoi Stock Exchange (**HNX**), and the Trading Center for Unlisted Securities at the Hanoi Stock Exchange (**UPCoM**).

HOSE

Trading on the HOSE, previously called the Ho Chi Minh Securities Trading Center, commenced on 28 July 2000. At the beginning of the HOSE, an overall foreign ownership limit of 20% for equities and 40% for bonds was implemented. In a bid to improve liquidity, the government successively raised the foreign ownership limit for both equities and bonds. The HOSE is the largest stock exchange in Vietnam. As of 10 May 2014, the HOSE had 342 listings, including 302 stocks, 2 fund certificates, and 38 bonds. The total listed volume was 30.415 billion VND, of which 99.62% were stock shares. The market capitalisation was 310.5 trillion VND.

HNX

The HNX was launched in 2005. The main products on this market are listed stocks and listed bonds.

The consolidation of the HOSE and the HNX into one stock exchange is currently under consideration, and the Ministry of Finance (**MOF**) has submitted a plan on the consolidation to the Prime Minister for his approval. According to Mr. Le Van Chau, President of the Vietnam Association of the Securities Business (**VASB**), "*[T]he spectrum of grouping them into one organisation is to form a stock exchange large enough to compete with other big trading platforms in other countries*".

CONTACTS
Wai Ming Yap, **Partner**
DID: +65.6389.3009
waiming.yap@stamfordlaw.com.sg

Arnaud Bourrut-Lacouture, Associate
DID: +65.6389.3068
arnaud.bourrut@stamfordlaw.com.sg

CORPORATE BUSINESS TRANSACTIONS

UPCoM

UPCoM was launched on 24 June 2009. This is the trading floor of stocks and convertible bonds of public companies which are not listed.

Foreign investments on the securities markets

Circular 213-2012 prescribes the conditions of investment for foreign investors. Such investors may:

- directly conduct investment transactions via the purchase and sale of shares, bonds or other types of securities, or contribution to the share capital of companies; or

- indirectly conduct investment of securities by contribution to a fund managed by a fund management company in Vietnam (or branch of a foreign fund manager).

Foreign investors may also designate a transaction representative to conduct trading and investment activities in their names but such investment authorisation or appointment shall not include activities such as asset management, trading account management, decision making on investment and disinvestment, selection of types of securities, trading volume, price level, and timing of trading. Foreign individuals may also authorise a securities company to manage their security trading accounts. Finally, fund management companies or branches of a foreign fund management company may manage securities investment portfolios on behalf of their foreign clients or conduct investment activities in their names.

To be allowed to trade on the Vietnamese stock exchanges, foreign investors must fulfil the following conditions:

- Obtain a securities trading code from the Vietnam Securities Depository centres (unless they invest indirectly through a fund management company);

- Apply for one indirect investment capital account and one depositary account with a custodian bank. Non-resident foreign investors must open a capital Vietnamese Dong account at an authorised credit institution to conduct direct investment in Vietnam. Investment capital in foreign currency must be converted to Vietnamese Dong before the indirect investment is carried out. An indirect investment capital account must be used to implement, notably, receipt from the assignment of capital contribution of shareholding from the sale of securities, dividends and other revenues arising from indirect investment activities; and

- Report their ownership, disclose information about their securities transactions and pay taxes in accordance with applicable laws.

Foreign investment in listed shares and public companies

Decree 60 relaxes restrictions on foreign investment in listed shares and public companies, although there remain some areas of uncertainty as to the application of the decree. Before Decree 60 was passed, foreign ownership in listed shares and public companies was limited to 49%. Additionally, lower caps, such as those applying to banks, would apply even where an entity is listed. Decree 60 contains new provisions that could allow for majority-and-above control of public companies by foreign investors.

A company may qualify as being public if it meets one of the three following criteria: (1) its shares are listed on a stock exchange; (2) it has conducted an initial public offering; or (3) it has more than 100 shareholders with a charter capital of VND 10 billion or more.

For public companies operating in sectors and/or business lines subject to foreign ownership limits in international treaties, the maximum ratio of foreign ownership must be at the ratios stipulated in such international treaties. This effectively means that the Vietnamese government confirms the current administrative approach of applying the minimum commitments under international treaties as maximum foreign ownership thresholds. A number of sectors are covered and restricted by this clause, including telecommunications and logistics.

For public companies operating in sectors and/or business lines subject to specific foreign ownership limitations in the Law on Investment or relevant specific sector laws, the maximum ratio of foreign ownership shall be as stipulated in such laws. This means that foreign investment in sectors such as banking, where foreign ownership caps are specifically set out in domestic regulations, will continue to be constrained by those caps. Decree 60 also stipulates that for public companies operating in sectors and/or business lines subject to conditions applicable to foreign investors, but where no specific ratio on foreign ownership limitation has yet been issued, the maximum ratio of foreign ownership will remain 49%.

For public companies operating across various sectors, where the maximum foreign ownership cap may vary according to each different activity under Vietnamese law, the maximum ratio of foreign ownership cannot exceed the lowest ratio permitted for any one of the activities (unless otherwise provided in an international treaty).

For public companies operating in sectors and/or business lines other than the above, the ratio of foreign ownership is unlimited, unless otherwise provided in the charters of the companies.

It remains uncertain at present, if foreign investors are permitted to hold capital of a public company without limitation in sectors which are "*subject to conditions applicable to foreign investors but where no specific ratio on foreign ownership limitation has been issued*". It is not clear how this phrase

will be interpreted by the authorities. Indeed, it is not clear which conditional sectors are referred to. For instance, the Law on Investment has set forth a list of 267 conditional sectors, but some of these conditional sectors apply to both foreigners and domestic investors. It is not clear therefore whether the cap of 49% will automatically apply to those sectors.

Derivatives trading

Decree 42 came into effect on 1 July 2015. The decree represents the first phase of a new legal framework for trading derivative securities in Vietnam, expected to be implemented in 2016. We expect that further regulations should be issued and become effective before then.

Derivatives are defined in the decree as securities prescribed under the Law on Securities and, as such, all provisions therein must also be complied with to the extent they are applicable. Futures contracts, options and forwards are permitted to be traded on the regulated market so long as the underlying assets are securities traded on a Vietnam stock exchange.

Non-securities derivatives transactions such as interest rate swaps, foreign currency swaps, and commodity swaps are not covered by Decree 42, although the latter provides that the Prime Minister shall further consider the listing of "*derivatives whose underlying assets are assets other than securities*".

Both Vietnamese entities and foreign entities will be able to invest on the derivatives market, although the following requirements and conditions are to be satisfied by Vietnamese entities:

- ***A securities company -*** must have a *Certificate of satisfaction of conditions for derivatives self trading* issued by the State Securities Commission (**SSC**);
- ***A fund management company -*** the capital for making derivatives trading must be sourced from entrusted funds of an investment fund or capital of a securities investment company, provided that provisions permitting the use of those capital sources for investment in derivatives are clearly documented in relevant investment portfolio management contracts and/or charters of that investment fund or securities investment company (as applicable). The fund management company is not allowed to use its own equity, including loan capital, to invest in derivatives;
- ***A credit institution or a Vietnamese branch of a foreign bank -*** must have a prior written approval of the State Bank of Vietnam to conduct trading in derivative securities;
- ***An insurer or a Vietnamese branch of foreign insurer -*** must have a prior written approval of the Ministry of Finance.

CORPORATE BUSINESS TRANSACTIONS

In order to invest in derivatives, any investor must have opened a derivatives trading account with the relevant trading member and placed an escrow deposit (either money or securities) as required by the relevant clearing member.

According to Decree 42, any transaction in derivatives on the stock exchange shall be conducted by trading members. Only Vietnamese entities can be trading members. Decree 42 distinguishes between a "*derivatives securities trading member*", which is a Vietnamese securities company permitted to conduct activities of derivatives self-trading, brokerage and consultancy, and a "*special trading member*", which is a Vietnamese commercial bank permitted to invest in derivatives whose underlying assets are bonds. A derivatives securities trading member will need to be licensed with the SSC and receive a Certificate of satisfaction of conditions for derivatives brokerage, while a special trading member must receive approval from the State Bank of Vietnam and must be a trading member on the Government bond market of the stock exchange.

Among other conditions listed in Decree 42 regarding the conduct of derivatives securities business, the following minimum share capital required should be highlighted:

- VND 600 billion (circa 36 million SGD) for self-trading;
- VND 800 billion (circa 48 million SGD) for a brokerage; and
- VND 10 million (circa 6 million SGD) for an investment consultancy.

Legal Representatives of Companies Incorporated in China – A Judicial Change of Heart?

Introduction

Ask any restructuring professional about the greatest challenge in restructuring and reorganising a business group with operations in the People's Republic of China (**PRC**), and he/she is likely to say that it is virtually impossible to take over control of the PRC operating subsidiaries without the co-operation of the existing PRC legal representatives.

Every business in the PRC is required to have a legal representative, who is the main principal with the legal power to represent the PRC company in accordance with the law or articles of association of the company. The legal representative is appointed to act on the company's behalf and has full access to the company, cash, and capital. A legal representative's acts are binding on the company even if he/she is acting beyond his/her authorised scope.

Often, foreign owners or administrators are held ransom by these PRC legal representatives and are forced to negotiate a settlement with the legal representatives in return for their co-operation to hand control back to the owners.

However, the recent judgement of the Supreme People's Court of the People's Republic of China (**SPC**) in *Sino-Environment Technology Group Limited v Thumb Env-Tech Group (Fujian) Co. Ltd* (the **Fujian Thumb case**), may signal a change in the judicial attitude towards the previous impasse. In that judgement, the court recognised that a properly passed shareholder resolution of a PRC company is sufficient to change the legal representative of that company.

Summary of the Fujian Thumb Case

Thumb Env-Tech Group (Fujian) Co. Ltd (**Fujian Thumb**) was a wholly owned PRC operating subsidiary of Sino-Environment Technology Group Limited (**Sino**), a Singapore company.

On 30 June 2008, state approval was granted for Fujian Thumb to increase its registered capital from RMB 130 million to RMB 380 million. Fujian Thumb completed the registration of the change of the registered capital.

On 4 June 2010, Sino was placed into judicial management. On 20 January 2011 and 30 March 2012, the Sino judicial managers passed written shareholder resolutions to change the legal representative and directors of Fujian Thumb. The then PRC management of Fujian Thumb refused to recognise the changes.

On 27 April 2012, Fujian Thumb filed a lawsuit in the PRC to demand that Sino pay RMB 45 million for the increase in capital. In response, the Sino judicial managers filed a PRC lawsuit against Fujian Thumb on 16 May 2012 to confirm the validity of the resolution for the removal and appointment of directors and a legal representative of Fujian Thumb.

CONTACTS
Justin Yip, **Partner**
DID: +65.6389.3049
justin.yip@stamfordlaw.com.sg

Yingjie "Jenny" Wang, Associate
DID: +65.6389.3076
yingjie.wang@stamfordlaw.com.sg

On 18 December 2012, the legal representative of Fujian Thumb was surreptitiously changed to another party by the then management of Fujian Thumb, without the authorisation of the Sino judicial managers. Sino challenged this action by filing a further PRC lawsuit requesting the cancellation of the said change.

In its judgement, the SPC recognised that the filing of the 27 April 2012 lawsuit was not the true intention of Fujian Thumb, since the Sino judicial managers had at the time of filing already passed a resolution for the change of the Fujian Thumb legal representative. The SPC expressly recognised that a properly passed shareholder resolution of a PRC company is sufficient to change the legal representative of that company, and proceeded to dismiss the 27 April 2012 lawsuit.

What can foreign shareholders expect?

Under the PRC legal system, the PRC's written laws are the only sources of law that can be directly applied by courts in rendering decisions. Precedent case authorities, such as the Fujian Thumb case, are normally for general reference only and are not binding on other PRC courts in similar cases. That said, the pronouncement by the SPC is nevertheless of great significance, as it signals that the PRC courts are moving away from a strict interpretation of the PRC's written laws, and are prepared to take a more pragmatic and commercial-minded approach. If so, this can only augur well for doing business in the PRC, as well as restructuring and reorganising PRC business operations, and make the PRC more conducive for multi-national corporations. It nevertheless remains to be seen whether the provincial and local courts in the PRC will adopt a similar approach to the SPC's.

Corporate Governance Issues: What to Do When Shareholders Veto a Decision by Exiting or Refusing to Attend a Meeting

Shareholders have, on certain occasions, exited or refused to attend certain meetings to avoid approving decisions which they do not agree with. Such a strategy is more commonly used in small and medium enterprises or joint venture corporations where the chances of deadlock are considerably higher, particularly if each stakeholder holds a similar shareholding in the relevant company. From a tactical point of view, some shareholders refuse to attend such meetings so that the necessary quorum requirements are not met, thereby invalidating the meetings and preventing any decisions from being made.

To further complicate matters, issues arise when corporate decisions are made following the conclusion of such meetings where there is an absence of a quorum. In such event, section 392 of the Companies Act (Cap. 50) (**Act**) provides that such a proceeding is not invalidated by reason of any procedural irregularity, unless the court is of the opinion that the procedural irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the court. There are well-established principles in Singapore under the Act and common law which govern the latter situation where a shareholder is proceeding with a decision in breach of the articles of association (**Articles**) and/or any shareholders' agreement due to lack of quorum.

Lim Yew Ming v Aik Chuan Construction Pte Ltd and others

An interesting development in corporate governance has arisen from the recent decision of *Lim Yew Ming v Aik Chuan Construction Pte Ltd and others* [2015] SGHC 101, where the High Court of Singapore exercised its discretion under section 182 of the Act to order that a meeting of only one shareholder (which lacked a quorum) be called, held and conducted.

This case involved a family-owned company where the majority shareholder held 51.5% and the remaining six shareholders, all being family members of the majority shareholder, held the other 48.5% of the company. Two of the minority shareholders were also directors of the company. The majority shareholder, on two occasions, had attempted to convene extraordinary general meetings (**EGMs**) to remove these two directors. His efforts, however, were thwarted due to a lack of quorum, as the other shareholders had refused to attend the EGMs.

The High Court in *Lim Yew Ming* followed a string of established English law cases, where the English courts set out that the lack of quorum would not prevent a corporate decision, such as the appointment or removal of a director, from being made, such decision which is something a majority shareholder would have the right to effect. The Singapore courts adopted a holistic approach to determining whether there was any "impracticability" and whether to exercise their discretion under section 182 of the Act.

CONTACTS
Lian Seng Yap, **Partner**
DID: +65.6389.3088
lianseng.yap@stamfordlaw.com.sg

Ting Chan, Associate
DID: +65.6389.3020
ting.chan@stamfordlaw.com.sg

Such "impracticability" will generally be construed by the courts if the circumstances arise such that the meeting could not practically be conducted. However, the Singapore courts have held that there is no threshold requirement that there has to be a deadlock affecting the daily operations of the company for such "impracticability" to arise.

With some qualifications . . .

While the general position adopted in Singapore is that a quorum requirement does not confer a veto power on a minority shareholder by his/her ability to prevent a shareholders' meeting from being held by his/her refusal to attend such meeting, the court in its judgement in *Lim Yew Ming* suggested that some factors would persuade the court not to exercise its discretion in determining that a one-member quorum was valid.

For example, the court may take a different view if a minority shareholder has a special right attached to his/her shares, implying that his/her presence at such meetings is indispensable. A similar reasoning was applied by the Singapore Court of Appeal in the case of *Chang Benety v Tang Kin Fei* [2012] 1 SLR (***Chang Benety***), albeit in the context of section 392 rather than section 182 of the Act, where in view of the special nature of the quorum provision, the court found that there will prima facie be substantial injustice to the side which exercised its deadlock rights. The court in *Chang Benety* highlighted that if the minority shareholder can show evidence to imply that the minority shareholders intended to have their interests represented such that the company is prevented from making decisions that would prejudice their positions, then the court may hold that there is a substantial injustice to the minority shareholder where a meeting has been held despite such a quorum requirement being breached.

Factors which evidence that there are special rights attached to the shares of minority shareholders include a shareholders' agreement requiring specific representation at a meeting, enshrining a provision that decisions are to be made on a cooperative and consensual basis among shareholders, or a specific quorum requirement that does not only specify a minimum number but also representation (either in terms of shareholding or on the board of directors). Where it appears that the Articles or a shareholders' agreement intends to create a class right in favour of certain shareholders, the courts may be less inclined to exercise their discretion.

Another relevant case is *Golden Harvest Films Distribution v Golden Village Multiples* [2007] 1 SLR 940, which involved a joint venture company set up by entities belonging to two conglomerate companies (i.e. Golden Harvest and Village Roadshow). Each of the two conglomerates nominated three directors to the board. The Articles of the joint venture company provided that the chairman would have a casting vote in the event of a deadlock at the board level. The issues before the Court of Appeal were whether the appointment of the chairman was irregular, and if so, whether the board meeting had not been invalidated by the procedural irregularity of not meeting the quorum requirements, as such irregularity had neither caused nor might have caused *"substantial injustice that cannot be remedied by any order of the Court"*

under section 392 of the Act. The Court of Appeal refused to invalidate the meeting on the ground that the substantial injustice had been perpetrated in the opposite direction by the persons who failed to attend the meeting so as not to constitute a valid quorum. It was observed *obiter* in this case that the three directors nominated by Golden Harvest who hung up the phone and left the board meeting were in the wrong by walking out of the meeting before the board could begin to conduct its business.

While section 182 and section 392 of the Act are and should remain distinct provisions with separate considerations, the issue of section 182 has not been discussed extensively in the Singapore courts; thus, it is likely that the Singapore courts will follow a similar approach to that of the English courts. The English courts have, in the past, distinguished cases on whether the relative shareholding of the parties was equal (i.e. whether the shareholding interests of the parties are relatively equal or if the majority shareholder is clearly in control of the company) or whether the quorum provision intended to also create a class right in favour of a certain shareholder (or if there is evidence of parties' express or implied acceptance that there would be certain constraints on the rights of certain shareholders).

A special case for family-owned companies?

While it was argued in *Lim Yew Ming* that family-owned companies should be subject to a different standard and should be treated as a different category of companies, the Singapore courts rejected this argument, subject to any special circumstances on a case-by-case basis, such as any pre-existing partnership arrangements between family members.

What can be done to avoid such deadlock?

The decision in *Lim Yew Ming* is a positive one for majority shareholders in Singapore, particularly because it is not a pre-requisite that there be a deadlock in the day-to-day operations of the company for the court's discretion under the Act to be invoked. However, it seems unlikely that the courts will exercise such discretion where there are indications that shareholders are willing to negotiate and reach a compromise.

Practically speaking, however, to avoid events of deadlock or having to make such an application to the court, directors and shareholders should ensure that the Articles of the company, or the shareholders' agreement, sufficiently and clearly governs the proceedings of meetings, including quorum. The Articles may specify that if the requisite quorum of two or more is not present, the meeting will be adjourned for a specified period of time, after which whoever present, even if insufficient to meet the two-person quorum requirement, shall be sufficient quorum at such adjourned meeting. Where there are groups of shareholders in a company, in addition to having a numerical requirement, i.e. two for quorum, it is possible to put in place a provision in the shareholders' agreement and/or the Articles of the company stating that each group's representative will have to be present in order to constitute a valid quorum.

A well-drafted shareholders' agreement with clear and comprehensive deadlock provisions can sometimes help to resolve a deadlock. However, not all companies have shareholders' agreements in place, as in the case of *Lim Yew Ming*, and not all companies' Articles are adequate for deadlock resolution. In such situations of deadlock, shareholders may be forced to resort to drastic measures in the event that the deadlock cannot be resolved, such as winding up the company.

The shareholders can put in place certain management structures to avoid situations of deadlock, such as an independent director's swing vote or casting vote, or the rotation of the chairman of the meeting. The Articles of a company may provide that the chairman of a meeting (in practice, usually the chairman of the board) may have a right to demand a poll after a vote on a show of hands resulting in a deadlock. Such chairman may also have a second or casting vote in the event of the deadlock if provided by the Articles.

Other deadlock resolution mechanisms which can be included in a shareholders' agreement include, in the event of a deadlock or a potential deadlock, put and call options, or referrals to specific shareholders or the chairman or chief executive of the company as the deciding vote. In more drastic circumstances, there may be provisions allowing for referral to mediation, expert determination, or arbitration. In cases where such deadlock absolutely cannot be resolved, the parties may then exercise their put and call options, or enter into a voluntary winding up of the company if it is unable to continue operating as one commercial entity.

In conclusion

It is clear from the case of *Lim Yew Ming* that if a shareholder refuses to attend meetings with the objective of preventing the requisite quorum from being formed, the court will exercise its discretion, with limited qualifications, that may affect important corporate decisions. Shareholders should recognise that meetings are an important decision making mechanism within a company which allow for commercial decisions to be proposed and debated openly upon, and therefore avoid disrupting proper corporate processes and decision making.

NEWS

Launch of the Morgan Lewis Asia Chronicle

We are excited to announce the launch of the *Morgan Lewis Asia Chronicle*. The "new" I will launch its inaugural issue in October and will feature articles and news from our Asia offices, namely the Singapore, Tokyo, and Beijing offices.

If you receive the current *Stamford Chronicle*, you will be added to the mailing list for the *Asia Chronicle*. And if you have any contacts that would be interested in receiving the Asia Chronicle, please click the following link and drop a note to Tammy Baker (tammy.baker@stamfordlaw.com.sg).

As we say goodbye to the *Stamford Chronicle*, we thank you for your loyal readership and hope you enjoy the *Asia Chronicle*!

Singapore Office hosts upcoming International Arbitration seminar

The Singapore office is hosting an international arbitration seminar on 1 October. Partners Timothy Cooke (Singapore) and David Waldron (London) will be focusing on practical skills and techniques to realise the full potential of the arbitral process. In particular, the seminar will address how to draft a watertight arbitration clause, how to select the right arbitral tribunal for the dispute in hand, and how to formulate a procedure that will prove efficient and effective. If you would like to register for this seminar, as well as receive information on future seminars in Singapore, please don't hesitate to contact Timothy Cooke (timothy.cooke@stamfordlaw.com.sg).

HEADLINE MATTERS

OLS Enterprise: Proposed Acquisition of Malaysian Phosphate Additives

The firm represented OLS Enterprise Ltd. (**OLS**) with respect to the proposed acquisition of Malaysian Phosphate Additives Sdn. Bhd. (**MPA**) by way of a reverse takeover for a consideration of approximately S$300 million ($217.2 million). MPA, a Malaysian company engaged in manufacturing feed and fertiliser phosphate products, has an indirect 40% stake in the development of an integrated phosphate plant to be located in Sarawak, Malaysia. When completed, the plant will be the first of its kind in Malaysia and Southeast Asia. It is expected to have a total estimated cost of MYR1.75 billion ($452.2 million). MPA also has been appointed technical adviser in relation to the phosphate plant, and is responsible for overseeing the plant's integration process during construction and optimising the process conditions upon start-up.

OLS has entered into the transaction with the shareholders of MPA, including Malaysian Technology Development Corporation Sdn. Bhd. (**MTDC**). MTDC is a wholly owned subsidiary of Khazanah Nasional Berhad, the strategic investment fund of the Malaysian government entrusted with holding and managing the government's commercial assets and undertaking strategic investments. An announcement was released on SGXNET (an online portal for the Singapore Exchange) on 3 August regarding the entry into the definitive share purchase agreement by OLS and the shareholders of MPA.

The team was led by partner Lian Seng Yap with assistance from associates Khai Ling Yau and Aaron Leong.

Global Mobility: Advice on Proposed €3.7 Billion Sale of LeasePlan Corporation

Morgan Lewis Stamford acted as Singapore legal adviser to Global Mobility Holding (a joint venture of Volkswagen and Fleet Investments) in its proposed €3.7 billion ($4.06 billion) sale of LeasePlan Corporation, the global leader in fleet management and driver mobility, to an international consortium. The consortium includes leading Dutch pension fund service provider PGGM; Denmark's largest pension fund ATP; Singapore sovereign wealth fund GIC; a wholly owned subsidiary of the Abu Dhabi Investment Authority; the Merchant Banking Division of Goldman Sachs; and investment funds managed by TDR Capital. Global Mobility reached an agreement with the consortium on 23 July for the sale of 100% of LeasePlan. The sale is subject to approval by the relevant regulatory and antitrust authorities, including the European Central Bank in consultation with the Dutch Central Bank. Closing is expected to take place by the end of 2015, subject to obtaining the necessary approvals. The consortium brings financial services sector experience and additional strategic experience as well as a strong track record of successful long-term investing. LeasePlan will continue its drive for the delivery of high-quality fleet management and driver mobility services for its clients.

The team was led by partner Elizabeth Kong.

HEADLINE MATTERS

Yeo, Teo, and Lim: Victory in Joint Venture Dispute

After a 12-year joint venture dispute, we emerged victorious for firm clients Yeo Boong Hua, Teo Tian Seng, and Lim Ah Poh. Justice Woo Bih Li of The High Court of the Republic of Singapore ruled in our clients' favour in *Yeo Boong Hua v. Turf Club Auto Emporium Pte Ltd.* Our clients, import and trade automobiles, had partnered with the defendants in a joint venture to develop a massive retail mall and automobile trading centre in Singapore. Initially, our clients settled a claim with the defendants for minority shareholder oppression. However, the defendants failed to comply with the terms of the court-ordered settlement. In a first-of-its-kind case in Singapore, our clients applied to set aside the settlement agreement and the court order, and revive the original claim.

Following years of appeals and a protracted trial, the High Court on 6 August ruled in our clients' favour, ordering the original court order and settlement to be set aside on the grounds of bad faith (we had showed under cross-examination that the defendants' officers had misappropriated the joint venture's assets). In a highly unusual ruling, the court also found that the defendants' key witness, a prominent Singapore entrepreneur, had committed perjury. The case now proceeds to damage claims assessment, which could be substantial.

The team was led by partner Adrian Tan, and associates Pei Ching Ong, Jean Wern Yeoh, and Siok Khoon Lim.

Retained to Act in Billion-Dollar Art Scandal

The firm had been retained to act for Tania Rappo, one of two defendants caught up in a global billion-dollar art dealer scandal. The client, along with Yves Bouvier, is being sued by Russian oligarch Dmitry Rybolovlev, who is ranked in 2015 as *Forbes*' 156th richest person in the world. Both defendants are accused of artificially inflating the price of several artworks by well-known masters such as Leonardo da Vinci, Pablo Picasso, Claude Monet, and Mark Rothko. The claim is in excess of $1 billion and involves coordination in several jurisdictions around the world including Singapore, Hong Kong, the Principality of Monaco, Switzerland, and the various Freeport zones in Geneva, Luxembourg, and Singapore. Allegations of corruption, fraud, criminal conspiracy, and money laundering in these jurisdictions have also arisen, requiring a multipronged, multidisciplinary, and multijurisdictional approach. After being retained on 16 March, the team obtained an early victory, amending an ex parte freezing order to permit payments for the client's living and business expenses and legal fees. This was opposed strenuously by Mr. Rybolovlev's counsel. The firm also prepared and filed the appeal papers for the matter before the Singapore Court of Appeal, and although the case was argued by different counsel verbally, the Court of Appeal adopted in its reasoning wholesale the written submissions of the firm in allowing the appeal in the client's favour.

The team was led by partner Daniel Chia, with associates Kenneth Chua, Yanguang Ker, and Chee Yao Aw.

HEADLINE MATTERS

OCBC: Establishment of Medium-Term Note Program

The firm represented Oversea-Chinese Banking Corporation Limited (**OCBC**) as sole arranger and dealer in the establishment by Century Sunshine Group Holdings Limited (**Century Sunshine**) of an SGD300 million (approximately $220 million) multicurrency medium-term note (**MTN**) program that was listed on the Singapore Exchange Securities Trading Limited (**SGX-ST**). The transaction agreements were signed on 19 May. Century Sunshine is a Cayman Islands–incorporated holding company that has its shares listed on the Hong Kong Stock Exchange. Century Sunshine is a producer of magnesium products and fertilisers, and conducts its operations in the PRC. This transaction is one of the few instances of a Singapore-law-governed MTN program being established by a foreign company that is not listed on the SGX-ST and that has all of its operations outside Singapore.

We expect to see an increasing number of such cross-border Singapore MTN programs being established by foreign companies to tap the Singapore dollar bond market, as this form of financing is increasingly becoming a popular financing option, in addition to the US dollar high-yield bond market.

The team was led by partner Sin Teck Lim, with support from associates Max Lee, Su Ai Kwa, and Ashleigh Low.

NauticAWT Limited: Initial Public Offering

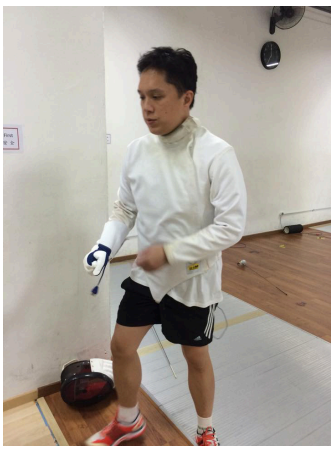
Morgan Lewis Stamford has advised NauticAWT Limited (**NauticAWT**), as issuer's counsel, in respect to its initial public offering (**IPO**) on the Catalist board of the Singapore Exchange Securities Trading Limited. NauticAWT is a provider of engineered solutions for the oil and gas industry in field exploration, field development, and field refurbishment, including design life extension and production enhancement for ageing and mature assets. We advised on all aspects of NauticAWT's IPO—Singapore's fifth IPO in 2015—including due diligence undertaken in more than eight jurisdictions. The invitation was approximately six times subscribed, and NauticAWT's 23 July opening price of S$0.35 (US$0.26) was 75% higher than its IPO price of S$0.20 (US$0.15).

The team was led by Bernard Lui, with associates Parikhit Sarma and Max Lee.

THE LAST WORD

The Last Word is a regular segment allowing you a tongue-in-cheek insight into the personalities in Morgan Lewis Stamford.

Middle Age has a way of catching up with you. You suddenly realise the weight is harder to lose and binge eating has consequences.



In an attempt to stave off the inevitable, I returned to fencing earlier this year. To those who do not know me, I used to fence competitively for more than 10 years but stopped 10 years ago. I quickly remembered that Fencing is a young man's sport and old bones and weak knees do not mix well with it. They say that fencing is a complete sport – physical chess; one of mind and body.

I agree. Especially of late. I am acutely aware of the weakness in my body (a huge understatement) and my need to over-compensate it with tactical tricks – most of which fail to work because of the weakness of my body.

To the clients who have noticed I walk funny on Wednesdays, you now know why.

Daniel Chia
Partner, Litigation

If you have any queries or would like to obtain past issues of the Morgan Lewis Stamford *Chronicle*, please do not hesitate to approach our communications team (corpcomms@stamfordlaw.com.sg) or any member of our Editorial Committee.

- Editorial Committee -
JUSTIN YIP (justin.yip@stamfordlaw.com.sg)
HUI LIN GOH (huilin.goh@stamfordlaw.com.sg)
TIMOTHY COOKE (timothy.cooke@stamfordlaw.com.sg)
TAMMY BAKER (tammy.baker@stamfordlaw.com.sg)