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FINANCIAL SERVICES

India-Mauritius Tax Treaty Amended – Singapore's Next?

Introduction

It is common knowledge that Singapore and Mauritius are the two largest FDI contributors into India. As per the statistics published by the Indian Department of Industrial Policy and Promotion, during the period April 2015 – March 2016, Singapore raised INR 89,510 Crores (equivalent of approximately USD 13.2 billion) of investment into India, followed by Mauritius with INR 54,706 Crores (equivalent of approximately USD 8.1 billion). Their popularity was largely due to the favourable tax treaties that both countries enjoyed with India. The India-Mauritius treaty accords the investors exemption from Indian capital gains tax implications arising from disposal of their share investments in India. The India-Singapore tax treaty also contains a similar capital gains tax exemption provision with higher substance requirements.

India-Mauritius Treaty Amendments

In May 2016, the India-Mauritius tax treaty was amended marking a shift from a resident-based taxation regime to a source-based taxation regime. The most significant change is the withdrawal of capital gains benefit from April 1, 2017. From April 1, 2017 Indian tax authorities will be able to impose capital gains tax on alienation of shares by a Mauritian resident in an Indian company. This withdrawal is sought to be implemented in a phased manner. The first phase will be the transitional period from April 1, 2017 to March 31, 2019 during which only 50% of the applicable capital gains tax rate will be charged, subject to fulfilment of the limitation of benefit (**LOB**) conditions. The LOB conditions require that in order to take advantage of the concessional tax rate, a Mauritian company should not be a shell/conduit company and its affairs should not be organised solely for the purposes of availing the concessional tax rate. In order to avoid being labelled as a shell/conduit, the Mauritian company should have an operating expenditure of at least INR 2,700,000 (equivalent of approximately USD 40,000) in the immediately preceding 12 months. The second phase will commence from April 1, 2019 where the full applicable capital gains tax rate will be charged. Shares acquired up to March 31, 2017 will continue to enjoy the benefits of the treaty as the amendments cater for grandfathering of all such investments. Another significant change brought about by the amendments is the levy of a favourable 7.5% tax rate by India on the gross amount of interest income arising from debt investments made by a Mauritian resident.

How Does It Impact Singapore?

The capital gains exemption under the India-Singapore tax treaty is co-terminus with the India-Mauritius tax treaty. Hence, with effect from April 1, 2017, Singapore will also lose the capital gains benefit under its treaty with India. In the absence of a renegotiated treaty with appropriate grandfathering

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provisions, it is unclear whether the alienation of shares acquired up to March 31, 2017 by a Singapore resident in an Indian company will enjoy the existing treaty benefits. Such ambiguity could be unsettling for investor sentiment. There is an urgent need to clarify the position and also to bring the India-Singapore tax treaty at par (if not better) with that of its Mauritius counterpart.

As one of the top destinations for investments into India in the last few years, Singapore has played a crucial role in India's economic development. Singapore is preferred by investors for its corporate-friendly laws, stable political environment, and its efficient dispute resolution institutions, amongst other things. In the absence of parity between the two treaties, Singapore's position as India's leading foreign direct investment contributor will be affected and the last thing the two governments would want is a loss of momentum at this stage.

Conclusion

India has tax treaties with Mauritius, Singapore, Cyprus, and the Netherlands that provide for capital gains tax benefits in some form or other. Having been declared a noncooperative tax jurisdiction by the Indian government, Cyprus was not a very attractive destination for investors. On June 30, 2016, the Cyprus Ministry of Finance announced that India and Cyprus have completed renegotiation of the India-Cyprus tax treaty, which will have the effect of making capital gains source based with grandfathering provisions for existing investments, similar to the India-Mauritius treaty. These amendments, once effective, will also remove Cyprus from the list of noncooperative tax jurisdictions. News reports suggest that India and the Netherlands intend to restart the process of renegotiating their tax treaty following commencement of the process in 2013.

The Indian Finance Minister had in May 2016 stated that the India-Singapore tax treaty would be renegotiated. However, the governments of both countries have no developments in this regard . To maintain investor confidence and to retain Singapore's position as the preferred jurisdiction for FDI into India, the investor community expects that this matter will be taken up by both governments as a matter of priority.

INVESTMENT MANAGEMENT

Growing the Funds Platform

Undergirded by an excellent financial, legal, and regulatory infrastructure and coupled with an extensive trade, investment, and tax treaty network, the past decade has seen Singapore emerge as an asset management gateway to Asia for fund managers who enjoy, amongst other things, attractive tax incentives for setting up operations in Singapore.

Some interesting figures can be gleaned from the 2014 Singapore Asset Management Survey conducted by the Monetary Authority of Singapore (**MAS**):

- Singapore's assets under management (**AUM**) grew to S$2.4 trillion in 2014, a 30% increase year-on-year and a doubling of AUM from 2009 (S$1.2 trillion)
- 81% of AUM is sourced outside of Singapore and 68% find themselves invested in the Asia-Pacific region
- A total of 591 fund managers are registered or licensed with the MAS, with eight of the top ten global PE firms having a presence in Singapore
- Hedge and private equity is driving the increase in alternative AUM expansion
- Singapore's participation in the fund passporting arrangements offered under the ASEAN Collective Investment Scheme and Asia Region Funds Passport regimes are beginning to facilitate access to regional markets of retail funds constituted in Singapore through a streamlined authorisation regime. This achieves economies of scale within a framework that adopts common rules and promotes certainty of tax, legal, and accounting treatment.

A Great Leap Forward

The recent keynote address by the Senior Minister of State for Finance at the Investment Management Association of Singapore's 17th Annual Conference held in Singapore on 16 March 2016 is likely to bring more cheer to the industry. Observing that asset managers are increasingly consolidating both fund management operations as well as fund domicile, the Minister announced plans to introduce a new regulatory framework for open-end investment companies (**OEIC**). While Singapore has been successful in drawing asset managers to set up operations in Singapore, the ramp-up in terms of Singapore-domiciled fund vehicles has advanced at a slower pace with many Singapore-managed funds continuing to be domiciled in, amongst others, Luxembourg, Delaware and the Cayman Islands.

To date, traditional funds domiciled in Singapore have adopted either the private company or unit trust model. There are drawbacks in each of these structures — a unit trust is not always able to access double tax treaties while

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the corporate vehicle lacks variable capital structures and presents some operational limitations in relation to the issue and redemption of shares and dividend distribution.

In an industry survey conducted in 2013[1], more than 90% of the respondents supported the OEIC structure[2], highlighting the phenomenally successful Luxembourg experience with the UCITS and non-UCITS structures.

While there is currently scant information as to the proposed OEIC framework, the proposal will likely address issues such as variable capital structures within the legal entity, the legal characteristics of each subfund or compartment,[3] and the dividend distribution and/or redemption mechanics[4].

Based on experience in other jurisdictions that have introduced similar structures[5], the OEIC regime will not only present cost savings and enhanced administrative efficiency to asset managers[6], but it also crucially plugs existing lacunae in the choice of legal entity in Singapore — that of the umbrella and subfunds structure where assets and liabilities of each subfund can be shielded from that of other subfunds.

Umbrella structures allow managers to pursue multi-strategies and target different clientele, all within the parameters of a single legal entity. If established under current corporate entity laws in Singapore, for example, through the use of different share classes, assets invested into by one class of investors nonetheless remain exposed to liabilities of other share classes insofar as third parties are concerned. The alternative of using separate special purpose vehicles to achieve such liability segregation would limit the risk of contagion but increase administrative cost.

The OEIC framework is targeted to be rolled out within a year. It is a development that will be closely watched and welcomed and adds another factor to Singapore's continuing efforts to remain not only relevant but also a favoured asset management and fund domicile choice for managers and investors alike.

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[1] The survey can be accessed at http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Surveys/Asset%20Management/2014%20AM%20Survey%20Report.pdf.

[2] Survey conducted by PwC, 'Why not, indeed? A PwC viewpoint on creating a new platform for Singapore's asset management industry'.

[3] For example, would each compartment or subfund have separate legal identities or only contractual segregation of asset and liabilities?

[4] Would dividends, for instance, be freely distributable or would the OEIC offer a dividend declaration rule that is simply less onerous than the current 'accounting profit' test for Singapore corporate vehicles?

[5] Different jurisdictional developments have given rise to various terminology for similar (and not necessarily identical) structures such as the protected cell company in Guernsey and Jersey, and the segregated cell company or segregated portfolio company in the British Virgin Islands and the Cayman Islands.

[6] As the manager would be able to, for example, rely on a single service provider, be it the distributor or custodian, and a single set of offering materials.

DISPUTE RESOLUTION

Singapore Court Strongly Urges Parties to Transfer Suit to the Singapore International Commercial Court in lieu of Staying the Action in Favour of Another Forum

In an unprecedented decision, the Singapore High Court has dismissed applications for a suit to be stayed in favour of foreign jurisdictions by directing the parties to consider agreeing to a transfer of the suit to the Singapore International Commercial Court (**SICC**), despite the lack of connecting factors to and the noncompellability of material witnesses in Singapore.

The Decision

In *Accent Delight International Ltd and another v Bouvier, Yves Charles Edgar and others* [2016] SGHC 40, the defendants applied to stay proceedings in relation to plaintiffs' claims for breach of fiduciary duties, deceit, fraudulent misrepresentation, constructive trust, conspiracy, knowing assistance, and knowing receipt.

The plaintiffs were companies owned by family trusts set up by Russian oligarch and billionaire Dmitriy Rybolovlev (**Rybolovlev**). The defendants were an art-dealing businessman and his affiliates who had allegedly acted as Rybolovlev's agent in the purchase of artworks, primarily in Switzerland. The defendants made their applications against the background of the plaintiffs' allegations that Bouvier had fraudulently inflated the prices of the artworks. Related criminal proceedings were afoot in Monaco.

The defendants sought a stay of proceedings on two main grounds. The first issue was that there was litigation pending in another forum. The second issue, which is the focus of this article, was that Singapore was not the convenient forum (**forum non conveniens**) to determine the dispute, and that the case should be decided in Switzerland or Monaco.

The High Court determined this issue by applying the two-stage test in the well-known decision of *Spiliada Maritime Corp. v Cansulex Ltd* [1987] 1 AC 460. The first stage of the test is for the defendant to demonstrate that there is another, more appropriate forum for the dispute to be heard. If the court is satisfied that another forum is more appropriate, the plaintiff may, as the second stage of the test, identify circumstances of the case that nevertheless require the stay to be refused.

As to the first stage of the test, the Court determined that the fundamental issue was whether the plaintiffs can pursue the majority of their substantive claims under Swiss law. In coming to the conclusion that the first stage had not been discharged, the High Court considered that Swiss law did not recognise the key heads of the plaintiffs' claims, which would therefore need to be reclassified. This detracted from the argument that Switzerland was a more appropriate forum. Beyond that, it appears that little material analysis was

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made on the appropriateness of Switzerland and Monaco as appropriate forums.

As to the second stage of the *Spiliadia* test, the Court briefly considered the resulting prejudice that may follow if the plaintiffs' claims would not be recognised under Swiss law, and if the defendants did not agree on the appropriate forum for the suit. The Court then turned to whether the SICC would be an appropriate forum for the suit. The Court held that the perceived advantages to the defendants, and conversely the perceived disadvantages to the plaintiffs of Switzerland being the forum, would be levelled out if this suit remained in Singapore but was transferred to the SICC. Accordingly, the Court urged the parties to consider agreeing to a transfer of the suit to the SICC, and further provided that in the event that the parties fail to agree on the transfer to the SICC, that the defendants would have to present full arguments to the Court as to why the suit should not be so transferred. It would seem from the Court's strong encouragement that it considered that the SICC would be the most appropriate forum.

Observations

The High Court's decision illustrates two salient points. First, the SICC has jurisdiction over a much wider scope of actions than it is commonly known for. Whilst the SICC is generally known to have the jurisdiction to try an action only if its claims are of an international and commercial nature, this case has illustrated that its precise scope is not just restricted to common commercial transaction claims involving international trade or international investments. Instead, it appears that the scope of claims under the SICC's jurisdiction may also extend to economic and other wrongful torts such as fraud and misrepresentation where the tortious or fiduciary duty alleged to have been breached may be subject to non-Singapore law.

Second, and potentially significant, the High Court's decision appears to suggest that the SICC, as an alternative forum to the primary domestic Singapore Courts, may have jurisdiction over a much more expansive range of proceedings. The decision appears to suggest that there may be circumstances when the SICC may be considered better placed than other foreign courts to determine a dispute even when there may be few connecting factors to Singapore or only a tenuous link to Singapore law. It remains to be seen if, and the extent to which, the special features of the SICC may shape the well-established laws on forum non conveniens.

This decision might point to increasing difficulty in staying proceedings in Singapore in favour of a foreign forum. In response, litigants may consider commencing such proceedings in Singapore first, before seeking to engineer a transfer to the SICC. If undertaken in a timely fashion, this could provide a first-mover advantage in relation to the commencement of any claims (both contractual and tortious) that are of an international nature.

MAS Amends the Singapore Code on Take-overs and Mergers

On 25 February 2016, the MAS, on the advice of the Securities Industry Council (**SIC**), issued a revised Code on Take-overs and Mergers (Singapore Code), which came into effect on 25 March 2016.

The revisions seek to provide certainty in cases of competing offers, encourage proactive target boards, ensure more timely disclosures and codify existing practices.

The key changes are outlined below:

Competing Offers

- A new auction procedure, which is modelled after the auction procedure codified by the Panel on Takeovers and Mergers in the UK, will be prescribed to break the impasse of a long-drawn offer process where competing bidders have not agreed to an alternative resolution procedure, in order to help ensure the finality and an orderly conclusion of competitive situations within a reasonable time frame.

- In cases where an offeror has announced a firm intention to make an offer and there is a possibility of a potential competing offeror, the deadline for the potential competing offeror to clarify its intention to announce a firm intention to make a competing offer or otherwise is extended from Day 50 to Day 53 from the date the first offeror dispatches its initial offer document.

- Offer timetables that govern the deadlines for revising and concluding offers will be aligned to the latest competing offer.

Proactive Offeree Boards

- Boards of target companies may consider the feasibility of soliciting a competing offer or running a sale process without being deemed to be frustrating the existing offer.

- Boards of target companies may share management projections and forecasts with independent financial advisors to enable the adviser to advise on the offer.

More Timely Disclosures

- Material changes to information previously published in an offer must be disclosed promptly and to ensure wide dissemination of the material change in information, a paid press notice may be needed.

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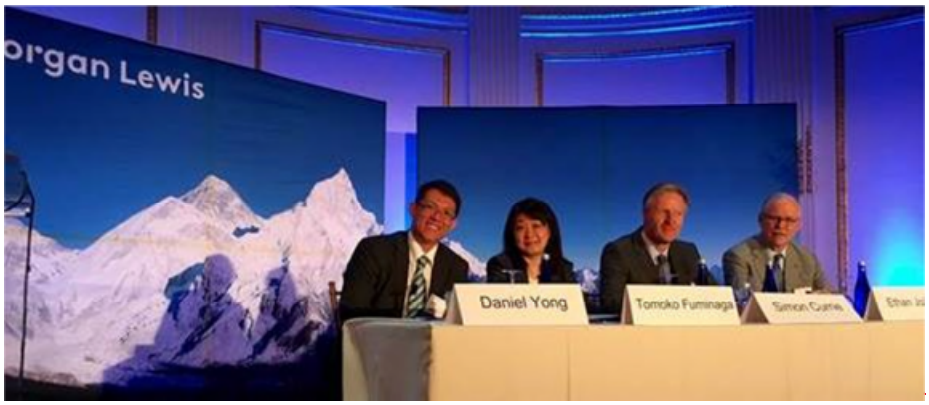
- In the case of preconditional offers, target companies may apply to the SIC for the offer documents to be posted earlier than 14 days after the date of the offer announcement.

For more information on the changes to the Singapore Code, please refer to the press release by MAS here.

NEWS

Ninth Annual Advanced Topics in Hedge Fund Practices

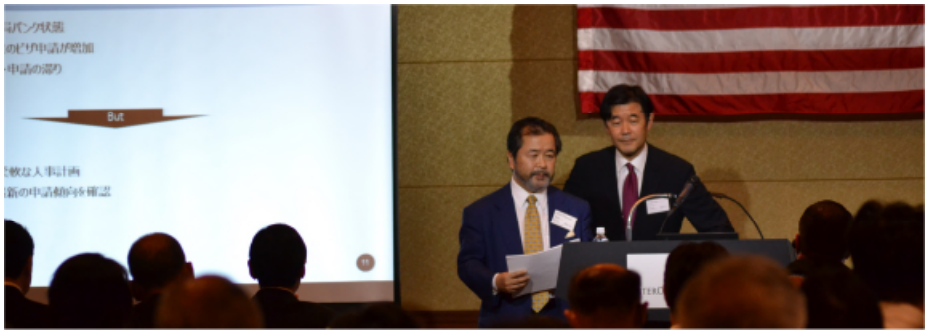
Daniel Yong and Tomoko Fuminaga spoke at the Ninth Annual Advanced Topics in Hedge Fund Practices, which was held in New York on 9 June. Our partners talked about International Fund Issues in Singapore and Japan, focusing on recent regulatory changes, trading practices and investment positions, institutional investor terms, alternative fund products and structures, co-investment and seeding arrangements, new offshore fund issues, and broker-dealer and ethical issues.



Above: *From left to right: partners Daniel Yong (Singapore), Tomoko Fuminaga (Tokyo), Simon Currie (London), and Ethan Johnson (Miami).*

Pennsylvania Investment Seminar

Tsugumichi Watanabe and Satoru Murase spoke on the legal environment for investment in the United States and Pennsylvania at a seminar sponsored by the Pennsylvania Department of Community and Economic Development, organised by Japan External Trade Organisation (**JETRO**), and supported by the Tokyo Chamber of Commerce and Industry. The seminar, which was attended by about 150 executives and managers from Japanese companies that have invested in or are considering investing in Pennsylvania, provided an overview of Pennsylvania's economic business and legal environments as well as a case study by a Japanese company that has already invested in the state.



Above: *From left to right: partners Tsugumichi Watanabe (Tokyo) and Satoru Murase (New York).*

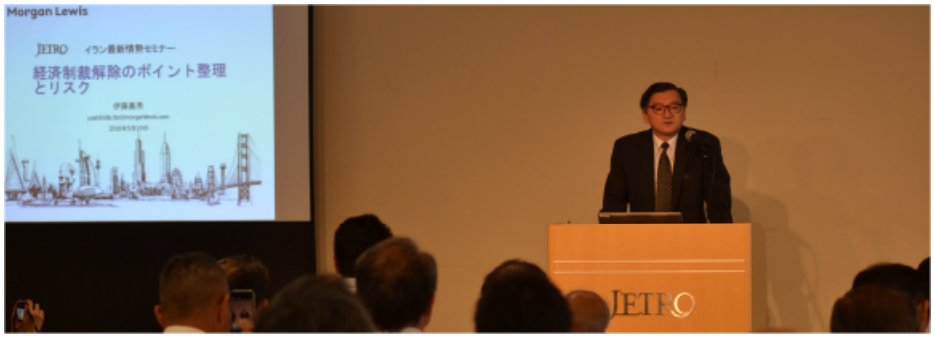
NEWS

Mount Fuji Dialogue Conference

Shinjiro Takagi and Satoru Murase participated in the Mount Fuji Dialogue 2016 conference of influential political and business leaders from Japan and the United States.

JETRO Seminar on Iran Sanctions Relief

Yoshihide Ito spoke on "Iran Sanctions Relief: Summary of Points and Risks" at JETROon 19 May. His presentation featured practical points and issues of interest to Japanese companies. The seminar was attended by more than 200 executives and managers of leading Japanese companies.



Above: *Corporate/M&A partner Yoshihide Ito (Washington DC).*

HEADLINE MATTERS

Singsung: Victory at the Singapore Court of Appeal

We recently represented consumer electronics producer Singsung in winning its appeal against LS Electrical in the Singapore Court of Appeal. Singsung and LS compete in the growing African market, and LS's founder is the younger brother of Singsung's founder. Singsung sued LS for passing off and copyright infringement, alleging LS had copied the look of its products and packaging. LS argued Singsung's market lay outside Singapore, and therefore LS's actions could not be in breach of the country's laws.

In the landmark decision May 23 in Singsung v *LG 26 Electronics*, written by Singapore Chief Justice Sundaresh Menon, the court ruled LS was liable for passing off. According to the court, as businesses are expanding internationally and e-commerce is on the rise, the tort of passing off could apply to situations where Singapore companies sold to customers outside of the country. The court also allowed Singsung's claim for copyright infringement of its packaging: LS had challenged Singsung's copyright because the packaging was designed by its contract manufacturers in China, but the court ruled that, notwithstanding the Chinese design, Singsung was the owner of the copyright.

The court overturned the previous ruling by the High Court, and awarded Singsung damages and legal costs. The decision has been widely covered in the Singapore media.

The team was led by litigation partner Adrian Tan (Singapore), and Singapore associates Pei Ching Ong and Joel Goh.

Greenland-Amare Proposed REIT

We advised the Singapore-based Amare Investment Management Group on its cooperation with the Greenland Group, China's biggest state-owned developer, to set up and list a real estate investment trust (**REIT**) on Singapore's stock exchange.

Greenland and Amare have entered into a multibillion-dollar property management and acquisition-related agreement. The agreement, involving more than S$4.5 billion of assets, calls on Amare to acquire Greenland's existing 19 hotel assets in China and overseas. Amare will set up a joint venture entity (**JVE**) with Greenland to manage these hotels. The JVE is set to contract out the operations of these hotels to major names in the industry including InterContinental Hotels Group, Starwood, and JW Marriott.

The deal is premised on Greenland's and Amare's interests in stepping up expansion in the real state and hospitality sectors in China and overseas, while the Chinese domestic property prices come under

pressure and values have become more attractive for investment. When the time matures, the consortium plans to set up and list a REIT on Singapore's stock exchange.

Greenland, which is listed on both Shanghai and Hong Kong stock exchanges, owns, develops, and manages a variety of commercial, office, industrial, and other buildings worldwide, with a focus on high-rise premium mixed-use complexes and developments with major property investments and developments.

The team was led by corporate/M&A partner Lian Seng Yap (Singapore) and Singapore associates Dr. Yang Qiu, Jun Meng Heng, and Ting Chan.

Alibaba Group Holding Limited Enters Into an Agreement to Acquire a Controlling Stake in Lazada Group S.A.

Morgan Lewis Stamford has acted as Singapore counsel to Alibaba Group Holding Limited in its agreement to acquire a controlling stake in Lazada Group S.A., conducting the legal due diligence review of the Singapore operations of Lazada Group S.A. and advising on all Singapore law-related matters raised in the transaction documents.

This transaction consists of an investment of approximately US$500 million in newly issued equity capital of Lazada Group S.A. and acquisition of shares from certain shareholders of Lazada Group S.A. for a total investment by Alibaba Group Holding Limited of approximately US$1 billion. This transaction was announced on 12 April 2016. Alibaba Group Holding Limited is one of the world's largest e-commerce companies and Lazada Group S.A. is an e-commerce company headquartered in Singapore, from which it runs operations in Indonesia, Malaysia, Singapore, Thailand, Vietnam, and the Philippines.

The team was led by corporate/M&A partners Suet-Fern Lee (Singapore) and Wai Ming Yap, and Singapore associates Lisa Hui, Gina Ng, Chin Hiang Wu and Aaron Leong.

Pacific Hunt Energy: Oppression Action and Breach of Directors' Duties Claim – Dismissal of Claims Without Trial

We are currently acting for Pacific Hunt Energy and Holloman Group in a dispute involving a US$2 billion oil and gas asset in Myanmar. The case is complex, and raises issues of corporate espionage, energy, and procurement procedures under Myanmar law, Canadian and Singapore Company Law, and the untested issue of the precise rights of note and bond holders to apply for minority oppression reliefs under both Canadian and Singapore law.

We recently appeared before the High Court of Singapore for an interlocutory appeal, and successfully obtained the dismissal of allegations of wrongdoing made against our clients Pacific Hunt Energy Pte. Ltd., Pacific Hunt Energy Corp., and two of its directors. We represent the clients, who are associated

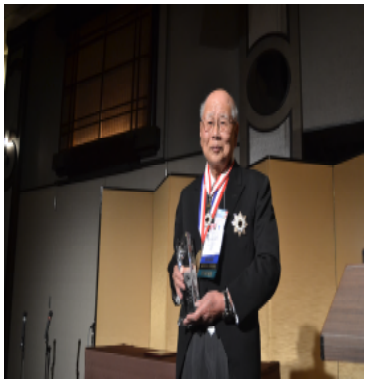
with long-standing client Holloman Corp., in appealing against several specific discovery orders made against them. In the main action, we are defending against oppressive conduct allegations initiated by a rival shareholder faction. The rival faction also alleged a conspiracy or an improper scheme by the Pacific Hunt entities and Holloman to seize control of an asset in Myanmar worth US$1 billion. The actions are part of a series of five in Singapore and Canada.

In an interlocutory fight on the scope of discovery, instead of focusing on simply suppressing the documents sought, we took the novel approach of arguing that the rival faction's allegations of a conspiracy/scheme against Holloman and Pacific Hunt were irrelevant to the claims in the action and accordingly, any documents sought in relation to those parts would be irrelevant as well. The court agreed with us in its ruling, which became only apparent to the rival faction upon pronouncement by the court, resulting in dismissal of the claims of wrongdoing against our clients at an early stage of the proceedings without having to go to trial. The only issues that remain relate to technical and procedural breaches.

The team was led by litigation partner Daniel Chia (Singapore), and Singapore associates Chee Yao Aw, Yanguang Ker, and Kenneth Kong.

COFFEE WITH . . .

Dr. Shinjiro Takagi



Shinjiro is Japan's preeminent insolvency lawyer.

*After passing Japan's national bar examination in 1960, I studied for two years at the Legal Research and Training Institute (**LRTI**), which is operated by the Supreme Court of Japan. Graduates diversify into three career paths after completing their training at LRTI: junior judges, public criminal prosecutors, and private lawyers.*

Junior judges are entitled to promotion to judges after gaining 10 years of experience as panel members. Most civil countries are of a similar judicial system. In 1988, the Cabinet appointed me as a judge. I was the first judge to be appointed following years of private practice rather than going through the conventional junior judges and panel members route. When I was in private practice, I organised a bankruptcy and reorganisation group for the Tokyo Bar Association and became the chair of the group in 1980.

*In my first year as a judge, I was head of the bankruptcy division of the Tokyo District Court (**TDC**) and spearheaded efforts to innovate court practice on reorganisation cases and to speed up the administration of liquidation cases. After this, I moved to one of the civil divisions of the TDC as a presiding judge, hearing civil and commercial litigation cases for three years. After my stint in the litigation division, I served as head of special divisions of the TDC — including divisions such as civil execution and mediation — for two years. I was then transferred to two local district courts where I served as president for three years. Presidents of district courts are of a high-ranking status similar to the governors of the 47 prefectures in Japan. Returning to Tokyo in 1997, I sat in the Tokyo High Court, an appellate court, as head of one of the civil divisions, presiding over civil and commercial appeal cases.*

*Resigning from judgeship in 2000, I became a law professor and concurrently resumed my private practice, specialising in insolvency matters. I had, as a court-appointed trustee, worked on the reorganisation of Kyoei Life Insurance Company. Kyoei is the biggest insolvency case in Japan with aggregated debts amounting to US$41 billion. After its successful reorganisation, I created the 'Guidelines for Out of Court Reorganisation Workouts in 2001' in my capacity as chair of the Committee that was organised by the Japanese Bankers Association, Japanese Federation of Managers Association, and other relevant organisations. Using the Guidelines, I also reorganised many other big business corporations including Nippon Yakin Industry, and Hakodate Dockyard in 2001 and 2002. From 2003 to 2007, leading the Industrial Reorganisation Corporation of Japan (**IRCJ**) (an asset management company created by the Japanese government) I reorganised a lot of huge business corporations including Mitsui Mining, Daiei Supermarket, Kanebo, Daikyo*

Construction, and others. In 2009, I led the task force requested by the Japanese government to revise the restructuring plan of Japan Airlines.

*Before the IRCJ was disbanded on the completion of its operation, I proposed to create the Business Reorganisation ADR (Alternative Dispute Resolution, **BRADR** scheme under Guidelines issued by the Ministry of Economy, Trade and Industry (**METI**) and Ministry of Justice (**MOJ**). BRADR was thus created by the Industrial Competitive Power Strengthening Law in 2007. The Japan Association of Turnaround Professionals (**JATP**) is now operating the scheme and reorganising many big ailing business corporations licensed by METI and MOJ. In 2008, I became chair of the Select Committee of Professionals who preside over the BRADR. Most recently, I proposed to the METI, MOJ, and the Financial Service Agency to add 'cram down' provisions to the BRADR scheme to make it possible to bind minority creditors when majority creditors agree upon the draft reorganisation plan, adopting majority rule and abolishing the incumbent unanimous consent rule.*

Before joining Morgan Lewis, I served as an executive senior advisor at Nomura Securities from 2007 to 2016 and advised the company on its debt trading business, reorganisation, and other investment banking businesses including M&A transactions of ailing businesses.

I proposed reformation of Japanese insolvency laws during the 1980s to early 2000. I was a chair of a committee to reform Corporate Reorganisation Law organised by the METI in early 2000. I have written more than 10 books and more than 300 articles in Japanese and English regarding insolvency and civil procedures. My books and articles are often referenced when insolvency law reformations are undertaken in Japan. Toyo University also conferred a Doctor of Law degree on me in 2002 after examining my articles relating to insolvency law reformations.

*In 2002 and 2003, I founded the Japanese Association for Business Reorganisation, JATP, National Network of Bankruptcy Lawyers, and Japanese Federation of Insolvency Professionals, and became the first president and/or advisor for these organisations. I also founded the East Asian Association of Insolvency and Reorganisation in 2009 and was the first president of the association. I was elected the second foreign fellow of the American College of Bankruptcy in 1998. I received the Outstanding Contribution Award in 2005 from the International Insolvency Institute (**III**), for which I am a board member of governors. In 2016, I became the first member of III to receive the newly established Founder's Award. In appreciation for my contribution to civil justice and business reorganisation, the Rising Sun, Golden and Silver Star Order was bestowed on me by the Japanese Emperor in 2007.*

A representative of the World Bank introduced me as the 'Godfather of the Japanese Insolvency Community' at the APEC Business Advisory Council Conference in April 2016, and a prominent emeritus professor called me a 'revolutionist' in the community. I decided to join Morgan Lewis to impart my legal knowledge and experience not only in Japan but also to the entire Asian Region. I was appointed as Senior Advisor for the Asian Bankers Association on the Promotion of the ABA Informal Workout Guidelines and Model Agreement. I continue to promote corporate reorganisation in Asia and to visit many ASEAN countries to discuss with bankers associations, bankers, lawyers, accountants, and other professionals.

In addition to working hard, I enjoy holidays very much. I have enjoyed scuba diving more than 300 times in places such as the Red Sea, Palau, Bali, Caribbean islands, Okinawa, and others. I also enjoyed mushing in Yukon and Alaska and horseback riding in the Canadian Rockies.

THE LAST WORD

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

Superheroes

Most of us (at least the men) aspire to be superheroes; and we have a whole universe to choose from. Old-time favourites include Superman, Spiderman, Thor, Ironman, and their brethren from House Stark (oops, I meant Marvel and Avengers). The women shouldn't feel left out — plenty of pickings for you too: Wonder Woman, Black Widow (always thought this sounded too fatalistic) and, more recently, Rey (Skywalker?).

Sure, it's great being able to fly and leap tall buildings in a single bound, to have super-tensile strength webbing shoot out from your wrists, or a super-duper cool hammer that only you can throw around. But seriously, how many of us need any of these things? Although I could easily live with the ability to read and control another's mind with the Force: '[fill in name],you will lessen my workload and increase my salary today'.

We could, however, be 'everyday heroes' to our spouses, children, parents, siblings, friends, and colleagues. A lot to ask for but doable. Special, extraordinary powers not required; awareness and desire to serve, yes. I suspect that if we did this right, these precious people in our lives will, in their own ways, make us feel like superheroes. I hope you spend the rest of the day looking for your spandex.

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