

In Brief

DEALS

WongPartnership acts in... 1
Strategic partnership between NTUC and Fullerton

CONSTRUCTION

A disputed and unadjudicated set-off 4
cannot be raised against an adjudicated
amount found to be payable under an
adjudication determination

A main contractor who failed to file a payment response in adjudication proceedings under the Building and Construction Industry Security of Payment Act was precluded from subsequently relying on a contractual set-off to resist the enforcement of the adjudication determination

***AES Façade Pte Ltd v WYSE Pte Ltd* [2017]
SGHC 171 (Singapore, High Court, 18 July
2017)**

CONTRACT

Foreign Illegality: Distinction between 8
an agreement being “directly affected
by foreign illegality” vs “tainted by
foreign illegality”

High Court addresses the issue of foreign illegality in Singapore and makes a distinction between contracts that are “directly affected by foreign illegality” and those not directly affected by foreign illegality but “tainted by foreign illegality”, and the circumstances in which a contract tainted by foreign illegality would be unenforceable in Singapore

***EFG Bank AG, Singapore Branch v Teng Wen-Chung* [2017] SGHC 318 (Singapore, High Court, 15 December 2017)**

LAWWATCH

APRIL 2018

EMPLOYMENT

Termination of employees: conducting
“due inquiry” 11

High Court sets out guide on the conduct of “due
inquiry” prior to termination

*Long Kim Wing v LTX-Credence Singapore
Pte Ltd [2017] SGHC 151 (Singapore, High
Court, 30 June 2017)*

REGULATORY

SGX Guide on Prevention of Insider
Trading 13

DEALS

WONGPARTNERSHIP LLP ACTS IN...

Strategic partnership between NTUC and Fullerton

WongPartnership acted for NTUC Income ("NTUC") in a strategic partnership with Fullerton Fund Management Company Ltd ("Fullerton") to appoint Fullerton as the investment manager of a portfolio of NTUC assets estimated at SGD23 billion. As part of the partnership, FFMC Holdings Pte Ltd ("FFMC"), the holding company of Fullerton, issued new shares to NTUC, giving NTUC a significant minority stake in FFMC, while Temasek remains the majority shareholder.

The strategic partnership establishes Fullerton as one of the largest locally-owned asset management companies in Singapore, with its assets under management (AUM) increasing to over SGD40 billion

Partners from a number of WongPartnership's Practice Groups were involved in the transaction including Ng Wai King, Chan Sing Yee and Kyle Lee from the Corporate/ Mergers & Acquisitions Practice, and Chan Jia Hui from the Financial Services Regulatory Practice.



NG Wai King
Managing Partner
d: +65 6416 8022
e: waiking.ng
[@wongpartnership.com](mailto:waiking.ng@wongpartnership.com)
Click [here](#) to view Wai King's CV.



CHAN Sing Yee
Partner – Corporate/Mergers & Acquisitions Practice
d: +65 6416 8018
e: singyee.chan
[@wongpartnership.com](mailto:singyee.chan@wongpartnership.com)
Click [here](#) to view Sing Yee's CV.



Kyle LEE
Partner – Corporate/Mergers & Acquisitions Practice
d: +65 6517 8738
e: kyle.lee
[@wongpartnership.com](mailto:kyle.lee@wongpartnership.com)
Click [here](#) to view Kyle's CV.



CHAN Jia Hui
Partner – Financial Services Regulatory Practice
d: +65 6416 2794
e: jiahui.chan
[@wongpartnership.com](mailto:jiahui.chan@wongpartnership.com)
Click [here](#) to view Jia Hui's CV.

Other recent matters that WongPartnership was involved in were:

DESCRIPTION	TYPE
Disposal by Singapore billionaire, Peter Lim, of the entire issued and paid-up share capital of Sasteria Pte. Ltd to Rowsley Ltd for a total consideration of up to SGD1.6 billion to be satisfied by the issuance of shares in Rowsley Ltd. Sasteria Pte Ltd is the sole owner of the Thomson Medical Group and the majority shareholder in TMC Life Sciences Berhad (a multidisciplinary healthcare company that is listed on Bursa Malaysia).	Corporate/Mergers & Acquisitions

DESCRIPTION	TYPE
Sale of CapitaLand Limited's effective equity interest in a group of companies which hold 20 retail malls in the PRC, to unrelated entities for approximately SGD1.71 billion.	Corporate/Mergers & Acquisitions
Token generation event by Centrality Investments Limited, a Blockchain-based marketplace platform, which raised USD80 million in virtual currency by selling CENNZ tokens. The CENNZ tokens were sold out in just six (6) minutes.	Corporate/Mergers & Acquisitions / Financial Services Regulatory / Technology & Media / Tax
Acquisition by ESR Funds Management (S) Limited, as manager of ESR-REIT, of 80% of the issued and paid-up share capital of 7000 AMK Pte. Ltd, which has a leasehold interest in the property known as 7000 Ang Mo Kio Avenue 5, Singapore 569877, valued at an agreed purchase price of SGD300 million.	Corporate/Mergers & Acquisitions / Corporate Real Estate / Real Estate Investment Trusts
Investment worth approximately USD400 million by FountainVest Partners (Asia) Limited and Ontario Teachers' Pension Plan Board into the Pure Group.	Corporate/Mergers & Acquisitions / Corporate Real Estate
Intermediated exchange of bonds undertaken for Pacific International Lines (Private) Limited.	Debt Capital Markets
Voluntary conditional cash offer by COSCO SHIPPING International (Singapore) Co Ltd. (" Cosco ") for all the issued ordinary shares (" Shares ") in Cogent Holdings Limited, including all Shares owned, controlled or agreed to be acquired acting or deemed to be acting in concert with Cosco.	Corporate/Mergers & Acquisitions
Mandatory unconditional cash offer by UOL Group Limited (" UOL ") for all the ordinary shares in Singapore Land Limited other than those already owned, controlled or agreed to be acquired by UOL.	Corporate/ Mergers & Acquisitions
Proposed privatisation of LCTH Corporation Berhad, a subsidiary of Fu Yu Corporation Limited, through a selective capital reduction and repayment exercise.	Corporate/Mergers & Acquisitions
Investment commitment by Makara Innovation Fund to accelerate the development of tryB Group's financial infrastructure platform for ASEAN.	Corporate/Mergers & Acquisitions
Acquisition by DCP Capital Partners of printed circuits board solution provider, MFS Technology (S) Pte. Ltd., from Navis Capital Partners and Novo Tellus Capital Partners, and the financing relating to the acquisition.	Corporate/Mergers & Acquisitions / Banking & Finance
Issuance of SGD100 million 4% notes due 2023, pursuant to the SGD250 million Multicurrency Medium Term Note Programme of BreadTalk Group Limited.	Debt Capital Markets

DESCRIPTION	TYPE
Voluntary conditional cash offer for all of the issued ordinary shares of LTC Corporation Limited (LTC) by Mountbatten Enterprises, a consortium comprising LTC's controlling shareholders from the Cheng family.	Corporate/ Mergers & Acquisitions
Grant of SGD700 million facilities to Millenia Tower Investments Limited for, among others, the refinancing of its outstanding debt and general working capital requirements, secured over, among others, Millenia Walk and Millenia Tower.	Banking & Finance / Corporate Real Estate / Debt Capital Markets
Purchase of 5 Corporation Drive Singapore by AETOS Holdings Pte Ltd, following completion of the purpose built facility developed for it by Tuas View Development Pte. Ltd., a wholly-owned subsidiary of Ascendas Land (Singapore) Pte. Ltd.	Corporate Real Estate / Energy, Projects & Construction
Development and lease of a build-to-suit facility for use by an entity under a multinational corporation for development, manufacturing, testing, research and development, storage, marketing and sales of certain electronic components and other ancillary uses.	Corporate Real Estate / Energy, Projects & Construction

CONSTRUCTION

A disputed and unadjudicated set-off cannot be raised against an adjudicated amount found to be payable under an adjudication determination

A main contractor who failed to file a payment response in adjudication proceedings under the Building and Construction Industry Security of Payment Act was precluded from subsequently relying on a contractual set-off to resist the enforcement of the adjudication determination.

AES Façade Pte Ltd v WYSE Pte Ltd [2017] SGHC 171 (Singapore, High Court, 18 July 2017)

In a key decision for the construction industry, the High Court held that a disputed and unadjudicated set-off could not be raised against an adjudicated amount that was payable under an adjudication determination made under the Building and Construction Industry Security of Payment Act ("**SOP Act**").

The decision also provides guidance on the interpretation of the widely used Singapore Institute of Architects Conditions of Sub-Contract ("**SIA Conditions**"). The High Court held that a main contractor could not invoke the right of contractual set-off under clauses 11.4 and 11.5 of the SIA Conditions against an adjudicated amount that was payable under an adjudication determination.

Finally, the decision also affirms that a successful claimant would ordinarily be entitled to receive the adjudicated amount without undue delay, and courts will not readily grant a stay of enforcement of an adjudication determination pending either the determination of arbitral proceedings or an appeal.

The Decision

A subcontractor, AES Façade Pte Ltd ("**AES**"), obtained an adjudication determination in its favour against the main contractor, WYSE Pte Ltd ("**WYSE**"). In the adjudication, as the learned adjudicator found that WYSE had failed to serve a payment response within the timelines prescribed under the SOP Act, it was obliged under section 15(3) of the SOP Act to disregard WYSE's argument that it was entitled to set-off liquidated damages against AES' claimed amount.

After AES obtained leave to enforce the adjudication determination ("**Enforcement Order**"), WYSE applied to set aside the Enforcement Order, on the ground that it was entitled to contractually set-off liquidated damages against the adjudicated amount payable under the adjudication determination, with the consequence that no monies were due to be paid to AES and hence, the Enforcement Order was misconceived. In the alternative, WYSE also sought to stay all proceedings relating to the execution of the Enforcement Order, pending the conclusion of arbitration proceedings between AES and WYSE.

The High Court dismissed both of WYSE's applications.

The High Court further dismissed WYSE's oral application to stay the enforcement of the Enforcement Order pending the outcome of an appeal to the Court of Appeal and ordered that the adjudicated amount be released forthwith to AES.

WongPartnership LLP acted for the successful plaintiff, AES Façade Pte Ltd.

This update takes a look at the High Court's decision.

Our Comments/Analysis

Set-offs: Contractual and Statutory requirements

The decision underscores the importance of complying with the timelines and procedures prescribed by the SOP Act. Employers and contractors in receipt of a payment claim should consider seeking legal advice at an early stage to ensure that they file a valid payment response within the prescribed timelines, including any reasons for withholding payment (whether as a set-off, cross-claim, counterclaim or otherwise). If a set-off is being relied on as one of the reasons in the payment response, it is critical that the contractual requirements or conditions precedent to the set-off are also satisfied.

Having surveyed the relevant authorities from other jurisdictions, the High Court also recognised that a set-off against an adjudicated amount might be permissible in the following situations:

- where a claimant and respondent both agree to a set-off after an adjudication determination;
- where the claimant does not dispute a respondent's right to the sum sought to be set-off; and
- where the sum sought to be set-off is the subject of an existing court order, judgment, arbitral award, or another adjudication determination.

Disputed and unadjudicated set-off could not be raised against the adjudicated amount

In coming to the decision that the SOP Act does not permit a respondent to raise a disputed and unadjudicated set-off against an adjudicated amount payable under an adjudication determination, the High Court found, among others, that:

- the absence of an express prohibition of set-off against an adjudicated amount in the SOP Act (in contrast to the express prohibition in Australian and New Zealand legislation) was a neutral factor;
- the language of section 27 of the SOP Act implied that actual payment of the adjudicated amount had to be made (rather than making notional payment by way of a set-off, which is treated under the SOP Act as a reason for withholding payment rather than a mode of payment);
- the scheme of the SOP Act, as well as its object and purpose, necessarily excluded set-offs against an adjudicated amount.

Notably, the High Court observed that allowing set-offs against an adjudicated amount would result in an unacceptable perversion of the SOP Act – employers and contractors would be free to pick and choose when to make their arguments of set-off, cross-claim or counterclaim rather than putting forth all their reasons for withholding payment in their payment response so that they could be considered and decided in the adjudication.

The High Court's decision provides welcome clarity that a disputed and unadjudicated set-off cannot be raised against an adjudicated amount to resist enforcement of an adjudication determination. The decision gives effect to the objective and purpose of the SOP Act, which is to create a provisional process where adjudicated amounts are effectively final and binding on the parties to the adjudication until their differences are finally and conclusively determined or resolved whether by arbitration or litigation.

The contractual right of set-off under the SIA Conditions, correctly interpreted, does not allow a set-off to be raised against an adjudicated amount

The High Court also considered whether the right of set-off under clauses 11.4 and 11.5 of the SIA Conditions contravened section 36(2)(a) of the SOP Act, which renders any provision that defeats the operation of the SOP Act void. The High Court clarified that the right of set-off under clauses 11.4 and 11.5 of the SIA Conditions were not void under section 36(2)(a) of the SOP Act, as they did not have the effect of allowing WYSE to raise a set-off against the adjudicated amount. Instead, the High Court held that:

- the phrase “set-off” in clauses 11.4 and 11.5 of the SIA Conditions referred to the set-off expressly permitted under section 15(3) of the SOP Act provided the procedural requirements were strictly complied with;
- the wording of clauses 11.4 and 11.5 only purported to allow WYSE to “set-off against any monies due to the Sub-Contractor under this Sub-Contract”, and not against monies due by virtue of any other reason; and
- the adjudicated amount did not comprise merely “monies due ... under this Sub-Contract”, but acquired the additional status as a statutory obligation pursuant to section 22(1) of the SOP Act.

The High Court’s decision that the right of set-off under clauses 11.4 and 11.5 of the SIA Conditions does not permit a set-off to be raised against an adjudicated amount is of wider import as these provisions are mirrored in other standard forms such as the REDAS Design and Build Conditions of Contract and the Public Sector Standard Conditions of Contract, both of which grant an employer a right to deduct or set-off sums and/or damages against amounts which might have been or may become due and payable to the contractor. In light of the High Court’s analysis, employers using these other standard forms should be prudent to ensure that they raise any reasons for withholding payment in their payment response, otherwise they will likely not be able to subsequently rely on the contractual right of set-off against an adjudicated amount.

Stay of execution pending determination of arbitral proceedings

Finally, the High Court reiterated that a successful claimant would ordinarily be entitled to receive the adjudicated amount without undue delay, and that a stay of enforcement should only be permitted in the following two limited instances:

- where there is clear and objective evidence of the successful claimant’s actual present insolvency; or
- where the court is satisfied on a balance of probabilities that if the stay were not granted, the money paid to the claimant would not ultimately be recovered if the dispute between the parties were finally resolved in the respondent’s favour by a court or tribunal or some other dispute resolution body.

In rejecting WYSE’s application for a stay of execution pending determination of arbitral proceedings, the High Court found that WYSE’s actions in seeking to withhold payment, while effectively seeking to overturn the adjudication determination by commencing separate arbitration proceedings, would defeat the legislative intent of the SOP Act of stimulating the cash flow of players in the construction industry.

Stay of execution pending determination of an appeal

In keeping with the legislative objective of the SOP Act, the High Court was not persuaded by WYSE's argument that the phrase "pending the final determination of those proceedings" in section 27(5) of the SOP Act must mean that the money it had paid into court should only be released after the outcome of an appeal to the Court of Appeal and ordered that the money paid into court be released forthwith to AES.

Notably, the High Court remarked that the courts should be wary of construing any provision in a manner that would defer or delay payment to a successful claimant in an adjudication.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or the following partner:



Ian DE VAZ

Joint Head – Energy, Projects
& Construction Practice

d: +65 6416 8128

e: ian.devaz

[@wongpartnership.com](mailto:ian.devaz@wongpartnership.com)

Click [here](#) to view Ian's CV.

CONTRACT

Foreign Illegality: Distinction between an agreement being “directly affected by foreign illegality” vs “tainted by foreign illegality”

High Court addresses the issue of foreign illegality in Singapore and makes a distinction between contracts that are “directly affected by foreign illegality” and those not directly affected by foreign illegality but “tainted by foreign illegality”, and the circumstances in which a contract tainted by foreign illegality would be unenforceable in Singapore.

***EFG Bank AG, Singapore Branch v Teng Wen-Chung* [2017] SGHC 318 (Singapore, High Court, 15 December 2017)**

Our Comments

This decision is a reminder that for transactions governed by Singapore law which also involve a foreign jurisdiction element, it is important to both seek appropriate foreign legal advice to ensure that the transaction is not illegal under the laws of that foreign jurisdiction and to consider the factors that the Singapore court would take into account when determining whether the transaction would be held to be unenforceable for being tainted with foreign illegality (even if it were legal under Singapore law).

WongPartnership acted for the successful plaintiff/respondent, EFG Bank AG, Singapore Branch.

This update takes a look at the High Court’s decision.

Brief Facts

The plaintiff, the Singapore branch of EFG Bank AG, granted two Singapore law governed loan facilities to a borrower, Surewin Worldwide Limited (“**Surewin**”). The loan facilities were secured by, among others, a Singapore law governed indemnity agreement (“**Indemnity Agreement**”) executed by the defendant (a Taiwanese citizen) and certain Singapore law governed pledges (“**Pledges**”) over assets beneficially owned by Singfor Life Insurance Company Limited, a Taiwanese insurance company (“**Singfor**”).

The dispute between the plaintiff and the defendant concerned the liability of the defendant under the Indemnity Agreement. The defendant’s appeal in resisting the plaintiff’s application for summary judgment was based on the argument that the first loan facility was part of a fraudulent scheme to defraud Singfor into providing its assets as collateral for loans to Surewin. This was a breach of Taiwanese law, which also led to the prosecution and conviction of the defendant. The defendant argued that the first loan facility was void and/or unenforceable due to the foreign illegality and since the first loan facility was void and/or unenforceable, the Indemnity Agreement was also tainted with illegality.

High Court's decision

The High Court, in dismissing the defendant's appeal against the Registrar's decision granting the plaintiff summary judgment, held that in order to obtain summary judgment, a plaintiff must first establish a *prima facie* case for judgment, and once this is done, the burden shifts to the defendant who, in order to obtain leave to defend, must establish a fair and reasonable probability that he has a real or *bona fide* defence, or that there is an issue or question in dispute which ought to be tried, or that there ought for some other reason to be a trial.

The High Court found that the plaintiff in this case had established a *prima facie* case for summary judgment. The next question was whether the defendant had established a reasonable probability that he has a real or *bona fide* defence, which in turn raised, among others, a sub-issue of whether the Indemnity Agreement is unenforceable by virtue of foreign illegality.

In addressing the principle of foreign illegality, the court made a distinction between contracts that are “directly affected by illegality” and those that are “tainted by foreign illegality”.

In the case of contracts that are “directly affected by foreign illegality”, the High Court agreed with the following principles cited in the Singapore International Commercial Court case of *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2016] 4 SLR 1:

- (1) principle of domestic policy - a Singapore court will not enforce a contract or award damages for its breach, if its object or purpose would involve doing an act in a foreign and friendly state which would violate the law of that state; and
- (2) conflict of laws principle – in general, a contract is invalid if the performance of it is unlawful by the law of the contract where the contract is to be performed.

On the facts, since the first loan facility and the Indemnity Agreement were governed by Singapore law and the place of performance was in Singapore, they were not directly affected by foreign illegality, rather the question was whether they were tainted by foreign illegality.

Where a contract was not in itself illegal but was tainted by foreign illegality, the court should apply the test in *Euro-Diam v Bathurst* [1990] 1 QB 1, namely:

- (1) whether the illegal transaction from which the “taint” is said to arise is enforceable in Singapore on the application of the appropriate connecting factor (*viz.*, forum, proper law and place of performance). If it is enforceable in Singapore, then the claim is enforceable.
- (2) If the illegal transaction is unenforceable in Singapore, the court will then have to further consider whether (i) the plaintiff needs to plead or prove illegal conduct to establish his claim, or (ii) the claim is so closely connected with the proceeds of crime to offend the conscience of the court.

Applying the above to this case, the High Court found that the illegal transactions from which the taint was said to arise would be enforceable in Singapore (as there was no contractual performance required in Taiwan and the foreign illegality rule is not part of Singapore law) and accordingly the first loan facility and Indemnity Agreement are enforceable in Singapore.

The High Court went on to say that even if the illegal transactions were unenforceable in Singapore, the plaintiff in this case need not plead or prove illegal conduct to establish its claim and that the first loan facility and Indemnity Agreement do not involve or have a sufficient proximity with the proceeds of crime. As such, the defendant failed to raise a reasonable probability that he has a bona fide defence.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:

**Andre MANIAM**

Senior Counsel

d: +65 6416 8134**e:** [andre.maniam](mailto:andre.maniam@wongpartnership.com)[@wongpartnership.com](mailto:andre.maniam@wongpartnership.com)Click [here](#) to view Andre's CV.**Lionel LEO**Partner – Banking & Financial
Disputes Practice**d:** +65 6517 3758**e:** [lionel.leo](mailto:lionel.leo@wongpartnership.com)[@wongpartnership.com](mailto:lionel.leo@wongpartnership.com)Click [here](#) to view Lionel's CV.

EMPLOYMENT

Termination of employees: conducting “due inquiry”

High Court sets out guide on the conduct of “due inquiry” prior to termination

***Long Kim Wing v LTX-Credence Singapore Pte Ltd* [2017] SGHC 151 (Singapore, High Court, 30 June 2017)**

In *Long Kim Wing v LTX-Credence Singapore Pte Ltd* [2017] SGHC 151, the High Court held that “due inquiry” prior to the termination of an employee requires a process where the employee concerned is clearly informed about the allegation(s) and the evidence against him so that the employee has an opportunity to defend himself by presenting his position, with or without other evidence.

The High Court had to grapple with the novel issue of what constitutes “due inquiry” in employment contracts which are not covered by the Employment Act; in particular, whether such “due inquiry” requires that an employee be given a right to be heard in relation to allegations made against him. In this regard, the Court held that “due inquiry” required more than the making of inquiries and the conduct of an investigation – though “due inquiry” need not be formal, the employee should have an opportunity to present his case, and to that end, must first be informed clearly what the case against him is.

Our Comments

Long Kim Wing v LTX-Credence Singapore is a clear guide for both employers and employees on how “due inquiry” should be conducted prior to termination.

Underlying the judgment is a consistent theme: the facts, process and documentation need to support the arguments made in relation to the termination. Where “due inquiry” needs to be conducted, the process whereby the employee is informed of the misconduct and evidence and is afforded an opportunity to respond, while not necessarily formal, should be clearly recorded.

WongPartnership acted for LTX-Credence Singapore Pte Ltd in *Long Kim Wing v LTX-Credence Singapore Pte Ltd*.

This update takes a look at the decision.

The meaning of “due inquiry” and the consequences of the failure to conduct “due inquiry”

One of the issues in was whether LTX-Credence Singapore Pte Ltd (“**LTX-Credence**”) conducted “due inquiry” before dismissing its former director and employee, Long Kim Wing (“**Mr Long**”). Mr Long alleged that he was entitled to damages based on a reasonable length of time that it would have taken to conduct “due inquiry”, as required under his employment agreement. The employment agreement did not prescribe a definition for “due inquiry”.

The meaning of “due inquiry” is crucial as the Employment Act generally requires an employer to conduct “due inquiry” prior to dismissing an employee without notice on the grounds of misconduct inconsistent with the fulfilment of the conditions of the employee’s service.

Meaning of “due inquiry” and whether LTX-Credence conducted “due inquiry”

After considering the case law and guidance from the Ministry of Manpower (“MOM”), the High Court distinguished “due inquiry” from the general making of inquiries and conduct of an investigation. “Due inquiry” was a process whereby:

- first, the employee is informed clearly about the allegation(s) and the evidence against the employee; and
- thereafter, the employee is then given an opportunity to defend himself by presenting his case, with or without other evidence.

The “due inquiry” process does not necessarily need to be formal, but where no formal process is undertaken, there is a greater risk that “due inquiry” was not conducted and the court would be more careful to ensure that the employee’s right is protected.

If “due inquiry” is required but not conducted, the employer would be liable to pay damages to the employee based on the reasonable amount of time it would have taken the employer to conduct “due inquiry”. The burden of proof is on the claimant employee to establish the amount of reasonable time.

In the present case, while the Court accepted that LTX-Credence had conducted an internal investigation into the circumstances that warranted the dismissal of Mr Long and that the results of that investigation showed that the dismissal of Mr Long was justified, the Court found that a general inquiry and investigation was insufficient for the purposes of “due inquiry”, as it was unclear whether Mr Long was specifically informed of the allegations of misconduct during the course of such allegations.

The Court found that LTX-Credence would have needed an additional 7 days to conduct “due inquiry” (instead of the 2 months submitted by Mr Long) i.e., for LTX-Credence to clearly specify to Mr Long each and every allegation as well as its evidence to support each allegation and to give Mr Long the opportunity to respond. Accordingly, Mr Long was entitled to payment of his salary for those 7 days.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



Jenny TSIN

Joint Head – Employment Practice

d: +65 6416 8110

e: [jenny.tsin](mailto:jenny.tsin@wongpartnership.com)

[@wongpartnership.com](mailto:jenny.tsin@wongpartnership.com)

Click [here](#) to view Jenny's CV.



Jared CHEN

Partner – Commercial &
Corporate Disputes Practice

d: +65 6416 6875

e: [jared.chen](mailto:jared.chen@wongpartnership.com)

[@wongpartnership.com](mailto:jared.chen@wongpartnership.com)

Click [here](#) to view Jared's CV.

REGULATORY

SGX Guide on Prevention of Insider Trading

Singapore Exchange (“SGX”) has launched a guide on the prevention of insider trading (“SGX Guide”) together with the Association of Banks in Singapore, the Institute of Singapore Chartered Accountants, the Law Society of Singapore and the Singapore Institute of Directors. A copy of the SGX Guide can be accessed [here](#).

The SGX Guide intends to, among other things, help companies develop and implement procedures to manage confidentiality and prevent insider trading by outlining principles and guidelines for companies to consider and put into practice. The focus is not only on ensuring that policies, procedures and practices are in place, but to ensure the effectiveness of the same. The SGX Guide is not intended to be prescriptive and implementation will need to be tailored to each company.

There are three key parts to the SGX Guide:

- creating a culture of compliance;
- handling and controlling confidential information; and
- restricting dealings in securities.

This Update highlights key issues, based on the SGX Guide, to be considered in developing and reviewing compliance policies, and measures which companies may consider implementing to address these issues.

To assist review, a table of key issues is set out below with a column which may be completed during review. Similar to the SGX Guide, the table is neither intended to be prescriptive nor serve as a checklist for compliance, but is intended to assist in identifying areas for improvement. In considering the issues, it is important to look not only at the form of the internal policies and procedures, but also at their substance and effectiveness in achieving the objectives of and principles set out in the SGX Guide.

Key Issues		Yes / No (Notes e.g., reference to policies / procedures)
(A) Creating a Culture of Compliance		
(A1)	Does the company have in place:	
(i)	an internal compliance policy on handling, protection and disclosure of confidential information and restrictions on dealings in securities (including guidance in non-legalistic language on legal and regulatory prohibitions and stating clearly types of securities covered and persons to whom the policy applies);	
(ii)	clear written policies on investigations of breaches and enforcement actions, including a whistleblowing policy; and	
(iii)	processes to monitor trading activity (such as share prices and volumes)?	

Key Issues	Yes / No (Notes e.g., reference to policies / procedures)
(A2) Does the company have in place measures to create a strong culture of awareness within the company of the risks of information flow and restrictions against dealings in securities? Is there a culture of compliance in the company? Does senior management lead by example? Is there clear accountability for compliance matters?	
(A3) Are there regular reviews of policy and procedures to ensure relevance and effectiveness?	
(B) Handling and Control of Information	
(B1) Are there restrictions in place on the dissemination and sharing of confidential information to reduce any chances of information leakage, which could reduce market integrity?	
(B2) Are there procedures in place to prevent accidental disclosures?	
(B3) Are the company's physical document management and information technology controls effective?	
(C) Restrictions Against Dealings in Securities	
(C1) Does the company have a "black-out period" and/or "trading windows", to limit the time frame that dealing in the company's securities by specific classes of personnel is permitted?	
(C2) Is there a policy that staff should not deal in the company's securities based on speculation or short-term considerations?	
(C3) Have proper pre-dealing and post-dealing procedures been established in relation to the issuer's securities (and for certain institutions, e.g. financial institutions, in relation to all listed securities)?	
(C4) For certain institutions, e.g. financial institutions, is there a "restricted list" and/or "watch list" of securities and are these lists maintained and updated?	

Part A: Creating a Culture of Compliance

The focus in this part is to ensure that a company establishes and ingrains a compliance culture which emphasises the importance of appropriate handling of confidential information and the prevention of insider trading.

The Guide suggests a three-prong approach:

- clear policies and procedures;
- awareness of policies and procedures; and
- regular reviews.

Clarity

It is not only necessary for companies to establish policies and procedures – these policies and procedures need to be clear (e.g., plain language, easy to read).

The substance of the policies and procedures also needs to be comprehensive and include key information (e.g., the scope of prohibitions, obligations, confidential information and securities covered; potential sanctions; procedures for investigations; processes for monitoring trading activities). Particular attention should be given to the processes set out in the latter two parts of the SGX Guide on the processes for handling of confidential information and restrictions against dealings in securities, which are addressed further below.

Awareness

Once policies and procedures are in place, a company needs to ensure that compliance is ingrained. The SGX Guide suggests:

- ensuring that senior management leads by example;
- having clear lines of accountability and reporting with respect to the policies and procedures; and
- ensuring that all employees and any other relevant persons are aware of the policies and procedures and the consequences of breaches including through regular publicity, training and assessment.

Review

The SGX Guide recommends regular annual reviews of compliance policies.

With the pace of developments, on the legal and regulatory fronts as well as in technology and operations, companies may consider it worthwhile to also conduct ad-hoc reviews of the accuracy and effectiveness of policies throughout the year to consider whether adjustments are necessary to account for these developments.

Part B: Handling and Control of Information

Key Principles

The second part of the SGX Guide focuses on the implementation of procedures with respect to confidential information. The SGX Guide sets out the following key principles when developing processes for handling confidential information:

- control and restrict the disclosure and sharing of confidential information;
- implement procedures to prevent accidental disclosures; and
- implement effective physical document management and information technology controls.

Possible Measures

The SGX Guide also suggests measures which may be adopted to achieve these key principles:

- in terms of disclosure:
 - disclosure on a “need to know” basis;
 - conduct of disclosure with caution;
 - diligent maintenance of a privy persons list – the SGX Guide includes a form for consideration;
 - proper processes for public announcements should be implemented;
- in terms of control and restriction, companies can consider implementing:
 - Chinese walls;
 - confidentiality agreements with third parties – the SGX Guide further sets out minimum expectations on the scope of confidentiality agreements; and
 - password protection, restrictions on use of personal devices and other technological measures to control disclosure.

Policies and procedures should also clearly set out the scope of “confidential information” to assist employees in identifying situations where “confidential information” is involved and additional diligence is therefore required.

Part C: Restrictions Against Dealings in Securities

The focus of the final part is on dealings in securities and prevention of insider trading and other legal and regulatory prohibitions. Suggested preventive measures include:

- implementation of “black-out periods” and/or “trading windows” to limit dealing in the company’s securities;
- restrictions on dealing based on speculation or short-term considerations;
- implementation of pre-dealing and post-dealing procedures;
- implementation of audit trails; and
- in certain cases, maintenance of a “restricted list” and “watch list” of securities.

As part of the compliance culture, any processes implemented, whether in relation to handling of confidential information or prevention of insider trading, will need to be regularly assessed against new and ongoing developments including:

- the 2017 amendments to the Securities and Futures Act;
- the proposed MAS guidelines on the definition of “persons who commonly invest” in the Securities and Futures Act; and
- recent MAS enforcement actions against insider trading.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



Annabelle YIP

Joint Head – Corporate Governance
& Compliance Practice

d: +65 6416 8249

e: [annabelle.yip](mailto:annabelle.yip@wongpartnership.com)

[@wongpartnership.com](https://www.wongpartnership.com)

Click [here](#) to view Annabelle's CV.



Joy TAN

Joint Head – Corporate Governance
& Compliance Practice

d: +65 6416 8138

e: [joy.tan](mailto:joy.tan@wongpartnership.com)

[@wongpartnership.com](https://www.wongpartnership.com)

Click [here](#) to view Joy's CV.



Kevin HO

Partner – Corporate Governance &
Compliance Practice

d: +65 6416 2555

e: [kevin.ho](mailto:kevin.ho@wongpartnership.com)

[@wongpartnership.com](https://www.wongpartnership.com)

Click [here](#) to view Kevin's CV.

SOME OF OUR OTHER UPDATES ...

DATE	TITLE
29 March 2018	LegisWatch: Implementation of Deferred Prosecution Agreements
27 March 2018	CaseWatch: Stage Set for First Virtual Currency Trial
8 March 2018	LegisWatch: Infrastructure Protection Act The New Regulatory Framework for Security-by-Design
5 March 2018	LegisWatch: MAS Public Consultation on Proposed Regulations for Mandatory Trading of Derivatives Contracts

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-

WongPartnership LLP
Beijing Representative Office
Unit 3111 China World Office 2
1 Jianguomenwai Avenue, Chaoyang District
Beijing 100004, PRC
t +86 10 6505 6900
f +86 10 6505 2562

-

WongPartnership LLP
Shanghai Representative Office
Unit 1015 Link Square 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-

WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-

Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

wongpartnership.com

MALAYSIA

-

Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

-

Al Aidarous Advocates and Legal Consultants
Abdullah Al Mulla Building, Mezzanine Suite 02
39 Hameem Street (side street of Al Murroor Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com

-

Al Aidarous Advocates and Legal Consultants
Zalfa Building, Suite 101 - 102
Sh. Rashid Road
Garhoud
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

-

ZGLaw
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw