WONG PARTNERSHIP

In Brief

DEALS

INSOLVENCY I MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2000

LAW WATCH

DECEMBER 2023

INTELLECTUAL PROPERTY I GEOGRAPHICAL INDICATIONS

INTELLECTUAL PROPERTY I COPYRIGHT

WONG PARTNERSHIP

DEALS

WONGPARTNERSHIP LLP ACTED IN …
Issuance of US$1 Billion in Aggregate Principal Convertible Senior Notes by NIO

NIO Inc. (**NIO**) issued US$1 billion in aggregate principal convertible senior notes. NIO had plans to use the net proceeds from the notes offering to repurchase a portion of its existing debt securities, to further strengthen its balance sheet position, as well as for general corporate purposes.

Founded in 2014, NIO is a leading smart electric vehicle maker, providing premium services and creating pioneering charging solutions. NIO drives next-generation innovations, such as its industry-leading battery swapping technologies, Battery as a Service (BaaS), as well as its proprietary autonomous driving technologies and Autonomous Driving as a Service (ADaaS). NIO is primary-listed in New York and has secondary listings in Singapore and Hong Kong.

The partners involved in the transaction were Chong Hong Chiang from the China Practice, Kevin Ho and Jayne Lee from the Corporate Governance & Compliance Practice, and Hui Choon Yuen from the Debt Capital Markets Practice.

CHONG Hong Chiang
Head – China Practice
Partner – Equity Capital Markets Practice
d: +65 6416 8005
e: hongchiang.chong@wongpartnership.com
Click here to view Hong Chiang's CV.

Kevin HO
Co-Head – Corporate Governance & Compliance
d: +65 6416 2555
e: kevin.ho@wongpartnership.com
Click here to view Kevin's CV.

HUI Choon Yuen
Head – Debt Capital Markets
d: +65 6416 8204
e: choonyuen.hui@wongpartnership.com
Click here to view Choon Yuen's CV.

Jayne LEE
Partner – Corporate Governance & Compliance
d: +65 6416 8256
e: jayne.lee@wongpartnership.com
Click here to view Jayne's CV.

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Other recent matters that WongPartnership is or was involved in:

DESCRIPTION	PRACTICE AREAS
Acted in the proposed subscription of 70% shares in Vnergy Pte Ltd (**Vnergy**) for US$7 million by Wintime Energy. Vnergy is National University of Singapore's all-vanadium redox flow battery energy storage technology start-up company.	Corporate/Mergers & Acquisitions
Acted as Singapore counsel in the acquisition by ZQ Capital of Popular Holdings Limited, the holding company for the Popular group.	Corporate/Mergers & Acquisitions Corporate Real Estate Intellectual Property, Technology & Data
Acted as legal counsel in the incorporation of, and pre-seed convertible note investment in Amperesand by, Xora Innovation, an early-stage investment platform of a global investment firm. Amperesand is the first deep tech spin-out start-up that aims to commercialise solid state transfers technologies based on patents developed by Nanyang Technological University (**NTU**) scientists. Amperesand is under a S$75 million pilot programme between NTU, Temasek and the National University of Singapore to accelerate deep tech spin-offs from universities.	Corporate/Mergers & Acquisitions Intellectual Property, Technology & Data WPGrow: Start-Up/Venture Capital
Advising on the proposed collaboration between NTX, a Singapore-based waterless printing and dyeing technology firm, and the University of Oregon for a sustainable textile facility near the university's new Northeast Portland campus. The facility, known as "Bridges", will include NTX's latest technology and machinery.	Corporate/Mergers & Acquisitions
Acting in relation to the closure of Flash Coffee's 11 Singapore outlets and the winding-up of the business in Singapore.	Restructuring & Insolvency
Acting in the acquisition by GGV Capital of a minority stake in Indonesia's aquaculture giant, eFishery, which turned unicorn earlier this year with a last valuation of $1.4 billion.	Corporate/Mergers & Acquisitions WPGrow: Start-Up/Venture Capital

DESCRIPTION	PRACTICE AREAS
Acted in relation to the divestment by Clifford Capital Holdings of its 50% stake in Pierfront Capital Fund Management to Keppel Corporation.	Asset Management & Funds
Acted in the series seed funding round of KozyStay, a proptech start-up based in Indonesia, with Cercano Management Asia as lead investor.	Corporate/Mergers & Acquisitions Intellectual Property, Technology & Data WPGrow: Start-Up/Venture Capital
Acting in the collective acquisition of Far East Shopping Centre, a 999-year leasehold property along Orchard Road, by Glory Property Developments.	Corporate Real Estate

INSOLVENCY I MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT 2000

Singapore High Court Clarifies Principles Governing Scope of Restraining Orders Relating to Assets of Companies in Liquidation

In *Re Attorney-General (liquidators of oCap Management Pte Ltd, non-party)* [2023] SGHC 316, the General Division of the High Court of Singapore (**High Court**), recognising the importance of not impeding liquidation processes pending the making of foreign confiscation orders, clarified the principles governing the scope of restraint orders relating to assets of a company in liquidation on an application under the Mutual Assistance in Criminal Matters Act 2000 (**MACMA**) with a view to striking the appropriate balance between Singapore's winding-up regime and the MACMA regime.

Our Comments

The High Court's decision strikes a sensible balance between various competing concerns in that, while it is important to facilitate the provision and obtaining of international assistance under the MACMA, it is equally crucial to ensure that the entire liquidation process (in respect of which the core of the liquidator's duties is the duty to get in, realise and distribute the company's assets in settlement of its liabilities *pari passu*) is not halted indefinitely pending a foreign confiscation order.

The latter concern takes on added importance in the early stages of a liquidation, where there is urgency on the part of the liquidator to quickly take custody of the company's assets, especially in the face of alleged wrongdoing by the company's previous management. For example, where there has been alleged wrongful dissipation of assets, the liquidator would want to act quickly to trace and secure the assets, to prevent them from being dissipated to the point of being unrecoverable, and he ought not to be stymied from acting swiftly to do so.

Background

The broad question in these proceedings centred on the extent to which the need for liquidators of a company to have access to the company's funds from realised assets to facilitate the orderly distribution of assets is outweighed by the interest of providing international assistance to another state in foreign criminal proceedings where the company's assets might be the subject of a foreign confiscation order.

In August 2020, a German court ordered the provisional seizure and attachment of up to €100 million of assets of Singapore-based oCap Management Pte Ltd (**Company**) in liquidation, which it was believed to have obtained as proceeds from alleged criminal offences involving the Wirecard Group.

In October 2020, German authorities submitted a request to the Attorney-General of Singapore (**AG**) pursuant to the MACMA seeking Singapore's assistance to restrain the dealing in any of the monies deposited in two accounts (**Accounts**) of Citibank NA (**Citibank**) of up to €210 million.

In March 2022, German authorities instituted criminal proceedings against four individuals alleging that the Wirecard Group's funds were embezzled through €210 million of unsecured loans to divert money *via* the

Company to partner companies, and sought an order for confiscation of the value of the proceeds of crime obtained by the Company.

The AG sought, under section 29(2)(b) of the MACMA, an order to restrain the Company and Citibank, until further order, from dealing with their interest in all or any part of the monies in the Accounts (**Restraint Order**).

The Company's liquidators (**Liquidators**), who were not parties to the AG's application, did not oppose it but argued that the Restraint Order should be made with appropriate conditions and exceptions to allow them to deal with no less than S$2,705,000 in the Accounts so as to not: (a) inhibit them in exercising their functions of distributing any property to the Company's creditors; and/or (b) prevent the payment out of any property of expenses properly incurred in the winding-up in respect of the Accounts.

The Liquidators contended that the MACMA framework operates on the rule that the "first in time prevails", i.e., whether the insolvency legislation or the MAMCA takes priority depends on whether orders are made under the MACMA before or after a winding-up order is made.

The High Court's Decision

The High Court allowed the AG's application, finding that the requisite statutory requirements under the Third Schedule to the MACMA for the grant of the Restraint Order had been met. However, recognising the importance of not hampering the liquidation process pending a foreign confiscation order and seeking to strike an appropriate balance between the liquidation and the MACMA regime, the High Court stated it would give directions on the filing of submissions specifically on the amount with which the Liquidators should be allowed to deal.

As the Company was in liquidation, the High Court's power to grant a restraint order was subject to paragraph 14(2) of the Third Schedule to the MACMA, which provides as follows:

> **Winding up of company holding realisable property**
>
> **…**
>
> (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the General Division of the High Court by paragraphs 7 to 11 or on a receiver so appointed must not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable —
>
> (a) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
>
> (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

Interpretation of paragraph 14(2)(a)

The High Court found that the specific purpose of paragraph 14(2) generally (i.e., both sub-paragraphs 14(2)(a) and 14(2)(b)) is to strike a balance between the domestic insolvency regime and the MACMA regime, where the same realisable property is the subject of both.

Citing the *obiter* comments of the English Court of Appeal in *In re Stanford International Bank Ltd and another* [2010] 3 WLR 941 (***In re Stanford***), the High Court noted that the "first in time prevails" rule does not apply to the MACMA. The "all-or-nothing" approach adopted in *In re Stanford* leaves the outcome of any case to whether the company had fortuitously entered into a winding-up before the hearing of the restraint order. The potential upshot of this is that there might be "*unseemly races between insolvency practitioners and prosecutors*", which is undesirable. Even if English law adopted a "first in time prevails" rule, it cannot be directly transposed into Singapore law. On the contrary, the starting point is that primacy must be given to the text and statutory context of paragraph 14(2)(a).

Further, given the text, context, and purpose of paragraph 14(2)(a), which restricts the court's power to grant a restraint order, the High Court observed that it not only applies where granting a restraint order would inhibit the liquidator from performing the act of distribution itself, but also where it would inhibit the liquidator from performing other functions which serve the ultimate ends of distribution.

Appropriate balance to be struck

Having regard to the liquidator's wide-ranging functions, the High Court held that paragraph 14(2)(a) must be taken to cover the entire liquidation process, at least up to the point of completion of distribution to creditors (although, presumably, the distribution of any balance to shareholders may fall outside the ambit of this paragraph). Accordingly, even if a restraint order is granted, the liquidation process would still continue and should not be allowed to be stymied indefinitely pending a foreign confiscation order. This strikes the appropriate balance between the winding-up regime and the MACMA regime as intended by Parliament.

The High Court was therefore of the view that paragraph 14(2)(a) should be read broadly to limit the court's power to grant a restraint order over realisable property where it would inhibit the liquidator from performing the act of distribution to the company's creditors, as well as other functions which would serve that ultimate purpose.

Interpretation of paragraph 14(2)(b)

The High Court also held that a liquidator is entitled to claim expenses incurred both before and after a restraint order was made. On a proper interpretation, paragraph 14(2)(b) restricts the court's power to grant a restraint order over realisable property to which the liquidator's functions are exercisable, if: (a) expenses were, or would be, incurred in the liquidation of realisable property; and (b) the incurring of such expenses was or would be proper.

As regards the first element, the High Court listed the following non-exhaustive factors relevant to assessing the projected future expenses of the liquidator: (a) the necessary anticipated work to be done for the remainder of the liquidation; (b) whether there would be any access to third-party funding, as the value of the company's realisable property to be shielded from a restraint order would be adjusted downwards since less of the realisable property would need to be liquidated to pay for expenses; and (c) whether the past expenses of the liquidator have been reasonable.

The High Court noted that the second element relates to both past and future expenses and whether they are justified. Regarding future expenses, the second element may not need to be assessed separately from the first, as there is overlap. As for past expenses, the principles governing the remuneration of, and reimbursement to, a liquidator would apply. Relevant considerations include: (a) the time spent by the

liquidator on the matter; (b) the value brought to bear by the liquidator; (c) the reasonableness of the charge out rate; (d) the complexity of the matter; (e) the effectiveness of what was done; and (f) the functions and responsibilities of the liquidator. The test for whether the claimed remuneration is proper is whether the sum is a fair, reasonable and proportionate reflection of the value of the services rendered. This must be assessed holistically — the remuneration awarded should be commensurate with the nature, complexity and extent of the work undertaken. Further, the court may determine the expenses to be awarded without any taxation procedure.

The High Court further highlighted that, where a liquidator seeks to rely on paragraph 14(2)(b), he must not only fulfil the statutory grounds in sections 139(3)(a) and 139(3)(b) of the Insolvency, Restructuring and Dissolution Act 2018 (**IRDA**) to justify his claim, but also satisfy the court that the expenses claimed are proper, even if the grounds on which he relies do not typically require the court's intervention. There are at least two reasons for this additional requirement:

(a) First, the court would be concerned with not only the interest in ensuring that the liquidator is properly remunerated for his work and indemnified for his expenses, but also the interest in facilitating the provision of international assistance to other countries in criminal matters and to obtain reciprocal international assistance.

(b) Second, even in relation to those provisions, the court retains a supervisory function to confirm or vary the amount to be paid to a liquidator. Thus, in the context of paragraph 14(2)(b), even where a liquidator has shown that the requirements in sections 139(3)(a) or 139(3)(b) of the IRDA are satisfied, the court must be the final arbiter of whether the expenses claimed are proper.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partner:

Daniel LIU
Partner – Restructuring & Insolvency
and Special Situations Advisory
d: +65 6416 2470
e: zhaoxiang.liu@wongpartnership.com
Click here to view Daniel's CV.

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INTELLECTUAL PROPERTY I GEOGRAPHICAL INDICATIONS

Singapore Court of Appeal Clarifies Approach to be Taken Under Section 41(1)(f) of Geographical Indications Act 2014

A geographical indication (**GI**) is a sign used on products having a specific geographical origin and possessing qualities or a reputation due to that origin, and thus helps consumers connect such products to a particular region or *terroir*. In *Consorzio di Tutela della Denominazione di Origine Controllata Prosecco v Australian Grape and Wine Incorporated* [2023] SGCA 37, the Court of Appeal considered, for the first time, the operation and interpretation of provisions under the Geographical Indications Act 2014 (**GIA**) and, dismissing a challenge on the grounds that the term "Prosecco" contained the name of a plant variety that was likely to mislead the consumer as to the true origin of the product, allowed "Prosecco" to be registered as a GI in respect of wines in Singapore.

Our Comments

This decision provides welcome guidance on the registration and opposition of GIs in Singapore. In particular, this decision outlines the manner in which the Singapore courts interpret Section 41(1)(f) of the GIA (**Section 41(1)(f)**) by setting out the relevant factors and the types of evidence that would be considered when assessing the grounds for refusal of registration of a GI under this section.

Advertising materials and sales figures of goods originating from another region may be useful insofar as they provide some evidence as to how a product for which the GI is being registered has been marketed to the consumer in Singapore. However, such evidence would not directly demonstrate whether the Singapore consumer would have been misled by the GI in question. Instead, consumer surveys should be used as a more direct means of proving that the Singapore consumer is likely to be misled. That said, parties should also place before the court evidence of the questions that were asked in the surveys, demographics of individuals surveyed and how the surveys were conducted.

This decision also demonstrates the court's stance on two principles in relation to the GIA. First, while there may be similarities between GIs and trade marks, they are in fact distinct species of intellectual property. As such, the principles governing the refusal of registration of a trade mark under Section 7 of the Trade Marks Act 1998 (**TMA**) cannot be wholly imported into the GIA. Second, the European Union (**EU**) principles on GIs would not be useful in the interpretation of Section 41(1)(f) as the EU and Singapore GI regimes have marked differences. In this regard, Section 41(1)(f) should be interpreted by considering the legislative intent behind Singapore's GI protection framework.

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

Background

The appellant was the Consorzio di Tutela della Denominazione di Origine Controllata Prosecco (**Consorzio**), an Italian trade body responsible for protecting, promoting, marketing and generally overseeing the use of the term "Prosecco".

The respondent was Australian Grape and Wine Incorporated (**AGWI**), the representative body for grape growers and winemakers in Australia.

On 3 May 2019, Consorzio applied to register "Prosecco" as a GI in respect of wines in Singapore (**Application GI**). The claimed geographical area for the production of "Prosecco" wines was the "North East region of Italy", which included the entire territory of Belluno, Gorizia, Padova, Pordenone, Treviso, Trieste, Udine, Venice and Vicenza. The Application GI was accepted and published in the Geographical Indications Journal under Geographical Indication No 50201900088S on 21 June 2019.

On 9 September 2019, AGWI filed a notice of opposition against the registration of the Application GI, relying on two grounds of opposition:

(a) First, that the Application GI contained the name of a plant variety and was likely to mislead the consumer as to the product's true origin. Section 41(1)(f) provides that a GI which contains the name of a plant variety or an animal breed and is likely to mislead the consumer as to the true origin of the product must not be registered as a GI.

(b) Secondly, that the Application GI did not fall within the meaning of a "*geographical indication*" as defined in Section 2(1) of the GIA.

AGWI's opposition was dismissed by the Principal Assistant Registrar of Geographical Indications who ruled that neither ground of opposition had been made out. On appeal, the General Division of the High Court of Singapore (**High Court**) held that AGWI's opposition under the first ground succeeded but not the second.

The Consorzio appealed to the Court of Appeal against the High Court's decision in relation to the ground of opposition under Section 41(1)(f). AGWI did not cross-appeal against the High Court's dismissal of its second ground of opposition.

The Court of Appeal's Decision

Allowing Consorzio's appeal, the Court of Appeal found that AGWI's ground of opposition under Section 41(1)(f) had not been made out and thus allowed "Prosecco" to proceed to registration as a GI.

Interpretation of Section 41(1)(f)

Affirming that Section 41(1)(f) has two conjunctive requirements, the Court of Appeal stated that the proper approach is to:

(a) First consider, on an objective basis, whether the GI sought to be registered contains the name of a plant variety or an animal breed that is recognised as such by a "not insignificant" population of people. Evidence of this could come from sources such as reputable scientific journals, or legal registers of plant varieties, or from the general usage of the term as denoting a plant variety or an animal breed among a body of consumers or producers.

(b) If that element is met, then consider whether the GI sought to be registered is – at the time the registration application is made – likely to mislead consumers into thinking that the product can only originate from the specified region when, in fact, its true origin could be other geographical locations

where the plant variety or animal breed used to make the product are found. To answer this question, it is necessary to focus on matters which Singapore consumers (i.e., Singapore citizens and residents and not consumers merely passing through) are aware of, since such awareness naturally affects whether Singapore consumers are likely to be misled by the GI sought to be registered. Emphasising the territorial application of the GIA, the Court of Appeal noted that all references to "the consumer" in Section 41(1)(f) must be references to the "Singapore consumer" as explained above.

The apex court listed the following three (non-exhaustive) factors that should be taken into account in considering whether the GI is likely to mislead the Singapore consumer:

(a) First, whether the average consumer here is aware that the name in question is the name of a plant variety or an animal breed. If the consumer does not perceive or believe the name in question to be that of a plant variety or an animal breed, then it is unlikely that any operative deception would arise. Put another way, the question in this case would be whether the Singapore consumer knows that "Prosecco" is the name of a grape.

(b) Second, whether the consumer is aware that the plant variety or animal breed in question is involved in the production of the product over which GI protection is sought. If he is not, then it is unlikely that he will be misled as to the true geographical origin of the product. Using this case as an illustration, if the Singapore consumer does not know the type of grape used to produce "Prosecco", it cannot be said that he will be misled as to the true geographical origin of "Prosecco" wine.

(c) Third, whether the GI sought to be registered is identical to the name of the plant variety or animal breed, as opposed to the GI containing other words in addition to the name of the plant variety or animal breed. The latter would convey a different message to the Singapore consumer. Taking this case as an example, "Prosecco" would convey a very different message from "Italian Prosecco".

The Court of Appeal noted that the question whether the Singapore consumer is likely to be misled is ultimately a factual one, and that the three factors set out above simply constitute guidance on the issues which the court would consider in determining the question.

Finally, the Court of Appeal clarified that the party opposing the registration bears the legal burden of proof of establishing the ground of opposition under Section 41(1)(f). It is clear from rule 27 of the Geographical Indications Rules 2019 that it is the party opposing the registration who must produce evidence to support its opposition, failing which the notice of opposition will be treated as though it had not been filed.

On the facts of this case, the Court of Appeal found that, while AGWI could demonstrate that the Application GI contained the name of a plant variety, it was unable to show that the Singapore consumer was likely to be misled by it. The evidence adduced by AGWI, which was limited to marketing materials and statistics showing the increase in import volumes of Australian "Prosecco" in Singapore, did not establish that the Singapore consumer was likely to be misled by the Application GI at the time it was made. Commenting on the methodology deployed, the Court of Appeal took the view that consumer surveys would have been a more direct way of demonstrating whether the Singapore consumer would be misled. That said, such surveys would not in and of themselves be determinative; parties must also provide evidence of how such surveys had been conducted.

Approach to interpretation of GIA

This decision also provides important general guidance on the interpretation of the GIA.

First, the Court of Appeal noted that principles relating to the interpretation of EU regulations would not be useful in the interpretation of Section 41(1)(f), given the "marked differences" between the Singapore model of GI protection and the EU model. Ultimately, Section 41(1)(f) had to be considered and interpreted in its own context and in light of the legislative intention behind Singapore's GI protection framework.

Secondly, the Court of Appeal highlighted that it would be slow to import principles of trade mark law into the law of GIs. While there are similarities between GIs and trade marks, they are fundamentally distinct species of intellectual property with very different historical underpinnings. The Court of Appeal therefore rejected Consorzio's reference to Section 7 of the TMA in support of its argument that the perspective of the Singapore consumer which has been read into provisions in the TMA should similarly be read into the GIA.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

LAM Chung Nian
Head – Intellectual Property,
Technology & Data Group
d: +65 6416 8271
e: chungnian.lam
@wongpartnership.com
Click here to view Chung Nian's CV.

Kylie PEH
Partner – Intellectual Property,
Technology & Data Group
d: +65 6416 8259
e: kylie.peh
@wongpartnership.com
Click here to view Kylie's CV.

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INTELLECTUAL PROPERTY I COPYRIGHT

Standing Over the Moon: Statutory Exclusive Licensees Cannot Themselves Grant a Statutory Exclusive Licence

The General Division of the High Court of Singapore (**High Court**) has held that an exclusive licensee had standing to bring an action for copyright infringement under the Copyright Act 2021 (**CA**), despite having granted a sublicence to a related entity on terms identical to its own exclusive licence: *Tiger Pictures Entertainment Ltd v Encore Films Pte Ltd* [2023] SGHC 255.

Our Comments

This decision affirms the principle set out in the case of *Alliance Entertainment Singapore Pte Ltd v Sim Kay Teck and another* [2007] 2 SLR(R) 869 (***Alliance Entertainment***) that a statutory exclusive licensee cannot himself grant a statutory exclusive licence by way of sublicence.

Licensees may wish to take this into consideration when structuring licensing arrangements, as it may have implications on which entity has standing to sue for copyright infringement.

Background

Tiger Pictures Entertainment Ltd (**Claimant**) was a company incorporated in the People's Republic of China (**China**) and engaged in the business of selling and distributing films around the world. Encore Films Pte Ltd (**Defendant**) was a Singapore-incorporated company that distributed films in Singapore and other countries in Southeast Asia.

The dispute concerned the rights to a Chinese film titled "Moon Man", in which the copyright was owned by a Chinese company, Kaixin Mahua (**Kaixin**).

Kaixin entered into a licence agreement with the Claimant, making it the exclusive licensee in all jurisdictions except China and Korea. The licence included the right to sublicense the copyright in "Moon Man". The Claimant granted an exclusive licence to its related entity in Hong Kong, Tiger Pictures Entertainment Ltd (**HK Tiger**), on terms identical to its own exclusive licence.

The Claimant began negotiations with the Defendant for the distribution of "Moon Man" in Singapore. The Defendant eventually released "Moon Man" in Singapore, and the Claimant commenced a claim against the Defendant for copyright infringement, contending that no agreement had been formed between the parties.

The Defendant applied, among other things, to strike out the Claimant's claim on the basis that it had no legal standing to sue for copyright infringement.

The High Court's Decision

Dismissing the striking-out application, the High Court held that the Claimant was an exclusive licensee at the time of the alleged infringement and therefore had standing to maintain the copyright infringement action.

The law

Under section 153(1) of the CA, an action for copyright infringement may be brought by an exclusive licensee.

The definitions of "exclusive licence" and "exclusive licensee" in relation to a copyright are set out in section 103 of the CA. In particular, an "exclusive licence" is a licence: (a) granted by the owner or prospective owner of the copyright; and (b) authorising the licensee, to the exclusion of any other person, to do an act that, by virtue of the CA, the owner of the copyright would, but for the licence, have the exclusive right to do.

The Defendant's position

The Defendant claimed that, at the time of the alleged infringement, the Claimant was not an exclusive licensee of the copyright in "Moon Man" because it had wholly licensed its exclusive right of distribution, as well as other rights to the film, to HK Tiger. In other words, HK Tiger had supplanted the Claimant as the statutory exclusive licensee.

In support of its position, the Defendant relied on *Dendron GmbH v Regents of the University of California* [2004] FSR 43 (***Dendron***), where the High Court of England and Wales held that the sublicensee supplanted the exclusive licensee as the statutory exclusive licensee.

The High Court's decision

The High Court observed that the main difficulty in the Defendant's case was that section 103 of the CA requires that the exclusive licence be granted by the owner or prospective owner of the copyright. In this case, HK Tiger's licence was granted by the Claimant, and not Kaixin, the owner of the copyright to "Moon Man".

Referring to the decision in *Alliance Entertainment*, the High Court affirmed the principle that a statutory exclusive licensee cannot himself grant a statutory exclusive licence by way of sublicence. Therefore, while the Claimant had the right to sublicense its rights in "Moon Man", it could not have granted a statutory exclusive licence to HK Tiger by way of a sublicence. The High Court further found that there was no indication that the Claimant had acted on behalf of Kaixin to grant the licence to HK Tiger.

The High Court noted that *Dendron* was not applicable to this dispute, because the decision in *Dendron* turned on the specific language of a particular provision of the UK Patents Act 1977, whereas this case was governed by an entirely different statutory regime, i.e., the CA.

In the circumstances, the High Court held that there was nothing to suggest that the Claimant had lost its status as the statutory exclusive licensee despite the sublicence granted to HK Tiger. Consequently, the Claimant satisfied the standing requirement set out in section 153 of the CA.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

LAM Chung Nian
Head – Intellectual Property,
Technology & Data Group
d: +65 6416 8271
e: chungnian.lam
@wongpartnership.com
Click here to view Chung Nian's CV.

Kylie PEH
Partner – Intellectual Property,
Technology & Data Group
d: +65 6416 8259
e: kylie.peh
@wongpartnership.com
Click here to view Kylie's CV.

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LEGAL HIGHLIGHTS

NOVEMBER 2023	
1 November 2023	**MAS Guidelines for Financial Institutions on Transition Planning for a Net Zero Economy** The Monetary Authority of Singapore (**MAS**) recently published a series of consultation papers relating to a proposed set of Guidelines on Transition Planning, which are intended to apply to various different types of financial institutions such as banks, asset managers who have discretionary authority over the portfolios that they are managing, and insurers (together, **FIs**). The proposed guidelines are intended to supplement the Guidelines on Environmental Risk Management previously issued by the MAS on 18 December 2020. The MAS intends the proposed guidelines to facilitate FIs' transition planning processes as they build climate resilience and enable robust climate mitigation and adaptation measures by their customers. Transition planning refers to the internal strategic planning and risk management processes undertaken to prepare for both risks and potential changes in business models associated with the transition. As such FIs play a key role in mobilising capital and enabling their customers to transition in an orderly manner, they should, through robust client engagement and stewardship processes, encourage changes (through the adoption of risk mitigation and adaptation strategies) in their customers' business strategies and risk profiles, instead of indiscriminately withdrawing credit / investments / insurance coverage (as applicable). The proposed guidelines set out the MAS' expectations of such FIs in relation to: (a) governance and strategy; (b) (for banks) customer engagement; (c) portfolio management; (d) forward-looking risk assessment tools; (e) data, metric and targets; (f) implementation strategies, particularly in relation to people, processes and systems; (g) (for asset managers and insurers) engagement and stewardship; and (h) disclosures. The proposed guidelines also provide illustrative examples of sound practices to facilitate implementation by these FIs. For example, the MAS expects such FIs to have clear, actionable and decision-useful risk appetite statements that consider risks holistically when implementing their business strategies and transitioning to a low carbon economy. In particular, FIs should consider mitigation and adaptation measures in response to transition and physical risks that they face through exposure to their customers and investments. **Related information:** MAS Guidelines for Financial Institutions on Transition Planning for a Net Zero Economy **Contact our Partners:** Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong
OCTOBER 2023	
31 October 2023	**Proposed Enhancements to the E-Payments User Protection Guidelines and Shared Responsibility Framework** Two consultation papers relating to the protection of e-payments users were published on 25 October 2023. The first relates to proposed enhancements to the MAS' E-Payments User

	Protection Guidelines (**User Protection Guidelines**), while the other relates to a proposed shared responsibility framework applicable to FIs, telecommunication operators (**Telcos**) and consumers in respect of losses arising from covered phishing scams. In respect of the User Protection Guidelines, the MAS has proposed to: (a) align the guidelines with established anti-scam industry practices implemented by major retail banks; (b) impose additional duties of responsible FIs to facilitate prompt detection of scams by consumers and introduce a fairer dispute resolution process; and (c) reinforce the consumers' responsibility to take necessary precautions against scams. The MAS is also looking to introduce additional guidelines to clarify the processes expected of responsible FIs in rectifying erroneous transactions. Separately, the proposed shared responsibility framework (jointly issued by the MAS and the Infocomm Media Development Authority) is intended to preserve confidence in digital payments and digital banking in Singapore, strengthen the direct accountability of FIs and Telcos to consumers for losses resulting from phishing scams, and emphasise the responsibility of individuals to be vigilant against scams. The proposed duties on responsible FIs under the proposed framework include: (a) the imposition of a 12-hour cooling-off period upon the activation of a digital security token during which "high-risk" activities cannot be performed; (b) the provision of notification alerts on a real-time basis for the activation of a digital security token and conduct of high-risk activities; (c) the provision of outgoing transaction notification alerts on a real-time basis; and (d) the provision of a 24/7 reporting channel and self-service feature to report and block unauthorised access to customers' accounts. A "waterfall" approach has also been proposed for the apportionment of responsibility for losses arising from a covered phishing scam. First, the responsible FI is expected to bear the full amount of such losses if it has breached any of its duties under the proposed framework. Second, if the FI has fulfilled all its duties but the Telco has breached any of its duties under the proposed framework (but only if the scam was perpetrated *via* SMS), then the Telco is expected to bear the full amount of such losses. Finally, if both the FI and Telco have fulfilled their duties under the proposed framework, the consumer bears the losses although he/she may pursue further action through other avenues such as the Financial Industry Disputes Resolution Centre Ltd (FIDReC). **Related information:** • Consultation Paper on Proposed Enhancements to the E-Payments User Protection Guidelines • Consultation Paper on Proposed Shared Responsibility Framework **Contact our Partners:** Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong
26 October 2023	**Repeal of Regulatory Regime for Registered Fund Management Companies** The MAS has published a consultation paper on its proposal to repeal the registered fund management company (**RFMC**) regime. RFMCs are a class of fund management companies which are subject to reporting requirements that are relatively less onerous as compared to licensed fund managers. The key difference between RFMCs and licensed fund managers which are restricted to serving accredited/institutional investors is that RFMCs are additionally

	subject to limits on the number of clients they may have and the value of assets they may manage. The MAS is proposing to repeal the RFMC regime to simplify the regulatory regime and harmonise the applicable requirements for fund managers. For existing RFMCs, the MAS' proposals would require them to file a prescribed application form within a stipulated timeline, with successful applicants being granted a capital markets services licence for fund management. The current assets under management (AUM) limit of S$250 million will be retained *via* a licence condition to be imposed on such transitioned RFMCs, which may subsequently engage with the MAS to review and lift this restriction. Transitioned RFMCs would then be subject to all the same regulatory requirements currently applicable to licensed fund managers. The MAS will stop accepting RFMC applications from 1 January 2024 to minimise the number of "transitional" applications to be reviewed when the proposals are implemented. **Related information:** Consultation Paper on Repeal of Regulatory Regime for Registered Fund Management Companies **Contact our Partners:** Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong
SEPTEMBER 2023	
29 September 2023	**MAS Enforcement Report 2022/2023** The MAS has issued its 4th Enforcement Report. The report details the MAS' enforcement actions taken from January 2022 to June 2023 against FIs and individuals for market abuse, financial services misconduct and money laundering related offences. In this period, the MAS imposed nearly S$13 million in civil penalties for market abuse cases, namely false trading, insider trading and disclosure-related breaches – the largest amount recorded so far. The MAS has also indicated that its enforcement priorities for 2023 and 2024 include: (a) enhancing its capabilities to tackle misconduct in the digital asset ecosystem, including by working with foreign regulators and law enforcement agencies to obtain and share information on errant entities and individuals; and (b) continued focus on asset and wealth managers' compliance with applicable laws and regulations, particularly business conduct and anti-money laundering and countering the financing of terrorism related requirements, as well as holding senior management accountable for lapses of their FIs where appropriate. **Related information:** MAS Enforcement Report 2022/2023 **Contact our Partners:** Elaine Chan | Rosabel Ng | Chan Jia Hui | Tian Sion Yoong

OTHER UPDATES

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

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

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
Oberoi Centre, 13th Floor, Marasi Drive, Business Bay
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

wongpartnership.com