WONG PARTNERSHIP

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WHAT CAN WE LOOK FORWARD TO IN 2024?

2023 proved to be a challenging year, with regional conflicts, geopolitical tensions, elevated inflation, market volatility, a warmer climate globally and myriad other disruptions that kept many investors on the sidelines away from the market. On the positive side, the advent of generative AI and the demand for technological solutions that incorporate generative AI have prompted legal professionals to seek out new tools to assist clients.

As we step into 2024, we take this opportunity both to reflect on lessons gleaned from the events of the past year and to offer you insights into key legal themes identified in various practice areas to help you steer through the anticipated headwinds and developments in this VUCA world.

COMPETITION IN SINGAPORE: THE ROAD AHEAD IN 2024

We briefly survey below the key trends and developments from 2023 and explore what businesses can expect heading into 2024.

Trends and Developments

- **Heftier fines for cartel conduct:** Businesses can expect that financial penalties for cartel conduct will likely continue to be hefty in coming years. In the 2023 decision of *CU Water Services Pte Ltd v Competition and Consumer Commission of Singapore* [2023] SGCAB 1 (Competition Appeal Board decision of 3 October 2023), the Competition Appeal Board **(CAB)** affirmed the position of the Competition and Consumer Commission of Singapore **(CCCS)** that bid rigging and other obvious cartel behaviour are serious infringements which attract a higher starting percentage; in this case a starting base penalty of 9%. This higher starting percentage represents a shift in policy towards higher penalties, which the CCCS has indicated – and the CAB has affirmed – is justifiable as a matter of Singapore's maturing competition enforcement policy as there is now sufficient market awareness of the harm caused by cartelistic conduct to competition.

- **Return of dawn raids:** 2024 may see an uptick in CCCS enforcement activity – e.g., in the form of investigations and dawn raids – as we move away from the slowdown observed during the COVID-19 pandemic. For reference, in November 2023, the CCCS carried out what was likely the first dawn raids since the onset of the COVID-19 pandemic, at the premises of numerous businesses providing building construction services in Singapore.

- **Longer merger filing review timelines:** Transaction parties should note that, as transactions continue to grow in complexity, clearance may take longer. The average period for a Phase 1 clearance in 2023 was about three calendar months. The CCCS has emphasised that parties may assist in expediting the review process by ensuring that their merger filings contain all requisite information from the outset.

- **Sustainability policy developments:** Sustainability is positioned to remain a key policy priority for the CCCS. Businesses can look forward to the release of guidelines on: (a) business collaborations pursuing environmental sustainability objectives; and (b) environmental claims made in advertising that could amount to unfair practices under the Consumer Protection (Fair Trading) Act.

- **Significant Investments Review Act:** The Significant Investments Review Bill was passed in January 2024 and will come into force as the Significant Investments Review Act **(SIR Act)**. While there is no date indicated as yet as to when the SIR Act will come into force, we expect that it will be in the coming months. Investors in critical entities in Singapore should check whether the entity in which its direct or indirect acquisition of shareholding interests and/or control over voting power relates, is a Designated Entity (as defined in the SIR Act). Prospective acquirers and sellers of Designated Entities, as well as Designated Entities themselves, must comply with certain ownership and control related notification and approval requirements (e.g., in relation to the appointment and removal of key officers).

For more details on these trends and developments, as well as our key takeaways on navigating the regulatory landscape in 2024, please see our 6 February 2024 update titled Navigating the Regulatory and Enforcement Landscape in 2024.

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NAVIGATING RECENT TRENDS AND DEVELOPMENTS IN THE SINGAPORE FINANCING LANDSCAPE

Noteworthy trends and developments in the Singapore financing scene include: (a) a substantial uptick in green and sustainability-linked loans in recent years; (b) the emergence of transition financing as an "alternative" to green and sustainability-linked loans; (c) the recent increase in peer-to-peer **(P2P)** lending; as well as (d) certain interesting developments in the acquisition financing space. These are briefly summarised below.

Trends and Developments

- **Growth in green and sustainability-linked loans:** There has been a significant increase in the number of green loans **(GLs)** and sustainability-linked loans **(SLLs)** that have been taken up over the past few years, with global credit-rating agencies beginning to differentiate credits based on environmental, social and governance **(ESG)** attributes. Singapore companies borrowed up to US$39.5 billion in GLs as at the end of 2022, and SLLs and ESG-linked loans in Singapore totalled SG$75 billion in 2021. The adoption rate of SLLs for development financing in particular has been healthy, with companies and REITs in the real estate sector accounting for 46% of green or sustainability-linked debt in 2021. This is due to a confluence of factors such as the presence of a robust certification scheme for green buildings and the Singapore Green Building Masterplan, under which the nationwide target is for 80% of buildings to be certified green or to have best-in-class energy efficiency by 2030, as well as the Singapore government's creation of a robust regulatory framework within which issuers and borrowers of SLLs can work (e.g., in relation to ESG reporting).

- **Emergence of transition financing:** While GLs and SLLs have become increasingly prevalent, borrowers in high-emitting sectors, such as aviation and energy generation, in particular, may find it challenging to take up GLs and SLLs given the nature of their industries. This has led to the emergence of "transition finance", which generally refers to the investment, lending, insurance and the provision of other related services to gradually decarbonise high-emitting industries such as power generation, buildings and transportation. In this regard, Singapore targets to convert 80% of its buildings from "brown" to "green" by 2030. About 95% of Singapore's electricity is still being generated from natural gas, so transition financing is likely to become increasingly prominent in Singapore. The Monetary Authority of Singapore has recently updated and expanded the Green Finance Action Plan, which was introduced in 2019. The refreshed plan is titled "Finance for Net Zero Action Plan" (FiNZ Action Plan) and its scope has been widened to not only cover green financing, but also transition financing.

- **Increase in P2P lending:** In recent years, P2P lending has seen growing prevalence in the form of digital platforms directly connecting lenders and borrowers. P2P lending involves directly matching borrowers, which are often small and medium enterprises **(SMEs)** seeking shorter-term financing (SMEs may not be able to procure bank financing as they may not have adequate credit standing or collateral), and lenders, which may be institutional or retail investors, through online platforms that also facilitate the collection, evaluation and transmission of the borrowers' details to these potential lenders.

NAVIGATING RECENT TRENDS AND DEVELOPMENTS IN THE SINGAPORE FINANCING LANDSCAPE

- **Developments in acquisition financing:** There have also been several noteworthy developments in the acquisition financing space, such as the following:

  — Enterprise financing scheme, mergers and acquisitions loans scheme (EFS - M&A Loans Scheme)
  The Enterprise Financing Scheme **(EFS)** was rolled out at the end of 2019 by Enterprise Singapore to give newly formed SMEs the option to make simplified applications with certain participating financial institutions to obtain various types of loans. Among such loan schemes, the EFS - M&A Loans Scheme is particularly popular, as it allows local SMEs to tap into funding for international M&A transactions that they would otherwise be precluded from obtaining. Participating lenders are also partially indemnified against the risk of borrowers' default, with Enterprise Singapore taking on a 50% risk share (with those meeting certain conditions enjoying a risk share by Enterprise Singapore of up to 70%). The EFS - M&A Loans Scheme has since been extended until March 2026 and expanded to include funding for domestic M&A activities.

  — Covenant-lite loans
  Covenant-lite loans are characterised by the paring down or absence of financial or maintenance covenants, such as covenants obliging borrowers to maintain a certain amount of assets or to ensure that their aggregate leverage does not exceed a pre-designated limit. The absence or paring down of such financial or maintenance covenants allows borrowers to focus on other aspects of the loan, particularly value creation. However, in the Asia-Pacific region (including Singapore), banks have thus far shown a preference for stronger covenants, and covenant-lite loans remain uncommon. Instead, other flexible loan structures with covenant-lite features such as Term Loan B (also referred to as institutional term loans or TLB) are more commonly adopted.

Of the various trends and developments explored above, we expect the increasing prevalence of GLs, SLLs and transition financing to continue throughout 2024 and beyond, as greater accountability continues to be placed on businesses and corporate actors in relation to ESG issues. Whichever way the market turns in 2024, it is likely that GLs, SLLs and transition financing will continue to flourish, and remain a crucial part of the financing landscape in Singapore for the foreseeable future.

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BANKING DISPUTES: EVOLVING FRONTIERS AND BATTLEFRONTS

We continued to be very active in 2023 in our representation of various banks and financial institutions in respect of the enforcement of their lender and other contractual rights. Besides debt enforcement and asset recovery, new trends emerged from the crypto-winter and subsequent legal efforts to enforce, track and recover digital assets.

Trends and Developments

- **Significant decisions from the Singapore courts:** Case law developments from the Singapore courts have provided further guidance in a variety of areas:

  — The General Division of the High Court of Singapore **(High Court)** held in *Algorand Foundation Ltd v Three Arrows Capital Pte Ltd* (HC/CWU 246/2022) that a debt denominated in cryptocurrency is not a money debt capable of forming the subject matter of a statutory demand under section 125(2)(a) of the Insolvency, Restructuring and Dissolution Act 2018 **(IRDA)**. The High Court subsequently clarified in *Loh Cheng Lee Aaron and another v Hodlnaut Pte Ltd* [2023] SGHC 323 that the monetary value of crypto-assets could nevertheless be taken into account when determining whether a company was unable to pay its debts under sections 125(1)(e) and 125(2)(c) of the IRDA.

  — The High Court, in *UCO Bank, Singapore Branch v Green Mint Pte Ltd* [2023] 5 SLR 708, ruled that the court has the inherent power to consider making a judgment on the merits of the claim against a guarantor debtor who does not file a defence, where it is satisfied that a default judgment would not be enforceable in a foreign jurisdiction.

  — In *Ethoz Capital Ltd. v Im8ex Pte Ltd* [2023] 1 SLR 922, the Singapore Court of Appeal **(Court of Appeal)** held that an accelerated repayment clause with default interest must be a genuine pre-estimate of damages; otherwise, it may be struck down as an unenforceable penalty.

  — Guidance on the scope of exceptions to the statutory duty of banking secrecy was given by the High Court in *La Dolce Vita Fine Dining Co Ltd v Zhang Lan and others* [2022] 5 SLR 602, which clarified that bankers' books discoverable under section 175(1) of the Evidence Act 1893 exclude account opening forms as a category unless they are entered into the bank's permanent transactional record, and that a declaration of beneficial ownership in an account opening form that is entered into the bank's records would fall within the definition of bankers' books.

  — Finally, in *Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA* [2023] 2 SLR 389, the Court of Appeal upheld the validity of a sanctions clause which the defendant bank (which was subject to the laws of the United States) sought to rely on to disclaim liability for a failure to pay upon presentation of documents if the vessel involved was subject to United States sanctions, but held that a strict approach would apply to the interpretation of such clauses, and that clear objective evidence will be required from a party seeking to rely on such a clause. In this instance, the defendant bank could not rely on the sanctions clause because there was insufficient evidence that the vessel concerned was subject to United States sanctions.

BANKING DISPUTES: EVOLVING FRONTIERS AND BATTLEFRONTS

- **United Kingdom Supreme Court's decision on Quincecare duty:** We note with interest the United Kingdom Supreme Court's recent decision in *Philipp v Barclays Bank UK Plc* [2023] UKSC 25 that the Quincecare duty to refrain from executing payment instructions where a bank is put on notice concerning potential fraud does not apply where the payment instruction comes directly from the customer because, among other things, it is a basic duty of a bank to comply promptly with a customer's valid instructions without concerning itself with the wisdom or risks of the customer's payment decisions. We look forward to potential consideration of this decision by the Singapore courts in an appropriate case in view of the increasing number of claims being filed against banks by scam victims.

- **Potential for increased environmental, social and governance (ESG) disputes:** For 2024, we anticipate a need for greater awareness of potential ESG-related litigation claims, tracking developments in the United States and Europe. Financial institutions will unfortunately remain the target of ESG activists. Potential claims may include misrepresentation claims premised on ESG mis-statements and greenwashing.

- **Anticipated rise in claimant group securities actions:** While Singapore does not have a class action regime, we also anticipate the possibility of more claims being brought by claimant groups in securities litigation. We are currently involved in a note-holder action in the High Court that will involve the determination of issuer and arranger banks' rights and liabilities.

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COMMERCIAL LITIGATION 2024: TRENDS AND TRAPS

While we largely emerged from the COVID-19 pandemic by the end of 2023, there remains considerable geopolitical instability in various regions of the world. The current macroeconomic landscape is no doubt a concern for many businesses worldwide. Alongside such volatility, the booming and evolving fintech industry has also seen its fair share of action in the past year, with reports stating that over US$2 billion were lost to scams involving cryptocurrency.

Trends and Developments

- **Supply chain / downstream contractual disputes:** With uncertainty looming in respect of the unrest surrounding the Red Sea, many global shipping lines either have vessels anchored in the Red Sea, or have chosen to reroute vessels away from the Suez Canal. This will undoubtedly put a strain on supply chains in terms of time delays, costs and other logistical complexities. Indeed, a good number of the vessels affected are bound for Singapore, a major shipping hub.

  The disruptions to shipping routes and timetables will likely trigger an increase in disputes in respect of supply chain contracts, and downstream supply / distributorship contracts. Businesses should plan ahead for supply chain turbulence.

- **Disputes concerning cryptoassets and asset recovery:** 2023 was a year of clarity for Singapore law in respect of cryptoassets, with the Singapore courts confirming that cryptoassets are property in the eyes of the law and can be the subject of a trust, but cannot be treated in exactly the same manner as state-issued fiat currency.

  With the amount of fraud, scams, and insolvency the industry has seen in 2023, coupled with impending regulation, 2024 will see continued legal action in this regard, whether before the courts or in arbitration. Individuals and businesses should continue to keep a close watch on developments in this space, and be ever vigilant against evolving fraud and scam tactics. They should also bear in mind that time is of the essence where recovery of cryptoassets is concerned, given the increasing number of tools readily available to fraudsters and scammers to mix and split cryptoassets, making tracing more challenging.

- **Stakeholder disputes and enforcement:** The general international economic downturn is expected to drive an increase in litigation relating to joint ventures and partnerships. With businesses taking a hit and changing business strategies due to the prevailing macroeconomic situation, such disputes could range from mismanagement and minority oppression, to withdrawal and termination (e.g., investors seeking to exit relationships). The changing business risks landscape may also fuel litigation arising out of pending or completed M&A transactions. These may include, for instance, disputes in relation to inadequate disclosures in due diligence, breaches of representations and warranties, inability to fulfil conditions precedent or subsequent, and “material adverse change” clauses.

  Such litigation may include arbitration-related litigation such as applications to stay court actions in favour of arbitration, requests for urgent assistance from the Singapore courts in aid of arbitration, as well as challenges to arbitral awards and their enforcement.

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2024: THE RETURN OF THE DRAGON?

2024 is a significant milestone for our China Practice as our Shanghai Representative Office celebrates its 20th anniversary. We expect to continue to work closely with our regional partners and practices to support the legal needs of our clients for both in-bound and out-bound work in China.

Trends and Developments

- **Geo-strategic tensions:** Geo-strategic tensions between the East and West are expected to persist in 2024. Opportunities for outbound investment for Chinese and China-based parties will likely continue to grow as they seek to diversify geo-strategic business risks by venturing into neutral countries. Singapore has, for some time, been one of their preferred platforms or springboards to set up or grow their regional and global businesses. As it is critical for such businesses to set up viable tax and legal structures right from the outset, it will be imperative for parties to obtain early advice on the best possible offshore legal structures for their investment and acquisition activities.

- **Improvement in the climate for foreign direct investment into China:** Further efforts by regulators to stabilise the market and improve the climate for foreign direct investment in China are anticipated in 2024. Investors in China will need to balance this with regulatory developments, particularly with regard to corporate compliance (taking into account China's amended Company Law) and data protection.

- **Resurgence of overseas public listings:** Notably, more than half of the applications made under the rules implemented in 2023 governing overseas listings by China-based companies (see our update here) have been accepted so far. We foresee that this, coupled with companies' diversification plans, has the potential to spark a resurgence of overseas public listings of China-based companies in 2024.

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WILL 2024 FINALLY BE THE YEAR FOR IPOs?

In 2023, global macroeconomic, geopolitical and other factors resulted in subdued global capital market fundraising activity which was also observed in Singapore and most of the markets in the region. Despite this, Indonesia saw the highest number (79) of new listings among major Southeast Asian bourses, raising total proceeds of approximately Rp. 54,000 billion (S$4.9 billion) followed by Thailand's 40 new listings which raised total proceeds of approximately Baht 46,000 billion (S$1.7 billion). In many markets in Southeast Asia, including Singapore, there were more companies listing on the junior boards of the various stock exchanges.

We are pleased to have been involved in the first de-SPAC on the Singapore Exchange **(SGX)** last year. However, the deal was done amidst a general decline in global interest for SPACs, in the wake of frenzied SPAC listings in prior years. SPAC IPOs and, in turn, de-SPACs are unlikely to return to that level of activity given that SPACs typically focus on the acquisition of technology-related companies which have struggled to attract investors at current valuations, and following the introduction of more stringent regulatory requirements in the United States. The Singapore REIT IPO market faced its two consecutive worst years as well, in light of the high interest rate environment.

One would hope that 2024 can only be better.

Trends and Developments

- **Capital markets recovery in Southeast Asia:** Southeast Asian markets are expected to remain important to global stock exchanges, as seen from collaborations between regional stock exchanges and counterparts in the rest of the world.

  The IPO market should fare better in 2024 compared to 2023, especially in Southeast Asia. Even if challenging global economic and geopolitical tensions remain, countries with strong domestic capital markets like Indonesia and Thailand are expected to be less affected by external factors, especially on the back of resilient domestic economic growth. IPO activity is thus expected to see an uptick in the second half of 2024.

  The SGX attracts listings of issuers with regional or global business and operations. Consequently, adverse global market developments impact capital markets activity in Singapore more significantly than other regional markets. Given the pipeline of IPO-ready companies, an improvement in investor appetite will see a rebound in the number of Main Board listing applicants. REIT IPOs are also expected to return in a favourable interest rate environment. There are also a number of Singapore companies looking to the United States and other global markets that are considering a dual listing on the SGX.

- **Pre-IPO fundraisings herald listings in the next one to two years:** Given some uncertainty around public markets, we expect private market fundraising to continue in 2024 for many companies in 2024 that have a listing horizon within the next one to two years.

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THE UPCOMING WORKPLACE FAIRNESS LEGISLATION: WHAT YOU NEED TO KNOW

The Workplace Fairness Legislation **(WFL)** is likely to be enacted in the second half of 2024. This is a significant development in the Singapore employment law landscape. Employers should familiarise themselves with the changes, and take steps to ensure that the practices and culture within their companies are compliant with the upcoming legislation.

While the exact provisions of the WFL have not been finalised, on 4 August 2023, the final report **(Report)** of the Tripartite Committee on Workplace Fairness, comprising members from the Ministry of Manpower **(MOM)**, National Trades Union Congress and Singapore National Employers Federation, was accepted by the Singapore government. The Report contains 22 recommendations in four key areas for the WFL. We anticipate that the upcoming WFL will address these areas (pertinent ones are highlighted below).

Trends and Developments

- **Legislating Specific Protections:** Employers are generally not to discriminate against job applicants and employees based on an exhaustive list of protected characteristics: (a) nationality; (b) age; (c) sex, marital status, pregnancy status, caregiving responsibilities; (d) race, religion, language; and (e) disability or mental health conditions.

- **General Protection:** The Tripartite Guidelines on Fair Employment Practices **(TGFEP)**, which have been addressing workplace discrimination in Singapore, will continue to apply and will work in tandem with the WFL to offer protections to all forms of workplace discrimination. The continued application of the TGFEP serves to eliminate discrimination not covered by the WFL.

- **Dispute Resolution:** The first step employers must take is to establish formal grievance handling procedures. This provides an official avenue for the reporting and amicable internal resolution of discrimination and harassment incidents, while maintaining the confidentiality of the identity of the reporters. If an internal solution cannot be achieved, the matter will first proceed to mediation at the Tripartite Alliance for Dispute Management. If that does not succeed, the matter may be brought before the Employment Claims Tribunal **(ECT)** as a last resort.

- **Penalties for Breaches of the WFL:** Under the WFL, the ECT will be able to order monetary compensation of up to $5,000 for pre-employment claims, and up to $30,000 for in-employment and end-employment claims. For serious breaches, the MOM may take enforcement action(s) against the employer. The WFL provides for the imposition of a range of possible enforcement actions which depend on the severity of the breach. This includes corrective orders, administrative penalties, and civil penalties attracting large financial penalties, for low, moderate and high severity breaches respectively.

Considering these developments, it is paramount for employers to ensure that their policies and procedures are in compliance with the upcoming WFL.

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INDONESIA

EXCITING YEAR AHEAD...

Indonesia is the largest economy in Southeast Asia and the world's fourth most populous nation. 2024 is expected to be an exciting year for Indonesia given that it will have a new president for the first time in 10 years.

Trends and Developments

- **Indonesian presidential election:** In the past, the run-up to an Indonesian presidential election often resulted in transaction activity being muted with foreign investors taking a wait-and-see approach as to which candidate came into power and what sort of foreign investment policies might be implemented. Coupled with rising interest rates, foreign investors and buyers have had difficulty in completing transactions at acceptable valuations. Based on the recent available results from the "quick counts" of independent pollsters following the conclusion of polling on 14 February 2024, Defence Minister Prabowo Subianto has claimed victory although the final result of the elections will likely only be known in late March. Against this backdrop, we expect the slowdown in transaction activity observed in 2023 to continue into much of 1H2024, with a pickup in deal activity going into 2H2024 (subject to macroeconomic conditions remaining stable).

- **Resilient economic growth:** Regardless of the outcome of the presidential election, Indonesia's economic growth is expected to remain resilient. According to the World Bank, private consumption is anticipated to be the primary driver of growth in 2024. In the short-to-medium term, business investment and public spending are also expected to pick up as a result of government reforms and new government projects that often accompany a change in presidency.

- **Investment themes:** Indonesian investment themes that we have seen in the past few years are expected to continue in 2024. These include investment opportunities in the technology and e-commerce sectors, health care sector, tourism sector, energy and mining industries and construction sector.

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PERSPECTIVES FROM THE FRONTLINES

In 2024, we foresee more disputes being referred to arbitration as a result of geopolitical conflicts, the climate transition and increased investment involving Asian parties, both outbound and inbound, as well as an uptick in attempts by unsuccessful parties to set aside or resist the enforcement of arbitral awards in Singapore.

Trends and Developments

- **Geopolitical conflicts spawn disputes:** The ongoing conflicts between Ukraine and Russia and in the Middle East continue to generate disputes. The year began with an ICSID claim in excess of US$1 billion filed by Russian-linked ABH Holdings S.A. against Ukraine for alleged illegal expropriation of its investment in Sense Bank, one of the largest banks in Ukraine. The halting of gas supplies by Russian stated-owned Gazprom to buyers who refuse to pay for gas in roubles has spawned several arbitrations. The attacks in the Red Sea by Houthi rebels have also disrupted one of the world's most important shipping routes and could give rise to disputes over delay, diversions and claims of *force majeure*. Due to various sanctions imposed against certain Russian parties, we have also seen a pivot away from London as a seat for disputes involving Russian parties, with more opting for arbitration in Hong Kong or Singapore.

- **Climate-crisis related disputes:** There is now an international consensus that drastic steps are needed to arrest the pace of global warming. As states and corporations seek to meet their climate change commitments by, among other things, moving away from carbon-intensive energy sources and investing in renewable energy, we expect an increase in disputes in the energy, infrastructure and project sectors.

  In this connection, major arbitral institutions such as the ICC, LCIA, and SIAC have reported spikes in environmental disputes and/or disputes in sectors closely connected with climate change (such as energy and construction) and this trend is expected to continue. We also foresee investors increasingly resorting to investor-state arbitration to claim compensation for environmental and other climate-change related measures implemented by states that adversely affect their investments. Most recently, in 2023, a US$20 billion ICSID arbitration was brought by a United States company under the North American Free Trade Agreement against Canada for refusing to permit the construction and operation of an LNG plant after environmental assessments concluded that there were major environmental and climate change concerns.

- **Disputes involving Asian parties:** As both inbound and outbound investment in Asia continues to grow, we anticipate more arbitrations involving Asian parties arising from these investments. This is borne out by the 2021 Queen Mary University of London International Arbitration Survey, which shows significant growth in the percentage of respondents selecting Asian arbitral institutions such as the SIAC, HKIAC and CIETAC as their preferred choice. The choice of the SIAC is particularly popular in matters where both parties are Asian as Singapore is widely regarded as a neutral, safe, and developed jurisdiction to administer disputes. Notably, we have observed a growing number of Asian parties (particularly from the People's Republic of China) assuming the role of claimants in international arbitrations.

- **Setting aside and enforcement of arbitral awards:** We have also seen an increase in applications to set aside and/or enforce arbitral awards in the Singapore courts. This is due to the rising popularity of Singapore as an arbitral seat and more foreign companies having corporate offices and assets in Singapore. Our international arbitration team has represented states, state entities and investors in enforcing arbitral awards and defending against challenges to their validity. Most recently, we successfully acted for Deutsche Telekom AG in proceedings before the Singapore International Commercial Court and on appeal to a five-member Court of Appeal to enforce an investment treaty arbitration award in excess of US$150 million against the Republic of India (*The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 10). This case (see our update here) is an example of an award creditor choosing to enforce an award in Singapore even though the award debtor is not Singaporean and the underlying dispute has no connection to Singapore.

- **Third-party funding:** Third-party funding of international arbitration continues to gain traction following its legalisation in major Asian arbitration hubs like Singapore and Hong Kong. We have seen a growing number of enquiries from clients about this method of financing their legal claims, which is no longer only used by impecunious claimants but increasingly seen as a valuable tool for businesses to manage the financial risks of dispute resolution. In the United Kingdom, while the legality of damages-based funding agreements was cast in doubt by a recent decision of the United Kingdom Supreme Court (*R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28), the Justice Secretary has in January 2024 signalled that the United Kingdom government intends to legislatively reverse the effects of that decision.

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REGULATING AI: LEGAL TRENDS AHEAD

Artificial intelligence **(AI)**, in particular, generative AI, and machine learning technologies are coming under greater scrutiny as their accelerating use and adoption cause regulators worldwide to grapple with how, if at all, they can and should be regulated. This update outlines developments in Singapore and overseas, and identifies legal trends to watch in this space in the year ahead.

Trends and Developments

- **Distinct approaches to AI regulation:** Distinct approaches to regulating AI have emerged around the world. Some jurisdictions have proposed omnibus and prescriptive legislative approaches (e.g., the European Union's proposed Artificial Intelligence Act and Canada's Artificial Intelligence and Data Act) that seek to regulate applications of AI across sectors depending on the impact or risk level of the AI system, while others have enacted regulations targeting specific applications of AI or particular sectors (e.g., China's Deep Synthesis Provisions and Generative AI Regulations). Singapore maintains its distinct approach towards AI regulation by reiterating its priority to deepen its understanding of how AI is used before deciding on the appropriate steps to take on the regulatory front.

- **Singapore's embrace of AI – revised national AI strategy:** Even as Singapore has taken a measured approach towards AI regulation, it has sought to position itself at the forefront of adoption and development of AI technologies by revising its national AI strategy to regard AI as a "necessity" and operate with a "global outlook for AI" to keep pace with international developments and standards. In this regard:

  — Singapore has continued to build on its AI Verify framework (the world's first AI governance testing framework) by mapping it to the United States' AI Risk Management Framework with an aim of increasing interoperability, reducing compliance costs, and fostering a more conducive environment for AI deployment and innovation.

  — The Infocomm Media Development Authority (IMDA) is seeking to expand the existing Model AI Governance Framework that covers traditional AI by proposing a framework to address generative AI concerns while still continuing to facilitate innovation.

- **Intellectual property (IP) rights in the age of AI:** Regulators have provided greater clarity on authorship over AI-generated works as jurisdictions around the world increasingly wrestled with IP ownership issues over AI-generated content. For instance, the United States Copyright Office has declared that copyright only protects material that is the product of human creativity. This is similar to the current position in Singapore, where the courts have required a sufficient causal nexus between the human author of a work and the work itself for copyright to subsist. That said, cases involving generative AI have yet to come before the Singapore courts and the issue remains untested judicially. Questions also remain as to the use of content for training AI models and the boundaries of fair use. In this regard, Singapore's Copyright Act is groundbreaking in establishing a broad computational data analysis exception to copyright infringement, which can facilitate research and development of generative AI and data analytics tools.

REGULATING AI: LEGAL TRENDS AHEAD

Looking ahead, as countries seek to fine-tune their approaches to AI regulation, we may see more discussions across jurisdictions on mutually recognising each other's frameworks to increase alignment and interoperability as countries shift to operationalising and implementing their respective frameworks. Singapore's embrace of AI, coupled with global initiatives and legislative shifts, underscores the need for businesses to stay agile and well informed of the evolving regulatory landscape as we anticipate further responses by regulators to the increasing adoption of AI technologies.

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MERGERS & ACQUISITIONS

FORTUNE FAVOURS THE BRAVE...

But proceed with caution.

After what most might claim to be an annus horribilis for M&A in 2023, during which we saw a 25% decline in global M&A value compared to 2022, there are now some signs that M&A activity will revive in 2024. While recent events have shown that geopolitical risks remain, an uptick in M&A volume in the last quarter of 2023 demonstrates that investors are beginning to tire from standing on the sidelines. Amid expectations of a more favourable borrowing environment with interest rates stabilising, recession fears waning and growing talks of a soft landing, we are predicting a brisk period for M&A in the next 12 months as buyer and seller expectations converge.

Trends and Developments

- **Gradual recovery for S-REIT M&A:** S-REITs suffered in 2023 due to persistently high interest rates, which led to increased borrowing costs, reduced property valuations, and lower distributions. However, with S-REIT managers actively managing balance sheet exposures and debt cost headwinds subsiding, we predict a revival of M&A activities which will allow REITs to seek growth opportunities to support medium to long-term distribution per unit growth.

- **Private equity clearing the backlog:** As general partners come under increasing pressure from limited partners to make distributions from investments made prior to the global COVID-19 pandemic, there is a need to exit from many of these investments. Heading into 2024, as sponsors begin to have greater certainty on valuation, the contraction in valuation gaps will likely see more such deals done this year. Continuing the trend of the past few years, we foresee that the secondary market will remain the chosen path to monetisation for private equity firms.

- **Return of voluntary delisting:** Ever since 2019, following the amendments by the Singapore Exchange to the voluntary delisting rules, there has been a dearth of privatisations *via* the voluntary delisting route with most offerors preferring the “easier” scheme of arrangement or general offer method. However, with the amendment to the Companies Act in 2023 making it harder for certain offerors to exercise the right of compulsory acquisition, we anticipate the possibility of voluntary delistings making a comeback for certain offerors, albeit in a more subdued manner than in pre-2019. Depending on the circumstances, there may be certain situations where the voluntary delisting route may prove to be a more effective way to undertake privatisations.

- **Continued robust shareholder activism:** 2023 saw an increase in shareholder activism, more than observers might have expected for such a down year. As the corporate landscape in Singapore continues to shift, we expect this trend to continue in 2024. We also envisage that the increase in number of activist campaigns will result in a push for M&A to accelerate, especially if the financing and M&A markets improve over the course of the year.

As we move into 2024, the recent geopolitical instability in the Middle East may continue to dent market confidence. However, prospects for our region look good (or comparatively better than others) which may eventually prove to be rewarding for the bold. Time to gear up and get in the game.

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SOFT LANDING? PERHAPS NOT FOR EVERYONE

Despite rising interest rates, quantitative tightening, geopolitical tensions and macroeconomic uncertainty, there are few signals indicating pent-up pressure in distress. Non-performing loan ratios, insolvency filings, and debt restructuring activity remained steady in Singapore throughout 2023. The reckoning witnessed in the crypto markets, exemplified by the collapse of Three Arrows Capital, Hodlnaut, Babel, Genesis and Zipmex, has not been mirrored in the "real economy". Even as some economists expect a soft landing for the real economy, we expect there to be pockets in the market which present risk (and opportunity) in the distress space.

The rapid development of Singapore case law on restructuring and insolvency (see our update, *Singapore Restructuring & Insolvency Yearbook 2023*) will give market participants greater predictability and certainty on execution and implementation of turnaround and special situations strategies.

Trends and Developments

- **The net-zero transition has begun:** In 2023, major local banks like OCBC and UOB released their net-zero transition plans, joining DBS which released its plan in 2022. Across the board, these net-zero plans envisage a gradual pullback in financed emissions across a slew of sectors, including power, oil and gas, aviation, shipping, real estate and manufacturing. 2023 showed early signs of the withdrawal in motion, with a moderate decline in loans to transportation, storage, electricity and gas industries. Refinancing will pose a risk to these affected sectors, and private credit may step in to fill this gap.
- **Rise of private credit:** The global rise of private credit will bring a different type of player to the market. Less constrained than traditional bank lenders, and (potentially) more committed than bond investors, private credit funds are the ones to watch in the distress space. The scope for creativity and innovation in deal structures, turnarounds, and value enhancement will be magnified with private credit.
- **Asset revaluation and impact on leverage plays:** 2023, exemplified by the downfall of Silicon Valley Bank, has shown the systemic risk of complacency from years of zero-interest-rate policy and the seismic impact that rising interest rates can have on valuations of long-duration assets. Interest rates remain anyone's guess but, undoubtedly, revaluation risk remains in the market, not least in leveraged real estate asset plays.
- **Limits of quick-fire cost management solutions:** The early weeks of 2024 started with a number of layoffs announced by large-cap companies. Quick-fire cost management solutions might not be a panacea for all businesses, particularly those with high fixed costs and debt service burden. Boards and management should be open to taking multi-pronged approaches involving operational and financial elements to develop holistic value-maximising restructuring plans.

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SPECIALIST & PRIVATE CLIENT DISPUTES

PRIVATE CLIENT: OUTLOOK 2024

We identify below the key trends which are likely to impact ultra-high-net-worth families and individuals in 2024.

Trends and Developments

- **Tightening of the single family office (SFO) tax exemption regime:** While there has been a proliferation of SFOs in Singapore in recent years, it has become increasingly harder for SFOs to obtain tax exemption. To safeguard against money-laundering risks, more regulations relating to their governance and compliance with notification and reporting requirements are expected to be implemented. Consequently, SFOs will likely have to commit more resources to address governance and compliance requirements. Alternatively, SFOs may come together to form multi-family offices.

- **Transfer of wealth and stress-testing of succession structures:** 2024 will see an acceleration of the transfer of wealth and assets from first generation owners of wealth to the next generations. It will be a critical period where the previous succession planning efforts of the first generation might be stress-tested.

  The second generation will be able to contribute more ideas regarding family business, philanthropy, investment and family governance. Any succession planning done to date may have to be reviewed to determine whether it continues to meet the needs and expectations of the family and whether it is sufficient from the perspective of family governance.

- **Alternative asset classes:** The approval in January 2024 by the United States Securities and Exchange Commission of the first United States-listed exchange traded funds (ETFs) to track Bitcoin may provide momentum for similar regulatory approvals in and around Asia. Indeed, in August 2023, the Monetary Authority of Singapore **(MAS)** announced a new regulatory framework to ensure a high degree of value stability for stablecoins regulated in Singapore.

  In 2024, we expect investments made by ultra-high-net-worth families and individuals and SFOs to be more diverse. As digital assets e.g., cryptocurrencies, NFTs and other tokenised assets become more prevalent and accessible, there will be increasing need for interested parties to have conversations and advice concerning transfers and succession planning for such assets.

- **Creative combinations of investment and philanthropy:** With the launch of the Philanthropy Tax Incentive Scheme administered by the MAS in 2023 as well as relaxation of the rules applicable to grantmakers slated to take effect from 2024, we expect to see a bigger appetite among ultra-high-net-worth families and individuals for philanthropy. It will be important for such families and individuals to tap on these new schemes and rules to enjoy greater benefits while giving.

  We also expect the younger generation of ultra-high-net-worth individuals to adopt more creative structures combining investment and philanthropy to bring about a greater social or environmental impact and to grow their catalytic capital.

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SUSTAINABILITY AND RESPONSIBLE BUSINESS: TRENDS FOR 2024

As global efforts to combat climate-related issues and achieve net-zero goals intensify, Singapore has been doing its part. This update provides a quick snapshot of some of the key efforts undertaken by Singapore regulators in this space and trends to look out for moving forward.

Trends and Developments

- **Disclosure and reporting:** Singapore regulators continue to consider enhanced disclosure and reporting requirements for companies. In July 2023, Singapore's Sustainability Reporting Advisory Committee **(SRAC)** proposed that listed and large non-listed companies be progressively required to begin reporting International Sustainability Standards Board (ISSB)-aligned climate-related disclosures from 2025; this is over and above the existing requirement for listed companies to report on climate-related financial risks based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). Of note, the SRAC's proposal included expanding the scope of directors' duties to cover climate-related disclosures by companies. While this is currently only at the public consultation stage, it is expected that the relevant authorities will in due course take steps to implement the SRAC's proposal. Overseas, the European Union Corporate Sustainability Reporting Directive came into force in January 2023 and significantly expanded the scope of European Union companies required to report on the environmental and social impact of their business activities and the detail and extent of reporting required. This is expected to have a corresponding impact on the disclosures made by companies doing business with European Union counterparts.

- **Financial markets:** In December 2023, the Monetary Authority of Singapore **(MAS)** issued the Singapore Code of Conduct for ESG Rating and Data Product Providers to establish baseline industry standards for transparency in methodologies and data sources, governance, and management of conflicts of interest that may compromise the reliability and independence of ESG products. Adoption of the Code is voluntary and the Code is to be applied on an "explain or comply" basis. In October 2023, the MAS issued a public consultation paper on Transition Planning for Financial Institutions setting out the MAS' proposed supervisory expectations for financial institutions to have a sound transition planning process to facilitate effective climate change mitigation and adaptation measures by their customers and investee companies. These are all part of the Singapore Government's nation-wide efforts to transition to a net-zero economy.

- **Green and Ethical Financing:** Singapore remains the largest green and sustainability financing market in Asia-Pacific and Southeast Asia and we expect this to continue in 2024. In 2021, Singapore accounted for more than 30% of green and sustainability-linked loans in the Asia-Pacific region and between 2018 and 2021, over S$39.8 billion of green and sustainability-linked loans were issued in Singapore. We have acted in some of the most significant and landmark green financing deals in Singapore, including acting for Perennial Shenton Property Pte. Ltd., as borrower, in the S$3 billion green loan syndicated financing of the project development at 8 Shenton Way (which remains the largest syndicated green loan financing in Asia to date), and are well placed to assist our clients with their green and ethical financing needs.

SUSTAINABILITY AND RESPONSIBLE BUSINESS: TRENDS FOR 2024

- **Greenwashing:** While Singapore does not currently have laws and regulations that specifically address greenwashing, Singapore relies on a patchwork of consumer protection laws and other laws, regulations, and industry codes that prohibit the making of false and/or misleading claims in different contexts, to combat greenwashing (e.g., the Consumer Protection and Fair Trading Act 2003, the Securities and Futures Act 2001, and the Singapore Code of Advertising Practices). Most recently, the Advertising Standards Authority of Singapore found that claims in an advertisement by Prism+ that use of its air-conditioners were the "best tip" to "save the earth" flouted the requirement under the Singapore Code of Advertising Practices not to mislead and misrepresent any matter likely to influence consumer attitudes towards a product. In response, Prism+ withdrew the advertisement. With increasing global focus on the threat of greenwashing, it is expected that Singapore regulators will escalate scrutiny of sustainability disclosures by Singapore companies to guard against greenwashing. Also, as awareness of climate-related issues grows among consumers and investors, it is also expected that complaints of greenwashing will increase. Companies should therefore take steps to ensure that any claims made regarding their sustainability efforts and/or the climate impact of their businesses are truthful, accurate and verifiable.

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