

LEGALUPDATE

A DREW & NAPIER PUBLICATION

DREW & NAPIER WINS LITIGATION AND TAX & TRUSTS FIRM OF THE YEAR AWARDS

We are proud to announce that Drew & Napier LLC has again won the **Litigation Firm of the Year Award** and the **Tax & Trusts Firm of the Year Award**.

These awards were announced at the recent Asian Legal Business SE Asia Deals of the Year Awards held on 2 June 2006.

This is the second consecutive year in which Drew & Napier clinched both the Litigation Firm of the Year Award and the Tax & Trusts Firm of the Year Award.

We also acted in the scheme of arrangement for Asia Pulp and Paper which was named the **South East Asia Insolvency & Restructuring Deal of the Year**. This is the second year running that a matter in which we had worked on has been named South East Asia Insolvency & Restructuring Deal of the Year. The judging panel based its decision on the size, complexity, and breadth of the deal. The degree to which the deal involved innovative legal techniques and structures was also a key factor.

We are honoured by these Awards and would like to thank you for your support.

The Directors
Drew & Napier LLC

MAIN OFFICE

20 Raffles Place
#17-00 Ocean Towers
Singapore 048620

t +65 6535 0733

f +65 6535 4906

mail@drewnapier.com

www.drewnapier.com

In this issue...

P3 Recent appointments

Announcing the appointment of our new Director and Associate Directors

P6 Document Retention Policies
by Hri Kumar & Benedict Teo

Obligation to retain and produce documents – scope of these obligations in investigations and civil litigation – the importance of having a comprehensive document retention policy – steps to designing a document retention policy – discussion of the *Arthur Anderson* case which arose from the Enron scandal and lessons to be culled from it

P10 Selected Issues in Managing Competition Law Litigation
by Cavinder Bull & Dean Shirley

Restrictions against anti-competitive conduct – how to manage competition law litigation – the role of economists – discovery in competition law litigation – alternative dispute resolution

P14 Investing in India: Through Singapore or Mauritius?
by Christina Ng & Lam Li Woon

Overview and comparison of India's capital gains tax exemption in double tax treaties (DTT) with Singapore and Mauritius respectively – effect of the India-Singapore DTT on Mauritius' popularity as the favoured jurisdiction through which companies invest into India

P18 An Overview of the Workplace Safety & Health Act 2006
by Lawrence Tan

Overview of Workplace Safety & Health Act 2006 (WSHA) – discussion of salient provisions – ambit of workplaces covered by WSHA – persons who are responsible under WSHA – increased penalties under WSHA – enforcement strategy – protection of informants

RECENT APPOINTMENTS

We are pleased to announce the appointment of the following Director and Associate Directors:

DIRECTOR

Kelvin Tan



Kelvin's practice encompasses a wide range of corporate and commercial litigation. He has represented Singapore and international clients in a wide range of disputes including banking, company, defamation, employment, intellectual property, international trade, land and tenancies, and trusts. Kelvin read Law at the National University of Singapore.

Kelvin can be reached at +65 6531 2526 or by email at kelvin.tan@drewnapier.com

ASSOCIATE DIRECTORS

Corporate

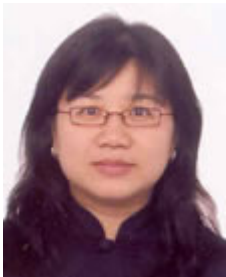
Danny Tan



Danny joined Drew & Napier in June 1999. Danny's main areas of practice are corporate law, work relating to the stock exchange and listed companies, joint ventures, venture capital funds, as well as mergers and acquisitions.

Danny can be reached at + 65 6531 2233 or by email at danny.tan@drewnapier.com

Lynette Low



Lynette graduated with an Honours Degree in Law from Manchester, UK and was called to the Bar in England and Wales, as well as the Singapore Bar. She has also obtained the CEHA qualification from the Singapore Institute of Surveyors and Valuers.

Lynette has acted for development companies, investment companies, statutory bodies, as well as the individual client in her years of practice as a conveyancing, banking and corporate lawyer, including the sale and purchase/acquisition of residential, commercial and industrial properties by way of private treaty, auction or tender; commercial/residential/mixed development projects; leases; mortgages; consumer banking, *en bloc* matters and properties under the Real Estate Investment Trust schemes (REIT).

Lynette can be reached at + 65 6531 4152 or by email at lynette.low@drewnapier.com

Litigation**Tham Feei Sy**

Feei Sy joined Drew & Napier LLC in October 2002 and brings with him a broad range of experience in particular, banking and commercial litigation. He is part of Hri Kumar's team where he is involved in debt recovery work for banks. Feei Sy's areas of practice cover a broad spectrum of Civil & Commercial Litigation including mortgagee's action, claims and debt recovery.

Feei Sy can be reached at + 65 6531 2364 or by email at feisy.tham@drewnapier.com

Moraly**Joseph****Veronica**

Veronica Joseph is an Associate Director in the Litigation & Dispute Resolution Department under Mr Randolph Khoo's team. Veronica read Law at the National University of Singapore and upon concluding her studies joined Drew & Napier LLC in 1999. Veronica's principal areas of practice are in family disputes and employment matters.

Veronica can be reached at + 65 6531 4136 or by email at joseph.veronica@drewnapier.com

Suresh**Divyanathan**

Suresh joined Drew & Napier in 1999 and is a member of *Senior Counsel*, Mr Jimmy Yim's team. Suresh read law in NUS Law School and was an avid mooter, finishing runner-up in the local Advocacy Cup competition. He also represented Singapore at the Philip C. Jessup International Law Moot Court Competition in 1998 where his team beat over 60 international teams to reach the semi-finals. Suresh's principal areas of practice include a broad spectrum of Civil & Commercial Litigation and Arbitration involving contractual, tortious and intellectual property claims. His clients are both local and international with a particular focus on Japan and Korea.

Suresh can be reached at + 65 6531 2439 or by email at sureshd@drewnapier.com

Tan Hee Joek

Hee Joek joined Drew & Napier LLC in 2005. He read Law at Oxford on a Singapore Government Overseas Merit Scholarship and was previously a State Counsel and Deputy Public Prosecutor with the Attorney-General's Chambers' Civil and Criminal Justice Divisions. Hee Joek's principal areas of practice are in corporate, commercial and criminal litigation, as well as arbitration. In addition, he also advises on info-communications and administrative law issues.

Hee Joek can be reached at + 65 6531 4146 or by email at heejoek.tan@drewnapier.com

Intellectual Property

Yvonne Tang



Yvonne read law in the National University of Singapore and joined Drew & Napier's Intellectual Property Department in 1998. She is primarily involved in both contentious and non-contentious Intellectual Property work involving trademark enforcement, passing-off disputes, copyright protection and infringement.

Yvonne can be reached at + 65 6531 2595 or by email at yvonne.tang@drewnapier.com

Corporate Conveyancing

Lau Sok Hiang



Sok Hiang joined Drew & Napier LLC in 2004. She handles all aspects of real estate, property, conveyancing and banking and financing work. This would include handling the sale of *en bloc* and development (commercial/residential) projects, the sale and purchase of residential, commercial and industrial properties by way of private treaty, auction or tender; leases, mortgages and consumer banking.

Sok Hiang can be reached at + 65 6531 2320 or by email at sokhiang.lau@drewnapier.com

DOCUMENT RETENTION POLICIES – AVOIDING POTENTIAL PITFALLS

EXECUTIVE SUMMARY

It is often the case that litigation mercilessly exposes the vulnerabilities and shortcomings of a company's organizational structure and processes, be it in risk management, human resource management or information flow. Surprisingly, one of the most common weaknesses is also the one most usually ignored: document retention.

Companies today produce and receive an overwhelming amount of information everyday. The documentation and storage of that information is as critical as how it is used. This article highlights the need for companies to maintain a comprehensive document retention policy in order to comply with its legal obligations.

There are essentially two obligations – to retain and to produce documents. We will begin by addressing the scope of these obligations, and the consequences of failure before going on to explain why and how companies should maintain a comprehensive document retention policy, and how to adapt these policies when litigation is contemplated. In order to contextualize the issues, the article will also examine the case of *Arthur Andersen LLP v United States* 544 U. S. No. 04–368 (2005) (“*Arthur Andersen*”), which was heard by the United States Supreme Court in the wake of the Enron scandal.

THE OBLIGATION TO RETAIN DOCUMENTS

In the ordinary course of business, a company is likely to face various statutory obligations to retain various company documents. These include Section 199 of the Companies Act, Section 67 of the Income Tax Act, and Section 46 of the Goods and Services Tax Act which require various documents and records to be retained for seven years.

Another statutory provision to take note of is Section 96 of the Employment Act which provides that an employer must keep records pertaining to payments made to each workman at the place of employment. Failure to do so may result in fines and/or committal sentences being imposed.

THE OBLIGATION TO PRODUCE DOCUMENTS

Companies also face obligations to produce documents when they come under regulatory or police investigation, as well as when they become parties to civil litigation.

i. Documents required for investigations

Examples of statutory provisions which set out the powers of various agencies and the police to request the production of documents from companies include Section 58 of the Criminal Procedure Code (Cap 68), Sections 7 and 25 of the IDA Act, Section 59 of the Telecommunications Act, Sections 63 to 65 of the Competition Act 2004, and Section 18 of the Banking Act. Should a company default on any of the above statutory provisions and be convicted, it may be fined and the company's officers jailed.

ii. Documents in Civil Litigation

A party to civil litigation must produce to its opponent all “*relevant*” documents in its possession, custody or power. This is a process known as “discovery”. The extent of a party's discovery obligation was authoritatively set out by the Court of Appeal in *Tan Chin Seng v Raffles Town Club* [2002] 3 SLR 345 at 351. A document is relevant if it specifically addresses the issues pleaded in the action, and will:

- (i) be relied on in support of the party's case;
- (ii) adversely affect the party's case;
- (iii) adversely affect another party's case; or
- (iv) support another party's case.

It is important to note that the meaning of “*document*” in this context is very different from its common meaning. A “*document*” is more than just physical copies of written, printed or typed pieces of paper. It also includes any information retained in an electronic form, graphic or video material, markings appearing on any document, and significantly, all drafts of such documents.

Contemporaneous documents provide valuable ammunition to a skilful cross-examiner, and many a case has been won or lost by “incriminating” documents given in discovery. As a result, it is often very tempting for parties to disclose only documents which are beneficial or neutral to their case. However, such selective disclosure is not permitted, and if the defaulting party is found out (which invariably happens), it faces adverse consequences, regardless of the merits of its case.

Under Order 24 Rule 16 (1) and (2) of the Rules of Court, selective discovery may lead to the action being dismissed or, as the case may be, the defence struck out and judgment entered accordingly. In addition, the offending party shall be liable to committal.

In *Manilal & Sons (Pte) Ltd v Bhupendra KJ Shan (trading as JB International)* [1989] SLR 1182, the High Court struck out the Plaintiff’s claim for failing to comply with a discovery order. This decision was followed and applied in the more recent case of *Soh Lup Chee and Others v Seow Boon Cheng and Another* [2002] 2 SLR 267. In that case, the High Court held that full discovery is necessary “so that the contest at trial will be open and fair”.

Given the above obligations to produce documents, any deliberate destruction of documents which a company has an obligation to produce for investigatory or civil litigation purposes can result in serious consequences. Under Section 204 of the Penal Code, the destruction of a document which may be used as evidence before a court of justice or in any proceeding lawfully held before a public servant, may be punishable by a jail term which may extend to two years, or a fine, or both. It is important to note that this section is applicable for **both** criminal and civil proceedings.

THE CASE FOR A COMPREHENSIVE POLICY

Obviously, a comprehensive document retention policy will enable a company to better meet its obligations to retain documents in the course of its business. Such a policy will take into account the different statutory provisions requiring the retention of various documents for various lengths of time, and consolidate these into simple instructions to employees setting out what documents need to be retained and for how long.

With regards to a company’s obligation to produce documents, a comprehensive document retention policy can set out the steps a company needs to take when facing the prospect of investigations and/or litigation. This has a two-fold purpose. First, it ensures that the company is able to produce documents when required, and second, it also helps the company explain the absence of documents which should otherwise be in its possession, custody or power.

By setting a company-wide standard on what documents to destroy and when to do so, a company ensures the following:

- (i) individual employees do not exercise their discretion regarding such matters. Documents destroyed pursuant to a consistent and reasonable policy will go a long way to defeating any allegation of improper destruction. As mentioned earlier, serious consequences will follow a company’s failure to meet its obligations to retain and/or produce documents when required;
- (ii) it places the company in a position to easily access data that might be exculpatory, or at least supportive of the company’s legal position, in the event of litigation and thereby improving the company’s litigation readiness; and
- (iii) it allows the company to adopt a proactive stance towards discovery requests, or requests for documents from government agencies. This is significant as it conveys a spirit of transparency that can aid the company not only in a court of law, but also in the court of public opinion, something of increasing importance in the current business climate.

DESIGNING A DOCUMENT RETENTION POLICY

How to go about it

A responsible approach to designing a document retention policy is to shift the focus from “what to destroy” to “what to retain”. A records protection bias makes an excellent foundation for a sound document retention policy.

Determining what to retain can be a serious challenge. The following are just some considerations when designing a document retention policy:

- (i) the company should first determine the types of documents it is likely to generate in the course of its business. Some documents will have a higher retention value, others lower;
- (ii) the company should also consider the quality of service it intends to provide to its clients. Maintaining documents from clients can result in better quality service for returning clients but may cause other problems of its own;
- (iii) the issue of cost and space limitations. The company has to determine how much it costs to destroy documents or to retain them, and for how long;
- (iv) the company must weigh the impact of potential litigation. Retaining documents for too long can involve the company in costly litigation but failure to retain documents can also result in other liability issues; and
- (v) the company should automate the process of document destruction as far as possible to eliminate the inference that documents were deleted for nefarious reasons. The automatic emptying of trashed email from office servers after a stipulated number of days is already in widespread practice. This practice should be expanded to cover all documents, including those in local machines.

The underlying philosophy of a sound document retention policy is that it is created in good faith, applied on a consistent basis, and in the ordinary course of business. As such, the policy must be clear, reasoned and workable. It should also be set out in writing, distributed widely within the firm, with the rank and file adequately trained in policy requirements. Lastly, the policy should take into account what to do when regulatory or legal action is threatened or pending. In the case of *Arthur Andersen*, failure to consider this last point resulted in the collapse of the firm.

The case of Arthur Andersen

In *Arthur Andersen*, employees of the accounting firm were reminded and encouraged to comply with the firm's document retention policy (in relation to the destruction of documents), despite knowing since August 2001 of possible investigations into accounting improprieties related to Enron. The abuse of its document retention policy was aptly illustrated by the comments of Michael Odom, a partner of Arthur Andersen, who urged compliance saying, "*If it's destroyed in the course of normal policy and litigation is filed the next day, that's great.*"

Throughout the whole of October 2001, Arthur Andersen's "Enron Crisis-Response Team" ("ECRT") constantly reminded employees to adhere to the firm's document retention policy, resulting in substantial destruction of paper and electronic documents. The ECRT only informed employees to stop shredding documents after a formal request for documents was made by the Securities and Exchange Commission to Arthur Andersen on 9 November 2001.

Although the trial judge convicted Arthur Andersen on the charge of knowingly and corruptly persuading its employees to withhold documents from an official proceeding, this was set aside by the Supreme Court of the United States on a technicality – the jury was instructed that it could convict even if the firm honestly believed its conduct was lawful when the elements of the charge required conscious wrongdoing.

How will such a situation be treated by Singapore courts? There has been no local judicial pronouncement on pre-action destruction of documents. However, cases in Australia and the United Kingdom suggest that if the destruction of documents was "*[an attempt] to pervert the course of justice*", the perpetrator of such an act may have their pleadings struck out – see *McCabe v British American Tobacco Australia Services Ltd* [2002] V.S.C. 73 and *Douglas v Hello! Ltd. (No.3)* [2003] EMLR 29.

In Singapore, Section 204 of the Penal Code is available against potential defendants in civil or criminal proceedings in the event of systematic destruction of incriminating documents in anticipation of legal proceedings, even if done pursuant to a company's document retention policy.

Lessons from Arthur Andersen

The most important lesson learnt from *Arthur Andersen* is that as soon as a company is aware that it might be involved in potential litigation or regulatory investigation, it must immediately suspend further destruction of relevant documents. At that point in time, the company should adopt a system of preserving and retaining its

documents. The company should be able to point to a suitable document retention policy which has incorporated these considerations and demonstrate that the policy has been carefully implemented, with strong compliance mechanisms in place, in order to limit any potential liability.

In that event, if a relevant document cannot be found, it will be easier for the company to maintain either that the document was destroyed legitimately in accordance with its policy, or where such destruction is inconsistent with its policy, that such destruction was not dishonest or inadvertent.

Another valuable lesson is that special “rapid response” teams should be created to preserve documents, not destroy them. This team should comprise of management, IT personnel, in-house counsel, as well as external counsel. External counsel should be retained as soon as possible so that timely legal advice may be given and privilege may be asserted when required. Privileged documents do not need to be disclosed either in the context of discovery or as part of an investigation by government agencies (although the James Hardie (Investigations and Proceedings) Act 2004 seems to have cast doubts over the future of legal professional privilege in respect of governmental investigations in Australia). Clear guidelines should then be issued by this team, instructing employees on how to create, retain and preserve documents in light of anticipated legal proceedings.

CONCLUSION

It is clear that a carefully thought out document retention policy can prove invaluable in the face of litigation or regulatory investigation. The existence of a sound policy is critical in limiting the exposure of a company and its management to serious statutory and/or judicial sanctions. Companies will do well to pay greater attention to the formulation and enforcement of its document retention policies.



HRI KUMAR

Hri is a litigator whose main areas of practice are: banking; defamation; insolvency; and general commercial litigation. Hri joined Drew & Napier in 1992 and was made a partner in 1997. Since corporatisation on 1 May 2001 he has been a director of Drew & Napier LLC.

Hri can be reached at +65 6531 2522 or by email at hri.kumar@drewnapier.com



BENEDICT TEO

Benedict is an Associate with Drew & Napier LLC's Litigation Department. He graduated from the National University of Singapore in 2004 and was placed on the Dean's List in his final year. He was formerly the chief editor of the Singapore Law Review and represented NUS in the Manfred Lachs Space Moots in 2003. Benedict practices general commercial litigation, and has been involved in various property, banking and defamation matters.

Benedict can be reached at +65 6531 2522 or by email at benedict.teo@drewnapier.com

SELECTED ISSUES IN MANAGING COMPETITION LAW LITIGATION

EXECUTIVE SUMMARY

On 1 January 2006, the provisions of the Singapore Competition Act (“the Competition Act”) on anti-competitive agreements, decisions and practices (section 34) and the abuse of dominance (section 47) came into force.

From the beginning of 2006, the Competition Commission of Singapore (“the CCS”) has had the ability and responsibility of enforcing sections 34 and 47 of the Competition Act. Businesses in Singapore now face a real possibility of being investigated and prosecuted by the CCS, as well as private rights of action being brought against them for alleged anti-competitive conduct.

For many, the possibility of such competition law litigation will represent a new type of litigation risk. Some may approach such litigation in the same way they have approached other complex litigation. However, competition law litigation has certain distinguishing factors. The purpose of this article is to draw out some of these distinctions and to highlight the need for specialist representation when faced with competition law disputes.

ENFORCING RESTRICTIONS AGAINST ANTI-COMPETITIVE CONDUCT – A VIGNETTE

The two main prohibitions against anti-competitive conduct are sections 34 and 47 of the Competition Act.

Section 34 prohibits agreements, decisions and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore. Section 47 prohibits a dominant entity from abusing its dominant position in any market in Singapore.

Competition law disputes often begin with a complaint to the regulator, which in Singapore's case, is the CCS. Any party can file a complaint with the CCS for suspected breaches of sections 34 or 47. The CCS may accordingly conduct an investigation if there are reasonable grounds for suspecting that neither prohibition has been infringed.

The Competition Act not only introduces new potential liabilities, it can also involve parties in a fairly protracted litigation process. The stakes for such litigation are particularly high, not only because the fines involved can be hefty and compensatory damages will not be insignificant, but also because of the detrimental reputational impact of being found to have acted “*anti-competitively*”. In jurisdictions which have a mature competition law regime, such litigation has the potential to destroy a business if the process is not well managed. There is no reason to think that the stakes are any smaller under the Competition Act in Singapore.

MANAGING COMPETITION LAW LITIGATION

In one sense, competition law litigation is just another type of complex litigation. Many of the same skills which are required to successfully manage and litigate a complex corporate or commercial dispute are relevant to handling competition law litigation. In that sense, litigators who handle complex litigation may be considered well placed to engage in competition law representations.

However, the unique nature of the substance of competition law stipulates certain necessary differences in the way in which anti-trust litigation is managed. While it is impractical to try and list out each and every difference here, the analysis of a few of these key distinguishing marks will assist in clarifying how such litigation should be handled.

Such points of distinction include: the role of economists in the litigation team, privilege, ensuring that discovery does not result in confidential market information being revealed to a competitor, and the role of alternative dispute resolution in competition law disputes. Each of these points will be dealt with in turn below.

(i) Economists

Competition law analysis is a unique fusion of law and economics:

“An economist with expertise in industrial organization is usually needed to provide analysis and potential testimony on market definition, impacts on competition, and related issues.”

(Sonya D Winner, *“Assembling and Managing an Antitrust Litigation Team”* in Antitrust Litigation Strategies for Success: Practising Law Institute, November 1998)

In the Singapore context, dealing with a section 47 case would require parties to obtain economic analysis to first define the market in question. Typically, if coherent economic analysis results in the market being defined as relatively large, this will make it more difficult to establish that a particular business is “dominant” because the larger the market, the less likely it is that one firm will be dominant.

This illustrates the crucial nature of economic analysis as many cases of abuse of dominance are won or lost on the basis of the market definition. The economist would also be asked to analyse whether in economic terms, the party in question could be termed “dominant” in the market that has been defined. Finally, the economist will be asked to analyse the effect that the conduct complained of has on the defined market.

It should be clear from the above that economic analysis is often the heart and soul of a competition law case. Of course, there are other aspects to any case. There are factual issues to deal with, for example, whether the management of a particular undertaking was motivated by a deliberate intent to eliminate competition through predatory pricing, or whether a number of businesses were acting in concert.

In addition, there are non-economic legal issues as well. However, without diminishing the importance of each of these aspects of an anti-trust case, it remains the experience of competition law litigators, including the authors of this article, that economic analysis forms the heart of competition law practice.

For example, in one case the authors of this article acted for a Singaporean company which had been the target of a complaint by its competitor and was being investigated by the sectoral competition regulator. Allegations of predatory pricing were fundamentally related to economic analysis such that economists were instructed from day one and the legal team from Drew & Napier LLC worked hand in glove with these economists from London to integrate economic arguments into the submissions to the regulator. The case was concluded with no action being taken against the company in question.

While it is fairly common in complex litigation to have expert witnesses testify, the centrality of economists to any competition law case illustrates the bond between law and economics in this area and distinguishes it from other types of complex litigation.

(ii) Discovery in competition law cases

It is the norm for complex litigation to include a significant emphasis on discovery. This is no different for competition law disputes. However, the intensity of discovery in anti-trust cases is worth emphasizing.

Whether the allegations are under section 34 or 47 of the Competition Act, they will involve the examination of a series of acts, course of conduct and concerted practices which inevitably stretch over long periods of time. For an undertaking of any significant size, it will involve discovery of a substantial amount of documentation when investigations are launched. It is precisely because competition law focuses on the conduct of business undertakings that every bit of correspondence, email and internal memoranda will be sought by a competition investigator.

Discovery is also made more complex because it is not simply the conduct that needs to be considered in deciding whether a document is relevant. Economic analysis also comes into play as the economic effect of certain conduct may not be patently apparent. Documented conduct may be exculpatory, but without lawyers thinking from an economic perspective, the benefit of that will be lost.

It is vital that parties comply with discovery obligations in competition law disputes without putting the confidentiality of their sensitive market or competitive information at risk. This can at times be a real challenge.

Market sensitive or competitive information is the very heart of section 47 allegations, for example, the business' strategy for dealing with competitors. Yet, one has to be wary of the details of a perfectly legitimate business strategy coming to the knowledge of the business' competitor because of discovery.

Cynically, one might even be concerned that anti-trust complaints might sometimes be made, not for the sake of the final relief that the regulator can afford, but simply to elicit confidential information through the discovery process. It is with this backdrop that there are provisions in the law, like section 89 of the Competition Act, to permit a party to request confidential treatment of documents produced to the regulators in competition law disputes.

Discovery and disclosure of documents under competition law will be as significant in Singapore as in jurisdictions with mature competition law regimes. The need for an economics focused discovery approach and the heightened need to protect the confidentiality of sensitive information will dominate this important part of any competition law dispute.

(iii) Alternative dispute resolution

The use of alternative dispute resolution has understandably proliferated as business people look for the best way to have their disputes settled. However, it has been said that most anti-trust litigators "*view ADR with some skepticism*" - Janet L. McDavid, "*Using Alternative Dispute Resolution in Antitrust Cases*" (1990)4 SPG ANTITR 25. .

Competition law disputes are potentially all consuming. They take up management time and are not inexpensive. Therefore, at first blush, they would be prime candidates for alternative dispute resolution. However, our view is that the use of alternative dispute resolution for competition law disputes will remain limited in the short term.

While businesses are usually run on a pragmatic basis and businessmen should always try to remain open to settlement, it may be difficult in the competition law context to consider alternative dispute resolution in the same way as for a commercial dispute. Since competition law litigation in Singapore will commence with an investigation by the CCS rather than by private action, the scope for traditional settlement is immediately narrower. No doubt the CCS will itself be pragmatic about representations that are made to it but if it launches an investigation, it will usually be because it has sufficient grounds to be concerned. It is the experience of the authors that private parties have more flexibility in reaching settlements than do authorities and regulators.

It is to be hoped though that the CCS will follow the trend in jurisdictions with more mature competition law regimes where anti-trust regulators do enter into settlements with private parties. In *Glaxosmithkline South Africa (Pty) Ltd v Makhathinini and Others* 97/CR/NOV04, the Competition Tribunal of South Africa stated:

"One can easily see what absurdities would result if the title to prosecute and settle were not coextensive. In the first place there is the fact that the Commission is left in a position of a contracting party not a prosecuting party in approaching settlement negotiations with the respondent, which cannot be in the public interest."

Another reason why alternative dispute resolution may not be as popular in competition law matters is because the effect of being labeled "anti-competitive" can be so detrimental to a business that parties often feel that they have to avoid it at all cost. The primacy of the reputational issue cools parties' enthusiasm for settlement. From a reputation standpoint, it may not matter whether the penalty imposed by the regulator is a small fine or a far-reaching mandatory order.

It remains to be seen, though, whether alternative dispute resolution might be more extensively used in dealing with private rights of action under section 86 of the Competition Act.

CONCLUSION

The matters discussed above are by no means the only distinguishing factors of competition law litigation. However, it is hoped that our discussion will heighten awareness of the *sui generis* nature of competition law disputes. Such disputes require business focused litigation at the interface between law and economics. While we have climbed the learning curve over the past five years with clients within the telecommunications, energy and media sectors as a result of sectoral competition regulation, parties outside these industries, which are now

subject to the Competition Act, will need to sensitize themselves to the new law and to properly manage this new type of potential dispute.

**CAVINDER BULL**

Cavinder handles complex litigation spanning a wide area of corporate and commercial life. Cavinder obtained First Class Honours from Oxford University, an LL.M from Harvard Law School which he attended on a Lee Kuan Yew Scholarship, and is called to the Bar in England, New York and Singapore. Asia Pacific Legal 500 describes Cavinder as a rising star and in one judgment, the Court commended Cavinder as a persuasive advocate who had ably prosecuted a factually complex and somewhat emotively charged case with conspicuous fairness. Cavinder studied competition law in London and practiced anti-trust law in New York, working on cases like the Microsoft anti-trust litigation and obtaining US Department of Justice approval for the merger between Grand Metropolitan and Guinness in one of the world's largest mergers then.

Cavinder can be reached at +65 6531 2416 or by email at cavinder.bull@drewnapier.com

**DEAN SHIRLEY**, LLB BA, admitted as a Barrister and Solicitor of the High Court of New Zealand in 1997

Dean is an International Lawyer with Drew & Napier LLC and a member of the Competition Law Group. Dean has practiced competition law for almost 5 years and worked as a senior investigator at the New Zealand competition regulator for three and a half years where he gained invaluable first-hand experience in competition law litigation and contentious regulatory investigative processes.

Dean can be reached at +65 6531 4126 or by email at dean.shirley@drewnapier.com

INVESTING IN INDIA: THROUGH SINGAPORE OR MAURITIUS?

EXECUTIVE SUMMARY

Until recently, Mauritius has been the favoured jurisdiction through which companies invest into India. Investors seem to have bypassed the fairly long list of countries that also enjoy capital gains exemptions in their double tax treaties with India, e.g., Cyprus, Indonesia, Syria, Tanzania, Thailand, United Arab Emirates and Zambia.

Mauritius' popularity amongst this list of potential host jurisdictions is due in no small part to the fact that the cost in taxes of routing the investment through Mauritius is a small 3%. Although Mauritius claims a headline tax rate of 15%, the rate reduces dramatically to 3% on account of credits for a company with Global Business Licence Category 1 (GBL1) status. Deciding to use Indonesia or Thailand as a conduit, for example, has its own challenges (both these jurisdictions impose their own capital gains tax). As such, Mauritius has emerged the location of choice for investments into India.

On 1 August 2005, Singapore joined the list of countries with which India has agreed to exempt Indian capital gains tax. It is significant that Singapore will enjoy these benefits for so long as Mauritius does. The other countries listed who also enjoy Indian capital gains tax exemption are significantly stand-alone and if their benefits are also withdrawn because of the larger policy, it would not be by virtue of their having been regarded by GOI (Government of India) today as tied. In GOI's mind, Singapore and Mauritius are more akin to each other as neither imposes domestic capital gains tax and both are low effective-tax-rate-jurisdictions.

This article compares very briefly the relative provisions for Indian Capital Gains Tax exemption advantages in India's double tax treaties with Mauritius and Singapore.

COMPARISON OF CAPITAL GAINS EXEMPTION ARTICLES

India-Mauritius Double Tax Treaty (DTT)

In the case of the India – Mauritius DTT, Indian capital gains will not apply provided:

- (i) the recipient of the capital gains is a *tax resident* of Mauritius (an unusual feature of the residence definition in the India-Mauritius DTT is that it requires the entity to be liable to tax in Mauritius instead of the merely the usual control and management tests);
- (ii) the subject property is not immovable property in India;
- (iii) the property does not form part of the business property of a permanent establishment in India; and
- (iv) if the property is aircraft or ships, the recipient's effective place of management is not India.

In addition, to the above, there has been much controversy as to the degree of substance required for Mauritian tax resident companies established for the purpose of holding Indian shares and other movable property. This issue has been resolved by the Supreme Court of India in *Union of India (UOI) and Anor vs Azadi Bachao Andolan and Anor* [2003] 263 ITR 707 (SC).

The action was commenced by two writ petitions, both by way of Public Interest Litigation, challenging the legality of Circular No. 789 of April 13 2000 (the "Circular") issued by the Central Board of Direct Taxes (the "CBDT"). This Circular stated, *inter alia*, that a mere tax residence certificate from the Mauritian Authorities would be "*sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the [India-Mauritius DTA] accordingly.*"

The High Court (reported in 2002) took the view that for a company to be a Mauritius tax resident, it must, *inter alia*, do business in Mauritius and pay tax on its income. It said:

"Avoidance of double taxation would mean that a person has to pay tax at least in one country. Avoidance of double taxation would not mean that a person does not have to pay tax in any country whatsoever. In Mauritius in terms of statute that a foreign company is not entitled to owe any property, open any bank account, do any business. Several

restrictions have been imposed in that country as a result whereof no income may be generated in Mauritius and no income-tax may be payable therein.

Does the double taxation treaty envisage such a situation? In our opinion it does not.”

It also took the view that a certificate of residence cannot be conclusive evidence of residence and in quashing the Circular, the High Court said:

“Conclusiveness of a certificate of residence granted by the Mauritius tax authorities is not contemplated under the treaty or under the income-tax Act. Whether a statement shall be conclusive or not must be provided for under a legislative act, e.g., Indian Evidence Act. When evidence in relation to a matter under issue is produced before the authorities exercising judicial function by reason of a circular issued by CBDT it cannot be prescribed that such evidence shall be conclusive. Such a provision as regards conclusiveness of a certificate must find place in the statute itself...”

An uproar in the commercial community followed the issuance of this judgement in 2002 and much uncertainty reigned with respect to entities already incorporated for this purpose in Mauritius. However, on appeal to the Supreme Court of India, the judgment of the High Court was set aside and the Supreme Court declared the Circular to be valid and efficacious.

The Supreme Court of India in its judgment examined the definition of “resident” under the Mauritius Income Tax Act which, in the case of a company, means a company which is incorporated in Mauritius or has its central management and control in Mauritius.

The Supreme Court said:

“... it is urged by the respondents that any company which is registered as an offshore company under [Mauritius Offshore Business Activities Act, 1992] can hardly carry out any business activity in Mauritiu...”

...The respondents contend that when the possibility of such a company earning income within Mauritius is almost nil, there is hardly any possibility of its paying tax in Mauritius, whatever be the provisions of the Mauritian Income-Tax Act.

...In our view, the contention of the respondents proceeds on the fallacious premise that liability to taxation is the same as payment of tax. Liability to taxation is a legal situation; payment of tax is a fiscal fact. For the purpose of application of Article 4 of the [India-Mauritius DTT], what is relevant is the legal situation, namely, liability to taxation, and not the fiscal fact of actual payment of tax. If this were not so, the [India-Mauritius DTT] would not have used the words 'liable to taxation', hut would have used some appropriate words like 'pays tax'. On the language of the [India-Mauritius DTT], it is not possible to accept the contention of the respondents that offshore companies incorporated and registered under [Mauritius Offshore Business Activities Act, 1992] are not 'liable to taxation' under the Mauritius Income-tax Act; nor is it possible to accept the contention that such companies would not be "resident" in Mauritius within the meaning of Article 3 read with Article 4 of the [India-Mauritius DTT].”

The Supreme Court applied solely the residence test in the India-Mauritian DTT without adding substance or other anti-avoidance tests to the same. With respect to the residence test, the Supreme Court considered the position of a Mauritian company with (i) little or no business in Mauritius, and who (ii) paid minimal or no tax, and nevertheless concluded that such company would technically be “liable to taxation” in Mauritius even though it might not at a particular time be paying any tax (whether on an exemption or otherwise). On this basis, such a company would satisfy the requirements of the residence article and therefore be entitled to the benefit of the capital gains exemption article.

Following the judgement of the Supreme Court, it is now the position in India that there is little substance required behind Mauritian incorporated companies holding investments in India and unless dual tax residence is argued, a

tax residence certificate from the Mauritian Authorities is all that is required to claim the benefit of the capital gains tax exemption.

India-Singapore Double Tax Treaty

In the case of the India-Singapore DTT, Indian capital gains will not apply provided:

- (i) the recipient of the capital gains is a tax resident of Singapore;
- (ii) the recipient has not arranged his affairs with the primary purpose of taking advantage of the benefits of the capital gains exemption article, i.e., that the Singapore tax resident must have *bona fide* business activities in Singapore;
- (iii) the subject property is not immovable property in India; and
- (iv) the property does not form part of the business property of a permanent establishment in India; and
- (v) the recipient is not a shell/conduit company, i.e., an entity that:
 - (a) has no or negligible business operations in Singapore;
 - (b) has no real and continuous business activities carried out in Singapore;
 - (c) has an annual total expenditure on operations in Singapore of less than S\$200,000 or Indian Rs 50,00,000 in Singapore in the immediately preceding period of 24 months from the date the gains arise.

However, a tax resident of Singapore will be deemed not to be a shell/conduit company if:

- (i) it is listed on the securities market operated by the Singapore Exchange Limited, Singapore Exchange Securities Trading Limited and the Central Depository (Pte) Limited; or
- (ii) its total annual expenditure on operations in Singapore is equal to or more than S\$200,000 or Rs50,00,000 in the immediately preceding period of 24 months from the date the gains arise.

While the anti-avoidance provisions for the capital gains article of the India-Singapore DTT are wider than exist under the India-Mauritius DTT, they arguably provide more certainty if the recipient is able either to meet the minimum yearly expenditure or is listed on an exchange in Singapore.

However, in our view, the arrangement of the paragraphs of Article 3 of the Protocol amending the India-Singapore DTT which came into effect on 1 August 2005 (the "Protocol") has the effect of suggesting that a Singapore tax resident qualifying under the listing or expenditure safe haven provision would nevertheless require *bona fide* business activities and proof that it has not arranged its affairs with the primary purpose of taking advantage of the capital gains exemption. This is because the listing/expenditure provisions merely negate the prohibition in Article 3.2 against shells/conduits. It does not address the primary prohibition in Article 3.1 against entities that have arranged their affairs with the primary purpose of taking advantage of the capital gains exemption, i.e., those who do not have *bona fide* business activities in Singapore.

The policy behind the manner in which these provisions have been drafted is not easy to reconcile. We understand however that the Comprehensive Economic Cooperation Agreement and the operation of the Protocol is intended to be reviewed periodically and perhaps this will be addressed in future protocols.

CONCLUSION

Unlike Mauritius, Singapore is a complex and substantial tax jurisdiction. Thus, Mauritius will still be the jurisdiction of choice for investments into India where one is looking only for a jurisdiction to locate a passive holding entity. Quite apart from the substance requirements, a decision to locate in Singapore for the purpose of the capital gains exemption without proper consideration of all other issues (e.g., Singapore withholding tax on debt into Singapore) may result in trading the Indian capital gains exemption for Singapore domestic tax issues.

However, for companies that use Singapore as a regional hub in any case, the event of the Protocol is an enhancement of Singapore's attractiveness as a holding company jurisdiction. Not only will such companies enjoy domestic tax concessions, they will have access to Singapore's network of double tax treaties and Free Trade agreements, ready availability of capital and financial services, and single tier tax regime. For many of

these companies, the effective Singapore tax rate is not less attractive than the 3% paid in Mauritius and perhaps even more. At the end of the day, this is more likely than not the guiding light behind the negotiations to the Protocol. There is no intention to supplant Mauritius. Only a continuing agenda to build Singapore as the business hub for the region.

**CHRISTINA NG**

Christina is a director with Drew & Napier LLC and Head of the Indonesian, Thai and South Asian Desks. She is also a member of the firm's Structured Finance, and Energy and Infrastructure Business Groups.

She was recommended in the *Asia Pacific Legal 500 2003/2004 Edition* for M&A with a technology specialization, in the *AP Legal 500 2004/2005 Edition* for her role advising the Bharti Changi Consortium in respect of the modernization and restructuring of the Mumbai and Delhi airport, and in the *International Tax Review 2004*, as one of the leading tax practitioners for Singapore.

Christina can be reached at +65 6531 2250 or by email at christina.ng@drewnapier.com

**LAM LI WOON**

Li Woon is an Associate with Drew & Napier LLC's Banking and Corporate Department. She graduated from the National University of Singapore in 2003 and her principal areas of practice are tax law (with an emphasis on corporate tax, structured finance and cross-border transactions), corporate finance and general corporate and commercial work.

Li Woon has recently returned from a secondment with the London offices of Freshfields Bruckhaus Deringer. She worked with the Structured Finance team during her time in London and was exposed to transactions involving securitisation, hedge funds and derivatives.

Li Woon can be reached at +65 6531 4164 or by email at liwoon.lam@drewnapier.com

AN OVERVIEW OF THE WORKPLACE SAFETY & HEALTH ACT 2006

EXECUTIVE SUMMARY

Parliament recently introduced the Workplace Safety and Health Act 2006 (Act 7 of 2006) (“WSHA”) to replace the Factories Act (Cap. 104, 1998 revised edition). The WSHA came into effect on 1 March 2006.

The WSHA was introduced partly as a result of three high-profile accidents in 2004 – the collapse of Nicoll Highway, the fire on the vessel “Almudaina” at Keppel Shipyard and the accident at Fusionpolis, which collectively claimed 13 lives.

The Committee of Inquiry into the collapse of Nicoll Highway had noted:

“The collapse did not develop suddenly. Several technical and administrative factors contributed to the collapse. From the early stages...there were failures to demonstrate the necessary level of care. A multiplicity of events led to the position where design, construction, instrumentation, management and organisation systems...failed. Serious human errors were made. There were failures in defensive systems. The builder did not adequately deal with insidious warning signs. There was no proper and appropriate design reviews. There were inadequate contingency and remedial measures.”

Accordingly, the WSHA attempts to put in place a system which will enhance work safety through effective accountability.

We will now examine the main provisions under the WSHA.

A) SECTION 2: WORKPLACES, AND NOT MERELY FACTORIES, TO BE COVERED

First, the WSHA is intended to extend to all work places and not merely factories under the old Factories Act – see Section 5(1). Section 2(2) of the WSHA allows the Minister to, from time to time, include additional places to be covered by the WSHA. The intention is for the WSHA to cover all workplaces in time. The initial list of places covered by the WSHA includes airports, ships in harbour, railway areas, and laboratories.

Thereafter, the ministry has indicated that it will extend the coverage of the WSHA in stages in consultation with the industry within three to five years of WSHA coming into force. The immediate priority was to focus on the sectors with the highest accident and fatality rates. These include construction sites, shipyards, and metalworking factories.

It is noted that certain occupational groups have been exempted. They include members of the Singapore Armed Forces, the Police Force, and other members of the Home Team. These agencies need the flexibility to make urgent operational decisions without being encumbered by legislative requirements.

B) SECTIONS 10-20: PERSONS WHO ARE RESPONSIBLE UNDER THE WSHA

The WSHA expands and defines the categories of persons who are responsible in terms of accountability. It also specifies their duties. A person can wear more than two under the WSHA. For example, under Section 10, a person may be considered an employer as well as a subcontractor.

The Act may, at any one time, impose the same duty or liability on two or more persons, whether in the same capacity or in different capacities. This is a change from the old Factories Act where the person held responsible for safety was the registered occupier of the factory. With outsourcing, specialization and a more diverse employment relationship, the WSHA seeks to recognize these new relationships which may not have been so common in the past.

The following persons are tasked with ensuring safety at the workplace:

- (i) Occupiers of the premises- Section 11

- (ii) Employers – Section 12
- (iii) Self Employed Persons – Section 13
- (iv) Principals – Section 14
- (v) Persons at Work – Section 15
- (vi) Manufacturers/Suppliers of machinery, equipment – Section 16
- (vii) Installers of machinery, equipment, persons in control – Section 17
- (viii) Occupiers of Common areas – Section 19

(i) Occupier

Under Section 4 of the WSHA, the term “*occupier*” means:

- (a) the holder of the certificate of registration or factory permit where one has to be obtained under any regulations; and
- (b) the person having charge, management or control of the premises either as principal or as agent. It does not matter whether such person is also the owner of the premises.

(ii) Duty of employer extends to non employees

It is worth noting that the duty of an employer under Section 12 extends to taking reasonably practicable measures to ensure the health and safety of persons who are not his employees, but who may be affected by any undertaking carried out by the employer in the workplace.

(iii) Self-Employed Persons

Under section 13 of the WSHA, every self-employed person (whether or not he is also a contractor or subcontractor) is also tasked with ensuring health and safety at the workplace.

The term “*self-employed person*” is defined in Section 4 and means a person who works for gain or reward otherwise than under a contract of service, whether or not employing others.

(iv) Principals

There is now a duty placed on “*principals*” to ensure health and safety.

Section 4 defines “*principal*” as a person who:

- “...in connection with any trade, business, profession or undertaking carried on by him, engages any other person otherwise than under a contract of service —*
- (a) to supply any labour for gain or reward; or*
 - (b) to do any work for gain or reward.”*

Section 14(1) of WSHA states that a principal is under the duty, to take “*reasonably practical*” measures to ensure the safety and health of the following persons when they are at work for the principal:

- (a) any contractor he engages;
- (b) any direct or indirect subcontractor engaged by such contractor; and
- (c) any employee employed by such contractor or subcontractor.

The above duty is confined to when such persons “*are working under the direction of the principal as to the manner in which the work is carried out*” – see Section 14(2). Additionally, under Section 14(3), the principal is also under the duty to take “*reasonably practical*” measures “*to ensure the safety and health of other persons who may be affected by any undertaking carried on by him in the workplace.*”

In his speech at the second reading of the Workplace Safety and Health Bill on 17 January 2006, Dr Ng Eng Hen, the Minister for Manpower, explained the rationale for Section 14 is as follows:

“Section 14 covers principals who engage contractors for specialized tasks or services of workers from third party labour suppliers. In such a situation, there is no contract of employment between the principal and the contractor or worker supplied. Traditionally, a principal who engages a contractor would be engaging the specialist services of the contractor, and would not be directing the contractor on how to do the work. However, today the situation is different. Principals often engage “contractors” and 3rd party labour

not for their specialist expertise, but precisely so that they can avoid entering into direct employment relationships, for organizational or other reasons. In such situations, the principal in terms of supervision takes on the worker's safety and health. The bill thus places on him responsibility for the worker's safety and health as if he were his employer. If this were not the case, then the duties under the Act could be simply circumvented by a careful crafting of the legal relationship."

WSHA seeks to extend safety risks to those which may be posed to members of the general public as illustrated by the recent case of chlorine gas leaking when a contractor mixed the wrong chemicals together.

(v) Manufacturers/Suppliers of machinery, equipment, etc.

Sections 15, 16, 17 and 19 of the WSHA places a duty to be responsible for safety and health on every person at work, manufacturers and suppliers of machinery, installers or modifiers of such machinery ,etc. . These are the direct stakeholders in ensuring a safe regime and hence, they must shoulder the responsibility of promoting a culture of safety.

C) SECTION 48: DIRECTORS OF COMPANIES WILL ALSO BE HELD RESPONSIBLE

Directors of companies must be aware of a key provision in the WSHA which is Section 48. It essentially provides that if offences are committed by a body corporate, then officers of that body corporate will be held responsible. The burden of proving that the officer was not culpable lies with that officer and not with the State.

The exceptions are if the offence was committed "*without his consent or connivance*" or if "*he had exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances*" – see Section 48(1)(a) and (b). It is considered that in order for there to be a paradigm shift in ensuring a safety workplace for all, every one, from the directors of companies, to the individual worker, has to play their part.

D) SECTION 50: INCREASED PENALTIES

The next main area introduced by the WSHA is enhanced penalties for breaches of the Act.

Under the old Factories Act, the maximum penalty imposable on an individual was \$200,000 and/or imprisonment for a period not exceeding 12 months. Under the WSHA, this has been increased to include a jail term of up to 24 months.

For corporate offenders, the maximum fine is \$500,000. Repeat offenders are dealt with more harshly. In addition to a term of imprisonment, under Section 51, the court can also impose additional fines on:

- (i) a natural person, of an amount not exceeding \$400,000 and, in the case of a continuing offence, with a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction;
- (ii) a body corporate, a fine not exceeding \$1 million and, in the case of a continuing offence, with a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

E) ENFORCEMENT STRATEGY

In case of non-compliance with the Act, the Commissioner for Workplace Safety and Health (the "Commissioner") may serve a remedial order or a stop-work order in respect of the workplace posing a risk to the safety, health and welfare of persons at work under Section 21. Remedial Orders can be issued even when there is no immediate danger to life and limb – see "*Introduction to the WSHA*" on www.mom.gov.sg. The Commissioner may also, if he thinks fit, suspend any certificate issued by him under the WSHA in respect of any workplace – see Section 23.

F) SECTION 45: INFORMANTS PROTECTED

The WSHA also "encourages" employees or any person to report lapses in safety to the Commissioner by conferring such reports protection from disclosure – see Section 45. Hence, anyone can feel free to report breaches or lapses in safety without fear of being found out.

CONCLUSION

Most people work to live and not live to work. If this is the concept, then surely any life lost or persons injured in the pursuit of work is surely one too many and it is hoped that with the implementation of the WSHA, the accident rate will be the only one falling.

As pointed out by the Minister for Manpower, the aim of the WSHA is to shift all stakeholders' mindset to obtain a comprehensive risk management system. The old adage "prevention is better than cure" seems to be the order of the day and this augurs well for the construction industry.

**LAWRENCE TAN**

Lawrence is a Deputy Director with Drew & Napier LLC's Building and Construction Business Group. Lawrence specialises in Building and Construction Law and has acted for and advised statutory boards, developers, contractors and consultants in construction related disputes, in both litigation and arbitration. Lawrence is also active in drafting all forms of building related contracts and standard forms for clients and professional bodies. Lawrence is an adjunct lecturer with the Singapore Institute of Management and is a Principal Mediator with the Singapore Mediation Centre. He has also co-authored the book *Laws and Practice of Injunctions in Singapore*.

Lawrence can be reached at +65 6531 2514 or by email at lawrence.tan@drewnapier.com

CONTACTS**BUSINESS GROUPS AND PRACTICE AREAS****BANKING /GENERAL FINANCE**

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

BUILDING & CONSTRUCTION

Tan Liam Beng
T +65 6531 4139
F +65 6533 3591
E liambeng.tan@drewnapier.com

CAPITAL MARKETS

Sin Boon Ann
T +65 6531 2206
F +65 6535 4864
E boonann.sin@drewnapier.com

CHINA BUSINESS GROUP

David Chin
T +86 21 6335 1628
F +86 21 6335 0638
E david.chin@drewnapier.com

COMPETITION LAW

Andrew Ong (non-contentious)
T +65 6531 4106
F +65 6535 4864
E andrew.ong@drewnapier.com

Cavinder Bull (contentious)

T +65 6531 2416
F +65 6533 3591
E cavinder.bull@drewnapier.com

CORPORATE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

EMPLOYMENT & IMMIGRATION

Indranee Rajah, SC (contentious)
T +65 6531 4100
F +65 6532 7149
E indranee.rajah@drewnapier.com

Andrew Ong (non-contentious)

T +65 6531 4106
F +65 6535 4864
E andrew.ong@drewnapier.com

OTHER OFFICES

Shanghai Office
#2501 Office Tower
Bund Center
222 Yan An Road East
Shanghai 200002
China
T +86 21 6335 1628
F +86 21 6335 0638
E china@drewnapier.com

Drewmarks Patents & Designs (Malaysia) Sdn Bhd
9th floor
Bangunan Getah Asli (Menara)
148 Jalan Ampang
50450 Kuala Lumpur, Malaysia
T +603 2162 2522/2162 2529
F +603 2162 2804
E drewmark@tm.net.my

PT Drewmarks Konsultama
Correspondence address:
20 Raffles Place
#17-00 Ocean Towers
Singapore 048620
T +65 6531 2503/6531 2504
F +65 6533 0694
E ip@drewnapier.com

DrewCorp Services Pte Ltd
20 Raffles Place
#09-01 Ocean Towers
Singapore 048620
ROC No. 200102492H
T +65 6531 2266
F +65 6533 1542/6533 7649
E services@drewcorpservices.com

FAMILY & MATRIMONIAL

Randolph Khoo
T +65 6531 2418
F +65 6532 7149
E randolph.khoo@drewnapier.com

FUND MANAGEMENT & PRIVATE EQUITY

Evelyn Wee
T +65 6531 2260
F +65 6535 4864
E evelyn.wee@drewnapier.com

TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

Andrew Ong
T +65 6531 4106
F +65 6535 4864
E andrew.ong@drewnapier.com

INSOLVENCY & REORGANISATION

Davinder Singh, SC
T +65 6531 2402
F +65 6532 7149
E davinder.singh@drewnapier.com

Sushil Nair

T +65 6531 2410
F +65 6532 7149
E sushil.nair@drewnapier.com

Manoj Sandrasegara

T +65 6531 4156
F +65 6532 7149
E manoj.sandrasegara@drewnapier.com

INSURANCE & REINSURANCE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

INTELLECTUAL PROPERTY

Morris John (Patents)
T +65 6531 2503
F +65 6533 0694
E mj@drewnapier.com

Dedar Singh Gill (Trade Marks)

T +65 6531 2507
F +65 6533 0694
E dedar.singh@drewnapier.com

LIFE SCIENCES

Lim Wee Hann
T +65 6531 2244
F +65 6535 4864
E weehann.lim@drewnapier.com

LITIGATION & DISPUTE RESOLUTION

Jimmy Yim, SC
T +65 6531 2504/6531 2505
F +65 6533 3591
E jimmy.yim@drewnapier.com

PROJECT FINANCE

Christina Ng
T +65 6531 2250
F +65 6535 4864
E christina.ng@drewnapier.com

PROPERTY

Chua Bee Lan
T +65 6531 2302
F +65 6535 1952
E beelan.chua@drewnapier.com

SHIPPING & INTERNATIONAL TRADE

Ian Koh
T +65 6531 2436
F +65 6533 3591
E ian.koh@drewnapier.com

TAX, TRUSTS, ESTATE PLANNING & PROBATE

Teoh Lian Ee
T +65 6531 2248
F +65 6535 4864
E lianee.teoh@drewnapier.com

TRANSNATIONAL & CROSS-BORDER WORK

Christina Ng
T +65 6531 2250
F +65 6535 4864
E christina.ng@drewnapier.com

Through a joint venture with Freshfields Bruckhaus Derigner in Singapore, we have associated offices in: Amsterdam, Barcelona, Beijing, Berlin, Bratislava, Brussels, Budapest, Cologne, Dusseldorf, Frankfurt, Hamburg, Hanoi, Ho Chi Minh City, Hong Kong, London, Madrid, Milan, Moscow, Munich, New York, Paris, Rome, Shanghai, Tokyo, Vienna, Washington.

Copyright in this publication is owned by Drew & Napier LLC. This publication may not be reproduced or transmitted in any form or by any means, in whole or in part, without prior written approval. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of information or opinion contained in this publication. This publication covers a wide range of topics and is not intended to be a comprehensive study of the subjects covered nor is it intended to provide legal advice. It should not be treated as a substitute for specific advice on specific situations.