

## FOREWORD

We are pleased to announce the opening of our new China office in Shanghai. Since receiving our licence to operate in Shanghai, our China practice has been growing. Our team of lawyers will be happy to assist you on any legal matters you may have in China. Contact details of our lawyers in the Shanghai office are listed on the back page. Please feel free to contact them if you should require their assistance on any legal issues in China.

In this edition of the Legal Update, we have put together articles on the latest changes to the property financing rules, a recent landmark decision in the Court of Appeal on payments made under mistake of law, a case note on cyber-squatting and a brief discussion on IT contracts. We hope you find the breadth of topics discussed in this issue interesting.

Directors  
Drew & Napier LLC

## THANK YOU

We wish to thank you, our clients, for all your support in the past year. The World IP Survey has once again named Drew & Napier LLC the top Patent firm in Singapore. This is the 6th year that Drew & Napier is listed as number one.

The World IP Survey was conducted by UK based Managing Intellectual Property, a leading international IP magazine with over 10,000 readers around the world. Their research was conducted between June and August this year with nomination forms sent to nearly 4,000 IP specialists in companies and private practice across over 100 countries. Each individual was invited to nominate up to three firms in each of 50 categories. Responses were received from practitioners all over the world, covering patent and trade mark/copyright work.

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

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Our Shanghai Office

# Overview of Recent Changes in Property Financing Rules

The Singapore Government recently announced changes in the financing rules for property purchases. The focus of these changes is to place more responsibility with buyers. This is realised by encouraging buyers to carefully utilise their CPF savings and at the same time taking into account the exposure of their bank loans.

## REVERSAL OF PRIORITY OF CLAIMS

The main change is that the banks will now take first charge instead of the CPF Board. This represents a reversal from the previous order of priorities where in the event of a loan default, monies had to be refunded into the borrower's CPF account first before the bank is paid what it is owed by the borrower.

The change will apply to property purchases entered into on or after 1 September 2002 and existing loans that are refinanced after this date.

It will also apply to Housing & Development Board ("HDB") flats bought on or after 1 January 2003 where the flat owners do not qualify for a HDB subsidised loan and are taking a commercial bank loan.

## Relaxation of the 20% Cash Up Front Rule

Private property buyers who purchase their property on or after 1 September 2002 can use their CPF funds to pay for 10% of the

initial downpayment. This was announced by the Monetary Authority of Singapore, relaxing a 6-year rule requiring buyers to fork out at least 20% of the initial downpayment in cash up front.

The total downpayment, including that made from CPF savings, remains at 20% of property value, with at least 10% being met by cash from the borrower. The financing limit for residential property purchases remains unchanged at 80% of the purchase price or valuation, whichever is the lower.

As an exception, where the buyer has committed on a purchase prior to 1 September 2002, but has not paid the second 10% which is due on or after 1 September 2002, he may apply to use his CPF savings for the second 10% payment provided his loan agreement



Table A – Schedule of X% of Valuation Limit

Date of Purchase	CPF Withdrawal Limit
1 September 2002 – 31 December 2003	150%
1 January 2004 – 31 December 2004	144%
1 January 2005 – 31 December 2005	138%
1 January 2006 – 31 December 2006	132%
1 January 2007 – 31 December 2007	126%
1 January 2008 onwards	120%

with the bank is signed on or after 1 September 2002.

For HDB flats, the cash downpayment will initially be 0% for purchases made between 1 January 2003 and 1 December 2003. Thereafter, the cash downpayment will increase by 2% per year until it reaches 10% by 1 January 2008.

#### CPF WITHDRAWAL LIMIT

CPF withdrawals for private property purchases entered into on or after 1

September 2002 and existing loans that are refinanced after this date will be capped at an amount equivalent to 150% of the value of the property (“Withdrawal Limit”). This 150% Withdrawal Limit will be brought down gradually to 120% of the value of the property over 5 years. (See Table A)

For HDB flats bought with commercial bank loans, the 150% limit will start with purchase options entered into on or after 1 January 2003 and this will be gradually lowered to 120% from 1 January 2008.



Lai Wai Leng joined Drew & Napier in 1999 and became an Associate Director in 2002. Her area of experience covers all aspects of real estate, conveyancing and property work including sale and purchase transactions of residential, commercial, Housing Development Board and Jurong Town Corporation properties, auctions, tenders, leases, development, mortgages, credit/loan documentation, representing the Central Provident Fund Board and probate and administration work. Wai Leng can be contacted at +65 6531 2320 / 6531 2317 or email her at [waileng.lai@drewnapier.com](mailto:waileng.lai@drewnapier.com).

# | Abolishing the Mistake of Law Rule

## INTRODUCTION

The Singapore Courts recently joined other common law jurisdictions in abandoning the mistake in law rule by holding that money paid under a mistake of law is recoverable.

The material issue, namely whether Singapore law should also recognise the right to recover payments made under a mistake of law, was addressed when it came for decision before the High Court of Singapore and the Court of Appeal in the case of Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd [2001] 4 SLR 90; [2002] 2 SLR 1.

enrichment, that the rule precluding recovery of money paid under mistake of law could no longer be maintained and recognition should be given to a general right to recover money paid under mistake, whether of fact or law, subject to the defences available in the law of restitution. It was further held that recovery was permissible even where the payment had been made under a certain understanding of the law which was subsequently departed from by judicial decision or where the payment had been received by the recipient under an honest belief of entitlement to retain the money.

## ORIGINS OF THE RULE AND TRENDS IN OTHER COMMON LAW JURISDICTIONS

The mistake of law rule states that payments made under a mistake of law are not recoverable by the payor, unlike payments made under a mistake of fact. This rule originated from the decision of Lord Ellenborough in *Bilbie v Lumley* [1802] 2 East 469 which was made on the basis that “every man must be taken to be cognizant of the law; otherwise there is no saying to what extent the excuse of ignorance might not be carried”.

Other common law jurisdictions have also abolished the rule. In Canada, the rule was abrogated by the Supreme Court of Canada in *Air Canada v British Columbia* [1989] 1 SCR 1161, in Australia, in *David Securities v Commonwealth Bank of Australia* [1992] 175 CLR 353 and by the Supreme Court of South Africa in *Willis Faber Enthoven v Receiver of Revenue* 1992 (4) S.A. 202. The same conclusion was reached by legislation in New Zealand and Western Australia.

## SINGAPORE: THE MISTAKE OF LAW RULE ADDRESSED IN DE BEERS

### The Facts

In 1992, De Beers, who were the owners of two penthouses in Peoples’ Park Complex, wanted to subdivide their property into 18 lots. However, they were required to obtain permission from



the management corporation (“MC”) of People’s Park Complex before they could do so.

After several meetings and EGMs, the MC finally agreed to the subdivision, on the condition that De Beers pay the total sum of \$370,000 to the MC. The MC justified the demand for payment on the basis that a subdivision would result in increased human traffic, thereby requiring an upgrade of lifts and additional maintenance of common property. De Beers paid up because they believed that the MC was legally entitled to impose such payments.

In late 2000, De Beers were advised that the payments demanded by the MC were unlawful. First, the Land Titles (Strata) Act (Cap. 158) (“LTSA”) provided that any contribution towards maintenance should have been levied in proportion to the share values of the respective lots. Secondly, the MC had to obtain the Commissioner of Building’s approval before it could levy those additional charges on them. The question was whether De Beers could successfully recover those sums, as the payments were made under a mistake of law.

#### The Trial

At the trial, the Honourable Justice Judith Prakash agreed that the mistake of law rule was itself a mistake. Her Honour felt that while it was not considered generally beneficial for parties to be

able to unravel long concluded transactions, it would be worse to continue to deny recovery to all persons who had made payment under a mistake of law. The MC was ordered to return the S\$370,000 to De Beers, plus interest. The MC appealed to the Court of Appeal.

#### The Appeal

The Court of Appeal held that it is trite law that a body created by statute, such as an MC, only has powers granted expressly or by implication in that statute, and that anything done outside these powers is void. In this case, the Court held that the MC’s demands for payment from De Beers as a condition for granting the subdivision approval were unlawful as they were not permitted under the LTSA to do so.

More significantly, the Court of Appeal after examining the common law position in UK and Australia, held that the mistake of law rule should also be judicially abrogated in Singapore. The court therefore dismissed the MC’s appeal with costs.

#### THE RESULTING ROAD AHEAD

The effect of abolishing the mistake of law rule is that, under Singapore law, if a payer pays money under the mistaken belief that he is legally obliged to pay it, when he is not bound in law to pay it, he is entitled to recover his money, subject to any applicable defences.



Harpreet Singh Nehal is a Director of Drew & Napier LLC. He pursued his LL.M. at the Harvard Law School and upon graduation, was appointed a Justices' Law Clerk with the Supreme Court of Singapore. In 1994 and 1995, Harpreet taught at the Harvard Law School. His areas of special interest in litigation include: Administrative law, Cross-Border Litigation & Enforcement, Medical & Professional Negligence, and general commercial litigation. Harpreet can be contacted at +65 6531 2446 or email him at [harpreet.singh@drewnapier.com](mailto:harpreet.singh@drewnapier.com).

# | Squatting in Cyberspace

## INTRODUCTION

Earlier this year, the World Intellectual Property Organisation Arbitration and Mediation Center (“the WIPO Center”) presided over a domain name dispute in the case of ABN AMRO Holdings N.V. v. Cor de Ruitter (WIPO Arbitration & Mediation Centre Administrative Panel Decision Case No. D2001-1434). The Panel allowed Cor de Ruitter, an individual, to retain ownership of the domain name, <abn.info> after finding that ABN AMRO did not prove bad faith by Cor de Ruitter.

## BACKGROUND

On 21 September 2001, Cor de Ruitter had registered the domain name <abn.info> with a Canadian registry. On 7 December 2001, ABN AMRO Holdings N.V. (incorporated in the Netherlands) filed a complaint with the WIPO Center in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”). ABN AMRO Holdings N.V. is a well-known bank with more than 3,500 branches worldwide. It has registered its mark “ABN AMRO” in many countries and the mark “ABN” in the Benelux. At the material time, no website was active under the domain name <abn.info> because it was then not possible to operate a website under a <.info> domain name.

## ISSUES

For ABN AMRO to succeed in its complaint, it had to show the following under paragraph 4 of the Policy:

- (i) that the domain name was identical or confusingly similar to its trade mark “ABN AMRO”;
- (ii) that Cor de Ruitter had no rights or legitimate interests in the domain name; and
- (iii) that the domain name was registered and used in bad faith.

Paragraph 4(b) of the Policy sets out specific circumstances that are considered evidence of registering and using a domain name in bad faith. They are:-

- (i) circumstances indicating that the domain name was registered or acquired “for the primary purpose of selling, renting or otherwise transferring the domain name registration to the...owner of the trademark or service mark or to a competitor...for valuable consideration in excess of...documented out-of-pocket costs directly related to the domain name”; or
- (ii) engaging in a pattern of conduct where a domain name is registered “in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name”; or
- (iii) registration of the domain name “primarily for the purpose of disrupting the business of a competitor”; or
- (iv) using the domain name to intentionally “attract, for commercial gain, Internet users to the web site or other on-line location, by creating a likelihood of confusion with the



complainant's mark as to source, sponsorship, affiliation, or endorsement" of the web site or the products and services related to the web site.

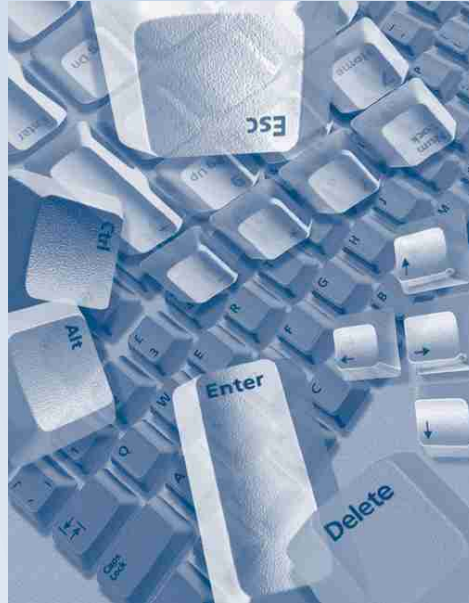
#### DECISION

Whether the domain name was identical or confusingly similar to the trade mark "ABN AMRO"?

The bank asserted that its "ABN AMRO" trade mark was well known worldwide and that the domain name comprised an important part of its trade mark, namely "abn". As Cor de Ruiters had no links whatsoever with ABN AMRO, it was likely to cause confusion to members of the public.

Cor de Ruiters pointed out that the name "ABN Bank" or "ABN" was no longer in use. ABN Bank had merged with AMRO Bank to form ABN AMRO Bank. Therefore, Cor de Ruiters argued, he was making fair use of the domain name because the bank was no longer identified with the name "ABN". He argued that the domain name should not be transferred to the bank when it had no intention to use it. Cor de Ruiters also adduced evidence to show that "ABN" domain names in several ccTLDs were unused, remained available for registration or were in use by other companies unrelated to the bank.

On the question whether the trade mark "ABN AMRO" was confusingly similar to <abn.info>, the Panel deemed that it was likely that people would think that <abn.info> referred to ABN



AMRO bank, especially people in Netherlands. However, the Panel saw no need to decide on the issue of confusing similarity because there were other reasons for rejecting the bank's complaint.

Whether Cor de Ruiters had any rights or legitimate interests in <abn.info>?

ABN AMRO asserted that Cor de Ruiters had no right to the domain name as he did not use nor made preparations to use it in relation with genuine business. Even if he did so use or prepare to use the domain name, such use could not be considered genuine since he was not associated with ABN AMRO in any way.

Cor de Ruiters countered that he had a legitimate interest in <abn.info> as he ran a website (www.aaveste.nl) which supplied information on his Real Estate Agency "Aaveste Makelaardij". He had registered the domain name <abn.info> because he had plans to use

it as a connection to “Aaveste Bedrijfs Nieuws” (i.e. Aaveste Company News) where customers and prospective customers could obtain information about his business. Therefore, his registration of the domain name was bona fide.

The Panel decided that Cor de Ruiters’ explanation for the choice of domain name, that is, an abbreviation of “Aaveste Bedrijfs Nieuws”, was insufficient to demonstrate a legitimate interest. He had not provided evidence of use of that name as part of his business, nor of any preparation for a website under that domain name prior to the filing of the bank’s complaint.

#### Whether the domain name was registered and used in bad faith

The bank asserted that Cor de Ruiters had registered and was using the domain name in bad faith on two grounds:

- (i) that the domain name was registered in order to prevent ABN AMRO from reflecting

its trade mark in a corresponding domain name; and

- (ii) that he registered the domain name for the purposes of selling, renting or otherwise transferring it to ABN AMRO for a profit since he was not associated with ABN AMRO in any way whatsoever.

Cor de Ruiters countered these assertions by pointing out that ABN AMRO had failed to register the domain name during the so-called “Sunrise Period”. The “Sunrise Period” was an exclusive registration period during which trade mark holders were granted a first right to register <.info> domain names that correspond to their trade marks. Cor de Ruiters maintained that he intended to use the domain name for his Real Estate Agency’s activities and not to sell, rent or otherwise transfer it to ABN AMRO for a profit. He had offered ABN AMRO the first right to buy the domain name at a maximum price of EUR 100 in the event that he should decide to abandon it in future. The Panel noted that this offer price was a price that would not normally exceed the registration costs of a domain name.

The Panel found no evidence that Cor de Ruiters had registered <abn.info> for the purpose of selling, renting or otherwise transferring it to the bank for a profit. Nor was there any evidence to show that Cor de Ruiters engaged in a pattern of conduct of registering domain names to prevent others with legitimate interests from registering domain names that corresponded to their trade marks. Moreover,



the registration of <abn.info> did not prevent ABN AMRO from reflecting its corresponding domain name <abnamro.info>.

Therefore, ABN AMRO had failed to prove bad faith by Cor de Ruitter and the Panel rejected the bank's complaint.

For the sake of completeness, the Panel also considered whether the evidence was sufficient to prove bad faith under paragraph 4(b)(iii) and (iv) of the Policy. The Panel found that there was no evidence that Cor de Ruitter had registered the domain name for the purpose of disrupting the business of a competitor. The fact that Cor de Ruitter was in a different business alone was not sufficient to establish bad faith under paragraph 4(b)(iii) of the Policy. The Panel also held that there was no prima facie evidence to satisfy the requirements of paragraph 4(b)(iv) of the Policy.

#### CONCLUSION

This decision highlights the importance of registering one's trade marks as domain names to protect against the use of those trade marks by cyber-squatters. By taking this simple precautionary step, a trade mark owner will be able to avoid the consequences of being held to ransom by a cyber-squatter, or from being denied the right to recover a domain name that is identical to his trade mark because of a lack of evidence of bad faith by the domain name owner.

Drew & Napier LLC has the largest intellectual property practice in Singapore led by Morris John, Managing Director. We are privileged to represent a host of internationally renowned clients. All matters undertaken by the group, whether complex or routine, are characterised by Drew & Napier LLC's ethos of complete client service coupled with a high standard of work. In addition, our IP litigation team handles all aspects of intellectual property litigation. Our lawyers also advise on various aspects of technology transfer, and draft and review agreements to develop, license, procure and finance all IP rights including computer software and hardware projects.

For assistance, please contact Morris John at +65 6531 2503 or email him at [mj@drewnapier.com](mailto:mj@drewnapier.com).

# | Preparing and Managing IT Contracts

## INTRODUCTION

Most organizations tend to rely on standard term contracts at the commencement of a business relationship. While such standard term contracts may address the principal issues that the organization would be concerned with, each transaction should be viewed independently.

In the IT industry, changes, customization, delays and bugs are common and almost a given. As such, even with the presence of a well-drafted contract, disputes may still arise.

While history is littered with many cases relating to contractual breaches, the recent case of National Skin Centre (Singapore) Pte Ltd v Eutech Cybernetics Pte Ltd [2002] 1 SLR 241 provides a very good example for the need to prepare a good contract and manage such a contract effectively.

In this case, National Skin Centre (Singapore) Pte Ltd ("NSC") decided to replace its existing computer system with a new computer system, to address the Y2K problems and to incorporate the latest technology in the new system at the same time. A closed tender was called in May 1998 and several vendors, including Eutech Cybernetics Pte Ltd ("Eutech"), with experience in healthcare software were invited to bid. After evaluating the proposals of the tenderers, NSC awarded the contract to Eutech.

After negotiations and clarifications, the parties entered into a written contract on 30 December 1998 for the supply of a computer system with customized software. The original completion date was sometime in October 1999, with the commissioning of the system to be carried out by 31 August 1999. In the course of the performance of the contract the parties encountered some differences. NSC subsequently terminated the contract, called on the banker's guarantee procured by Eutech under the contract and sued Eutech for breach of the contract.

NSC's claim against Eutech was that Eutech (a) failed to provide the prototype; (b) failed to install the application software; (c) failed to provide a "live" system; (d) failed to commission the application software; and (e) failed to complete the conversion of medical records and cases, by the stipulated dates in accordance with the provisions of the contract.

Eutech denied that it was guilty of such delay and claimed instead that NSC was entitled to make only minor modifications during the prototyping stage. Eutech further claimed that NSC had insisted on a complete change to the original scope of works that resulted in Eutech's failure to abide by the time schedule.

The contract provided that the new system was ►



▶ to incorporate certain features and functionalities (addressed in a gap analysis that formed part of the contract) of the previous system. Scant documentation was made of NSC's feedback and requirements during the prototyping stage and meetings were not minuted. The project manager was also extremely accommodating to NSC and in all written correspondences exchanged there were no records of whether or not these feedbacks amounted to change requests as subsequently alleged by Eutech.

The Judge held that the feedback did form part of the original scope of the contract and that Eutech was in breach of its obligations under the contract and was liable to NSC for damages suffered by NSC, including increased costs and expenses suffered by NSC as a result of having to appoint another vendor to supply the same.

This case illustrates two fundamental points:

1. In preparing a contract, it should be drafted to anticipate potential disputes; and
2. Once executed, it must be properly managed.

## PREPARING THE CONTRACT

### Scope of Works – Legal and Technical

It is important to quantify and detail the exact scope of works that will be performed and the exact features and functionalities that will be delivered in the contract. Hence, in the preparation of any such contract, there should be two sections in the contract that will document the scope of works to be delivered.

The first is legal and the second, technical. Both the legal and the technical sections should be drafted to address the scope which the



vendor will be obliged to perform in exacting terms as opposed to generic adjectives. The project manager and the legal advisor must thus work together to ensure that both sections of the contract when read as a whole will complement each other and neither will contradict the other.

### The Legal Section

The legal section must define the scope and extent of the obligations, the manner in which the project is to be managed and how disputes are to be resolved between the parties. It should also provide for the manner and form in which correspondences are to be addressed between the parties. These legal provisions are imperative to determine the exact scope of works to be performed by the vendor and to define the nature and extent of the legal relationship between the parties.

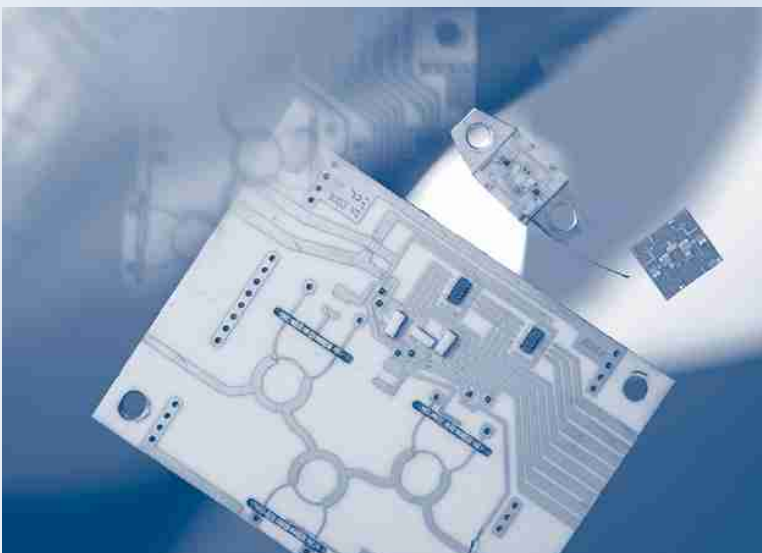
It is often tempting to simply provide that the vendor will design, build and install a particular system in accordance with the directions of the customer. Such provisions are easy to negotiate with customers and will attract customers to sign on the dotted line quickly. Such provisions are frequently used in IT contracts and will invariably lead to disputes. ▶

### The Technical Section

The technical section, which sets out the deliverables and the exact scope of works to be performed by the vendor, as well as the time schedule, is often appended to the contract as an appendix or schedule.

It is also common practice for correspondences, letters and memos to be used to form part of the technical section. This will often arise in situations where substantive negotiations and clarifications are made prior to the execution of the contract on the vendor's original proposal.

Differences in the expectations of the customer and the vendor on the deliverables and the scope of works will often result in disputes. Even though correspondences may be dated, it is still possible that confusion may arise as to which particular correspondence and term will override the other, or which document will prevail. While it may be possible for the legal terms to provide that the document latest in time will prevail, the very nature of the manner in which the document is prepared will easily give rise to disputes.



Therefore, the specifications of the deliverables, should be properly drafted and detailed enough to document exactly what will be delivered by the vendor. It should also specify what the customer is to provide to ensure that the vendor will be able to perform its obligations.

## MANAGING THE CONTRACT

### Managing Delays

A very common occurrence in the IT industry is delay in the performance of the contract. Delays may occur in a variety of situations. They may result from customization works that fail to integrate the system, an incompatibility of operating systems, additional works or requirements from customers, or failure on the part of the customer to comply with their obligations.

The legal contract must be drafted to address this particular eventuality. The legal contract should define what may be constituted as a delay. For example, delays may arise from (a) change requests; (b) external factors; (c) non-compliance by the customer of its obligations; (d) non-provision of assistance by the customer; (e) impact of other delays; (f) disputes, are some basic factors which the contract should address.

The contract should also address the consequences of delay. In the event of a real delay occurring, would this give rise to a cause for termination or would the time schedule be rescheduled to account for such delay with the vendor paying liquidated damages in the event of such delays? From the vendor's point of view, a cap on the total amount of liquidated damages payable must also be considered.

► It is also common that the terms of the contract specify that time is of the essence. Thus, while it is often attractive and impressive to provide a tight timing deadline for the performance of the contract, the time schedule should be prepared conservatively to ensure that the vendor is capable of adhering to it.

### Change and Contract Management

Even after the contract is signed and work has begun, it is often conceivable that changes and amendments to the scope of works will be required and the contract may need to survive the personalities of the parties involved in the project.

In the National Skin Centre case, the project manager subsequently resigned from the company and the project was handed to another person. The original project manager had failed to document meetings and change requirements and this led ultimately to the Judge ruling that many of the so-called changes were in fact within the original scope of the contract.

It is imperative that the project manager properly document all correspondences exchanged between the parties and ensure that all changes to the scope of the project are properly documented and signed off by both parties as a change request. The contract should provide for the form and manner in which these change requests are to be addressed.

The change should be carefully considered by the vendor in terms of both cost and time implications, both of which are of paramount importance to the vendor. The costs and time impact should then be forwarded to the



customer. If agreeable, both parties should sign off on the change request and only then will the change be incorporated into the contract. It is also imperative that the change and its impact on the entire contract and project scope be considered as a whole and not just the change itself.

While administratively cumbersome, such tight contract administration is the only way to prevent disputes from arising.

Even with the preparation of these standard forms and the implementation of such processes, it is the due diligence of the vendor that will prevent disputes from arising. All meetings should be documented and the minutes of the meetings should be signed off by both parties, especially if any deviations or variations were agreed to during the meeting. All exchanges and discussions held between parties should be reduced into writing and confirmed by an exchange of letters, e-mails or faxes.

### Force Majeure

The events of force majeure are traditionally ►



considered to be external factors totally beyond the control of the parties such as acts of God (e.g. floods, tempest, epidemics). Presently, vendors rely on various critical external factors such as the supply of electrical currents, the provision of an adequate telecommunications service or the availability of communication lines to perform their obligations under the contract.

The failure of these third party facilities may prevent the vendor from performing its obligations under the contract or will cause costly delays to the customer and/or the vendor. Any such failure will not automatically excuse the vendor from its obligations, no matter how reasonable the failure may seem.

Currently, there does not appear to be any local judicial pronouncements as to whether or not such failures will be considered as events of force majeure but the freedom to contract is a principle that the courts will adhere to.

Given that understanding, the contract should

address what additional factors will excuse the vendor from the performance of its obligations under the contract.

#### Project Management

In large projects, it is often considered prudent to assemble a steering committee to drive and direct the implementation of the project and to address broad commercial concepts, thereby reducing friction and disputes that may arise between the parties. The committee will often consist of high level decision makers from both the vendor and the customer's project teams.

The contract should provide for the types of matters and situations that should be submitted to the steering committee for decision. The steering committee may consider matters ranging from change requests to the settlement of disputes. They may also be convened to oversee the detailed implementation and installation of the entire project.

While not a necessity in every project, the steering committee will often prove to be a useful and practical mechanism in project management.

#### Dispute Resolution

Even with the steering committee, it is often inevitable that disputes may not be resolved between the parties.

Parties should consider, at the outset, the proper mechanism and forum under which disputes are to be resolved. In the event that parties are unable to resolve the dispute amongst themselves, through good faith negotiations, parties should consider submitting the dispute ►

to mediation, which is a process of assisted negotiations, and then to arbitration in the event that mediation fails to resolve the dispute.

If preservation of the business relationship is paramount, the courts should be considered only as a last resort for the resolution of disputes as most, if not all court proceedings, will destroy all business relationships between the parties. Mediation and arbitration, while different, are less formal and may even preserve the business relationship.

### Termination

While no organization would like to terminate a business relationship, how and when a contract may be terminated should be addressed as a fundamental issue. Termination of the contract was also an issue challenged and considered in the above case. The contract should specify the various situations under which the contract may be terminated. For example, must a default precede the termination or would a simple notice with an adequate notice period suffice? Further, in the event of a default, must

the default be material? What if the default was capable of being corrected? These are all questions that the contract should address.

Accordingly, the consequences of termination must also be addressed. What are the vendor and the customer's obligations or liabilities in the event that the contract is terminated? Would the vendor be required to bear the losses suffered by the customer? Would the vendor still be entitled to be paid for work done despite the vendor not being able to complete the delivery? Are there any requirements to deliver or transfer any materials already developed to the customer? If so, what are the terms of transfer especially since the contract had already been terminated.

### CONCLUSION

By giving due care and attention to the terms of the contract at the start of a business relationship and with proper contract management during the performance of the contract, the need to litigate to resolve disputes that can be avoided will be deemed unnecessary.



Benjamin Loh is a Senior Associate with Drew & Napier LLC's Info-Communications & Technology team. He graduated from the University of Hull, United Kingdom and was admitted as an Advocate and Solicitor of the Supreme Court of the Republic of Singapore in 1997. Benjamin specializes in Information Communications Technology and Entertainment Law, with an emphasis on Technology / Mass Media Law. His other areas of practice are in Commercial and Corporate Law. He can be contacted at +65 6531 2296 or email him at [benjamin.loh@drewnapier.com](mailto:benjamin.loh@drewnapier.com).

# DREW & NAPIER LLC

Your Legal Partner for the 21<sup>st</sup> Century

## OUR CHINA PRACTICE IN SHANGHAI

In 2000, we were privileged to receive a licence to operate an office in Shanghai. Our China practice has grown since then, together with our clients' interests there. To meet our client's needs, we have increased our legal support to a team of 12 lawyers who are based in Shanghai and Singapore.

David Chin, previously Managing Director of our Property Department, is now the Chief Representative of our Shanghai office. He is joined by Associate Director Julian Kwek of our Litigation Department and two other China lawyers.

For queries on China related matters, please contact David Chin or Julian Kwek at:-



Drew & Napier LLC Shanghai Office

#2501, Office Tower

Bund Center

222 Yan An Road East

Shanghai 200002

Tel : +86 21 6335 1628

Fax : +86 21 6335 0638

E-mail : china@drewnapier.com

david.chin@drewnapier.com

julian.kwek@drewnapier.com

CONTACT DIRECTORS FOR BUSINESS GROUPS  
AND PRACTICE AREAS

### Banking/ General Finance

David Ang

Tel : + 65 6531 2236 Fax : + 65 6535 4864

Email : david.ang@drewnapier.com

### Building & Construction

Christopher Chuah

Tel : + 65 6531 4102 Fax : + 65 6533 3591

Email : christopher.chuah@drewnapier.com

### Capital Markets

Sin Boon Ann

Tel : + 65 6531 2206 Fax : + 65 6535 4864

Email : boonann.sin@drewnapier.com

### Corporate

Gary Pryke

Tel : + 65 6531 4104 Fax : + 65 6535 4864

Email : gary.pryke@drewnapier.com

### Employment & Immigration

Indranee Rajah (employment & labour disputes)

Tel : + 65 6531 4100 Fax : + 65 6532 7149

Email : indranee.rajah@drewnapier.com

Andrew Ong (non-contentious)

Tel : + 65 6531 4106 Fax : + 65 6535 4864

Email : andrew.ong@drewnapier.com

### Family & Matrimonial

R Raj Singam

Tel : + 65 6531 2400 Fax : + 65 6532 7149

Email : raj@drewnapier.com

### Info-Communications & Technology

Andrew Ong

Tel : + 65 6531 4106 Fax : + 65 6535 4864

Email : andrew.ong@drewnapier.com

### Insolvency & Reorganisation

Davinder Singh, SC

Tel : + 65 6531 2402 Fax : + 65 6532 7149

Email : davinder.singh@drewnapier.com

### Insurance & Reinsurance

Gary Pryke

Tel : + 65 6531 4104 Fax : + 65 6535 4864

Email : gary.pryke@drewnapier.com

### Intellectual Property

Morris John

Tel : + 65 6531 2502 Fax : + 65 6533 0694

Email : mj@drewnapier.com

### Life Sciences

Lim Wee Hann

Tel : + 65 6531 2244 Fax : + 65 6535 4864

Email : weehann.lim@drewnapier.com

### Litigation & Dispute Resolution

Jimmy Yim SC

Tel : + 65 6531 2504 / 6531 2505

Fax : + 65 6533 3591

Email : jimmy.yim@drewnapier.com

### Project Finance

Christina Ng

Tel : + 65 6531 2250 Fax : + 65 6535 4864

Email : christina.ng@drewnapier.com

### Property

Chua Bee Lan

Tel : + 65 6531 2302 Fax : + 65 6535 1952

Email : beelan.chua@drewnapier.com

### Shipping & International Trade

Ian Koh

Tel : + 65 6531 2436 Fax : + 65 6533 3591

Email : ian.koh@drewnapier.com

### Tax, Trusts, Estate Planning & Probate

Teoh Lian Ee

Tel : + 65 6531 2248 Fax : + 65 6535 4864

Email : lianee.teoh@drewnapier.com

### Transnational & Cross-Border Work

Leena Pinsler

Tel : + 65 6531 2240 Fax : + 65 6535 4864

Email : leena.pinsler@drewnapier.com

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20 Raffles Place #17-00 Ocean Towers, Singapore 048620 Tel: +65 6535 0733 Fax: +65 6535 4906

E-mail: mail@drewnapier.com Website: www.drewnapier.com