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DREW & NAPIER LLC

CAPITAL MARKETS

Features and Updates on Capital Markets in Singapore

In This Issue

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Regulatory and Legal Updates

SGX Updates

1. SGX shortens time-to-market for secondary fund raising

On 9 December 2010, the Singapore Exchange Limited ("SGX") announced measures to shorten time-to-market for secondary fund raising exercises. The measures formalise certain temporary measures on fund raising implemented in early 2009 to facilitate the raising of capital by companies under tight credit conditions during the global financial crisis.

The measures, which took effect from 1 January 2011, are as follows:

(1) shortening the notice of books closure date from 10 to five clear market days;

(2) allowing issuers to undertake non-renounceable rights issue without specific shareholders' approval, provided the rights shares are priced at a discount not exceeding 10% of the prevailing market price;

(3) allowing issuers to issue scrip dividends without shareholders' approval, provided shareholders are given a cash option; and

(4) introducing a new practice note in the Listing Manual to provide guidance on sub-underwriting arrangements, including the need to seek specific shareholders' approval where sub-underwriting fees are paid to controlling shareholders and substantial shareholders.

Both the Mainboard and Catalist listing rules have been amended to reflect this development.

Other measures implemented in early 2009 such as a higher threshold for renounceable pro-rata share issuances and larger discount limits for placement exercises have ceased after 31 December 2010, following feedback from market participants on their potential dilutive effects.

For more information, please click on the following links:

(1) SGX announcement;
(2) Amendments to Mainboard listing rules;
(3) Amendments to Catalist listing rules.

2. SGX proposes sustainability reporting for listed companies

On 28 August 2010, SGX issued a consultation paper titled "Proposed Policy Statement and Guide to Sustainability Reporting for Listed Companies" to guide the listed companies in formulating their sustainability reporting. The public consultation period ended on 19 November 2010.

Sustainability reporting describes the consideration and integration of environmental and social dimensions into traditional financial reporting to develop a holistic approach towards corporate disclosure. In the narrowest sense, sustainability reporting refers to the publication of environmental, social and governance information in an integrated manner that reflects activities and outcomes across these three dimensions of an organisation's performance.

SGX is encouraging more listed companies to commit to sustainability practices and reporting, given the increasing global attention drawn towards issues of environment protection and social responsibility.

Currently, sustainability reporting is voluntary. As more companies adopt sustainability reporting, SGX will review its policy on sustainability reporting to keep pace with global developments and will consider formulating formal rules to regulate disclosure, if necessary.

For more information, please click on the following link:

SGX consultation paper entitled "Proposed Policy Statement and Guide to Sustainability Reporting for Listed Companies"

3. SGX streamlines approval process for listing of bonds

In August 2010, as part of SGX's ongoing measures to enhance the listing, trading and distribution of fixed income products, SGX streamlined the approval process for listing of bonds offered to accredited and institutional investors. As part of this initiative, SGX circulated an updated, more comprehensive listing application form and indicated that it will endeavour to approve complete listing applications submitted to it within two (2) business days instead of the current five (5) business days.

4. SGX and ACRA provide guidance to strengthen audit quality

On 15 July 2010, the Accounting and Corporate Regulatory Authority ("ACRA") and SGX jointly issued the "Guidance to Audit Committees on Evaluation of Quality of Work Performed by External Auditors" ("the Guidance"). The Guidance aims to strengthen the quality of audit amongst Singapore companies by providing practical guidance to assist their board of directors and Audit Committees in evaluating the work performed by their external auditors.

The Guidance focuses on four key indicators of audit quality observed through ACRA's Practice Monitoring Programme, which assesses the compliance of public accountants with auditing standards and pronouncements. These four indicators, also known as the "E-A-S-E indicators", are:

(a) Emphasis on quality by the audit engagement partner and the audit firm;

(b) Allocation of adequate and appropriate human resources;

(c) Substantial involvement of the audit engagement partner; and

(d) Exercise of professional scepticism.

The Guidance also includes a set of sample questions that are directly relevant to the E-A-S-E indicators. The sample questions are intended to offer practical and constructive assistance to audit committees in discharging their statutory and fiduciary duties.

The Guidance is available on both ACRA and SGX websites. Please click on the following link to access the Guidance on SGX website:

Guidance to Audit Committees on Evaluation of Quality of Work Performed by External Auditors

For further information, please contact our Mr Sin Boon Ann, Ms Su Jen Jen or Ms Rachel Poon.

MAS Updates

1. Perpetual licences for capital market services and financial advisers licence holders

Pursuant to amendments to the Securities and Futures Act ("SFA") and the Financial Advisers Act ("FAA"), which came into effect on 26 November 2010, capital markets services ("CMS") and financial advisers ("FA") licences would no longer have to be renewed every three years. Subject to the payment of an annual licence fee, once the licence is issued, it would continue to be valid unless:

- the licence holder ceases to carry on business in any of the regulated activities to which the licence relates;
- the licence lapses (due to the winding-up of the licence holder or other prescribed circumstances); or
- the licence is revoked or suspended by the Monetary Authority of Singapore ("MAS").

This change applies to new applications for CMS and FA licences as well as licences issued prior to 26 November 2010. MAS has also clarified that holders of the latter licences, which contain an expiry date, can continue to conduct their regulated activities and/or provide the financial advisory services for which they are licensed after the licence expiry date, unless they have filed a cessation notification to MAS or the licence has lapsed or has been revoked or suspended by MAS. This clarification was provided by the amendments to the Frequently Asked Questions on the Securities and Futures (Licensing and Conduct of Business) Regulations and the Frequently Asked Questions on the Financial Advisers Regulations.

2. MAS amends practice notes on lodgement of prospectuses and other documents

In October 2010, MAS amended several practice notes on the lodgement of prospectuses and other documents pursuant to the SFA. Amongst others, the CIS Practice Note 1/2005 – Administrative Procedures for Retail Schemes and the Shares and Debentures Practice Note 1/2005 – Lodgement of Documents have been amended to incorporate the requirement for a duly signed confirmation by the person making the offer, or where the person making the offer is an entity, by each and every director or equivalent person of the entity, that he is aware of the criminal liability under the SFA for any false or misleading statements, or omission of information required to be included in the prospectus to be lodged with, or submitted to MAS together with the prospectus.

3. MAS issues guidelines on the product highlights sheet

In October 2010, MAS issued the Guidelines on the Product Highlights Sheet ("PHS") which provide guidance to issuers and their professional advisers in preparing their PHS. For offers of (a) debentures in the form of debentures or units of debentures issued pursuant to a securitisation transaction ("asset-backed securities") and structured notes (including exchange-traded notes) where the offer is made in or accompanied by a prospectus; and (b) unlisted collective investment schemes ("CIS") and exchange-traded funds where the offer is made in or accompanied by a prospectus, an issuer will have to prepare a PHS (in a format prescribed by MAS) to be furnished to investors at the time of making the offer.

The PHS will highlight the key terms and risks of an investment product and will generally set out the possible investment objectives which may be achieved by investing in that investment product. These guidelines apply to all relevant offers for which prospectuses are lodged or, as the case may be, due to expire on or after 1 March 2011.

For further information, please contact our Mr Sin Boon Ann or Ms Yap Siew Ling.

Legal Updates

1. Insider trading

To minimise the risks of committing insider trading, officers of listed companies should: (i) not deal in securities if in possession of material price-sensitive information prior to the announcement of such information; and (ii) not deal in securities during the period commencing two weeks before announcing the company's financial statements for each of the first three-quarters of its financial year, or one month before its half-year or financial year, as the case may be. This blackout period will end on the date of announcement of the relevant results.

If an officer of a listed company buys or sells shares without observing precautions, he may be investigated by the Commercial Affairs Department and possibly prosecuted. A recent example of this was when Mr Koh Wee Seng, the chief executive of a local jewellery chain, Aspial Corporation, was investigated. This arose from a number of regular share purchases which Mr Koh made on the open market. Mr Koh was cleared of insider trading allegations. This incident was reported on 8 January 2011 in The Straits Times. The Straits Times article also reported that:

> "Several senior executives of listed companies have been investigated and charged with insider trading in recent times, including a former director of AP Oil.

In AP Oil's case, Mr Ang Luck Seh, 61, then an executive director, was fined $80,000 in November 2009 for insider trading relating to the purchase of 85,000 AP Oil shares."

2. Market manipulation

In *Monetary Authority of Singapore v Tan Chong Koay & Anor* [2010] SGHC 277, the Singapore High Court found in favour of MAS in its claim against Tan Chong Koay and Pheim Asset Management Sdn Bhd for market manipulation under section 197 of the SFA.

Cavinder Bull, SC, Yarni Loi, and Gerui Lim of Drew & Napier LLC acted for MAS, the successful plaintiffs.

Dr Tan Chong Koay ("Dr Tan") is the founder of Pheim Asset Management Sdn Bhd ("Pheim Malaysia") and Pheim Asset Management (Asia) Pte Ltd ("Pheim Singapore") (collectively, the "Pheim Group"). Both companies are in the business of fund management.

During the period from 29 to 31 December 2004 (the "material time"), which were the last 3 market days of 2004, Pheim Malaysia purchased a total of 360,000 United EnviroTech ("UET") shares for $152,470.95, at an average price of $0.424 per share (the "UET trades"). The UET counter was an illiquid counter and the UET trades dominated the market, making up 88% of the total trades in the material time. The bulk of Pheim Malaysia's purchase orders were entered within the last half hour before the close of trading on each day. As a result, the price of the UET stock rose significantly by 17%.

Due to the increase in UET's share price, certain funds within the Pheim Group recorded a significant increase in their net asset values and outperformed their respective benchmarks. Pheim Singapore also earned an additional $50,000 in fees arising from the outperformance of these funds.

In 2008, MAS commenced a civil action against Dr Tan and Pheim Malaysia for market manipulation. MAS' primary case was that the defendants' sole or primary purpose in entering into the UET trades was to raise and set the market price of UET shares for the year ending 2004, in time for year-end valuations.

The Court found that MAS had successfully established its case against the defendants under section 197 of the SFA. The two defendants were ordered to pay a civil penalty of $250,000 each, and to pay the costs of the action to MAS.

Dr. Tan and Pheim Malaysia have appealed the High Court ruling. On 25 January 2011, it was reported in the Business Times ("BT") that:

> "The [MAS] is seeking the dismissal of an appeal filed by...Pheim Malaysia and its CEO against a market rigging ruling, to discourage attempts at window dressing here…the MAS urged that the High Court judgment be affirmed to 'send a clear deterrent message to the appellants and other fund managers in the market that the manipulation of share prices by 'window-dressing' practices will not be tolerated in Singapore'."

The appeal was heard on 14 March 2011. Judgment was reserved.

For further details, please refer to Drew & Napier's Legal Update on the High Court decision by clicking on the link below:

Drew & Napier Legal Update dated 22 September 2010 – Case Update – MAS Wins First Civil Action for Market Manipulation

3. Directors' duties

Directors of public companies are expected to be aware of the importance of the timely and accurate disclosure of relevant information, both to the public (in general) and the investing public (in particular). They should also be aware of their duties as directors under the law. The following case illustrates this.

In *Public Prosecutor v Ong Chow Hong* [2009] SGDC 387, Ong Chow Hong ("Ong"), the former chairman and independent director of Airocean Group Limited ("Airocean"), pleaded guilty on 6 August 2009 to a charge under section 157(1) of the Companies Act Cap 50. The facts described below are from the judgment.

On 25 November 2005, whilst being a director of Airocean, Ong approved the release of an announcement by Airocean to SGX without having sight or knowledge of its contents. The announcement was entitled "Clarification of Straits Times article on 25 November 2005" and released via SGXNET on 25 November 2005 at 8.13 pm ("2005 Announcement"). By this action, he failed to use reasonable diligence in the discharge of his duties as a director, and was therefore in breach of section 157(1) of the Companies Act.

On 25 November 2005, the Straits Times published an article entitled "*Airocean's chief executive Thomas Tay under CPIB probe*" (the "News Article"). That same day, SGX asked Airocean to confirm whether or not Thomas Tay was in fact a subject of CPIB investigations and if so, to seek an explanation as to why the fact that its CEO was under a CPIB probe was not made public.

Ong knew that his company was preparing a public announcement in response to the News Article. However, that morning, he informed the company secretary that he would agree to any announcement that would be issued by the company so long as it was approved by independent director Peter Madhavan ("Peter"). He left these instructions as he was going off to play golf that day.

The court found that in the 2005 Announcement, Peter made a different presentation of the facts known to the Airocean Board. This presentation of facts was also against the advice of Airocean's solicitors. It was, in law, misleading in a material particular. It sought to convey to readers the impression that the CPIB investigations did not concern Thomas Tay or Airocean's two subsidiaries. This would have the effect of stabilising Airocean's share price at a level higher than what it would have been had the facts been accurately presented to the public.

Ong paid a fine of $4,000. He was disqualified from acting as a director for one year. This was later extended to two years by the High Court.

In PP v Chong Keng Ban @ Johnson Chong & Ors [2011] SGDC 4, other Airocean directors were also found to have breached the law. On 7 January 2011, it was reported in the Straits Times that:

> "three former Airocean directors were convicted of making a "misleading" announcement to the Singapore Exchange."

Among them, Johnson Chong ("Chong"), who was also the former chief operating officer of the air cargo firm, together with Peter:

> "were also convicted of consenting to the company's "reckless failure" to disclose relevant information, while Chong was also found guilty of three charges of insider trading."

On 4 March 2011, it was reported in the Straits Times that Peter, a former independent director of Airocean and a lawyer by profession, was sentenced to four months' jail for his part in making a misleading statement to SGX. He was also fined $120,000. This is significant as this is the first time that an independent director has been sentenced to a term of imprisonment for such offence. In sentencing him to four months' imprisonment, the court emphasised that it had found him to be the "most active" and hence the "most culpable" in making the misleading statement.

The directors do not accept the court's findings and are appealing to the High Court against their convictions and sentences.

For further details, please refer to Drew & Napier's Legal Update on the High Court decision by clicking on the link below:

Drew & Napier Legal Update dated 29 March 2011 – Case Update – The Airocean Case: Lessons for Independent Directors

For further information, please contact our Mr Sin Boon Ann or Mr Mark See.

Special Focus – Due diligence on material litigation and customer contracts

China-based shipbuilder New Century Shipbuilding Limited ("New Century Shipbuilding") withdrew its IPO just before its offer closed in May 2010. The IPO was intended to raise S$666.4 million and would have been amongst the largest IPO in Singapore last year.

In August 2010, it was reported in The Straits Times that:

- A confidential circular issued by MAS obtained by the Straits Times indicated that New Century Shipbuilding had breached rules under the SFA.
- In the circular addressed to New Century Shipbuilding's chief executive Yuan Kaifei on 29 July 2010, MAS said that the firm had inaccurately included shipbuilding orders that had already been terminated by its subsidiary New Times Shipyard.
- New Century Shipbuilding also failed to disclose in its IPO prospectus that it was facing a legal claim of US$60 million (S$81 million) over contracts with Sino Noble for the building of two bulk carriers.
- New Century Shipbuilding was issued a 'supervisory warning' by MAS 'to comply with the applicable laws and regulatory requirements at all time' in view of the inaccuracies in its prospectus.
- The regulator also said it would 'take the contravention into account when considering actions to be taken against [New Century Shipbuilding] for any future violations'.

The New Century Shipbuilding case serves to remind listed companies and prospective listing applicants, issue managers and the relevant advisers of the importance of proper due diligence and disclosure.

Prospective listing applicants. The Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 (the "SFR"), which prescribes the type of information to be included in prospectuses, requires disclosure of "information on any legal or arbitration proceedings, including those which are pending or known to be contemplated, which may have, or which have had in the 12 months immediately preceding the date of lodgment of the prospectus, a material effect on the financial position or profitability of [the issuer]."

As the SFA imposes civil and criminal liability for the omission of material information, the issuer is under an obligation to fully disclose such material litigation and other legal proceedings. However, the issue manager and underwriter (together with the relevant advisers) are also required to take reasonable steps to ensure that there are no major lapses in the due diligence and disclosure in this respect. In connection with the foregoing, the Due Diligence Guidelines issued by the Singapore Investment Bank Association provides the following guidance to its members:

"Where there is current or threatened material litigation or other legal proceedings involving the issuer, the issue manager should, together with the relevant advisers, review and ascertain the business and financial implications arising from such material litigation or other legal proceedings. Public searches on civil and criminal actions taken or judgements ordered against the issuer should be conducted where practicable. Where there is material litigation, the issue manager should obtain a summary of the action and a legal opinion on the merit of the issuer's case from the legal advisers acting for the Issuer in respect of that litigation."

Standard due diligence practice at the moment includes the conduct of: (i) searches against the publicly available databases of the Singapore courts to ascertain if the issuer and its group companies have been (or are) party to any civil or criminal proceedings in Singapore in the preceding three years; and (ii) general interviews with the major customers of the issuer. Foreign counsels appointed to conduct IPO due diligence on foreign-incorporated group companies are similarly instructed to run the equivalent searches or make the necessary inquiries in their respective jurisdictions, if such information is publicly available. However, this does not detract from the issuer's obligation to make full and frank disclosure, especially since arbitration proceedings and threatened or pending litigation do not typically show up on court searches, and certain jurisdictions may not have comprehensive or searchable records relating to court proceedings. The New Century Shipbuilding case also underscores the importance of the interviews conducted with the major customers as an avenue for discreet enquiries to ascertain that contracts with significant financial contribution are still in force.

Finally, the issuer and its directors and executive officers should be sensitive to personal matters that may affect an IPO. For instance, the involvement of a director in a fraud-related case, even if it had no merits, may affect public perception of the issuer and its leadership. As such, a frank discussion with the issue manager and legal advisers is encouraged.

Listed companies. As a general rule, companies listed on SGX are expected to make immediate announcements of any information relating to it or any of its subsidiaries or associated companies which: (i) is necessary to avoid the establishment of a false market in its securities; or (ii) would be likely to materially affect the price or value of its securities.

Accordingly, legal disputes and cancellation of contracts that are expected to have any significant effect on the company's financial position and profitability, and which are likely to come within the above categories, should be announced in a timely manner. However, keeping in mind that certain threatened or pending proceedings or settlements arrived at may have to be kept confidential, legal advice should be sought as to the extent of information disclosed as well as the timing of such announcements.

If you require further clarification or have any queries on this article, please contact our Mr Sin Boon Ann, Ms Grace Lai or Ms Ong Yee Yen.

Special Focus – Limited partnership fund and limited liability partnership fund structures

In our previous newsletter, we discussed the legal considerations relating to a property fund structured as a real estate investment trust ("REIT") or as a registered business trust ("BT").

We discuss below the salient legal considerations relating to a property fund structured as a limited partnership ("LP") registered under the Limited Partnership Act (Chapter 163B, 2009 Revised Edition) (the "LPA") or as a limited liability partnership ("LLP") registered under the Limited Liability Partnership Act (Chapter 163A, 2009 Revised Edition) (the "LLPA").

Both LPs and LLPs are essentially partnerships save that the former does not have a separate legal corporate status whereas the latter is a separate legal corporate entity distinct from its members. Each LP is required to have at least one general partner and at least one limited partner. The general partner will usually have management of the LP and bears unlimited liability for the obligations and other liabilities of the LP. In contrast, LLPs are not required to have any general partners and all the partners in an LLP are entitled to limited liability.

In the United States of America, LPs are a popular fund structure for real estate investment funds as the investors or limited partners in such funds are allowed to set-off their share of any losses incurred by such LP fund against their chargeable income from other sources. The same is not true in Singapore and the investors or limited partners of a Singapore LP are generally not allowed to set-off their share of any losses from a Singapore LP fund against their chargeable income from other sources.

In a LP, the assets are held beneficially by the partners whereas in a LLP, the assets are generally held legally and beneficially by the LLP itself and the limited partners do not have a proprietary beneficial interest in the assets of the LLP. Akin to a company, a LLP holds its assets in its own name and the assets belong to the LLP, and not that of its partners. The partners do not have any legal or equitable interest in the assets of the LLP, but only a right to share in the capital and profits.

Unless statutory relief provisions are relied upon, a transfer of legal or beneficial proprietary interests in Singapore real estate or shares in Singapore companies will result in Singapore stamp duty being payable. A transfer of partnership interests in a LP owning Singapore real estate or shares in Singapore companies may incur Singapore stamp duty].

There are the following advantages in using LPs and LLPs as fund structures as compared with using a Singapore limited liability company ("LLC") incorporated under the Companies Act (Cap 50) of Singapore:-

- Both the LPs and the LLPs are able in their respective constitutive documents to freely provide for different classes of rights for different classes of limited partners and general partners.

- Distributions to the partners in a LP and a LLP may be paid out of operating cash flows whereas distributions to a shareholder in a LLC may only be paid out of profits.

A fund structure using the LP or LLP structure faces certain licensing constraints:-

- Under the SFA, a person who engages in the regulated activity of "fund management" is required to first obtain a capital markets services licence for fund management. The conditions for obtaining such a licence are onerous. For a LP fund that makes offers only to accredited investors, there are exemptions from such licensing requirement under the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap 289, Rg 10, 2004 Rev. Ed).

- Offering of partnership interests in a LP or a LLP is principally regulated by the SFA, its regulations and the Code on Collective Investment Schemes. The offering will have to be accompanied by a prospectus registered with MAS unless an applicable prospectus statutory exemption is relied upon. Also, unless an applicable statutory exemption is relied upon, the offering of partnership interests in a LP or a LLP will require authorisation as a collective investment scheme and will require a trust company licensed under the Trust Companies Act (Cap.336) of Singapore to act as the approved trustee and a fund manager licensed under the SFA to act as fund manager. The other requirements for authorisation as a collective investment scheme are wide-ranging and stringent. They also impose restrictions on asset class, asset concentration, borrowing limits and connected person transactions.

- At the time of writing, there are no LPs or LLPs which are authorised as collective investment schemes. Also, no LPs or LLPs have registered a prospectus with MAS for sale of partnership interests to the public.

- Where the LP or LLP fund is structured as a "closed end fund" (i.e. where the units in such LP or LLP are primarily or exclusively non-redeemable at the option of the unit-holders), such fund will not fall within the definition of a "collective investment scheme" and the offering of interests or units in such LP or LLP will be regulated as an offering of securities in a corporation and will not require a licensed trustee nor a licensed fund manager.

Tax and other critical considerations

One of the more important considerations when choosing between a LP or LLP and some other fund structure such as a REIT or a BT structure is the tax transparency of the structure. In simple terms, the issue is whether the income will be taxable in the hands of fund vehicle or trustee, or whether such income is taxable in the hands of the investors or unit-holders. Unless a suitable tax concession applies, the prevailing income tax rate payable by a fund vehicle which is a corporation is 17%, and such tax leakage will result in a substantially diminished distribution and adversely affect the attractiveness of the trust as an investment asset class.

Taxation at fund vehicle level

In Singapore, a LP will generally be tax transparent as the partners are taxed individually on their respective share of the partnership income whereas the LP itself is not taxed. This is the same in the case of a LLP, which is treated as a partnership and not as a separate legal entity for income tax purposes. Therefore, each partner of an LLP will be chargeable with tax on his or its share of the income from the LLP. Where a partner is an individual, his share of income from the LLP will be taxed based on his personal income rate of tax and where a partner is a company, its share of income will be taxed based on the prevailing rate of corporate tax.

A fund vehicle structured as a REIT is not automatically entitled to tax transparent status. If the REIT is intended to be listed on SGX, an application to the Inland Revenue Authority of Singapore ("IRAS") may be made for tax transparency treatment, and such tax transparency treatment may be granted by the IRAS on a case-by-case basis, subject to the usual conditions. On the other hand, there is no tax transparency treatment in Singapore accorded to BTs. A BT registered under the Business Trusts Act (Cap.31A) of Singapore is treated like a company under the one-tier system for income tax purposes. The income of a BT is taxed at the trust level and this tax treatment is effective from the first year such a trust commences operation as a BT. Such tax is assessed by the trustee-manager in the following circumstances: (a) where the income is derived from any trade or business carried on by the trustee, in its capacity as the trustee of the trust; (b) where the beneficiaries of the trust are not resident in Singapore; or (c) where the beneficiaries are not entitled to the income of the trust.

Stamp duty

In Singapore, stamp duty is payable upon the transfer of immovable properties. The applicable stamp duty amounts to approximately up to 3% of the higher of the market value or the acquisition price of the immovable properties. Unless a suitable stamp duty remission is granted, such stamp duty is payable upon transfer of immovable properties to the property fund. The transfer of immovable property to a fund structured as a LP or LLP will not be exempt from stamp duty.

This contrasts with the case of REITs. For REITs, stamp duty remission is granted on any transfer or sale of any immovable property to a REIT that (a) is listed on SGX; or (b) is to be listed on SGX within one month from the execution of such transfer. As announced by the Government in Budget 2010 on 22 February 2010, this stamp duty remission granted to REITs will be extended and granted on chargeable documents executed from 18 February 2010 to 31 March 2015 (both dates inclusive) for the sale of property or interest thereof to a REIT, as long as the REIT is listed on SGX within six months from the execution of the chargeable document.

Stamp duty remission is also allowed on the transfer of 100% of the issued share capital or any interest therein of a Singapore incorporated company set up solely to hold immovable properties outside Singapore to a REIT, executed from 1 January 2006 to 17 February 2010 (both dates inclusive). As announced by the Government in Budget 2010, this stamp duty remission granted to REITs will similarly be extended and granted on chargeable documents executed from 18 February 2010 to 31 March 2015 (both dates inclusive).

There is currently no equivalent stamp duty remission granted to transfers of immovable properties to BTs. Transfers of immovable properties to BTs will not be granted any remission of stamp duties and this will adversely affect the commercial attractiveness of the BT structure for a Singapore property fund.

Summary

In view of the present constraints, LPs and LLPs are probably not the fund vehicles of choice as fund structures for offer to the retail public or where the funds hold Singapore real estate. Their chief attraction may lie in the possibility of tax deductions in the home jurisdiction of the investor, for losses incurred in such LPs and LLPs particularly in the initial years of the funds.

If you require further clarification or have any queries on this article, please contact our Mr Petrus Huang.

Deals Highlights

Some recent capital markets transactions handled by us

IPOs & SECONDARY LISTINGS

- **IPO of ES Group (Holdings) Limited:** Sin Boon Ann (Director), Mark See (Senior Associate) and Ong Yee Yen (Associate) acted as solicitors to the invitation for the IPO and listing of ES Group (Holdings) Limited on the Catalist. ES Group (Holdings) Limited is a homegrown marine and offshore group engaged in new building, conversion, and repair of ocean-going vessels.

- **IPO of Mun Siong Engineering Ltd:** Sin Boon Ann (Director), Yap Siew Ling (Associate Director) and Amanda Goh (Associate) acted as solicitors to the invitation for the IPO and listing of Mun Siong Engineering Ltd on the Mainboard of SGX. Mun Siong Engineering Ltd is an integrated mechanical engineering and electrical and instrumentation service provider for the process industries comprising oil and gas, petroleum and petrochemical industries as well as pharmaceutical and power plants.

- **Warrants listing by Pollux Properties Ltd.:** Marcus Chow (Director) and Tan Mei Hui (Associate) acted for Pollux Properties Ltd. in the placement of 23,350,000 of 155,653,846 existing warrants issued by Pollux Properties Ltd. through a vendor sale, and in the listing and quotation of the 155,653,846 existing warrants. Each warrant entitles the holder to subscribe for one new share at an exercise price of S$0.13 per new share in the capital of Pollux Properties Ltd.

DEBT CAPITAL MARKETS

- **Bond offering by PT Bumi Resources TBK:** Marcus Chow (Director) and Felicia Koh (Associate) acted as Singapore counsel to PT Bumi Resources TBK in respect of the listing of US$700 million guaranteed senior notes ("Notes") maturing in 2017. The interest is at 10.75%. The Notes were listed and quoted in the Bonds Market of SGX in October 2010.

- **Refinancing of senior loan facility and junior bonds:** Sandy Foo (Director), Ralph Lim (Director), Kaveeta Sandhu (Associate) and Rachel Liew (Associate) acted for ARIEF (Singapore I) Pte Ltd ("AREIF") in the refinancing of AREIF's S$525,000,000 senior loan facility and S$175,000,000 junior secured fixed rate bonds in connection with AREIF's acquisition of TripleOne Somerset (a commercial plaza in the heart of Singapore's prestigious Orchard Road shopping belt) in early 2008. The refinancing exercise involved the entry by AREIF into a new S$575,000,000 senior loan facility and the issue of S$105,000,000 in principal amount of new junior secured fixed rate bonds (listed on SGX).

- **Debt conversion by Asian Micro Holdings Limited:** Marcus Chow (Director) and Joanne Lee (Senior Associate) acted for Asian Micro Holdings Limited in the conversion of an aggregate amount of S$1,500,000 owing by Asian Micro Group to relevant participating creditors and the issue of 100,000,000 shares at the issue price of S$0.015 pursuant to the conversion of such debts. Asian Micro Holdings Limited offers natural gas related products and services. Its secondary core business is providing recycling and precision cleaning of packaging trays and media/disk cassettes used in the hard disk drive and semiconductor industries in Singapore, China and Thailand.

Deals Highlights (cont'd)

Some recent capital markets transactions handled by us

SECONDARY OFFERINGS

- **Secondary placement of shares of Overseas Union Enterprise Limited:** Farhana Siddiqui (Director), Lam Shiao Ning (Director), Joanna Yeo (Senior Associate) and Divya Thakur (Associate) acted for the underwriting syndicate comprising CIMB Securities (Singapore) Pte Ltd, Credit Suisse (Singapore) Pte Ltd, Merrill Lynch (Singapore) Pte Ltd, Morgan Stanley Asia (Singapore) Pte Ltd and Standard Chartered Securities (Singapore) Pte Limited in connection with the secondary placement of 120,500,000 shares of Overseas Union Enterprise Limited by its controlling shareholder.

FUNDS

- **Establishment of a fund constituted as a Singapore limited partnership:** Petrus Huang (Director), Farhana Siddiqui (Director), Felicia Koh (Senior Associate) and Chong Chia Chi (Senior Associate) acted for Redwood Group Asia Pte Ltd as Singapore counsel advising and reviewing the structuring and establishment of a fund constituted as a Singapore limited partnership, whose purpose is generally to hold, manage, develop and dispose of for investment purposes, real property or other interests derived from real property. The fund's target fund size was US$600 million. Drew & Napier worked with Freshfields Bruckhaus Deringer in Japan for this matter.

Corporate Finance & Capital Markets Group Profile

Singapore is an active and growing centre for corporate finance and capital market activities, serving not only local but also regional and international business needs. Consistently ranked as one of the leading local practices in Asia Pacific, our team regularly advises issuers and underwriters on initial public offerings and listings of companies on the Singapore Exchange as well as mergers and acquisitions and other equity-related fund raising exercises such as rights issues, private placements and convertible and exchangeable bonds. In addition, we are well-placed to assist our listed clients in providing advice on their continuing listing requirements relating to matters such as capitalisation issues, the adoption of employee share schemes and privatisations. With the combined strengths of the other practice groups within our firm, we are well-placed to bring the necessary knowledge to complete complex transactions effectively and to assist our clients in structuring their operations, as well as in accessing debt and equity markets.

Our Directors

Gary Pryke - Managing Director (Corporate and Finance)
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Gary is the Managing Director and Head of the Corporate and Finance Department. Gary is recommended as a leading corporate lawyer, particularly in the field of mergers & acquisitions in many well-known publications. Gary's primary area of practice is corporate finance, including mergers and acquisitions, securities and stock exchange related work, servicing financial institutions, local and international corporate clients. Gary also has experience in project and other finance work.

Sin Boon Ann - Deputy Managing Director (Corporate and Finance)
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Boon Ann is the Deputy Managing Director of Drew & Napier's Corporate and Finance Department and the Head of our capital markets practice. He has been recommended as a leading individual by The Asia Pacific Legal 500 in the area of capital markets. Boon Ann has extensive experience in corporate finance transactions. His work includes acting as counsel in relation to initial public offerings of securities as well as mergers and acquisitions, secondary equity offerings, debt offerings and advising on regulatory compliance. Boon Ann acted as counsel in approximately a quarter of initial public offerings in Singapore in 2009 (7 out of 28 initial public offerings).

Petrus Huang - Director (Corporate and Finance/Funds and Capital Markets)
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Petrus has over 20 years of practice experience. He is highly recommended for Banking & Finance in the Global Counsel 3000 and the Practical Law Company Which Lawyer? 2007 and 2008. He has been named as a leading funds practice lawyer by International Who's Who Legal 2009, and a leading practitioner in Euromoney Legal Expert Guide to the World's Leading Investment Funds Lawyers in June 2010. He is the editor of CCH Annotated Singapore Stock Exchange Listing Manual and a contributor to Halsburys' Laws of Singapore volume on Securities Law and LexisNexis' Annotated Business Trusts Act.

Yeo Wee Kiong - Director (Corporate and Finance/ Capital Markets)
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Wee Kiong has 18 years of practice experience as a corporate finance lawyer. Wee Kiong's primary area of practice is corporate finance work, including mergers and acquisitions, securities, initial public offerings and stock exchange related work, equity and market related finance, servicing venture capital and private equity funds. Wee Kiong also has experience in the formation of investment funds, project finance and other finance and banking work. The Practical Law Company Which Lawyer? 2009 describes him as a 'corporate finance expert, active in private equity transactional work, fund formation, M&A and capital market issues' and recommends him as a leading individual.

Sandy Foo - Director (Corporate and Finance)
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Sandy has over a decade's experience in Corporate and Financial Services transactions. Sandy's main area of practice covers corporate law with particular emphasis on mergers & acquisitions (listed as well as private companies, domestic as well as cross border). Her other main area is finance, where she has significant experience in general banking, project and acquisition financing (combining her knowledge of M&A as well as financing matters). Ancillary to her main areas of practice, Sandy also advises on and has extensive experience in a full spectrum of corporate and finance activities such as general corporate/commercial advice; joint ventures; regulatory issues for financial institutions; syndicated financing; restructuring (debt and equity); advising SGX-listed companies and serving as their company secretaries.