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LSTA ADVANCING THE CORPORATE LOAN MARKET

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1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

The resurgent lending market witnessed in Singapore in 2021 and 2022 due to an increase in loan demand post-pandemic sharply contracted over the course of 2023, as evinced by the announced results for the third quarter of 2023 of the three major Singapore banks (DBS Group Holdings, Ltd. (***DBS***), Oversea-Chinese Banking Corporation, Limited (***OCBC***) and United Overseas Bank Limited (***UOB***)) – the banks saw a rise in loan growth of just 1% year-on-year for the period reported. Amidst global economic uncertainties worsened by the ongoing Russia-Ukraine war and the Israel-Palestine conflict, the Monetary Authority of Singapore (***MAS***) has been maintaining its prevailing monetary policy for the last two quarters, choosing to closely monitor global and domestic economic developments amid global economic uncertainties reflected by weaker than expected growth in Eurozone and China. This has preserved the Singapore dollar on a broadly steeper path of appreciation against the nation's key trading partners.

To address inflation woes plaguing the global economy since 2022, the U.S. Federal Reserve (***Fed***) had moved to steadily increase base lending rates an unprecedented 11 times across 2022 and 2023. However, the resilience demonstrated by the U.S. economy has resulted in talk of a freeze of further interest rate hikes by the Fed going into 2024. Accordingly, major Singapore banks have begun slashing fixed interest rates for home loans – from the two decade high of 4.5% in November 2022 to a more palatable 3.75% in June 2023.

In line with forecasts that Southeast Asia's energy needs will grow by 50% before 2050, demand for financing of conventional and renewable energy projects continues to increase unabated. Introduced in October 2021 by the Singapore government agency Enterprise Financing Scheme-Green has been helping companies access green financing, and close to 50 small and medium-sized enterprises developing and providing green solutions have received support, with up to $260 million of green loans being issued as of April 2023.

On the sustainability front, the Singapore government is also making progress on its objective to issue up to S$35 billion of green bonds by 2030. As of 31 March 2023, S$8.2 billion's worth of green bonds have been issued across four green categories, namely clean transportation, waste management, green building and sustainable water, including the S$2.4 billion inaugural sovereign bond – the Green Singapore Government Securities (Infrastructure) Bond, part of which proceeds raised will be allocated to finance Singapore's expansion of its rail network.

In line with the Singapore government's commitment to ensure that the green bonds issued by the public sector agencies adhere to market best practices, the MAS introduced in June 2022 the Singapore Green Bond Framework, a governance framework for sovereign green bond issuances under the Significant Infrastructure Government Loan Act 2021. The framework sets out guidelines for public sector green bond issuances that are aligned with internationally recognised market principles and standards.

The Green Finance Industry Taskforce (***GFIT***), which was convened by the MAS as part of its action plan for Singapore to be a leading centre for sustainable and green finance in Asia and globally, has continued with its efforts to help accelerate the development of green finance in Singapore through the following key initiatives: (i) developing a taxonomy; (ii) improving disclosures; (iii) fostering green finance solutions; and (iv) enhancing environmental risk management practices of financial institutions. In connection with this, on 3 December 2023, the GFIT together with the MAS launched the Singapore-Asia Taxonomy for Sustainable Finance (***Singapore-Asia Taxonomy***) – the world's first multi-sector transition taxonomy which sets out detailed thresholds and criteria for defining green and transition activities that contribute to climate change mitigation across eight focus sectors. Pivotally, the Singapore-Asia Taxonomy provides a credible framework to phase-out coal-fired power plants, a critical part of the energy transition in the Asia-Pacific region where coal accounts for almost 60% of power generation. To ensure credibility of the early coal phase-out process, the taxonomy sets out both entity and facility-level criteria that are aligned to a 1.5°C scenario.

Lastly, on the technological front, the MAS announced in 2020 the award of digital banking licences to a number of entities. Following this, four digital banks, GXS Bank, backed by a consortium comprising Grab Holdings Inc. and Singapore Telecommunications Limited, MariBank, backed by South-east Asian e-commerce giant Sea Limited, Green Link Digital Bank, backed by Chinese developer Greenland Holdings and supply chain financing platform Linklogis Hong Kong, and Anext Bank, backed by Ant Group launched their services in 2022 and 2023.

It remains to be seen how the entry of digital banks into Singapore will affect the loan market – particularly in areas such as accessibility of funds for small-to-medium enterprises.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

Trafigura Group Pte. Ltd., a market leader in the global commodities industry, announced on 25 October 2022 the successful closure of its new syndicated loan facilities amounting to an equivalent of USD2.4 billion. The new facilities comprised,

inter alia, a USD revolving credit facility as well as USD and CHN term loan facilities. The facilities were used to refinance existing loans of the Trafigura Group as well as for general corporate purposes. A total of 28 financial institutions participated in the transaction with DBS, SCB and Sumitomo Mitsui Banking Corporation Singapore Branch as the mandated lead arrangers and bookrunners.

On 23 June 2021, DBS entered into Singapore's first USD Secured Overnight Financing Rate (***SOFR***) linked export financing transaction with Bunge. The S$25 million transaction, priced off SOFR averages, represents a noteworthy milestone as the industry transitions away from the Singapore Interbank Offered Rate (***SIBOR***). Another industry milestone achieved by DBS is the completion of Singapore's first trade finance transaction referencing the Bloomberg Short-Term Bank Yield Index (***BSBY***) with Reliance. The option of using the BSBY in addition to SOFR-based pricing is useful for trade finance transactions involving straight-through processing. CapitaLand and UOB have also signed a two-year S$200 million term loan pegged to the Singapore Overnight Rate Average (***SORA***), in a first-of-its-kind loan agreement. CapitaLand had also signed another agreement referencing SORA, for a S$150 million three-year corporate loan as part of the original S$300 million sustainability-linked loan extended by OCBC.

Amidst growing efforts by the Singapore government/MAS to intensify sustainable development in Singapore, there has been an increase in the number of sustainable financing and green loan transactions. One example is the S$3 billion Multicurrency Medium Term Note (***MTN***) Programme and Green Bond Framework established by the National Environment Agency (***NEA***). The purpose of this MTN Programme is to finance the NEA's landmark Tuas Nexus Integrated Waste Management Facilities, making it the first of its kind in the region to, amongst other things, treat incinerable waste with enhanced efficiency. Separately, the Housing & Development Board (***HDB***), Singapore's public housing authority, also announced in March 2022 that it raised S$1 billion through the issuance of its inaugural green bond. The proceeds from the green bond will be used exclusively to finance HDB's green building projects, as guided by HDB's new Green Finance Framework.

On the sustainable loans front, in early 2022, Sembcorp Industries secured a S$1.2 billion syndicated sustainability-linked loan facility pegged to SORA by a group of banks including DBS and OCBC, the first and largest loan of such type which will be used for its general corporate purposes and/or the financing or refinancing its group renewable energy and sustainable projects. Additionally, mainboard-listed OUE Commercial Real Estate Investment Trust announced in August 2022 that it successfully completed a S$978 million unsecured sustainability-linked loan to refinance its existing secured borrowings. The loan is one of the largest sustainability-linked loan extended to a Singapore real estate investment trust and was syndicated by a consortium of four mandated lead arrangers and bookrunners – CIMB Bank Singapore, Maybank Singapore, OCBC and SCB – and was supported by a total of 19 banks.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Yes, subject to there being sufficient corporate benefit and no contravention of specific rules under the Companies Act 1967 (***CA***); for example, relating to guarantee of loans to companies related to directors and provision of financial assistance.

S157 of the CA provides that a director of a company "shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office". This statutory statement is in addition to the directors' duty under general law to exercise their discretion *bona fide* in what they consider is in the best interest of the company. The directors of a company must ensure there is sufficient corporate benefit in giving any guarantee, including a guarantee for the borrowings of one or more members of its group.

A commonly asked question is whether directors can, in giving a guarantee, consider the interests of the corporate group as a whole. The theoretical rule is that companies within a group are separate legal entities. However, in practice, companies are often part of larger groups and it is generally accepted that there is corporate benefit on the face of a transaction involving a holding company guaranteeing the obligations of its subsidiary. It would be harder, however, to show corporate benefit in a subsidiary guaranteeing the debts of its holding or sister companies and in such situations it would therefore be prudent to have the shareholders of the company sanction the giving of the guarantee.

In addition, companies must be mindful of the prohibition under s163 of the CA relating to the guarantee of loans, quasi-loans or credit transactions to companies related to directors. Such prohibition does not apply to exempt private companies, which are essentially private companies owned wholly by individual shareholders not exceeding 20, or a government-owned private company gazetted as such. There are exceptions to this prohibition, including where the companies involved are in a subsidiary/holding company relationship or are subsidiaries of the same holding company in the legal sense. Members of a corporate group in the legal sense are therefore generally exempted from such prohibition. They are, however, not exempted if they are non-subsidiary affiliates and directors must be careful then to conduct the necessary enquiry to ensure there is no contravention of the section. With effect from 3 January 2016, a new exception was introduced to allow for prior approval by the company in a general meeting to permit such transactions. Where practicable (for example, when dealing with private companies), lenders are likely to require such prior approval by shareholders to be obtained to do away with the risk of triggering this prohibition.

Regard must also be given to the prohibition against the giving of financial assistance and other considerations where a company is insolvent, as set out under sections 4 and 8 below.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

See question 2.1 above. In giving a guarantee, the directors of the company must ensure there is sufficient corporate benefit. If the corporate benefit to the guaranteeing company is disproportionately small or there is no corporate benefit, then there may be an issue as to whether the directors in giving the guarantee are in breach of their fiduciary duties.

Where directors have given a guarantee in breach of their fiduciary duties, the guarantee may be set aside if the lender had knowledge of the impropriety and the offending directors may be both civilly and criminally liable for their breach.

Other considerations where a company is insolvent are set out under section 8 below.

2.3 Is lack of corporate power an issue?

Unless otherwise limited or restricted by the provisions of its own constitutive documents, a company has full capacity to perform any act, including entering into guarantees. Caution should be taken as there are, however, companies with old forms of constitutive documents that still contain restrictions and limits on the grant of guarantees and if so, such restrictions will continue to apply.

The effect of the lack of corporate power in the grant of a guarantee, whilst it does not invalidate the guarantee *per se*, may be asserted or relied upon in, amongst others, proceedings against the company by any member of the company or, where the company has issued debentures secured by a floating charge over all or any of the company's property, by the holder of any of those debentures to restrain the doing of any act or transfer of any property by the company. The court may, in such a situation, exercise discretion to set aside and restrain the performance of the guarantee but allow for compensation for loss or damage sustained.

S25B of the CA deems the power of the directors to bind the company, or authorise others to do so, to be free of any limitation under the company's constitution, in favour of persons dealing with the company in good faith. It remains to be seen whether the Singapore courts will find that knowledge of an act being beyond the powers of the directors under the constitutive documents of the company will, by itself, be sufficient to establish a lack of good faith for purposes of this new provision.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

No governmental consents or filings are generally required.

A guarantee will be required to be lodged with the companies' registry in Singapore, the Accounting and Corporate Regulatory Authority (***ACRA***), only if by its terms it also seeks to create a charge or agreement to charge within the meaning of s131 of the CA.

In terms of formalities, a contract of guarantee must be in writing and signed by the person sought to be rendered liable under the guarantee. Board resolutions approving the terms, execution and performance of the guarantee should be passed. Shareholders' approval should also be obtained if there is any potential issue of lack of corporate benefit and breach of directors' duties, or triggering of s163 of the CA, or where it is otherwise required by statute (for example, to whitewash the transaction) or the constitutive documents of the company.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

No, unless otherwise restricted by the constitutive documents of the company.

If, however, the amount guaranteed is clearly disproportionate to the corporate benefit received, the issues discussed in question 2.2 above would arise.

Other considerations where a company is insolvent are set out under section 8 below.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

There are no exchange controls in Singapore that would act as an obstacle to the enforcement of a guarantee.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

Under Singapore law, all types of collateral may potentially be available to secure lending obligations, provided the grant thereof is not against public policy.

Common types of collateral that can be used include real property (land and buildings), personal chattels, debts and other receivables, stocks and shares and other choses in action.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

It is possible to give asset security by means of a general security agreement; for example, by way of a debenture seeking to take security over different classes of assets, save to the extent that a statutorily prescribed form is required (e.g. to effect a legal mortgage over land under the Land Titles Act 1993 (***LTA***) or a Singapore-registered ship under the Merchant Shipping Act 1995, or to take a legal assignment over book-entry securities under the Securities and Futures Act 2001).

The main types of security interests that can be created under Singapore law are mortgages, assignments, charges, liens and possessory pledges, and the appropriate method of taking security would depend on the nature of the asset over which the security is to be taken and the extent of security required.

Different classes of assets will also be subject to different procedures and perfection requirements.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Land

Yes, a legal or equitable mortgage/charge or assignment of sale and purchase/lease/building agreement with mortgage-in-escrow is commonly granted over real property (land and to the extent immovable, plant and buildings thereon). The type of security will depend on, amongst other factors, whether title over the land has been issued, the land type and the type of holding.

There are two types of land in Singapore – common law titled land and land under the LTA. Virtually all land in Singapore has been brought under the LTA. A legal mortgage for land under the LTA must be in a statutorily prescribed form and registered with the Singapore Land Authority (***SLA***). Where title has not been issued for land under the LTA, a lender would take an equitable mortgage over the sale and purchase agreement, lease or building agreement in relation to the land, with an accompanying mortgage-in-escrow for perfection upon issue of title.

Commonly, an appropriate caveat may also be lodged with the SLA against the land to protect the lender's interest during the time between the acceptance of the facility and the registration and perfection of the security.

Related security like an assignment over insurances, rental and sale proceeds and agreements, and in the case of land under construction, assignment over construction contracts and performance bonds, are usually also taken.

Procedure and perfection steps briefly include the seizing of relevant title documents, registration with the SLA (or Registry of Deeds, if applicable), registration of the charge with ACRA

under s131 of the CA, stamping, consents from lessor of the land or other third parties (if applicable), corporate authorisations, whitewash/shareholders' approval (if applicable), etc. In practice, some banks require shareholders' approval where the assets to be mortgaged/charged constitute the whole or substantially the whole of the company's undertaking or property.

Machinery and equipment

A fixed charge granted by way of a debenture or charge is commonly taken over machinery and equipment.

Registration with ACRA will be required under s131 of the CA. Other perfection steps are (to the extent applicable) discussed above.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Yes, security over receivables (being choses in action) can be taken by way of an assignment or charge (fixed or floating) through a deed of assignment/charge or a debenture, depending on the entire security package to be taken. Generally, lenders may also, for control purposes, obtain a charge (fixed or floating) over the accounts into which the receivables are paid (see question 3.5 below).

In order to take a legal assignment over receivables, it must be in writing with express notice in writing given to the debtor of the receivables. The giving of notice also enables the lender to secure priority.

A charge to be taken over receivables can be fixed or floating. Where the lender is able to control the receivables and they are not subject to withdrawals without consent, a legal assignment or fixed charge may be created over the subject receivables. Often, however, the receivables are part of the ongoing business of the security provider and the lender does not seek to take control over the same. In such a situation, only a floating charge may be created in substance, regardless of how the charge is termed or labelled in the documentation.

Registration with ACRA will be required if the charge is floating or the receivables fall under one of the prescribed categories of s131 of the CA. Other perfection steps are, to the extent applicable, discussed in question 3.3 above.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes, security over cash deposited in bank accounts (being choses in action) can be taken in the same way as receivables, and the principles and requirements in question 3.4 apply.

In practice, it may be difficult to obtain a legal assignment or fixed charge over cash deposited in a bank account unless the bank account is opened with and controlled by the lender. Where that is not practicable and/or it is necessary to enable the chargor to make withdrawals from the bank account freely, the lender may be left with taking only a floating charge over the account.

Registration with ACRA will be required if the charge is floating or if it falls under one of the prescribed categories of s131 of the CA. An express written notice of assignment must also be given to the account bank to perfect the security and preserve priority. Other perfection steps are, to the extent applicable, as discussed in question 3.3 above.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Shares in Singapore may be in certificated/scrip or scripless form.

Where shares are certificated, a legal or equitable mortgage may be taken over the shares. A legal mortgage may be granted by way of a share mortgage, accompanied by a transfer and registration of the shares and delivery of share certificates in the mortgagee's name. The procedures and restrictions for the transfer will be set out in the company's constitutive documents and the CA. An equitable mortgage/charge may be granted by way of a share mortgage/charge and deposit of share certificates together with a blank transfer executed by the mortgagor/chargor on the agreement that the mortgagee/chargee may complete the transfer forms upon occurrence of a default event under the facility or by notice.

Where shares are in scripless form (i.e. book-entry securities, being essentially listed shares of companies on the Singapore stock exchange – Singapore Exchange Securities Trading Limited), by statute, a different regime will apply. Security may be taken over such shares by way of a statutory assignment or statutory charge in prescribed form registered with the Central Depository (Pte) Limited in Singapore or by common law subject to certain prescribed requirements.

There is no specific restriction to prohibit the general terms of security over shares to be governed by New York or English law; however, the creation and grant of security over shares should be governed by Singapore law as the shares of Singapore companies (and exercise of certain enforcement rights) are regulated by the CA and local property rules.

Registration with ACRA will be required if the charge is floating or if it falls under one of the prescribed categories of s131 of the CA. In the case of a statutory charge over shares in scripless form, an express written notice of assignment must also be given to the depository agent to perfect the security and preserve priority. Other perfection steps, to the extent applicable, are as discussed in question 3.3 above.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Yes, a floating charge is most commonly created over inventory. The chargor in this instance will generally be permitted to deal with the inventory in the ordinary course of its business until the occurrence of a default event under the facility or notice from the lender.

Registration with ACRA is required under s131 of the CA. Other perfection steps, to the extent applicable, are as discussed in question 3.3 above.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Yes for both cases, subject to considerations such as the existence of corporate power and corporate benefit, s162/s163 of the CA (prohibition on loans, quasi-loans and credit transactions to directors and related companies) and financial assistance, etc., as set out in this chapter.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

The fee for the registration of a charge/security instrument with ACRA in accordance with s131 of the CA is currently S$60 per charge.

In addition, security interest over certain assets (e.g. aircraft, ships, intellectual property rights and land) will need to be registered at specialist registries and additional fees will be payable. For example, the fee payable for the registration of a mortgage over land with the SLA is currently S$68.30 per mortgage.

Stamp duty is payable on a mortgage, equitable mortgage or debenture of any immovable property and stocks or shares. A legal mortgage is subject to *ad valorem* duty at the rate of 0.4% of the amount of facilities granted on the mortgage of immovable property or stocks and shares, subject to a maximum duty of S$500. An equitable mortgage is subject to *ad valorem* duty at the rate of 0.2% of the amount of facilities granted on the mortgage of immovable property, subject to a maximum duty of S$500.

Notarisation is not required for security documents that are executed and to be used in Singapore.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

The charge/security instrument to be lodged with ACRA under s131 of the CA must be lodged within 30 calendar days after the creation of the charge where the document creating the charge is executed in Singapore (or within 37 calendar days if executed outside Singapore). The filing (once filing forms are completed) is instantaneous and confirmation of registration from ACRA will normally take up to three business days.

The timeframe for registration at specialist registries differs according to each registry. For example, the registration of a mortgage with the SLA may take several weeks or even several months if complex and involving multiple units. In the interim, a lender may protect its interest by the lodgement of a caveat with the SLA.

Fees payable for such registrations are as discussed in question 3.9 above.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

Regulatory consents may be required in certain circumstances; for example, where the subject land is state land leased from the Singapore government or government statutory boards, such as the SLA and Urban Redevelopment Authority.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

Under Clayton's rule, security taken over a revolving loan may be "reducing" as the loan "revolves" as a result of the "first-in first-out" rule. In the absence of contrary indication, a secured revolving facility may technically lose the security once an amount equal to the original loan and any associated charges and interest has been paid into the account, even though sums have been paid out in the meantime. This is rarely an issue in practice, however, as finance documents will be drafted to provide for inverse order of payment and/or for security to be continuing notwithstanding any intermediate payments made and to secure the ultimate amount outstanding under the loan.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

Execution requirements are predominantly set out in the company's constitutive documents and the CA. In addition, certain instruments are also statutorily required to be in writing or executed by deed. For example, a legal mortgage over land must be by deed. Certain statutory remedies (e.g. power to sell the mortgaged property, to insure the property, to appoint a receiver, etc.) given to mortgagees will also not be available unless the mortgage is by deed. Commonly, it is prudent in any event for securities to be executed by deed so that there is no issue of past consideration. It is worth noting that amendments to the CA in 2015 introduced provisions allowing for the execution of deeds without the use of a common seal, thereby making the execution of deeds less administratively burdensome for local companies.

Where it is envisaged that the execution of the security instrument be completed by virtual means, it is also good practice for it to be done in line with the principles set out in the English case *R (on the application of Mercury Tax Group and another) v HMRC*.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company that directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

S76 of the CA provides, *inter alia*, that a public company or a company whose holding company or ultimate holding company is a public company, shall not, whether directly or indirectly, give any financial assistance for the purpose of, or in connection with, the acquisition by any person (whether before or at the same time as the giving of financial assistance) or proposed acquisition by any person of shares in the company or in a holding company or ultimate holding company (as the case may be) of the company. The prohibition does not extend to sister subsidiary companies. The CA further provides that financial assistance for the acquisition of shares may be provided by means of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the release of a debt or otherwise.

These provisions may therefore be triggered in the event of the giving of guarantees/securities or other accommodation that may directly or indirectly provide "financial assistance" within the meaning of the CA. There are, however, whitewash provisions available under our laws, including short-form whitewash procedures that would enable the company to effect a whitewash through, *inter alia*, board approval, if doing so does not materially prejudice the interests of the company or its shareholders or the company's ability to pay its creditors, or the passing of shareholders' and directors' resolutions and lodgement of solvency statements and papers with ACRA without the need for public notification and objection period or court order. Where the company is unable to effect a short-form whitewash,

parties must bear in mind that the need for public notification and objection period for a long-form whitewash will mean that a timeframe of six to eight weeks (assuming no objections) may be required.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Yes, Singapore recognises the role of an agent and trustee and these roles are normally taken up by the lead bank to whom the borrower has granted the mandate to arrange the syndicated loan. An express trust will be created to ensure the desired consequences.

The creation of the trust must comply with the relevant formalities. For example, s7 of the Singapore Civil Law Act 1909 requires a trust in respect of immovable property to be manifested and proved in writing signed by the person who is able to declare such trust. In addition, a validly constituted express trust must be certain as to the intention of the settlor to create the trust, the identity of the subject matter and the identity of the beneficiaries. Provided the relevant mechanics are set out in the finance documents and the trust is properly constituted, the security trustee will be able to hold the security on trust for the syndicated lenders and will have the right to enforce the finance documents and collateral security, including applying the proceeds from the collateral to the claims of the syndicated lenders in accordance with the finance documents.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above, which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

This is not applicable. Please refer to question 5.1 above.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

The right of Lender B to enforce the loan and guarantee exists provided the procedure for assignment or novation of Lender A's rights and obligations, as set out in the finance documents, are complied with (e.g. consent of borrower and guarantor if required) and the continuity of the guarantee is provided for expressly and preserved under the documents.

Where there are no proper procedures or transfer/preservation provisions within the finance documents or the security agency/trust is not properly constituted, an assignment or novation of the underlying loan may result in an assigned or new debt that is not covered by the guarantee. A transfer in such a situation may fail and the guarantee rendered unenforceable over the assigned or new debt. In such an instance, a fresh guarantee will be required for Lender B to be guaranteed. In practice, confirmation by the guarantor is often sought even if the documents provide expressly for preservation without consent.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Withholding tax is applicable by virtue of s12(6) read with s45 or s45A of the Singapore Income Tax Act 1947 (***ITA***), where a person is liable to pay another person not known to him to be tax resident in Singapore any interest, commission, fee or any other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee, or service relating to any loan or indebtedness if such payments are either (i) borne, directly or indirectly, by a person resident in Singapore or a permanent establishment in Singapore (except in respect of any business carried on outside Singapore through a permanent establishment outside Singapore or any immovable property situated outside Singapore), or (ii) deductible against any income accruing in or derived from Singapore. Interest and payments in connection with any guarantee or indebtedness that are made to foreign lenders would generally be subject to withholding tax unless otherwise exempted. The current withholding tax rate on such s12(6) payments is 15% of the gross amount (assuming the payment is not derived by the non-resident from any trade, business, profession or vocation carried on or exercised by him in Singapore and is not effectively connected with any permanent establishment in Singapore of the non-resident).

There are, however, various exceptions to this. S12(6A) of the ITA excludes from the scope of s12(6) the following payments:

(i) any payment made to a non-resident person for any arrangement, management or service relating to any loan or indebtedness where such arrangement, management or service is performed outside Singapore for or on behalf of a person resident in Singapore or a permanent establishment in Singapore; and

(ii) any payment made to a guarantor who is a non-resident person for any guarantee relating to any loan or indebtedness, where the guarantee is provided for or on behalf of a person resident in Singapore or a permanent establishment in Singapore.

For the purposes of s12(6A), a qualifying "non-resident" is a person who is not incorporated, formed or registered in Singapore and who does not, by himself or in association with others, carry on a business in Singapore and does not have a permanent establishment in Singapore; or if he does carry on a business in Singapore (by himself or in association with others) or has a permanent establishment in Singapore, the arrangement, management, service or giving of guarantee was not performed through, or effectively connected with, that business carried on in Singapore or that permanent establishment.

Since payments covered under s12(6A) are excluded from the scope of s12(6), the obligation to withhold tax does not arise for s12(6A) payments even though they are made to a non-resident person. In addition, s45(9)(c) of the ITA exempts from withholding tax interest that is paid to Singapore branches of non-resident foreign companies (e.g. non-resident foreign banks). If the non-resident bank is a resident of a country with which Singapore has an applicable tax treaty, the treaty may provide for a reduced withholding tax rate.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Singapore has various governmental agencies to assist foreign investors and creditors. The Economic Development Board is the lead governmental agency responsible for planning and executing strategies to attract foreign businesses and investments. Enterprise Singapore works to position Singapore as a base for foreign businesses to expand into the region, in partnership with Singapore-based companies.

Although incentives are generally industry-specific, and are not affected by the residency of the investors or creditors, there are selected schemes directed at attracting foreign investors and creditors.

Save for withholding taxes as discussed in question 6.1, no taxes specific to loans, mortgages or other security documents, either for the purposes of effectiveness or registration, are applicable. Stamp duty as discussed in question 3.9 will be applicable.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?

Where the bank is not a tax resident in Singapore, withholding tax as discussed in question 6.1 may apply.

Where the bank is a tax resident in Singapore or has a branch in Singapore, any interest, commission, fee or any other payment in connection with any loan or indebtedness or with any arrangement, management, guarantee, or service relating to any loan or indebtedness that is either (i) borne, directly or indirectly, by a person resident in Singapore or a permanent establishment in Singapore (except in respect of any business carried on outside Singapore through a permanent establishment outside Singapore or any immovable property situated outside Singapore), or (ii) deductible against any income accruing in or derived from Singapore, that accrues to or is derived by the bank or its Singapore branch will be deemed to be sourced in Singapore and subject to income tax in Singapore by virtue of s12(6) read with s10(1) of the ITA.

6.4 Will there be any other significant costs that would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

Apart from fees and tax payable as discussed above (i.e. questions 3.9 and 6.1), the provision of certain services, for example, the provision of guarantee services, may be subject to Goods and Services Tax (***GST***) in Singapore if the provider of the service is registered for GST purposes pursuant to s9(1) read with the first schedule of the Singapore Goods and Services Tax Act 1993, unless the service qualifies for zero-rating as an international service or is an exempt supply on which no GST is chargeable. The rate at which GST is chargeable on standard-rated supplies of goods and services is 8.9% with effect from 1 January 2024.

6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for the purposes of this question.

Singapore tax laws do not contain thin capitalisation rules. However, should the banks be organised under the laws of a foreign jurisdiction, and no express choice of law is made in the finance documents, the applicable law governing the finance documents may be that of the foreign jurisdiction. In such a situation, the borrower may not be able to enjoy any rights and remedies that are available to a borrower in Singapore, but not in that foreign jurisdiction.

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Provided that it is *bona fide* and legal and there is no reason for avoiding the choice on grounds including illegality or public policy, the express choice of the laws made by the parties to a contract will be upheld as valid and binding in any action in the courts of Singapore and the courts will enforce a contract that has a foreign governing law.

In January 2015, the Singapore International Commercial Court (***SICC***) was established to hear international commercial disputes, including those governed by foreign laws.

The key features of the SICC are: (i) it is a division of the General Division of the Singapore High Court, which means that SICC judgments can be enforced as judgments of the Supreme Court of Singapore; (ii) it has a diverse panel of judges that include eminent international jurists and existing Supreme Court Judges; (iii) its proceedings are open court proceedings, although parties may apply for the proceedings to be confidential; (iv) there is flexibility for parties to seek leave of court to apply alternative rules of evidence (i.e. rules that differ from the existing Singapore rules of evidence) that they may be more familiar with; and (v) parties may appoint foreign-qualified lawyers to represent them in court where the cases have no substantial connection to Singapore or to address the court on matters of foreign law.

The SICC has heard a number of cases on a range of subjects and involving parties from various jurisdictions. Additionally, the Supreme Court of Judicature (Amendment) Act 2018 clarified that the SICC has jurisdiction to hear cases relating to international commercial arbitration (see s18D of the Supreme Court of Judicature Act 1969). A Technology, Infrastructure and Construction List was also established in 2021 to address technically complex cases (e.g. construction, engineering and technology-related disputes). Specialised procedures will apply to cases that are placed on the list with the consent of the parties, which allows for more efficient and expeditious resolution of such disputes. The Singapore International Commercial Court (Amendment No. 2) Rules 2022 also introduced a new amendment such that from 1 October 2022, the SICC will also have jurisdiction to hear any proceedings relating to corporate insolvency, restructuring or dissolution that are international and commercial in nature.

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a "foreign judgment") without re-examination of the merits of the case?

At present, certain judgments from English courts may be recognised and enforced in Singapore without a re-examination of the merits of the case under the Reciprocal Enforcement of

Commonwealth Judgments Act 1921 (***RECJA***) (for judgments obtained before 1 March 2023), the Reciprocal Enforcement of Foreign Judgments Act 1959 (***REFJA***) (for judgments obtained on or after 1 March 2023), and/or the Choice of Court Agreements Act 2016 (***CCAA***).

Under the RECJA, a final judgment which was obtained before 1 March 2023 for a sum of money obtained against a company in Singapore (which is not a judgment for the payment of a fine, penalty or tax, or anything of that nature) in a superior court in England may be enforceable against the company in Singapore, unless there are special grounds for refusing registration and enforcement (e.g. the judgment was obtained by fraud, an appeal is pending, or the judgment concerns a cause of action that could not be entertained in Singapore for reasons of public policy).

The REFJA, however, applies if the final judgment from the relevant English court was obtained on or after 1 March 2023. The RECJA was repealed with effect from 1 March 2023, and the legal framework for statutory recognition and enforcement of foreign judgments in civil proceedings was streamlined and consolidated under the REFJA. The REFJA provides for the possibility that non-money judgments (e.g. freezing orders, injunctions) as well as judgments that are not from superior courts, amongst others, may be registered and enforced in Singapore. However, as at the time of writing, such non-money and other judgments from English courts have not yet been gazetted as judgments which are registrable under the REFJA.

English judgments may also be recognised under the CCAA, which implements the regime created by the 2005 Hague Convention on Choice of Court Agreements (***Hague Convention***). Under the CCAA, English judgments may be recognised and enforced if parties had entered into an agreement designating the English courts as having exclusive jurisdiction in respect of a particular matter. In instances of overlap (i.e. where the English judgment is a final judgment for a sum of money obtained against a company in Singapore (which is not a judgment for the payment of a fine, penalty or tax, or anything of that nature) from a superior court in England and there exists an agreement designating English courts as having exclusive jurisdiction over the subject matter in dispute), enforcement of the English judgment will be governed by the CCAA and not the RECJA or REFJA (as may be applicable).

Like the RECJA and REFJA, recognition and enforcement of English judgments under the CCAA will not entail a re-examination of the merits. Similarly, there are also exceptions to the scope of the CCAA. For example, insolvency matters and matters involving consumers are excluded from the scope of the CCAA. Further, recognition and enforcement may be refused if, for example, the English judgment is inconsistent with a Singapore judgment given in a dispute between the same parties. There are also several grounds on which recognition and enforcement must be refused if, for instance, the foreign judgment was obtained by fraud in connection with a matter of procedure, or where it would be manifestly incompatible with the public policy of Singapore.

As to judgments by New York courts, only certain judgments issued by New York courts will be enforced in Singapore in accordance with the common law. There is no reciprocal agreement or convention between Singapore and the United States of America in respect of the enforcement of court judgments. There is also no Singapore legislation in place to facilitate the enforcement of New York court judgments. Broadly speaking, under the common law, a judgment for a fixed or ascertainable sum of money may be enforced, provided it is final and conclusive, and the foreign court had jurisdiction over the defendant in accordance with the private international law principles recognised by the Singapore courts. It will then be for the party resisting enforcement to prove that the New York courts had no jurisdiction over the matter, or that the judgment was obtained by fraud, or that there were any major procedural irregularities in arriving at the judgment, or that enforcement would be a direct or indirect enforcement of foreign penal, revenue or other public law, or that enforcement would be contrary to the public policy of Singapore. The Singapore court will not re-examine the merits of the case.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

The timeline for each case would depend on its own facts. Generally, if the claim is against a defendant in Singapore and based on a straightforward loan agreement or guarantee, it is possible to obtain default or summary judgment within three to six months of filing the claim (assuming there is no appeal).

There are generally three main methods of enforcement, namely:

S/N	For civil proceedings commenced before 1 April 2022	For civil proceedings commenced on or after 1 April 2022
1.	Writ of seizure and sale	Enforcement order for seizure and sale of property (application to be made in a single enforcement application)
2.	Garnishee proceedings	Enforcement order for attachment of a debt (application to be made in a single enforcement application)
3.	Examination of judgment debtor	Examination of enforcement respondent

For civil proceedings commenced on or after 1 April 2022, the Rules of Court 2021 consolidate methods of enforcement into a single enforcement order, where the party seeking enforcement of a judgment takes out a single application for one or more methods of enforcement, such as those listed at points 1 and 2 above. Depending on which method of enforcement is selected and whether any challenge is mounted by the debtor, the process could take two to six months or longer (again, assuming there is no appeal).

7.4 With respect to enforcing collateral security, are there any significant restrictions that may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?

There is no specific requirement for a public auction, although sale by public auction is commonly carried out as a matter of practice. Secured creditors typically have wide powers under

the terms of the security document to take possession, dispose or otherwise deal with the secured assets, or appoint a receiver in respect of the secured assets, to satisfy the secured debts. There may be requirements for regulatory consent in respect of certain types of borrowers (for example, regulated entities).

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?

There are no specific restrictions on foreign lenders filing a suit or foreclosing on collateral security, provided the Singapore courts have jurisdiction over the matter.

7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

Yes, there are various types of moratoria which are statutorily provided for under Singapore law in the bankruptcy, organisation and similar contexts. Broadly, these operate on enforcement on lender claims (though not always necessarily on enforcement of collateral security), and may be categorised into moratoria in the contexts of liquidation, judicial management and schemes of arrangement.

In the context of liquidation, the Insolvency, Restructuring and Dissolution Act 2018 (***IRDA***) provides for an automatic moratorium where a liquidation order is made, or where a provisional liquidator is appointed. Such a moratorium generally does not apply to the enforcement of collateral security, and in the event the secured creditor requires court action or proceedings to enforce its security, Singapore courts are likely to grant such permission. In the insolvent liquidation of a company, no secured creditor is entitled to any interest in respect of its debt after the commencement of the winding up, if the secured creditor does not realise its security within 12 months after the commencement of the winding up or such further period as the liquidator may determine.

In the context of judicial management, the IRDA also provides for an automatic moratorium upon the making of an application for a judicial management order or the lodgement of a written notice of appointment of an interim judicial manager (i.e. where creditors have resolved to place the company under judicial management, a process that does not involve the Singapore court). However, if within the period of 12 months immediately before the date on which such an application or lodgement the company already enjoyed such an automatic moratorium by virtue of a prior application for a judicial management order or lodgement, no second automatic moratorium will apply. An automatic moratorium also applies upon the making of a judicial management order. If such an automatic moratorium applies, generally a creditor may not enforce any security over the company's assets without permission from the court or the judicial manager. If a secured creditor does not realise its security within 12 months after the date on which the permission or consent to enforce the security was given or such further period as the judicial manager may determine, that secured creditor is not entitled to any interest in respect of its debt from the date that such permission or consent is obtained.

In the context of schemes of arrangement, under the IRDA and the CA, the court may grant a moratorium order (***Scheme Moratorium***) if applied by the company (under the IRDA and the CA), creditor or member (under the CA), which may cover the enforcement of security. Most companies would be able to avail themselves of the IRDA regime, under which an automatic 30-day moratorium comes into effect on the filing of a moratorium application (subject to the relevant statutory requirements being satisfied). Under the IRDA regime, related companies (i.e. the applicant company's subsidiaries, holding company or ultimate holding company) may apply to extend the Scheme Moratorium to the related companies. Further, the IRDA also allows a Scheme Moratorium to have worldwide or extraterritorial effect (i.e. applying to acts outside of Singapore). For the Scheme Moratorium to have extraterritorial effect, the applicant company must seek to restrain specific acts of a specific party that is in Singapore or within the jurisdiction of the Singapore court.

If the IRDA regime is unavailable, a company may seek a Scheme Moratorium under the CA but as a prerequisite the applicant company will need to put forth a sufficiently detailed scheme proposal first.

Notwithstanding the moratorium for companies in liquidation, judicial management or a scheme of arrangement, secured creditors may generally enforce their security with the permission of the court and in accordance with the terms that the court may impose.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

Foreign arbitral awards (i.e. arising out of arbitrations seated outside of Singapore) may be recognised and enforced in Singapore in accordance with the New York Convention in conjunction with the International Arbitration Act 1994 (***IAA***) (which puts into force the UNCITRAL Model Law on International Commercial Arbitration, with modifications) without having its merits re-examined. However, the courts may refuse to enforce such awards on grounds recognised by the New York Convention, which includes: incapacity of a party; failure to give proper notice to a party or the inability of a party to present his/her case; the selection of the arbitrators or the arbitral procedure was inconsistent with the agreement of the parties or the law of the seat; the award falling outside of the scope of the submission to arbitration; invalidity of the arbitration agreement; the award having been set aside; the subject matter of the difference between the parties to the award not being capable of settlement by arbitration under the law of Singapore; and/or the enforcement of the award being contrary to the public policy of Singapore.

An award arising out of an international arbitration seated in Singapore under the IAA may also be enforced in Singapore without having its merits re-examined.

The grounds for setting aside an arbitral award under the IAA are substantially the same as the grounds for refusing enforcement under the New York Convention, except that the award may also be set aside if there was fraud, corruption or a breach of the rules of natural justice in connection with the making of the award.

An award arising out of a domestic arbitration under the Arbitration Act 2001 may generally be enforced without having its merits re-examined, with the same grounds for setting aside as an international arbitration award. However, in limited situations the court may grant leave to appeal on a question of law that is of general public importance where the parties have not excluded such appeals by agreement.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

Bankruptcy proceedings in respect of a company, in the sense of court proceedings relating to the insolvency of a company, include liquidation, schemes of arrangement and judicial management. The restrictions on enforcing security in these contexts are by way of statutory moratoria, which are explained under question 7.6 above.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

Yes. Liquidators and judicial managers, but not receivers, can apply to set aside transactions entered into or claw back certain assets transferred before the commencement of liquidation or judicial management. Such transactions include transactions at an undervalue, unfair preferences, extortionate credit transactions, floating and unregistered (but registrable) charges and transactions defrauding creditors. The clawback period ranges from three years (transactions at an undervalue and extortionate credit transactions) to two years (unfair preferences, if given to a person connected with the company; if not, one year) before the commencement of liquidation or judicial management. Generally, floating charges created within one year (two years if given to a person connected with the company) before the commencement of liquidation or judicial management are invalid except to the value of the consideration (insofar as the consideration consists of money paid, goods or services supplied, or the discharge/reduction of debt) for the creation of the charge together with interest, unless there is proof that the company was solvent at the time the floating charge was created. Finally, charges that are registrable under the CA should be registered within 30 days after the creation of the charge, though the time may be extended by the court where it is, amongst other things, just and equitable to do so.

Though not directly affecting security, the IRDA also contains provisions against fraudulent trading (i.e. where the business of a company has been carried on with the intent to defraud creditors or for any fraudulent purpose) as well as wrongful trading (i.e. where the company incurs debts or other liabilities without reasonable prospect of meeting them when the company is insolvent or when such liabilities cause the company to become insolvent). A liquidator, judicial manager, contributory or creditor can in such instances apply for a declaration for the parties to the fraudulent/wrongful trading to be personally responsible for the debts/liabilities of the company.

In a liquidation, costs and expenses relating to the winding up as well as specified employment liabilities (including wages, retrenchment benefits, contributions under a scheme of superannuation and remuneration in respect of vacation leave, up to a certain limit prescribed by order in the Gazette) rank ahead of floating charges and must accordingly be paid out of property subject to a floating charge if the remaining assets of the company are insufficient to meet those debts. In a receivership, the same employment liabilities must be paid in priority to any claim for principal and interest secured by property subject to a floating charge.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Entities incorporated in Singapore are generally not excluded from bankruptcy proceedings in Singapore, although the source legislation for the winding up may differ depending on the type of entity in question. Various exclusions and/or modifications also exist in relation to specific kinds of entities and industries. As an example, a judicial management order under the IRDA cannot be made in relation to (amongst other entities) a banking corporation or a finance company licensed under the Finance Companies Act 1967, a licensed insurer licensed under the Insurance Act 1966, or a company otherwise prescribed under the Gazette (including securitisation special purpose vehicles, covered bond special purpose vehicles, certain approved financial institutions and merchant bank licensees) (this list is not exhaustive).

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

Self-help remedies may be available if provided under the contract or are otherwise conferred by the law for specific types of security. For instance, appointment of a receiver can be provided for in debentures, and the creditor may have a power of sale for properties subject to a mortgage or a pledge. In this regard, the right to appoint a receiver over a company can arise statutorily, contractually in accordance with the terms of the security document, such as a debenture, or by an exercise of the court's power to appoint a receiver on the application of the secured creditor. For the most part, the receiver's duties are owed to the appointing secured creditor, and the receiver would act in furtherance of the interests of the secured creditor to realise the collateral security.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

Yes, a party's submission to a foreign jurisdiction will generally be upheld as valid and binding in any action in the courts of Singapore. Whether such submission has taken place will be determined by the laws of Singapore.

In particular, where a party has submitted exclusively to the jurisdiction of a state that is party to the Hague Convention (see question 7.2 above), the CCAA would apply and a Singapore court must stay or dismiss proceedings in the Singapore court in favour of proceedings in the foreign court. This is subject to certain exceptions. For example, the CCAA does not apply to certain types of matters, such as insolvency matters and matters involving consumers. The Singapore court can also refuse to stay or dismiss proceedings in its courts if, for example, the agreement to submit to the foreign jurisdiction is null and void under the law of the foreign jurisdiction, or if giving effect to the agreement would lead to manifest injustice or would be manifestly contrary to the public policy of Singapore.

Even where the Hague Convention does not apply, Singapore courts will stay local proceedings if there is a valid exclusive jurisdiction clause in favour of a foreign court, unless there is strong cause to refuse a stay, such as an abuse of process or a denial of justice.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

A party's waiver of sovereign immunity may be legally binding and enforceable provided it satisfies the conditions set out in the State Immunity Act 1979.

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e., a lender that is not located in your jurisdiction)? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank *versus* a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

Under Singapore law, unless exempted or excluded, a person may not carry on the business of a moneylender without holding the requisite moneylenders' licence. The relevant legislation, the Moneylenders Act 2008, provides that any person who lends a sum of money in consideration of a larger sum being repaid (i.e. charge interest) shall be presumed, until the contrary is proved, to be a moneylender. The same prohibition would apply to a "foreign" lender who carries on the business of moneylending in Singapore from a place outside Singapore.

"Any person licensed, approved, registered or otherwise regulated by the MAS under any other written law", amongst others, would fall outside the ambit of the prohibition as an "excluded moneylender". These would include banks or finance companies that are licensed and regulated under the Banking Act 1970 and Finance Companies Act 1967, respectively. The question therefore is whether "foreign" lenders or other non-bank entities that are not so licensed, approved, registered or otherwise regulated by the MAS are necessarily excluded. With effect from 1 March 2009, an amended Moneylenders Act came into force in Singapore pursuant to which, amongst others, "any person who lends money solely to corporations" or "any person who lends money solely to accredited investors within the meaning of s4A of the Securities and Futures Act 2001" would be an "excluded moneylender". Accordingly, a lender can be an "excluded moneylender" provided that it lends (and has lent) money solely to corporations or only to accredited investors.

There has been academic debate on whether a "foreign" unlicensed lender or other non-bank entity would not be deemed an excluded moneylender if it had in the past lent money otherwise to individuals who were not accredited investors. The prevailing view, however, is that the Singapore courts are unlikely to allow such a defence without more to succeed in the context of legitimate financial activity of commercial entities.

For corporations convicted of unlicensed moneylending, a fine will be imposed of not less than S$50,000 and not more than S$500,000. In addition, subject to certain exceptions, the contracts for such loans, and guarantees or securities given for such loans, shall be unenforceable, and any money paid by or on behalf of the unlicensed moneylender under the contracts for the loans will not be recoverable in any court of law.

The granting of loans to corporations *per se* is not otherwise regulated in Singapore. There are no licensing or eligibility requirements in Singapore for an agent under a syndicated facility for lenders lending to a company in Singapore and, subject to the above, it need not be licensed or authorised provided that no other regulated activities (e.g. banking, securities or financial advisory activities) are being conducted.

11 LIBOR Replacement

11.1 Please provide a short summary of any regulatory rules and market practice in your jurisdiction with respect to transitioning loans from LIBOR pricing.

In December 2020, there were various developments in relation to the discontinuation of LIBOR and SIBOR, with implications for the industry benchmark transition to SORA. To provide additional guidance on cessation timelines and to support the transition to a SORA-centred SGD interest rate market for a range of financial products, the Steering Committee for Swap Offer Rate & SIBOR Transition to SORA (***SC-STS***) laid down the following key timelines to be observed by financial institutions (***FIs***): (i) FIs to cease usage of the Swap Offer Rate (***SOR***) and SIBOR in new derivatives contracts and in financial products respectively by the end of September 2021; (ii) the SC-STS to retain the originally contemplated end-date of end-2024 for the Fallback Rate (SOR); and (iii) FIs to target to reduce their SOR exposures to corporates to 20% by the end of 2022.

In line with the timelines above, the Association of Banks in Singapore and the SC-STS have finalised the key settings of the MAS Recommended Rate, which will apply as a contractual fallback reference rate in wholesale SOR contracts after 31 December 2024. In view of its recommendation to cease the reliance on LIBOR in new contracts, the SC-STS had also published an updated Transition Roadmap and set out supplementary guidance to help market participants price the conversion of wholesale SOR contracts to SORA for the current period until 31 December 2024. The committee's guidance provides clarity on the pathway for the eventual transition of all legacy SOR contracts to SORA, and will further facilitate the industry's transition away from SOR following its discontinuation on 30 June 2023.

Since the end of February 2021, key market participants such as OCBC have been offering a full range of SORA-based products. FIs have been encouraged to implement the essential changes to transition exposures to SORA, including the acceleration of staff training, operational changes, and client outreach. The key timelines and roadmap set out by the SC-STS provide a prudent path towards mitigating financial risks from the imminent discontinuation of LIBOR, and ensures continual access to important funding markets.

12 ESG Trends

12.1 Do you see environmental, social and governance (ESG) or sustainability-related debt products in your jurisdiction? If yes, please describe recent documentation trends and the types of debt products (e.g., green bonds, sustainability-linked loans, etc.).

The MAS has been taking active steps to develop Singapore as the leading centre for green and sustainability/sustainability-linked finance, and Singapore has seen significant growth in green and sustainable finance instruments, including green and

sustainability-linked bonds and loans – please refer to questions 1.1 and 1.2 above on the Singapore government's initiatives in this regard, and the significant lending transactions in relation to such ESG and sustainability-related debt products in recent years. The types of debt products we see in Singapore are mainly green and sustainability-linked bonds and loans, with documentation based largely on Loan Market Association (***LMA***)/Asia Pacific Loan Market Association (***APLMA***) templates, taking into account the relevant LMA/APLMA Green Loan Principles and Sustainability-Linked Loan Principles.

12.2 Are there any ESG-related disclosure or diligence requirements in connection with debt transactions in your jurisdiction? If yes, please describe recent trends and any impact on loan documentation and process.

There are no specific ESG-related disclosure or diligence requirements in connection with debt transactions in Singapore.

However, the Singapore Exchange introduced a phased approach to mandatory climate reporting for issuers of equity securities listed on the Singapore Exchange based on the recommendations of the Task Force on Climate-related Financial Disclosures in 2021. In 2022, climate reporting was made mandatory for all listed issuers on a 'comply or explain' basis. From 2023 and through to 2024, climate reporting is being made progressively mandatory for issuers in specified industries (namely, issuers in the (a) financial industry, (b) agriculture, food and forest products industry, (c) energy industry, (d) materials and buildings industry, and (e) transportation industry), while other issuers will continue to report on a "comply or explain" basis. The "comply or explain" approach requires issuers to describe their practices in relation to each principle and/or guideline. If the issuer excludes any component, it must disclose this and describe what it does instead, with reasons for doing so.

13 Other Matters

13.1 Are there any other material considerations that should be taken into account by lenders when participating in financings in your jurisdiction?

The principal Singapore law considerations for lenders when participating in financings in Singapore have generally been covered by the above questions and answers.

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