



Dear Readers,

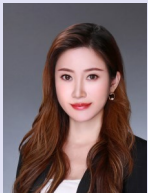
Find out in this E-Bulletin:

- How SGP's Companies Act is about to be amended,
- When the Unfair Contract Terms Act can also be applied and
- What it takes for General Terms and Conditions to become part of a contract

We appreciate your feedback and look forward to hearing from you.

RESPONDEK & FAN
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SINGAPORE

Proposed changes to Singapore's Companies Act and Limited Liability Partnerships Act to improve transparency

In view to improve the transparency and beneficial ownership of companies and limited liability partnerships ("LLPs") proposed changes are set to be made to Singapore's Companies Act ("CA") and the Limited Liability Partnerships Act. The proposed revisions have been detailed in the draft Corporate Registers (Miscellaneous Amendments) Bill. Such amendments also aim to alleviate the misuse of corporate entities for illicit purposes, such as money laundering, terrorism financing, and other threats to the financial system. The main proposed amendments are as follows:

Key Proposed Amendments

(i) Statutory timeline to update changes of the register of members of a foreign company

Currently, there is no timeline to update registers of foreign companies when there is a change in particulars. The proposed revision will require foreign companies to update their register of members within 30

days after any change in the particulars contained in the register.

(ii) Register of controllers, Registration of individuals with executive control under prescribed circumstances

Where a Singapore company, foreign company or LLP knows or has reasonable grounds to believe that the entity has no registrable controller; or has a registrable controller but has not been able to identify the registrable controller, individuals with executive control (i.e. CEO or partners in the LLPs) of the entity are taken to be registrable controllers of the entity. This must be reflected in its register of controllers within 2 business days.

Further clarification on the definition of "executive control" will be published by ACRA.

(iii) Statutory timeline to update the register of nominee directors

In the proposed revision, a statutory timeline will be imposed for Singapore companies to update their registers of nominee directors within 7 calendar days after it is informed (i) that a director has ceased to be a nominee; or (ii) of any change to the particulars of a person for whom a director is a nominee.

(iv) Register of nominee shareholders



A new requirement will also be imposed on Singapore companies and foreign companies to keep a non-public register of nominee shareholders in the prescribed form at the prescribed place.

Under the proposed amendments, nominee shareholders will be required to inform their companies or foreign companies when they become or cease to be nominee shareholders, within 30 days after the date on which they become or cease to be nominee shareholders.

The nominee shareholders must also provide prescribed particulars of their nominators to the companies or foreign companies within the same timeframe, and any changes to these particulars within 30 days after the changes. Companies are required to update their register of nominee shareholders within seven calendar days after receipt of information/particulars from the nominee shareholders.

Applicability of the Unfair Contract Terms Act in business-to-business contracts

The Unfair Contract Terms Act (“UCTA”) was enacted to protect consumers who have weaker bargaining positions and have to deal with larger businesses on their standard terms and conditions, which are usually non-negotiable and often may contain harsh or unreasonable terms.

The UCTA generally is only applicable in business-to-consumer contracts. However, the Singapore High Court’s ruling in the recent case of [Dathena Science Pte Ltd v JustCo \(Singapore\) Pte Ltd. \[2021\] SGHC 219](#) indicated that the UCTA does not only apply to business-to-consumer contracts. In this case, a sizeable cybersecurity software company (Dathena) successfully invoked various UCTA arguments to prevent the landlord (JustCo) from enforcing certain clauses in their lease agreement, which were held to be grossly

unfair and disadvantageous to Dathena. In particular, the Court found that Dathena was a “consumer” for the purposes of the UCTA; in any event, Dathena was also dealing with JustCo on JustCo’s “written standard terms of business”, without room to negotiate these terms. The conditions for the application of the UCTA were therefore satisfied.

What this means to corporate businesses

This judgment implies that any contract that a business enters into regularly in its course of business (such as leasing office premises) would fall within the ambit of UCTA. Further, if one party does not negotiate the terms, then it could be deemed to be dealing on the other party’s standard terms. The court is also cognizant that no matter how large the companies are, one party will always have less bargaining power than the other.

It is hoped that more judicial clarity will be shed on the situations in which the UCTA will apply. In the absence of which, parties should consider reviewing their standard terms to avoid overly oppressive and one-sided terms, or allow negotiation opportunity for the other party to avoid the UCTA’s application.

Standard Terms and Conditions have no force if incorporated in non-contractual documents

The Singapore Court of Appeal recently held that a reference to terms and conditions in non-contractual documents will have no legal force in the case of [Nambu PVD Pte Ltd v UBTS Pte Ltd and another appeal \[2021\] SGCA 98](#). In this case, Nambu entered into a contract (“Contract”) to engage UBTS to transport a machine. Unfortunately, the machine caught fire while being transported. Nambu then commenced an action against UBTS for the fire damage.



High Court’s Decision

The High Court held that the fire was caused by UBTS’s negligence, and held that UBTS could not rely on its own standard terms and conditions (“UBTS T&Cs”) and the Singapore Logistics Association’s standard terms and conditions (“SLA T&Cs”) to limit its liability as neither set of terms was incorporated into the Contract.

Court of Appeal’s Decision

Before the Court of Appeal, UBTS argued that the SLA T&Cs were incorporated into the Contract by virtue of either reasonable notice or by course of dealing as the SLA T&Cs were referenced in invoices and delivery orders issued by UBTS for the Contract as well as work done prior and unrelated to the Contract. The Court of Appeal disagreed with UBTS and opined that the delivery orders and invoices were not meant to have contractual effect.

This is so because the invoices and delivery orders were issued after the Contract was entered into. It was only after the machine had been burned, that UBTS issued a delivery order (“DO”) and invoice for that Contract. These documents came too late to introduce terms into the subject contract. Therefore, there was no reasonable notice to permit incorporation of the SLA T&Cs.

The Court of Appeal further held that, if it can be proven that the document containing the particular term sought to be incorporated into the contract is intended merely as a receipt and not as a contractual document as such, that term will not be incorporated into the contract.

The Court of Appeal also clarified that, non-contractual documents cannot give rise to a course of dealing such as to justify the incorporation of the terms in those documents. If the delivery orders and invoices were not binding for the very contracts for which they were

issued, there was no reason for Nambu to expect these delivery orders and invoices to be binding for the Contract.

Businesses should be mindful when attaching standard terms and conditions (“T&Cs”) in various documents, as these documents may not have contractual effect. As is apparent from this judgment, T&Cs must be expressly and properly referenced in contracts in order to have contractual force; a mere reference to T&Cs in documents such as invoices and delivery orders will not be sufficient if such documents do not have contractual effect.

While such T&Cs may, in certain situations, be incorporated where there has been a previous course of dealing, or established trade practice, these always depend on the specific facts of each case. Businesses should ensure that their T&Cs are properly incorporated by making them known to the other party before or at the time of entering into the transaction.