

Regional Restructuring & Insolvency

# Singapore and Malaysia Announce Protocols for Court-to-Court Cooperation in Cross-Border Insolvency and Shipping

## Introduction

Commercial transactions and disputes are increasingly likely to contain a cross-border element. As such, the ability of Courts to cooperate on the management of proceedings that span their respective jurisdictions will facilitate the efficient resolution of cross-border issues. In this regard, the Singapore and Malaysia Courts have demonstrated a commitment to judicial cooperation between the two countries.

On 5 October 2021, the Supreme Court of Singapore and the Federal Court of Malaysia announced the implementation of Protocols on Court-to-Court communication and cooperation in Admiralty, Shipping and Cross-Border Insolvency matters ("**Protocols**"). The Protocols put in place a framework for cooperation and communication between the two Courts to facilitate the efficient and timely coordination and administration of prescribed types of cases.

In line with cooperation between the Courts, the effective management of cross-border disputes involving Singapore and Malaysia would also be greatly facilitated by the collaboration between counsel in both jurisdictions. In this regard, Rajah & Tann Singapore LLP and Christopher & Lee Ong, as members of the Rajah & Tann Asia Network operating in Singapore and Malaysia respectively, are well placed to help jointly navigate the waters of the transnational dispute resolution process.

In this Update, we highlight the key features of the Protocols and how they impact cross-border commercial disputes.

## Scope of Protocols

The Protocols provide a framework for any of the Superior Courts of Malaysia and the Supreme Court of Singapore to communicate and cooperate in specific types of matters.

The Protocol on cross-border corporate insolvency matters applies to the following types of proceedings commenced in Malaysia and Singapore (or other similar processes as are available in Malaysia and Singapore):

## Regional Restructuring & Insolvency

- (a) Winding up;
- (b) Judicial management;
- (c) Schemes of arrangement for debt restructuring; or
- (d) Receivership in the context of corporate insolvency.

The Protocol on related admiralty and shipping matters applies to the following types of proceedings commenced in Malaysia and Singapore:

- (a) Proceedings involving claims coming within the admiralty jurisdiction of either Court;
- (b) *In rem* proceedings that involve the arrest of the same vessel, including the release or judicial sale in Malaysia or Singapore; or
- (c) Proceedings that arise out of the same casualty and which involve parties to an existing limitation action in Malaysia or Singapore.

## Court-to-Court Communication and Cooperation

The Protocols set out the procedures on how the Courts of Malaysia and Singapore may establish communication in the relevant areas. The key features are highlighted below.

**Initiation of communication** – Under the Protocols, each Court may initiate a request for court-to-court communication with the foreign Court concerning the cases listed above. The foreign Court may respond directly to the request and engage in court-to-court communication, the method of which will depend on the agreement by the two Courts.

**Disputant participation** – Parties before each Court will be notified of each request for court-to-court communication. However, the parties will not be permitted to participate in such communication unless the agreement of the Courts is obtained.

**Confidentiality** – The confidentiality of any documents, information and other data exchanged in court-to-court communication will be maintained, unless already in the public domain. The documents, information, and other data exchanged will only be used for the purposes and objectives of the Protocol concerned.

## Concluding Words

The Protocols are a welcome development. We see in the Protocols certain key elements and features of the Judicial Insolvency Network (JIN) (more information on which can be found [here](#)), a network of insolvency judges around the world, which focuses on cross-border insolvency matters.

## Regional Restructuring & Insolvency

The Protocols target matters in the pertinent areas of Cross-Border Insolvency, as well as Admiralty and Shipping. Disputes in these areas are likely to involve separate jurisdictions and are potentially complex. Different parties and stakeholders may be involved in the different jurisdictions and each jurisdiction may have its own unique considerations and circumstances. Court-to-court communication protocols provide a platform for each party to better understand and consider another party's position, and hopefully facilitate a holistic resolution of issues.

Parties with queries in the prescribed areas involving Singapore and Malaysia may feel free to contact our respective teams at Rajah & Tann Singapore LLP and Christopher & Lee Ong.

## Contacts

### Singapore



**Chua Beng Chye**  
Rajah & Tann Singapore LLP  
Deputy Head, Restructuring &  
Insolvency

T +65 6232 0419

[beng.chye.chua@rajahtann.com](mailto:beng.chye.chua@rajahtann.com)

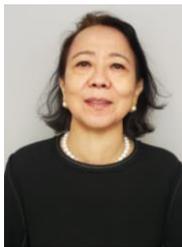


**Sheila Ng**  
Rajah & Tann Singapore LLP  
Partner, Restructuring & Insolvency;  
Commercial Litigation

T +65 6232 0590

[sheila.ng@rajahtann.com](mailto:sheila.ng@rajahtann.com)

### Malaysia



**Chua See Hua**  
Christopher & Lee Ong  
Partner, Restructuring & Insolvency

T +603 2273 1919

[seehua.chua@christopherleeong.com](mailto:seehua.chua@christopherleeong.com)



**John Mathew**  
Christopher & Lee Ong  
Partner, Dispute Resolution &  
Litigation

T +603 2273 1919

[john.mathew@christopherleeong.com](mailto:john.mathew@christopherleeong.com)



**Heng Yee Keat**  
Christopher & Lee Ong  
Partner, Dispute Resolution &  
Litigation

T +603 2273 1919

[yee.keat.heng@christopherleeong.com](mailto:yee.keat.heng@christopherleeong.com)

Please feel free to also contact Knowledge and Risk Management at [eOASIS@rajahtann.com](mailto:eOASIS@rajahtann.com).

## Our Regional Contacts

RAJAH & TANN | *Singapore*

**Rajah & Tann Singapore LLP**

T +65 6535 3600  
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

**Christopher & Lee Ong**

T +60 3 2273 1919  
F +60 3 2273 8310  
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

**R&T Sok & Heng Law Office**

T +855 23 963 112 / 113  
F +855 23 963 116  
kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

**Rajah & Tann Myanmar Company Limited**

T +95 1 9345 343 / +95 1 9345 346  
F +95 1 9345 348  
mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP  
Shanghai Representative Office**

T +86 21 6120 8818  
F +86 21 6120 8820  
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

**Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**

T +632 8894 0377 to 79 / +632 8894 4931 to 32  
F +632 8552 1977 to 78  
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

**Assegaf Hamzah & Partners**

**Jakarta Office**

T +62 21 2555 7800  
F +62 21 2555 7899

**Surabaya Office**

T +62 31 5116 4550  
F +62 31 5116 4560  
www.ahp.co.id

RAJAH & TANN | *Thailand*

**R&T Asia (Thailand) Limited**

T +66 2 656 1991  
F +66 2 656 0833  
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

**Rajah & Tann LCT Lawyers**

**Ho Chi Minh City Office**

T +84 28 3821 2382 / +84 28 3821 2673  
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

**Rajah & Tann (Laos) Co., Ltd.**

T +856 21 454 239  
F +856 21 285 261  
la.rajahtannasia.com

**Hanoi Office**

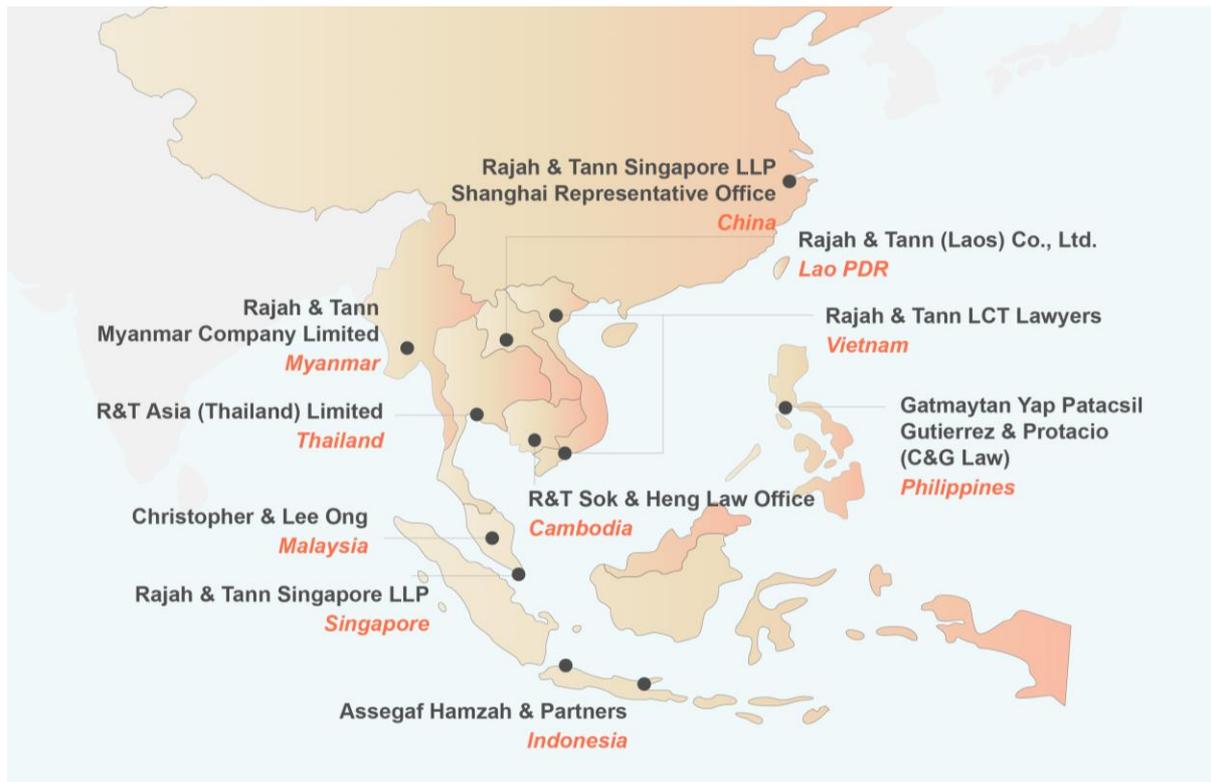
T +84 24 3267 6127  
F +84 24 3267 6128  
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This Update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this Update.

## Our Regional Presence



---

Rajah & Tann Asia is a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes our regional office in China as well as regional desks focused on Brunei, Japan and South Asia. Member firms are independently constituted and regulated in accordance with relevant local requirements.

The contents of this publication are owned by Rajah & Tann Asia together with each of its member firms and are subject to all relevant protection (including but not limited to copyright protection) under the laws of each of the countries where the member firm operates and, through international treaties, other countries. No part of this publication may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Asia or its respective member firms.

Please note also that whilst the information in this publication is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as legal advice or a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. You should seek legal advice for your specific situation. In addition, the information in this publication does not create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on the information in this publication.

---