



LEGAL UPDATES

International Child Abduction Act

Following Singapore's accession to the Hague Convention on the Civil Aspects of International Child Abduction (HCCAICA), the International Child Abduction Act was passed in Parliament in September 2010 and took effect from 1 March 2011. The Ministry of Community Development Youth and Sports has been designated the Central Authority to discharge Singapore's obligations under the Convention to process an application for the return of a child who is abducted from another Convention country. However, for the full extent of the services of Central Authorities in a fellow Convention country to be made available to Singapore, Convention countries must recognize Singapore's accession. To-date, Uruguay, the Bahamas, Germany, New Zealand and Greece have done so.

Arbitration

Doshion Ltd v Sembawang Engineers and Constructors Pte Ltd [2011] SGHC

The plaintiff, Doshion Limited, was an Indian company, and a sub-contractor of the defendant, a Singapore company. A dispute arose under two sub-contracts between the parties. The sub-contracts contained an arbitration agreement, and an arbitration was commenced.

Before the arbitration hearing, parties ended up in the High Court with the plaintiff contending that parties had reached an oral settlement by virtue of which the arbitration proceedings should be terminated. The defendant denied the existence of any such settlement. The High Court held for the defendant on 3 grounds: (i) the arbitrator was not functus as the arbitration proceedings had not even started; (ii) that a dispute over the existence of a settlement or a dispute over whether there is a dispute, is a matter for the arbitrator and finally, (iii) a dispute over the scope of an arbitration agreement is also a matter for the arbitrator to determine.

Copyright

Pioneers & Leaders (Publishers) Pte Ltd v Asia Pacific Publishing Pte Ltd [2010] SGHC 211

This recent Singapore High Court decision has now confirmed that a company can be the author of copyright works, holding that there is nothing in principle to prevent an incorporated body being deemed the author of a copyright protected work.

The defendant argued that the plaintiff company did not have authorship as section 27 of the Singapore Copyright Act allows only natural persons and not an incorporated entity to be an "author" of copyright protected works. The defendant further argued that granting authorship to an incorporated entity would be contrary to public policy as this leads to an indefinite perpetual copyright term.

The High Court held that a commercial perspective of authorship was required: where employees from different departments of a company contributed in creating parts of a work such that each part created was practically meaningless on its own and did not constitute an intellectual creation with copyright protection, and where it was really the company as a whole that brought together all the parts to create a final product that was



copyright protected; the company in such a situation would arguably be an "author" of the work. Who an "author" was ultimately depended on the facts of each case and more specifically, the rights that were sought to be protected, and the factual context from which the relevant works arose.

The High Court further held that the duration of copyright protection for works authored by companies should be 70 years from the date when the work is first published and the same period of protection as for unpublished works under section 28(3) of the Copyright Act or works of which the author is unknown under section 29 of the Copyright Act.

Banking

Hsu Ann Mei Amy (personal representative of the estate of Hwang Cheng Tsu Hsu, deceased) v Oversea-Chinese Banking Corporation [2011] SGCA 3

In this landmark case, the Singapore Court of Appeal clarified the principles governing the bank's duty in dealing with a customer's mandate as a two-stage inquiry: (i) whether the bank is put on notice and (ii) whether its actions were reasonable.

The Court of Appeal also considered the red flags which may put a bank on notice of potential financial abuse when dealing with old and infirm clients. In particular, the Court considered the following 12 guidelines accepted in financial institutions in other jurisdictions to identify instances where the old and infirm may be potential victims of financial elder abuse: (a) where an elderly person is accompanied by a new acquaintance to make a large or unusual withdrawal of cash; (b) where an elderly person is accompanied by a family member or other person who seems to coerce them into making transactions; (c) where an elderly person is not allowed to speak for him or herself, or where the party accompanying the elderly person does all the talking; (d) where an elderly person starts to appear fearful (particularly of the person accompanying him or her) or withdrawn; (e) where the elderly person is physically absent when the instructions are given to the bank; (f) where there are withdrawal slips presented by a third party, with the elderly person's signature on it but the rest of the slip is filled out in a different handwriting; (g) where there are significant withdrawals or transfers suddenly made by or on behalf of an elderly person, especially where the elderly person obtains no apparent benefit from such transactions; (h) where the elderly person does not appear to understand or be aware of recently completed transactions; (i) where the elderly person signs documents without appearing to understand what the documents mean; (j) where the elderly person gives implausible explanations or appears confused about what he or she is doing with the money; (k) where the elderly person engages in banking activity that is unusual, erratic or uncharacteristic; and (l) where there is creation of joint accounts with another person or sudden inclusion of new names on the elderly person's account.

On the facts of the case, the Court of Appeal found in favour of the bank in that it had acted reasonably in not carrying out its customer's mandate under circumstances which had put it on notice.