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27. SECURITIES AND FINANCIAL SERVICES REGULATION

Hans **TJIO**
LLM (Harvard), MA (Cambridge);
Advocate and Solicitor (Singapore); Barrister (Middle Temple);
CJ Koh Professor, Faculty of Law, National University of Singapore.

I. Introduction

27.1 In August 2024, the Monetary Authority of Singapore ("MAS") formed the Equities Market Review Group ("Review Group") to look into reviving valuations in the Singapore stock market, as well as increasing the number of new initial public offerings ("IPOs") in Singapore. The Review Group provided its first detailed report in February 2025 outlining its plans, but continued to provide informational updates in the interim. The report appears to have worked, as by the end of 2025, valuations in the Singapore stock market were up relative to markets around the world. Notably, this was so even though many other countries, like the UK, had similarly studied ways of reforming their markets and had therefore also recovered well in terms of their relative valuations. At the same time, the number of listed IPOs in Singapore also dramatically increased from four in 2024 to 13 in 2025. However, the relationship between these increases and the Review Group's report remains uncertain. Indeed, it has been pointed out that US markets have reached such high valuations today partly due to a decline in the number of publicly listed companies (due to delistings) given normal demand and supply conditions.[1] There is also some of that phenomenon in Singapore as the number of listed companies fell from a high of 782 in January 2011 to 622 in July 2024 and to the lowest point of 605 in October 2025. This chapter will therefore not examine IPO numbers in further detail.

1 Craig Doidge *et al*, *Are There Too Few Publicly Listed Firms in the US?* (Fisher College of Business Working Paper No 2025-03-005, Charles A Dice Center Working Paper No 2025-05, Cornell SC Johnson College of Business Research Paper European Corporate Governance Institute – Finance Working Paper No 1047/2025, HKU Jockey Club Enterprise Sustainability Global Research Institute Paper No 2025/025, 2025) point out that by 2023, the US had half the number of listed firms *per* capita as other countries. But this means that there are serious problems in their private equity markets, with many companies unable to return to the public markets but are not marked to market: Maureen Farrell, "Once Wall Street's High Flyer, Private Equity Loses Its Luster", *New York Times* (23 December 2025) <https://www.nytimes.com/2025/12/23/business/private-equity-stock-market.html> (accessed 31 March 2026).

27.2 The simple chart below tracks the Price-to-Earnings ("PE") ratios of the stock markets of various countries from January 2024, which is prior to when rumours of intervention in the markets started, to the end of 2025 when the full details of the Review Group's Report (published in November 2025) had been fully fed into the market (although the Report did not contain the precise changes to the Securities and Futures Act 2001[2] ("SFA") and SGX Listing Rules). Nonetheless, it was in February 2025 that those details were first formally announced. This included a S$5bn equity market development programme where selected fund managers were chosen to invest in Singapore stocks (mainly small and medium-sized enterprises); tax exemptions for fund managers' qualifying income derived from investing in Singapore-listed equities; requirements for family offices to invest in Singapore-listed entities; research grants for equity research (even at the pre-IPO stage for private companies with a local presence); and a relaxation of primary and secondary market listing requirements. Consultation on these proposals started in May 2025, and a progress update was released in July 2025[3] ("July 2025 Update") where the first three fund managers were chosen to invest in Singapore-listed shares with smaller market capitalisation, and research grants were awarded to enhance investment analyses. Then, in October and November 2025, final details of the proposed changes were announced and another batch of asset managers were appointed and allocated funds to invest. The market reacted positively to these developments even though actual funds were not disbursed till early 2026.

2 2020 Rev Ed.

3 Monetary Authority of Singapore, "MAS Appoints First Batch of EQDP Asset Managers; Commits S$50 million to Boost Equity Research and Product Listings; and Outlines Proposals to Enhance Investor Recourse", media release (21 July 2025) <https://www.mas.gov.sg/news/media-releases/2025/mas-appoints-first-batch-of-eqdp-asset-managers> (accessed 31 March 2026).

EVENT	Pre-Announcement		Interim	Post-Announcement		Final
DATE	Jan 2024	Jun 2024	Dec 2024	May 2025	Oct 2025	Dec 2025
COUNTRY	PE(%US)	PE	PE(%US)	PE	PE	PE(%US)
US	22.4(1)	24.7	26.8(1)	23.9	27.8	26.6(1)
SINGAPORE	10.2(0.46)	11.8	13.3(0.50)	14.2	15.6	16.5(0.62)
MALAYSIA	14.8(0.66)	8.3	15.0(0.56)	14.1	14.6	15.2(0.57)
AUSTRALIA	15.1(0.67)	19.9	19.8(0.74)	19.7	20.5	20.3(0.76)
UK	10.5(0.47)	13.5	15.7(0.59)	18.2	19.0	19.7(0.74)
HONGKONG	14.3(0.64)	13.8	14.3(0.53)	14.4	18.0	17.7(0.67)
CANADA	14.2(0.63)	17.0	18.4(0.69)	18.9	19.7	20.2(0.76)

These are country stock market PE ratios from World PE Ratio.

II. Takeovers

27.3 Drawing some parallels with takeover offers under the Singapore Code on Take-overs and Mergers ("Takeover Code"), MAS' August 2024 statement could be seen as an offer announcement, and its February 2025 statement, the posting of an offer document, which under r 22.1 of the Takeover Code, has to be made not less than 14 days and not more than 21 days after the offer announcement.[4] While both have effects on the market price of securities, their legal effects are different, an issue which the Bermudan Supreme Court addressed in *Annuity & Life Re Ltd & Pope Asset Management LLC v Kingboard Copper Foil Holdings Ltd*[5] ("*Annuity v Kingboard*"). While clearly not binding in Singapore, the Bermudan Supreme Court had to deal with the issue of whether a takeover offer announcement constituted a formal offer under the Takeover Code. This involved the successful 2019 takeover and eventual privatisation of the first defendant ("Kingboard"), a company incorporated in Bermuda but listed on the Singapore Exchange, and thus also subject to the Takeover Code.

27.4 More than a year before the takeover, there had been a minority shareholder petition for oppression against the defendants, who were Kingboard and its controlling shareholders. As part of the settlement agreement ("Settlement Agreement"), the defendants had acquired

4 The Final Report of November 2025 could be seen as a no-increase or no-extension statement that locks in the final offer price.

5 [2025] SC (Bda) 88 Civ.

the shares of the minority shareholder at a price of $0.45. However, in case the valuation was too low, the Settlement Agreement contained an anti-embarrassment clause which stated that the minority shareholders would also be paid the excess sum if the defendants or its affiliates enter "into a transaction to the effect that the shares in the Company are offered to be purchased or are issued at a price exceeding Singapore $0.45 *per* share"[6] within 12 months of the date of the Settlement Agreement. One issue that arose in the case was whether the offer announcement of a voluntary unconditional offer by one of the defendants to acquire the company for $0.60, which was issued a day before the 12-month period lapsed and eventually led to its privatisation, constituted such a transaction.[7] While Martin J eventually held that this was a matter solely for Bermudan contract law, the Takeover Code was examined in some detail as one argument made by the minority shareholder was that the offer announcement could not be withdrawn without the consent of the Securities Industry Council (and there must be extenuating circumstances) and thus had the same legal effect as a formal contractual offer. Consequently, it was argued that even though the offer document was posted after the end of the relevant period, the offer process had started earlier with the offer announcement and was therefore within the relevant period. However, Martin J thought that the Takeover Code was not strictly relevant as this was a matter of contractual interpretation for the proper law of the contract:[8]

> In this case, it is clear that as a matter of Bermuda law an announcement of an intention to make an offer is not an offer, certainly not one which can be accepted by anyone, and it is not of itself a transaction by which shares are offered to be purchased or sold. Therefore, as a matter of Bermuda law, the Court concludes that the terms of clause 7 were not triggered by the Offer Announcement on 4 April 2019.

27.5 Nonetheless, in *obiter dicta*, Martin J also said that he would have come to the same conclusion even if the provisions of the Takeover Code

6 *Annuity & Life Re Ltd v Kingboard Copper Foil Holdings Ltd* [2025] SC (Bda) 88 Civ at [3].

7 As to the meaning of transaction in the context of transactions at an undervalue, defrauding creditors under s 423 of the UK Insolvency Act 1986 (c 45), see *El-Husseiny v Invest Bank PSC* [2025] UKSC 4, noted Jonathan Foo & Hans Tjio, "Transactions That Place Assets Beyond the Reach of Creditors" [2026] *Legal Studies* (forthcoming). The equivalent provisions are found in Singapore in s 438 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed). See also *Envy Asset Management Pte Ltd v CH Biovest Pte Ltd* [2024] SGHC 46 and *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141, which are discussed by Hans Tjio, "Comparative Legal Treatment of Ponzi Schemes" [2026] *Journal of Business Law* (forthcoming).

8 *Annuity & Life Re Ltd v Kingboard Copper Foil Holdings Ltd* [2025] SC (Bda) 88 Civ at [127].

had been relevant. He held that both the offer announcement and the posting of the offer document were "separate and distinct phases of the process of making an Offer"[9]: while an offer announcement had some regulatory effect, it was not a document that constitutes a formal offer that can be accepted by target shareholders.[10] Instead, an offer announcement is usually initiated to "prevent a false market in the shares being created"[11] and this was not a case of a bidder "thereby entering into a transaction to the effect that the shares in [Kingboard] were offered to be purchased".[12]

27.6 The case is also significant for a number of other reasons. First, this was a case where an oppression action in a listed company had first succeeded, but was subsequently reversed by the Bermudan Court of Appeal[13]. This was what led to the Settlement Agreement. The same kind of litigation has not appeared before a Singapore court, arguably because it is hard to find "commercial unfairness", which is the oppression standard here, with an exchange-listed company, given that unhappy shareholders can sell out on the secondary market. In contrast, in the Bermudan approach, which follows the UK House of Lords in *O'Neill v Phillips*,[14] the plaintiff only needs to show that there was a breach of any mutual expectations held by the parties. Similarly, in Hong Kong,[15] a case of unfair prejudice was successfully brought by the majority shareholders

9 *Annuity & Life Re Ltd v Kingboard Copper Foil Holdings Ltd* [2025] SC (Bda) 88 Civ at [130].

10 Martin J accepted that Singapore law and Bermudan law were captured in the following cases: *Portcom Pte Ltd v Verrency Group Ltd* [2022] SGHC 97 *per* Philip Jeyaretnam J at [42] that "what must be communicated is something capable of being accepted by the shareholders so as to give rise to a contract, whether absolute or conditional" and *Re Chez Nico (Restaurants) Ltd* [1991] BCC 736, *per* Sir Nicholas Browne-Wilkinson VC at 746 that "the Offeror must specify the terms which are capable of being accepted by the shareholders so as to give rise to a contract".

11 *Annuity & Life Re Ltd v Kingboard Copper Foil Holdings Ltd* [2025] SC (Bda) 88 Civ at [134]. Graham Stedman, *Takeovers* (Longman, 1993) states at para 6.3 that "The rationale behind this is clear; press announcements are designed to provide information which the market will rely on, and to prevent the creation of a false market."

12 *Annuity & Life Re Ltd v Kingboard Copper Foil Holdings Ltd* [2025] SC (Bda) 88 Civ at [137].

13 *Kingboard Chemical Holdings et Al v Annuity & Life Reassurance Ltd et Al* [2017] CA (Bda) 3 Civ, reversing *Re Kingboard Copper Foil Holdings Ltd* [2015] Bda LR 97, discussed in Martin Ouwchand, "The Availability of the Unfair Prejudice Remedy for Activist Shareholders of Public Companies" (2016) 31 *Butterworths Journal of International Banking and Financial Law* 146.

14 *O'Neill v Phillips* [1999] 1 WLR 1092.

15 See *Luck Continent Ltd v Chen Chee Tock Theodore* [2013] 5 HKC 442, discussed by David C Donald, "Enforcement of Corporate and Securities Law in Hong Kong" in *A Financial Centre for Two Empires* (Cambridge, 2016) at pp 196–200. In the UK, see *Re St Piran Ltd* [1981] 1 WLR 1300 (although, as in *Luck Continent Ltd v Chen Chee Tock Theodore* [2013] 5 HKC 442, it did not eventuate in a buy-out order).

of a listed company against minorities who voted against changes to the company's articles that were required to maintain its stock exchange listing as their votes constituted a breach of mutual expectations shared by the shareholders to retain the company's listing status.

27.7 In addition, given the recent failures of attempts to privatise listed companies in Singapore where the bidder and its affiliates already hold a large number of shares in the target prior to the takeover offer, *Annuity v Kingboard* [16] illustrates the usefulness of a statutory provision that does not exist in Singapore. This is s 103 of the Bermuda Companies Act 1981 which allows for compulsory acquisition of the remaining shares once a bidder acquires 95% of the total number of shares in a company regardless of how many shares it or its affiliates held prior to the offer (subject to appraisal rights). In contrast, s 102 of that Act, like s 215 of the Companies Act 1967,[17] requires the bidder to reach 90%, which does not include all the shares it, its nominees or related corporations hold (in *Annuity v Kingboard*, they had about 88% at inception). This provision had been tightened in the first major reform of the area undertaken by the Companies Legislation and Regulatory Framework Committee in 2002.[18] This was because it was thought that the section had possibly been abused by controlling shareholders who set up special purpose vehicles ("SPVs") to bid for the remaining shares in a listed company and then tendered their own shares which counted to the 90% threshold. Then, the Companies, Business Trusts and Other Bodies (Miscellaneous Amendments) Act 2023[19] amended s 215 to further exclude from the 90% threshold a list of other persons connected with the bidder. At the same time, it is now also harder to succeed with delisting offers under r 1307 of the SGX Listing Manual which, after amendment in July 2019, requires a 75% vote of independent shareholders (the offeror and its concert parties must abstain on the delisting resolution) before a listed company can be delisted (which is one of the conditions attached to an offer) as well as the need for an independent financial adviser to certify that the offer price is fair and reasonable. Consequently, compulsory acquisitions of listed companies have become more difficult in Singapore, particularly when delisting is a condition of the transaction. This can be seen in the failed 2025 privatisation of Great Eastern by OCBC, which was then required to restore the free float of 10%: OCBC already had 93.72% of shares but could not get 75% of the remaining shareholders to vote in favour of the delisting offer. But as takeover rules seem to be both a form of corporate law (where the place of incorporation governs) as

16 [2025] SC (Bda) 88 Civ.
17 2020 Rev Ed.
18 Through the Companies (Amendment) Act 2003 (Act 8 of 2003).
19 Act 17 of 2023.

well as securities laws (where the place of public offering or listing rules apply), it was s 103 of the Bermuda Companies Act 1981 which facilitated Kingboard's privatisation, and it thus did not face the same difficulties.[20]

III. Securities and corporate litigation

27.8 The other important change that was announced in February 2025 was the strengthening of investor protection through enhancing avenues for shareholder recourse, largely through the provision of some form of compensatory regime for violations of the market abuse regime under the SFA. While this was initially seen as a possible form of US plaintiff/lawyer-driven class action litigation, which some research from the UK suggests may have led to higher valuations,[21] subsequent details provided in the July 2025 Update and the *Consultation Paper on Measures to Enhance Investor Recourse Avenues in Market Misconduct Cases* ("Consultation Paper") made it clear that this would not be the case. Instead, it will be closer to a China/Taiwan model where a lead plaintiff representative that satisfies certain criteria will bring legal action on behalf of investors against issuers (and possibly their directors).[22] The plaintiff may obtain some external funding but investors will also have to bear some of the costs. The framework may also involve an enhanced version of the civil actions that investors have been able to take on the back of MAS civil penalty actions or state criminal convictions that have been provided for market abuse since the SFA (s 234), which for various reasons have not been used.

27.9 This approach may be more appropriate for Singapore, given its culture and economic context. US securities action litigation has come under much criticism, *eg*, as said by Gevurtz:[23]

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20 It was held in *Goldilocks Investment Co Ltd v Noble Group Ltd* [2018] 5 SLR 425 at [13], however, that the Securities and Futures Act (Cap 289, 2006 Rev Ed) was arguably a "forum mandatory statute".

21 Fernan Restrepo, "The Capital-Market Effects of Introducing Private Rights of Action in Securities Regulation: Evidence from the United Kingdom" (2023) 66(1) *Journal of Law & Economics* 183. For a recent case on s 90A of the Financial Services and Markets Act 2000 (c 8) (UK), see *Allianz Funds Multi-Strategy Trust & Co v Barclays Bank Plc* [2024] EWHC 2710 (Ch). But s 90A was intended as a moderate investor action procedure unlike the US system: Paul L Davies QC, *Review of Issuer Liability, Liability for Misstatements to the Market* (HM Treasury Discussion Paper, March 2007).

22 Wang-Ruu Tseng, "Taiwan: Investor Protection in Taiwan's Capital Market" in *Global Securities Litigation and Enforcement* (Pierre-Henri Conac & Martin Gelter eds) (Cambridge University Press, 2019) at p 1046.

23 Franklin A Gevurtz, "United States: The Protection of Minority Investors and Compensation of Their Losses" in *Global Securities Litigation and Enforcement*

(cont'd on the next page)

> For observers from other nations, the result is to provide an object lesson in how to create an irrational system by not stepping back from the more obvious issues to ask deeper questions about what the system is or is not achieving.

27.10 Even more recently, Booth has said that US courts' "missteps have led the law horribly astray".[24] It is usually the case that as financial centres develop, shareholder rights will be enforced first through oppression actions against controllers (which will then be seen to be too wide and so restricted by the courts), then derivative actions against directors which are indirect (and so will not be fully satisfactory to shareholders) and then direct shareholder actions for compensation against companies (which again will be seen as too wide and will need to be managed carefully). The clearest recent example of the latter may be the UK Privy Council decision in *Jardine Strategic Ltd v Oasis Investments II Master Fund Ltd (No 2)*[25] which held that the old evidential "shareholder rule" favouring them did not apply and so legal advice privilege could be asserted by the company against its shareholders when there is litigation between them. Consequently, some suggest that actions for disclosure violations in the secondary securities markets should be brought by the company against its directors, as opposed to shareholders against the company for both corporate governance reasons as well as fairness amongst shareholders (especially those that are not in the plaintiff class).[26] But the Consultation Paper expressly stated that neither oppression nor breach of fiduciary cases, as opposed to litigation under the SFA, will come under the new investor compensation framework.[27]

27.11 In that context, the appellate decision in *Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd*[28] ("*Goh Jin Hian*") is significant. At first instance,[29] Goh, who was at the relevant time a non-executive director, was found liable to the company for both negligence and the failure to act in the company's best interests when it was near insolvency.[30] It was held

(Pierre-Henri Conac & Martin Gelter eds) (Cambridge University Press, 2019) at p 112.

24 Richard A Booth, "A Brief (and Partial) History of Securities Litigation" (European Corporate Governance Institute – Law Working Paper No 845/2025, 1 May 2025).

25 [2025] UKPC 34.

26 See Richard A Booth, "A Brief (and Partial) History of Securities Litigation" (European Corporate Governance Institute – Law Working Paper No 845/2025, 1 May 2025); and Hans Tjio, "Enforcing Corporate Disclosure" [2009] Sing JLS 332.

27 See Monetary Authority of Singapore, *Consultation Paper on Measures to Enhance Investor Recourse Avenues in Market Misconduct Cases,* (Consultation Paper P015-2025, October 2025) at para 2.12.

28 [2025] 1 SLR 872.

29 *Inter-Pacific Petroleum Pte Ltd v Goh Jin Hian* [2024] SGHC 178.

30 This was not a derivative action as the company was in liquidation and so the corporate action was initiated by the liquidator.

that Goh did not appreciate that the company was in the cargo trading business and not just bunker trading, and had incurred large debts as a result of drawdowns on bank facilities set up additionally for cargo trading. Goh resigned as director when he found out that the company was unable to pay the bank creditors. A few days later, an application to have the company placed under judicial management was filed. It was subsequent to that that Goh found out the extent of the company's indebtedness due to drawdowns for cargo trades. At first instance, it was held that given Goh's negligence, he was liable for the relevant losses from the cargo drawdowns which followed the breach of duty. The Appellate Division of the High Court disagreed and held that the test of causation for negligence required the plaintiff to prove that the loss in question would have been avoided if Goh had discharged his duty or care, and this burden had not been met. To reach this decision, the court discussed a couple of less well-known English decisions.

27.12 One case discussed was *Lexi Holdings Plc v Luqman*,[31] where non-executive directors were initially found not liable for their inactivity in the light of the managing directors' fraud as nothing they could have done would have prevented the loss that occurred. The English Court of Appeal[32] reversed the decision and found the two non-executive directors liable on the basis that they failed to prevent a loss which they could have prevented had they properly looked for answers to "searching questions". Notwithstanding this, Morritt C confirmed the approach of Briggs J at first instance. Kannan Ramesh JAD thought that this showed that there is a need for a plaintiff to show the "hypothetical edifice"[33] or "counterfactual"[34], and said of *Weavering Capital (UK) Ltd v Dabhia*:[35]

> Although the judge in the proceedings below had not provided any express analysis of causation, the English Court of Appeal found that it was implicit in the judge's findings that the breaches had caused the loss that was suffered by WCUK on a 'but for' basis (*Weavering Capital* at [53] and [55]). In this regard, it bears noting that in *Weavering Capital,* WCUK had succeeded on proving the 'hypothetical edifice', and the burden was on the appellants to rebut the counterfactual (*Weavering Capital* at [51]–[55]).

27.13 A similar approach requiring stricter but-for causation and the proof of a counterfactual was also applied to the account of profits for a breach of fiduciary duty by the Singapore Court of Appeal in *UVJ v*

31 [2009] BCC 716.
32 *Lexi Holdings Plc v Luqman* [2009] BCC 716 at [38].
33 *Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd* [2025] 1 SLR 872 at [140].
34 See further Niranjan Venkatesan, "Causation in Misrepresentation: Historical or Counterfactual? And 'But For' What?" (2021) 137 *Law Quarterly Review* 503.
35 *Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd* [2025] 1 SLR 872 at [148], referring to *Weavering Capital (UK) Ltd v Dabhia* [2013] EWCA Civ 71.

UVH,[36] but this was recently found to be unnecessary by the UK Supreme Court in *Recovery Partners GP Ltd v Rukhadze*[37] on the basis that the equitable duty to account was a separate duty and not a just remedy for a fiduciary breach.[38]

27.14 In *Goh Jin Hian,* the Appellate Division of the High Court said that a "director may be sentinel, but he is not a forensics investigator or a sleuth, unless there are signs that would put him on inquiry".[39] The duty of care is therefore less "actuating" than the duty to act in the company's best interests,[40] which the court in *Goh Jin Hian* also held was subjective in nature, with objective facts merely constituting evidence of subjective intent.[41] Importantly, Ramesh JAD said:[42]

> With respect, we therefore disagree with the Judge's finding that Dr Goh had breached the Creditor Duty. Dr Goh could not have breached the Creditor Duty if he did not exercise any discretion in relation to the Cargo Drawdowns. In our view, the Judge fell into error by taking the view that *Foo Kian Beng*[43] did not foreclose the possibility of the Creditor Duty applying to a director who failed to act with due care. It is clear from *Foo Kian Beng* that the Creditor Duty only applies to a director who had exercised his discretion to transact.

27.15 Consequently, the creditor-regarding duty only applies to the directors' duty to act in the company's best interest, which is subjective in nature. Given that Goh did not know of the cargo trading business and the cargo drawdowns, he could not be said to have breached the "creditor duty", which is to take the creditors' interest into account when a company is near insolvency as this required Goh to have procured the transactions in question.

27.16 While there were other cases that suggested that the duty to act in the company's best interest is objective in nature, the most recent Singapore Court of Appeal decisions have said that an objective approach is taken as to the surrounding circumstances only in determining whether the directors had breached their subjective duty to act in the company's

36 [2020] 2 SLR 336.
37 [2025] UKSC 10, noted Paul S Davies, "Accounting for Profits" (2025) 84 *Cambridge Law Journal* 241 and discussed by Weiming Tan, "Account of Profits in Dishonest Assistance, the 'Equal Rigour' Principle, and the Retreat from 'Status'" (2026) 142 *Law Quarterly Review* 58.
38 But see *UVJ v UVH* [2020] 2 SLR 336 at [27]–[30].
39 *Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd* [2025] 1 SLR 872 at [158].
40 *Credit Suisse Trust Ltd v Ivanishvili, Bidzina* [2024] 2 SLR 164 at [48].
41 *Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd* [2025] 1 SLR 872 at [123].
42 *Goh Jin Hian v Inter-Pacific Petroleum Pte Ltd* [2025] 1 SLR 872 at [125].
43 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361.

best interests.[44] It remains a question of *bona fides*. In contrast, the most recent UK position on the duty of directors to promote the success of the company under s 172 of the Companies Act 2006[45] is that the test is one of objective dishonesty.[46]

27.17 The position in Australia seems to be a hybrid of the two.[47] However, the fact that this standard is not fully stable or requires much theoretical[48] or contextual understanding[49] suggests that the good faith duty has been extended to situations where it is not fully suited, as has been suggested is the case with disclosure violations or environmental, social, and governance ("ESG") compliance where complying with externally imposed requirements may in fact appear to be against a company's best interests, at least in the short to medium term.[50] Even if this may be disproved objectively, a director could genuinely believe that it is in the company's best interest to ignore those external requirements, particularly if they are largely in the form of soft law, as many ESG requirements are. Separately, this is why the no-conflict rule is there to act as a form of prophylaxis to keep directors on track with respect to their good faith duty.[51] Similar arguments have been made for why the proper purpose rule is necessary to ensure that directors act constitutionally and adhere to rules given the less focused nature of the best interest duty, which has however been said to be a core fiduciary duty in Singapore alongside the no-conflict rule.[52]

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44 *Foo Kian Beng v OP3 International Pte Ltd* [2024] 1 SLR 361 at [74] and [94]; *BIT Baltic Investment & Trading Pte Ltd v Wee See Boon* [2023] 1 SLR 1648. Compare *Credit Suisse Trust Ltd v Ivanishvili, Bidzina* [2024] 2 SLR 164.

45 c 46 (UK).

46 *Saxon Woods v Costa* [2025] EWCA 708. The test there is linked to that in criminal law (*Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67), where there is perhaps a fear that juries may be too sympathetic to defendants on a subjective test. Countries without recent experience of juries are perhaps more comfortable having a subjective test, but with objective facts used to evidence intent.

47 See Rosemary Teele Langford & Ian Ramsay, "Directors' Duty to Act in the Interests of the Company: Subjective or Objective?" [2015] *Journal of Business Law* 173. In the UK, see *Charterbridge Corp v Lloyds Bank Ltd* [1970] Ch 62 at 74.

48 See *eg*, Amir N Licht, "Good Faith in Corporate Law: Between Cognition and Propriety, or Whose Conscience Is It Anyway?" (European Corporate Governance Institute – Law Working Paper No 881/2025, 26 September 2025).

49 Lionel Smith, "Degrees of Loyalty" in *Liber Amicorum in Honor of Professor Olivier Morétau* (A Parise, M Vitetta, & M Séjean eds, forthcoming, 2026).

50 Hans Tjio, "Sustainable Directors' Duties and Reasonable Shareholders" (2024) 25 *European Business Organization Law Review* 333.

51 Matthew Conaglen, "The Nature and Function of Fiduciary Loyalty" (2005) 121 *Law Quarterly Review* 452.

52 *Sim Poh Ping v Winsta Holding Pte Ltd* [2020] 1 SLR 1199 at [253]. Contrasting proper purposes, see Robert Flannigan, "Fraud On a Power, Improper Purpose and Fiduciary Accountability" (2019) 62 *Canadian Business Law Journal* 133.

IV. Business trusts and unitholder rights

27.18 In recent issues of the *Singapore Academy of Law Annual Review of Singapore Cases* ("SAL Ann Rev"), the matters that came up with Singapore business trusts and real estate investment trusts were whether they could be restructured by way of a corporate scheme of arrangement and more recently whether external managers that owned real estate investment trust ("REIT") units could be prevented from voting their units when the issue of their replacement by internal managers was subject to a unitholder vote, or the "no-look-through" principle. The first issue resurfaced in a 2025 court decision discussed below while the "no-look-through" principle with unitholder rights (and general exercise of rights by indirect shareholders) has been the subject of discussion in the financial press.[53]

27.19 One unforeseen consequence of using the trust structure for REITs in 2003 as opposed to the UK REIT which came about a little later in 2005 in corporate form, was that there were difficulties for the REIT to borrow (as the borrowing would be done by the trustee or manager). Corporate lawyers then tried to draft the REIT as a separate entity that is committed to the loan directly instead of the trustee or manager. The courts only had to partly address this issue when it came to the restructuring of business trusts some 15 years later. The cases that came to court, largely at first instance, tried to accommodate this development by analogising the REIT with the company for the purposes of scheme restructuring: *Re Croesus*.[54] This though was not about insolvent restructuring but a privatisation takeover by way of a scheme which had been provided for by the Securities Industry Council.[55]

27.20 But the issue the court had to confront directly in the 2025 case of *Re Dasin Retail Trust Management Pte Ltd*[56] was whether the trustee-manager remained liable for the debts incurred by a fund and corporate lawyers were quite surprised given how they thought Singapore

53 Lee Su Shyan, "More Nominee Shareholders, Accounts Could Be Detrimental to Investor Protection but It Is a Double Edge Sword", *The Business Times* (23 April 2025). In the UK, in the context of beneficial noteholder standing, see now *Caxton International Ltd v Essity Aktiebolag (Publ)* [2025] EWHC 1477 (Ch).

54 *Re Croesus Retail Asset Management Pte Ltd* [2017] 5 SLR 811, (discussed in Hans Tjio, "Securities and Financial Services Regulation" (2017) 18 SAL Ann Rev 680).

55 Securities Industry Council, Monetary Authority of Singapore, *Practice Statement on Trust Schemes in Respect of Mergers and Privatisations* (3 October 2008). See now The Singapore Code On Take-Overs and Mergers, Note On Definition of Derivative at pp 12–15 <https://www.mas.gov.sg/-/media/mas/resource/sic/the_singapore_code_on_take_overs_and_merger_24-january-2019.pdf> (accessed 31 March 2026).

56 [2025] 4 SLR 1346.

law had evolved[57] when it was held that it did. There, Kristy Tan JC held that it was "trite law" that the trust is "not a legal person but a relationship concerning property between the persons who hold that property on trust and those for whose benefit they do so";[58] the trust was therefore not a separate entity in the legal sense. Instead, the trustee-manager, Dasin Retail Trust Management Pte Ltd remained liable for the debts incurred on behalf of the trust, Dasin Retail Trust (which was a business trust listed on the Singapore Exchange), but was entitled to apply for relief under the Insolvency, Restructuring and Dissolution Act 2018.[59] This was to obtain a moratorium under s 64 and to restructure the debts (as opposed to restructuring the entire "entity" itself, which was perhaps more the issue in the earlier takeover cases).

27.21 The Privy Council has consistently held that a trust, even a business trust, is not a separate entity: *Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd.*[60] This was recently confirmed in *Equity Trust (Jersey) Ltd v Halabi,*[61] which dealt with the proprietary nature of a trustee's right of indemnity from the trust fund, where Lord Briggs said, however, that "a trust, like a company, has an enduring quality of its own".[62]

27.22 Consequently, the business trust is a hybrid entity, and its legal character must be assessed contextually. For example, borrowing Smith's modular theory of understanding property, one would need to determine the extent to which it operates as "entity property" – property owned by the trust that its creditors can focus on without worrying about the creditors of the beneficiaries or unrelated businesses.[63] It may be that the trustee-manager has two patrimonies and while it has personal liability for its own debts, that does not rule out liability also for the debts incurred on behalf of a trust. It may also be that it has some form of right of indemnity for those debts which could take the form of reimbursement or exoneration from the trust fund. The trustee's right of "recoupment" was examined in 2024 in *British and Malayan Trustees Ltd v Ameen Ali Salim Talib.*[64] There, it was held that creditors can in turn

57 Hans Tjio, "Merrill and Smith's Intermediate Rights Lying Between Contract and Property: Are Singapore Trusts and Secured Transactions Drifting Away From English Towards American Law?" [2019] Sing JLS 235.
58 *Re Dasin Retail Trust Management Pte Ltd* [2025] 4 SLR 1346 at [38].
59 2020 Rev Ed.
60 [2019] AC 271.
61 [2023] AC 877.
62 *Equity Trust (Jersey) Ltd v Halabi* [2022] UKPC 36 at [257].
63 Henry Smith, "Property as the Law of Things" (2012) 125 *Harvard Law Review* 1691.
64 [2025] 3 SLR 16. See further Matthew Conaglen, 'Trustees Competing Over Indemnity Rights" (2024) 48 *Melbourne University Law Review* 1.

only access trust assets through being subrogated to the trustee's right of indemnity. But that right of indemnity may have greater survivability only through statutory recognition, as in New Zealand, because it is otherwise lost if the trustees have acted in breach of trust or outside the authority given to them.[65]

27.23 The difference in how corporate lawyers and litigators look at the law has thus come to the fore in the area of business trusts as the former may have drafted something which judges now feel is a conceptual impossibility, *ie*, that creditors have direct claims to the trust fund as opposed to the trustee-manager who in turn has a right of indemnity from the fund. Appellate courts are put in a difficult position by practitioners and some matters should be resolved earlier in the higher courts before it becomes too costly to society to reverse an established practice. Arbitration is a problem in this respect.

V. Digital assets

27.24 But the issue with the trust-as-entity is about partitioning *existing* assets. It is in the digital asset space that practice and policy arguments have been most forcefully used in order to *create* property, which benefits those with first-mover advantages in this "new enclosure".[66] With the proliferation of so much new property from thin air based on weak doctrinal foundations,[67] it is understandable that many disputes now are arising over their ownership and transfer, and other forms of rent-seeking, even if they have largely avoided any form of securities or other financial regulation.

27.25 *Beltran, Julian Moreno v Terraform Labs Pte Ltd*[68] involved the first representative action before the Singapore International

65 Trusts Act 2019 (NZ) s 86 (which came into effect on 30 January 2021) now also allows creditors to be subrogated to a trustee's right of indemnity (which is for expenses and liabilities incurred) even if, for some reason, the trustee is not entitled to be fully indemnified. The final version is different from the draft proposed by the New Zealand Law Commission, *Review of the Law of Trusts: A Trusts Act for New Zealand* (NZLC R130, August 2013) at ch 16. This only applies if the creditor has given value in good faith and the trust property has received a benefit from the transaction between the trustee and the creditor, and the creditor can only rely on the trustee's indemnity to the extent of the value given.

66 Paddy Ireland, *Property and Contemporary Capitalism* (Bristol University Press, 2024) ch 4, citing Christopher Brett, *The New Enclosure: the Appropriation of Public Land in Neoliberal Britain* (Verso, 2018).

67 See *eg*, Robert Stevens, "Crypto is not Property" (2023) 139 *Law Quarterly Report* 615.

68 [2025] SGHC(I) 17.

Commercial Court brought under O 10 r 19 of the Singapore International Commercial Court Rules 2021. Here, ten representative claimants representing 356 other claimants grouped into ten classes sued three defendants for breach of unilateral contract, misrepresentation (fraudulent, negligent, and innocent), inducing breach of contract, and unlawful means conspiracy concerning seven misrepresentations in relation to digital assets. In particular, those representations were about the safety and soundness of the stablecoin, TerraUSD ("UST") which was supposed to be pegged to the US dollar at a one-to-one exchange rate but lost its peg during the Terra-Luna crash of 7 May 2022, causing it to lose most of its market value. The alleged misrepresentations were that UST was sounder than Bitcoin which is a more speculative cryptocurrency and also produces no interest payments. The claimants held UST tokens and sought compensation for their economic losses based on the causes of action above. The first defendant counterclaimed for a declaration that the claimants were bound by the terms and conditions hyperlinked on its websites.

27.26 While some representations were conceded as fraudulent, as class action procedures are not as yet in place in Singapore, the individual reliance of each plaintiff had to be shown. This confirms that in fraud claims – which otherwise seem to have a directness test for damages/loss – it is reliance that is "essential".[69] Although the misrepresentation does not have to be the sole reason for the investment, it has to be operative. While not framed like a duty of care for negligence liability, the plaintiff must have acted upon the false statement – it must be "actively present to their mind".[70] Anselmo Reyes IJ thought that while there is no presumption of reliance,[71] it will often be inferred from some form of inducement as long as the claimant is "within the class of persons within their contemplation as likely to be deceived".[72] However, external circumstances can support a countervailing inference, *eg*, that the representee did not believe in the representation, that it ceased to believe in the representation's truth at some point or that it entered into the transaction for a different purpose. This does not mean that the reliance

69 Arthur Cunningham, Civil Litigation of Commercial Fraud (Clarus Press, 2021) at pp 1–60. Similarly, leading US torts academics have argued for the central place of reliance in fraud: John CP Goldberg, Anthony J Sebok & Benjamin C Zipursky, "The Place of Reliance in Fraud" (2006) 48 *Arizona Law Review* 1001.

70 *Beltran v Terraform* [2025] SGHC(I) 17 at [98], citing *Axis Megalink Sdn Bhd v Far East Mining Pte Ltd* [2024] 1 SLR 524 at [139]. See also *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 at [14] (third requirement).

71 *Beltran v Terraform* [2025] SGHC(I) 17 at [93].

72 *Standard Chartered Bank v Pakistan National Shipping Corporation No 2* [1998] 1 Lloyds Rep 684 at 696; *Panatron Pte Ltd v Lee Cheow Lee* [2001] 2 SLR(R) 435 at [14] (second requirement).

has to be "reasonable"[73] but that the representee must have subjectively understood the representations to bear the pleaded meanings.

27.27 Other than one class, Category 9, which received the most compensation, the ten classes (which were unique in terms of the precise combination of representations relied on) did not rely on all seven representations. Reyes IJ also found that a number of representations were not actionable as they were statements to the future[74] (*eg*, that those who staked their USTs on the Anchor platform would earn up to 20% annualised returns) and/or did not bear the meanings pleaded.[75]

27.28 This decision is a building block for the development of the proposed investor compensation regime for market abuse which, particularly on the secondary market, may require some form of presumption of reliance to work so that all the claimants in the class do not have to show that they relied in the same way on a disclosure violation (which may be particularised) so long as they relied on the accuracy of the market price (which can be generalised). One of the proposals to strengthen ss 234 and 236 of the SFA civil claims is to facilitate investors' proof of their reliance on false and misleading statements. The October 2025 Consultation Paper sought views on the proposed mechanics in which this may be facilitated. One approach is found in the 1988 US Supreme Court case of *Basic v Levinson*,[76] which said that their stock markets were priced efficiently enough for them to adopt the "fraud on the market" theory". Essentially, this theory deems that all investors rely on the market price to make their trading decisions. As such, in the US, if there is any misrepresentation that distorts the market price, all the investors that traded on that misrepresentation would be deemed to have relied on it in the same way (even though in that case many investors sold without knowing about the misstatement with respect to merger negotiations). This allows investors to form a class (without having to show separate individual reliance on the misstatement itself as Reyes IJ required) in order to seek compensation largely from issuers (and their insurers) rather than from the directors/managers.[77] Despite some

73 *Beltran, Julian Moreno v Terraform Labs Pte Ltd* [2025] SGHC(I) 17 at [96]. See now *Jonathan Kupetz v Terraform Labs Pte Ltd* [2026] SGCA(I) 1.

74 *Beltran, Julian Moreno v Terraform Labs Pte Ltd* [2025] SGHC(I) 17 at [79].

75 *Beltran, Julian Moreno v Terraform Labs Pte Ltd* [2025] SGHC(I) 17 at [80].

76 485 US 224 (1988).

77 In contrast, while there is no aiding and abetting liability under Rule 10b-5, direct actions can be brought by shareholders against directors (and controlling persons under § 20(a) of the Securities Exchange Act 15 USC (US) (1934), although this is much less common than actions against corporate issuers, and individuals seldom actually pay anything in the resulting settlement: John Coffee Jr, "Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation" (2006) 106 *Columbia Law Review* 1534 at 1550.

reservations, *Basic v Levinson,*[78] has recently been approved in *Halliburton Co v Erica P John Fund Inc*[79] even though it was acknowledged that the concept of "fraud on the market" was premised on efficient markets and this has not been shown to be the case in recent financial crises like the Global Financial Crisis.

27.29 Where the regulation of digital assets is concerned, it appears that the focus is no longer on primary market prospectus requirements (which disclosures, as will be seen below, should have been a prerequisite to their acceptance as property) but on the secondary market regulation of digital service providers. In June 2025,[80] an enhanced regulatory framework for digital token service providers (which host either digital payment tokens or capital markets products) was promulgated under the Financial Services and Markets Act 2022,[81] requiring them to be licensed before they can carry out any business in Singapore even where all their customers are overseas – they were previously regulated only if they had Singapore clients. The regulation focuses on the money laundering and terrorism financing risks of digital payment tokens but does not cover utility or governance tokens; the difficulty is that the labels are not binary as most tokens are hybrid in nature.

VI. Corporate finance and capital maintenance

27.30 Unlike digital assets, which have been quickly accepted as property, with the UK Property (Digital Assets etc) Act 2025[82] and recent UK and Australian decisions even seeing them as a new form of intangible property that is distinct from a chose in action like a share, the latter took a long time to be accepted as property in the 19th century.

27.31 While debts were seen as property first, and assignments of them were recognised in equity and then at law, shares were only recognised as property when they were analogised with the debt as a chose in action in the later part of the 19th century in *Colonial Bank v Whinney*.[83] The recognition of shares as choses in action was in turn helped by the importance of prospectus disclosure which was required under the

78 485 US 224 (1988).
79 573 US 258 (2014). See also *Amgen Inc v Connecticut Retirement Plans* 568 US 455 (2013).
80 Timothy Goh, "MAS Clarifies Position On Regulation of Digital Token Service Providers", *The Straits Times* (9 June 2025).
81 Act 18 of 2022.
82 c 29.
83 *Colonial Bank v Whinney* (1885)30 Ch D 261.

Companies Act 1867[84] reifying these fundraising instruments.[85] This is consistent with Ireland's[86] point that it is regulation that makes future claims, in particular, a specie of property. A more modern version of the argument that he uses is that it is *SEC v WJ Howey*[87] and its interpretation of "investment contracts" – which triggers prospectus disclosure – that has buttressed the acceptance of US securities as property-as-capital.

27.32 Aside from prospectus disclosure, strict capital maintenance rules also help lock contributions made by shareholders in a company to create the "permanence" required even of modern tests of property from *National Provincial Bank v Ainsworth*.[88] These are part of the asset partitioning rules which help create priority structures so that creditors are given assurances that they rank ahead of shareholders. One of these rules is found in s 76(1) Companies Act 1967,[89] which is that a company cannot give financial assistance for the acquisition of its own shares. In *Public Prosecutor v Sim Chon Ang Jason*,[90] which involved the sentencing of a director of a company that had given such financial assistance, it was held by Vincent Hoong J that a sentencing framework should be provided for s 76 offences. He agreed with the Prosecution that there were no reported sentencing decisions under that provision, and that the diverse ways in which s 76(1) offences can be committed by a company meant that what was required was a "framework capable of assessing the overall culpability of an offender and the harm inflicted upon all stakeholders *in totality*" [emphasis in original].[91] A single starting point before any factual evidence in the case is examined[92] was therefore unsuitable as different stakeholders such as "creditors, shareholders, and third parties are harmed in qualitatively and quantitatively distinct ways" by a financial

84 c 131 (UK).
85 *Twycross v Grant* (1877) 2 CPD 469 at 483.
86 Paddy Ireland, *Property and Contemporary Capitalism* (Bristol University Press, 2024).
87 328 US 293 (1946), which Ireland sees as investments where its holders benefit from the efforts of others (Paddy Ireland, *Property and Contemporary Capitalism* (Bristol University Press, 2024) ch 4). Thomas Hobbes, *Leviathan* (1651) pointed out that there is no private property in the state of nature and it only exists with a sovereign power that creates and enforces property rights, *cf* John Locke, *Second Treatise of Government* (1690), for property from own body and labour.
88 [1965] AC 1175.
89 2020 Rev Ed.
90 [2025] 3 SLR 326.
91 *Public Prosecutor v Sim Chon Ang Jason* [2025] 3 SLR 326 at [17].
92 *Public Prosecutor v Sim Chon Ang Jason* [2025] 3 SLR 326 at [43], citing Benny Tan Zhi Peng, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Sentencing Frameworks" (2018) 30 SAcLJ 1004 at Appendix B para 5.

assistance breach.[93] Hoong J adopted the following indicative sentencing ranges provided by the Prosecution:

Harm / Culpability	Slight	Moderate	Severe
Low	Fine or up to 6 months' imprisonment	6 to 12 months' imprisonment	12 to 18 months' imprisonment
Medium	6 to 12 months' imprisonment	12 to 18 months' imprisonment	18 to 24 months' imprisonment
High	12 to 18 months' imprisonment	18 to 24 months' imprisonment	24 to 36 months' imprisonment

27.33 Hoong J provided further guidance for the low harm, low culpability category – that the "custodial threshold is crossed where: (a) the value of the company's assets that are actually or potentially depleted is significant relative to the size of the company, and (b) there is distortion in the market of the company's securities".[94] What remains unclear, however, is whether this sentencing framework applies to the other offences created in s 76, namely, unlawful share repurchases by a company or a company lending money on the security over its shares in s 76(1A).

27.34 Earlier, at trial,[95] Hoong J had reversed the Magistrate Court's decision that had acquitted Sim, who was the chief executive officer of Jason Parquet Specialist (Singapore) Pte Ltd ("JPS"), on the financial assistance charge. He found him guilty of one charge under s 76(1)(*a*)(ii)(B) of the Companies Act,[96] punishable under s 76(5) and read with s 408(3)(*b*) of the Act, for getting JPS to indirectly provide financial assistance to Tjioe, the managing director and shareholder of Tati Trading Pte Ltd ("Tati"), in connection with Tati's proposed acquisition of shares in Jason Parquet Holdings Ltd ("JPH"), JPS's holding company (the provisions also prohibit the giving of financial assistance for the acquisition of shares in such a company) at the time

93 *Public Prosecutor v Sim Chon Ang Jason* [2025] 3 SLR 326 at [43].
94 *Public Prosecutor v Sim Chon Ang Jason* [2025] 3 SLR 326 at [62].
95 *Public Prosecutor v Sim Chon Ang Jason* [2024] SGHC 169.
96 Cap 50, 2006 Rev Ed.

of JPH's IPO.[97] The Defence argued that the $535,000 received by Tati through DBS's financing facility was not a company asset of JPS *per se*, and it therefore could not constitute "financial assistance" by JPS, which was a wholly owned subsidiary of JPH. However, Hoong J held otherwise on the basis that the assets of JPS had been depleted and put at risk for the purpose of the acquisition as JPS incurred a debt to DBS which was not used to repay an obligation that had already crystallised at the time the financial assistance was rendered.[98]

27.35 Such strict capital maintenance rules for normal companies do not exist with the Singapore variable capital company ("VCC"), which makes it suitable for fund management businesses. Under s 2 of the Variable Capital Companies Act 2018[99] ("VCC Act"), a VCC can be set up as a single standalone fund, or as an umbrella fund consisting of two or more sub-funds. The shareholders of a VCC or holders of shares in a particular sub-fund of the VCC are the investors in that fund or sub-fund. Shareholders of a VCC or a sub-fund can ask for redemption of their shares without any restriction. In *Zhong Shan Strategic Fund v RG Strategy Fund VCC*,[100] such a request for redemption of shares in a sub-fund of a VCC by a shareholder (a mutual fund registered in the Cayman Islands) was not fulfilled and the shareholder petitioned for the sub-fund to be wound up on both just and equitable grounds as well as the insolvency ground that the sub-fund was unable to pay its debts. This was under para 14 of the First Schedule to the VCC Act which applies in place of s 254(1) of the Companies Act 1967[101] in setting out the grounds on which the court may order the winding up of a sub-fund.

27.36 It was held that the petitioning shareholder was not a creditor as a result of the sub-fund's failure to meet a redemption request. However, the shareholder was a contingent creditor given that the sub-fund's Constitution as well as the information memorandum on share subscription conferred on the shareholder the option to ask for their shares to be redeemed. This gave rise to an obligation on the part of the sub-fund to do so after the period of suspension for redemption

97 Section 76(16) of the Companies Act (Cap 50, 2006 Rev Ed) provided that the reference to the "proposed acquisition" of shares includes the subscription of shares and s 76(1) covers "a public company or a company whose holding company or ultimate holding company is a public company".

98 *Public Prosecutor v Sim Chon Ang Jason* [2024] SGHC 169 at [82] and [84].

99 2020 Rev Ed. The Monetary Authority of Singapore has warned about possible money laundering associated with the variable capital company: Owen Walker, "Singapore Warns of Illicit Funds in Popular Low-Tax Investment Vehicles", *Financial Times* (16 March 2026).

100 [2025] 5 SLR 322.

101 2020 Rev Ed.

which the VCC's board and fund manager were entitled to impose. At that future time, after the suspension was lifted, the sub-fund would be liable to the shareholder at a price to be determined as *per* the information memorandum. The petitioning shareholder also satisfied the definition of "contributory" under s 2(1) of the VCC Act. Kristy Tan J, however, found that the sub-fund was not insolvent on the single cash flow test which applies to other non-VCC companies as well under para 14(*d*) of the First Schedule to the VCC Act.[102] With respect to the just and equitable ground under para 14(i) of the First Schedule, this was also not established as there had to be both unfairness to the shareholders being locked in a company and a loss of substratum or primary commercial purpose before the statutory grounds of winding up were established.[103] In any case, in *obiter dicta*, Tan J thought that even if the court's jurisdiction had been invoked, she would have exercised her discretion not to wind up the sub-fund given that the action was an abuse of process as it was brought due to frustration with the "pace or structure of redemption"[104] and it was not about the sub-fund's viability.

VII. Market manipulation

27.37 Where non-VCC companies are concerned, however, capital maintenance rules are still quite strict and serve not only to protect creditors but perhaps also to prevent market abuse. This was what Hoong J observed in the sentencing judgment in *Public Prosecutor v Sim Chon Ang Jason*[105] when examining the reform of financial assistance rules in 2011 that:[106]

> … the Steering Committee went on to identify 'other secondary purposes of financial assistance prohibitions', namely, 'to prevent market manipulation and to inhibit management of the company interfering with the normal market in the company's shares'. Evidently, the protective rationale of s 76 of the Companies Act has since come to extend to not just shareholders and creditors of the company, but also to third parties such as the stock market in which that company's stocks are traded and the stock exchange itself.

27.38 Similarly, a few years ago in *International Healthway v Enterprise Fund*[107] at first instance, Hoo Sheau Peng J held that the prohibition against share repurchases found in s 76(1A) was not only about capital maintenance but was also a form of regulation against market

102 Following *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] 2 SLR 478.
103 *Zhong Shan Strategic Fund v RG Strategy Fund VCC* [2025] 5 SLR 322 at [128].
104 *Zhong Shan Strategic Fund v RG Strategy Fund VCC* [2025] 5 SLR 322 at [139].
105 [2025] 3 SLR 326.
106 *Public Prosecutor v Sim Chon Ang Jason* [2025] 3 SLR 326 at [37]–[38].
107 [2018] SGHC 246 at [25] and [29].

manipulation, although there the Court of Appeal only dealt with that particular prohibition in the context of the former.[108] In the latter situation, the most direct manipulation provision is found in s 197 of the SFA which proscribes market rigging and false trading. In respect of this, Hoo J was also the judge who heard the complex case of *Public Prosecutor v Soh Chee Wen*[109] (which spanned more than two years, with around 200 hearing days, noted in the previous issue of SAL Ann Rev), where she found Soh and Quah guilty of various offences arising out of a scheme to manipulate the markets for and prices of three listed companies on the Mainboard of the Singapore Exchange, namely Blumont Group Ltd, Asiasons Capital Ltd, and LionGold Corp Ltd. Soh was sentenced to 36 years' imprisonment and Quah to 20 years' imprisonment. The Court of Appeal fully endorsed Hoo J's findings and decision.[110]

27.39 Soh and Quah had carried out the scheme by controlling and financing it using an extensive web of 189 trading accounts held with 20 financial institutions (through trading representatives Soh and Quah worked with) in the names of 60 individuals and companies. Consequently, all the offences, including that of false trading and price manipulation, were brought under the rubric of conspiracy. One ground of appeal was that the conspiracy charges had not been sufficiently particularised, which the Court of Appeal rejected. The court thought that separate charges of conspiracy had been correctly brought as there were multiple separate agreements to commit each of the offences.[111] Some of the price manipulation charges were concerned with manipulation to achieve certain objectives whereas others were "a desperate bid to stave off a market crash which would unravel their scheme".[112] However, it was less clear that the false trading charges related to separate conspiracies. One difficulty there was that the court observed that s 197(1)(*b*) was amended during the relevant period where the manipulative trades occurred. This may have formally (although perhaps not in substance) altered the *mens rea* requirements for the provision, which changed from "create, or do anything that is intended or likely to create" to a "purpose" to create a false and misleading appearance of active trading or with respect to the market or the price of capital markets products traded on an organised market. Given that, the court thought that to mandate a single charge in those circumstances would create confusion for the defendants as to the case they had to meet. It said: [113]

108 *The Enterprise Fund III Ltd v OUE Lippo Healthcare Ltd* [2019] 2 SLR 524.
109 [2023] SGHC 299.
110 *Soh Chee Wen v Public Prosecutor* [2025] 2 SLR 176.
111 *Soh Chee Wen v Public Prosecutor* [2025] 2 SLR 176 at [220].
112 *Soh Chee Wen v Public Prosecutor* [2025] 2 SLR 176 at [220].
113 *Soh Chee Wen v Public Prosecutor* [2025] 2 SLR 176 at [224].

> Where there is a relevant change in the law, it seems inevitable that the consideration of whether there is an agreement to commit an illegal act, meaning in this case an act punishable under the SFA, must be assessed independently; it cannot be the case that this would necessarily constitute one and the same offence of conspiracy. This is also consistent with the purpose of s 132(1) of the CPC, which is to prevent prejudice to the accused person in having to defend against distinct offences which are grouped together in one charge. It thus follows that the Prosecution was entitled to bring separate False Trading Charges in relation to the pre-amendment and post-amendment versions of s 197(1)(*b*) of the SFA.

27.40 The Court of Appeal also upheld Hoo J's decision on the question of corporate attribution. Soh had argued that there had been no deception practiced on the financial institutions as their trading representative's knowledge had to be attributed to them. This is an argument that has been frequently used recently in financial cases all around the world, and it appears that attribution must be understood in context.[114] Sundaresh Menon CJ, rejecting Soh's argument, agreed:[115]

> 241 Second, even if the [trading representatives ("TRs")] were acting within their actual or ostensible authority (which they were not), the principles of attribution would nonetheless be inapplicable to impute their knowledge to the [financial institutions ("FIs")]. In *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329, we observed that an individual's knowledge or state of mind should not be attributed to a company 'where the company is itself the target of [the] agent's … dishonesty' (at [68]–[70]). We concluded that there was no rule of attribution applicable where the company, against which knowledge of a director is being attributed, is a victim of the director's wrongdoing.
>
> 242 Here, the FIs are victims of their agents' (namely, the TRs') dishonesty and their flagrant breaches of the SGX-ST Rules. As the Judge observed, the absence of *any* principle, rule, policy or logic justifying attribution is especially significant in this case because the individuals seeking to rely on it (namely, the Appellants) are not innocent third parties but rather individuals who are complicit in the breaches of duty by those agents (see GD at [1000]–[1002]). Both the Appellants must have been aware that they needed express formal authority from *both* the Relevant Accountholder and the FI to instruct trades for another person's account and sought to subvert this requirement. This is driven home by the fact that the First Appellant was an undischarged bankrupt who could not lawfully have transacted in his own name, and the Second Appellant had, on one occasion, responded to a TR who requested for her to complete

114 *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd* [2019] UKSC 50, noted Rachel Leow, "Attribution and Illegality Again" (2020) 136 *Law Quarterly Review* 181. The attribution of an agent's knowledge to a company (even a one-person company) depends on its context and purpose, *eg*, whether the company's responsibility is being apportioned with an agent or with a third party.

115 *Soh Chee Wen v Public Prosecutor* [2025] 2 SLR 176 at [241]–[242].

certain third-party authorisation forms by threatening to take her business to another brokerage (see GD at [988]). To attribute the TRs' knowledge to the FIs in such circumstances would be to create a perverse incentive for future offenders to work with similarly compromised agents to deceive and defraud their principal. This cannot be correct.

[emphasis in original]

VIII. Fraudulent conduct and conflicts of interest in fund management

27.41 In *Sun Weiyeh v Public Prosecutor*,[116] Tay Yong Kwang JCA, hearing a Magistrates Appeal in the General Division of the High Court, upheld the decision of the district judge[117] who had convicted the appellant, Sun, of two charges under s 201(*b*) of the Securities and Futures Act[118] for engaging in acts in connection with the sale of securities which were likely to be fraudulent or deceptive. The appellant, who was a portfolio manager of several funds, sold securities at an undervalue from one fund to another fund in which he held a majority shareholding, despite knowing of higher bids for these securities from third parties. He was sentenced to six months' imprisonment on each charge, with both imprisonment terms to run concurrently.

27.42 On appeal, the issue concerned the definition of fraud and the requisite *mens rea* to prove an offence under s 201(*b*), which is worded similarly to the US general anti-fraud provision in § 10 of the Securities Exchange Act[119] and its associated Rule 10b-5 that is foundational to their insider trading and market abuse regime. Here, however, Tay JCA noted that it was a general catch-all provision given Singapore's specific insider trading and market abuse provisions to cover securities fraud for the protection of investors.[120] He rejected arguments that US Supreme Court[121] decisions on the *mens rea* requirement of the section suggested that there "must be a specific intent to defraud, *ie*, that he intended the specific consequences that followed from his act, as opposed to having mere knowledge of the consequences of his act".[122] He did not see the US cases standing for that proposition, but only that fraud was to be contrasted with negligent non-feasance and only required knowing or intentional misconduct. The appellant's further argument that Tay JCA

116 [2025] 5 SLR 372.
117 *Public Prosecutor v Sun Weiyeh* [2024] SGDC 242.
118 Cap 289, 2006 Rev Ed.
119 15 USC (US) (1934).
120 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [40] and [61].
121 *Ernst & Ernst v Hochfelder* 425 US 185 (1976); *Aaron v SEC* 446 US 680 (1980).
122 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [55].

rejected was that s 201(*b*) should be aligned with the recently amended definition of the word "fraudulently" in s 25 of the Penal Code 1871[123] which expressly states that there has to be an "act with intent to deceive another person". The Prosecution, on the other hand, argued that fraud was distinct from deception and should be given a wider meaning in this context, which Tay JCA accepted. It could encompass dishonesty that does not arise from deception and "would include a director's breach of duty done with the knowledge that it would result in wrongful gain to himself or wrongful loss to others"[124] as the director was put in that position to safeguard, and not act against, the financial interest of the company. In summarising, Tay JCA said that "touchstone of fraud is dishonesty and an offence would be made out upon proof that the offender acted with an objectively dishonest state of mind".[125] He thus held that the sale to the fund in which Sun held a majority stake was fraudulent. As shown above, this criminal standard is also used in the civil liability test of whether directors have acted in the best interests of the company in the UK. In Singapore, however, it has been observed above that for directors' duties, the test is whether the directors subjectively believed that they were acting in the company's best interests.[126]

27.43 It appears that the fund manager of Sun's majority-owned fund, if it had been licensed in this case, could also be liable under the newer regulations promulgated under s 341 of the SFA, requiring a holder of a capital markets services licence *to mitigate conflicts of interest arising from the management of assets*.[127] That provision was used for the first time in the largest Ponzi scheme in Singapore's history when the former chief investment officer ("CIO") and director of a family office, Envysion, which was a holder of a capital markets services licence for fund management that advised and managed investment portfolios that had invested in the scheme, pleaded guilty for his neglect in not disclosing the conflicts of interest arising from its relationship with the Ponzi operator.[128] The Ponzi operator had given substantial loans to the fund's chief executive

123 2020 Rev Ed.

124 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [38].

125 *Sun Weiyeh v Public Prosecutor* [2025] 5 SLR 372 at [61].

126 It has been pointed out that good faith can be objective or subjective, depending on the context: Amir N Licht, "Good Faith in Corporate Law: Between Cognition and Propriety, or Whose Conscience Is It Anyway?" (European Corporate Governance Institute – Law Working Paper No 881/2025, 26 September 2025).

127 Securities and Futures (Licensing and Conduct of Business) Regulations (2004 Rev Ed) reg 13B(1)(*e*).

128 Christine Tan, "Former Chief Investment Officer of Firm That Invested in $1.46b Nickel Trading Scam Fined $9,000", *The Straits Times* (7 October 2025). Compare *ASIC v Citigroup Global Markets Australian Pty Ltd* [2007] FCA 963 at [7], where a similar provision found in s 912A(1)(*aa*) of the Corporations Act 2001 (Cth) did not apply to Citigroup Global Markets Australian Pty Ltd ("Citigroup") as the

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officer, part of which were injected into the firm when its base capital fell below regulatory requirements. There were also referral fee arrangements where the firm was paid a fee for referring clients to the scheme. Given this, it was quite clear that outside investors in the fund needed to be apprised of those arrangements. The CIO was fined under s 331 of the Act which provides for individual liability where an officer is party to the firm's wrongdoing.[129] One other charge of the firm failing to put in place an appropriate risk management framework for the management of funds[130] was taken into consideration in the CIO's sentencing. These are new or modified conduct of business rules that licensed persons under the SFA and their senior management should be aware of.

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contractual documentation that Citigroup had with its client expressly stated that it was not a fiduciary.

129 See Monetary Authority of Singapore, "Former CEO and Directors of Envysion Wealth Management Pte Ltd Charged With Offences Under the Securities and Futures (Licencing and Conduct of Business) Regulations, Securities and Futures Act, Financial Advisers Act, and Official Secrets Act (7 March 2024)", media release (7 March 2024) <https://www.mas.gov.sg/regulation/enforcement/enforcement-actions/2024/former-ceo-and-directors-of-envysion-wealth-management-pte-ltd-charged> (accessed 31 March 2026).

130 Securities and Futures (Licensing and Conduct of Business) Regulations (2004 Rev Ed) reg 13B(1)(*a*).