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Introduction

Special Economic Zones (“SEZs”) are designated areas within a country that offer a more favourable regulatory framework to encourage both local and international investment. Over the decades, SEZs have played a crucial role in driving economic growth, attracting foreign direct investment, and fostering industrial development. These zones typically provide investment-friendly incentives, such as tax breaks, streamlined regulations, and enhanced infrastructure. A prime example of a successful SEZ is Shenzhen in China, the country’s first SEZ, which has been instrumental in driving China’s economic reforms and continues to be a key player in its growth. Other examples of special economic zones in Asia include the Incheon Free Economic Zone in South Korea, Kendal SEZ in the Centra Java province of Indonesia, the BBK free trade zone comprising of Indonesian islands of Batam, Bintan, and Karimun, the Eastern Special Development Zone of Thailand and the Golden Triangle Special Economic Zone along the border region of Thailand, Laos and Myanmar.

In a similar vein, on 7 January 2025 at the 11th Malaysia-Singapore Leaders’ Retreat, the Governments of Malaysia and Singapore formally established the Johor-Singapore Special Economic Zone (“JS-SEZ”) through an exchange of the signed agreement. This collaborative effort is designed to facilitate the cross-border movement of people and goods, while strengthening the regional business ecosystem.

By joining forces, both nations aim to attract global investments more effectively and enhance their competitive edge. As Malaysian Prime Minister Anwar Ibrahim aptly stated, this initiative is unique in that it leverages the strengths of both countries, deepening their economic ties in an increasingly polarised world.

The JS-SEZ is situated in the state of Johor, spanning an area of approximately 3,588 square kilometres. It will comprise 9 flagship zones: Johor Bahru Waterfront, Iskandar Puteri, Tanjung Pelepas, Tanjung Langsat - Kong-Kong, Senai - Skudai, Kulai - Sedenak, Desaru - Penawar, Forest City, and Pengerang. These strategically located zones will play a crucial role in fostering economic development and positioning the region as a key hub for investment and industrial growth.

(a) Economic sectors:

- **Promoting investments:** Facilitating and encouraging investments from Singapore and international companies in 11 strategic economic sectors within the JS-SEZ. These sectors include manufacturing, logistics, food security, tourism, energy, digital economy, green economy, financial services, business services, education and healthcare.
- **Project expansion:** Supporting the expansion of 50 projects within the first 5 years and a

cumulative goal of 100 projects by the end of the 10-year mark, which is expected to generate 20,000 skilled job opportunities.

- **Renewable energy projects:** Facilitating the development of renewable energy projects to accelerate renewable energy trading between both nations.

(b) Movement of people and goods:

- **Talent mobility:** Enhancing Malaysia’s existing visa schemes, such as the DE Rantau Nomad Pass which allows qualified foreign digital nomads to travel and work in Malaysia.
- **Immigration facilities:** Expanding immigration clearance capacity by implementing automated immigration lanes and paperless clearance for goods.
- **Connection between the two nations:** Promoting the use of the Second Link Bridge (connecting Johor and Singapore) by commercial vehicles and additionally, to launch the Rapid Transit System (RTS) Link which is anticipated to commence by the end of 2026. The RTS Link is expected to facilitate the movement of 10,000 people between the two countries on a daily basis.

(c) Talent development:

- **Skills enhancement:** Attracting and developing talents aligned with industry needs within the JS-SEZ. This includes bolstering industry-ready skills training and education programmes in partnership with the Johor Talent Development Council (JTDC).

(d) Ease of doing business

- **One-stop investment centre:** Establishing the Investment Malaysia Facilitation Centre-Johor (IMFC-J) to serve as a central hub for facilitating investments and business operations within the JS-SEZ.

Before inking the JS-SEZ Agreement, the governments of both countries had proactively collaborated on several early initiatives. For example, Singapore implemented passport-free QR code clearance at its land checkpoints starting in March



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2024, while Malaysia established the IMFC-J one-stop shop to streamline and accelerate the process for companies looking to establish or expand within the JS-SEZ. Additionally, both nations entered into partnerships to enhance cooperation in technical and vocational education and training (TVET) programs to meet industry needs. They also streamlined customs procedures for land intermodal transshipments, enabling traders to apply for a single transshipment permit with Singapore Customs for land intermodal transshipments starting 1 January 2025.

Following the JS-SEZ Agreement, the Malaysian Government announced that, effective 1 January 2025, investors within the JS-SEZ would be eligible for a range of incentives, including:

1. **Special Corporate Tax Rate:** New companies undertaking new investment in qualifying manufacturing and services activities, namely, AI and Quantum Computing Supply Chain, Medical Devices, Pharmaceutical, Aerospace Manufacturing and Global Services Hub, are entitled to enjoy a special tax rate of 5% for up to 15 years. Existing companies undertaking new investment in the qualifying manufacturing and services activities on the other hand are entitled to enjoy a special investment tax allowance of 100% on the qualifying capital investment (excluding



Image by Reuters

land) incurred within 5 years which can be set-off against 100% statutory income.

- 2. Special tax rate for knowledge workers:** A special flat tax rate of 15% on chargeable employment income for a period of 10 years is available for eligible knowledge workers working in JS-SEZ.
- 3. Stamp Duty Exemption:** 40% stamp duty exemption on the instrument of transfer or financing agreement for the purchase of a commercial property in Johor Bahru Waterfront and Iskandar Puteri that remains unsold as at 31 December 2024.
- 4. Capital Allowance:** One off accelerated capital allowance for qualifying companies in respect of renovation costs incurred on a building or part of a commercial building within the JS-SEZ flagship areas for the purpose of qualifying company's business.

In conclusion, the JS-SEZ stands as a testament to the power of cross-border collaboration and visionary economic planning. By leveraging the strengths of both Malaysia and Singapore, the JS-SEZ is poised to drive regional growth, foster innovation, and create new opportunities for businesses and skilled talent. With its strategic focus on high-growth industries, talent development, and streamlined trade and investment processes, the JS-SEZ will not only enhance the competitiveness of both nations but also serve as a model for future

economic zones across the region. The foresight embedded in this initiative promises to accelerate the flow of investments, strengthen economic ties, and ensure sustainable, inclusive growth for years to come, making the JS-SEZ a pivotal cornerstone in the region's economic future.

This article is authored by our Partner, Ms Hoong Wei En and Associate, Ms Ooi Hui Tian. The information in this article is intended only to provide general information and does not constitute any legal opinion or professional advice.

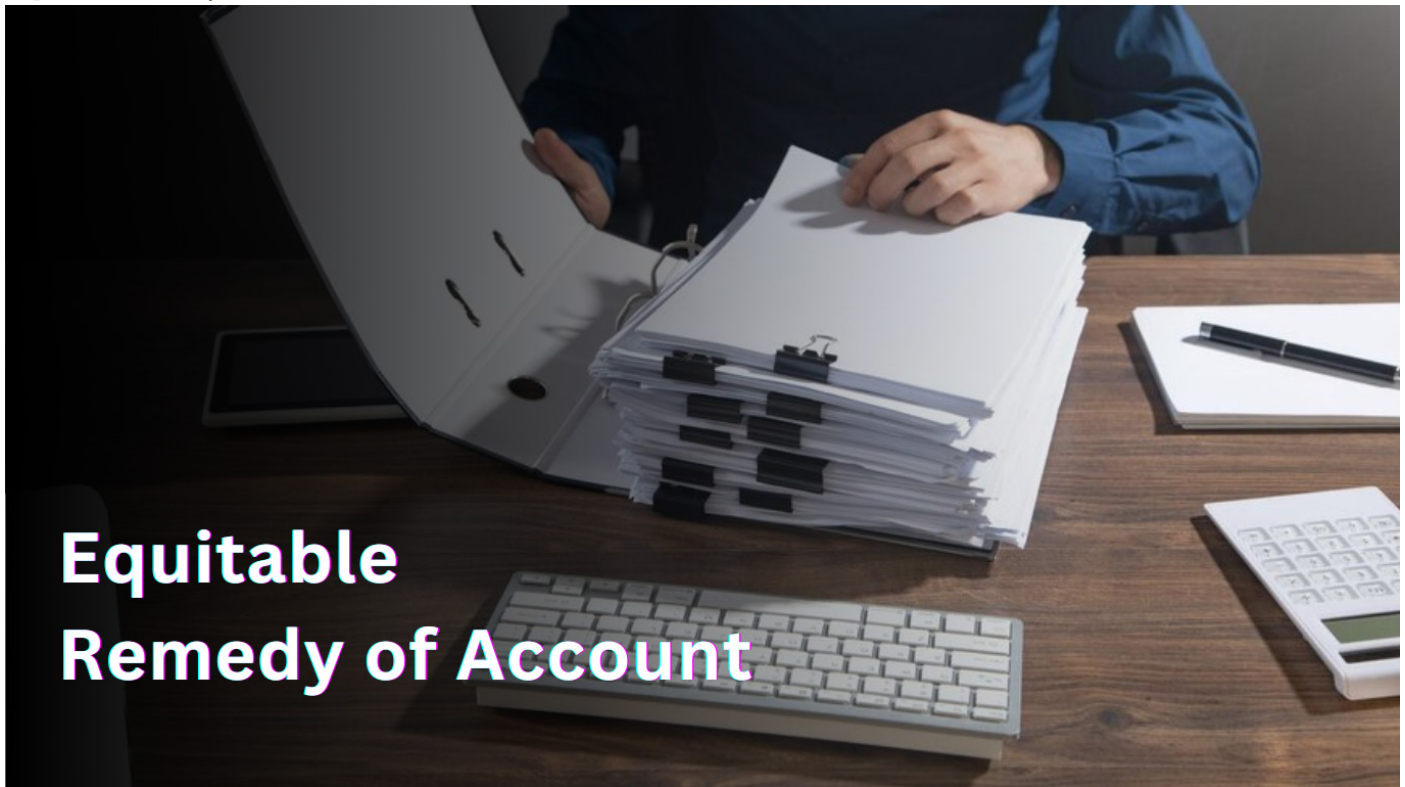


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Equitable Remedy of Account

Introduction

Have you ever faced a situation where your company funds seemed to vanish unexpectedly, only to discover that the loss was tied to the actions of a former director who was in charge of the operation of the company and has since resigned? You were left in the dark, with no clarity on what has transpired or how the funds were utilised?

A client of the firm has encountered such a situation, and we managed to assist them in successfully obtaining the equitable remedy of account from the Malaysian court.

Brief background

Our client is an Australian company who has decided to set up a company in Malaysia with the aim of expanding its business into the Malaysian market. Our client incorporated a local entity and appointed a local director who would be fully in charge of the operation of the entity.

Fast forward 3 years, the local director resigned. After taking over the management of the Malaysian entity, our client discovered that all the company funds had disappeared. These funds were purportedly used for the company operations, yet no supporting documents were available to substantiate the usage of the alleged operational costs and expenses.

Faced with confusion and unanswered questions, our client initiated a civil action for an order to compel the former director to account for the funds received by the Malaysian entity and purportedly used for the company operations.

Remedy of account

The remedy of account is an equitable remedy. The remedy is typically useful in situations where the facts are in the peculiar knowledge of the person who is being complained about.

For instance, in our case, the former director of our client was the only one in charge of managing the company bank account. There were no supporting documents, or any proper records kept to trace back the usage of the funds in the company bank account by the former director. Our client had no information or details on the actual usage of the funds as they were exclusively within the knowledge of the former director.

In seeking the remedy of account, the complainant must prove:

1. The complainee is an accounting party; and
2. The complainant is entitled to some sum of monies from the complainee.

An accounting party

To seek a remedy of account, the parties must be in a fiduciary relationship. While the categories of fiduciary relationships are never closed, the accepted traditional category of fiduciary relationship includes employee-employer and director-company. In other words, both employees and directors are considered accounting parties.

Entitlement to the sum found due

A point to be noted is that the remedy is not for the purpose of discovery. Hence, the complainant must prove to the court that the complainant is entitled to some sum of monies from the complaine.

For instance, in our case, our client had to prove that there was mismanagement or misconduct by the former director. Due to the mismanagement and misconduct, the former director was to repay the misused funds in the local entity to our client.



Image by Mohamed Hamdi on Pexels

The order

Ordinarily, a direction that an account to be taken may be included in the judgment given at the trial of the action. Such judgment may include directions as to the mode of taking the account and the future conduct of the action. Thereafter, the court, upon determining the exact amount owed by the complaine (i.e., accounting party), an order for payment will be given.

Conclusion

The equitable remedy of account serves as a critical tool for addressing situations where financial mismanagement leaves a company without clarity on the usage of its funds. In this case, it enabled our client to uncover the details surrounding the missing funds and hold the former director accountable for the misused funds.

This article is authored by our Partner, Mr Cheah Soo Chuan and Senior Associate, Mr Khor Wei Wen. The information in this article is intended only to provide general information and does not constitute any legal opinion or professional advice.



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Navigating Partial Revocation of Trademarks: Lessons from **Transferwise Ltd v Public Bank Bhd**

Introduction

The recent Court of Appeal decision in ***Transferwise Ltd v Public Bank Bhd*** offers valuable insights into Malaysian trademark law, particularly the application of partial revocation of registered trademarks due to non-use under Section 46(1) (read with Section 46(4) of the Trademarks Act 2019 (“Act”). This case underscores the importance of genuine trademark use and the need for trademark proprietors to align their registrations with actual commercial activities.

Background of the Case

Public Bank Berhad (“PBB”), one of Malaysia’s largest financial institutions, is the registered proprietor of the mark “



(which features a piggy bank device depicting a child wearing a cap emblazoned with the word “wise” and a coin, and the words “AKAUN SIMPANAN”, “SAVINGS ACCOUNT” and “WISE – WISDOM IN SAVING EARLY” beneath it) (“PBB’s Wise Mark”) in respect of the following services in Class 36:

“Banking, financial, insurance and investment services; real estate; securities brokerage; stock brokerage; computerised financial services; issuing letters of credit and travellers cheques; financing of loans; safe deposit and surety services; issuing statements of accounts; mortgage and purchase financing; money exchange services; automatic cash dispensing services; electronic funds transfer and automated payment services; credit and cash card services; trustee services, commodities and futures brokerage, management services for loan related transactions and financial planning services; all included in class 36.”

Since the registration of PBB’s Wise Mark in 1997, the mark has been used by PBB in relation to the provision of children’s savings accounts.

Transferwise Ltd (“**Transferwise**”) is a UK-based financial technology company specializing in currency exchange and transfer services across multiple jurisdictions, including Malaysia. In Malaysia, these services were initially offered under its “**Transferwise**” mark through a local third party in 2017, and from 2019 onwards, through its wholly-owned subsidiary, namely Wise Payments Malaysia Sdn Bhd. Following a global rebranding and its name change to “Wise Payments Ltd” in 2021, Transferwise has since provided its services under its “Wise” and “**wise**” marks (collectively, “**the Wise Marks**”).

With plans to expand its services in Malaysia, Transferwise applied to register its “**Transferwise**” marks and the Wise Marks in Malaysia. Transferwise also sought partial revocation of PBB’s Wise Mark under Section 46(1)(a) (read with Section 46(4)) of the Act, arguing that PBB had only used PBB’s Wise Mark in relation to children’s savings accounts and not for the full range of services covered under its registration.

The High Court dismissed Transferwise’s application, holding that Transferwise was not an “aggrieved person” under Section 46(1) of the Act and that PBB had sufficiently demonstrated use of PBB’s Mark. However, upon appeal, the Court of Appeal overturned the decision, partially revoking PBB’s trademark registration.

Key Issues

The case revolved around three primary issues which are discussed below.

(1) Whether Transferwise was an aggrieved person

Section 46(1) of the Act provides that the registration of a trademark may be revoked by the court upon an application by an aggrieved person based on any of the prescribed grounds.

The Court of Appeal, applying the established principles from Federal Court’s decisions in cases such as *McLaren International Ltd v Lim Yat Meen*, *LB (Lian Bee) Confectionery Sdn Bhd v QAF Ltd and Mesuma Sports Sdn Bhd v Majlis Sukan Negara Malaysia*; *Pendaftar Cap Dagangan Malaysia (Interested Party)*, notwithstanding that these cases were decided under the now repealed Trade Marks Act 1976, held that an aggrieved person: (i) is one who has either used or has a genuine and immediate intention to use a mark in a trade that is identical or similar to that of the registered proprietor; and (ii) must have a legal interest, right or legitimate expectation in his own mark and that his interest or rights are substantially impacted by the presence of the registered mark.

Based on these principles, the Court of Appeal found

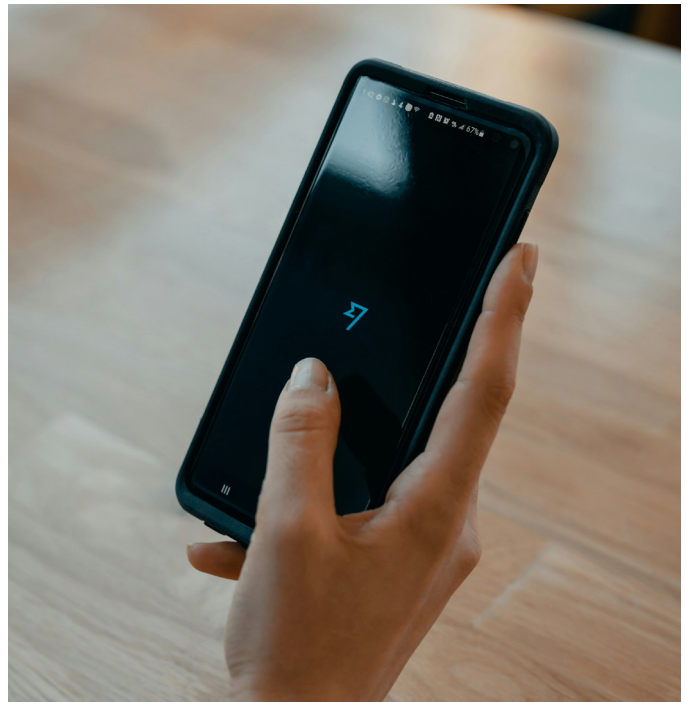


Image by Tech Daily on Unsplash

that Transferwise qualified as an aggrieved person under Section 46(1) of the Act as Transferwise had shown: (i) use of the Wise Marks in Malaysia through its subsidiary, with such use accruing to Transferwise; and (ii) a genuine and present intention to continue using the Wise Marks for its expanded services in Malaysia. The Court of Appeal rejected the High Court’s finding that Transferwise was not an aggrieved person merely because it is the Malaysian subsidiary that provides the services in Malaysia and that Transferwise could not have used the Wise Marks as it lacked the required licence from the Central Bank of Malaysia to provide such services.

(2) Whether PBB’s trademark registration ought to be partially revoked due to non-use, except for use in relation to children’s savings accounts

Under Section 46(1)(a) of the Act, a registered trademark can be revoked if it has not been used in good faith for a continuous period of three years following the date of issuance of the notification of registration, and there are no proper reasons for non-use. The burden of proof initially lies with the party seeking revocation, who must establish a prima facie case of non-use, after which the burden shifts to the registered proprietor to show evidence of use.

The Court of Appeal found that Transferwise had presented strong evidence demonstrating that PBB

had not used PBB’s Wise Mark for any services other than children’s savings accounts during the relevant period. Additionally, the Court of Appeal determined that PBB failed to provide sufficient evidence to establish use of PBB’s Wise Mark for any other services covered under its registration.

(3) Whether banking and financial services can be severed and compartmentalized and revoked in part?

Section 46(4) of the Act allows for partial revocation of a trademark registration where the ground(s) of revocation applies only to certain goods or services covered by the trademark registration.

The Court of Appeal recognized the court’s authority to remove specific goods or services from a trademark registration under this provision if the trademark is only used for a narrower range of goods or services. Consequently, it found that the High Court had erred in ruling that banking and financial services could not be easily severed or compartmentalized and that all the services registered under PBB’s Wise Mark were inherently relevant.



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Given the clear evidence that PBB’s Wise Mark had only been used for children’s savings accounts, the Court of Appeal found that PBB’s trademark registration should have been partially revoked and limited to “banking” and “financial” services only given that “children’s savings accounts” fell within these services. However, the Court of Appeal was reluctant to further limit the services to “children’s savings accounts” as such a limitation would be unnecessarily confusing and restrictive, and not in the interest of the public or the trade.

The above view finds support in the Singapore High Court’s decision in *Weir Warman Ltd v Research & Development Pty Ltd*, where the court, in considering Section 22(6) of the Singapore Trade Marks Act (which is in *pari materia* with Section 46(4) of the Act), similarly declined to narrow the specification of “pump parts” into specific types of pumps for which the defendant’s “Warman” mark was used, although it found that the defendant’s registration should have been partially revoked and limited to “pump parts”. In delivering its judgment, the Singapore High Court in *Weir Warman Ltd (supra)* tacitly approved the reasoning in *Bluestar Exchange (Singapore) Pte Ltd v Teoh Keng Long* that narrowing the specification of “knitwear” to the specific categories of clothes for which the respondent’s mark was in fact used was not in the interest of the public or trade as it would result in confusion and invite litigation. The court further elaborated that the task of the court in partial revocation was to limit the specification so that it reflected the circumstances of the particular trade and the way the public would perceive the trademark’s use.

It is interesting to note the Singapore High Court’s observation in *Weir Warman Ltd (supra)* regarding the contrary position of the UK courts on partial revocation under Section 46(5) of the UK Trade Marks Act 1994 (which is also in *pari materia* with Section 46(4) of the Act). In the UK, the court and the Registrar have the discretion to re-write the specification of goods or services to achieve the required degree of revocation such that the courts may “dig deeper” into certain wider specification and insert words of limitation into the specification.

In *Mercury Communications Limited v Mercury Interactive (UK) Limited*, although the case was decided under the old (repealed) UK Trade Marks

Act 1938, the court opined that an overly wide specification such as “computer programs”, could be partially cancelled. Additionally, the court was of the view that it was, in appropriate circumstances, necessary to “dig deeper” into the meaning of the description to assess its scope in relation to the actual use of the mark, particularly where non-use in respect of a significant subset of a wide general description was established.

In ***Minerva Trade Mark***, the court found that while the registered mark “**Minerva**” had been used for printed stationery, there was no use for printed literary matter. As a result, the court took the view that the broad specification of “printed matter” could be narrowed, leading to the revocation of the trademark registration for all other printed materials except for stationery.

The extent to which it was appropriate to “dig” into a specification of trademark registrations was critically examined in ***Decon Laboratories Limited v Fred Baker Scientific Ltd***. The court held that the key consideration is what constitutes a fair specification of goods or services, taking into account the actual use of the trademark by the proprietor and the expectation that such use would continue. The court emphasized that there was no pressing need to confer on the proprietor of a wider protection than warranted by actual use. Instead, a balance must be struck between the interests of the proprietor, other traders and the public considering that the trademark registration reflects the extent to which the mark has genuinely been used. In that case, the court restricted the specification of cleaning products for “general purpose” to “all for non-domestic use” given its actual industrial use.

Conclusion

This Court of Appeal case highlights the importance of partial revocation in ensuring that trademark registrations align with actual and genuine use, preventing businesses from monopolizing broad categories of goods and services without genuine commercial activity. Therefore, trademark proprietors should exercise caution when applying for broad specifications, ensuring that their trademark registrations accurately reflect actual and intended use. Failure to use a registered trademark may leave proprietors vulnerable to revocation challenges,

which could result in the limitation or complete loss of their registered trademark rights.

It is noteworthy that in determining the issue of partial revocation, Singapore appears to have adopted a more cautious stance with a focus on preventing consumer confusion and unnecessary disputes. In contrast, the UK has taken a more interventionist approach, actively modifying and rewriting specification of goods and services to ensure that protection is limited to actual use, thereby preventing overly broad claim that could restrict market competition. While the Court of Appeal in the present case leaned toward Singapore’s approach, it remains to be seen how the Malaysian courts will continue to address partial revocation given these differing approaches.

This article is authored by our Partner, Mr Ng Kim Poh and Senior Associate, Ms Chong Kah Yee. The information in this article is intended only to provide general information and does not constitute any legal opinion or professional advice.



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