

May 2017 - European Court of Justice says EU – Singapore FTA requires national approval

Summary

About two and a half years after the European Union (EU) – Singapore Free Trade Agreement was concluded and initialled, the European Court of Justice of the EU (“ECJ”) issued Opinion 2/15 on 16 May 2017 that rules that this agreement requires ratification by all the EU member states and relevant regional parliaments to fully enter into force. This ruling cannot be appealed. Full text of the ruling can be found here:

<http://curia.europa.eu/juris/document/document.jsf?docid=190727&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=529746>

Pertinent details

The ECJ has found that some of the provisions envisaged in the agreement fall within competencies shared between the EU and its member states, hence the deal cannot be concluded by the EU alone. However, there are only two aspects of the agreement highlighted by the ECJ as being outside the sole competency of the EU, being:

- the field of non-direct foreign investment; and
- the regime governing dispute settlement between the investors and member states.

The ECJ has clarified that other aspects of the agreement do fall within the sole competency of the EU, notably including:

- access for goods and services;
- public procurement;
- protection of direct foreign investments;
- intellectual property rights;
- combatting anti-competitive activity;
- sustainable development;
- exchange of information.

Implications

The ECJ ruling will have an impact on the implementation of the EU – Singapore FTA as well of future agreements that the EU negotiates.

For the EU - Singapore FTA, which has already been agreed, it is not likely that the EU will seek a re-negotiation of the agreement to bring it fully within its own competency. It is more likely that it will look to implement the parts of the agreement that already fall within its competency on a provisional basis, while awaiting the ratification of the full agreement by the relevant national and regional bodies.

For other, future agreements, given the limited areas that the ECJ has ruled to be outside the EU’s sole competency, it may well be that the EU will seek to negotiate agreements that omit these parts. The attractiveness of entering new trade agreements, both for the EU and its dialogue partners, could easily off-set the slightly narrower scope of agreements that ensue.

Let’s talk

For more information or analysis, please contact:

Frank Debets

Managing Partner

Office: +65 6236 7302

Email: frank.debets@sg.pwc.com



The information contained in this article is of a general nature only. It is not meant to be comprehensive and does not constitute the rendering of legal, tax or other professional advice or service by PricewaterhouseCoopers WMS Pte Ltd (“PwC”). PwC has no obligation to update the information as law and practices change. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PwC client service team or your other advisers.

© 2017 PricewaterhouseCoopers WMS Pte Ltd. All rights reserved. “PricewaterhouseCoopers” and “PwC” refer to the network of member firms of PricewaterhouseCoopers International Limited (PwCIL). Each member firm is a separate legal entity and does not act as agent of PwCIL or any other member firm.