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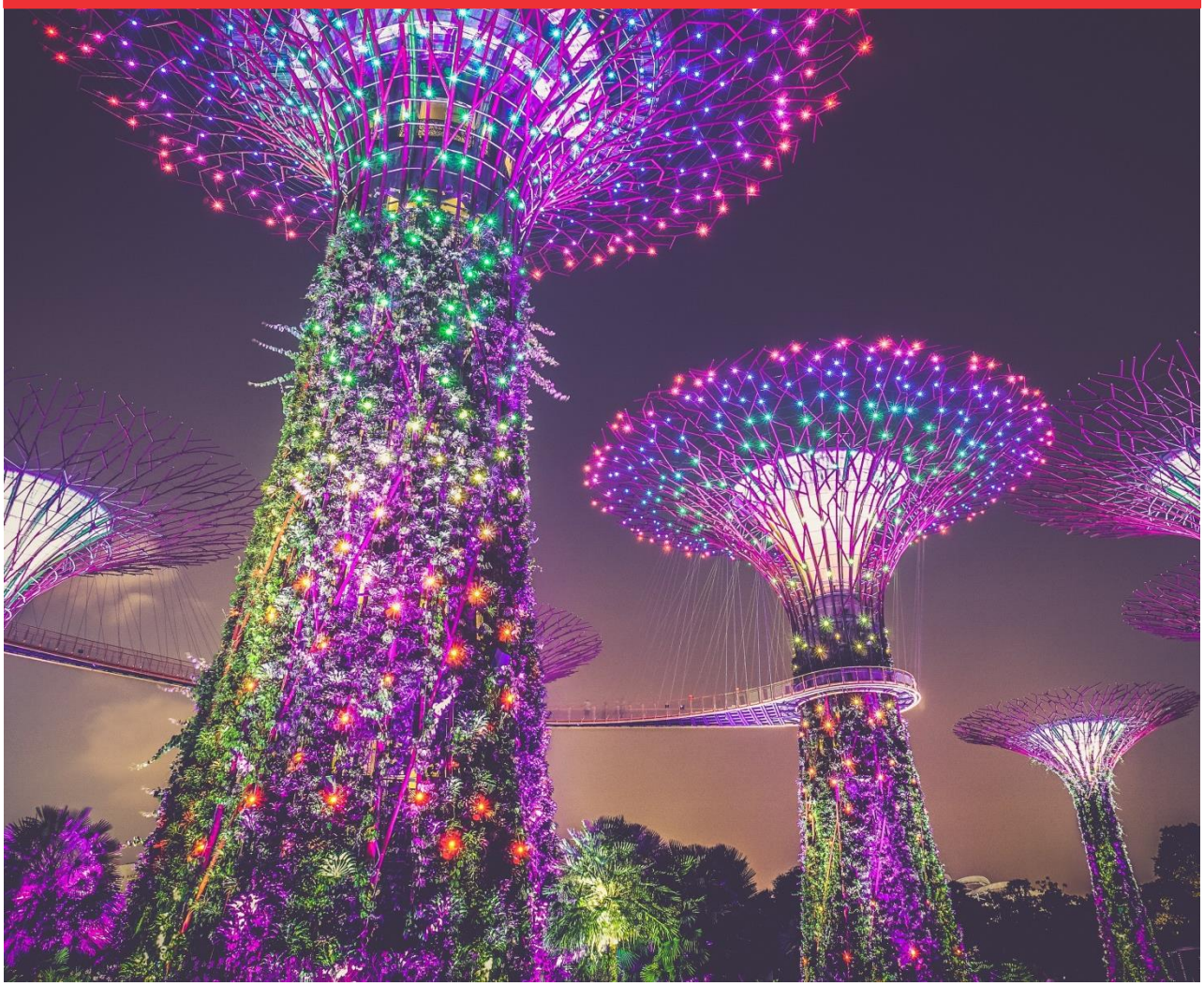
# Doing Business in Singapore 2017



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# 1. Introduction

Singapore, a Republic with a multi-racial population of over 5 million, is an attractive place in which to do business. It has an enviable record of political stability and the government actively encourages investment by foreign business interests. All of these factors combine to make the country extremely attractive to multinational companies.

# 2. Legal Background

For historical reasons, the Singapore legal system is based on English law. Many of Singapore's Acts of Parliament are modelled on English Acts, and English common law applies in many areas. In mercantile matters, a number of statutes passed by the English Parliament have been incorporated into Singapore law.

Court procedure is also similar to that which exists in England. Foreign judgments from certain Commonwealth jurisdictions are indirectly enforceable in accordance with the *Reciprocal Enforcement of Commonwealth Judgments Act*. Hong Kong SAR judgments can be registered under the *Reciprocal Enforcement of Foreign Judgments Act*. It is also possible to enforce a judgment obtained from a superior court of other states by bringing a fresh action on the judgment in a Singapore court. Arbitration is also available as a means of dispute resolution for domestic and cross-border disputes. Singapore is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which means that arbitral awards from other countries party to the convention can be enforced in Singapore, and arbitral awards from Singapore can also be enforced in those countries. In recent years Singapore has established itself as a premier venue for international arbitrations and is one of the leading arbitration centres in Asia-Pacific.

Parties to international commercial transactions seeking court-based resolution in a neutral, third party venue such as Singapore may also submit their disputes to the Singapore International Commercial Court ("**SICC**"). Although the SICC is a division of the Singapore High Court, there are special rules for disputes which have no substantial connection to Singapore or where the contract stipulates a foreign law as the governing law, which allow the SICC to depart from the usual litigation procedures. Unlike an arbitral award, the SICC judgment may only be enforced through reciprocal provisions or through a separate action for enforcement of debt in the jurisdiction in which the assets are located.

# 3. Types of Presence

Business in Singapore may be conducted through a variety of vehicles including:

- Sole proprietorship or partnership (which can take various form including the newly introduced Limited Liability Partnerships);
- Company;
- Branch;
- Representative office; and
- Business trusts.

The choice of organisational form is dictated partly by the activities which are intended to be carried on in Singapore and partly by tax considerations. Each of the five possibilities is discussed in detail below.

# 4. Sole Proprietorship and Partnership

## 4.1. Sole Proprietorship

Any individual can engage in business as a sole proprietor provided he obtains approval of his business name and registers his business with the Accounting and Corporate Regulatory Authority ("**ACRA**") through, **Bizfile,** ACRA's electronic filing and information retrieval system. Individuals wishing to carry on business in partnership must also be registered with ACRA through Bizfile.

## 4.2. Partnership

The maximum number of partners permissible is 20 for most businesses, and 10 for banking partnerships, but the position is different in the case of certain professional partnerships regulated by law.

A one-time business registration fee of S$65 (of which S$15 is the name approval fee) is payable to ACRA. Thereafter, an annual renewal fee of S$20 is payable to ACRA.

## 4.3. Limited Liability Partnership

Interested parties may choose to register a Limited Liability Partnership ("**LLP**") to carry out their business activities. An LLP is a body corporate and has legal personality separate from its partners. It gives its owners the flexibility of operating as a partnership whilst giving them limited liability, thereby combining the benefits of a partnership with those of a private limited company. However, there are safeguards in law to minimize abuse and provide protection to parties who deal with the LLP.

### 4.3.1. Establishing a Limited Liability Partnership

The application fee is S$165 (including a S$15 name approval fee). Every LLP must have at least one manager who is ordinarily resident in Singapore and the manager shall be a natural person of full age (at least 18 years old) and capacity (for example, not disqualified under the Limited Liability Partnerships Act or the Companies Act). Every LLP shall have at least 2 partners. The partner may be an individual, a local company, a foreign company or another LLP.

A company may convert to an LLP if all the shareholders of the company are going to be the partners of the LLP, the company fulfils all its outstanding filing obligations, and the company has no outstanding security interests in its assets at the time of the application for conversion. The conversion fee payable is S$100.

Singapore Citizens or Permanent Residents who are partners of the LLP must have their contributions to Medisave (a national medical savings scheme) paid up to date with the Board of the Central Provident Fund (Singapore's social security system) at the time of

registration of a new LLP, conversion from company or business to an LLP or when they enter as a new partner of an existing LLP.

### 4.3.2. Continuing Requirements

An LLP is required to keep such accounting and other records that will sufficiently explain its transactions and financial position. It is required to keep such records for five years and the Registrar of Companies may require the LLP to produce the accounting records for inspection.

An LLP is not required to file annual returns to ACRA but the manager is required to submit an Annual Declaration to ACRA stating whether the LLP is able to pay its debts as they become due in the normal course of business.

Any form or other document to be lodged with ACRA must be lodged using BizFile.

## 4.4. Limited Partnership

The Limited Partnerships Act ("**LPA**"), which came into operation on 4 May 2009, introduced a new vehicle for doing business in Singapore. Limited Partnerships ("**LPs**") are useful in "labour-capital" partnerships, where one or more financial backers prefer to contribute money or resources while the other partner performs the work. An LP does not have a separate legal entity from its partners.

The structure of an LP must comprise at least one or more general partners and one or more limited partners. General partners are responsible for the day-to-day management and operation of the LP and they will be jointly and severally liable for the debts and obligations of the LP. Limited partners play a passive role and are not to take part in the management of the LP and are not able to bind the partnership in any arrangement. The liability of limited partners is limited to the extent of their investment in the LP. However, limited partners risk losing the protection of their limited liability if they participate in the management of the LP.

### 4.4.1. Establishing a Limited Partnership

The LP and each of its partners is required to be registered with ACRA. On registration, certain details must be provided to ACRA, which include the nature of business, the details of each partner and whether each partner is a general partner or a limited partner. In addition, the LPA requires that the name of the LP contains the words "limited partnership" or the acronym "LP" in order to put third parties on notice of the limited liability status of its limited partners.

### 4.4.2. Continuing Requirements

Whilst an LP is not required to file its accounts or have them audited, it is required to keep proper accounting and other records that will sufficiently explain its transactions and financial position. An LP is required to keep such records for five years and the Registrar of Companies may require the LP to produce the accounting records for inspection.

As with the case of an LLP, any form or other document which a LP has lodge with ACRA must be lodged using BizFile.

# 5. Limited Liability Company

A limited liability company incorporated under the Companies Act is a separate entity from its shareholder(s). Equity participation by Singaporeans is not a requirement. A foreign company can thus set up a wholly-owned subsidiary in Singapore. Joint ventures may also be established using a limited liability company and indeed this is the usual structure for a joint venture entity in Singapore.

## 5.1. Establishing a Limited Liability Company

To establish a limited liability company, the proposed name must first be approved by ACRA. Every limited liability company must have the word “Limited” or “Ltd.” at the end of its name, and a private limited liability company must have the word “Private” or “Pte.” before the word “Limited” or “Ltd.”.

All companies have to include their unique registration numbers in company documents (e.g. business letters, statements of account, invoices, official notices, publications) but they are not required to display their company name on the outside of their office premises.

There is no minimum capitalization requirement.

A Singapore company must have a minimum of one director resident in Singapore. An expatriate in Singapore on an employment pass is acceptable for this purpose. Where this requirement is not satisfied, ACRA and the Courts may compel members of a company to appoint one director that is resident in Singapore. Members of a company may also be made liable for the debts of the company if it continues operating for more than six months without having a resident director. All directors must be natural persons. Where the company only has one director, he must not also function as the company secretary.

A Singapore company may have only one shareholder. Shares of a company do not have a par or nominal value but bearer shares are not recognised.

All corporate filings, including filings required for the incorporation of a limited liability company, may be done on-line through Bizfile.

With Bizfile, the time taken to approve/reject a name application is, generally, almost instantaneous. The process of incorporation of a company is also considerably reduced, and can be completed within a few hours from the time the on-line forms are submitted to ACRA. ACRA will charge a fee of S$15 for an application for a company name and a flat fee of S$300 for the incorporation of a company. An e-mail notification of incorporation from ACRA serves as evidence that the company has been incorporated. The notice of incorporation will contain particulars such as the company registration number and the effective date of incorporation. A certificate of confirmation of incorporation by ACRA can be obtained upon application and payment of a prescribed fee of S$50.

Registration of foreign companies, business registration services, information services, as well as lodgement of other company forms with ACRA are also made online, through Bizfile.

## 5.2. Continuing Requirements

The Singapore Companies Act is similar to its Australian and the U.K. counterparts and was amended in 2015 to keep pace with relevant international legal developments and to ensure the regulatory framework for setting up and doing business in Singapore remains conducive, effective and efficient. It lays down various continuing filing and reporting requirements which must be observed by a Singapore company. The most important of these is the requirement to keep such accounting and other records, prepared in accordance with the Singapore Financial Reporting Standards ("**SFRS**"), which will:

- sufficiently explain the company's transactions and financial position;
- enable the preparation of true and fair financial statements (and any supporting documents); and
- conveniently and properly enable the audit of these records.

If a company does not fall under the categories of an "exempt private company", a "small company" or a "dormant company", the company must file its audited financial statements electronically with ACRA on Bizfile, which will be open to public inspection. The company may also distribute its statutory reports via e-mail or host such reports on its company website (if certain conditions set out in the Companies Act are met).

An exempt private company is exempted from filing audited accounts with ACRA if it meets these criteria:

- has 20 or less shareholders;
- restricted rights in share transfers;
- has annual revenue of S$5 million or less;
- files a declaration of solvency at the time of filing its Annual Return with ACRA; and
- confirms that audited accounts have been distributed to its shareholders.

Recognising that the S$5 million annual revenue threshold for the exempt private company category is too low for most companies to benefit from this category's audit exemption, the new "small company" category was recently added. For a private company to qualify as a small company, it must fulfil at least two of the following three criteria in each of the immediate past two financial years beginning on or after the change 1 July 2015:

- total revenue of not more than S$10 million for each financial year;
- total assets of not more than S$10 million at the end of each financial year; and
- total number of employees of not more than 50.

Although a small company is exempt from having its accounts audited, it will still need to file these accounts annually with its Annual Return filing. To preserve some level of confidentiality for small companies; the unaudited financial statements will require disclosure of only basic information.

An inactive or non-trading company will be considered dormant and exempted from filing audited accounts with ACRA if no accounting transaction occurs from the time of its formation; or since the end of the previous financial year. A dormant company must nonetheless:

- prepare accounts in compliance with the SFRS for tax compliance;
- keep all financial statements and other records as required by the Companies Act; and

- lodge with ACRA a directors' statement at the same time an annual return would have been lodged.

Any shareholder or shareholders holding at least 5% of the total number of issued shares or any class of those shares, or at least 5% of the total number of shareholders may, by notice in writing to the company during a financial year but not later than one month before the end of that year require the company to obtain an audit of its accounts for that year. ACRA is also empowered to require a company to submit audited accounts.

In addition, every Singapore registered company must maintain a register of members, directors, managers and secretaries, directors' interests in the company and group shares or debentures, mortgages and charges and a minute book of meetings. Where the company has only one director, it must maintain a minute book containing all written resolutions and declarations made by the company, and which will be open to public inspection.

The Companies Act also contains a number of other restrictions (for example, restrictions on loans to directors) and lays down extensive disclosure requirements (for example, directors must disclose their interests in shares, including shares and options in any holding company). These are designed to ensure that the privileges of limited liability are not abused. The Companies Act also provides a measure of protection to directors who rely on advice and information from professionals and experts provided that the directors act in good faith, make proper inquiry if necessary in the circumstances and have no knowledge that such reliance is unwarranted.
The Companies Act is administered strictly by ACRA, which can be expected to take action against any contravention of the Companies Act which comes to its attention.

# 6. Branch of a Foreign Corporation

As an alternative to incorporating a local company in Singapore, a foreign corporation wishing to establish a business presence in Singapore can set up a branch here. The branch office, being a part of the foreign corporation and not a separate legal entity, can only engage in activities authorised under the by-laws or other constitutional documents of the foreign corporation.

## 6.1. Establishing a Branch

A foreign corporation which wishes to establish a place of business or to carry on business in Singapore must register with ACRA before commencing operations in Singapore.

The Companies Act requires that a branch name be approved before it can be registered. All filing for the application to approve the name, as well as for branch registration, is made online through Bizfile.

A one-time registration fee of S$300 is payable to ACRA, if the foreign corporation establishing the branch has an authorised share capital. If the foreign corporation has no share capital, the one-time registration fee payable to ACRA is S$1,200.

ACRA has the power to refuse to register a foreign company with a name which is “undesirable”. It is therefore necessary to seek approval of the name prior to the registration of the branch.

At present, a branch must maintain at least one authorised representative resident in Singapore who is authorised to accept service on behalf of the corporation and who is answerable for doing all things required of the corporation under the Companies Act.

## 6.2. Continuing Requirements

A branch is subject to similar filing and reporting requirements as those applicable to companies incorporated in Singapore. In particular, the foreign corporation must periodically report its financial status to ACRA. There are two specific requirements:

- Firstly, a foreign company must lodge with ACRA, within 60 days of its annual general meeting, a copy of its financial statement made up to the end of its last financial year. The financial statement should be prepared using accounting standards similar to the Singapore Financial Reporting Standards or the Singapore Financial Reporting Standards for Small Entities, for example prepared to the International Financial Reporting Standards ("**IFRS**"), or are acceptable to the ACRA. Examples of accounting standards acceptable to ACRA include:
  (a) financial statements prepared in accordance with the United States' generally accepted accounting principles;
  (b) financial statements prepared in accordance with standards that have converged with the IFRS.

  ACRA has the power to require further information to be provided to supplement the financial statement if it considers that the financial statement does not sufficiently disclose the foreign corporation's financial position; and

- Secondly, a foreign corporation is required to prepare and lodge with ACRA (at the same time as the financial statement referred to above):
  (a) an audited statement showing its assets used in and liabilities arising out of, its operations in Singapore; and
  (b) profit and loss accounts which give a true and fair view of the profit or loss arising out of its operations in Singapore;

  as at the date to which its financial statementsreferred to in above was made up.

Exemptions from the second requirement outlined above can be sought in certain situations. However, ACRA has stated that it will grant an exemption only in very limited circumstances in order to uphold the principles of transparency and equality of treatment for all Singapore-registered foreign companies. In any event, audited accounts for the foreign corporation's Singapore operations will have to be prepared for tax purposes.

The performance of certain restricted types of activity in Singapore by a foreign corporation will not give rise to the need to register a branch. Activities which fall into this category include the soliciting of orders which are accepted and become binding contracts only outside Singapore, the maintenance of a bank account and the investment of funds.

# 7. Representative Office

Representative offices are presently administered by the International Enterprise Singapore ("**ieSingapore**"). Their status is not acknowledged by any statute but is governed by a number of administrative guidelines. Application to establish a commercial representative office is made to the ieSingapore and must fulfil the following criteria:

- the foreign company's sales turnover must exceed US$250,000;

- the foreign company must have been established for at least 3 years; and
- the proposed number of staff for the representative office should be less than 5 people.

All applications are made online should be accompanied by:

- a softcopy of the foreign company's latest audited accounts;
- a softcopy of the foreign company's certificate of incorporation (in English or an official English translation); and
- (preferably) a brochure describing the company's activities and its products.

Processing time is about one to three weeks generally.

The activities of a representative office are strictly limited to "market research and feasibility studies". It may carry out marketing, advertising and market research but must not become involved in negotiating contracts, the order acceptance process, invoicing and collection of payments or after-sales service. Provided the office remains within the guidelines, it is not viewed as having a corporate presence and accordingly there are no corporate filing requirements under the Companies Act. Moreover, the functions of a representative office must be carried out only on behalf of its head office and other branches of the same company. A representative office should not act on behalf of other companies in the same group.

A representative office may operate in Singapore for a maximum of three years from its commencement date, provided that the representative office status is renewed annually after evaluation by ieSingapore. The processing fee for the annual renewal application is S$200. ieSingapore expects the representative office to be a temporary measure and expects representative offices to eventually upgrade to a branch or company.

# 8. Business Trusts

Generally, a business trust is a business enterprise that is set up as a trust structure as opposed to a company structure. Business trusts are essentially hybrid structures and comprise elements of both companies and trusts. The structure is established under a trust deed under which the trustee has legal ownership of the assets of the business enterprise and manages the business for the benefit of the beneficiaries of the trust. Purchasers of units in the business trust hold beneficial interests in the assets of the business trust. Business trusts may either be registered or unregistered. The operations of registered business trusts are regulated by the *Business Trusts Act.* In particular:

- business trusts are run by a single responsible entity known as the trustee-manager. The trustee-manager has the dual responsibility of safeguarding the interests of unit holders and managing the business trust;
- there are provisions to mitigate any potential conflict of duty between the trustee-manager's obligation to manage affairs in the best interests of the company and to manage the assets of the business trust in the best interests of the unit holders. The trustee-manager must act in the best interest of the unitholders and give priority to these interests where there is any conflict of interests;
- an audit committee must be established and the Board of Directors and Chief Executive Officer must each provide an annual certification on issues relating to the governance of the trustee-manager;

- the rights of unitholders are provided for, including the right to vote to remove the trustee-manager and to amend the trust deed, by special resolution and the right to annual financial statements prepared by the trustee-manager to SFRS standards and which give a true and fair view of the financial position and performance of the registered business trust; and
- certainty and protection is provided to unitholders, by limiting their liability for the obligations of the trust and the circumstances under which unitholders may take civil action.

For taxation purposes, an unregistered business trust and its unitholders are subject to taxation based on normal rules applicable to trusts whereas a registered business trust is treated like a company for income tax purposes. The Inland Revenue Authority of Singapore ("**IRAS**") has released an e-tax Circular "Income Tax treatment of a Trust Registered under the Business Trusts Act 2004" (the "**Circular**"), which provides guidance on the tax treatment of registered business trusts. This Circular provides as follows:

- group loss relief is available for registered business trusts. For this purposes, units in a registered business trust are used instead of the ordinary shares in a company;
- a shareholding test, similar to that for companies, is applicable for the deduction of unabsorbed capital allowances ("**CA**"), trade losses and donations;
- a registered business trust is considered a resident of Singapore if:
  - the trustee of the registered business trust in his capacity as such carries on a trade or business in Singapore; and
  - the control and management of the business is in Singapore;
- double taxation relief will be granted to a Singapore resident registered business trust, for tax suffered overseas on foreign sourced income. Where the foreign sourced income is from a country where Singapore does not have an Avoidance of Double Tax Agreement, unilateral tax credits may be available; and

- stamp duty relief which is applicable to companies for certain asset transfers, is also available to registered business trusts.

# 9. Taxation in Singapore

## 9.1. Income Tax - General

Singapore income tax is payable on all income derived from Singapore or received in Singapore from outside Singapore.

However, foreign-sourced income in the form of dividends, branch profits and services income which are received in Singapore from outside Singapore by a resident company is exempt from tax if certain prescribed conditions are met. Foreign-sourced income received in Singapore by resident and non-resident individuals is generally exempt from tax. Please see further below.

A company is a tax resident in Singapore if the control and management of its business is exercised in Singapore.

Singapore does not impose tax on capital gains. However, gains of a recurring nature may be regarded as income in which case it is subject to tax. From 1 June 2012 to 31 May 2017 (both dates inclusive), gains derived by a divesting company from the disposal of ordinary shares in an investee company are not taxable if certain conditions are satisfied.

Gains arising from the disposal of assets for which capital allowances have been previously claimed are deemed to be income chargeable with tax up to the amount represented by the difference between the sales price and the tax written down value.

Currently, the tax rate for companies in Singapore (both resident and non-resident) is 17%.

For corporate taxpayers, three-quarters of their chargeable income up to the first S$10,000 and half of their chargeable income for the next S$290,000 are exempted. For newly incorporated companies, the first S$100,000 and half of the next S$200,000 of their chargeable income for any of their first three Years of Assessment ("**YAs**") are also exempt from tax.

For YAs 2013 to 2015, companies will also receive a 30% corporate income tax rebate that is subject to a cap of S$30,000 per YA. For YA 2016 and 2017, the 30% corporate income tax rebate will be capped at $20,000 for each YA. IRAS will include this rebate when it assesses a company's income tax returns for the relevant YAs.

Individuals resident in Singapore are subject to tax on income accrued in or derived from Singapore at the sliding scale for personal income tax ranging from 0% on the first S$20,000 of their chargeable income to 20% (which will be raised to 22% from YA 2017 onwards) for income greater than S$320,000. All foreign-sourced income received in Singapore by resident individuals is exempt from tax, except for such income that is received by them through a partnership in Singapore.

Non-resident individuals in Singapore are generally taxed at 20% (which will be raised to 22% from YA2017 onwards) on chargeable income derived in Singapore, subject to exceptions for certain types of income. All foreign-sourced income received in Singapore by non-resident individuals is exempt from tax. For a non-resident individual who exercises short-term employment in Singapore, his employment income is exempt from tax if he exercises employment in Singapore for not more than 60 days in a calendar year. If he exercises employment in Singapore for more than 60 days but not more than 182 days, his Singapore-sourced employment income is subject to tax at the same progressive rates which apply to a resident individual or 15%, whichever results in a higher tax. If an individual is physically present or is employed in Singapore for 183 days or more in any calendar year, he is considered a resident and taxed as such. Specific rules in applicable double tax treaties may change the 60/183 day rules stated above.

Representative offices are not subject to tax on the basis that they are neither carrying on any "business" nor are they engaged in any income generating activities. However, if this is not the case, from a tax administration perspective, the Singapore tax authorities may seek to impose tax on representative offices.

Expenses "wholly and exclusively" incurred in the production of income chargeable to tax are generally deductible (including interest on "capital employed in acquiring income"). Capital allowances ("**CA**") are available in respect of capital expenditure incurred on the provision of plant and machinery for the purpose of the company's business. A taxpayer may elect to claim an initial allowance of 20%, followed by an annual allowance which is calculated on a straight-line basis over expected working life provided in the Income Tax Act. As an alternative, a taxpayer may elect to claim accelerated CA on a due claim basis.

Capital allowances may also be available on qualifying capital expenditure incurred on the construction or renovation of a building or structure on industrial land pursuant to the Land Intensification Allowance Scheme, provided certain conditions are satisfied.

Unutilized CAs and trade losses can be carried forward indefinitely provided that there is not more than a 50% of change in the ultimate shareholders and their respective shareholdings based on the relevant dates. In the case of CAs, the company must also be carrying on the same business in respect of the CAs that fall to be made. A taxpayer may also opt for carryback of the unutilized CA and trade losses provided certain conditions are satisfied.

## 9.2. Dividends

Singapore adopts a one-tier corporate tax system. Income taxes paid by a Singapore company on its chargeable income are final. Dividends paid by a company resident in Singapore are exempt from tax in the hands of its shareholders (regardless of whether they are individual or corporate entities, residents or non-residents). Further, Singapore does not impose any withholding tax on dividends paid to non-resident shareholders.

## 9.3. Loss Carry-Back System

Companies are allowed to either carry forward their unutilised CAs and trade losses to offset future income (i.e. loss carry-forward) subject to the satisfaction of certain conditions. To address the needs of smaller businesses running into cash flow problems, particularly during a cyclical downturn, a one-year carry-back of current year unutilised CA and trade losses is also available.

## 9.4. Withholding Taxes

Withholding taxes at the rate of 10%, 15% or 17% apply to the gross amount of certain types of income sourced or deemed sourced in Singapore and made to non-residents, e.g. interest, royalties, technical assistance fees and management fees. If withholding tax is imposed at the rate of 17%, it is not a final tax, and the non-resident can claim a deduction for expenses incurred in earning the relevant Singapore-sourced income. Non-residents may opt to file tax returns with IRAS to seek to be assessed to tax on a net income basis. Any excess of tax withheld may be refunded to the non-residents if IRAS agrees with the returns filed. Withholding tax does not apply to technical assistance fees and management fees if these services are provided wholly outside Singapore. Withholding tax for royalty payment is 10%. With effect from 21 February 2014, withholding tax is waived in respect of payments made to Singapore branches of non-resident companies. However, these Singapore branches will still be taxed on such payments and are required to declare them in their annual income tax returns.

## 9.5. Inter-Company Pricing

As far as inter-company pricing is concerned, our domestic law adopts the arm's length principle endorsed by the Organisation of Economic Cooperation and Development ("**OECD**"). The Comptroller of Income Tax ("**CIT**") has the power under our domestic law to

adjust the taxable income of an entity if, in the CIT's opinion, the transaction in question with its related party does not meet the arm's length standard.

There is a specific anti-avoidance provision in Singapore income tax law which allows the CIT to assess a non-resident to tax in the name of a resident where dealings between them have not been on an arm's-length basis. There is also a general anti-avoidance provision which empowers the CIT to disregard or vary certain transactions and dispositions where he is satisfied that the purpose or effect of the arrangement is to directly or indirectly alter the incidence of tax payable, relieve a person from liability to pay tax or make a return, or to reduce or avoid tax payable.

The CIT largely follows the standards set internationally by the OECD in determining whether the arm's length standard has been met. On 6 January 2015, IRAS released an update to its Singapore Transfer Pricing Guidelines, which consolidates all previous circulars and guidance issued by IRAS relating to transfer pricing and aims to provide clear support to, as well as inculcate discipline in, taxpayers who are expected to maintain and demonstrate compliance with the arm's length standard. In particular, the updated guidelines include a clear statement that IRAS expects contemporaneous transfer pricing documentation to prepared for transactions that exceed certain stipulated thresholds.

There are procedures in place for taxpayers to apply for an "Advance Pricing Arrangement". Such procedures afford taxpayers an opportunity to obtain certainty regarding the tax treatment of their inter-company transactions.

## 9.6. Double Tax Agreement

At the time of publication, Singapore has entered into and ratified over 70 comprehensive double tax agreements and eight limited treaties covering income from shipping and air transport enterprises. Only a limited treaty has been signed with the U.S. Most of the treaties reduce the rate of withholding tax on interest and royalties significantly, even, in some cases, to 0%.

Treaty benefits may be claimed, in general, by a person resident in either treaty country. Where tax is paid in a foreign jurisdiction with which Singapore has a tax treaty, credit can be claimed against any Singapore tax payable for the foreign tax paid. Credit claims are restricted on a source by source and jurisdiction by jurisdiction basis, unless the taxpayer elects for a pooling basis, subject to certain conditions being met. Excess credits cannot be carried forward to future years or used to shelter tax on income from another source or from a similar source in a different jurisdiction.

## 9.7. Unilateral Tax Credit

Unilateral tax credit is given in respect of foreign tax paid in countries with which Singapore does not have a double tax agreement on all types of foreign-sourced income received in Singapore by a Singapore tax resident. The unilateral tax credit is generally granted on a source by source, country by country basis, unless the taxpayer elects for a pooling basis, subject to certain conditions being met.

## 9.8. Loss-Transfer of Group Relief

Current year unutilised losses, donations and CAs of one company may be set off against the profits of a related company in the same group for the YA in question. This applies only

to Singapore-incorporated companies. Such companies will be deemed to be related only where one company either directly or indirectly owns at least 75% of the other company. Such companies are also deemed to be related where a third Singapore-incorporated company owns at least 75% of both companies.

## 9.9. Taxation of Branches and Non-Residents

Singapore sourced income, or offshore income received in Singapore, of a branch, is subject to tax at 17%. However, this tax base is expanded by section 12(1) of the *Income Tax Act*, which states that where a non-resident person (whether a company or an individual) carries on trade or business of which only a part is carried on in Singapore, the gains or profits of the trade or business are deemed to be derived from Singapore to the extent that they are not directly attributable to operations carried on outside of Singapore.

A non-resident taxpayer who carries on part of his trade or business in Singapore thus has the onus of clearly delineating that portion of his total income not attributable to a Singapore source. To the extent that he is unable to do so, he is, in theory, liable to tax on the remaining income. In practice, this onus can generally be discharged provided separate accounts are carefully kept.

## 9.10. Taxation of Partnerships

A general partnership, which is not registered as a Limited Liability Partnership, is not a separate legal entity and is not treated as a separate assessable entity for tax purposes. Individual partners are assessed separately on their respective share of income from the partnership. Resident partners are taxed at the applicable marginal individual rates noted above. A non-resident partner of a partnership regardless of whether the partner is a corporation or an individual conducting business in Singapore is assessed on his share of income computed in accordance with the general provisions of the *Income Tax Act*. However, the graduated rates of tax do not apply to a non-resident, and a non-resident individual partner is taxed at a flat rate of 20% (which will be raised to 22% from YA 2017 onwards) on every dollar of partnership income which accrues to him.

An LLP registered in Singapore has the advantage of a being a separate legal entity and providing limited liability protection for partners. At the same time an LLP retains the flexibility and tax transparency of a general partnership as described above as it is not treated as a separate assessable entity for Singapore tax purposes. Various deductions such as CA, trade losses and donations can be set-off firstly against the partners' respective shares of the LLP's trade profit (if any), and then against the partners' own income from other sources (if any).

# 10. Tax Incentives

Singapore companies are frequently encouraged to increase productivity. Consequently, they can now claim substantial deductions for expenditure on six productivity-related activities pursuant to the Productivity and Innovation Credit Scheme introduced during the 2010 Budget and enhanced during the 2011, 2012 and 2014 Budgets.

In addition, Singapore offers an attractive package of tax incentives. These are found in the *Income Tax Act* and in the *Economic Expansion Incentives (Relief from Income Tax) Act*. The various incentive schemes are administered by various statutory agencies, including the

Monetary Authority of Singapore ("**MAS**"), the Economic Development Board ("**EDB**"), the Maritime and Port Authority of Singapore ("**MPA**") and International Enterprise Singapore ("**ieSingapore**").

The MAS and the MPA administer tax incentives specially designed for the banking and financial services industry, and the maritime industry respectively. The EDB and ieSingapore administer more generally available tax incentives.

The EDB, in particular, is a flexible and highly responsive government body which has offices in many major commercial centres in Asia, Europe and North America. The EDB is happy to discuss proposed investments on an informal basis and frequently gives a quick "in principle" response to written applications.

## 10.1. Tax Incentives Administered by the MAS

The following tax incentives are some of the principal tax incentives administered by the MAS:

(i) Financial Sector Incentive ("**FSI**") scheme

The FSI scheme is an umbrella tax incentive scheme which comprises several tax incentives for the financial services industry. Under the FSI scheme, tax incentives are generally categorized under either the Enhanced Tier ("**ET**") award or the Standard Tier ("**ST**") award. The ET award is targeted at certain financial activities that have been identified as being high growth areas and high value-added processes. The ST award covers a broader range of financial activities.

Initial award periods may vary from 5 to 10 years, based on the number of employees and the scope of activities taken. The tenure of the awards may be extended subject to the approval of the Monetary Authority of Singapore.

FSI-ST companies

FSI-ST companies are entitled to a concessionary tax rate of 12% on qualifying income derived on or after 1 January 2011. The list of qualifying income can be found in the Fourth Schedule of the Income Tax (Concessionary Rate of Tax for Financial Sector Incentive Companies) Regulations 2005 ("**FSI Regulations**").

FSI-Headquarters ("**FSI-HQ**") and FSI-Fund Management ("**FSI-FM**") companies

FSI-HQ and FSI-FM companies are entitled to a concessionary tax rate of 10% on qualifying income. The list of qualifying income can be found in Regulations 5 and 6 of the FSI Regulations.

FSI-ET companies

FSI-ET companies are entitled to a concessionary tax rate of 5% on qualifying income. There are different types of FSI-ET companies under the following schemes:

- FSI-Capital Market ("FSI-CM")
- FSI-Derivative Market ("FSI-DM")
- FSI-Credit Facilities Syndication ("FSI-CFS")

(ii) Specific incentives for the wealth management industry

Foreign trusts and foreign accounts of philanthropic purpose trusts (including any eligible holding company owned under the trust) are generally exempt from tax on their investment income. The trusts have to be administered by approved trustee companies in Singapore.

Locally administered trusts (including any holding company owned under the trust), whose settlors are all individuals and beneficiaries are all individuals or charities; and family-owned investment companies are exempt on most investment income as if the income was received by an individual, instead of a trust or a company.

A resident fund (set up as a resident company) or a non-resident fund (set up as a non-resident company or a trust not administered by a trustee in Singapore) that is managed by a fund manager in Singapore is exempt on specified income derived from designated investments. However, the fund must not be 100% owned by investors in Singapore. Non-qualifying investors of such a fund will have to pay a "financial amount" to the CIT. The “financial amount” is effectively equivalent to the corporate income tax payable on their share of income and gain of the fund, even though the fund may be exempt.

With effect from 1 April 2009 to 31 March 2019 (both dates inclusive), the requirement that the fund must not be 100% owned by investors in Singapore is lifted for funds with a minimum of S$50 million in investments (among other conditions). In addition, the shareholding limits previously imposed on resident non-individual investors have been lifted. Thus, such funds which are 100% owned by resident non-individuals are now temporarily eligible for a tax exemption upon approval by MAS.

(iii) Other specific incentives

Tax exemption is available for approved asset securitization special purpose vehicles resident in Singapore.

Concessionary tax rates are also available for the following activities:

- the provision of certain offshore insurance underwriting, broking and advisory services;
- the provision of certain processing services to financial institutions in Singapore;
- securities lending and repurchase activities;
- trading or the provision of intermediary services in commodity derivatives by approved commodity derivatives trading companies; and
- provision of clearing services in relation to over-the-counter derivatives.

## 10.2. Tax Incentives Administered by the EDB

The EDB is responsible for encouraging foreign investment into Singapore. Tax incentives are often a key feature of any package that the EDB may offer a foreign investor to entice the foreign investor to set up an enterprise in Singapore. The package that the EDB offers is often determined by negotiations between the EDB, the foreign investor and its professional advisors.

For foreign investors seeking to locate manufacturing operations or the performance of high value-added services in Singapore, the pioneer or pioneer services incentives, as well as the Development and Expansion Incentive ("**DEI**"), are available. Pioneer status entitles the Singapore entity to full tax exemption on qualifying activities, whereas the DEI entitles the Singapore entity to a concessionary tax rate as low as 5% on certain prescribed qualifying income.

The Approved Headquarters incentive scheme will be withdrawn from 1 October 2015 onwards. Instead, companies performing qualifying headquarters activities or services in Singapore to network companies may qualify for the DEI, subject to meeting of the relevant conditions.

The EDB also provides some incentives to mitigate the strict application of tax rules in some circumstances and to encourage certain economic activities:

(i) Acquisition of productive equipment and capital investments

The EDB can give full or partial exemption from withholding tax for interest payable on approved foreign loans where the loan is used to acquire productive equipment.

Investment Allowance for a qualifying project, or Integrated Investment Allowance for fixed capital expenditure incurred on an approved overseas project may also be available.

(ii) Research and development

Under the Approved Royalties Incentive scheme, the EDB can grant exemption from withholding tax for royalties payable for the use of or the right to use intellectual property brought into Singapore. The government will review the relevance of the scheme on 31 December 2023.

## 10.3. Tax Incentives Administered by the MPA

The MPA oversees port regulatory matters and the maritime sector in Singapore and administers a number of tax incentives for the maritime industry.

While income derived from operating Singapore ships is generally exempt, most income derived by a Singapore enterprise from operating foreign ships would ordinarily be taxable. However, exemption from tax for income from the operation of foreign ships may be obtained from the MPA under the Maritime Sector Incentive - Approved International Shipping Enterprise ("**MSI-AIS**") Award. In addition, qualifying profits remitted from approved foreign branches by MSI-AIS entities will also be exempted from tax.

The income of certain investment vehicles from the chartering or leasing of ships or the leasing of containers may also be exempt upon approval. The investment managers of the approved investment vehicles may enjoy a 10% concessionary tax rate on their management fees.

A 10% concessionary tax rate is also available to certain shipping logistics companies upon approval.

As of mid-2011, the range of current tax exemptions and incentives available to entities in the maritime sector have been consolidated under three broad categories of the Maritime Sector Incentive. The current incentives have also been enhanced with automatic withholding tax exemptions on qualifying payments made in respect of qualifying loans for acquiring or constructing approved ships. Furthermore, certain supplies of marine-related services will also be zero-rated for Goods and Services Tax ("**GST**") purposes.

## 10.4. Tax Incentives Administered by ieSingapore

ieSingapore is an agency charged with the promotion of international trade in Singapore and the outward expansion of Singapore enterprises.

The primary tax incentive administered by ieSingapore is the Global Trader Programme ("**GTP**"). A GTP company enjoys a concessionary tax rate of 5% or 10% on income from qualifying trading activities in physical commodities, commodity futures and all derivative instruments.

With effect from 1 April 2012, 200% tax deduction can automatically be claimed without approval from ieSingapore on expenses incurred in relation to overseas trade fairs, exhibitions, trade missions and overseas investment development (such as expenses incurred for feasibility studies).

# 11. Other Taxes

## 11.1. Property Tax

Owners of Singapore real estate are required to pay property tax on an annual basis. For owner-occupied residential properties, the tax rates will range from 0% to 16% depending on the annual value of the property. For non-owner-occupied residential properties, the new tax rates will range from 10% to 20% depending on the annual value of the property. The property tax rate on non-residential properties will remain at 10%.

## 11.2. Stamp Duty

Stamp duty is levied on instruments and agreements enumerated in the *Stamp Duties Act* at *ad valorem* rates or at fixed rates, depending on the document concerned. The stamp should be affixed on any such instruments or agreements which are executed in Singapore, or which, if executed outside Singapore, are received in Singapore. Currently, stamp duty is only levied on instruments which relate to stocks and shares (of companies with registers of stocks and share in Singapore) and Singapore immovable property.

## 11.3. Death and Estate

There is no longer any estate duty in Singapore for the estates of persons who die on or after 15 February 2008.

## 11.4. Goods and Services Tax

GST in Singapore is a broad-based consumption tax with few exemptions for specific industries, the main exemptions being for financial services and residential real estate. Businesses with annual sales of less than S$1,000,000 are not required to register for GST purposes, or to charge GST on their supplies. Exports and international services are zero-rated. The current rate of GST is 7%.

# 12. Residential Property

The *Residential Property Act* of Singapore contains substantial restrictions on the transfer of residential property to "foreign persons".

In the first instance, all transfers of residential property to foreign persons are, subject to certain exceptions, prohibited and void. "Transfers" here include beneficial transfers, testamentary transfers and transfers of any estate or interest in the residential property except by way of mortgage, charge or re-conveyance. The *Residential Property Act* contains a detailed definition of "residential property" and includes:

- vacant residential land;
- landed houses with land titles (e.g. detached house, semi-detached house, terrace house, etc);
- landed houses with strata titles in a non-condominium development (e.g. strata terrace houses); and
- shop houses which are not strata subdivided and are erected on land other than land which has been declared to be non-residential property pursuant to the Residential Property Notification.

The definition of residential property specifically excludes commercial and industrial properties and buildings and premises permitted to be used solely for commercial and/or industrial purposes, any registered hotels, and such other land or building as the Minister may from time to time declare to be industrial, commercial or non-residential property. "Foreign persons" include non-citizens of Singapore, permanent residents, companies not incorporated in Singapore and societies not formed in Singapore, which have not been specially exempted or approved by the Minister.

The major exception to the basic rule is that foreigners may purchase flats in buildings or units in an approved condominium. This exception is subject to the proviso that a foreigner cannot acquire all of the units in a building or all of the condominiums in a development without the approval of the Minister, unless such acquisition is by way of agreement, lease or assignment for a term not to exceed 7 years, inclusive of any further term which may be granted by way of an option or renewal. (It should be noted that leases to "foreign persons" may in any case not exceed 7 years.)

Singapore companies holding residential property are not permitted to have non-citizen members or directors, and are required to amend their Memorandum or Articles accordingly. Similar requirements apply to Singapore limited liability partnerships and Singapore societies. There are a series of mechanisms in the *Residential Property Act* that provide procedures for persons seeking exemption from these fundamental prohibitions.

## 12.1. Stamp Duty

The current stamp duty rate payable by purchasers is 1% for the first S$180,000 of consideration, 2% for the next S$180,000 and 3% on the balance.

A seller's stamp duty ("**SSD**") has been introduced and is levied on sellers who dispose of Singapore residential real estate within a certain holding period. The SSD is payable in addition to stamp duty payable by purchasers. For residential properties bought on or after 14 January 2011, the SSD is payable on disposals within four years of acquisition and at an enhanced rate – 16% of the full consideration if disposed within the first year of purchase; 12% if disposed within the second year; 8% if disposed within the third year; and 4% if disposed in the fourth year.

An Additional Buyer's Stamp Duty ("**ABSD**") was introduced as a further measure to cool the property market. Non-Singapore residents and non-individual purchasers have to pay ABSD at 15% on purchases of residential property. Singapore permanent residents will have to pay ABSD of 5% on the purchases of their first residential property, and Singapore citizens will have to pay ABSD of 7% on the purchase of their second residential property and 10% on their third or more residential property.

## 12.2. Goods and Services Tax

Goods and services tax is payable on non-residential property where the seller is a GST-taxable person registered with the Comptroller of GST.

## 12.3. Income Tax

If a seller is not a Singapore resident, or is a trader of immovable property as provided in the Income Tax Act, an appropriate proportion of the applicable withholding tax must be deducted from the purchase price. Whether or not the seller is a trader in immovable property is a question of fact, and the buyer's lawyer may ask for a letter of confirmation from the vendor stating that the vendor has not been assessed by Inland Revenue Authority of Singapore as a property trader. The buyer's lawyers are to withhold up to 15% of the gross purchase price, or every instalment paid of the purchase price (e.g. the deposit). The buyer's lawyer will have to file tax forms for the buyer in order to account to the CIT.

# 13. Employment

## 13.1. Employment of Expatriates

Before they can be employed in Singapore, foreigners are required to obtain a work pass from the Ministry of Manpower ("**MOM**"). The type of work pass required depends on the job type, skill level, and salary level of each employee.

## 13.2. Personalized Employment Pass

The Personalized Employment Pass ("**PEP**") is for overseas foreign professionals whose last drawn fixed monthly salary (no more than 6 months before the time of application)

overseas was at least S$18,000. Holders of EPs (as defined below) who earn at least S$12,000 in fixed monthly salary can apply for the PEP as well.

The PEP is linked to the individual employee and is granted on the strength of his merits. PEP holders can remain in Singapore for up to 6 continuous months in between jobs and can generally take on employment in any sector.

The PEP is valid for 3 years and is non-renewable. The minimum salary requirement applies throughout the PEP's 3 year validity, and a PEP holder retains the dependants' privileges of his original EP or current eligibility at the point of PEP application, whichever is higher.

PEP holders and their employers must keep MOM informed of any changes in the PEP holders' employment status and contact particulars, and must reveal their annual basic salary to MOM.

## 13.3. Employment Pass

Employment passes ("**EP**") are issued to foreigners who are interested to work and have job offers in Singapore. MOM exercises its discretion in granting EPs to expatriates on a case-by-case basis. They will need to earn at least S$3,300 and possess acceptable degrees, professional qualifications or specialist skills. To qualify, older applicants have to command higher salaries commensurate with their work experience and quality. The EP is linked to a specific employer and any change in employer requires a fresh application.

An EP application takes approximately 7 working days to be processed, and copies of all academic certificates and documentation relevant to substantiate the applicant's qualifications and work experience must be produced. Accompanying dependants (wives and children) of certain EP holders can apply separately for dependants' passes.

## 13.4. The S Pass

The S pass is for foreigners who are in the middle category of workers with a basic monthly salary of at least S$2,200. Applicants for S passes are assessed on a points system, taking into account multiple criteria including salary, education qualifications, skills, job type and work experience. A monthly levy of S$315 or S$550 per month (depending on the percentage of S pass holders to the total workforce) also applies and there is a 15% cap on the number of S pass holders in each company based on the company's number of local workers and work permit holders for a company who do business in the services sector, and a 20% cap on the number of S pass holders for companies who do business in other sectors.

## 13.5. Work Permit

The work permit is issued to semi-skilled or unskilled foreigners from approved source countries who want to work in Singapore. Employers will be required to observe certain obligations for employees who hold work permits, including purchasing and maintaining medical insurance for such workers and, where necessary, furnishing a S$5,000 security bond in the form of an insurance/banker's guarantee to the Singapore government before the employee is permitted entry into Singapore. A monthly levy of S$250 to S$950 per month (depending on whether the worker is semi-skilled or unskilled, and for the manufacturing and services sectors, on dependency ceiling or quota) also applies.

## 13.6. Advertising Requirements for New EP Applications

The following requirements under the Fair Consideration Framework must be met before an EP application is submitted to MOM: firms making new EP applications must advertise these job vacancies on a new jobs bank administered by the Singapore Workforce Development Agency; these job advertisements must be open to Singaporeans, comply with the Tripartite Guidelines on Fair Employment Practices, and run for at least 14 days, and the period between the closing date of the job advertisement and the EP application should be less than or equal to 3 months.

Small firms with 25 or less employees, jobs which pay a fixed monthly salary of S$12,000 and above, jobs that are necessary for short-term contingencies not longer than 1 month, and intra-group transferees are exempted from these advertising requirements. However, if MOM receives complaints of nationality-based or other discriminatory Human Resource practices, these firms may be placed under greater scrutiny and have their work pass privileges curtailed.

## 13.7. Employment Laws

The Employment Act (Cap. 91) ("**EA**") is the main legislation governing employment in Singapore. It applies generally to persons who have entered into or work under a contract of service. Professionals, managers and executives ("**PMEs**") earning a basic monthly salary of up to S$4,500 are also covered under the general provisions of the EA.

In general, the employer and employee are free to negotiate and agree on the terms of employment. However, should any term in a contract of service to which the EA applies be less favourable than any of the conditions prescribed by the EA, the term shall be deemed illegal, null and void to the extent that it is less favourable.

Where the EA does not apply, terms and conditions of employment are left to be agreed between and written into a contract of service signed by the employer and the employee.

Other statutes dealing with aspects of employment include but are not limited to the:

- Central Provident Fund Act (Cap. 36);
- Companies Act (Cap. 50);
- Employment of Foreign Manpower Act (Cap. 91A);
- Immigration Act (Cap. 133);
- Income Tax Act (Cap. 134);
- Industrial Relations Act (Cap. 136);
- Retirement and Re-employment Act (Cap. 274A);
- Child Development Co-Savings Act (Cap. 38A) ("CDCA");
- Personal Data Protection Act (No. 26/2012) ("PDPA");
- Protection From Harassment Act ("PHA");
- Skills Development Levy Act (Cap. 306);
- Trade Unions Act (Cap. 333);
- Unfair Contract Terms Act (Cap. 396);
- Work Injury Compensation Act (Cap. 354) ("WICA"); and
- Workplace Safety and Health Act (Cap. 354A).

For areas not specifically governed by statute, the common law generally applies.

# 13.8. Central Provident Fund

## 13.8.1. Singapore or Permanent Resident Employees

Employers have to make mandatory contributions to the Central Provident Fund ("**CPF**") accounts of employees who are Singapore citizens or who have permanent resident ("**PR**") status, based on the level of wages earned by each employee. CPF contributions are prohibited in respect of expatriate employees.

The CPF contribution and allocation rates for (i) Singapore Citizens, (ii) PRs in the 3rd year and onwards of obtaining PR status and (iii) PRs in the 1st and 2nd year of obtaining PR status but who have jointly applied with the employer to contribute at full employer and employee rates are as follows:

| Employee Age (Years) | Contribution Rate *(for monthly wages ≥ S$750)* | | | Credited to | | |
|---|---|---|---|---|---|---|
| | Contribution by Employer (% of wage) | Contribution by Employee (% of wage) | Total Contribution (% of wage) | Ordinary Account (% of wage) | Special Account (% of wage) | Medisave Account (% of wage) |
| 35 & below | 17 | 20 | 37 | 23 | 6 | 8 |
| Above 35-45 | 17 | 20 | 37 | 21 | 7 | 9 |
| Above 45-50 | 17 | 20 | 37 | 19 | 8 | 10 |
| Above 50-55 | 16 | 19 | 35 | 14 | 10.5 | 10.5 |
| Above 55-60 | 12 | 13 | 25 | 12 | 2.5 | 10.5 |
| Above 60-65 | 8.5 | 7.5 | 16 | 3.5 | 2 | 10.5 |
| Above 65 | 7.5 | 5 | 12.5 | 1 | 1 | 10.5 |

For other PRs in their first 2 years of acquiring PR status, CPF contributions for employees aged 50 and below are as follows:

| | |
|---|---|
| 1st year of acquiring PR status | 9% (5% deductible from employee's salary) |
| 2nd year of acquiring PR status | 24% (15% deductible from employee's salary) |

The maximum salary on which CPF is levied is S$5,000 per month. No CPF contribution is required on any amount in excess of S$5,000 except where the remuneration paid is above the basic wages. Payments which are not granted wholly and exclusively for the month such as bonuses and commission are deemed to be additional wages and a separate maximum contribution applies to them.

Pursuant to Budget 2015, the maximum salary on which CPF is levied will be raised from S$5,000 to $6,000 and the CPF contribution rates for older workers aged above 50 to 65 years will be increased effective from 1 January 2016.

### 13.8.2. Foreign Employees

No mandatory contributions have to be made by employers in respect of foreign employees, and foreign employees may not choose to make voluntary contributions.

## 13.9. Foreign Worker Levy

Employers may also have to pay a Foreign Worker Levy of S$250 to S$950 per month depending on the industry sector, whether the foreign workers are skilled or unskilled, and the percentage of foreign workers to local employees who are engaged by the employer. The duty to pay this levy continues until the work pass is cancelled.

# 14. Competition Regime

On 1 January 2005, the first operative provisions of the *Singapore Competition Act* ("**SCA**") came into force. These provisions established the Competition Commission of Singapore ("**CCS**"), the authority that will oversee and enforce the SCA.

The SCA prohibits the following activities:

- agreements which have as their object or effect the prevention, restriction or distortion of competition in Singapore;
- conduct which amounts to the abuse of a dominant position in any market in Singapore; and
- mergers that have resulted or may be expected to result in a substantial lessening of competition within any market in Singapore for goods or services.

The substantive provisions of the SCA have come into force in a phased approach intended to facilitate the transition to the new rules for businesses. The prohibitions on anti-competitive agreements and abuse of dominance, as well as provisions relating to enforcement of the SCA and the appeal processes, came into force on 1 January 2006 while the remaining provisions dealing with mergers came into force on 1 July 2007.

We set out below a summary of the three prohibitions, plus details of the penalties for infringement and the draft guidelines issued by the CCS.

## 14.1. Section 34 - Agreements Preventing, Restricting or Distorting Competition

Agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition in Singapore are prohibited unless they fall within the exclusions or exemptions set out in the SCA.

The SCA sets out examples of agreements which will be considered to infringe the prohibition, namely those that:

- directly or indirectly fix purchase or selling prices or any other trading conditions;

- limit or control production, markets, technical development or investment,
- share markets or sources of supply;
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Any provision of any agreement which infringes the prohibition will be void, and therefore unenforceable. However, certain agreements are excluded from the prohibition. These are listed in the Third Schedule to the SCA and include:

- agreements in respect of services of general economic interest;
- agreements made to comply with legal requirements or to avoid conflict with international obligations;
- public policy exceptions;
- agreements or conduct which relate to goods or services regulated by separate sectoral competition laws (for example the telecommunications, media and energy industries);
- vertical agreements, namely agreements between undertakings operating at different levels of the supply chain such as manufacturer and distributor, save for those specified by the Minister;
- agreements with net economic benefits, i.e. improving production or distribution or promoting technical or economic progress, provided such agreements do not impose on the undertakings restrictions which are not indispensable to the attainment of those objectives or afford the undertakings the possibility of eliminating competition in respect of a substantial part of the goods or services in question; and
- agreements or conduct that is directly related and necessary to the implementation of the merger.

In excluding vertical agreements from the Section 34 prohibition, Singapore has taken a different approach from other competition law regimes such as in the UK and EU. The Government's view is that in Singapore vertical agreements often have pro-competitive benefits which outweigh potential anti-competitive effects. For this reason vertical agreements are not currently regulated in the context of Section 34 (although they may be under Section 47, discussed below).

## 14.2. Section 47 - Abuse of a Dominant Position

Section 47 prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in any market in Singapore. It is interesting to note that "dominant position" refers to dominance in Singapore or elsewhere, thus a party which is not dominant in Singapore but abuses its dominance in another country in a manner that affects a market in Singapore will be in breach of Section 47. However, note that it is the abuse of a dominant position that is prohibited, not dominance itself. The SCA sets out examples of conduct which may constitute an abuse:

- predatory behaviour towards competitors;
- limiting production, markets or technical development to the prejudice of consumers;

- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive advantage; and
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Again, the Third Schedule sets out exclusions to these restrictions. These are the same exclusions as listed for Section 34 above, with the exception of the exclusion for vertical agreements as well as for economic benefits which do not apply to the Section 47 prohibition. Please note that Section 47 does not apply to conduct that is allegedly "abusive", if such conduct can be "objectively justified".

## 14.3. Section 54 - Mergers and Acquisitions that Substantially Lessen Competition

Section 54 of the SCA prohibits mergers that have resulted, or may be expected to result, in a substantial lessening of competition within any market in Singapore for goods or services. This section is meant to prevent the following if it would result in such a substantial lessening of competition in Singapore:

- two or more previously independent undertakings merge;
- one or more persons or other undertakings acquire direct or indirect control of the whole or part of one or more other undertakings; or
- the result of an acquisition by one undertaking (the first undertaking) of the assets, or a substantial part of the assets, of another undertaking (the second undertaking) is to place the first undertaking in a position to replace or substantially replace the second undertaking in the business or the part concerned of the business in which that undertaking was engaged immediately prior before that acquisition.

Some mergers are excluded however from the ambit of Section 54, namely:

- mergers approved by any Minister or regulatory authority other than the CCS;
- mergers approved by the MAS; or
- mergers under the jurisdiction of any regulatory authority other than the CCS under any written law relating to competition or code of practice relating to competition issued under any written law.

There is no compulsory pre-merger notification regime in Singapore. However, if the merger parties believe that the merger may trigger the Section 54 prohibition, the parties should consider filing a formal notification to CCS in order for CCS to clear the merger. The parties can also choose to ask the CCS to consider anticipated mergers before actually commencing the merger process by applying to the CCS for non-binding confidential advice, subject to certain conditions being met. If no notification is made and the CCS, after a merger is completed, finds that it infringes Section 54 the parties risk not only structural and behavioural remedies but also dissolution of the merger and financial penalties as set out below in Section 14.4.

Upon the receipt of a formal notification the CCS takes a two-step process in relation to clearing mergers. Each phase has its own prescribed forms that require completion. The rationale for this is that the first phase allows the CCS to quickly dispose of mergers which would clearly not be in breach of section 54 (normally within 30 working days) and the second phase would only be relevant to mergers that raise the possibility of such breach.

A more comprehensive overview of the merger provisions under the SCA is set out in our Mergers & Acquisition Guide which is available upon request.

## 14.4. Penalties and Enforcement

The CCS has been given very wide powers in relation to offences under sections 34, 47 and 54 offences. It can give any directions it thinks appropriate to bring the infringement under these sections to an end. This includes the termination of an infringing agreement, modification of infringing conduct or requiring the dissolution of an infringing merger. A financial penalty can also be imposed if the CCS is of the view it is appropriate to do so, although this cannot exceed 10% of the financial turnover in Singapore of the undertaking for each year of infringement, up to a maximum of three years.

The CCS has wide powers of investigation in respect of parties suspected of committing infringements, including the power to require the production of specified documents or specified information, enter premises with a warrant, and without a warrant in certain situations identified in the SCA, if there are reasonable grounds for suspecting that an infringement has been committed.

# 15. Miscellaneous Matters

## 15.1. Exchange Control

Singapore suspended exchange controls in 1978. No exchange control approvals are therefore required for inward investment into Singapore, for the remittance of dividends or profits or for the repatriation of capital.

## 15.2. Manufacturing Licences

Under the Control of Manufacture Act, a licence is required for the manufacture of certain items. However, the list of items for which a licence is required in Singapore is short and is unlikely to concern most incoming multinational corporations. Examples of items on the list include certain drawn steel products, beer and stout, cigars and chewing gum products.

## 15.3. Import and Export Controls

Historically, Singapore has been a free port. There are very few controls on imports and exports. The documentation required for imports and exports is relatively straightforward. However, under the Strategic Goods (Control) Act, the export, transhipment, bringing in transit, transfer as well as brokering the acquisition or disposal of goods, software and technology relating to munitions, biological, chemical products and items which have both civilian and military use are regulated via a permit and registration regime.

Only a few items are dutiable, the principal items being liquor, tobacco, petroleum products and motor vehicles.

## 15.4. Free Trade Agreements

While Singapore is a staunch supporter of the multilateral trading system (i.e. the World Trade Organisation ("**WTO**"), Singapore has also attempted to actively develop a network of bi-lateral trading arrangements with other major and strategic trading partners in the hope of accelerating the momentum of trade liberalisation. It is hoped that these Free Trade Agreements ("**FTAs**") will, among others, lead to an enhancement of trade and investment flows by providing lower tariffs for exports, improved market access for various commercial and professional services and better terms for investment in foreign countries.

Singapore has concluded FTAs with New Zealand, Japan, the European Free Trade Association (which includes Switzerland, Liechtenstein, Iceland and Norway), the Hashemite Kingdom of Jordan, the Trans-Pacific SEP (which includes Brunei, New Zealand and Chile), India, Panama, Australia, the United States, Peru, South Korea, China. Costa Rica and the Gulf Cooperation Council (which includes Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates).

## 15.5. Intellectual Property Law

Singapore's intellectual property law is mostly legislated. The protection of trade marks in Singapore is governed by the Trade Marks Act; copyright by the Copyright Act, industrial designs by the Registered Designs Act; patents by the Patents Act; and integrated circuits by the Layout-Designs of Integrated Circuits Act. Confidential information, unregistered trade marks and trade names remain protected by the common law. A more comprehensive overview of the intellectual property laws in Singapore is set out in our Intellectual Property Guide which is available upon request.

## 15.6. Membership of the Singapore Business Federation

On 1 April 2002, the Singapore Business Federation Act ("**SBFA**") came into operation and the Singapore Business Federation ("**SBF**") was formed. The objective of the SBF is to be the apex chamber of commerce to address the concerns of businesses with a substantial presence in Singapore.

Under the SBFA, a local company with a paid-up capital of or above S$500,000 shall become a member of the SBF. Similarly, a local branch where its foreign head office has an authorised share capital of or above S$500,000 shall become a member of the SBF. Membership to the SBF for such companies is automatic and compulsory under the SBFA. Members of the SBF are required to pay an annual subscription to the SBF. Annual subscription fees are determined by the Council of the SBF. These fees are pegged to the amount of a company's paid up or the foreign head office's authorised share capital.

Currently, the subscription fees are as follows:

| **Company's Paid up Capital / Foreign Head Office's Authorized Share Capital** | **Annual Fees (without GST)** |
|---|---|
| S$10 million & above | S$ 856 |
| S$5 million to less than S$10 million | S$ 642 |
| S$1 million to less than S$5 million | S$ 428 |
| S$0.5 million to less than S$1 million | S$ 321 |

Under the SBFA, any subscription payable to the SBF may be recovered by the Council by an action for a debt in any court of competent jurisdiction. The Council also has the option of lodging a claim for payment of the subscription fees with the Singapore Small Claims Tribunal.

Pursuant to the *Singapore Business Federation (Exemption) Order 2002*, gazetted on 13 September 2002, companies which have no employees are exempted from compulsory SBF membership. This exemption has been effective from 1 April 2002. In order to benefit from this exemption, the company must submit to the SBF Council:

- a declaration by any of its directors that the company did not or does not have any employee during that particular period; and
- the most recent annual audited accounts.

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