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Duane Morris & Selvam Country Investment Series

SINGAPORE

Duane Morris & Selvam Country Investment Series:

SINGAPORE

This publication leverages our extensive experience in Singapore to provide a broad understanding and helpful observations of Singapore's legal environment in relation to foreign direct investment, business structures, and merger and acquisitions ("**M&A**").

Singapore is known for its pro-business environment, strong legal system and ability to attract sizable foreign investments and business entrepreneurs. However, challenges remain and businesses need to be agile in order to thrive within Singapore's rapidly changing business and social climates.

We believe you will find that this publication serves as a helpful starting point as you plan new, and manage existing, investments and businesses in Singapore.

The information in this publication is for general information only. It does not constitute legal advice and should not be relied upon as such. Specific professional advice should always be sought for your specific circumstances. If you have any queries or require more detailed advice, please do not hesitate to get in touch with us.

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Introduction

Investment Environment in Singapore

A vibrant city-state located in the heart of Asia, Singapore offers global investors unparalleled access to global markets. Singapore continues to be well-regarded as an AAA-rated economy with strong growth potential and as a sound and stable location for business expansion as well as for investments.

New businesses looking for opportunities should know that Singapore stands firmly on a solid foundation built on a strong financial and regulatory framework, with a rule-of-law and stable government—compelling attributes that come together to form a conducive environment for companies eyeing a move to expand into the region with Singapore as their base. Singapore is attuned to the needs of businesses and the need to protect invention and innovation in order to expand business opportunities in Singapore.

The Singapore legal system is a rich tapestry of laws, institutions, values, history and culture. However, with socio-economic and politico-legal changes driven by increased globalisation and regionalisation, the legal system will need to constantly evolve to keep up. In Singapore, the legal system and the government have responded swiftly and deftly in creating new laws and institutions or adapting existing ones.

For instance, with an aim to reduce the regulatory burden on companies, improve business flexibility and the corporate governance landscape in Singapore, the Singapore Parliament passed the Companies (Amendment) Act 2017 on 10 March 2017, setting out significant amendments to the Singapore Companies Act (Cap 50, 2006 Rev Ed.) (the "**Act**") that became effective in phases across 2017 and 2018. Key amendments include the execution of deeds or other documents such as share certificates by way of a Common Seal being made optional and the dispensation of Annual General Meetings ("**AGM**") for private companies if certain conditions are satisfied.

In addition, the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**"), an omnibus legislation that consolidated all personal and corporate insolvency and debt restructuring legislation into a single statute, came into force on 30 July 2020. The IRDA seeks to align the insolvency and debt restructuring procedures previously found in separate pieces of legislation and enhance Singapore's insolvency and debt restructuring regime with the introduction of provisions relating to super-priority rescue financing and worldwide moratoriums.

To attract businesses ready to invest in Singapore, the government also keeps its tax rates and tax laws competitive and takes a strategic, holistic approach toward stewardship of key pillars of the economy, such as petrochemicals, electronics and clean energy.

Entering Singapore

All businesses must be registered with the Accounting and Corporate Regulatory Authority ("**ACRA**").

Foreign companies wishing to operate in Singapore can choose to incorporate a limited liability company, sole-proprietorship, limited partnership or limited liability partnership; or register a branch office, subsidiary company or representative office.

Special licenses are needed for some businesses, such as banking, newspapers and printing presses, insurance and gaming under the Banking Act (Cap 19, 2008 Rev Ed.), Newspaper and Printing Presses Act (Cap 206, 2002 Rev Ed.), Insurance Act (Cap 142, 2002 Rev Ed.) and Casino Act (Cap 33A, 2007 Rev Ed.), respectively.

Special licenses are also required for the manufacture or retail of goods, such as cigars and liquor, under the Tobacco (Control of Advertisements and Sale) Act (Cap 309, 2011 Rev Ed.) and Liquor Control (Supply and Consumption) Act 2015, respectively.

The Singapore government offers a one-stop GoBusiness Licensing service for business licence applications. The platform allows businesses to submit one or multiple licence applications to the relevant government agencies.

Types of Business Structures / Investment Vehicles

There are limited restrictions on foreign ownership of companies, and local equity participation is not required in businesses established in Singapore. Singapore entities and businesses can be up to 100 percent owned by a foreign national or company.

Limited Liability Company

A private limited company is one of the most popular forms of business and investment vehicles used in Singapore. It is a separate legal entity and shareholders are not liable for the company's debts beyond the amount of share capital they have contributed. A private limited company can be either limited by shares or limited by guarantee. However, private limited companies operating in Singapore typically prefer to be limited by shares. This is because a company limited by guarantee will not obtain its initial working capital from members via a subscription for shares (as is the case in a company limited by shares).

A private limited company can be 100 percent foreign owned and only a minimum of S$1 in paid-up capital is required to establish a company. A company can be registered in as quickly as 24 hours. However, the company must appoint a company secretary within six months of registration and must have a Singapore resident as a director (or a foreigner holding an EntrePass or Employment Pass) at all times. In order to register a Singaporean company, one must also provide a local Singapore address as the registered address of the company. The registered address must be a physical address (can be either a residential or commercial address) and cannot be a P.O. Box.

Foreigners cannot represent themselves in Singapore to incorporate a business in Singapore. Foreigners intending to set up a company in Singapore must engage a professional corporate secretarial firm to register a Singaporean company. There is no requirement for foreigners to obtain any special Singapore visa if they merely want to incorporate a private limited company but have no plans to relocate to Singapore. They are free to operate their company from overseas as well as visit Singapore on a visitor visa whenever required to attend to company matters on a short-term basis. However, they will need to find a local resident director since each company must have at least one local director. Professional corporate secretarial firms offering Singapore incorporation services often offer the service of a local nominee director for this purpose.

Foreigners with plans to relocate to Singapore to operate their company are required to obtain an Employment Pass or Entrepreneur Pass type of work permit. Once they have obtained a work permit, they can act as the local resident director of their company. All incorporation formalities (as well as work permit formalities, if applicable) can be handled without foreigners having to visit Singapore. The only exception may be opening a bank account, depending upon the choice of bank.

A private limited company is also subject to favourable tax rates. All Singapore resident companies are eligible for partial tax exemption, a 75 percent exemption on the first S$10,000 of normal chargeable

income and a further 50 percent exemption on the next S$190,000 of normal chargeable income, which effectively translates to a tax rate of about 8 percent for the first S$200,000 of normal chargeable income.

Sole Proprietorship or Partnership

The sole proprietorship or partnership is the simplest form of business organisation and is usually more suitable for small-scale businesses. Both the sole proprietor and the partners are subject to unlimited liability with regard to the debts of the business.

Any person who is carrying on business in Singapore either as a sole proprietor or in a partnership is required to register a business firm with the Registry of Companies and Businesses. However, some forms of businesses, which are carried out by professionals such as architects, engineers and doctors, are instead required to register with their respective professional bodies.

A sole proprietorship or partnership may be required to appoint an authorised representative who is responsible for the management of the business. If the sole proprietor or each of the partners of a business firm is a foreigner, then the authorised representative must be ordinarily resident in Singapore.

Limited Partnership

This business vehicle gives the owners the flexibility of operating as a partnership whilst giving them limited liability. It combines the benefits of a partnership with those of private limited companies. It provides a structure, which comprises at least one general partner with unlimited liability and limited partners with limited liability, and separates ownership from management. There are generally three parties in a limited partnership ("**LP**")—a limited partner, a general partner and a local manager. An individual or a corporation may become a general partner or a limited partner of an LP.

The LP is a vehicle that is well suited to limited life and self-liquidating funds. The LP may therefore appeal to niche markets like private equity and fund investment businesses. It is also attractive to investors who do not wish to take an active management role and who prefer to entrust management to someone willing to bear unlimited liability. Each partner need not be ordinarily resident in Singapore, which makes the LP attractive to foreign investors. However, a local manager has to be appointed if every general partner is ordinarily resident outside Singapore.

Registration is relatively quick and convenient and costs only S$100 to S$160. After registration, the name of the LP has to contain the words "limited partnership" or the abbreviation "LP" in all its invoices and official correspondences.

Unlike an incorporated company, an LP has less burdensome reporting requirements and administrative duties, but as the LP has a limited life span of just one or three years, its registration has to be renewed on an annual basis. Also, the LP exists as long as there is one general partner and one limited partner. If there is no limited partner, the partnership will be suspended, and the LP will be converted to a firm registered under the Business Names Registration Act 2014.

Limited Liability Partnership

A limited liability partnership ("**LLP**") is another form of business in Singapore. This structure was introduced to give potential entrepreneurs a greater choice of business vehicles as well as to attract foreign investment. Similar to an LP, an LLP gives owners the flexibility of operating as a partnership whilst giving them limited liability, combining the benefits of a partnership with those of private limited companies. However, unlike an LP, an LLP is not subject to the requirement of having at least one general partner with unlimited liability. LLPs in Singapore are governed by the Limited Liability Partnership Act (Cap 163A, 2006 Rev Ed.).

An LLP requires at least two partners, who can be individuals or body corporates, and at least one manager who is an individual ordinarily resident in Singapore. It is relatively quick and inexpensive to set up, with fewer formalities and compliance procedures than a company. There are no statutory requirements for general meetings, directors, company secretary and share allotments.

Partners of an LLP will not be held personally liable for any business debts incurred by the LLP. However, a partner may be held personally liable for claims from losses resulting from his own wrongful act or omission.

However, to minimise abuse and provide protection to parties who deal with LLPs, there are safeguards in law. An LLP is required to upkeep its financial records as well as report its financial status of solvency or insolvency annually. Further, as the partners enjoy limited liability, it cannot be terminated as easily as a general partnership.

Variable Capital Company

A variable capital company ("VCC") is one of the more recently recognised corporate vehicles in Singapore to be used as part of one or more collective investment schemes. This unique corporate structure is governed by the Variable Capital Companies Act 2018, which took effect on 14 January 2020. Previously, investment funds have generally been structured either as private limited companies or LPs. The introduction of VCCs seeks to overcome some of the inherent limitations of that traditional investment fund structure.

Unlike a private limited company where the subscription and redemption of shares are subjected to the requirement of obtaining majority shareholders' approval and the payment of dividends can only be out of the profits of the private limited company, a VCC is not bound by any capital maintenance requirements, allowing investors to redeem their shares freely, and is allowed to distribute dividends from its net assets or capital. A VCC is also a separate legal entity, and shareholders are not liable for the VCC's debts beyond the amount of share capital they have contributed. In addition, the register of members of a VCC is not required to be open for inspection by the public except for the manager of the VCC, the custodian of the VCC's sub-funds, any public authority or upon an order of court.

A VCC can be set up as a single standalone fund or an umbrella fund with two or more sub-funds, each holding a portfolio of segregated assets and liabilities. It can be used for both open-ended fund strategies where investors are allowed to redeem their investments at their discretion and close-ended

fund strategies where redemption is restricted. Every VCC must have a fund manager that is a holder of a capital markets services licence for fund management under the Securities and Futures Act (Cap 289, 2006 Rev Ed.) ("**SFA**"), a registered fund management company under the SFA or a person exempted from the requirement to hold a capital markets services licence under the SFA.

Foreign corporate entities comprising one or more collective investment schemes are allowed to redomicile in Singapore as a VCC by applying to ACRA to transfer their registration.

Other Arrangements

The following arrangements may also be suitable for foreign companies intending to carry out business activities in Singapore.

Subsidiary Company

A subsidiary company is a locally incorporated private limited company whose majority shareholder is another local or foreign company. Singapore allows 100 percent foreign ownership in companies. Therefore, a foreign company may incorporate a local limited liability company in Singapore (*i.e.*, subsidiary company) and own 100 percent of its shareholding.

A Singapore subsidiary is the most preferred registration option for small to mid-sized foreign businesses interested in establishing their presence in Singapore. A properly structured local subsidiary company is an excellent tax-efficient corporate body. A Singapore subsidiary company is considered a separate entity from the foreign company even if the foreign company is the only shareholder. The liabilities of the subsidiary company are not extended to the parent company. For taxation purposes, the subsidiary may be treated as a Singapore resident company and, as such, is eligible for tax exemptions and incentives available to local companies.

The name for the subsidiary can be different from that of the parent company and is subject to approval by the Registrar of Companies. The Act requires the appointment of one or more directors. At least one director must be a Singapore resident (citizen, permanent resident or Employment Pass holder). A Singapore subsidiary must maintain a registered office in Singapore and keep its statutory documents in that office.

Branch Office

A Singapore branch office, like a subsidiary, is a registered legal entity. However, unlike a subsidiary, a branch office is treated as an extension of the foreign company rather than a separate legal entity. This means that the foreign company's head office bears the ultimate responsibility for any liabilities arising due to the positive acts or acts of omission of the Singapore branch office. From a taxation point of view, a branch office is generally considered a nonresident entity and therefore is not eligible for the tax exemptions and incentives available to local companies in Singapore. Consequently, setting up a branch office is a less attractive option for small to mid-sized businesses.

The name of the Singapore branch office must be the same as that of the head office and must be approved before branch office registration. The company registrar generally approves the proposed name unless a name is identical to an existing company name.

The Act requires that a branch office appoint at least one authorised representative who is ordinarily resident in Singapore to accept services of process and notices. A branch office must have a registered office address in Singapore.

A Singapore branch office is allowed to conduct any type of business activity that falls within the scope of its parent company and can repatriate its earnings and capital. The portion of the income of the branch office, which is derived from or attributable to the operations carried out outside Singapore, will not be subject to taxes. Only the earnings derived from its operations in Singapore will be subject to the prevailing local corporate tax rates.

Representative Office

Foreign companies that are interested only in exploring the market or managing the company affairs without conducting any business activity of a profit-yielding nature can set up a representative office in Singapore. A representative office is a temporary setup that can operate only for a maximum of three years in Singapore, without any legal persona. Therefore, it cannot enter into any contracts or engage in trading directly or on behalf of the foreign company. Representative offices in Singapore can undertake only market research or feasibility studies on behalf of their parent company.

The foreign company bears implicit liability for the activities of the representative office in Singapore. The representative office must be staffed by a representative from the foreign company's head office and can engage a small number of local support staff not exceeding five employees.

Enterprise Singapore ("**ESG**") is the registration authority for representative offices for most industries, including manufacturing, business services, commerce and other sectors but excluding banking, finance and insurance that have to be registered with the Monetary Authority of Singapore ("**MAS**").

Choosing the Right Business Structure / Investment Vehicle

Deciding on the right business structure to incorporate in Singapore will depend on the particular situation and plans of an investor. Foreign investors usually carry on business through locally incorporated companies or branches.

Most foreign investors prefer to set up private limited companies because the tax position is simpler and provides for the ability to qualify for incentives, depending on the industry, location and office type. Subsidiaries of foreign corporations that do not wish to raise share capital or borrow funds from the public usually register as private companies and may commence business immediately after incorporation.

Limits on Foreign Investment

Singapore's legal framework and public policies are generally favourable towards foreign investors. Foreign investors are not required to enter into joint ventures or relinquish management control to local interests, and local and foreign investors are subject to the same laws.

Apart from regulatory requirements in some sectors, the government screens investment proposals only to determine eligibility for various incentive regimes. Singapore does not impose restrictions on reinvestment or repatriation of earnings or capital. The judicial system upholds the sanctity of contracts, and decisions are effectively enforced.

The exceptions to Singapore's general openness to foreign investment exist in telecommunications, broadcasting, domestic news media, financial services, legal and other professional services and property ownership. These industries are generally perceived to be critical to national interests. Under Singapore law, articles of incorporation may also include shareholding limits that restrict ownership in corporations by foreign persons.

Incentives for Investing in Singapore

The Economic Development Board ("**EDB**") is keen to stimulate business investment in Singapore. Together with other major government agencies, such as ESG, MAS, and Maritime and Port Authority of Singapore ("**MPA**"), they operate a number of incentives and development schemes. Some notable incentives and schemes are described below.

Mergers and Acquisitions Scheme

Under the Mergers and Acquisitions Scheme, a qualifying Singaporean company can claim a deduction of 25 percent of the cost of acquisition, up to a maximum of S$10 million, for all qualifying share acquisitions in the basis period for each year of assessment ("**YA**"). The Mergers and Acquisitions Scheme also provides deductibility of transaction costs and stamp duty relief.

To qualify, the acquiring company or its ultimate holding company must be incorporated and a tax resident of Singapore, carry on a trade or business in Singapore on the date of share acquisition, have at least three local employees throughout the 12-month period before the date of share acquisition and not be connected to the target company for at least two years before the date of share acquisition.

Tax Incentives

The Singapore government offers multinational companies ("**MNCs**") and investors a variety of tax incentives in order to attract investments into Singapore. The incentives may come in the form of income tax exemption or taxation at certain concessionary rates, usually at 5 percent or 10 percent.

Applications for tax incentives are subject to the approval of the relevant government bodies. The success of applications greatly depends on the merits of each case, the potential economic benefits for Singapore and the extent of investors' commitments in terms of total business spending and fixed asset investment.

In order to encourage the development of high-growth and high value-add financial activities in Singapore, MAS and the Inland Revenue of Singapore ("**IRAS**") have been granting various tax incentives for the financial services sector.

Income derived from either a Singapore or offshore fund potentially could be exempt from tax on all its sources of income and gains if such a fund is managed by a Singapore resident fund manager, subject to conditions.

Singapore-based fund managers may also secure a concessionary tax rate of 10 percent (compared with the usual tax rate of 17 percent), subject to conditions, for qualifying fee income earned from the management of qualifying funds.

Other financial sector incentives also cover the debt capital market, equity market and derivatives market. These incentives are subject to various conditions and qualifying income could be taxed at a concessionary rate of between 5 percent and 13.5 percent.

Financial Sector Development Fund ("FSDF")

Financial institutions with substantive business plans to establish or expand their operations in Singapore may apply for MAS tax incentives or grant schemes under the FSDF. Successful applicants must satisfy rigorous requirements with respect to the scale and quality of activities to be conducted in Singapore. Notable schemes available under the FSDF include the Financial Training Scheme ("**FTS**"), Institute of Banking and Finance Standards Training Scheme ("**IBF-STS**") and the Financial Specialist Scholarship ("**FSS**").

Pioneer Certificate Incentive ("PC") / Development and Expansion Incentive ("DEI")

The PC and DEI aim to encourage companies to grow capabilities and conduct new or expanded economic activities in Singapore. Companies that carry out global or regional headquarters ("**HQ**") activities of managing, coordinating and controlling business activities for a group of companies may also apply for the PC or DEI for the HQ activities.

An approved company under the PC or DEI is eligible for a corporate tax exemption or a concessionary tax rate of 5 percent or 10 percent, respectively, on income derived from qualifying activities. The incentive period is limited to five years with further extension available subject to the company's commitment to undertake further expansion plans.

To qualify for the PC or DEI, companies must meet certain criteria including the creation of employment and the generation of spin-off benefits to the economy from business expenditures, as well as the commitment to growing the workforce capabilities in Singapore. In addition, to be eligible for consideration of the PC, the company must introduce technology, skillsets or know-how into an industry that are substantially more advanced than the average prevailing levels in Singapore and must also carry out new, pioneering activities that have not been undertaken by other companies at a scale that is substantive in economic contribution.

Startup SG Founder ("SSGF") Programme

SSGF aims to provide mentorship and startup capital grants to first-time entrepreneurs with innovative ideas. Under SSGF, support is extended to teams of entrepreneurs with innovative business ideas by providing advice, learning programs and networking contacts. Successful applications will also be provided with a startup capital grant of S$50,000.

The team applying under SSGF must have at least three Singapore Citizens or Permanent Residents ("**SC/PR**") with at least two of the three main applicants being first-time founders. In addition, the first-time founders must hold a minimum of 30 percent equity in the company collectively and the company must have a minimum 51 percent SC/PR shareholding.

Startup SG Tech ("SSGT") Programme

SSGT is targeted at tech startups and provides successful applicants with early stage funding for the commercialisation of proprietary technology. SSGT supports Proof-of-Concept ("**POC**") and Proof-of-Value ("**POV**") projects for commercialisation of innovative technologies with the grant capped at S$250,000 and S$500,000, respectively.

A POC project is one which is still at the conceptualisation stage, and the technical/scientific viability of the concept still needs to be tested. On the other hand, a POV project is one where a technically/scientifically viable concept exists and development of a working prototype is required.

Enterprise Development Grant ("EDG")

The EDG is a programme managed by Enterprise Singapore. The grant is aimed at supporting projects that help Singapore businesses strengthen their business foundations, pursue innovation, improve productivity and expand into overseas markets. The EDG covers up to 30 percent to 70 percent of qualifying project costs, such as third-party consultancy fees, software and equipment and internal manpower cost.

Setting Up and Operating in Singapore

Directors' Duties and Responsibilities

Requirement of directorship

Under the Act, the minimum number of directors required in a company is one. The maximum number of directors usually will be stated in the company's constitution. There must be at least one director of the company who is ordinarily resident in Singapore. The minimum age to be appointed as a director is 18 years old in Singapore. In addition to the age requirement, a director must be physically and mentally capable of carrying out his duties.

Duties of a director

Directors are fiduciaries of the company that appoints them. A fiduciary is a person who is expected to act in the interests of another person. Hence, as a director, one has a fiduciary duty to act in the way he honestly believes to be in the best interest and benefit of the company.

Directors are also agents of the company. This means that directors are acting on behalf of the company and, in turn, the company is bound by the acts of the directors. Thus, it is vital for a director to exercise reasonable skill, care and diligence when carrying out duties as a director.

The fiduciary duties owed by directors to a company are mandated by both the common and statutory laws.

Some key fiduciary duties include the following:

Duty to act honestly and in bona fide manner in the interest of the company (section 157(1) of the Act): Directors, when acting as directors, may consider only the interests of the company when making decisions, and any personal or third party's interests must be disregarded. Directors will be held liable if they have acted without first considering the interests of the company. As a director, it is essential to act honestly at all times when carrying out duties of the directors. When dealing with co-directors, a director should be honest and must not conceal any material facts. Any attempt to defraud the company or gain an advantage for oneself or others at the expense of the company will amount to dishonesty, and it may result in civil action or criminal prosecution, or both. Certain transactions undertaken by directors that are not profitable may still be in the interest of the company, provided the director can prove that the transaction is bona fide in the interests of the company. Examples include sponsorships or charitable donations. Even though these transactions do not generate profit, they may be beneficial to the company if they serve to enhance the company's corporate image. To avoid a possible breach of fiduciary duties, it is prudent to obtain the approval of shareholders at a general meeting for such transactions.

Duty to avoid conflicts of interest (section 156 of the Act): It is vital for directors to give undivided loyalty to the company. Under both common and statutory laws, a director should not place himself in a position where the interests of the company may or in fact do come into conflict with his personal interests. An example where a conflict of interest may arise is when the director directly or indirectly enters into transactions with the company. This includes buying or selling property to the company.

Another example is the exploitation of corporate information and business opportunities without the permission of the company. Directors are not allowed to divert business intended for the company to themselves or a third party. A director who sets up another firm to rival and compete for contracts with the company will have breached his fiduciary duties.

Duty to exercise care, skill and reasonable diligence: Under both common law and statutory law, directors are expected to exercise reasonable care, skill and diligence in managing the company. If an individual director holds himself out to possess or in fact possesses a higher degree of qualifications or skills, he will be held to a higher standard of care, skill and diligence when carrying out his duties as a director. However, the standard of care, skill and diligence will not be lowered beyond the minimum objective standard required of a reasonable director to accommodate any inadequacies in the individual director's knowledge or experience.

Duty to not make improper use of any information: A director has a duty to not make improper use of any information acquired by virtue of his position as director to gain, directly or indirectly, an advantage for himself or for any other person or cause detriment to the company (section 157(2) of the Act). Should a director do so, he is guilty of an offence and liable to the company for any profit he gains or for losses suffered by the company. A director who buys or sells securities of the company while he is in possession of any insider information concerning the company commits an insider dealing offence under section 218 of the SFA.

Duty to act for the proper purpose: A director should be aware that powers conferred upon directors by the company's constitution should be used only for proper purposes. Certain powers are conferred on directors for particular purposes. If a director uses his powers to pursue objectives other than the purpose for which the powers are conferred, even if his objectives are still in the interests of the company, the use of such powers may be restrained. A commonly misused power is the power to issue shares, which is ordinarily intended to raise capital. If a director issues shares to dilute a member's shareholdings, gain control of the company, preserve control of the board or prevent a takeover bid, he has made improper use of his powers as a director.

Board meetings and quorum

A director has the responsibility of ensuring that the company complies with all of its statutory requirements on time. Important requirements include the holding of the company's AGM and the subsequent filing of Annual Returns ("**AR**") by the specified due dates. ACRA sends out reminders to companies and their directors to fulfil these obligations.

AGMs are conducted under the direction of the chairman of the meeting, who is usually the chairman of the board of directors. The chairman regulates the conduct of the meeting to ensure that it is properly run. If the company's constitution does not clearly specify who should serve as chairman, any member can be elected at the meeting to serve as chairman.

A quorum is the minimum number of people who must be present at the meeting for it to be considered legally valid. If the quorum is not stated in the constitution of the company, any two members

or proxies personally present at the meeting are enough to form the quorum.

Directors' Liability

If a director breaches his duties, he may be subjected to either civil or criminal liabilities, or both. Proceedings for civil liabilities are initiated by the company to which these civil liabilities are owed, while criminal liabilities are initiated by the public prosecutor. As there is considerable overlap between the common law duties and statutory duties, a breach in a common law duty may also result in a breach in statutory duties. Generally, statutory duties are enforced by regulatory bodies such as ACRA or by the public prosecutor, while common law duties are enforced by the company.

If a director makes improper use of information, he also would have breached section 157(2) of the Act and the common law. Under the Act, the director will be liable to return to the company any profit made by him or compensate the company for any damage suffered by the company as a result of the breach, and he will be guilty of an offence, subjecting him to a fine not exceeding S$5,000 or imprisonment for a term not exceeding one year.

Under section 156 of the Act, if a director fails to disclose potential conflicts of interest in any transaction, he is subjected to a fine not exceeding S$5,000 or imprisonment not exceeding one year.

In Singapore, it is common for directors and executive officers to obtain directors' and officers' liability insurance. This is usually purchased by their company for their benefit.

Employment of Locals

As Singapore's primary asset is its people, the government has gone to great lengths to build a highly educated and professionally qualified workforce and maintain exceptional employment standards and practices. To upkeep such standards, the Singapore government has entrusted the Ministry of Manpower ("**MOM**") and the Workforce Development Agency ("**WDA**") with the responsibility of regulating labour standards.

As the governing authority for Singapore's workforce, MOM enforces the regulations and guidelines set forth by the Employment Act (Cap 91, 2009 Rev Ed.) in order to ensure and maintain high standards on all aspects of employment. The Employment Act applies only to every employee (regardless of nationality) who is under a contract of service with an employer, except (a) any person employed in a managerial or executive position earning more than S$4,500 basic monthly salary; (b) any seafarer; (c) any domestic worker; and (d) any person employed by a statutory board or the Singapore government.

The WDA is the government-accredited agency focused on keeping Singaporean employees up to date and current in their respective industries. To do so, WDA regularly conducts industry-accredited upgrading courses for the workforce.

As the primary piece of legislation, the Employment Act governs the hiring, employment and dismissal of employees. The Employment Act provides the relevant workers with rights and benefits, including the right to maternity protection, child care leave for parents and the right to worker's compensation

for injuries sustained at work. Female employees that have been employed for at least three months may be eligible for paid maternity leave benefits. Employers are also prohibited from dismissing any employees on maternity leave.

The Employment Act does not stipulate a minimum salary that must be paid to employees. In other words, salary is subject to negotiation between the employer and the employee. There is also no requirement of bonus payment under the Employment Act. However, the salary must be paid at least once a month within seven days after the end of the salary period. Overtime pay, if applicable, must be paid within 14 days of the stipulated salary period. Annual bonus equivalent to at least one month's salary, commonly known as a 13th month payment, has become a common practice in Singapore. The actual amount of annual bonus varies from employee to employee, according to the policy of the company, and normally will be tied to the employee's performance as well as the performance of the company.

The Employment Act imposes restrictions on working hours, protecting workmen whose salaries do not exceed S$4,500 per month or employees whose salaries do not exceed S$2,600 per month. A "workman" is defined under the Employment Act as someone whose job involves manual labour. Under Part IV of the Employment Act, employees are generally not allowed to work for more than six consecutive hours without a period of leisure, for more than eight hours in a day and for more than 44 hours in a week.

For employees falling outside the Employment Act, the relationship between the employer and employee is regulated almost exclusively by contract. The governing law of the contract will depend on the choice of law clause in the contract. Parties are generally free to contract as they choose under an employment contract, subject to certain statutory requirements and limits as provided for in legislation and public policy.

It may be prudent to have a written employment contract in Singapore. Typically, only senior management employees may have the bargaining power to negotiate their employment contracts. Most employment contracts include several important clauses, such as the employee's appointment, duration of employment contract, remuneration package and termination.

Further, all employers are required to make Central Provident Fund ("**CPF**") contributions. CPF is a social security savings plan that covers healthcare, retirement and home ownership. The contribution rate varies depending on the age, the wage band and the status of the employee (*i.e.*, Singaporean citizen or permanent resident). The maximum amount of CPF contribution payable is based on a monthly salary ceiling of S$6,000. Voluntary contributions can be paid in addition to the mandatory contributions.

The employer is required to pay the employer's and employee's share of CPF contributions monthly for all employees (Singapore citizens and Singapore permanent residents) at the rates set out in the Central Provident Fund Act (Cap 36, 2013 Rev Ed.). The contributions payable should be based on the employee's actual wages earned for the month. The employer deducts the employee's share from the salary of the employee.

CPF contributions are not allowed for foreigners working in Singapore under an Employment Pass, S Pass or a Work Permit and for directors' fees.

Employment of Foreigners

Foreign nationals intending to enter Singapore to take up employment or to engage in business must obtain a work pass from MOM.

MOM issues work passes in the following categories: Employment Pass ("**EP**"), EntrePass, Tech.Pass, Personalised Employment Pass ("**PEP**"), S Pass and Work Permit.

Primarily, the Singapore government has adopted a policy of encouraging well-qualified and skilled foreigners who can contribute to the country's economy to join the workforce in Singapore. Immigration rules have also been liberalised to recognise such persons as potential permanent residents.

The EDB has also introduced a permanent residence scheme known as the Global Investor Programmme. This programme targets foreigners with outstanding entrepreneurial ability and substantial financial resources to invest in Singapore.

Foreigners who plan to exercise employment or establish businesses in Singapore must obtain the necessary approval from the relevant authority prior to the commencement of employment.

Work Passes

Employment Pass

An EP is given to a foreigner in a professional, managerial or executive position, who earns at least S$4,500 a month and has acceptable qualifications.

EntrePass

The EntrePass is meant for a foreign entrepreneur who wishes to start and operate a new business in Singapore.

Tech.Pass

The EDB recently launched a new work pass catered to top-tier foreign professionals looking to start businesses, lead corporate teams or teach in Singapore. Tech.Pass will be valid for two years, with a one-time renewal for a subsequent two years that will depend on certain criteria.

With Tech.Pass, individuals can perform activities like starting and operating a business, serve on the board of directors of a Singapore-based company or be a shareholder or investor in companies here. They can also take up lecturing roles in institutes of higher learning, serve as a mentor or adviser to companies here and conduct corporate training or workshops.

Personalised Employment Pass

The PEP is for high-earning EP holders and overseas foreign professionals. While an individual EP is tied to an employer, the PEP allows its holder to remain in Singapore without a job for up to six months while seeking employment opportunities. It is issued only once with a validity period of three years and is nonrenewable. A current EP holder and an overseas foreign professional must earn an annual salary

of at least S$144,000 and S$216,000, respectively, to be eligible to apply for the PEP and must earn a fixed monthly salary of at least $12,000 in each calendar year of the PEP.

S Pass

A foreigner whose fixed monthly salary is at least S$2,500 is eligible for an S Pass. S Pass applicants are assessed on a points system, taking into account such factors as salary, educational qualifications, skills, job type and work experience.

Currently, the number of S Pass holders a company can employ is capped at a sub-dependency ratio ceiling of 10 percent of the company's total workforce in the services sector, 20 percent in the manufacturing sector and 18 percent in all other sectors.

Work Permit

A foreigner whose fixed monthly salary is not more than S$2,500 is required to apply for a work permit. The permit can be categorised into "semi-skilled" and "unskilled" depending on the educational level and industry sector under which the applicant is employed.

An employer intending to hire non-Malaysian foreign workers to work in Singapore will need to furnish a security bond of S$5,000 per worker and pay foreign worker levies for them.

Foreign Worker Levy

Employers are required to pay a foreign worker levy, which is a pricing mechanism designed to regulate the number of foreign workers in Singapore. The number of S Pass holders and Work Permit holders that a company is allowed to hire is limited by quota and subject to this levy. The levy rates vary across industries and are tiered. Generally, a company that hires more foreign workers is subject to higher foreign levy rates.

Exemptions

However, a foreigner can engage in certain work-related activities in Singapore for a short period of time without a work pass if he notifies MOM upon arrival and before starting the activity. A foreigner can work in a work pass exempted activity for the duration of the short-term visit, up to a maximum of 90 days in a calendar year. Work pass exempt activities include arbitration and mediation services, exhibitions, journalism, junket activities, performances, seminars and conferences.

Business Culture and Etiquette

Although Singapore is generally regarded as a business-friendly economy, as with any country, there are social rules and protocols that foreigners should take note of when doing business in Singapore. A few points that are worth keeping in mind include:

Language

There are four official languages in Singapore – English, Mandarin, Malay and Tamil.

English is the language of business and administration and it is widely spoken. Translation and

interpretation services are usually available at hotel business centres, but these services are unlikely to be required as most Singaporeans are bilingual.

Meetings and Presentations

Name cards are an essential part of business protocol. They should be presented with both hands and with the name facing the recipient. No elaborate bowing is necessary in formal business meetings. A firm handshake will suffice. When addressing Chinese people, the family name is used. When addressing Malay people, the first of their two family names is used. Singaporean Indians use a variety of conventions, so it is advisable to use the family name. Punctuality is important, so effort should be made to arrive on time.

Negotiations

Singapore has a formal business culture with many rules of etiquette, which vary between the Chinese, Malay and Indian members of the population. Singaporeans are often cautious and keen to make sure they are doing business with the right person. Therefore, it is necessary to first establish trust and rapport with a Singaporean counterpart. Generally, small talk is common at the outset of meetings and one may be asked personal questions.

Personal relationships and networking are key elements of doing business in Singapore. Status and hierarchy are important in Singapore business culture, where many companies have a top-down structure. Decisions are nearly always made by the senior management and subordinates avoid directly questioning or criticising their superiors.

Intellectual Property Protection

The Intellectual Property Office of Singapore ("**IPOS**") is the government body responsible for registering patents, trademarks and designs in Singapore, all of which can be applied for electronically through the IPOS website. The site also provides searchable trademark, patent and design databases.

Singapore ranks top in intellectual property protection in Asia. According to the World Economic Forum's Global Competitiveness Report 2019, Singapore was ranked as top in Asia and second in the world for intellectual property protection in 2019.

Intellectual property law in Singapore covers the following four areas:

Patents

Patents are protected on a first-to-file basis. Inventions are protected in Singapore under the Patents Act (Cap 221, 2005 Rev Ed.). Registration may be obtained in two ways: through a domestic application filed with the Registry of Patents within IPOS or through an international application filed in accordance with the Patent Cooperation Treaty, with IPOS acting as the receiving office of the application. A person who has earlier filed an application for registration in a Paris Convention/World Trade Organisation ("**WTO**") country may, if he files for registration in Singapore within 12 months from the date of such application, claim a right of priority.

Trademarks

Trademarks are protected on a first-to-file basis. Singapore has a dual system of trademark law: Protection for trademarks may be available both under the Trade Marks Act (Cap 332, 2005 Rev Ed.) ("**TMA**") and common law. These two systems are independent of each other. Protection under the TMA is conditional upon registration of the trademark with the Registry of Trade Marks within IPOS. However, there is one exception. Special protection is granted under the TMA for "well known" trademarks, regardless of whether they are registered.

Registration may be obtained in two ways: through a domestic application filed with the Registry of Trade Marks or an international application filed under the Madrid Protocol, designating Singapore as a country where protection is sought. A person who has earlier filed an application for registration in a Paris Convention/WTO country may, if he files for registration in Singapore within six months from the date of such application, claim a right of priority. The trademark monopoly is limited to use in relation to the goods or services for which the trademark is registered. Singapore follows the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

Registered Design

Registered designs are protected on a first-to-file basis. Protection of industrial designs is available under the Registered Designs Act (Cap 266, 2005 Rev Ed.). Registration may be obtained in two ways: a domestic application filed with the Registry of Designs within IPOS or an international application filed in accordance with the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, designating Singapore as a country where protection is sought. A person who has previously filed an application for registration in a Paris Convention/WTO country may, if he files for registration in Singapore within six months from the date of such application, claim a right of priority.

Copyright

Copyright law in Singapore is governed by the Copyright Act (Cap 63, 2006 Rev Ed.). An author automatically enjoys copyright protection as soon as he creates and expresses his work in a tangible form. There is no need to file for registration to get copyright protection. For a work to be protected by copyright in Singapore, it has to be original and expressed in a tangible form such as in a recording or in writing. Originality simply means there is a degree of independent effort in the creation of the work.

M&A

In an increasingly globalised world, M&As are essential mechanisms of shareholder value enhancement. M&As facilitate access to new markets, capacities and technologies, as well as enable organisations to grow core competencies. Well-planned and strategic M&As are transforming a number of corporations into global or regional powerhouses and enabling unprecedented growth beyond geographical market limitations.

At the same time, M&As are not without risks. Corporations need to secure the right deal at the right time and price, as well as integrate the acquisition to realise their strategic objectives. Just as vital, corporations need to evaluate investment opportunities carefully, carry out due diligence thoroughly and know when to walk away. Given the complexity involved, it is not surprising that many acquisitions fall short of what acquirers expected.

In recent years, private equity has emerged as an important source of capital. The proliferation of private equity-driven deals in Asia is increasing competition for investments and pushing up valuation. It is now even more essential for private equity firms to identify the right deals, understand their target's potential and maximise value in deal structuring. Post-deal value creation and the right exit strategy are also integral to achieving desired returns.

Despite the challenging economic climate brought about by the Covid-19 pandemic, the level of M&A activity in Asia has remained robust, being a testament to the importance of transactions and investments for the long-term growth and sustenance of businesses here in Asia.

According to a report by corporate finance adviser Duff & Phelps, the value of M&A transactions in Singapore in 2020 remains ahead of our peers in the region, registering 482 M&A deals valued at US$59.2 billion compared to US$5.9 billion in Malaysia and US$9.7 billion in Indonesia.

Legal Framework

In Singapore, parties are largely free to negotiate terms and conditions of the sale and purchase of the business/shares of a company. Generally, the contractual provisions for the acquisition of a Singaporean company are often driven by commercial considerations and share the same basic components and features of acquisition agreements in other jurisdictions.

The Act, the IRDA, the Competition Act (Cap 50B, 2006 Rev Ed.) and the Code of Takeovers and Mergers ("**Takeover Code**") are the main laws and regulations governing a merger or acquisition. Singapore-listed companies' acquisition and disposal activities are also regulated by the Singapore Exchange's Listing Rules.

The Act and the IRDA provide for protection of creditors by its various capital preservation provisions, such as the rule preventing the undervalued sale of a business and preferring one creditor over another in the event of a company's insolvency and, particularly in relation to M&As, provisions on the prohibition of financial assistance by a company to the acquirer in the purchase of its shares.

The Competition Act prohibits mergers that have resulted, or are expected to result, in a substantial lessening of competition within any market of goods or services in Singapore. Although it is not compulsory to notify the Competition and Consumer Commission of Singapore ("**CCCS**") about a merger, in order to avoid potential additional cost and inconvenience at the later stages of an M&A transaction, a party who is unsure whether a proposed acquisition is prohibited by the Competition Act may want to notify the CCCS for a preliminary ruling.

Part VIII of the SFA contains legislative provisions relating to takeover offers. Section 138 of the SFA provides for the establishment of an advisory body known as the Securities Industry Council ("**SIC**"). The SIC is the regulator that oversees and administers the Takeover Code and is part of the MAS. Section 140 of the SFA lists the offences relating to takeover offers. Under the SFA, it is an offence for a person to give notice or publicly announce that he intends to make a takeover offer if he has no intention to make one. It is also an offence to make a takeover offer if a person has no reasonable or probable grounds for believing that he will be able to perform his obligations pursuant to the offer being accepted or approved.

The Takeover Code applies primarily to the acquisition of 30 percent or more of the voting control of public companies. However, unlisted public companies with more than 50 shareholders and having net tangible assets of S$5 million or more must also observe, wherever possible and appropriate, the provisions of the Takeover Code as set out in its General Principles and Rules.

The Employment Act of Singapore is another piece of legislation that has to be taken into consideration in M&As. When a business or part thereof is transferred from the seller to the purchaser, section 18A of the Employment Act automatically operates to transfer the contracts of employment to the purchaser. In addition, all the seller's rights, powers, duties and liabilities under, or in connection with, the employment contracts of the employees are transferred to the purchaser and any act or omission done before the transfer in respect of such contracts shall be deemed to have been done by the purchaser.

Singapore is generally an open economy with minimal foreign ownership or investment restrictions when it comes to M&As. There are, however, statutes relating to some particular industries, which govern takeover activity in Singapore. These restrictions limit the percentage of ownership or require prior regulatory approval for ownership in companies engaged in those industries. These industries are generally industries perceived to be critical to national interests, such as banking, finance, insurance and media.

Private M&A

Private M&A transactions are generally unregulated. However, the Act may be applicable or relevant in certain acquisitions.

Issues that may be relevant to acquisitions and covered in the Act include: fiduciary duties of directors, the prohibition against financial assistance by a company for the acquisition of its shares and the procedural requirements for the disposal of a company's business.

For instance, where a business sale involves the disposal by the vendor of the whole or substantially the whole of its undertaking or property, the prior approval of the vendor's shareholders in general meeting must be obtained pursuant to section 160 of the Act. The approval required is a simple majority vote of the shareholders present and voting at the general meeting.

If financing for the acquisition is required by the purchaser in a share sale, the assets of the target Singaporean company cannot be offered as security to the purchaser's lenders. Section 76 of the Act prohibits the giving of financial assistance by a public company, or a company whose holding company or ultimate holding company is a public company, in connection with the acquisition of its shares or its holding or ultimate holding company's shares. The giving of financial assistance includes the provision of security by the company. However, it is possible for a Singaporean company to provide financial assistance under "whitewash" procedures as specified in the Act.

Public M&A

Compared to private M&As, public M&As in Singapore are subject to greater exposure to regulatory scrutiny. The Takeover Code applies to the acquisition of voting control of public companies. It applies to corporations (including corporations not incorporated under Singapore law) with a primary listing of their equity securities in Singapore and business trusts or Real Estate Investment Trusts ("**REITs**") with a primary listing of their units in Singapore. The Takeover Code, which is administered by the SIC, was drafted with listed public companies and listed registered business trusts in mind. With respect to foreign-incorporated companies and foreign-registered business trusts, the Takeover Code applies only to those with a primary listing in Singapore.

The Takeover Code seeks to ensure that takeovers and mergers are conducted in accordance with good business practice for the fair and equal treatment of all shareholders. The SIC does not concern itself with the commercial merits of takeovers and mergers.

The Takeover Code contains general principles, rules and notes. However, the Takeover Code acknowledges that it is impracticable to create rules in sufficient detail to cover all scenarios that can arise in takeover and merger transactions. Therefore, it is essential that both the letter and spirit of the Takeover Code must be observed, especially in circumstances not explicitly covered by any rules.

Breach of the Takeover Code may result in the imposition of sanctions by the SIC. Sanctions that the SIC may impose include private reprimands, public censure and, where the breach is flagrant, further action as the SIC thinks fit, including actions designed to deprive the offender temporarily or

permanently of its ability to enjoy the facilities of the securities market.

Acquisition / Takeover Methods

The business of a Singaporean company generally may be acquired by a Share Sale or a Business Sale. The purchaser may either acquire the issued shares of the Singaporean company that carries on the business (a "**Share Sale**") or acquire the business (assets and liabilities) of the Singaporean company (a "**Business Sale**").

For a Share Sale, the purchaser is not required to be a Singaporean company or have a legal presence in Singapore. For a Business Sale, the purchaser must be a Singaporean company or a branch of a foreign company registered in Singapore. It is an offence to carry on business in Singapore without the legal presence of a Singapore-incorporated company or a Singapore branch.

Generally, a Share Sale is a more straightforward transaction as it involves merely a transfer of ownership of the shares in the Singaporean company. In contrast, a Business Sale entails the passing of asset titles from the Singaporean company to the purchaser. Examples of the Singaporean company's assets include land and premises, book debts, intellectual property rights, goodwill, insurance, hire purchase and other contracts, and plants and machinery. Given the need to transfer each asset or category of asset, from the Singaporean company to the purchaser, the parties will have to enter into numerous assignment or novation agreements.

Alternatively, section 215A of the Act has prescribed a third option of statutory amalgamation procedures to acquire the business of a Singaporean company. Such a process may involve either two or more companies amalgamating and continuing as one company or two or more companies amalgamating and forming a new company. The main distinguishing factor of the amalgamation process is that it does not require the sanction of the High Court, unlike a scheme of arrangement. The approval of the SIC is required for the exemption of certain provisions of the Takeover Code. These provisions include those relating to the offer timetable, acceptances, keeping the offer open for 14 days after it is revised and the right of acceptors to withdraw their acceptances.

Competition Law

The CCCS has the powers to investigate and adjudicate anti-competitive activities and to enforce the Competition Act. In particular, the CCCS focuses on activities that have appreciable adverse effect on competition in Singapore. The CCCS may launch a formal investigation where it has reasonable grounds for suspecting that the Competition Act has been infringed. The CCCS is empowered to issue a written notice to require businesses to provide documents and information, as well as to enter any premises to carry out inspections.

The Competition Act was enacted with the aim of enhancing the competitiveness of the Singapore economy by prohibiting certain anti-competitive business activities and regulating the conduct of market players. All business entities conducting business in Singapore, whether foreign, domestic or government-owned entities, are required to comply with the Competition Act.

Generally, three types of activities are prohibited under the Competition Act.

The first type of prohibited activity is a merger that substantially lessens competition within any market for goods or services in Singapore. This prohibition applies even where the merger takes place outside of Singapore, or where any party involved in a merger is located outside Singapore.

A party that is unsure of whether a proposed acquisition is prohibited by the Competition Act may apply to the CCCS for a decision regarding whether the acquisition, if carried into effect, will infringe the provisions of the Competition Act. Generally, the CCCS considers that competition concerns are unlikely to arise unless the merger results in a merged entity with a market share of 40 percent or more; or a merged entity with a market share of between 20 percent and 40 percent and a post- merger CR3 ratio of 70 percent or more. The CR3 is defined as the concentration ratio measured by adding the market shares of the three biggest firms in the market.

While merger notification to the CCCS is voluntary, the CCCS requires all parties involved in mergers to conduct a self-assessment in accordance with the methodologies in the guidelines published by the CCCS, read with its decided cases, on whether a merger filing is necessary.

The second type of prohibited activity is making agreements, decisions and practices that prevent, restrict or distort competition in Singapore. An example includes colluding with competitors to fix prices or to limit production supply in the market. However, certain agreements are exempted from the provisions of the Competition Act. For example, vertical agreements entered into between two or more businesses are generally not considered as anti-competitive agreements under the Competition Act.

The third type of prohibited activity is the abuse of a dominant position. Though being dominant is not

against the law, when a dominant player in a market uses its power to unduly restrict competition, such an action may be considered as abuse. Abusive tactics may include exclusive dealing, where the dominant player binds other businesses into working exclusively with itself, or predatory pricing, where the dominant player sets extremely low prices to drive competitors out of the market.

TAXATION

Tax Treaties

Currently, Singapore has entered into Double Tax Agreements ("**DTA**") with more than 70 countries worldwide, including Japan, China, Malaysia, Indonesia and the United Kingdom.

A DTA signed between Singapore and another country serves to relieve double taxation of income earned in one country by a resident of the other country. The DTA specifies the taxing rights between Singapore and the treaty country on certain cross-border income and may also provide for reduction or exemption of tax. The key benefits of a DTA include the avoidance of double taxes, lower withholding taxes and a preferential tax regime. These benefits serve to minimise the tax burden pertaining to a holding company structure.

This extensive DTA network, coupled with the absence of capital gains and dividends tax, makes Singapore a very attractive jurisdiction for business investments through a Singapore-incorporated holding company.

Corporate Tax

Singapore's tax system is often regarded as simple and investor-friendly, as it offers a level playing field for foreign investors, with no foreign ownership restrictions and no foreign exchange controls.

Income of a company (whether tax resident or not) that is accrued in or derived from Singapore or is received in Singapore from outside Singapore is subject to corporate income tax, unless the income is specifically exempt from tax.

The prevailing corporate income tax rate is 17 percent with a partial tax exemption on normal chargeable income of up to S$200,000 as follows: 75 percent exemption on the first S$10,000 of normal chargeable income and 50 percent exemption on the next S$190,000 of normal chargeable income. Accordingly, the effective tax rate on the first S$200,000 of normal chargeable income is around 8 percent. The balance of chargeable income in excess of S$200,000 is fully taxable at the prevailing rate of 17 percent.

New startup companies may also enjoy tax exemptions. The tax exemption scheme for new start-up companies was introduced by IRAS to support entrepreneurship and help local enterprises grow. The tax exemption is open to all new companies except a company whose principal activity is that of investment holding or the development of properties for sale, investment, or both. Eligible companies must also be incorporated in Singapore, be a tax resident in Singapore for that YA and not have more than 20 shareholders throughout the basis period for that. Under this scheme, qualifying new companies

are given 75 percent exemption on the first S$100,000 normal chargeable income and a further 50 percent exemption on the next S$100,000 of normal chargeable income for the first three consecutive YAs.

Further, the Minister for Finance has announced a Corporate Income Tax Rebate to be given to all companies to help them deal with rising business costs for YA 2020 at 25 percent of corporate tax payable, subject to a cap of S$15,000.

Dividends and Foreign-Sourced Income

The tax on dividend income is zero percent. No withholding tax is levied on post-tax dividends paid from Singapore. A Singapore-resident company may enjoy tax exemption for its foreign-sourced dividends, foreign-branch profits and foreign-sourced service income (*i.e.*, income where the services are rendered in the course of the taxpayer's trade, business or profession through a fixed place of operation in a foreign jurisdiction) received in Singapore if the following three conditions are met:

1) In the year the income is received in Singapore, the highest rate of tax of the foreign jurisdiction from which the income is received is not less than 15 percent.
2) The income is subject to tax in the foreign jurisdiction.
3) IRAS is satisfied that the tax exemption would be beneficial to the Singapore-resident company.

Furthermore, dividends issued by Singapore-resident companies are tax-exempt in Singapore in the hands of the shareholders.

Withholding Tax

There is a requirement to withhold tax when certain specified payments, such as interest, royalty and service fees (in respect of services performed in Singapore), are made to non-Singapore residents. The domestic withholding tax rates are generally 15 percent, 10 percent and 17 percent for interest, royalty and service fee payments, respectively. The rates may be reduced under the provisions of existing tax treaties between Singapore and relevant countries. Dividend payments made to nonresident shareholders are not subject to Singapore's withholding tax.

Stamp Duty

Stamp duty is levied on certain commercial and legal documents as prescribed in the Stamp Duties Act (Cap 312, 2006 Rev Ed.). They include documents relating to the transfer, conveyance and assignment of shares and immovable property. The chargeable instrument must be stamped within 14 days of its execution in Singapore. Any chargeable instrument executed outside of Singapore must be stamped within 30 days of its first receipt in Singapore.

The Third Schedule to the Stamp Duties Act ("**Third Schedule**") sets out the person liable to pay stamp duty, unless there is an agreement to the contrary that some other party is liable. Under the Third Schedule, the transferee is the party liable to pay stamp duty in transactions involving the transfer of shares and immovable property.

The stamp duty rate for the transfer of shares is 0.2 percent of the purchase price or the net asset value of the shares. The stamp duty rate for the transfer of immovable property is computed based on the purchase price or market value of the property, whichever is higher.

In relation to the transfer of immovable property, the transferee has to pay buyer's stamp duty, chargeable at different tiered rates for residential and nonresidential immovable properties from 1 percent to 4 percent. Depending on the date of acquisition, transfer of residential immovable property within one to four years of the date of acquisition also attracts additional duty that is borne by the transferor. This is referred to as seller's stamp duty. For properties acquired on and after 11 March 2017, the amount of seller's stamp duty payable (based on a rate of 12 percent, 8 percent or 4 percent) depends on the holding period of the property. Generally, the longer the holding period of the property, the smaller the amount of duty payable as a lower rate applies.

Others

There is no capital gains tax for companies or individuals in Singapore. Correspondingly, capital loss expenses are not allowed as deductions. However, where a gain is considered to be revenue in nature, such gain could be subject to tax if it is sourced in Singapore.

There is also no thin capitalisation regime in Singapore. No thin capitalisation rules are in effect that will impact the amount of debt that can be borrowed or guaranteed by entities incorporated in Singapore.

DISPUTE RESOLUTION

Cross-border transactions are increasingly common in today's business world. Where one or two international parties contract to do business in Singapore or in the region, it is essential to consider the issues of choice of governing law and the venue for dispute resolution.

Singapore offers an ideal choice, both for governing law and for dispute resolution venue. Singapore's law and legal system have their roots in English law, one of the most widely used systems of law for governing international business. Given its robust legal system, Singapore is well-placed to offer international parties a venue to resolve their disputes fairly, efficiently and economically.

Litigation in the Courts

The Supreme Court consists of the Court of Appeal and High Court. The High Court is a court of first instance, generally for claims beyond the jurisdiction of the State Courts.

The State Courts consist of the District Court and the Magistrates' Court. The District Court's general pecuniary jurisdiction is limited to claims of up to S$250,000. The Magistrates' Court's general pecuniary jurisdiction is limited to claims of up to S$60,000.

The informal process of the Small Claims Tribunal (which is governed by its own specific rules, not by the procedural rules that govern the main courts just mentioned) has jurisdiction over claims of up to S$20,000 (which may be increased to S$30,000 subject to the written agreement of the parties).

The main sources of law include the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed.), the State Courts Act (Cap 321, 2007 Rev Ed.) and other legislation, which have procedural application or contain procedural provisions, the Rules of Court, practice directions, case law and the inherent powers of the court.

Singapore's Supreme Court comprises highly experienced judges with a wide range of commercial expertise drawn from both the public and private sectors. The litigation process is open, transparent and quick. Disputes involving contested facts are disposed of on average within 12-18 months of commencement. From the decision of a trial court, there is a right of appeal to an appellate court, which is generally able to hear and dispose of an appeal within a few months of the trial court's judgment.

The Singapore International Commercial Court ("**SICC**") was officially launched on 5 January 2015 and is part of an initiative to grow the legal services sector and to expand the scope for the internationalisation and export of Singapore law. The SICC seeks to promote Singapore as a leading forum for legal services and international commercial dispute resolution, offering parties in transnational businesses an additional option of having their commercial disputes adjudicated by a panel of experienced judges comprising specialist commercial judges from Singapore and international judges from both civil law and common law traditions.

Alternative Dispute Resolution ("ADR")

The liberalisation of the financial industry in Singapore has led to growth of the ADR sector. Singapore has made great strides in establishing itself as one of the dispute resolution epicentres alongside London and Hong Kong. Having established its reputation for impartiality, integrity, excellent infrastructure and highly qualified professionals, it has become the forum of choice.

Mediation

The Singapore government has actively encouraged prospective litigants to engage in mediation before turning to the courts. Formal or institutionalised mediation was established in the 1990s with the Court Mediation Centre, renamed the Primary Dispute Resolution Centre, in the State Courts, the Singapore Mediation Centre ("**SMC**"), the Community Mediation Centres and other agencies and tribunals. In other words, mediation is practised in the various sectors of society catering to the diverse ethnic and social backgrounds of Singaporeans, from the grassroots community to government and business. Mediation is an attractive form of dispute resolution method as it guarantees confidentiality and is generally cheaper and faster than litigation.

In 2014, against the backdrop of a significant growth in trade and investment within Asia and the corresponding need for cross-border commercial dispute resolution services, the Singapore International Mediation Institute and the Singapore International Mediation Centre were launched, marking a major milestone in Singapore's development as a regional dispute resolution hub.

The Mediation Act 2017 coupled with the Mediation Rules are the main legislation dealing specifically with mediation. The Mediation Act sets out provisions concerning the stay of court proceedings where a mediation agreement is in play, as well as confidentiality obligations relating to mediation-related communications.

As an illustration of the growing acceptance of mediation as a form of dispute resolution in Singapore, Singapore ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation on 25 February 2020, which subsequently came into force on 12 September 2020. Since the establishment of the SMC, over S$10 billion worth of disputes have been mediated at the SMC, with 70 percent of the cases settled through mediation.

Arbitration

Like mediation, arbitration has a 20-year history in Singapore. The Arbitration Act (Cap 10, 2002 Rev Ed.) and the International Arbitration Act (Cap 143A, 2002 Rev Ed.) were passed in the 1990s after Singapore acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**") in 1986. Awards made in Singapore, either in respect of a domestic or international arbitration, are binding and enforceable. For example, if a counterparty is from a New York Convention country, an award obtained in Singapore against that counterparty is enforceable in the latter's country.

Similar to mediation, for the past 20 years, arbitration has gained traction as a popular dispute resolution method. Arbitration is also well supported by various institutions, expert arbiters and infrastructure to ensure that the arbitration process is seamless, efficient and professional.

The Singapore International Arbitration Centre ("**SIAC**") and the Singapore Chamber of Maritime Arbitration are two local, noninstitutional organisations that promote arbitration with their own panel of arbitrators and rules. The SIAC also provides training and certification. The SIAC, together with Maxwell Chambers, Asia's first integrated dispute resolution complex, offer state-of-the-art hearing facilities and comprehensive services to support the conduct of arbitration.

In June 2016, the SIAC announced the official release of the sixth edition of the Arbitration Rules of the SIAC ("**SIAC Rules 2016**"), which came into effect on 1 August 2016. Some of the key highlights of the SIAC Rules 2016 include provisions on consolidation of multiple contracts arbitration and joinder of additional parties to facilitate the cost-effective and efficient resolution of disputes, as well as the introduction of an innovative procedure for early dismissal of claims and defences, making SIAC the first amongst the world's major commercial arbitration centres to adopt this provision in its rules.

According to the 2019 SIAC annual report, SIAC has consistently received more than 400 new cases each year since 2017, with the total dispute value in 2019 climbing by nearly 15 percent from the

previous year to $8.09 billion. The strong growth in numbers, with 87 percent of the total cases handled in 2019 made up by international cases, reinforces Singapore’s position as one of the fastest-growing and well-recognised arbitral institutions globally.

FOR MORE INFORMATION

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