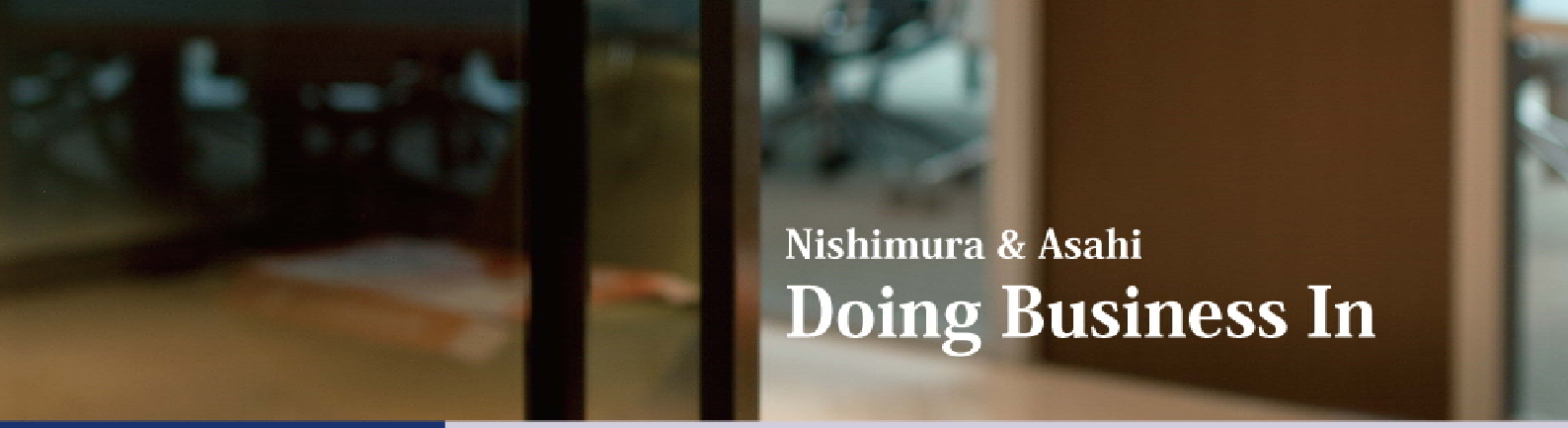

Singapore

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1. INTRODUCTION

1.1 Please give a brief outline of the legal system in Singapore. Is it based on common-law, civil-law, or some other system?

Historically, Singapore's legal system was based on English law. The Application of the English Law Act, Chapter 7A of Singapore, provides that the English common law, which was part of the law of Singapore before November 1993, continues to form part of Singapore law. Today, Singapore is responsible for its own law-making using a common law approach and its legal system is ranked highly by both regional and international bodies. In 2007, the Hong Kong-based Political and Economic Risk Consultancy highlighted that Singapore and Hong Kong were the only two legal systems in Asia that had judiciaries rated on a par with those in developed Western societies. In the World Bank Worldwide Governance Indicators, Singapore's judiciary was ranked third among the nine Commonwealth countries, after New Zealand and Canada.

Singapore has a constitution that is the supreme law of the country. It encapsulates the fundamental principles and establishes the country's executive, legislature and judiciary. The Parliament passes primary legislation in the form of statutes, with subsidiary legislation, such as rules and regulations, being drafted by Ministers, statutory bodies and government departments. Case law, in the form of the decisions handed down by Singapore judges, is also authoritative, and the doctrine of *stare decisis* (decisions of higher courts bind lower courts) applies.

1.2 How are the courts organized in Singapore?

The civil court structure consists of four layers, namely, the Magistrates' Courts, District Courts, High Court and Court of Appeal. Both the Magistrates' Courts and District Courts fall within the category of "Subordinate Courts". The Chief District Judge presides over the daily management and administration of the Subordinate Courts, and is directly accountable to the Chief Justice of Singapore

(the "Chief Justice")[1]. He is assisted in his duties by other District Judges. Matters are generally assigned to the various courts based on the amounts claimed by any given plaintiff or on the value of the subject matter in dispute.

The Supreme Court comprises the High Court and Court of Appeal. The High Court consists of the Chief Justice and the Judges of the High Court, while the Court of Appeal consists of the Chief Justice and Judges of Appeal. The High Court has original jurisdiction to hear disputes where the amount claimed or the value of the subject-matter in dispute is greater than that over which the Subordinate Courts have jurisdiction.

1.3 How are lawyers organized in Singapore?

The legal profession in Singapore is fused in the sense that lawyers are not divided into the roles of barristers and solicitors. Only individuals admitted as advocates and solicitors of the Supreme Court of Singapore may appear and plead in all courts of justice in Singapore.

1.4 What type of legal fee arrangements are common in Singapore?

The Legal Profession Act, Chapter 161 of Singapore, prohibits lawyers from agreeing to purchase an interest in the subject matter of the case/transaction they are working on, or from agreeing to be paid only if the suit, action or other contentious proceeding they are acting on is successful.

Other than this, the amount charged by a lawyer for his legal services is essentially a matter of agreement between the client and the lawyer. The general practice, however, is to charge hourly rates which vary depending on the seniority of the lawyer and the reputation of the law firm engaged. The courts nevertheless retain the discretion to declare that an agreement is void if they are of the view that it is unfair and unreasonable.

In considering whether an agreement is unfair, the courts may take into account, for instance, the complexity of the cause or matter, the difficulty or novelty of the questions involved, the skill, specialised knowledge and responsibility required, and the time and labor expended by the lawyer.

[1] The Chief Justice of Singapore is the highest position in the entire judicial system of Singapore. The Chief Justice is appointed by the President of Singapore, with the advice of the Prime Minister.

2. STRUCTURES FOR DOING BUSINESS

2.1 Is it necessary to set up a business organisation in Singapore to provide services or sell goods in Singapore?

To provide services or sell goods in Singapore one must usually set up some form of business organisation, as even sole proprietorships must register their businesses with the Registrar of Businesses, unless exempt under the Business Registration Act, Chapter 32 of Singapore, (the "**BR Act**").

2.2 What forms of business organisations can be set up in Singapore?

Please see the table on the following page.

2.3 What is the process, time required and cost for setting up each?

Please see the table on the following page.

2.4 Are there any fetters on the business activities that can be carried on by business organisations in Singapore?

Singapore is known to be business friendly and places few restrictions on the kinds of business activities that can be carried on in Singapore save for certain industries that are regulated, for example, banks and financial institutions, insurance companies, newspaper and printing presses and gaming establishments.

All the business organisations which are listed in the table on the following page may carry on any type of business activity in Singapore with the exception of a representative office which can only carry out promotional and liaison work and cannot carry out actual business in Singapore.

2.5 What are the ongoing obligations in relation to each of the forms of business organisations?

Please see the table on the following page.

No.	Entity	Description	Incorporation Process	Incorporation Timeframe	Incorporation Cost	Ongoing Obligations
1.	Company	Please refer to Section 3 - Corporations	Please refer to Section 3 - Corporations	Please refer to Section 3 - Corporations	Please refer to Section 3 - Corporations	Please refer to Section 3 - Corporations
2.	Branch of foreign corporation	This form of business organisation is only available to foreign corporations. A branch has no separate legal personality and its liabilities are that of its "parent". Having a registered office in Singapore means a foreign corporation can be served with legal process in Singapore. A registration obligation is imposed on all foreign corporations which have a place of business or which carry on business in Singapore. Under the Companies Act, Chapter 50 of Singapore (the "CA") every registered branch of a foreign corporation in Singapore must: ● appoint two natural persons ordinarily resident in Singapore as agents who are authorised to accept on its behalf service of process and any notices required to be served on the corporation; and ● have a registered office in Singapore.	The first step in the registration process is an application to the Registrar of Companies for approval of the branch's proposed name. Next, the following documents have to be lodged with the Registrar of Companies: ● a certified copy of the foreign corporation's certificate of incorporation or registration in its place of incorporation or origin; ● a certified copy of its constitutional documents; ● a list of its directors with the necessary particulars; ● a memorandum executed by or on behalf of the foreign corporation which sets out the powers of its local directors, where there are local directors resident in Singapore; ● a memorandum of appointment or power of attorney under the seal of the foreign corporation, or executed on its behalf, which states the names and addresses of its two local agents who are authorised to accept on its behalf service of process and any notices required to be served on the company; and ● notice of the	Once all of the required registration documents have been filed, a branch is usually registered within a matter of hours.	The registration fee for a foreign corporation with a share capital is S$300 and the fee for a foreign corporation not having a share capital is S$1,200. In addition, there is a name approval fee of S$15.	A branch must lodge both its head office accounts and branch accounts with the Registrar of Companies within two months of its Annual General Meeting (subject to certain conditions under the CA). A branch must also lodge notice of any changes in information previously lodged.

No.	Entity	Description	Incorporation Process	Incorporation Timeframe	Incorporation Cost	Ongoing Obligations
			location of its registered office in Singapore.			
3.	Representative office	Another method by which a foreign corporation may establish a business presence in Singapore is to set up a representative office. However, the activities of a representative office are limited to promotional and liaison work and this vehicle is not appropriate for carrying on business. A representative office is merely an administrative creature and has no legal status.	A representative office must be registered with International Enterprise Singapore. Such registration will be valid for a period not exceeding one year, renewable at least seven days before expiry.	The typical registration processing time is five working days.	A processing fee of S$200.	A representative office does not have any statutory filing obligations. If a representative office has been established in Singapore for a number of years, it may be expected to upgrade its presence in Singapore, since a representative office is not intended to be a permanent establishment. Two to three years is usually regarded as sufficient time for a foreign corporation to decide on the legal status of its Singapore office, i.e., to register a branch in Singapore or to incorporate a subsidiary company in Singapore.
4.	Sole proprietorship	The term "sole proprietorship" is used to describe a person who engages in business on his own without being associated with others. A sole proprietorship does not have separate legal existence. The owner of a sole proprietorship is personally liable to creditors of the sole proprietorship for all debts and liabilities incurred in the name of the business, without limitation.	All persons (with the exception of those listed in the BR Act) who carry on business in Singapore through sole proprietorships are required to register their businesses with the Registrar of Businesses. All applications to register a new business must be submitted online via an electronic filing and information retrieval system. Registration of a new business will be valid for one year from the date of registration. All renewals of business registration effected after 13 January 2003 will also be for a one-year period.	A sole proprietorship will usually be registered within 15 minutes of payment of the registration fee. However, it may take between 14 days to two months if the application needs to be referred to other authorities for approval or review.	There is a name approval fee of S$15 and a business registration fee of S$50.	Sole proprietorships do not need to audit their accounts or file annual returns. Whenever there is a change in the particulars that have been registered, a statement of the change specifying its nature and date must be lodged with the Registrar of Businesses within 14 days after the change.
5.	Partnership	A partnership consists of two or more persons carrying on business in common with a view to profit. A partnership does not have separate legal	As for sole proprietorship.	A partnership will usually be registered within 15 minutes of payment of the registration fee. However, it may take between 14 days to two months if the	There is a name approval fee of S$15 and a business registration fee of S$50.	Same as for sole proprietorships.

No.	Entity	Description	Incorporation Process	Incorporation Timeframe	Incorporation Cost	Ongoing Obligations
		existence. Each partner is jointly liable with the other partners in respect of all debts and liabilities of the partnership incurred during his participation in the partnership. A partnership may not be made up of more than 20 persons. This restriction on size, however, does not apply to a partnership that is formed for the purpose of carrying on any professional services like a partnership formed to practice law, medicine, accounting, etc.		application needs to be referred to other authorities for approval or review.		
6.	Limited partnership ("LP")	LPs are commonly used in businesses focusing on single or limited term projects, as well as for situations where one or more financial backers or investors do not wish to take up an active role in the management of the business, preferring to entrust its management to one or more persons who are willing to assume liability for the debts and liabilities of the business. An LP is not a legal entity and does not have a separate legal personality. As such, it can neither own property under its own name nor can it sue or be sued in its own name. Like a partnership, an LP is a relationship which subsists between persons carrying on business in common with a view of profit. An LP must consist of at least one limited partner and at least one general partner. Limited partners and general partners may be either individuals or corporations (which need not be incorporated in Singapore). A general partner is	An LP should be registered with the Registrar of Limited Partnerships (the "LP Registrar") in accordance with the procedures set out in the Limited Partnerships Act, Chapter 163B of Singapore. Every registration of an LP under the Limited Partnerships Act shall be valid for such period as the LP Registrar may specify. Applications for renewal must also be made to the LP Registrar.	As for sole proprietorship.	As for sole proprietorship.	Whenever there is a change in the particulars that have been registered, a statement of the change specifying its nature and date must be lodged with the LP Registrar within 14 days after the change. There is no express statutory requirement to file any financial statements and no annual audit is required. However, every general partner is required to ensure that such accounting and other records that will sufficiently explain the transactions and financial position of the LP are kept and retained for a period of at least five years after completion of the transactions or operations to which they relate.

No.	Entity	Description	Incorporation Process	Incorporation Timeframe	Incorporation Cost	Ongoing Obligations
		liable for all debts and obligations of the LP incurred while it is a general partner in the LP. A limited partner, on the other hand, will not be liable for the debts and obligations of the LP beyond the amount of its agreed contribution, subject to certain exceptions. In particular, to enjoy limited liability, limited partners may not take part in the management of an LP, nor do they have the power to bind an LP.				
7.	Limited liability partnership ("LLP")	An LLP may be used by any two or more persons associated for carrying on a lawful business with a view to profit. An LLP is essentially a partnership with limited liability. However, unlike a partnership or an LP, an LLP is a body corporate with a legal personality separate from that of its partners. An LLP's obligation is solely that of the LLP. A partner of an LLP is not personally liable for the wrongful act or omission of any other partner of the LLP but is personally liable in tort for his own wrongful acts or omissions. Where one of the partners of the LLP is liable to a person as a result of his own wrongful act or omission committed in the course of the business of the LLP or with the LLP's authority, the LLP is liable to the same extent as the partner. The liabilities of the LLP are met out of the property of the LLP. An LLP must be made up of at least two partners and must have at least one manager who is a natural person of	An LLP must be registered with the Registrar of Limited Liability Partnerships in accordance with the procedures set out in the Limited Liability Partnerships Act, Chapter 163A of Singapore and the Limited Liability Partnerships Regulations 2005.	Registration of an LLP will take place on the day the prescribed documents are lodged unless the registration requires the approval of another regulatory authority (in which case registration may be delayed by two to eight weeks).	There is a name approval fee of S$15 and a registration fee of S$150.	LLPs are required to keep accounting records that will sufficiently explain their transactions and financial position. LLPs are not required to audit or file their accounts but must submit an annual declaration of solvency.

No.	Entity	Description	Incorporation Process	Incorporation Timeframe	Incorporation Cost	Ongoing Obligations
		full age and capacity and who is ordinarily resident in Singapore. Every LLP must have a registered office within Singapore to which all communications and notices may be addressed.				
8.	Business trust ("BT")	BTs are business enterprises set up as trust structures. BTs are governed equally by the rules of common law and the Trustees Act, Chapter 337 of Singapore. However, the Trustees Act does not apply to a registered BT. A BT differs from a company as it is not a legal entity. It is created by a trust deed under which an entity, named the trustee-manager, has legal ownership of the assets of the business enterprise and manages the business for the benefit of the beneficiaries of the trust. Subject to the trust deed of a business trust, a trustee-manager may appoint agents to carry out and perform its functions. Investors of a BT take a stake in the underlying business by purchasing units in the BT. Unitholders in the BTs, being beneficiaries of the trust, hold a beneficial interest in the assets of the BT. A unitholder of a registered BT is not liable to contribute to the registered BT, nor is he liable in respect of any debts, liabilities or obligations incurred by the trustee-manager in its capacity as trustee-manager for the registered BT. The liability of a unitholder of a registered BT is limited to the amount	Registration under the BT Act is not compulsory for all BTs. However, only the units of a registered BT may be offered to the public for subscription or purchase. The Monetary Authority of Singapore (the "MAS") administers the registration of BTs. An application for the registration of a BT must be lodged with the MAS in the prescribed form together with any relevant annexures and information.	Registration of a BT is not as instantaneous as registration of a branch of a foreign corporation for example. The MAS will review the trust deed thoroughly before agreeing to registration and therefore parties will often try to seek pre-clearance from MAS of the trust deed and of the proposed appointees to the audit committee , informing them that a formal registration application will follow. However, the MAS may not always agree to facilitate such pre-clearance, so it is discretionary in that regard. If the trust deed and proposed appointees to the audit committee have been pre-cleared, registration may take place in about two to three weeks. If the trust deed and proposed appointees to the audit committee have not been pre-cleared, registration may take approximately four to eight weeks	The application fee for registration of a BT is S$2,000.	The trustee manager may not manage and operate any other business and must manage and operate the BT in accordance with the requirements of the BT Act and terms of the trust deed. There must be an annual auditor's report and the trustee manager must also appoint an audit committee from among its directors to review certain matters with the auditor of the BT.

No.	Entity	Description	Incorporation Process	Incorporation Timeframe	Incorporation Cost	Ongoing Obligations
		of money that he has expressly agreed to contribute to the registered BT. BTs differ from other traditional trusts, such as a private family trust or a unit trust, in that they actively undertake business operations. The Business Trusts Act, Chapter 31A of Singapore (the "BT Act") regulates corporate governance of registered BTs.				

3. CORPORATIONS

3.1 What are the different types of companies recognized in Singapore?

Companies may be categorised as follows:

- Whether it is a limited company or an unlimited company. If it is a limited company, whether it is limited by shares or limited by guarantee;
- Whether it is a private company or a public company. If it is a private company, whether it is an exempt private company or a non-exempt private company.

Limited Company vs Unlimited Company

The liability of the members of a company to contribute to the assets of the company upon its liquidation may be limited or unlimited. This gives rise to the distinction between a limited company and an unlimited company.

The liability of the members of a limited company is limited to the amount they have agreed to pay for their shares or to contribute to the assets of the company. Subject to certain exceptions, a limited company has the word "Limited" or "Berhad" or the abbreviation "Ltd." or "Bhd." in its name.

For an unlimited company, the liability of its members is without limitation.

It is possible to convert a limited company into an unlimited one and an unlimited company into a limited one.

Company Limited by Shares vs Company Limited by Guarantee

The distinction between a company limited by shares or by guarantee has to do with the ability of the company to call on the members to discharge their limited liability to contribute to the assets of the company.

A member of a company limited by shares may be called upon to pay any amount remaining unpaid on his shares to the company in discharge of his liability not only upon the liquidation of the company but also at any time during the existence of the company. The liability of the members of a company limited by shares is limited to the amount remaining unpaid on their shares.

A member of a company limited by guarantee may be called upon to discharge his liability to contribute to the assets of the company only in the event of the liquidation of the company. The liability of the members of a company limited by guarantee is limited to the amount that they have agreed to contribute.

Therefore, a company limited by guarantee does not obtain its initial working capital from its members. In contrast, the company limited by shares can obtain its initial working capital by issuing shares to its members which are paid for by the members. This makes a company limited by shares a more popular choice of business vehicle than a company limited by guarantee.

Private Company vs Public Company

A company having a share capital is a private company where:

(a) the right to transfer shares is restricted; and

(b) where the number of shareholders is restricted by its memorandum or articles to 50 (counting joint holders of shares as one, and excluding current employees of the company or its subsidiaries and former employees of the company or its subsidiaries who became members when they were employed by the company).

A private company must have the word “Private” or “Sendirian” or the abbreviation “Pte.” or “Sdn.” in its name.

A public company has been defined as one other than a private company. Essentially, it is a company where the number of shareholders can be more than 50. Generally, a public company is subject to more regulation than a private company.

Previously, only public companies could raise capital by offering shares and debentures to the public. With effect from 1 April 2004, private companies are no longer prohibited from offering shares and debentures to the public, thereby removing what had been a fundamental difference between private and public companies. Where shares in or debentures of a company are offered to the public, a prospectus which complies with the relevant provisions of the Securities and Futures Act, Chapter 289 of Singapore (the **"SFA"**) must be issued.

A private company may be converted into a public company. It is also possible to convert a public company into a private company.

Exempt Private Company

Private companies may further be classified into exempt private companies and non-exempt private companies.

An exempt private company must be a private company:

(a) in which no beneficial interest in the shares of the company is held directly or indirectly by a corporation; and

(b) which has no more than 20 members.

The Minister for Finance has the power to declare any private company that is wholly-owned by the Government of Singapore to be an exempt private company.

To keep the compliance costs for small companies low, an exempt private company is relieved from complying with certain regulatory requirements. For example, an exempt company is exempt from audit requirements for a financial year if its revenue for that year does not exceed S$5 million.

3.2 What is the process for incorporation of a company?

With effect from 13 January 2003, the then Registry of Companies and Business has completed the launch of Bizfile, which is an electronic filing system that allows the electronic filing of all legally prescribed company and business forms and their accompanying documents.

Broadly speaking, there are two main steps to incorporate a company:

- application for the approval and reservation of the company's name; and

- submission / filing of incorporation papers via BizFile.

Approval of company's name

On 15 January 2002, the Registrar of Companies launched Phase 1A of BizFile which requires applications for new local company names to be electronically submitted via BizFile.

Sections 27(1) and (2) of the Companies Act, Chapter 50 of Singapore (the "**CA**") bar the acceptance of the following:

- an undesirable name;
- a name that is identical to the name of an existing company, limited liability partnership, corporation or business; or
- a name that is of a kind that the Minister for Finance has directed the Registrar of Companies not to accept for registration.

Once the application to reserve a name for a company is approved, it will be reserved for 60 days. A company may submit its application for incorporation after the reservation of its name is approved.

Submission / Filing of incorporation papers

To incorporate a company, a person must:

- submit to the Registrar of Companies the memorandum and articles of association of the proposed company and other prescribed documents;
- furnish the Registrar of Companies with the prescribed information; and
- pay the prescribed fee to the Registrar of Companies (Section 19(1) of the CA).

Furthermore, certain persons engaged in the formation of the company (e.g. an advocate and solicitor) or a person named as a director / secretary of the company must make and submit a declaration, pursuant to Section 19(2) of the CA, that:

- all the requirements of the CA relating to the formation of the company have been complied with; and

- the identities of the subscribers to the memorandum and the officers of the proposed company have been verified.

On incorporation, a notice of incorporation in the prescribed form will be issued. Upon the application of the company, a certificate of confirmation of incorporation under the hand and seal of the Registrar of Companies will be issued (Section 19(7) of the CA). In this regard, the notice of incorporation or the certificate of confirmation of incorporation is conclusive evidence that the company is duly incorporated.

To incorporate a company, one may engage a professional firm or service bureau to assist him in the filling out of the application for incorporation via Bizfile. Directors themselves, may also incorporate the company. This is referred to as "self-incorporation" by the Accounting and Corporate Regulatory Authority. Information and details on self-incorporation are available at the following link: http://www.acra.gov.sg/Company/Starting_a_Company/ Incorporating +a+Local+Company.htm.

Fees payable

The fee for incorporation of a company with a share capital is S$300 irrespective of the size or currency of the issued share capital.

For the approval and reservation of names, a S$15 fee (applicable to both local companies and foreign corporations) is payable for every successful reservation through Bizfile.

3.3 How can a minority shareholder protect its interests?

The law provides for certain rights to which minority shareholders may have recourse. These rights seek to provide protection from, and remedies against, the domination of majority shareholders.

The most significant protection afforded to a minority shareholder is the common law principle that forbids majority shareholders from acting in a "fraud on the minority". The common law gives relief to minority shareholders who have suffered oppression at the hands of the majority. This common law principle is entrenched in and widened by Section 216 of the CA. A member of a company may apply to the court for relief under Section 216 of the CA where: (a) the affairs of the company are being conducted in a manner oppressive to, or in disregard of the interests of, one or more of the members of the company; (b) the powers of the directors are being exercised in a manner oppressive to, or in disregard of the interests of, one or more members of the company; (c) some act of the company has been done or is threatened to be done which unfairly discriminates against, or is otherwise prejudicial to, one or more of the members of the company; or (d) some resolution of the members (or any class

of them) has been passed or is proposed which unfairly discriminates against, or is otherwise prejudicial to, one or more of the members of the company.

3.4 Are there any corporate governance norms?

The Code of Corporate Governance 2005 (the "**Code**") sets out principles of good corporate governance practices which companies listed on the Singapore Exchange Securities Trading Limited ("**SGX-ST**") ("**listed companies**") are encouraged to follow.

The Listing Manual of the SGX-ST requires all listed companies to disclose their corporate governance practices and explain deviations from the Code in their annual reports. The oversight of corporate governance of listed companies comes under the purview of the Monetary Authority of Singapore and the Singapore Exchange Ltd.

3.5 Are there any restrictions on a foreign-owned Singapore company from raising capital/debt from Singapore markets?

There is generally no restriction on a foreign-owned Singapore company seeking to raise capital/debt from the Singapore market. However, the company must ensure that it complies with the prospectus requirements provided for under the SFA.

3.6 Can a Singapore company have foreign directors?

A Singapore company may have foreign directors, although the CA requires every company to have at least one director who is ordinarily resident in Singapore.

3.7 Are there any norms for the sharing of profits?

Dividends may only be paid out of a company's profits. Profits need only be available at the time that the dividends are declared. There is no necessity that there be available profits when the dividend is actually paid as long as there were profits at the time the dividend was declared. Typically, a company will provide for the payment of dividends in its articles of association. The directors may recommend a particular rate of dividend and the company in general meeting will declare the dividend subject to the maximum recommended by the directors.

3.8 What type of shares can a company issue?

A company's share capital may be divided into different classes. Non-exhaustive examples include ordinary shares and preference shares (with or without a redemption feature). The preferential rights attached to a particular class must be set out in the company's memorandum of association and articles of association.

3.9 Are there any requirements in relation to the frequency and mode of holding board meetings?

The CA does not regulate board meetings. A company may provide for matters relating to its board meetings in its articles of association, e.g. quorum requirements, notice requirements.

3.10 What responsibilities and liabilities do company directors have?

The common law, the CA and certain statutes prescribe rather strict rules in relation to duties imposed upon any person who becomes a director of a company. For directors of listed companies, the duties imposed by the Listing Manual of the SGX-ST have to be additionally complied with.

Section 157(1) of the CA provides that a director must at all times act honestly and use reasonable diligence in the discharge of the duties of his office. Section 157(1) is not an exhaustive statement of a director's duties as Section 157(4) of the CA specifically provides that Section 157(1) is in addition to any duties that may be imposed by any other written law, common law or equity. At common law, a director is regarded as a fiduciary of a company and accordingly he is bound to observe all fiduciary duties imposed by the common law.

The statutory, common law and equitable duties of a director may be broadly categorised as follows:

- Duties of good faith; and
- Duties of care and skill.

Breaches of these duties may lead to criminal or civil liabilities.

Duties of Good Faith

Directors' duties of good faith are derived from the fiduciary relationship the directors have with the company, the major characteristics of which are to act in good faith/bona fide in the best interests of

the company. These duties of good faith are examined briefly and generally under the following headings:

- **Bona fide and for the benefit of the company:** Directors must act bona fide for what they consider to be the best interests of the company and not for any collateral purpose. This is a subjective test. Provided that a director's motives are honest, and it can be shown that he was satisfied in his own mind that the course of action is beneficial to the company or correct, a director is normally immune from proceedings that he should have acted in some different way or that, with hindsight, a better judgment was possible.

- **Exercise powers for a proper purpose:** Where a director is vested with a power, he must exercise that power for the purposes for which it is conferred. He will be exceeding his power if he exercises it for an improper purpose.

- **Delegation and discretion:** The Articles of Association of a company usually provide for delegation of powers of directors to committees. The board of directors cannot, however, delegate all of its responsibilities to another person, to the effect of absolving the board from exercising proper supervision and managerial control over the company. Further, a director cannot fetter his discretion by entering into any contract with fellow directors or a third party governing or restricting the manner he votes at future board meetings.

- **Conflict of interests:** As fiduciaries, directors must not allow themselves to get into a position where there is a conflict between what they ought to do for the company and what they might do for themselves. An area in which conflict of interests often arises is the entering into transactions between the company and the director.

- **Use of inside information:** By virtue of Section 157(2) of the CA, an officer of a company is not allowed to make improper use of any information acquired by virtue of his position, to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company. Should he do so he is guilty of an offence and is liable to the company for the profit and damages it suffered. A director of a company who buys or sells securities of the company while he is in possession of any inside information concerning the company commits an insider dealing offence under the SFA. Inside information refers to information that is not generally available, however, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of that corporation.

- **Directors' shareholdings:** The holding of and dealing by directors and their families in the securities (including rights, options and interests in or over shares and debentures) of the company or its related companies must be promptly disclosed to the company (within two business days). Such disclosures are to be recorded in the register of directors' shareholdings to be maintained by the company.

Duty of Care and Skill

A director is under a mandatory duty, at all times, to act honestly and use reasonable diligence in the discharge of the duties of his office (Section 157(1) of the CA). The courts in determining the director's duty of care and skill have expanded on this general proposition and the law as it now stands may be summarised in three propositions:

- The standard of care and diligence expected of a director is objective, namely, whether he has exercised the same degree of care and diligence as a reasonable director found in his position. This standard is not fixed but a continuum depending on various factors such as the individual's role in the company, the type of decision being made, the size and the business of the company. This standard will not be lowered to accommodate any inadequacies in the individual's knowledge or experience. The standard will however be raised if he held himself out to possess or in fact possesses some special knowledge or experience.

- A director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical board meetings and meetings of any committee of the board upon which he happens to sit.

- Having regard to the exigencies of business and the articles of association of the company, a director may delegate some of his duties to some other official. A director is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

Protection is accorded by Section 157C of the CA to directors for reasonable reliance on information and advice prepared or supplied by employees, professionals and experts with respect to matters within their respective areas of competence.

4. LIQUIDATION

4.1 Please give a brief outline of the procedure involved in the winding up or liquidation of a company in Singapore. Are there any requirements specific to Singapore?

The law of insolvency in Singapore is broadly divided into personal insolvency (or bankruptcy) and corporate insolvency. The main statutes governing these areas are respectively the Bankruptcy Act, Chapter 20 of Singapore (the "**BA**") and the Companies Act, Chapter 50 of Singapore (the "**CA**").

In this part, references to "company" are to a company incorporated in Singapore under the CA, and references to "court" are to the High Court of the Republic of Singapore.

What is liquidation?

"Liquidation" or "winding up" refers to a process whereby the assets of the company are collected and realised, and the resulting recoveries used to pay off the liabilities of the company, with any surplus going to the shareholders. The end result of liquidation or winding up is usually dissolution of the company (albeit it is possible to stay the winding up of the company). Generally, in a typical liquidation scenario, the company concerned will experience the following:

- the company's business ceases,
- the company's assets will be realised,
- the company's creditors will be paid from the proceeds of the realised assets,
- the company's members will be paid from the balance of the proceeds (if any),
- the company is dissolved/ceases to exist.

Key differences between various types of liquidation

There are two main types of liquidation:

(i) Voluntary liquidation; and
(ii) Compulsory liquidation.

The main difference between voluntary and compulsory liquidation lies principally in the manner in which the liquidation process is initiated and also the date of commencement pursuant to the CA.

For a voluntary liquidation, generally the company initiates the process by passing a resolution in a general meeting to liquidate the company.

A voluntary liquidation commences

(a) at the date when the company resolved to liquidate voluntarily, except that

(b) in the case of a company which is unable to continue its business by reason of its liabilities, the directors of the company initiates the process by making a directors' declaration to that effect and which also states that meetings of the company and its creditors have been summoned within a month of the declaration, and forthwith appointing a provisional liquidator after lodging the declaration with the prescribed authorities. In such a case where there is an appointment of a provisional liquidator, the voluntary liquidation commences at the date of lodgment of the said directors' declaration with the prescribed authorities.

A voluntary liquidation in itself may be divided into two types:

(i) Creditors' voluntary liquidation ("**CVL**"), and
(ii) Members' voluntary liquidation ("**MVL**").

The principal difference between a CVL and a MVL depends on whether the company concerned is solvent or insolvent. In a MVL, the directors or a majority of the directors of the company concerned must make a declaration of solvency stating that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the liquidation.

For a compulsory liquidation, the company or some other party who has locus standi (such as a creditor), initiates the process by making an application to the court to liquidate the company. A compulsory liquidation commences at the time of the making of the application in court.

In the context of corporate insolvency (where the company is insolvent), there are two types of insolvent winding up:

(i) Creditors' voluntary liquidation; and
(ii) Compulsory liquidation.

Creditors' voluntary liquidation

Meeting of creditors

In a CVL, the company is required to convene a meeting of the creditors to be held on the same day, or the day next following the day, on which the general meeting in which the resolution to liquidate is proposed.

The company must convene the creditors' meeting to be held at a time and place convenient to the majority in value of the creditors. The creditors must be given at least seven clear days' notice via post of the meeting. The company must also prepare a statement of the names of all creditors and their respective claims to be attached to the notice of creditors' meeting. Further, the company must advertise the notice of creditors' meeting in a newspaper circulating in Singapore at least seven days prior to the date of the meeting.

The directors of the company must prepare a statement of the company's affairs to be laid out in the creditors' meeting showing:

- the assets of the company;
- the method and manner of valuation of the assets; and

- a list of the creditors of the company and their estimated claims against the company.

The directors must appoint one of themselves to attend the creditors' meeting. Such director together with the secretary of the company must attend the creditors' meeting and disclose information regarding the company's affairs and the circumstances leading to its liquidation.

The chairman of the meeting could either be one of the creditors or the director appointed to attend the meeting. It is a decision for the creditors to make.

The chairman's determination as to whether the meeting has been called at a time and place convenient to the majority in value of the creditors shall be final. If the meeting has not been called at a time and place convenient to the majority in value of the creditors, the meeting will lapse and the company will have to summon for a further meeting as soon as practicable.

If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors will have effect as if it had been passed immediately after the passing of the resolution for winding up.

Appointment of liquidator

At the general meeting of the company where the resolution to liquidate was passed, the company would also have passed a resolution to appoint a liquidator. The appointment of the liquidator is, at that stage, subject to the possible nomination of an alternative candidate by the creditors at the creditors' meeting. The creditors' nomination prevails over the company's nomination. If the creditors do not nominate an alternative candidate, the company's choice of liquidator prevails. In the case where the creditors' nomination prevails, any director, member or even creditor may still apply to court for an order directing that the company-nominated liquidator be the liquidator or, be joint liquidator with the creditor-appointed liquidator. However, if for whatever reasons, there is no liquidator acting, the court may have to appoint a liquidator.

Appointment of Committee of Inspection

At the first creditors' meeting (or in any subsequent creditors' meeting), the creditors may agree to form a Committee of Inspection ("**COI**") consisting of not more than five members. Members of the COI may be the creditors and/or members of the company, unless the creditors resolve that no members of the company shall be a COI member.

Compulsory liquidation

Application and order of court to wind up

An application for winding up by the court may be brought by a number of persons, the four most important of which, in a corporate insolvency, are the company, a creditor, a liquidator, and a judicial manager

The CA provides for 13 grounds on which the court may order for the company concerned to be liquidated. For the purposes of corporate insolvency, the most pertinent ground relates to the inability of the company to pay its debts.

Appointment of liquidator

For a winding up by the court, the liquidator is appointed by the court (giving due regard to the creditors' choice which is not binding) and if no liquidator is appointed, the Official Receiver will act as liquidator.

Appointment of Committee of Inspection

The liquidator may summon separate meetings of the creditors and contributories respectively to decide on whether a COI should be formed and if yes, to also decide on the members of the COI. If the liquidator does not summon for such meetings, the creditors or the contributories may request for such meetings to be summoned, in which case, the liquidator has no choice but to summon the respective meetings. If the separate meetings decide differently, then the court shall give the final decision by making such order as it thinks fit.

Effect of commencement of liquidation

The commencement date of liquidation is important because of the several effects flowing from it, be it a voluntary liquidation or a compulsory liquidation. The CA contains provisions (among others) that:

- allow the liquidator to avoid certain transactions that was entered into by an insolvent company within certain periods before the commencement of winding up (including, without limitation, transactions at an undervalue, unfair preference, etc.);
- impose personal and criminal liability on officers of a company who contract a debt without reasonable ground of expecting the company will be able to pay its debts;

- impose personal and criminal liability on any person who was knowingly a party to the carrying out by the company of fraudulent trading; and

- set out various offences involving officers of companies in liquidation.

Proof and ranking of claims

Most debts are provable in the winding up of insolvent companies (different rules apply for solvent companies). The following debts have priority over unsecured debts (in order of priority):

- costs and expenses of winding up;

- wages or salary up to five months' equivalent or S$7,500, whichever is less;

- amount due to an employee as a retrenchment benefit or an ex gratia payment up to the equivalent of five months' salary or S$7,500, whichever is less;

- work injury compensation under the Work Injury Compensation Act;

- amounts due in respect of contributions under the Central Provident Fund Act (this is a comprehensive social security savings plan. Working Singaporeans and their employers make monthly contributions to the Fund and these contributions go into accounts which earn interest. These contributions can be used for education, investment, buying a home, medical expenses, retirement and approved superannuation schemes;

- remuneration payable to any employee in respect of vacation leave;

- taxes assessed and any goods and services tax due before the commencement of winding up or assessed at any time before the time fixed for the proving of debts has expired; and

- gratuity or other sum of money due and owing to employee on his retirement or on the termination of his services pursuant to a collective agreement or an award.

All other debts and debts within the same class rank pari passu. Secured creditors do not generally fall within the scheme of bankruptcy and can usually enforce their security through the usual means, that is to say, a secured creditor may rely on and exercise his contractual rights as set out in the security documents to dispose of the security. For example, a well drafted mortgage document will usually empower the mortgagee to exercise the power of sale over the secured property upon the mortgagor's default.

4.2 Please give a brief outline of the bankruptcy proceedings in Singapore. Are there any requirements related to the filing specific to Singapore?

Bankruptcy proceedings in Singapore are governed by the Bankruptcy Act and the subsidiary legislation enacted thereunder. A bankruptcy application may be brought by a creditor or the debtor himself.

Creditor's application

A creditor may bring bankruptcy proceedings by way of an originating summons to the High Court against a debtor who owes him S$10,000.00 or more and who is unable to pay the debt. The bankruptcy application must be in the prescribed form and supported by an affidavit of the creditor.

Presumption of inability to pay debts

A debtor is presumed to be unable to pay his debt which is due if the creditor has served on him a statutory demand and payment is not made within 21 days after the debtor is served with the statutory demand and he has not applied to the court to set aside the statutory demand.

Debt Repayment Scheme

Introduced in the Bankruptcy Act on 18 May 2009, the Debt Repayment Scheme (the "**DRS**") provides debtors with an opportunity to avoid bankruptcy by repaying their debts in accordance with the DRS. The DRS is applicable to debtors faced with bankruptcy proceedings with unsecured debts not exceeding S$100,000 (excluding contingent liability).

Instead of making a bankruptcy order pursuant to a bankruptcy application, the court will adjourn the application for a period of six months or such other period as the court may direct and refer the matter to the Official Assignee (the "**OA**") to determine whether a debtor is suitable for a DRS, provided the following qualifying criteria are satisfied:

- The debt or the aggregate of the debts must not exceed S$100,000 or such other amount as may be prescribed;
- The debtor is not an undischarged bankrupt, and has not been a bankrupt at any time within the period of five years immediately preceding the date on which the bankruptcy application is made;

- A voluntary arrangement in respect of the debtor is not in effect, and was not in effect at any time within the period of five years immediately preceding the date on which the bankruptcy application is made;

- The debtor is not subject to any DRS, and has not been subject to any such DRS at any time within the period of five years immediately preceding the date on which the bankruptcy application is made; and

- The debtor is not a sole proprietor, a partner of a firm within the meaning of the Partnership Act, or a partner in a limited liability partnership.

Once a DRS commences during the period of adjournment of a bankruptcy application, the bankruptcy application is deemed withdrawn from the effective date of the DRS. The OA will administer the DRS and may charge such fees as may be prescribed.

During the period beginning with the effective date of a DRS and ending with the date on which the DRS ceases, no creditor will be allowed to commence or proceed with any action against the debtor for any outstanding debt, except with the court's permission. Further, a creditor is not entitled to retain the benefit of any execution against the goods or land of a debtor to whom a DRS applies, or attachment of any debt due or property belonging to such debtor, unless the execution or attachment is completed before the effective date of the DRS. However, the moratorium does not affect a secured creditor's right to deal with his security.

If the debtor is found to be unsuitable for the DRS, the court will proceed to hear the bankruptcy application and may order that the debtor be made a bankrupt.

Commencement of bankruptcy

The bankruptcy of a person who has been adjudged bankrupt by a bankruptcy order will commence on the day when the bankruptcy order is made.

A bankruptcy order may be made approximately four to six weeks from the date of the issue of the bankruptcy originating summons.

Effect of bankruptcy order

On the making of a bankruptcy order, the property of the bankrupt will vest in the OA without any further conveyance, assignment or transfer, and will become divisible among his creditors. Generally, no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy will have any remedy against the person or property of the bankrupt in respect of that debt and no action or

proceedings may be proceeded with or commenced against the bankrupt in respect of that debt without leave of the court.

Once a person is made a bankrupt, he is subject to many disqualifications and disabilities such as prohibition from overseas travel and starting court actions without the permission of the OA. He is also prohibited from managing a business or acting as company director without approval of the High Court or the OA. He is also disqualified from appointment as a trustee or personal representative.

5. FOREIGN INVESTMENT REGULATIONS

5.1 What are the sources of law regulating foreign investment in Singapore?

There is no single statute in Singapore which regulates foreign investment.

Instead, for certain regulated industries, there is industry-specific legislation which imposes restrictions in respect of foreign ownership of shares in the relevant company. There are also industry-specific statutes that limit or require prior regulatory approval for share ownership in companies engaged in the relevant industries.

The regulated industries are generally industries perceived to be critical to national interests, such as banking, finance, insurance and media. Examples of applicable statutes include the Banking Act, Chapter 19 of Singapore, the Finance Companies Act, Chapter 108 of Singapore, the Insurance Act, Chapter 142 of Singapore, the Broadcasting Act, Chapter 28 of Singapore, the Newspaper and Printing Presses Act, Chapter 206 of Singapore, the Telecommunications Act, Chapter 323 of Singapore the Postal Services Act, Chapter 237A of Singapore, the Electricity Act, Chapter 89A of Singapore and the Gas Act, Chapter 116A of Singapore.

5.2 What are the various methods in which foreign investment in Singapore is possible?

There is no specific legislation which prescribes the methods by which foreign investment in Singapore must be made. Each investment should be considered on a case-by-case basis. Relevant factors to consider include the type of investment proposed to be made, any industry-specific or other applicable legislation, investor objectives and tax implications.

5.3 What is the current foreign direct investment policy?

Singapore welcomes all forms of enterprise and investment.

The Singapore government has always adopted a pro-business policy, regardless of world economic situations or crisis.

Such pro-business policies make it easy for corporations to do business in Singapore.

5.4 What are the circumstances under which regulatory approval is required?

As stated under Question 5.1, for certain regulated industries, there is industry-specific legislation which imposes restrictions in respect of foreign ownership of shares in the company, and which also limit or require prior regulatory approval for share ownership in companies engaged in the relevant industries. Specific advice should be sought from local counsel.

5.5 Can a foreign company set up a wholly owned subsidiary in Singapore?

As a general rule, there is no prohibition against a company being wholly-owned by a foreign company. However, as stated under Question 5.1, for certain regulated industries, there is industry-specific legislation which imposes restrictions in respect of foreign ownership of shares in the company, and which also limit or require prior regulatory approval for share ownership in companies engaged in the relevant industries.

5.6 How long do regulatory approvals take?

This will vary from case to case.

5.7 Are there any restrictions on foreign ownership of land?

Non-residential real estate

A foreign person may freely acquire, hold and dispose of non-residential property such as:

(a) commercial real estate such as office and retail malls;

(b) any hotel registered under the provisions of the Hotels Act, Chapter 127 of Singapore; and

(c) industrial properties.

Residential real estate

General rule

There are restrictions in Singapore on ownership of certain "residential property" (as defined in the Residential Property Act, Chapter 274 of Singapore (the "**RPA**")) by foreign individuals or corporations which are not Singapore companies within the meaning of the RPA.

Sale and transfer of residential property under the RPA is restricted to citizens of Singapore and an "approved purchaser" (as defined in RPA). Prior to purchase of any residential real estate, foreign housing developers are required to apply for a qualifying certificate under the RPA, which stipulates certain conditions such as time frames for completion of the construction works and the deposit to be furnished.

Any transaction which is contrary to the RPA would be struck down as void.

Exceptions

A foreign person can purchase certain categories of non-restricted property such as apartments, whether or not the development has condominium status. However, a foreign person will not be permitted to purchase all the flats in any development without approval.
A foreign person can occupy residential property as a tenant, but the term of the lease must not exceed a period of seven years, including any further renewed term.

6. LABOUR

6.1 What are the principal regulations governing rights and obligations of employees?

Employment law in Singapore is governed by both statute and case law. The primary legislation governing the terms and conditions of employment is the Employment Act, Chapter 91 of Singapore (the "**EA**"). The EA covers all employees (including part-time employees) ("**non-exempt employees**") except seamen, domestic workers, certain classes of public servants and employees in managerial or executive positions ("**exempt employees**"). In addition, Part IV of the EA applies to workmen receiving a basic monthly salary of not more than S$4,500 and to other EA employees who receive a basic monthly salary of not more than S$2,000 ("**Part IV employees**").

6.2 Are there any maximum working hours prescribed for employees?

Exempt employees

There are no requirements prescribed by statute regulating maximum working hours for exempt employees.

Non-exempt employees

For non-exempt employees, the EA only prescribes rights for Part IV employees with respect to rest days and to maximum working hours per day and per week. Generally, Part IV employees are entitled to one rest day per week. In addition, a Part IV employee shall not be required under his contract of service to work more than six consecutive hours without rest, more than eight hours per day, or more than 44 hours per week. Where a Part IV employee is only required to work a five-day week, the limit of eight hours a day may be exceeded, but a limit of nine hours per day or 44 hours per week must be observed. Any working time over and above the stipulated eight or nine-hour limit shall be considered overtime. Save in the case of exceptional circumstances (such as accidents or work essential to the life of the community), no Part IV employee shall under any circumstances work for more than 12 hours in a day.

6.3 How can the services of an employee be terminated?

Exempt employees

Exempt employees have no statutory protection against dismissal by their employers in Singapore.

Non-exempt employees

Under the EA, notice of intention to terminate a contract of service in relation to a non-exempt employee must be in writing, whether given by the employer or the employee. The notice period may be agreed on between employer and employee, but the period of such notice must be the same for both parties. The EA prescribes certain minimum notice periods for a non-exempt employee if it is not provided for in the contract. The length of such minimum notice depends on the length of service of the non-exempt employee, and ranges from not less than one day's notice if the employee has been employed for less than 26 weeks to not less than four weeks' notice if the employee has been employed for five years or more.

The EA also provides that an employer may dismiss a non-exempt employee without notice on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his

service. If the non-exempt employee considers that he has been dismissed without just cause or excuse by his employer, he may, within one month of the dismissal, make written representation to the Minister for Manpower (the "**Minister**") to be reinstated in his former employment. If the Minister finds in favour of the employee, he may either direct the employer to (a) reinstate the employee in his former employment and to pay the employee the wages that he would have received had he not been dismissed, or (b) pay such amount of compensation in lieu of wages as the Minister may determine. The decision of the Minister is final and conclusive and cannot be challenged in any court.

In addition, female employees who are on maternity leave are protected against unlawful dismissal. Under the EA, it is an offence for an employer to give a female employee notice of dismissal while she is on maternity leave. If notice of dismissal is given without sufficient cause by an employer to a female employee and where such notice of dismissal is given within six months preceding the date of her confinement, the employer is still required to pay the employee the maternity benefits for which she would otherwise have been eligible.

6.4 Are there mandatory requirements for granting of leave or public holidays?

Exempt employees

Exempt employees have no statutory right to statutory public holidays or to paid annual leave. Such rights are a matter of contract between the employee and his employer.

Non-exempt employees

All non-exempt employees have a statutory right to all statutory public holidays.

The EA also prescribes the entitlement of a Part IV employee to paid annual leave, which starts at seven days paid annual leave for his first year of service, and an additional one day's annual leave for every subsequent 12 months of continuous service up to a maximum of 14 days. An employee who has not completed a full 12 months of continuous service is entitled to pro-rata leave.

A Part IV employee has to take his annual leave no later than 12 months after the end of every 12 months of continuous service. Leave not taken within that period will be forfeited. A Part IV employee is not statutorily entitled to salary in lieu of leave except on termination of employment.

Other non-exempt employees have no such statutory right to paid annual leave and thus for these latter, paid annual leave is a matter of contract between the employee and the employer.

6.5 Can employment contracts contain restrictive covenants such as non-compete clauses?

Employment contracts may contain restrictive covenants and some of the most common include non-competition clauses, non-solicitation clauses and confidentiality clauses. The enforceability of such covenants will depend upon their reasonableness as between the contracting parties and reasonableness in so far as the public interest is concerned. To impose such a covenant, an employer must have a legitimate proprietary interest to protect, such as the need to maintain a stable workforce or protect confidential information and trade secrets. In addition, the restriction imposed must not be wider than is reasonably necessary to protect that interest. In determining this, the period of restraint, scope of prohibited activities and geographical ambit of the covenant will be important considerations.

6.6 Can the employment contract compel employees to work for an establishment for a minimum period of time?

There are no statutory provisions relating to minimum working periods. The inclusion of such a provision is therefore a matter of contract and may be included in the employment contract if consented to by the parties.

6.7 Are female employees entitled to maternity leave?

The EA and the Children Development Co-Savings Act, Chapter 38A of Singapore, provide maternity protection and benefits for employees. Different classes of employees are entitled to varying lengths of maternity leave under these regimes, with the longest entitlement being 16 weeks.

6.8 Are male employees entitled to paternity leave?

There is no provision for paternity leave under Singapore law.

6.9 What are the requirements for the issuance of shares by a Singapore company to its employees/directors?

Employee share option schemes are common in Singapore and share options may be granted to employees of group companies. In order for an offer of share options to employees to be exempt from the prospectus requirements under the Securities and Futures Act, Chapter 289 of Singapore, no

sales or promotional expenses can be paid or incurred in connection with the offer other than those incurred for administrative or professional services.

6.10 Can employees of a Singapore company be granted employee stock options in a foreign company?

Yes, employees may be granted employee stock options in a group company outside Singapore.

6.11 Are employee stock options eligible for favourable tax treatment?

Gains derived by an employee from the exercise or disposal of share options or from the grant of share awards are taxable as employment income. Generally, the gain accrues when the share option is exercised, assigned or released or when any restriction on the sale of shares acquired expires (based on the market value of the shares at such time, less any purchase or acquisition price paid).

There are a number of tax exemption schemes for gains realised under a stock option or share acquisition plan for start-up companies, small and medium enterprises, or where the plan is widely available to employees of the company. The amount of tax exempted and the conditions for exemption vary according to the tax exemption scheme.

Generally, tax treatment for the employee is similar whether the stock option or share acquisition plan is operated by a company in Singapore or a group company outside Singapore.

7. INTELLECTUAL PROPERTY

7.1 What types of intellectual property rights are protected in Singapore?

The following intellectual property rights are protected in Singapore:

- Patents - To be protected by way of a patent under the Patents Act, Chapter 221 of Singapore, an invention must be new, involve an inventive step and be capable of industrial application. A granted patent takes effect on the date of issue of the certificate of grant and remains in force for 20 years from the filing date of the patent application or until such other date as may be prescribed.

- Trade Marks - A trade mark is a sign capable of being represented graphically, which can distinguish goods or services dealt with or provided in the course of trade by one person from goods or services so dealt with or provided by any other person. Under the Trade Marks Act, Chapter 332 of Singapore, registered trade marks

remain effective for 10 years from the date of their registration and may be renewed for a further 10 year period, subject to payment of a renewal fee.

It is not compulsory to register a trade mark in Singapore. However, registering a trade mark gives an owner rights under the Trade Marks Act which allow the owner to control its use. The owner of an unregistered trade mark can only rely on the common law action of "passing off" to protect the goodwill in their mark against imitation or any use that will misrepresent the source or origin of goods and services, and damage the proprietor of the trade mark.

- Copyright – Under the Copyright Act, Chapter 63 of Singapore, a number of works are protected, including original literary, dramatic, musical and artistic works as well as sound recordings, films, television broadcasts and performances. The nature of the protection will vary depending on the type of work but generally copyright in a particular work means the right to reproduce it in a material form, publish it and communicate it to the public. The duration of copyright protection varies depending on the type of work to which it relates.

  There is no registration procedure to secure copyright protection in Singapore because copyright arises automatically upon creation of a work which has the requisite originality and connection to Singapore (Section 27 of the Copyright Act, Chapter 63 of Singapore). The Copyright (International Protection) Regulations also apply to ensure that copyright protection granted under the Copyright Act is extended to works created overseas.

- Registered Designs – Under the Registered Designs Act, Chapter 266 of Singapore, "design" refers to features of shape, configuration, pattern or ornament applied to an article by any industrial process, but does not include methods of construction or features of shape or configuration of an article which are (i) dictated solely by the function which the article has to perform; (ii) are dependent upon the appearance of another article of which the article is intended by the designer to form an integral part; or (iii) enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function.

  The design must be new. A design is not new if it is the same as a design registered in respect of the same or any other article in pursuance of a prior application, or published in Singapore or elsewhere in respect of the same or any other article before the date of the design application, or if it is differs from such a design only in immaterial details or in features which are variants commonly used in the trade.

  The initial period of protection is five years from the date of registration of the design. Renewal of registration is permitted for further periods of five years each up to 15 years from the date of registration, subject to payment of a renewal fee.

- Layout-designs of Integrated Circuits - A layout-design is defined in the Layout-designs of Integrated Circuits Act, Chapter 159A of Singapore as a 3-dimensional disposition, however expressed, of the elements of an integrated circuit (at least one of which is an active element), and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture. A layout-design will be protected if it is original and not commonplace or, in the case of a layout-design that consists of a combination of elements and interconnections that are commonplace, the combination, taken as a whole, is original. No registration is required.

  The protection will last for 10 years, if the layout-design is first used commercially within five years of creation. In any other case, protection lasts for 15 years after its creation.

- Geographical Indications – Under the Geographical Indications Act, Chapter 117B of Singapore, protection may be conferred on an indication used in trade to identify goods as originating from a place, provided that the place is a qualifying country (i.e. a World Trade Organisation country, a party to the Paris Convention or a country designated by the Minister) or a region or locality in the qualifying country, and a given quality, reputation or other characteristic of the goods is essentially attributable to that place. No registration is required, and there is no upper limit on the period within which a geographical indication is protected.

  However, protection will not be conferred on a geographical indication that is:

  - Contrary to public policy or morality;
  - No longer protected or has fallen into disuse in its country or territory of origin;
  - The common name in Singapore in relation to goods or services which it identifies;
  - Continuously used for identifying a wine or spirit in Singapore for at least 10 years preceding 15 April 1994 or in good faith preceding that date, by a Singapore citizen or individual resident, a body incorporated in Singapore or any other person who has a real and effective industrial or commercial establishment in Singapore;
  - Identical or similar to a trade mark whereby the trade mark application or registration was made in good faith, or where the trade mark was continuously used in Singapore in the course of trade, either before 15 January 1999 or before the geographical indication is protected in its country or territory of origin; or
  - The name of a person or his predecessor in business, except where the name is used in such a manner as to mislead the public.

7.2 Are there any international treaties regarding intellectual property that Singapore is not a party to?

Singapore is not a party to the following international treaties and conventions:

- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods
- Nairobi Treaty on the Protection of the Olympic Symbol
- Patent Law Treaty
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- Trademark Law Treaty
- Washington Treaty on Intellectual Property in Respect of Integrated Circuits
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
- Madrid Agreement Concerning the International Registration of Marks
- Locarno Agreement Establishing an International Classification for Industrial Designs
- Strasbourg Agreement Concerning the International Patent Classification
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks

Singapore is a party to the following international treaties and conventions:

- Patent Co-Operation Treaty
- Paris Convention for the Protection of Industrial Property
- Berne Convention for the Protection of Literary and Artistic Works
- Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite

- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
- WIPO Copyright Treaty
- WIPO Performances and Phonograms Treaty
- International Convention for the Protection of New Varieties of Plants, otherwise known as the "UPOV Convention"
- Hague Agreement Concerning the International Registration of Industrial Design
- Singapore Treaty on the Law of Trademarks

7.3 Are there any regulations or guidelines by public institutions, such as the Fair Trade Commission or some other competition authority, in regard to intellectual property licenses?

Yes. The Competition Act, Chapter 50B of Singapore seeks to prohibit anti-competitive activities that unduly prevent, restrict or distort competition. The competition law regime in Singapore is administered by the Competition Commission of Singapore (the "**CCS**"), a statutory board of the Ministry of Trade and Industry.

In December 2005, the CCS issued the Guideline on Treatment of Intellectual Property, which explains how the CCS expects the Competition Act to operate in relation to agreements and conduct which concern intellectual property rights ("**IPRs**"). The Guideline sets out the CCS' views on the interface between IPRs and competition law, and some of the factors and circumstances that the CCS may consider when assessing agreements and conduct which concern IPRs.

The CCS will normally analyse the competitive effects of licensing arrangements within the product markets, although in some cases further analysis in the technology markets and/or innovation markets may be required.

The Competition Act prohibits agreements that have as their object or effect the appreciable prevention, restriction or distortion of competition within Singapore (unless they are excluded under

the Act or a block exemption order). The Guideline sets out the general framework that the CCS will apply when assessing licensing agreements within the context of this prohibition as follows:

Step 1 - The CCS will distinguish if the agreement is made between competing or non-competing undertakings, by examining whether the undertakings would have been actual or potential competitors in the absence of the agreement, at the time the agreement is made. Generally, agreements between non-competitors are less likely to be anti-competitive than agreements between competitors;

Step 2 - The CCS will then consider if the agreement and the licensing restraints restrict actual or potential competition that would have existed in their absence; and

Step 3 - The CCS will consider if an agreement that falls within the scope of the prohibition may, on balance, have a net economic benefit i.e. where it contributes to improving production or distribution or promoting technical or economic progress and does not impose on the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question. Such an agreement will be excluded by another provision of the Competition Act, no prior decision by the CCS to that effect being required.

The Competition Act also prohibits any conduct on the part of one or more undertakings which is an abuse of a dominant position in any market in Singapore. The exercise of an IPR by a dominant undertaking will not usually be an abuse when limited to the market for the specific product which incorporates it. However, competition concerns may arise where the dominant undertaking attempts to extend its market power into a neighbouring or related market, beyond the scope granted by intellectual property law.

8. EXCHANGE CONTROL

8.1 Are there any restrictions on the amount of local currency that may be brought into or taken out of Singapore?

The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act , Chapter 65A of Singapore, imposes reporting requirements in relation to movements of physical currency and bearer negotiable instruments into and out of Singapore. These reporting requirements are put in

place for the purpose of detecting, investigating and prosecuting drug trafficking offences and serious offences.

The reporting requirements in relation to movements of cash outside of or into Singapore are as follows:

- a person who moves cash exceeding S$30,000 (or its equivalent in a foreign currency) into or out of Singapore must make a report in respect of the movement to an immigration officer if the cash is carried with the person, or to a Suspicious Transaction Reporting Officer in all other cases, within the prescribed time;

- a person who receives cash from outside Singapore exceeding S$30,000 (or its equivalent in a foreign currency) must make a report relating to the receipt to a Suspicious Transaction Reporting Officer within five business days including the day of the receipt.

Certain persons are exempted from complying with the reporting requirements. These include a local financial institution which moves into or out of Singapore, or receives from outside Singapore:

- any bearer negotiable instrument for the settlement of its account with a foreign financial institution; or;

- any bearer bond or bearer securities in the course of providing custodial services for securities to its client.

The Singapore Police Force has clarified that the reporting requirements imposed under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act are not a currency exchange control measure. There are no restrictions to the type or amount of physical currency and bearer negotiable instruments which may be moved into or out of Singapore. This measure only requires a report to be made when the total value of the physical currency and bearer negotiable instruments being moved exceeds the equivalent of SGD 30,000. It does not seek to restrict legitimate cross border trade payments for goods and services, or the freedom of capital movements.

8.2 Are there any restrictions on the amount of foreign currency that may be brought into or taken out of Singapore?

Please see the response to Question 8.1.

8.3 Are there any restrictions on the inflow or outflow of foreign exchange?

While the Exchange Control Act does contain exchange control provisions, its operation has been suspended by the Monetary Authority of Singapore since 1 June 1978. Since then, all exchange controls in Singapore have been abolished, and both residents and non-residents are free to remit S$ funds into and out of the country. They are also free to purchase or sell S$ in the foreign exchange market. No exchange control formalities or approvals are required for any forms of payments or capital transfers.

The Monetary Authority of Singapore (the "**MAS**") imposes restrictions on the amount of Singapore dollar credit facilities that Singapore licensed financial institutions can extend to financial institutions that are resident outside Singapore. These restrictions are intended to reduce speculation on the Singapore dollar and to preserve the effectiveness of the monetary policy conducted by the MAS, rather than as a form of exchange control.

9. M&A

9.1 What are the various methods of mergers and acquisitions available to Singapore companies?

Control of corporations (including foreign incorporated corporations) which are listed on the Singapore Exchange Securities Trading Limited (the "**SGX-ST**") or unlisted Singapore incorporated companies which have more than 50 shareholders and net tangible assets of S$5 million (collectively, "**Target Companies**", each a "**Target Company**") are subject to the Singapore Code on Take-overs and Mergers (the "**Takeover Code**").

The main ways in which an offeror can acquire control of a Target Company are as follow:

(1) By way of a takeover offer

A takeover offer, i.e. a general offer for the shares of the Target Company, can take one of the following three forms under the Takeover Code:

- mandatory offers which are triggered by the offeror acquiring shares which result in the shareholdings in the Target Company held by the offeror and parties acting in concert with it crossing certain thresholds;

- voluntary offers which are made on a voluntary basis by the offeror; and

- partial offers where voluntary offers are made for some (but not all) shares in the Target Company.

(2) By way of a scheme of arrangement

In a scheme of arrangement ("**Scheme**"), which is between the Target Company and its shareholders, the Target Company cancels its existing shares and issues new shares in the Target Company to the offeror, in consideration of the offeror paying cash or issuing new shares in the offeror to shareholders of the Target Company. Alternatively, outstanding shares in the Target Company may be transferred from the shareholders of the Target Company to the offeror.

A Scheme is effected through the procedures set out in Section 210 of the Companies Act, Chapter 50 of Singapore (the "**CA**") and only applies if the Target Company is incorporated in Singapore.

A Scheme is initiated by the Target Company and requires the approval of members of the Target Company and the sanction of the Singapore courts. A Scheme that becomes effective in accordance with the requirements of the CA is binding on all shareholders of the Target Company .

All Schemes involving a Target Company must comply with the Takeover Code unless exempted by the Securities Industry Council (the "**SIC**").

(3) By way of an amalgamation

As an alternative to a Scheme, Sections 215A to 215J of the CA also provide for an acquisition through an amalgamation process. Such process may comprise either two or more companies amalgamating and continuing as one company, or two or more companies amalgamating and forming a new company.

The amalgamation process provided in the CA only applies if both the offeror and the Target Company are companies incorporated in Singapore.

An amalgamation must be approved by members of each amalgamating company. Unlike a Scheme, an amalgamation does not require the court's sanction.

All amalgamations must comply with the Takeover Code unless exempted by the SIC.

9.2 What is the process and timing for each method?

(1) Takeover offer

Under the Takeover Code, a takeover offer commences from the announcement of an offeror's firm intention to make a takeover offer for shares of a Target Company. The offeror is required to post the offer document to the shareholders of the Target Company not earlier than 14 days but not later than 21 days from the date of the announcement.

The Target Company is required to post an offeree document to its shareholders within 14 days of the posting of the offer document.

A takeover offer has to remain open for at least 28 days after the date on which the offer document is posted.

An indicative takeover timetable based on the requirements of the Takeover Code is as follows:

Stage	Time	Event
1	T	Announcement of takeover offer
2	Around T+ 1	Target Company releases announcement in response to announcement of the takeover offer
3	Around T+ 2	Target Company appoints the independent financial adviser ("IFA") for the takeover offer
4	T+ 21 or earlier (but not earlier than 14 days and not later than 21 days after T)	Offeror posts offer document to shareholders of Target Company and submits a copy to the SIC
5	T+ 35 or earlier (not later than 14 days after 4)	Target Company posts offeree circular to its share-holders which contains: (a) advice of the IFA; and (b) recommendation of the Target Company's directors on the takeover offer. A copy of the offeree circular is submitted to the SIC
6	T+ 49 (not earlier than 28 days after 4)	Close of takeover offer, unless extended
7	T+ 81 (60 days from 4)	Latest closing date of takeover offer

(2) Scheme of arrangement

For a Scheme, the offeror will typically enter into an implementation agreement with the Target Company, whereby the Target Company undertakes to propose the Scheme to its

shareholders for their approval in a general meeting convened specifically for the Scheme (the "**Scheme Meeting**").

Under the requirements of the CA, the Scheme will need to be approved by a majority in number representing 75% in value of the shareholders of the Target Company present and voting, either in person or by proxy, at the Scheme Meeting.

As a matter of process, the Target Company will need to apply to the Singapore courts for leave to convene the Scheme Meeting and if the requisite approval is obtained at the Scheme Meeting, the Target Company will then apply to the Singapore courts to sanction the Scheme.

The Scheme becomes effective and binds all shareholders of the Target Company upon the order of the Singapore courts sanctioning the Scheme being lodged with the Accounting and Regulatory Authority of Singapore ("**ACRA**").

Unlike takeover offers, there is no prescribed timing for a Scheme under the Takeover Code. A Scheme will typically take between 4 to 5 months to complete.

(3) Amalgamation

The offeror and the Target Company will typically enter into an amalgamation agreement whereby they agree to undertake the amalgamation.

Under the requirements of the CA, the offeror and the Target Company will need to jointly prepare an amalgamation proposal setting out the terms of the amalgamation. Both the offeror and the Target Company will have to seek the approval by special resolution of their respective shareholders in a general meeting to the amalgamation proposal.

As part of the process, the respective directors of the offeror and the Target Company will have to make solvency statements, which are enclosed with the amalgamation proposal that is sent to the respective shareholders of the offeror and the Target Company.

The amalgamation becomes effective and binds all shareholders of the offeror and Target Company when the amalgamation proposal is lodged with ACRA, after it is duly approved by the respective shareholders of the offeror and the Target Company.

There is no prescribed timing for an amalgamation under the Takeover Code, except that the amalgamation proposal must be posted within 35 days of the announcement of the proposed

amalgamation and the amalgamation must be effective by 5.30 pm on the 60th day after the date of posting of the amalgamation proposal to the shareholders of the offeror and the Target Company.

9.3 What are the criteria for determining which method is most suited to a particular case?

A take-over or acquisition of shares may be effected in various ways, taking into account financing preferences, tax considerations and market conditions. The most efficient method for any particular transaction depends on the circumstances and the objectives of the transaction parties.

9.4 What are the additional requirements, if any, if one of the companies involved in the restructuring is a listed company?

The Listing Manual applies to a takeover transaction where either the acquiring company or the target company is a company listed on the SGX-ST.

In the case where the acquiring company is a company listed on the SGX-ST, it will need to ascertain whether the takeover transaction is subject to the approval of its shareholders under the requirements of the Listing Manual. In addition, the SGX-ST's approval is required for the listing of new shares that are issued pursuant to an acquisition.

In the case of a scheme of arrangement and amalgamation, the scheme document and amalgamation proposal respectively concerning a company listed on the SGX-ST must be cleared by the SGX-ST

9.5 What are the regulations restricting the acquisition of a certain percentage of shares in a company and when do compulsory takeover regulations apply?

Shareholding restrictions in specific industries

Takeover activities affecting certain types of Singapore incorporated companies are subject to prior regulatory approval for share ownership in these companies. Examples of such types of companies include banks, finance companies, insurance companies, newspaper companies, broadcasting companies, trust companies, designated postal licensees, designated electricity companies, and designated gas companies.

Mandatory Offers

Under Rule 14 of the Take-over Code, a mandatory offer is triggered when an offeror acquires, whether by a series of transactions over a period of time or not, shares which taken together with shares held or acquired by persons acting in concert with it amounts to 30% or more of shares carrying voting rights of the Target Company.

A mandatory offer is also triggered when an offeror and persons acting in concert with it hold between 30% and 50% of the Target Company's shares carrying voting rights, and acquire in aggregate more than 1% of the Target Company's shares carrying voting rights in any rolling six-month period.

9.6 Would the above forms of restructuring also be available to foreign companies?

(1) Takeover offer

The Takeover Code applies to takeovers of:

- corporations, including foreign-incorporated companies, with a primary listing on the SGX-ST; and
- registered business trusts, including foreign-registered business trusts, with a primary listing on the SGX-ST.

(2) Scheme of Arrangement

As stated in paragraph 9.1(2) above, a Scheme is only applicable if the Target Company is incorporated in Singapore.

(3) Amalgamation

As stated in paragraph 9.1(3), the amalgamation process is only available if both the offeror and the Target Company are incorporated in Singapore.

9.7 Is there any legislation or other form of regulation which applies to restrict the potential anti-competitive results of a sale or acquisition of a business or company within Singapore?

The Competition Act, Chapter 50B of Singapore prohibits mergers that have resulted, or may be expected to result in, a substantial lessening of competition within any market for goods or services in

Singapore. The Competition Act is administered and enforced by the Competition Commission of Singapore (the "**CCS**"). Parties who are unsure whether their anticipated takeover or merger raises competition concerns may apply to the CCS either for guidance or for a decision.

10. TAX

10.1 What determines the extent of a company's liability to pay income tax in Singapore?

Singapore income tax has a territorial basis under which income sourced in Singapore is subject to Singapore income tax. Foreign sourced income will generally not be taxable in Singapore unless it is received (or deemed by law to be received) in Singapore.

Tax is assessed and payable on the income of a taxpayer for each year of assessment, which for a company corresponds to the financial year ending in the previous year.

For each year of assessment, taxpayers are required to file a tax return declaring their income for that year of assessment and to submit supporting documents. A company's tax return must be filed by 30 November. In addition, companies are required to file an estimate of their taxable income for each financial year within three months of the end of the financial year. This is to enable the Inland Revenue Authority of Singapore (the "**IRAS**") to make advance assessments of tax on the basis of the estimate provided.

Losses from a trade or business may be set off against income from other sources, and may be carried forward or backward (subject to limits) to be set off against income from another year of assessment. Subject to conditions, Singapore incorporated companies may also transfer losses to related Singapore incorporated companies, to be set off against the latter's profits.

10.2 How is residence treated for tax purposes?

In Singapore, a company's tax residence will depend on where its business is controlled and managed. Generally, a company will be a tax resident in Singapore if its board of directors meet to decide the affairs of the company only in Singapore and nowhere else.

The Singapore branch of a foreign company will usually not be a tax resident in Singapore if its management and control rests with its overseas head office.

Although resident and non-resident companies are usually taxed in the same way, non-resident companies are not entitled to the following:

- Benefits provided in the Avoidance of Double Taxation Agreements that Singapore has entered into with treaty countries;
- Tax exemption on foreign-sourced dividends, foreign branch profits, and foreign-sourced service income under the Income Tax Act;
- Credit for foreign tax paid on income that is subject to tax in Singapore where no Avoidance of Double Taxation Agreement is applicable;
- Certain tax exemptions on specific income that may only be applicable depending on the tax residence status of the person deriving the income;
- A tax exemption scheme for start-up companies; and
- Singapore withholding tax may apply to certain payments made to a person not resident in Singapore, but would not apply to payments made to a Singapore tax resident.

10.3 What is the corporate tax rate and how is it applied?

The current tax rate for companies is 17 per cent, with partial tax exemption for the first S$300,000 of profits.

10.4 What is the tax rate applicable to foreign companies on their income earned in Singapore?

Both local and foreign companies are charged at the same rate on their chargeable income. For the current rate, please see the answer to question 10.3 above.

10.5 What other taxes are payable in Singapore?

Goods and Services Tax

Goods and Services Tax ("**GST**") is intended to be a tax on domestic consumption. Although it is levied primarily on producers and suppliers, the burden of the tax is designed to fall upon end consumers who are not registered for GST.

Broadly speaking, a rate of 7% GST is applicable on any supply of goods or services in Singapore by a GST registered person and on any import of goods into Singapore. However, certain supplies are exempt from GST and a rate of 0% GST is applicable to exports of goods from Singapore and to the supply of certain international services.

The GST registered supplier will be responsible for collecting and paying the applicable GST to IRAS. The GST registered supplier will also claim a refund of GST paid on supplies made to itself by other GST registered suppliers (supported by proper tax invoices). Accounting for GST payments and refunds is generally done on a quarterly basis by the GST registered supplier filing the GST returns.

Generally, any person making or intending to make taxable supplies in the course or furtherance of a business may register for GST. A person is required to register for GST if the value of taxable supplies made or to be made by him will exceed S$1 million over a 12-month period.

Stamp Duty

Stamp duty is generally payable on instruments for the transfer of immovable properties in Singapore or shares registered in Singapore. Stamp duty is also payable on mortgages and leases.

For the transfer of immovable property, the rate of stamp duty is about 3% of the consideration or the value of the property, whereas for the transfer of shares, it is 0.2% of the consideration or the value of the shares. The duty is payable by the transferee of the property or shares. However, relief from stamp duty may be available under certain circumstances.

Property Tax

Property tax is payable annually on the value of land and immovable property in Singapore. The rate of tax is generally 10% of the annual value of the property as determined by the Chief Assessor.

10.6 Is there a tax on dividends?

Singapore operates a one-tier tax system on corporate profits, and dividends paid by a Singapore tax resident company are exempt from tax. This means that corporate profits are taxable on the company and not when distributed to the shareholders.

10.7 Are payments subject to withholding tax?

There is no withholding tax on dividends. Withholding tax at a rate of 15% is applicable on interest payments by a company tax resident in Singapore to a non-tax resident person who does not derive such interest from any trade or business in Singapore. Withholding tax at a rate of 10% is applicable on royalty payments by a company tax resident in Singapore to a non-tax resident person who does not derive such royalties from any trade or business in Singapore.

Withholding tax at a rate of 17% may also be applicable on various other payments by a company tax resident in Singapore to a non-tax resident person for the performance of management services or technical services (changes have been proposed such that said withholding tax would only be applicable where such services are performed by the non-tax resident person through a permanent establishment in Singapore) or for the rental of movable property.

Certain other payments made to a non-tax resident person may also be subject to withholding tax at varying rates, for example, trading gains from the disposal of real property in Singapore, on distributions from real estate investment trusts listed in Singapore, on director's fees and on income for professional services.

Withholding tax may be avoided or paid at a reduced rate under an applicable tax treaty between Singapore and the country of residence of the beneficial owner of the payment

10.8 Is capital gains tax payable in Singapore?

Singapore does not impose tax on capital gains. Hence, capital gains from the disposal of investments or other capital assets will not be subject to tax in Singapore. If capital allowances have been claimed on any asset transferred, a balancing charge or balancing allowance may be applicable on the transfer of the asset.

A gain realised on the transfer of trading stock or a trading asset may be taxable as a revenue gain or profit.

11. DISPUTE RESOLUTION

11.1 Please give a brief outline of the civil procedure in Singapore.

There are several stages in the process of a civil case in Singapore. First, proceedings may be commenced by either a writ or by an originating summons. The defendant must then file a defence by a stipulated deadline and may decide to enter an appearance (a defendant will usually only do so if they intend to challenge the claim). The plaintiff serves a reply, and pleadings are then deemed closed. Following this, discovery of documents will take place and the court will make directions relating to certain trial matters, such as the number of witnesses and how evidence is to be delivered. The action is then set down for trial within six months from the close of pleadings. Before the dispute proceeds to trial, however, there are several interim procedures available to the parties, namely summary judgment, striking out (if either of these is ordered by the court, the proceedings will be terminated before reaching trial), security for costs or interlocutory injunction.

Legal proceedings in Singapore are adversarial not inquisitorial. The parties are therefore in control of the litigation (subject to the substantive law and laws of evidence and procedure), and the judge assumes the role of adjudicator of a dispute. A lawyer is entitled to take such steps as will best serve his client's interests, provided that these are within his or her obligations as an officer of the court.

With a view to improving the efficiency of court proceedings, Singapore became the first country in the world to introduce a compulsory nationwide paperless court filing system in 2000. The electronic filing system makes provision for documents to be filed, served, delivered or otherwise conveyed using electronic service. In addition, Singapore courts actively manage cases with a focus on the expeditious conduct of claims. Pre-trial conferences are scheduled shortly after the commencement of proceedings allowing parties to update the court on the proceedings' status and for the court to set timelines. As a result, it is not uncommon for a trial to be concluded within 6 to 12 months of proceedings having been commenced.

11.2 How are foreign judgements enforced in Singapore?

A judgment creditor who has obtained an order from a foreign court may also enforce that judgment in Singapore. Once such judgment is registered with the High Court, it will have the same force and effect as a Singapore judgment for the purposes of its execution.

11.3 What are the alternative methods of dispute resolution available in Singapore?

Mediation

Mediation services are offered by the Singapore Mediation Centre as well as by the Primary Dispute Resolution Centre in the Subordinate Courts. The Singapore Mediation Centre has a panel of highly qualified mediators and neutrals, including retired Supreme Court Judges, Members of Parliament, former Judicial Commissioners, Senior Counsel and leaders from different professions and industries. The Primary Dispute Resolution Centre is staffed by judicial officers.

Particular effort has been made to promote mediation in the Subordinate Courts. The pre-trial conferences mentioned above were also implemented in order to bring all available dispute resolution programmes to the attention of litigating parties.

Expert Determination

Expert determination is a means by which parties to a contract instruct a third party to decide an issue. The third party is ordinarily an expert chosen for his or her expertise in relation to the issue between the parties. The Singapore courts have decided that, where the expert's determination has been agreed between the parties as final, that expert's determination will be binding on the parties. This dispute resolution tool has proven to be very useful in shipping cases, particularly when highly technical matters are at issue.

Arbitration

The Singapore courts encourage the use of arbitration as a means to resolve disputes, and this is evidenced by the fact that they recognise arbitration agreements and have stayed legal proceedings because of such agreements. Arbitration is therefore fast emerging as a dispute resolution mechanism of choice. The number of international cases administered by the Singapore International Arbitration Centre is steadily increasing.

In a boost to Singapore's arbitration industry, Maxwell Chambers was recently established to house the top international alternative dispute resolution institutions under one roof and to provide best-of-class hearing facilities and support services. These institutions are the Singapore International Arbitration Centre, the Singapore Institute of Arbitrators, the Singapore Chamber of Maritime Arbitration, the International Centre for Dispute Resolution, the International Court of Arbitration of the International Chamber of Commerce, the World Intellectual Property Organization, and the Permanent

Court of Arbitration. Singapore is the first country in the region to have a branch of the Permanent Court of Arbitration. This Singapore branch will provide arbitration, mediation, conciliation and fact-finding services in resolving international disputes for which at least one party is a state, a state entity or an inter-governmental body. In addition, the American Arbitration Association will be setting up a joint office with the Singapore International Arbitration Centre in Singapore.

The Singapore courts also have specialist judges to hear arbitration-related cases, and this contributes significantly to the country's attractiveness as a choice seat of arbitration globally.

11.4 How are arbitral awards enforced in Singapore?

An arbitral award may fall within either the Arbitration Act, Chapter 10 of Singapore (the "**AA**") or the International Arbitration Act, Chapter 143A of Singapore (the "**IAA**").

An arbitral award would fall within the IAA under the following circumstances:

- at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in a state other than Singapore; or
- one of the following places is situated outside the state in which the parties have their places of business:
    - the place of arbitration;
    - any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
- the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

An arbitral award that falls within the IAA is considered an "international award". An arbitral award that does not fall within the IAA, and in which the place of arbitration is Singapore, would be considered a "domestic award" and be governed by the AA.

Leave of the court is necessary before a domestic award can be enforced as a judgment or court order. The court's power to grant enforcement is discretionary, and a domestic award may be refused enforcement on the following bases:

- grounds exist that would entitle the court to set aside or remit an award on appeal; or
- circumstances exist such that an award is uncertain, ambiguous or incomplete etc.

International awards may be enforced in Singapore under two regimes:

- the IAA, which incorporates the 1958 New York Convention, if the award has been made in a Convention country; or
- the Reciprocal Enforcement of Commonwealth Judgments Act, Chapter 264 of Singapore.

Unlike awards made pursuant to Singapore arbitrations, in relation to awards made under the New York Convention, the Singapore courts are treaty bound to enforce a foreign award unless grounds exist under the Convention justifying a refusal to enforce the award.

It also bears noting that arbitral awards that have their seat of arbitration in Singapore may be refused enforcement elsewhere under the 1958 New York Convention if set aside by the Singapore courts.

11.5 What are the grounds on which an arbitration award can be challenged in the courts in Singapore?

Under the AA, the court may set aside a domestic award if the party applying for it to be set aside proves that:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement was invalid under the law assigned to it;
- they were not given proper notice of the arbitration proceedings;
- the award deals with a dispute not contemplated by the arbitration agreement;
- the composition of the arbitral tribunal was not in accordance with the parties' agreement;
- the making of the award was induced by fraud or corruption; or
- the making of the award breached the rules of natural justice and prejudiced the rights of any of the parties.

In addition, a party to Singapore arbitration proceedings may (upon notice to the other parties and the arbitral tribunal and with the agreement of all of the other parties or with leave of the court) appeal to the court on a question of law arising out of an award made in those proceedings. Such an appeal

must be made within 28 days of the date of the award and can be made only if all arbitral processes of appeal have been exhausted.

The court will only grant leave to appeal if it is satisfied that:

- the determination of the question will substantially affect the rights of one or more of the parties;
- the question is one that the arbitral tribunal was asked to determine;
- on the basis of the findings of fact in the award:
    - the decision of the arbitral tribunal on the question is obviously wrong; or
    - the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and
- despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

An application for leave to appeal must identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.

On an appeal, the court may make an order confirming the award, varying the award, setting it aside or remitting it to the arbitral tribunal for reconsideration in the light of the Court's decision.

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(As of March 31, 2010)