DOING BUSINESS IN Singapore

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**Business Structures:**
What types of business structures are permitted?

The business structures in Singapore are divided into the following:

**Partnership**
- General Partnership
- Limited Partnership
- Limited Liability Partnership (LLP)

**Company**
- Private Limited Company
- Exempt Private Company
- Limited Private Company (by shares)
- Limited Private Company (by guarantee)

**Public Limited Company**
- Public Company limited by shares
- Public Company limited by guarantee

**Business Trust**
**Sole Proprietorship**

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**Taxation:** Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

Sole Proprietorship: Profits of a sole proprietorship are taxed based on the sole proprietor's personal income tax rate, hence a sole proprietorship will not benefit from the effective corporate tax rate of 0-17%, nor can it benefit from the multitude of tax incentives that are specifically meant for companies.

Partnership: Profits of a partnership are taxed based on the respective partner's personal income tax rate, hence a partnership will not benefit from the effective corporate tax rate of 0-17%, nor can it benefit from the multitude of tax incentives that are specifically meant for companies.

Company: Corporate tax is levied on all Singapore registered corporations and branches. The tax imposed each year is based on the income earned in the preceding year and is collected by the Inland Revenue Authority of Singapore (IRAS). Singapore enjoys one of the lowest corporate taxes – only 17%. Further, companies can also apply for governmental tax exemptions, incentives and rebates. Some examples include, Start Up Tax Exemption and Corporate Income Tax Rebate.

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**Immigration:** Summarize immigration laws, including visas available for foreign employees.

Singapore has an open-door immigration policy for foreigners. The regulation of employment of foreigners is divided into foreign semi-skilled/unskilled labour and foreign professionals and entrepreneurs. There are various work permit schemes for skilled and semi-skilled workers such as:
- S Pass
- Work Permit for foreign workers
- Work Permit for foreign domestic workers
- Work Permit for performing artistes
- Work Permit for confinement nanny

There are also the following work pass schemes for foreign professionals and entrepreneurs:
- Employment Pass Scheme
- EntrePass Scheme
- Personalised Employment Pass Scheme

**Foreign Investment Review and Issues:** Does the government review and approve foreign investments? What factors are considered?

- Singapore's legal framework and public policies are generally favorable toward foreign investors. Foreign investors are not required to enter into joint ventures or cede management control to local interests, and local and foreign investors are subject to the same basic laws.
- Singapore is open to foreign investment and offers grants and tax incentives to companies after registration with the Economic Development Board.

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**Dispute Resolution and Court Systems:** Summarize the court system, including the use of juries and arbitration.

- The Singapore legal system generally provides 3 ways of dispute resolution: litigation, arbitration, and mediation.
  1. **Litigation:** Contentious matters are litigated in the Singapore Courts which commands a high standing by international standards. It is commenced through the service of an originating process. The Court system in Singapore is made up of the following courts:
     - Court of Appeal
     - High Court (dealing with claims above $250,000)
     - State Courts (consisting of the District Courts (dealing with claims from $60,000-$250,000), Magistrates’ Courts (dealing with claims below $60,000), Juvenile Courts, Coroners Courts as well as the Small Claims Tribunals (monetary limit of $10,000)).
     - Family Justice Courts
     - Singapore International Commercial Court (SICC)- The SICC is a division of the High Court and part of the Supreme Court of Singapore. It hears international and commercial disputes where the litigants have submitted to its jurisdiction under a written jurisdiction agreement and do not seek any relief in the form of, a prerogative order.
  2. **Arbitration:** Arbitration is well-supported as a viable alternative to dispute resolution. The Singapore International Arbitration Centre (SIAC) and the Singapore Chamber of Maritime Arbitration are two local non-institutional organisations that promote arbitration with their own panel of arbitrators and rules.
  3. **Mediation:** The Government actively encourages mediation as an alternative to dispute resolution resolved by reference to the courts with the objective of saving the parties' time and costs and to reduce the acrimony of the parties in the dispute. Formal or institutionalised mediation was established in the 1990s with the setting up of the Court Mediation Centre, renamed the Primary Dispute Resolution Centre, in the State Courts, the Singapore Mediation Centre (SMC), the Community Mediation Centres and other agencies and tribunals.

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**Foreign Corrupt Practices:** What are the anti-corruption, anti-bribery and economic sanction laws which impact doing business in the country?

- The key legislation in Singapore that deals with corruption in businesses is the Prevention of Corruption Act (Cap 241). Singapore takes a serious view of any corrupt practices in the country.
### Dealing with the Government:
**Identify major issues when dealing with local and federal governments.**

Singapore takes a firm stance towards money laundering and terrorism financing. Singapore’s Companies Act has recently been amended to increase the transparency of businesses. For example:

- Companies (except listed companies and Singapore financial institutions) and limited liability partnerships registered in Singapore are required to maintain registers of beneficial owners at prescribed places (e.g., company’s registered office or the registered filing agent’s registered office);

- Foreign companies registered in Singapore are required to maintain registers of beneficial owners and public registers of shareholders;

- A liquidator is required to retain records of wound up companies and LLPs for five years instead of two;

- Officers/partners/managers of struck off companies and LLPs required to retain accounting records and registers of beneficial owners for five years;

- Requirement for nominee directors/managers to disclose their nominee status and nominators to their companies/LLPs

### Types of transaction: How may businesses combine?

Mergers and acquisitions in Singapore are primarily governed by principles of contract and company law. The most common forms of business combinations in Singapore are as follows:

- A purchase of shares with voting rights in the target company or an acquisition of the business or assets of the target company;

- A joint venture (which usually involves the incorporation of a new company) formed by two or more parties to pursue a common commercial goal;

- A takeover of the target company through an offer for the shares of the target company;

- A scheme of arrangement under Section 210 of the Companies Act (Cap 50);

- An amalgamation under sections 215A–J of the Companies Act;

- A trust scheme constituting an acquisition of units in a business trust by way of an amendment of the trust deed constituting the trust following approval by unit-holders. In Singapore, the take-over of a public company is principally regulated by the following regulations and statutes.

1. **The Singapore Code on Take-overs and Mergers:**

   Basically, the Code states rules on the approach, the conduct, the timing, the documentation and the various types of offers and their terms in a take-over. The Code is drafted with listed public companies, listed registered business trusts, and REITS in mind, but unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders (as the case may be) and net tangible assets of $5 million or more must also observe the letter and spirit of the Code, wherever this is possible and appropriate. The Code does not
apply to takeovers or mergers of other unlisted public companies and unlisted business trusts, or private companies.

(2) **Securities and Futures Act (Cap. 289) (the “SFA”)**

(3) **Companies Act (Cap. 50):** The Companies Act provides the framework for schemes of arrangement (Sections 210, 212) and amalgamations (Sections 215A to 215K) in corporate take-overs and mergers. The acquisition of shares of minority shareholders (Section 215) of the target companies is also governed by the Companies Act.

(4) **Listing Manual:** The Listing Manual applies where the acquiring company or the target company is listed on the Singapore Exchange Securities Trading Limited. For acquisitions and realisations, the Listing Manual imposes disclosure obligations.

(5) **Competition Act (Cap. 50B):** The Competition Act prohibits mergers that result in a substantial alleviation of competition within any market for goods or services in Singapore. Any party may notify or consult the Competition Commission of Singapore for a decision or guidance on any merger that it is about to undertake or that may affect it.

### Competition Law: How do laws impact competition?

The foundation of Singapore’s competition law regime is the Competition Act 2004. The most important provisions are found in Part III of the Competition Act which sets out the three main prohibited activities:

- Anti-competitive agreements, decisions and practices;
- Abuse of a dominant position; and
- Mergers which substantially lessen competition.

### Employment Relations: Briefly summarize major laws impacting employment and employee relations.

The Employment Act governs basic terms and conditions at work; i.e. payment of salary, leave entitlement, termination of contract etc.

For employees not covered by the Employment Act, the employment is governed by the terms contained in the employment agreement.

### Governing Law: What law typically governs the transaction agreements?

The governing law of the contract is usually determined by either:

- Express choice of law clause (e.g. through a governing law/choice of law clause in the contract) or
- Objective choice of law (check list of connecting factors) determined through conflict of laws principles.

### Filings & Fees: Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination?

The main body governing the filing of corporate transactions is the Accounting & Corporate Regulatory Authority of Singapore (“ACRA”). Common corporate transactions usually filed by companies are as follows:

- Filing of Annual Returns
- Return of Allotment of Shares
- Transfer of Shares
- Change in Company Information
- Change in Company Officer Information
Disclosure of substantial shareholdings: What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

The Securities and Futures Act governs the disclosure requirements on the part of substantial shareholders of listed companies on the Singapore Exchange Securities Trading Limited. For example, under Section 135 of the Securities and Futures Act, there is a duty of a substantial shareholder to notify the company of his/her interest. Shareholders of a private limited company are also to provide information such as their name, address, personal identification number, nationality and shareholding. These details will be reflected on the company’s Business Profile Search, which offers a summary of the key information of the company.

Duties of directors and controlling shareholders: What duties do the directors or managers of a company owe to the company’s shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

Directors owe fiduciary duties to the company under common law and pursuant to express provisions in the Companies Act. Some examples of the duties directors owe a company are as follows:
- Duty to act for a proper purpose (director must exercise his powers for the purpose for which such power was conferred)
- Duty of good faith (Directors must exercise discretion in which they consider to be in the interests of the company)
- Duty not to place themselves in an actual conflict of interest
- Duty of skill, care, and diligence in executing their directorial functions

Controlling shareholders do not have such similar fiduciary duties.

Insolvency Laws

Winding Up/ Liquidation: A company may be wound up or liquidated in three ways: members’ voluntary winding-up, creditors’ winding-up and a court-ordered winding-up. Once a company is in liquidation, the power to run the company is taken from the board of directors and transferred to the liquidator. The duties of the liquidator are to wind up the company’s business, realise the assets, pay off the creditors and return whatever is left to the members.

A takeover of a public company which is being wound up is unlikely to occur as there cannot be an offer to acquire the company’s shares without the court’s approval. The court may sanction the share transfer if the bidder is capable of meeting its liabilities as a contributory.

Schemes of Arrangement: A takeover of a company that is being wound up can be structured as a scheme of arrangement. A scheme of arrangement is a legislative procedure allowing a company to be restructured. The liquidator proposes the scheme to the creditors or members, and, if approved by a statutory majority, it is binding on all creditors or members once sanctioned by the High Court of Singapore. A scheme of arrangement is subject to the Code unless certain conditions are met and, in such cases, exemptions from complying with material obligations of the Code can be obtained from the SIC which administers the Code.
Judicial Management: A financially troubled company may also be placed under judicial management where a judicial manager is appointed by the court to take control of the company from the directors in order to try and achieve one of the following: salvage the company as a going concern; effect a more advantageous asset realisation situation than if the company was subject to a winding-up process; or aid the approval of a scheme of arrangement with the shareholders and creditors. No restrictions on the transfer of a company’s shares are imposed when it is under judicial management.

Receivership: A company typically enters into receivership when a receiver is appointed by the debenture holder or trustee for the debenture holders, or by the court upon the application of the debenture holder or trustee for the debenture holders. The main function of the receiver is to gather in the assets subject to the charge, realise them and pay off the creditors, but it has no power to run the company’s business. There are no similar prohibitions of share transfer for a company going through receivership.