

Singapore



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Chapter 1: Introduction

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1.1 Political and constitutional structure

Singapore is a republic with a parliamentary system of government based on the Westminster model, with Members of Parliament representing constituencies. The Constitution lays down the basic framework for the three organs of state: the executive, legislature and judiciary.

Parliament and the President jointly make up the Legislature of Singapore. The Singapore Parliament is unicameral and is made up of Members of Parliament who are elected, as well as Non-Constituency Members of Parliament and Nominated Members of Parliament who are appointed. Singapore's executive branch of government consists of the elected President as the Head of State, the Cabinet led by the Prime Minister and the Attorney-General.

1.2 Legal structure

Singapore is a common law jurisdiction and derives its legal system from English common law. Until 1994, Singapore's court of final appeal was the Privy Council in the UK and decisions on common law by the House of Lords were taken as being virtually binding on the local courts. It is expressly provided in the Application of English Law Act that English common law, insofar as it was part of the law of Singapore before 12 November 1993, continues to be a part of the law of Singapore. However, Singapore has built its own substantial body of case law over the years. English judgments are still referred to and applied where appropriate by the local courts, although Australian and Canadian judgments are also referred to for guidance.

The judiciary consists of the Supreme Court and the state courts. The head of the judiciary is the Chief Justice. The Supreme Court comprises the Court of Appeal and the High Court, and specialised courts such as the Singapore International Commercial Court (SICC). The state courts comprise several courts, including specialised courts such as the Small Claims Tribunals and Employment Claims Tribunals.

1.3 Economy

The World Bank, in its *Doing Business 2020* report, ranked Singapore as the world's second-easiest place to do business. The World Economic Forum ranked Singapore as the top-most competitive economy in the world for 2019.

Singapore has one of the highest GDP per capita ratios in the world. Singapore's attractiveness to investors and businesses is the result of its strong economy, its sophisticated and stable business and political environment, and its highly skilled workforce.

Chapter 2: The business environment

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2.1 Government structure

The Singapore government is modelled after the English Westminster system. It has three branches: the legislature, executive and judiciary.

The Prime Minister is the head of the government, while the President is the Head of State. The Chief Justice is the head of the judiciary.

The legislature is responsible for making laws, and comprises the President and Parliament. The proceedings of the legislature may be found in the Official Reports of the Singapore Parliamentary Debates (Hansard).

The executive is responsible for administering laws, and comprises the President, Cabinet and Attorney-General. The Attorney-General is also the Public Prosecutor, and therefore has the discretion to bring charges or not (ie, prosecutorial discretion).

The judiciary is responsible for interpreting the law through the courts and comprises the Supreme Court (made up of the Court of Appeal and the High Court), the state courts (which includes the Small Claims Tribunals) and the Family Justice Courts. The SICC is a division of the High Court and is designed to deal with transnational commercial disputes. A panel of local judges and international judges from both the civil law and common law traditions hear an increasing number of commercial cases brought before the SICC.

2.2 Legal system

Singapore is a common law jurisdiction. In Singapore, the law (both criminal law and civil) can be found in statutes and cases. The Singapore Constitution is the supreme law of the republic, and any law enacted by the legislature after the commencement of the Constitution that is inconsistent with the Constitution is, to the extent of the inconsistency, void.

Statutes are passed by Parliament. These statutes may be accessed online at Singapore Statutes Online. Some key commercial statutes include the Companies Act (Cap 50), the Employment Act (Cap 91) and the Competition Act (Cap 50B). Some key statutes governing criminal law are the Penal Code (Cap 224) and the Criminal Procedure Code (Cap 68).

Case law comprises the corpus of cases decided by the judiciary over time. Many cases are reported and can be found in online depositories. Where cases involve statutory provisions, in the process of deciding the case the courts may interpret certain provisions in a statute. Consequently, a full understanding of what a statutory provision entails may require an examination of the relevant case law.

Singapore courts practice the doctrine of binding precedent or *stare decisis*. In essence, this means that courts lower in the judicial hierarchy are bound to follow the decision of the courts above it if the case they are deciding cannot be distinguished from the prior case. For example,

the decisions of the Singapore Court of Appeal are binding on the Singapore High Court. The decisions of courts in other parts of the Commonwealth are not binding on Singapore courts, although it is not unusual for English cases to be cited in Singapore's courts, especially when there is no direct local authority on a topic.

Deciding which court to bring a particular case in may not always be straightforward. While the quantum of the dispute is usually one of the first factors to consider, there may be other considerations. Disputes where the claim exceeds SGD 250,000 are usually litigated in the High Court. Disputes where the claim does not exceed SGD 20,000 are commonly heard by the Small Claims Tribunal.

Alongside the courts, arbitration has long been a popular dispute resolution mechanism. The SIAC is a global arbitration institution providing cost-competitive and efficient case management services to parties from all over the world. Besides cases, Singapore's arbitration law may also be found in statutes like the Arbitration Act (Cap 10) and the International Arbitration Act (Cap 143A). Singapore is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 'New York Convention'). Singapore arbitration awards are thus enforceable in many countries around the world. Singapore courts are also supportive of arbitration, and a party to an arbitration agreement may be able to seek a range of critical interim orders from Singapore courts in aid of arbitration.

Some regulatory bodies in Singapore are empowered to seek penalties for breaches of legislation/regulations/licences. Such enforcement actions are not unusual. For example, the Monetary Authority of Singapore (MAS) has on various occasions sought civil penalties for breaches of the Securities and Futures Act (Cap 289) (the 'SFA'). The Infocomm Media Development Authority (IMDA) has also taken enforcement action on various occasions for breaches of the terms of issued licences. These penalties can be substantial, and it may be worth considering written representations to the authorities when an enforcement issue arises. Depending on the circumstances, it may also be worth considering commencing internal corporate investigations. Singapore law protects privileged communications, which makes understanding your rights at an early stage of any potential enforcement action critical.

Chapter 3: Business and corporate structures

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3.1 Common forms of legal entities

In Singapore, most business entities and structures are regulated by the Accounting and Corporate Regulatory Authority (ACRA). Prior to registering the chosen business structure, the applicant may choose from the following common forms of corporate structures:

3.1.1 Sole proprietorship

A sole proprietorship is a business owned and controlled by an individual, a company or a limited liability partnership (LLP). It does not constitute a separate legal entity from its proprietor. As such, the sole proprietor is personally liable for all liabilities incurred during the course of business, and a sole proprietorship can sue or be sued in the proprietor's name. A sole proprietorship structure is usually recommended for small-scale businesses with no or negligible risk, and it is not usually recommended for businesses that require the hiring of staff or are looking at rapid expansion.

3.1.2 Partnership

A partnership is a business that may be owned by a minimum of two to a maximum of 20 partners. A partnership and all of its partners are regarded as a single legal entity. This means that partners have unlimited liability and are personally liable for the debts or legal liabilities of the partnership. In addition, partners are personally liable for the actions of other partners in the business and a partnership can sue or be sued in the partners' names. A partnership is usually recommended for individuals looking to start and operate a small-scale business with few compliance requirements. However, this structure is not usually recommended for businesses looking to own property, or involving more than 20 individuals.

3.1.3 Limited liability partnership (LLP)

An LLP is a vehicle that gives business owners the flexibility to operate as a partnership while having a separate legal identity, like a private limited company. Registration costs are lower than that of a company, and there are fewer formalities and procedures to comply with. An LLP structure is usually used by chartered professionals, such as lawyers and accountants.

A change in the partners of an LLP will not affect its existence, rights or liabilities. Unlike partnerships, an LLP can sue, be sued and acquire and hold property in its own name. While the partners will generally not be held personally liable for the debts incurred by the LLP, each partner may be held liable for his or her own wrongful acts or omissions.

3.1.4 Limited partnership (LP)

An LP is a vehicle for doing business consisting of a minimum of two partners, including at least one general partner and at least one limited partner. The general and limited partners may be individuals or corporations. In contrast to an LLP, an LP does not have a separate legal personality. Accordingly, it cannot sue or be sued, or own property, in its own name. While the general partner is liable for the actions of the limited partnership, including its debts and obligations, a limited partner generally is not liable for the debts or obligations of the LP beyond its agreed contribution.

In Singapore the LP structure is typically used by investment funds, and it is usually recommended where investors want the general partner of the business to be fully accountable. Accordingly, it is not usually recommended for business owners who do not want to be personally liable for the debts and obligations of the business.

3.1.5 Private company limited by shares

A company is a business entity registered under the Companies Act (Cap 50) of Singapore. The company is a separate legal entity from its shareholders, and its shareholders' liabilities are limited to the amount not paid up on shares bought by them. There are two types of private companies in Singapore:

- exempt private company: 20 members or less and no corporation holds a beneficial interest in the company's shares; and
- private company: 50 members or less.

A company tends to have higher set-up and maintenance costs relative to other business structures. Nevertheless, it is usually recommended for business operation, owing to its perception of credibility under requirements in the Companies Act, and its enjoyment of corporate tax rates and coverage pursuant to double tax agreements.

3.1.6 Branch

A branch is an extension of a foreign company, often used by foreign companies wishing to conduct business in Singapore. Through the branch, the foreign company carries out its Singapore operations while using its own name. The branch is usually recommended for a foreign company wishing to leverage its existing name and reputation. However, as a branch and its foreign parent company constitute a single legal entity, it is not usually recommended for a foreign business requiring a separate legal entity in Singapore.

3.1.7 Representative office

Like a branch, a representative office is an extension of its foreign parent company and is not a separate legal entity from the parent company. However, unlike a branch, it is not permitted to conduct any commercial activities and is temporary in nature, usually for one year with the potential to renew for a maximum of three years. It is typically used by foreign companies wishing to conduct market research in the Singapore market, without incurring incorporation and compliance costs, prior to establishing full-scale operations in Singapore.

3.2 Ongoing reporting and disclosure obligations

3.2.1 Sole proprietorship

Sole proprietorships are generally not required to file annual returns nor financial statements. However, sole proprietors may be required to file their annual tax return if they receive a notification from the Inland Revenue Authority of Singapore (IRAS) to do so.

3.2.2 *Partnership*

Partnerships are exempt from annual audit and are not required to file annual financial statements with ACRA. The partners must file a personal income return and it must relay the revenue and profits of the partnership to the IRAS.

3.2.3 *LLP*

An LLP is not required to file its accounts or have them audited, but is required to keep its books (accounting records, profit and loss accounts, and balance sheets) up-to-date so as to substantiate all the transactions and financial position of the LLP. Further, the manager of an LLP must submit an annual declaration of solvency or insolvency to ACRA. Such a declaration must be lodged within the first 15 months from the date of the registration of the LLP. Subsequently, a declaration once in every calendar year must be submitted at intervals of not more than 15 months. LLPs will not be liable to tax at the entity level, but each individual partner will be taxed on his or her share of the income from the LLP.

3.2.4 *LP*

An LP is not required to file its accounts or have them audited, but is required to keep accounting and other records that will sufficiently explain its transactions and financial position. Similar to LLPs, LPs will not be liable to tax at the entity level, but where the partner is an individual, his or her share of the income will be taxed at the tax rate for companies.

3.2.5 *Private company limited by shares*

All private companies, including exempt private companies, are required to file annual returns with ACRA. The annual return is an electronic form that provides critical information that helps the company's stakeholders to make informed decisions.

Private companies and insolvent exempt private companies are required to file their full set of financial statements with their annual returns, whereas solvent exempt private companies are exempt from filing their financial statements.

3.2.6 *Branch*

Together with its foreign parent company, a branch office is required to lodge its financial statements with ACRA on an annual basis. These financial statements must consist of audited statements of its assets and liabilities, and profit and loss account arising out of its Singapore operations. These statements are to be prepared in accordance with the Singapore Financial Reporting Standards.

3.2.7 *Representative office*

The representative office is not obligated to file annual returns with ACRA or annual tax returns with the IRAS.

3.3 Management structures

3.3.1 *Sole proprietorship and partnership*

In order to set up a sole proprietorship or a partnership, the sole proprietor or at least one partner of the partnership must be: (1) at least 18 years old; and (2) a Singapore citizen, a Singapore permanent resident or an EntrePass holder.

Nevertheless, a foreigner (or foreigners in the case of a partnership) residing overseas may set up a sole proprietorship or a partnership provided that the foreigner(s) appoint(s) at least one authorised representative. Such an authorised representative must be: (1) a natural person; (2) at least 18 years of age; (3) of full legal capacity; and (4) ordinarily resident in Singapore (the 'Requirements'). A person is considered to be 'ordinarily resident in Singapore' if he/she is a Singapore citizen, a permanent resident or a foreigner who has been issued an employment pass.

3.3.2 *LLP*

The partner in an LLP can be an individual, local company, foreign company or another LLP. Every LLP must have at least one manager ordinarily resident in Singapore, who is a natural person of at least 18 years of age. The manager need not be a partner, and takes part in the management of the LLP. This means that where the LLP fails to comply with certain rules and regulations of the Limited Liability Partnership Act, for example, by failing to file a declaration of solvency, this manager will be held responsible. Thus, compared with partners, the manager of the LLP shoulders heavier responsibilities.

A foreigner who wishes to register an LLP in Singapore is also required to appoint a locally resident manager, or seek approval from the Ministry of Manpower (the 'MOM') if the foreigner wishes to be present in Singapore to manage the operations of the LLP.

3.3.3 *LP*

The general partner of an LP can be an individual or a company, and the limited partner of an LP can be an individual, company or unregistered foreign company. A foreigner who wishes to register an LP in Singapore is required to appoint a locally resident manager, or seek approval from the MOM if the foreigner wishes to be present in Singapore to manage the operations of the LP.

3.3.4 *Private company limited by shares*

A company must have a company secretary, and at least one director must be resident in Singapore. An auditor is also necessarily appointed three months upon incorporation, unless the company is exempt from audit requirements.

3.3.5 *Branch*

A branch office must appoint at least one authorised representative who meets the Requirements that apply to an authorised representative appointed under a sole proprietorship or partnership.

3.3.6 Representative office

A representative office can have a maximum of five staff members. It must also appoint a staff member from the foreign company or a Singapore resident employee of the foreign parent company who will act as a representative of the parent company and execute operations in the Singapore office.

3.4 Director, officer and shareholder liability

3.4.1 Sole proprietorship, partnership and LLP

Registration of sole proprietorship, partnership or LLP begins with a name application at a fee of SGD 15. Registration of the sole proprietorship, partnership or LLP with ACRA costs an additional fee of SGD 100. Such a registration can be completed within a day, provided all the supporting documents are lodged properly. However, if the nature of the business requires a referral to another authority, it may take up to two months.

3.4.2 LP

Registration of an LP begins with a name application at a fee of SGD 15. Registration of the LP with ACRA costs an additional fee of SGD 100 for a one-year registration or SGD 160 for a three-year registration. Such a registration can be completed within a day, provided all the supporting documents are lodged properly. However, if the nature of the business requires a referral to another authority, it may take up to two months. LP registration must be renewed before it expires, and such a renewal with ACRA costs SGD 30 for a one-year registration or SGD 90 for a three-year registration.

3.4.3 Private company limited by shares

The process of incorporating a private company limited by shares begins with the applicant filing an application with ACRA for the approval of a proposed company name. The application fee for the company name is SGD 15. To complete the incorporation procedure, the applicant must provide information and documents, such as the principal activities of the company and a registered Singapore address, among others. Upon the population of the details on ACRA and payment of the registration fee of SGD 300, the company will be set up within the day.

3.4.4 Branch

Similar to the setting up of a private limited company, sole proprietorship and different forms of partnerships, the registration of a branch office begins with a name application. The application costs SGD 10 and can be processed within a day, but may take up to two months in the event of referrals to other authorities. Registration of a branch office on ACRA will cost an additional SGD 300, and the branch office may commence business upon registration unless additional licences or approvals are required due to the nature of the business.

3.4.5 Representative office

A foreign company that wishes to establish a representative office in Singapore must: (1) have been established in its home country for three years or more; and (2) have incurred a sales turnover of more than US\$250,000.

A representative office must be registered with Enterprise Singapore. The documents required for the approval process with Enterprise Singapore include: (1) a completed application form (via Enterprise Singapore's online portal); (2) a copy of the parent company's Registration Certificate or Certificate of Incorporation; and (3) copies of the parent company's latest annual report and audited accounts.

For any document not in English, an official English translation must be submitted to the online portal pursuant to the application. The processing fee for setting up a representative office and renewing the representative office each year is SGD 200.

Chapter 4: Takeovers (friendly M&A)

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4.1 Legal and regulatory framework

Where a public listed company is being acquired or taken over, such an activity is principally governed by an advisory body known as the Securities Industry Council (SIC). The SIC is the principal regulator that administers and enforces the Singapore Code on Take-overs and Mergers (the 'Takeover Code'). The SIC is made up of representatives from the government, MAS and private sector. The day-to-day business of the SIC is conducted by a professionally staffed full-time Secretariat.

The Takeover Code applies to the acquisition of voting control of public companies. It applies to corporations (whether local or foreign), business trusts and real estate investment trusts (REITs) with a primary listing of their equity securities in Singapore. It also applies to unlisted Singapore companies and unlisted registered business trusts or REITs with more than 50 shareholders or unit holders, and net tangible assets of SGD 5m. Although the Takeover Code does not have the force of law, its breach may result in the imposition of sanctions by the SIC.

Where either the acquiring company or the target company is a company listed on the Singapore Exchange (the 'SGX'), the SGX Listing Manual (the 'Listing Manual') also applies.

4.2 Merger control and statutory shareholding restrictions in specific industries

Section 54 of the Competition Act prohibits mergers that result, or may be expected to result, in a substantial lessening of competition within any market for goods or services in Singapore. Failure to follow merger control procedures where it would otherwise have been advisable to do so could result in financial penalties, or a direction for the merger to be unwound or for divestments to be carried out.

Other statutes relating to particular industries also govern takeover activity in Singapore insofar as they limit or require prior regulatory approval for share ownership in companies engaged in those industries. Those industries are generally industries perceived to be critical to national interests, for instance, banking, finance, insurance and media.

4.3 Types of takeover offers

4.3.1 Mandatory offers

A mandatory offer is triggered when an offeror acquires 30 per cent or more of the voting rights of the target company or, if it already holds between 30 and 50 per cent of the target company's voting rights, it acquires more than one per cent of the target company's voting rights in any rolling six-month period. In a mandatory offer, the offer price cannot be lower than the highest price paid by the offeror or its concert parties. The consideration paid in the mandatory offer should be in cash or be accompanied by a cash alternative. A mandatory offer is conditional upon the offeror obtaining acceptances that will result in the offeror, and persons acting in concert with it, holding shares carrying more than 50 per cent of the voting rights of the target company. Generally, no other conditions are permitted to be imposed in a mandatory offer.

Where an offeror acquires more than 50 per cent of the voting shares of a target company and, as a result, the offeror acquires or consolidates control of the public company because the target company itself had effective control of the public company, the offeror may be required to make a mandatory takeover offer for the public company.

4.3.2 Voluntary offers

A voluntary offer occurs where the offeror makes an offer for all the shares of the target company when the offeror has not incurred an obligation to make a mandatory offer. A voluntary offer must always be conditional on the offeror and its concert parties acquiring more than 50 per cent of the target company. In addition, the offeror may stipulate other objective conditions, such as a particular level of acceptances, shareholders' approval and certain regulatory approvals. In a voluntary offer, the offer price cannot be lower than the highest price paid by the offeror or any of its concert parties for any shares carrying voting rights in the target company during the offer period and within the three months leading up to the beginning of the offer period. The offer may be in cash or securities, or a combination thereof.

4.3.3 Partial offers

Partial offers are voluntary offers for less than 100 per cent of the outstanding shares in a target company. All partial offers must be approved by the SIC. Generally, the provisions in the Takeover Code applicable to a voluntary offer will also apply to partial offers, and the documents required for a partial offer will also be required in relation to a voluntary offer. Consideration for a partial offer may be in the form of cash or securities, or a combination of both.

4.3.4 Scheme of arrangement

An acquisition of a public company may also be effected through a scheme of arrangement provided for in section 210 of the Companies Act. In a scheme of arrangement, outstanding shares of the target company are either cancelled or transferred to the acquirer in consideration for cash and/or shares. Usually a scheme of arrangement is only used in a situation where the acquirer wishes to acquire all the shares of a target company and such acquisition is supported by the target company. All schemes of arrangement are subject to compliance with the Takeover Code. In accordance with Section 210 of the Companies Act, a scheme of arrangement requires the approval of a majority of members of the target company present and voting, representing at least 75 per cent in value of the shares voted at a scheme meeting. In the voting process, the acquirer and its related parties, as well as common substantial shareholders of the acquirer and the target company must abstain from voting. Furthermore, the scheme also requires the sanction of the High Court. Once an order for a scheme of arrangement has been approved by the High Court, it binds all shareholders, including those who objected to it at the scheme meeting or in the High Court.

4.3.5 Amalgamation process

As an alternative to the scheme of arrangement, an acquisition of a public company may be effected through an amalgamation process. Such a process may involve either two or more companies amalgamating and continuing as one company, or two or more companies amalgamating and forming a new company. The main difference in the amalgamation process is that it does not require the sanction of the High Court.

4.4 Directors' duties

The Takeover Code prevents a target company from frustrating a bona fide offer. When a target company's board of directors has been notified of a bona fide offer, or after the target's board has reason to believe that a bona fide offer is imminent, the board cannot, without shareholders' approval, take any steps that could effectively result in either the offer being frustrated, or denial of the target shareholders' opportunity to decide on the merits of the offer. The target company's board of directors must obtain the advice of an independent financial adviser when it receives an offer or is approached with a view to an offer being made, and must subsequently inform the shareholders of the substance of this advice. In addition, the directors of a company have a fiduciary duty under common law to act in the interests of the company and its shareholders as a whole.

4.5 Shareholder disclosures

The parties to a takeover and their associates are required to disclose shares, options or derivatives purchased or sold by them on their own account on a daily basis. The term 'associate' will normally include a holder of five per cent or more of the equity share capital of the offeror or target company. Disclosure must be made to the SGX and the SIC. Apart from the Takeover Code, shareholder disclosure obligations are found in the Companies Act and the SFA, and are required by the SGX with regard to listed companies. Disclosure obligations arise when a shareholder becomes a substantial shareholder, that is, a shareholder who has an 'interest' of five per cent or more of the total votes

attached to all the voting shares in a company. Disclosure must subsequently be made if there is a change in the substantial shareholder's interest in voting shares in a company in threshold bands of one per cent.

4.6 Suspension of trading and compulsory acquisition

If the offeror and its concert parties should, as a result of the offer or otherwise, own or control above 90 per cent of the issued share capital of the target company, the SGX may suspend the listing of the shares in the target company. An offeror who acquires not less than 90 per cent of the issued target company shares pursuant to a takeover offer (excluding those shares held at the date of the offer by, or by a nominee for, the offeror or its holding company, subsidiary or fellow subsidiary) is entitled compulsorily to acquire any remaining target shares under section 215 of the Companies Act. Conversely, dissenting shareholders of the target company have a right to be bought out by the offeror if the offeror and its subsidiaries hold 90 per cent or more of the issued target company shares.

Chapter 5: Foreign investment

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5.1 Foreign investment control/restriction

5.1.1 Introduction

Singapore relies heavily on foreign investment to drive economic growth. As such, the Singapore government places strong emphasis on attracting foreign investment, and has set up various organisations to encourage foreign investment (eg, the Singapore Trade Development Board), offering an extensive range of tax relief, as well as low barriers to entry for foreign investment.

5.1.2 Foreign investment control

Singapore has relatively minimal foreign investment control. For foreign individuals or corporations who intend to invest in a Singapore company, there are no special post-closing or filing requirements. The Takeover Code is applicable to all offerors, whether they are persons or corporations (be they resident in Singapore or not), and does not impose different requirements for foreign offerors compared with offerors resident in Singapore.

5.1.3 Licensing and legislative restrictions

However, approval is required for foreign investment in specific sectors. The Singapore government controls these sectors through licensing regimes (applying both qualitative and quantitative criteria depending on the sector involved) and legislative restrictions.

5.1.4 Restrictions on investment in the broadcasting sector

One restricted sector that requires licensing in Singapore is broadcasting. A licence is needed to carry out licensable broadcasting activities in Singapore, and a broadcasting licence will not be granted by the IMDA (the main regulatory body for this sector) if the broadcasting company is directed, managed or controlled by any foreign source or if any foreign source holds not less than 49 per cent of the share capital or voting power in the company.

5.1.5 Restrictions on investment in the real estate sector

Another sector that is restricted by legislation in Singapore is real estate. The main regulatory bodies for this sector are the Singapore Land Authority, the Housing and Development Board (the 'HDB') and Jurong Town Corporation (JTC), depending on the type of real estate involved. In general, transfers of real estate in contravention of foreign ownership restrictions will be null and void, and any person who acts in contravention of such restrictions will be guilty of an offence.

Real estate in Singapore is divided into three types: residential property, commercial property and industrial property. Residential property is classified into two categories: public and private property. Generally, foreigners are not permitted to purchase public housing flats (ie, HDB flats) unless his or her spouse is a Singapore citizen.

Additionally, pursuant to the Residential Property Act (Cap 274) of Singapore, government approval is required before a foreigner may purchase certain types of residential property. These restricted residential property types include, inter alia, vacant residential land, terrace or semi-detached houses and strata-landed houses.

Foreigners who are eligible to purchase residential property are also liable to pay higher rates of Buyer's Stamp Duty (BSD) and Additional Buyer's Stamp Duty (ABSD) to the IRAS. However, pursuant to certain free trade agreements to which Singapore is a party, nationals of some countries are accorded the same stamp duty treatment as Singapore citizens.

It is also noteworthy that non-Singapore citizens and companies who are not tax residents in Singapore and who have been assessed as 'property traders' will be required to pay an additional WHT of 15 per cent of the entire sale price of the property.

Apart from residential property, foreign individuals or entities may also wish to invest in commercial or industrial property. Fortunately, there are no restrictions on the purchase of commercial or industrial property by foreign individuals or entities in Singapore.

However, it should be noted that as industrial property is generally managed and administered by the JTC, persons owning or operating industrial property will be required to comply with the JTC's prevailing policies. Such policies may include the requirement to apply for approval before subletting the property.

In terms of tax, BSD (but not ABSD) is payable in respect of commercial and industrial property to IRAS.

Apart from BSD and ABSD, government service tax (GST), property tax and Additional Conveyance Duties ('ACD') may also be imposed on the purchase of property. GST is payable in respect of, inter

alia, the sale and lease of non-residential property. Property tax is payable by the registered proprietor of the property, which is determined based on a valuation of the said property. ACD is payable on qualifying acquisitions and disposals of equity interests in property-holding entities the primary tangible assets of which are Singapore residential property.

5.2 Foreign exchange control

5.2.1 MAS

The MAS is Singapore's central bank and integrated financial regulator. The MAS issues currency, oversees payment systems, and serves as banker to and financial agent of the government.

5.2.2 Capital injection and repatriation of funds

There are no foreign exchange or currency restrictions on the remittance or repatriation of capital or profits in or out of Singapore. Therefore, funds may be freely remitted into and out of Singapore.

The government imposes certain restrictions on the lending of the Singapore dollar to non-resident financial institutions to limit speculation in the country's currency market. However, these restrictions do not apply to the lending of Singapore dollars to individuals and non-financial institutions.

However, taxes that are applicable to businesses in Singapore affect the amount of profits that may be repatriated out of Singapore. For example, gains or profits accrued in, derived from or received in Singapore from outside the nation are subject to income tax, regardless of the tax residency status of the corporate entity. Additionally, certain types of income derived in Singapore and received by non-resident businesses may be subject to WHT.

5.2.3 Payment of dividends

In relation to dividends, Singapore operates a one-tier taxation system. This means that dividends are not subject to tax in the hands of the receiver. The amount from which the dividends are paid has already been subject to corporate tax on profit, and hence dividends paid to foreign corporate shareholders by a company tax resident in Singapore are not taxable.

However, dividends received from foreign companies are subject to income tax in Singapore if they are remitted to Singapore. Fortunately, taxpayers can claim an exemption from tax if: (1) the income has been taxed under the law of the territory from which the income is received; (2) the taxpayer receiving the income is resident in Singapore; (3) the comptroller of income tax is satisfied that the tax exemption is beneficial to the resident in Singapore; and (4) the highest tax rate in the territory from which the income is received is not less than 15 per cent.

5.3 Applicable tax incentive or grant

Singapore's tax incentive schemes are set out in the Income Tax Act (Cap 134) and the Economic Expansion Incentives (Relief from Income Tax) Act (Cap 86).

Tax incentive schemes are administered by a number of statutory agencies, including the Economic Development Board (EDB), Enterprise Singapore, the Maritime and Port Authority of Singapore (the 'MPA') and the MAS.

5.3.1 Key tax incentives offered by the EDB

To encourage businesses to grow capabilities, conduct new or expanded activities, and conduct headquarter activities in Singapore, the EDB's Pioneer Certificate Incentive (PCI) and Development and Expansion Incentive (the 'DEI') offer tax exemptions and concessionary tax rates of five per cent or ten per cent on qualifying income to approved companies for a period of five years.

The EDB also administers the Finance and Treasury Centre Incentive (the 'FTCI'), to encourage companies to base their treasury management activities in Singapore. Approved companies under the FTCI will be entitled to concessionary tax rates of eight per cent on qualifying income and an exemption on WHT on qualifying interest payments for a period of five years.

5.3.2 Key tax incentives offered by Enterprise Singapore

One of the key tax incentives offered by Enterprise Singapore is the Global Trader Programme (GTP). The GTP is targeted at companies engaged in the international trading of commodities or commodities derivatives. Approved companies under the GTP will be entitled to concessionary tax rates of five per cent or ten per cent on qualifying trading income.

Enterprise Singapore also administers the S13H scheme and the Fund Management Incentive (FMI) for venture capital and private equity funds and fund management companies, respectively. Approved venture capital and private equity funds under the S13H scheme are entitled to tax exemptions for up to ten years on qualifying investment income, while approved fund management companies under the FMI are entitled to a concessionary tax rate of five per cent for up to ten years on management fees and performance bonuses.

5.3.3 Key tax incentives offered by the MPA

The MPA administers tax incentives for the maritime sector, through its Maritime Sector Incentive (MSI).

The MSI is comprised of three awards granted for three types of activity: (1) the MSI – Approved International Shipping Enterprise Award is targeted at ship owning and operating companies, and entitles such companies to tax exemptions for periods of five or ten years; (2) the MSI – Maritime Leasing Award covers vessel and container financing, and entitles approved ship or container leasing or management companies to concessionary tax rates of ten per cent on qualifying leasing or management income for up to five years; and (3) the MSI – Shipping-related Support Services Award is granted to companies engaged in shipping-related support services, including shipbroking and management, freight forwarding and logistics, as well as crew and staff training and management. Approved companies under the MSI – Shipping-related Support Services Award are entitled to concessionary tax rates of ten per cent on qualifying income for five years.

5.3.4 Key tax incentives offered by the MAS

The MAS administers various tax incentives targeted at the financial sector, one of which is the Financial Sector Incentive (FSI). The FSI is offered to a range of financial institutions engaged in various activities, including banking, capital and derivatives market services, credit facilities syndication, fund management and trustee services. Approved financial institutions under the FSI are entitled to concessionary tax rates of five per cent, ten per cent, 12 per cent or 13.5 per cent for a period of five years.

The MAS also administers the Insurance Business Development Scheme (IBDS) for insurance and reinsurance companies. Approved insurers or reinsurers under the IBDS are entitled to concessionary tax rates of five per cent, eight per cent or ten per cent, depending on the type of risk they underwrite.

5.3.5 Grants

Grants may also be offered by various statutory agencies in Singapore.

The EDB offers a variety of grants, including the Research Incentive Scheme for Companies for research and development (R&D) projects; the Training Grant by Company for manpower training and development; and the Land Intensification Allowance for companies in the manufacturing and logistics sector looking to intensify their land use.

The MPA offers various grants to companies engaging in R&D projects relating to the maritime sector. These include the Maritime Innovation and Technology Fund, the Maritime Transformation Programme and the Singapore Maritime Institute Funds.

Finally, the MAS, under its Financial Sector Development Fund, issues grants for a range of financial sector activities, including bond issuance, listing on the SGX and the development of solutions or technology for the financial sector.

Chapter 6: Restructuring and insolvency

Andrew Chan, Allen & Gledhill, Singapore

6.1 Introduction

Insolvency law in Singapore is broadly divided into personal insolvency (or bankruptcy) and corporate insolvency. The main statutes governing these areas are the Bankruptcy Act and the Companies Act, respectively, although certain aspects of the Bankruptcy Act also apply to corporate insolvency.

Penalties for non-compliance with either the Bankruptcy Act or Companies Act can be imposed upon insolvent debtors for failure to comply with certain standards set by the statutes. Some acts of creditors are also prohibited in certain circumstances, but the penalties are largely civil rather than criminal.

A new omnibus act consolidating Singapore's personal and corporate insolvency and debt restructuring laws was gazetted on 7 November 2018. When it comes into force, the Insolvency, Restructuring and Dissolution Act, 2018 will modernise the law on corporate insolvency and strengthen debt restructuring regimes to provide greater opportunity for the rehabilitation of companies in financial distress.

Corporate insolvency can broadly be divided into the following four categories: liquidation, judicial management (JM), schemes of arrangement and receivership.

6.2 Liquidation

6.2.1 Description

'Liquidation' or 'winding up' refers to a process where the assets of a company are collected and realised. The resulting recoveries are used to pay the company's liabilities, with any surplus going to the shareholders. In the distribution of the company's assets among the non-preferential unsecured creditors of the company, the rule is usually distribution on a pro rata or *pari passu* basis. The end result of liquidation or winding up is usually the dissolution of the company.

6.2.2 Types of liquidation

There are two main types of liquidation: voluntary and compulsory. The main difference lies principally in the manner in which the liquidation process is initiated and the date of its commencement pursuant to the Companies Act. For a voluntary liquidation, the company generally initiates the process by passing a resolution in a general meeting of shareholders to liquidate the company. For a compulsory liquidation, the company, or some other party with the right (eg, a creditor) initiates the process by making an application to the court to liquidate the company. In the context of corporate insolvency, two common types of insolvent winding up are creditors' voluntary liquidation and compulsory liquidation pursuant to section 254(1)(e) of the Companies Act.

6.2.3 Effect of the commencement of liquidation

Regardless of whether liquidation is compulsory or voluntary, a number of consequences will follow once the process has commenced. In general, the consequences include the following:

- the company's business will generally cease;
- the powers of the company's directors will also cease;
- every invoice, goods order or business letter must include the words 'in liquidation' after the company's name to serve as a notice to all those dealing with the company; and
- any transfer of shares or alteration in the status of the members will be void.

6.2.4 *Avoiding liquidation consequences*

To avoid the consequences of a liquidation (ie, dissolution), an insolvent company has three options: (1) attempt to enter into a scheme of arrangement with its creditors; (2) seek to be put under JM; or (3) enter into an arrangement with its creditors under section 309 of the Companies Act.

6.3 Schemes of arrangement and compromise

Under a scheme of arrangement and compromise, which is outside of JM, a company must formulate a scheme proposal for consideration by its creditors. Typically, this will include a proposal for a compromise of the company's debts by way of various methods, such as payment of a reduced amount or issuance of equity for debt. The company must then seek the court's approval to call a meeting of its creditors. If approval is granted, the creditors will consider the proposal and vote on it at their meeting. If the requisite majority in number and value of creditors or class of creditors approve the scheme, the final step is for the court to sanction it. In making such a decision the court will consider whether the statutory requirements to effect a scheme have been complied with, whether sufficient information has been provided to the company's creditors, whether the terms of the scheme are reasonable and whether the terms of the scheme discriminate unfairly against any creditor or class of creditors. If the court sanctions the scheme and the order sanctioning the scheme is filed with the Accounting and Corporate Regulatory Authority, it becomes binding between the debtor company and its creditors. A scheme can also be sought in JM, and in general, the requirements for a binding scheme in JM are easier to satisfy as compared to one outside of JM.

On 23 May 2017 new provisions, including those adapting parts of Chapter 11 of the US Bankruptcy Code aimed at enhancing Singapore's restructuring framework and status as a centre for international debt restructuring, came into force. Key provisions include:

- moratorium: there is a limited automatic moratorium and the court may further order a moratorium in favour of a company that is proposing or intends to propose a new scheme, preventing creditors from, among other things, taking action against the company and giving the company breathing room to put forward its restructuring proposal;
- priority for rescue financing: the court is empowered to order that rescue financing be given equal or super-priority;
- cram-down provisions: the court may approve a scheme even if there are dissenting creditor classes, provided safeguards are met; and
- pre-packaged voting scheme: the court may dispense with calling creditor meetings if certain safeguards are met.

6.4 Judicial management (JM)

6.4.1 *Description*

An application may be made to the court to place a company under JM. The JM regime aims to provide a company that is or is likely to become unable to pay its debts as and when they fall due with

some 'breathing space' so that it can either be nursed back to financial health or achieve a better realisation of its assets than it would in liquidation. When the new Insolvency, Restructuring and Insolvency Act comes into force, there will also be the possibility of an out-of-court JM process, and there are some parallels between the court and out-of-court process. Below is a description of the court-based JM process.

6.4.2 Commencing a court-based JM process

The court-based JM process begins with a court application made in a prescribed form. This will state, among other things, that the company is or is likely to become unable to pay its debts and that there is a reasonable probability of either rehabilitation for the company, preservation of its business as a going concern or a better serving of the creditors' interests than in a winding up. The application may be made by the company, its directors, a creditor or creditors.

6.4.3 Granting a JM order

The court may make a JM order in relation to a company if it is satisfied that the company is or is likely to become unable to pay its debts and that there is a real prospect that the order will achieve one or more of the following three purposes:

1. survival of the company;
2. approval under the Companies Act of a compromise or arrangement between the creditors and/or members, or any class of them; or
3. a more advantageous realisation of the company's assets than on a winding up.

The mere satisfaction of these conditions will not necessarily lead to the grant of a JM order and, exceptionally, if it is in the public interest to do so, the court may grant an order even if the conditions are not met.

6.4.4 Effecting a JM order

Unless discharged, a JM order will remain in force for 180 days (which may be extended by the court). A judicial manager will be appointed and empowered to do all things for the management of the company's affairs, business and property, including any tasks which are necessary to achieve the JM purposes. The judicial manager must prepare and send proposals for achieving these purposes to the creditors within 60 days (which may be extended by the court) of the JM order. If the creditors approve the proposals, the judicial manager must then manage the company in accordance with them. Such proposals may include the company entering into a scheme of arrangement or selling any part of its undertaking that remains viable.

6.4.5 Discharging a JM order

The judicial manager is under a statutory obligation to apply for the discharge of a JM order when it appears that the purposes specified in it have either been achieved or are incapable of being achieved.

The result of a JM's successful completion largely depends on the judicial manager's proposals and the circumstances of each case. If the proposals lead to a scheme of compromise, this may result in part of the company's debts being extinguished or reduced in accordance with the scheme. The failure of JM will result in the company reverting to its pre-JM position. However, it may well lead to liquidation because one of the prerequisites for a JM application is a company's inability or likely inability to pay its debts, which is also a ground for liquidation.

6.5 Receivership

The appointment of receivers or receivers and managers is an alternative to the liquidation process. Although, in principle, receivers may be appointed in respect of individuals, more often than not they are appointed only in relation to companies. Going into receivership does not necessarily spell the end for a company; it can continue to exist as an entity.

A receiver can be appointed by a debenture holder and its key duty is to collect the assets that are the subject matter of the debenture, realise these assets and settle the dues of the creditors. Where the receiver is also appointed as manager, it will have additional power to manage the company's business.

Chapter 7: Employment, industrial relations, and work health and safety

Kelvin Wong, Allen & Gledhill, Singapore

7.1 Employees' rights and protection

7.1.1 Introduction

Employers and employees are generally free to agree on the terms of employment. Nevertheless, Singapore law sets out certain safeguards for employees. This section provides a summary of the regulatory framework surrounding employment in Singapore.

Employment law in Singapore is governed by both statute and case law. The regulatory framework for employment in Singapore is applicable to: (1) all employees who work in Singapore, including foreign employees; and (2) certain employees who work in foreign countries and have employment contracts governed by Singapore law.

7.1.2 Employees' rights and protection

EMPLOYMENT ACT

The primary legislation for employment in Singapore is the Employment Act. The Employment Act applies to all employees, except seafarers, domestic workers and public servants, and sets out

minimum terms relating to such matters as annual leave, sick leave, holidays, termination, salary payment and maternity benefits.

Employees who are regarded as more vulnerable receive additional levels of protection under the Employment Act. Such employees are:

- workmen (as defined in the Employment Act) who are in receipt of a salary not exceeding SGD 4,500 a month; and
- every employee, other than workmen or a person employed in a managerial or an executive position, who receives a salary not exceeding SGD 2,600 a month.

In relation to such employees, the Employment Act sets out further minimum terms relating to such matters as rest days, hours of work and overtime pay.

An employment contract that is less favourable to an employee than any of the minimum conditions prescribed by the Employment Act is illegal, null and void to the extent that it is less favourable. Employers who fail to employ on the minimum terms may be liable to fines and/or imprisonment.

Employees who have salary-related disputes or wish to bring wrongful dismissal claims may do so before the Employment Claims Tribunal.

7.1.3 Other statutory protections for employees

The Employment Act and the Child Development Co-Savings Act set out certain parental benefits and maternity protections for employees. These include maternity leave and adoption leave for female employees, paternity leave for male employees, and childcare leave and extended childcare leave for employees who have children. The Employment Act further provides that it is unlawful for an employer to give a female employee notice of dismissal while she is on maternity leave if she is eligible to take such leave and has given sufficient notice of such leave.

The Retirement and Re-employment Act (the 'RRA') provides for a prescribed minimum retirement age (currently 62 years old). Under the RRA, an employer is prohibited from dismissing on the grounds of age any employee who is below the prescribed minimum retirement age unless certain exemptions apply. An employer is also required to offer re-employment to any employee who has attained the prescribed minimum retirement age, as long as the employee fulfils certain eligibility criteria and is willing to continue to work.

The Workplace Safety and Health Act requires employers to take measures that are necessary to ensure the safety and health of employees at work. This includes ensuring a safe work environment and providing the necessary training and supervision for employees to perform their work.

The Work Injury Compensation Act requires employers to compensate an employee covered under the act if the employee suffers any personal injury by an accident arising out of and in the course of employment. Employers are also required to maintain insurance against all liabilities that may be incurred under the act, subject to certain exceptions.

7.1.4 Industrial relations

Singapore enjoys a relatively high degree of industrial harmony. Since gaining independence in 1965, Singapore has only experienced two major industrial actions. Most industrial disputes are resolved by conciliation in the Industrial Arbitration Court (IAC).

Every employee over the age of 16 has a right to be represented by a trade union in Singapore. Under the Industrial Relations Act (IRA), an employer is not permitted to dismiss or threaten dismissal of an employee on the ground of the employee becoming or proposing to become an officer or member of a trade union.

The IRA sets out the process by which a trade union may be recognised and thereafter negotiate a collective agreement with an employer. The collective agreement governs the terms of employment for the employees covered under the collective agreement. Once agreed upon between the trade union and employer, and certified by the IAC, the collective agreement is binding on the employer (or its successor), and on the relevant trade union and its members.

A collective agreement is valid for an operative period of not less than two years and not more than three years.

7.2 Statutory contributions and minimum wage

7.2.1 Central Provident Fund

The Central Provident Fund Act (CPFA) sets out a national savings scheme that applies to employees who are Singapore citizens or Singapore permanent residents. Under the CPFA, employers are required to make monthly contributions at prescribed rates to the Central Provident Fund (CPF) accounts of employees who are Singapore citizens or Singapore permanent residents. The contribution rates vary depending on factors such as the employee's age and salary and are set out in the First Schedule to the CPFA.

7.2.2 Minimum wages

There is no minimum wage in Singapore. However, progressive wage models apply to Singapore citizens and Singapore permanent residents employed in certain businesses in the cleaning, security or landscape sectors through various conditions at the licensing or registration stage.

7.3 Work permits

7.3.1 Work passes for foreign employees

Under the Employment of Foreign Manpower Act (the 'EFMA'), foreign employees (being employees who are not Singapore citizens or Singapore permanent residents) are required to obtain a valid work pass before they start work in Singapore. Working in Singapore without a valid work pass is an offence for both the employer and the foreign employee and may result in fines and/or imprisonment.

Work passes are issued by the Ministry of Manpower (MOM). The types of work passes available are set out in the Employment of Foreign Manpower (Work Passes) Regulations, 2012. They are as follows:

- work permit (including a training work permit);
- S pass;
- employment pass (including a training employment pass);
- personalised employment pass;
- Entre-Pass;
- work holiday pass;
- miscellaneous work pass; and
- letter of consent.

The relevant work pass for each employee depends on the employee's scope of work and professional qualifications. Generally:

- work permits are issued to unskilled or semi-skilled foreign workers in the construction, manufacturing, marine shipyard, processes or services sectors, as well as foreign domestic workers;
- S passes are issued to mid-skilled foreign employees who earn at least SGD 2,400 a month and meet certain criteria in qualifications and work experience;
- employment passes are issued to foreign professionals, managers and executives who earn at least SGD 3,600 a month and meet certain qualifications criteria. The MOM has recently announced an increase of this salary threshold to SGD 3,900 a month. This revision came into effect from 1 May 2020 for new employment pass applicants and will come into effect from 1 May 2021 for employment pass renewals; and
- personalised employment passes (PEPs) are issued to: (1) existing employment pass holders who earn a fixed monthly salary of at least SGD 12,000; and (2) overseas foreign professionals who have a last drawn fixed monthly salary of at least SGD 18,000.

Applications for work passes are generally carried out by the employer on the employee's behalf, except in the case of PEPs, which must be applied for by the foreign employee seeking to be a PEP holder.

The work pass issued to a foreign employee is specific to the foreign employee's particular employer and occupation (except in respect of PEP holders). Therefore, a foreign employee who wishes to carry out work for any other entity than the employer appearing on the existing work pass is required to obtain a new work pass to that effect.

Family members of eligible S pass or employment pass holders may join the S pass or employment pass holder in Singapore on a dependant's pass or long-term visit pass (LTVP). Upon obtaining the dependant's pass or LTVP, they may also apply for a letter of consent, which would allow them to work in Singapore.

For completeness, the number of work permit holders and S pass holders that may be hired by an employer is limited to a quota, known as the dependency ratio ceiling. This quota varies based on the sector. Employers of work permit holders and S pass holders are also subject to a foreign worker levy.

Chapter 8: Tax law

Sunit Chhabra, Allen & Gledhill, Singapore

8.1 Taxes applicable to individuals

Singapore tax-resident individuals are subject to tax on employment income on a progressive scale, with a maximum tax rate of 22 per cent. The employer is required to complete the annual Return of Employee's Remuneration (Form IR8A and accompanying appendices) and issue the completed form to the employee by 1 March each year, reporting all remuneration of the employee for the preceding calendar year, and the employee is required to include the information in the Form IR8A and its accompanying appendices in his or her income tax return to IRAS, unless the employer has arranged for such information to be transmitted directly to IRAS.

Most employers in Singapore come under the Auto-Inclusion Scheme (AIS) for Employment Income. Under the AIS, employers submit their employees' income information directly to IRAS electronically, and such income information is reflected on their employees' electronic income tax return (and automatically included in their income tax assessment).

Certain personal reliefs may be available to individuals to reduce chargeable income, including earned income relief, CPF relief and Working Mother's Child Relief, provided that the employee is a Singapore tax resident and satisfies the relevant qualifying conditions for such reliefs to apply.

8.2 Taxes applicable to businesses

The current tax rate for companies is 17 per cent, with a partial tax exemption for the first SGD 200,000 of annual chargeable income.

Companies are required to file a tax return declaring their income for each year of assessment ('YA') and submit supporting documents by 30 November (paper submissions) or 15 December (electronic submissions), as well as file an estimate of their income chargeable with tax for each financial year within three months from the end of the financial year. Companies are then required to pay income tax within one month from the date of the Notice of Assessment, unless such a company is paying via instalments through automatic deductions.

Losses incurred from a trade or business may be set off against income derived from other sources, and may, subject to certain conditions, be allowed to be carried forward or backward to be set off against income in another YA, or to be transferred to related Singapore-incorporated companies and set off against such a company's profits.

Dividends issued by Singapore tax-resident companies are exempt from tax, as Singapore operates a one-tier tax system on corporate profits.

WHT may be chargeable on certain payments, such as interest, royalties and directors' fees made by a Singapore tax-resident or Singapore-based entity to a non-tax resident person, at a rate between ten and 22 per cent, depending on the nature of such a payment. The rate may be reduced by an applicable tax treaty between Singapore and the country in which the recipient is a tax resident.

Aside from companies, a business in Singapore can be structured in various forms, including a partnership, LLP and LP. A partnership does not have a separate legal personality from its partners and is regarded as a tax-transparent entity such that the partners are taxed on their share of income from the partnership due to them for a basis period at their applicable income tax rates. An LLP has a separate legal personality from its partners, but is treated as a partnership for the purpose of income tax; that is, partners are taxed on their share of income from the LLP at their applicable income tax rates. However, there are certain deduction restrictions for partners in an LLP. Similarly, an LP is regarded as a tax-transparent vehicle, and a limited partner in an LP is also subject to certain deduction restrictions.

8.3 Other taxes

Stamp duty is generally payable on the contract or agreement for the sale of or the instrument for the transfer of immovable property in Singapore or shares registered in Singapore, as well as on mortgages and leases. The rate of Buyer's Stamp Duty is about three per cent (of the higher of the consideration or value of the property) for the transfer of immovable property, and the top marginal Buyer's Stamp Duty rate of four per cent will apply to the portion of residential property the value of which is in excess of SGD 1m. For a transfer of shares, stamp duty is payable at the rate of 0.2 per cent of the higher of the consideration or value of such shares. Generally, stamp duty is payable by the transferee of the property or shares. However, relief from stamp duty may be available in certain circumstances, subject to qualifying conditions.

Goods and services tax (GST) is imposed at a rate of seven per cent on any supply of goods or services in Singapore by a GST-registered person and on any import of goods into Singapore. The government has also announced that the rate of GST is proposed to be increased from seven per cent to nine per cent between 2022 and 2025. However, certain supplies, including prescribed financial services, are exempt from GST, and GST is chargeable at the rate of zero per cent for exports, as well as on the supply of certain international services. A person is generally required to register for GST, where such person makes, or intends to make, taxable supplies in the course or furtherance of a business exceeding SGD 1m over a 12-month period.

In addition, two new GST regimes have come into effect from 1 January 2020: the reverse charge regime and overseas vendor registration regime. Under the reverse charge regime, a GST-registered

person is required to account for GST on the value of imported services provided by a supplier outside Singapore to such person through a business-to-business supply of services to the extent that such services fall within the scope of the reverse charge regime. Under the overseas vendor registration regime, a supplier outside Singapore who has or reasonably expects its global turnover and value of digital services supplies to non-GST registered persons belonging in Singapore for a calendar year or the next 12 months to exceed SGD 1m and SGD 100,000 respectively may be required to register, charge and account for GST on such services.

Chapter 9: Intellectual property

Ong Pei Ching, TSMP Corporation, Singapore

9.1 Patents

A patent is a right granted for the exclusive use of an invention. Patents can be granted in respect of ‘patentable inventions’, which can be a product or a process for industrial use. ‘Patentable inventions’ are inventions that are new, involve an inventive step and are capable of industrial application.

9.1.1 Registration and protection in Singapore

To enjoy protection in Singapore, a patent application may be filed directly with the Intellectual Property Office of Singapore (the ‘IPOS’), or through the Patent Cooperation Treaty (PCT) National Phase Entry Route.

The PCT is administered by the International Bureau of the World Intellectual Property Organization (WIPO). It facilitates patent filings in multiple countries through a single application with a single office.

The date of the patent application is known as the priority date. Upon the grant of the patent, it will be protected for up to 20 years from the priority date, subject to the payment of annual fees from the fifth year of protection.

If the patent application was filed under the PCT National Phase Entry Route, the priority date will be backdated to the filing date of the foreign application. This applies if the application in Singapore was filed within 12 months from the date of the filing of the earlier foreign application.

Under the Patents Act, a patent can be granted to the inventor or joint inventors. Where there are two or more joint inventors, each inventor will have an equal undivided share in the patent, save for any agreement to the contrary. If the invention was made in the course of an employee’s duties, the invention shall be taken to belong to the employer.

It may take about two to four years for a patent to be granted. This depends on the complexity of the invention. The IPOS Registry of Patents has a procedure for a patent to be granted within 12 months if certain requirements are met. These requirements include having the IPOS as the first or second office of filing, and having no deficiencies in the patent’s formalities examination.

The IPOS also participates in international work-sharing programmes that accelerate the patent grant process. These include the following:

PATENT PROSECUTION HIGHWAY

In this programme, if corresponding or related patent applications for the same invention are filed in the IPOS and a partner intellectual property (IP) office, the IP offices can refer to each other's patent examination results. This will help to expedite the examination process. The IPOS's partner IP offices include those in China, Europe, Germany, Japan, Korea and the US.

ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN) PATENT EXAMINATION COOPERATION

Nine Association of Southeast Asian Nations (ASEAN) member states are participating in this programme: Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (PDR), Malaysia, the Philippines, Singapore, Thailand and Vietnam. In this programme, the member states' respective IP offices share information regarding (among others) their patent search and examination results. This process also allows applicants a fast-track patenting process in the participating IP offices.

9.1.2 *Infringement and defences*

Patent infringement may occur in a number of ways:

- If the invention is a product, infringement may occur if a party, without the consent of the proprietor, makes, disposes of, offers to dispose of, uses or imports the product, or keeps it whether for disposal or otherwise.
- If the invention is a process, infringement may occur if a party:
 - uses the process or offers it for use in Singapore when he or she knows, or it is obvious to a reasonable person in the circumstances, that its use without the proprietor's consent would be an infringement of the patent; or
 - disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process, or keeps any such product, whether for disposal or otherwise.

There are defences to patent infringement, including if the infringing act:

- was done privately, and not for commercial purposes;
- was done for experimental purposes relating to the subject matter of the invention; or
- consisted of the import, use or disposal of, or the offer to dispose of, any patented product that is produced by or with the consent of the proprietor of the patent granted in any country outside Singapore. This defence pertains to parallel imports.

9.2 Trademarks

A trademark means any sign capable of being represented graphically and that is capable of distinguishing goods or services dealt with or provided or in the course of trade by a person from goods or services so dealt with or provided by any other person. In other words, it is a badge of origin.

9.2.1 Registration and protection in Singapore

To enjoy statutory protection, trademarks may be registered under the Trade Mark Act. Upon registration, the initial length of protection is ten years. The protection may continue perpetually, so long as the registration is renewed for further periods of ten years.

A party can obtain protection of its trademark in Singapore through a domestic filing with the IPOS. Alternatively, if a party files its trademark application in another country, he or she can designate Singapore in an international registration under the Madrid Protocol. The Madrid Protocol is administered by the WIPO, and allows a trademark owner to seek protection of his or her trademark in multiple countries via a single application with a single office. Similarly, a party can file an international trademark application with the IPOS and designate multiple countries under the Madrid Protocol.

It may take about nine months for a trademark to be registered.

Well-known trademarks enjoy special protection under the Trade Mark Act. Many of the remedies available to registered trademarks under the Trade Mark Act apply to well-known trademarks, even if these trademarks are not registered and/or are not used in a business in Singapore.

9.2.2 Infringement and defences

Trademark infringement may occur in a number of ways, including:

- using a sign in the course of trade, without the consent of the proprietor, that is:
 - identical to the registered trademark in relation to goods or services identical to those for which it is registered;
 - identical to the trademark in relation to goods or services similar to those for which the trademark is registered, and is likely to cause confusion on the part of the public; and
 - similar to the trademark in relation to goods or services identical to or similar to those for which the trademark is registered and likely to cause confusion on the part of the public.

Other than civil liability, there may also be criminal liability for trademark infringers.

Registered trademarks may be used by others in non-infringing ways, such as if they are used to indicate the quality or the intended purpose of the goods or services. Fair use of registered trademarks in comparative commercial advertising, use for non-commercial purposes, or use for the purpose of news reporting or news commentary does not amount to trademark infringement.

Further, if a person has been continuously using an unregistered trademark before the date of registration of the registered trademark or before the registered proprietor's first use of the trademark, he or she will not have infringed the registered trademark.

A trader that uses an unregistered trademark may still have recourse under the common law tort of passing-off if another trader uses that unregistered trademark.

To establish passing-off, the claimant must show that: (1) there is goodwill in Singapore; (2) that the defendant has made a misrepresentation that his or her goods or services originate from the claimant, or are otherwise associated with the claimant; and (3) damage resulting from such a misrepresentation.

9.3 Copyright

Copyright is a bundle of property rights over original works or original expressions of ideas.

9.3.1 Protection in Singapore

There is no requirement of registration of copyright in Singapore to enjoy copyright protection.

Works that are protected include literary, dramatic, musical and artistic works, which are known as authors' works, and computer programs. Literary works include a compilation that, by reason of the selection or arrangement of its content, constitutes an intellectual creation. Artistic works include paintings, sculptures, drawings, engravings, photographs, buildings and models of buildings. Dramatic works include choreographic shows and scenarios for cinematograph films.

The Copyright Act also protects entrepreneurial works, namely sound recordings, cinematographic films, television broadcasts and sound broadcasts, cable programmes and published editions of works.

There are three prerequisites for copyright to subsist in an author's work in Singapore: the work must be connected with Singapore, must exist in some material form and must be original.

The central requirement to copyright protection is originality, which requires sufficient intellectual effort on the part of the author. However, artistic merit is not required.

With regard to the requirement for the work to be connected with Singapore:

- If the work is unpublished, it is sufficient if the author was a citizen or resident of Singapore or a member country of the Berne Union or the World Trade Organization (WTO) at the time the work was made.
- If the work is published, it is sufficient if the first publication took place in Singapore or a member country of the Berne Union or the WTO, or if the author was a citizen or resident of these countries when the work was first published.

By default, the author of the work is the copyright owner. However, the Copyright Act provides exceptions such as:

- when a work is commissioned by another, the commissioner rather than the author is the copyright owner; and
- when a work is produced in the course of employment pursuant to the terms of employment, the employer rather than the employee is the copyright owner.

The length of copyright protection varies depending on the type of work in question.

9.3.2 *Infringement and defences*

Generally, copyright infringement occurs when the protected work is reproduced in whole or in part. There is a nexus between the originality, skill and effort that goes into a work and the substantiality of copying required to establish infringement. The thinner the copyright protection, the more substantial the copying must be before a finding of infringement will be made.

Other than civil liability, there may also be criminal liability for copyright infringers.

There are defences to copyright infringement, including:

- fair dealing for any purpose, including research and study;
- fair dealing for the purpose of criticism or review; and
- fair dealing for the purpose of reporting current events.

9.4 Designs

Designs mean the features of shape, configuration, colours, pattern or ornament applied to any article or non-physical product that give that article or non-physical product its appearance. Under the Registered Designs Act, ‘articles’ are things that are manufactured, whether by an industrial process or otherwise. Thus, the protection provided under the Registered Designs Act is intended to cover designs in articles that are mass produced by a manufacturing process.

9.4.1 *Registration and protection*

To enjoy statutory protection, designs can be registered under the Registered Designs Act. The design must be new. The test for novelty is with reference to registered designs worldwide. A design will not be regarded as new if it is the same as a design, or differs in immaterial details or variants commonly used in the trade from a design that is:

- registered in respect of the same or any other article, non-physical product or set of articles and non-physical products in pursuance of a prior application; or
- published in Singapore or elsewhere in respect of the same or any other article, non-physical product or set of articles and non-physical products before the date of the first-mentioned application.

The Registered Designs Act has restrictions on registrable designs. Examples of designs that are not registrable include:

- a method or principle of construction;
- features of shape, configuration or colours of an article or a non-physical product that:
 - are dictated solely by the function that the article or non-physical product has to perform ('Functionality Exclusion');
 - are dependent upon the appearance of another article or non-physical product of which the article or non-physical product is intended by the designer to form an integral part ('Must-Match Exclusion'); or
 - enable the article or non-physical product to be connected to, or placed in, around or against, another article or non-physical product so that either article or non-physical product may perform its function ('Must-Fit Exclusion');
- features consisting of one or more colours that:
 - are not used with any feature of shape or configuration; and
 - do not give rise to any feature of pattern or ornament;
- designs that are contrary to public order or morality; and
- computer programs or layout designs of integrated circuits.

Apart from filing a domestic design application at the IPOS, an applicant can file a single design application under the Hague System with the IPOS to register his or her design in multiple countries.

If an applicant has filed an earlier design application in a Paris Convention country or a WTO member country, and files an application in Singapore within six months, he or she can use the earlier filed application to claim priority to the design. This similarly applies to design applications that are first filed in Singapore, in order to claim priority in subsequent applications filed in a Paris Convention country or a WTO member country.

Under the Registered Designs Act, the starting point is that the designer will be treated as the owner of the design. If there is more than one registered owner, each of them will be entitled to an equal undivided share in the rights of the design, subject to any agreement to the contrary. If the design was created in the course of his or her employment, there is a presumption that the employer is the owner of the design.

After registration, a design will be protected for an initial five years from the date of filing. Registration can be renewed every five years thereafter, up to a maximum period of 15 years.

Upon registration, the owner of the design enjoys exclusive rights in Singapore regarding any article in respect of which the design is registered and applied to, including:

- to make, import or use such articles for the purpose of trade or business; and
- to sell, hire, or offer or expose for sale or hire.

9.4.2 *Infringement and defences*

Infringement of a registered design occurs when a person, without the consent of the registered owner:

- does anything that is the aforementioned exclusive right of the registered owner;
- makes anything for enabling any article covered by the exclusive rights to be made in Singapore or elsewhere;
- does anything in relation to a kit that would constitute an infringement of the design if it had been done in relation to the assembled article, where a 'kit' is a complete or substantially complete set of components intended to be assembled into an article; and
- makes anything for enabling a kit to be made or assembled in Singapore or elsewhere, if the assembled article would be an article covered by the exclusive rights.

There are defences to infringement of a registered design. These include instances where the infringing act:

- was done for a private, non-commercial purpose;
- was done for the purpose of evaluation, analysis, research or teaching;
- consisted of the import, sale, hire, or offer or exposure for sale or hire of any article or non-physical product to which the design has been applied, and has been placed on the market, whether in Singapore or elsewhere, with the consent of the registered owner; this defence pertains to parallel imports;
- was done in good faith, and before the date of registration of the design; and
- involves the copying of a design that falls within the Functionality, Must-Match or Must-Fit Exclusions.

9.5 Other

The following statutes give specific IP protection to some other types of work:

- the Layout-Designs of Integrated Circuits Act protects, as the name suggests, the layout designs of integrated circuits;
- the Geographical Indications Act protects indications used in trade to identify goods as originating from a place, with a given quality, reputation or other characteristic of the goods essentially attributable to that place; and
- the Plant Varieties Protection Act protects a new plant group within a single botanical taxon of the lowest rank.

Some works may attract more than one type of IP protection. For example, a new plant group may attract protection under the Plant Varieties Protection Act in addition to the Patents Act.

Chapter 10: Financing

Francis Mok, Allen & Gledhill, Singapore

10.1 Licensing requirements for banks

10.1.1 Licensing requirements for banks

Banks in Singapore are supervised and regulated by the MAS. The MAS is Singapore's central bank and integrated financial regulatory authority for all financial institutions in Singapore. The regulatory framework for banks comprises the Banking Act and the MAS Act and the subsidiary legislation promulgated thereunder, as well as the notices, guidelines, circulars, and practice notes and codes issued by the MAS from time to time (collectively, the 'Banking Regulations').

It is a requirement to hold a bank licence in order to carry on any banking business in Singapore. 'Banking business' comprises deposit taking, the provision of cheque services and lending. Aside from banking business, banks are permitted to carry on most other types of business regulated by the MAS (or business that, if carried on in Singapore, would be regulated or authorised by the MAS), including financial advisory services, insurance broking and capital market services.

Generally, banks are prohibited from engaging in non-financial activities, but may conduct non-financial activities that are incidental to, related to or complementary to the banks' financial businesses.

10.1.2 Types of banks

The MAS currently issues two types of bank licences under the Banking Act: (1) a full bank licence; and (2) a wholesale bank licence.

Full banks may provide the whole range of banking business permitted under the Banking Act, including both SGD and non-SGD-denominated banking business. However, foreign banks with full bank licences are restricted in the number of branches and automated teller machines (ATMs) that they may operate. A small number of foreign full banks have been awarded qualifying full bank privileges, which permit them to operate at more locations, share ATMs among themselves, relocate their sub-branches freely and enter into an arrangement with local banks to let their credit card holders obtain cash advances through the local banks' ATM networks.

Wholesale banks operate within the Guidelines for Operation of Wholesale Banks issued by MAS. They may engage in the same range of banking business as full banks, except that they may not carry out SGD retail banking activities. Wholesale banks are only permitted to maintain one place of business in Singapore.

Besides licensed banks, financial institutions may be approved by MAS under the MAS Act to operate as merchant banks. The scope of activities a merchant bank may undertake is generally narrower than that for licensed banks: merchant banks can only conduct the activities listed in the MAS Guidelines for Operation of Merchant Banks (including asset management and lending in the institutional

money markets), and are not allowed to accept deposits or borrow from the public (except from banks, finance companies, shareholders and companies controlled by shareholders).

However, a merchant bank may also apply to MAS for approval to operate an Asian Currency Unit (ACU) for its foreign currency activities, and this enables a merchant bank to compete with licensed banks in the non-SGD banking market. As the operation of an ACU is governed by the Banking Act, where a merchant bank operates an ACU, it would be required to comply with certain requirements in the Banking Act.

In the near future, the regulation of merchant banks will be consolidated into the Banking Act. Amendments to the Banking Act to include a new licensing framework for merchant banks have been passed by Parliament, but have not yet come into operation.

10.1.3 Bank representative office

Bank representative offices are also governed under the Banking Act. Bank representative offices must be registered, and are subject to such conditions of registration as the MAS may impose. Generally, a bank representative office may carry out liaison work, market research or feasibility studies, but is not allowed to transact any business in Singapore.

10.1.4 Licensing process and admission criteria

To apply for a bank licence, an applicant would need to submit prescribed application forms to MAS. Interested applicants are encouraged to contact MAS to discuss the licensing requirements prior to submitting a formal application. MAS usually takes approximately nine to 18 months to approve an application, during which it may ask follow-up questions or request further information on the application.

In assessing an application for a bank licence, MAS will take into consideration the following factors and/or require that the applicant demonstrates the following:

- the financial soundness, track record, world ranking and reputation of the applicant, its parent company and major shareholders;
- the strength of home country supervision, including the willingness and ability of the home supervisory authority to cooperate with MAS, and its framework for cross-border cooperation;
- written consent from the home country supervisory authority for the establishment of a banking operation in Singapore;
- a well thought-out strategy for banking and financial services in Singapore, and sound business plans to ensure sustained economic viability; and
- robust risk management systems and processes that are commensurate with the applicant's size and proposed business.

Applicants must also meet minimum capital requirements prescribed under the Banking Act, as follows:

- Singapore-incorporated full bank: paid-up capital and capital funds of at least SGD 1.5bn;
- Singapore-incorporated wholesale bank: paid-up capital and capital funds of at least SGD 100m; and
- foreign-incorporated full or wholesale bank: head office funds of at least the equivalent of SGD 200m.

A bank in Singapore must continue to comply with the minimum capital requirements and other conduct of business requirements under the Banking Regulations on an ongoing basis. These may include risk-based capital adequacy requirements, minimum leverage ratio requirements and capital liquidity requirements as prescribed by the MAS. In addition, banks in Singapore are also expected to follow industry guidelines issued by the Association of Banks in Singapore.

10.1.5 Digital banks

Apart from the traditional banking model, MAS has established an internet banking framework that allows Singapore-incorporated banking groups to set up banking subsidiaries to pursue new business models, including internet-only banks. Such digital bank subsidiaries require separate full bank licences, and are subject to the same prudential and regulatory framework as traditional banks (eg, the same licensing and admission criteria apply). However, for a banking subsidiary the Singapore-incorporated parent bank of which has already met the SGD 1.5bn capital requirement will be subject to a lower paid-up capital requirement of SGD 100m, provided that the parent bank has control over the subsidiary.

Separately, MAS announced in 2019 that it is prepared to grant up to two digital full bank licences and three digital wholesale bank licences, which will allow non-bank entities to conduct digital banking businesses in Singapore. The application window has closed and MAS is expected to announce the successful applications in the second half of 2020. A digital full bank will be allowed to take deposits from and provide banking services to retail and non-retail customer segments, while a digital wholesale bank may only serve businesses and other non-retail customer segments. Digital full banks will not be allowed to operate ATMs or cash deposit machines (CDM), or join any existing ATM/CDM networks. This is because the objective is for digital banks to adopt innovative digital ways of serving customers and supporting the future digital economy. Digital banks are required to meet the same minimum capital requirements as traditional banks.

Chapter 11: Privacy laws and data protection

Felicia Tan, TSMP Corporation, Singapore

11.1 Privacy laws

In the absence of any explicit provision for the protection of privacy as a fundamental right in Singapore's Constitution, any omnibus privacy legislation in the country's statutes, or any explicit pronouncement by Singapore courts that a *general tort of privacy* exists, the starting point in Singapore

is not very different from the common law. The common law does not recognise a *general right* to privacy, but there exists today a framework of common law and statutory torts that collectively protect an individual's privacy. Individuals are therefore able to prosecute their claims for invasions into their privacy by private action before the civil courts much more effectively today than in the past.

While Singapore courts have not recognised the existence of a *general right* to privacy that is an actionable tort, or a fundamental right protected by the Constitution, that is not to say that Singapore's laws do not protect different aspects of privacy. Singapore's Personal Data Protection Act, 2012 (PDPA) protects informational privacy. The PDPA will be discussed in the next section.

Another aspect of privacy is the right to seclusion, which addresses intrusions into a victim's private space or affairs. Singapore has enshrined the tort of harassment, which deals with this aspect of privacy, by enacting the Protection from Harassment Act (Cap 256A) (the 'POHA') in 2014. The POHA also introduced a statutory tort of unlawful stalking.

Other aspects of privacy include the right to prevent the publication of private communication, the right to control the commercial exploitation of one's fame or identity (also sometimes referred to as the right of publicity, or false publicity), and those rights are protected by laws such as the law of breach of confidence, law of passing off, and defamation and malicious falsehood laws.

11.2 Data protection

Personal data in Singapore is protected under the PDPA. 'Personal data' refers to data, whether true or not, about an individual who can be identified from that data, or from that data and other information to which the organisation has or is likely to have access.

The PDPA applies to 'any individual, company, association or body of persons, corporate or unincorporated, whether or not – (a) formed or recognised under the law of Singapore; or (b) resident, or having an office or a place of business, in Singapore'.

The PDPA establishes a data protection law that comprises various rules governing the collection, use, disclosure and care of personal data. It recognises both the rights of individuals to protect their personal data, including rights of access and correction, and the needs of organisations to collect, use or disclose personal data for legitimate and reasonable purposes. In the development of this law, references were made to the data protection regimes of key jurisdictions that have established comprehensive data protection laws, including Australia, Canada, the EU, Hong Kong, New Zealand and the UK, as well as the Organisation for Economic Co-operation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flow of Personal Data, and the Asia-Pacific Economic Cooperation (APEC) Privacy Framework.

The PDPA continues to be developed to address any gaps in the personal data protection regime. For instance, under the Advisory Guidelines on the PDPA for National Registration Identity Card (NRIC) and Other National Identification Numbers, with effect from 1 September 2019 an organisation may only collect, use or disclose an individual's NRIC number, birth certificate number, foreign identification number or work permit number if it is either required by law, or it is necessary to establish or verify an individual's identity to a high degree of accuracy. This has significantly raised

public awareness in Singapore of the importance of personal data, and the country has seen a radical change in how organisations collect, use and disclose personal data.

The PDPA also provides for the establishment of a national Do Not Call (DNC) Registry. The DNC Registry allows individuals to register their Singapore telephone numbers to opt out of receiving marketing phone calls and mobile text messages from organisations.

The PDPA is enforced by the Personal Data Protection Commission (PDPC). The PDPC investigates complaints, and its powers include the power to require the production of documents and information, enter premises with or without warrant for inspection, issue directions for compliance with the PDPA and sanction errant entities. Sanctions include financial penalties and/or imprisonment. The PDPC publishes its decisions relating to organisations that are found to have contravened the data protection provisions under the PDPA and also takes a proactive approach in assisting organisations to comply with the PDPA through conducting outreach activities and issuing advisory guidelines.

In addition to the PDPA, the Singapore data protection regime consists of various other guidelines (which may be general or sector/industry-specific) issued by either the PDPC or other government agencies or commissions. For instance, the Tripartite Alliance for Fair and Progressive Employment Practices (the ‘TAFEP’) has published several guidelines relating to employment practices, including advisories on the type of information that prospective employers should not take into account during pre-employment checks. The latest in the list would be applicants’ mental health conditions. As of January 2020, it is discriminatory to obtain declarations of mental health conditions of job applicants. While such PDPC or TAFEP guidelines are advisory in nature and not legally binding, these guidelines are edifying of the manner in which the relevant commission or agency may interpret the PDPA and data protection laws, and should not be neglected.

An individual has two avenues through which he or she may address his or her concerns of a breach of the PDPA by an organisation. The individual may submit a complaint to the PDPC, or where the individual has suffered loss or damage directly as a result of the contravention, he or she may commence civil proceedings against the organisation under section 32 of the PDPA.

For businesses operating outside Singapore or companies not registered in Singapore, it is important to bear in mind that the PDPA has *extraterritorial* effect, which means it applies to all organisations collecting, using or disclosing personal data in Singapore, whether or not the organisation itself has a physical presence or is registered as a company in Singapore.

The PDPA obligations do not apply to the public sector. Other laws in place criminalise unauthorised disclosure of data by public agencies and their officers, such as the rules under the Government Instruction Manual 8, the Official Secrets Act and the Public Sector (Governance) Act.

Other relatively sector-specific legislation in Singapore that regulates the collection, use and/or disclosure of data by private sector organisations includes, for instance:

- the Banking Act, which prohibits the disclosure of customer information by a bank or its officers;
- the Computer Misuse and Cybersecurity (Amendment) Act, 2017, which criminalises unauthorised access or modification to computer systems, thus dealing with (though not limited to) computer system hackers;
- the Electronic Transactions Act regulates the security and use of electronic transactions; and
- the Telecom Competition Code issued under the Telecommunications Act requires licensees under the act to take reasonable measures to prevent the unauthorised use of end-user service information.

Chapter 12: Competition law

Daren Shiau, Allen & Gledhill, Singapore

12.1 Introduction

The Competition Act is the principal statute governing the competition law regime in Singapore. The provisions of the Competition Act are administered by the Competition and Consumer Commission of Singapore (CCCS).

The CCCS is the most active competition regulator in the ASEAN region, leading in cartel and dominance investigations, as well as the calling-in and investigating of mergers with an effect in Singapore.

12.2 Cartel regulation

12.2.1 Application

Section 34 of the Competition Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices that have as their object or effect the prevention, restriction or distortion of competition within Singapore (the ‘Section 34 Prohibition’).

The term ‘agreement’ in the Section 34 Prohibition covers both legally enforceable and non-enforceable agreements, including informal understandings and gentlemen’s agreements.

12.2.2 Prohibited matters

Under the Competition Act, agreements, decisions or concerted practices that may have the object or effect of preventing, restricting or distorting competition within Singapore include:

- directly or indirectly fixing purchase or selling prices, or any other trading conditions;
- limiting or controlling production, markets, technical development or investment;
- sharing markets or sources of supply;

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

As set out in the CCCS Guidelines on the Section 34 Prohibition, other typically prohibited activities include: bid-rigging (collusive tendering); joint purchasing or selling; sharing information; exchanging price and non-price information; restricting advertising; and setting technical or design standards.

The CCCS takes a hard-line approach to information exchange between competitors. A passive mode of participation in a discussion or the fact that an undertaking does not act on the confidential information received does not relieve the undertaking of liability under the Section 34 Prohibition, unless it has publicly distanced itself from the anti-competitive discussion.

12.2.3 Vertical agreements

Pure vertical agreements are excluded from the Section 34 Prohibition. Pure vertical agreements are narrowly defined as agreements between parties who operate at a different level of the production or distribution chain and relating to the conditions under which the parties may purchase, sell or resell certain products.

However, a vertical relationship and/or having a diagonal agreement does not preclude the finding of a concerted practice that infringes the Section 34 Prohibition, for example agreements of a hub-and-spoke nature. In addition, vertical agreements are not excluded from the Section 47 Prohibition.

12.2.4 Infringement decisions

To date the CCCS has issued three international cartel decisions concerning the freight forwarding industry, the machinery and industrial equipment industry, and the industry for electronic circuitry components. The CCCS has also conducted dawn raids and investigations within and outside Singapore in a wide range of industries, including the autoparts, consumer electronics, financial services, fast-moving consumer goods (FMCG), logistics, petrochemicals, precision manufacturing and shipping industries.

12.3 Abuse of dominance

12.3.1 Application

Section 47 of the Competition Act prohibits any conduct on the part of one or more undertakings that amounts to the abuse of a dominant position in any Singapore market (the ‘Section 47 Prohibition’). In assessing whether the Section 47 Prohibition applies, a two-stage test is applied: (1), whether the undertaking is dominant in the relevant market; and (2), whether it is abusing that dominant position.

12.3.2 Definition of 'dominance'

An undertaking will be dominant for the purposes of Singapore competition law if it has substantial market power. Market power arises where an undertaking does not face sufficiently strong competitive pressure and can be thought of as the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels. Generally, as a starting point, the CCCS will consider a market share above 60 per cent as likely to indicate that an undertaking is dominant in the relevant market. However, the CCCS has indicated in its Guidelines on the Section 47 Prohibition that this starting point does not preclude dominance being established at a lower market share. This position has been taken by the CCCS in *Re Abuse of a Dominant Position by SISTIC.com Pte Ltd* [2010] SGCCS 3 and upheld by the Competition Appeal Board in *Re Abuse of a Dominant Position by SISTIC.com Pte Ltd* [2012] SGCAB 1.

Market definition is also relevant in the assessment of whether an undertaking is dominant. In this regard, the extent to which there are constraints on an undertaking's ability to profitably sustain prices above competitive levels will be considered. Such constraints include the extent of existing and potential competition and other factors, such as the existence of powerful buyers and economic regulation.

12.3.3 Definition of 'abuse'

It is noteworthy that the Section 47 Prohibition also applies to undertakings in a dominant position outside Singapore that abuse their dominant position in a market in Singapore. The Section 47 Prohibition will apply where the conduct is engaged in by entities that form a single economic unit, where that single economic unit is dominant in a relevant market. Collective dominance can also be established between two or more economic entities that are legally independent of each other. Under the Competition Act, conduct may constitute an abuse if it consists of:

- predatory behaviour towards competitors;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Other categories of conduct that may amount to abuse include pricing below cost, certain discount schemes, certain cases of price discrimination, margin squeezes, vertical restraints, exclusive purchasing agreements, refusals to supply and refusals to allow access to an essential facility.

12.3.4 Notification

An undertaking that is unsure whether its agreement, decision or conduct infringes the Section 34 and/or Section 47 Prohibitions may notify the CCCS either for guidance or a decision. Generally, the

CCCS will take no further action once it has provided guidance or a decision unless certain matters are brought to its attention, such as complaints from third parties.

The fast-track procedure for cases involving the Section 34 and/or Section 47 Prohibition allows businesses under investigation to enter into an agreement with the CCCS where the business will admit its liability early by acknowledging its participation in an anti-competitive activity. In return, it will receive a reduction on the financial penalty to be imposed.

12.4 Merger control

12.4.1 Application

Section 54 of the Competition Act prohibits mergers (including the creation of full-function joint ventures) that result, or may be expected to result, in a substantial lessening of competition within any market for goods or services in Singapore (the 'Section 54 Prohibition'). The Section 54 Prohibition may apply even where a merger party is located outside Singapore, so long as the merger has effect on any market in Singapore.

12.4.2 Notification

The CCCS requires all merger parties to conduct a mandatory self-assessment on whether a merger filing is necessary. A merger control filing to the CCCS is expected and advisable if the findings of the self-assessment are that the merger exceeds the quantitative thresholds.

In considering whether to notify a merger in Singapore, merger parties and their advisors should be aware of the following features of Singapore's risk-based merger control regime:

- the CCCS has an active market intelligence function keeping markets under review to ascertain which M&As are taking place and not notified to the CCCS;
- there are no jurisdictional safe harbours where mergers that do not trigger specified quantitative thresholds are exempt or excluded from the Section 54 Prohibition;
- in the absence of a merger notification, parties bear an evergreen antitrust risk; and
- where the CCCS investigates, the CCCS would already have formed its theories of harm, and the burden of proof will be on the merger parties to demonstrate why the CCCS is wrong.

In addition, the recent CCCS decision in CCCS Case No 500/001/18 – *Grab/Uber* in 2018 provides two significant risks that undertakings ought to take note of:

- undertakings that have conducted a self-assessment may still be found to have intentionally or negligently infringed the Section 54 Prohibition if they proceed to close a transaction without notifying the CCCS: despite the parties in *Grab/Uber* having conducted a self-assessment, the CCCS disagreed with the findings of the self-assessment and found that the parties had intentionally or negligently infringed the Section 54 Prohibition by failing to notify the transaction; and

- the CCCS may reject undertakings' post-completion merger control filings and instead conduct an investigation: while the Singapore merger control regime allows for post-completion merger control filings, the CCCS prefers pre-completion filings and may reject post-completion filings or call-in unnotified transactions, opting instead to investigate the merger.

The CCCS has stated that if a merger results in the indicative quantitative notification thresholds (the 'Quantitative Thresholds') being crossed, the CCCS is likely to give further consideration to the merger before being satisfied that it will not result in a substantial lessening of competition.

The Quantitative Thresholds are:

- a post-merger combined market share of the three largest firms of at least 70 per cent and the merged undertaking has a market share of at least 20 per cent; or
- a merged undertaking with a market share of at least 40 per cent.

The CCCS may also, and as a matter of practice does, call-in and investigate transactions that fall below the Quantitative Thresholds. The test as to the existence of a substantial lessening of competition is qualitative rather than quantitative. Qualitative factors include the ease and speed of supply-side substitution, countervailing buyer power, market transparency and cost stability in the market. In particular, the CCCS has also investigated transactions six years after the transaction was completed.

The CCCS has, to date, issued one infringement decision for a completed transaction, and issued four provisional decisions to block transactions. The rapid succession of merger decisions by the CCCS in the past few years requiring commitments, in addition to prohibition of transactions, signals its increasingly aggressive enforcement towards merger control. The CCCS has also been stepping up its enforcement of gun-jumping, specifically, information sharing prior to the consummation of a merger, and ancillary restrictions, such as non-compete obligations and supply restrictions, in the merger context.

12.5 Consequences of infringement

If the CCCS decides that there has been an infringement of any of the above prohibitions, it may direct that the infringement be brought to an end and, where necessary, specify a particular course of action to eliminate the harmful effect of the infringement and prevent its recurrence. To illustrate, the CCCS has, pursuant to its merger control powers, issued three proposed decisions to block a merger and accepted commitments in six merger decisions to date.

In addition, if the CCCS is satisfied that the infringement has been committed intentionally or negligently, it may impose a financial penalty of up to ten per cent of the Singapore undertaking's turnover for each year of infringement, up to a maximum of three years. The financial penalty is calculated based on the relevant turnover for the financial year preceding the date when the undertaking's participation in the infringement ended.

Chapter 13: Dispute resolution

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13.1 Structure of the courts

13.1.1 Introduction

Singapore's legal system is consistently ranked highly by both regional and international bodies. Singapore's excellent dispute resolution services are not confined to the judiciary. In the 2007 UK House of Lords case of *West Tankers v RAS Riunione Adriatica di Sicurtà SpA* [2007] UKHL 4, Lord Hoffmann stated in his judgment that Singapore stands as one of the world's 'leading centres of arbitration'.

13.1.2 Litigation

COURT STRUCTURE

The legal profession in Singapore is fused as lawyers are not divided into barristers and solicitors. The civil court structure comprises two tiers: the Supreme Court and the state courts.

The principal courts under the state courts are the Magistrates' Courts and District Courts. The Magistrates' Courts generally hear disputes in which the amount claimed or the value of the subject matter in dispute does not exceed SGD 60,000. The District Courts generally hear cases where the amount claimed or the value of the subject matter in dispute does not exceed SGD 250,000. The state courts also consist of specialised courts that deal with specific types of claims. For example, Small Claims Tribunals provide a quick and inexpensive forum for the resolution of small claims that fall within certain categories, such as disputes arising from contracts for the sale of goods or the provision of services. Employment Claims Tribunals provide a speedy and low-cost forum for the resolution of employment-related disputes within prescribed claim limits.

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 the 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 which the state courts have jurisdiction to hear. The High Court also hears appeals from District Courts and Magistrates' Courts. The Court of Appeal hears appeals from the High Court.

In January 2015 the SICC was launched as a division of the High Court. The SICC is designed to deal with transnational commercial disputes where the claim in the action is of an international and commercial nature. It addresses the increase in commercial litigation in Singapore, such as cross-border commercial disputes governed by foreign law.

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 made provision for documents to be filed, served, delivered or otherwise conveyed using electronic service. In January 2013 an integrated electronic litigation system (eLitigation) was launched as an enhanced version of the electronic filing system to provide law firms and court users with an integrated platform for the filing and service of court documents, and active management of case files throughout the litigation process. 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 for 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 six to 12 months of proceedings being commenced.

ENFORCEMENT OF FOREIGN JUDGMENTS

It is worth noting that a judgment creditor who has obtained a judgment from a foreign court may enforce that judgment in Singapore by a suit on a debt under the traditional common law position, or pursuant to statute, provided that the relevant criteria for enforcement have been fulfilled.

One such key statute is the Choice of Court Agreements Act, which entered into force on 1 October 2016. This act implements the Convention on Choice of Court Agreements concluded at The Hague on 30 June 2005. Among other things, the Convention requires contracting states to recognise and enforce judgments of the courts of other contracting states designated in exclusive choice of court agreements in international civil or commercial cases, subject to the exceptions in the Convention. The Convention counts Singapore, Mexico and all the EU member states (except Denmark) among its contracting parties. Under the act, the foreign judgment will be generally recognised and enforced if it has effect and is enforceable in the state in which the judgment originated. This development also strengthens Singapore's position as a dispute resolution hub in Asia by enhancing the international enforceability of Singapore court judgments.

13.1.3 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 their expertise in relation to the issue between the parties. 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 them. This dispute resolution tool has proven very useful in shipping cases, particularly when highly technical matters are at issue.

13.2 Use of arbitration

13.2.1 Arbitration

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. Statutory rules have been enacted in the form of the Arbitration Act (which deals with domestic arbitration), as well as the International Arbitration Act (which deals with international arbitration) to provide for the said stay of legal proceedings in such cases.

The legislative framework concerning arbitration in Singapore has been frequently revisited by the Singapore government (amendments were made in 2010 and 2012) in order to ensure that the arbitration regime is on par with other jurisdictions and that Singapore remains an attractive venue for arbitration.

The SIAC was established in July 1991 as a not-for-profit, non-governmental organisation to meet the demands of the international business community for a neutral, efficient and reliable dispute resolution institution in Asia. The SIAC comprises a Court of Arbitration, which oversees the case administration and arbitral appointment functions of the SIAC; and the Board of Directors, which oversees its corporate and business development functions. On 30 December 2016 the SIAC announced the official release of the first edition of the Investment Arbitration Rules of the Singapore International Arbitration Centre, a specialised set of rules to address the unique issues present in the conduct of international investment arbitration. The SIAC Investment Arbitration Rules 2017 came into effect on 1 January 2017.

In addition, an arbitration facility centre (Maxwell Chambers) was launched in 2010 with the government's support. There are many arbitration bodies represented in Singapore, such as the International Court of Arbitration of the International Chamber of Commerce (ICC), the International Centre for Dispute Resolution (ICDR) (the international division of the American Arbitration Association (AAA)), the Arbitration and Mediation Centre of the WIPO, the Singapore Chamber of Maritime Arbitration (SCMA) and the Singapore Institute of Arbitrators.

Further strengthening Singapore's attractiveness as an arbitration hub is the fact that Singapore is a signatory to the New York Convention, affording ease of enforcement of arbitral awards. The judiciary has also consistently delivered pro-arbitration decisions with a policy of minimal curial intervention.

In *Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd & Anor* [2006] 3 SLR(R) 174, the Singapore court expressly opined that the courts should give effect to foreign arbitration awards.

The Civil Law Act was amended on 1 March 2017 to enact a framework for third-party funding in Singapore, providing businesses with an additional financing option for international arbitration. Third-party funding is already available in other international arbitration centres and its introduction in Singapore strengthens the country's position as a key arbitration seat in the world. Entities that provide third-party funding must meet certain specific criteria set out in regulations.

13.3 Other forms of dispute resolution

13.3.1 Mediation

Mediation forms a part of Singapore's full suite of dispute resolution services, one which serves to complement court litigation and arbitration. It is cost-effective, flexible and fast. Mediation services are offered by the Singapore Mediation Centre (SMC) and the Singapore International Mediation Centre (SIMC), as well as the State Courts Centre for Dispute Resolution (SCCDR).

The Singapore International Mediation Institute (SIMI) and the SIMC were officially launched on 5 November 2014 with a view to develop Singapore into a centre for international commercial mediation. As a professional standards body for mediation, the SIMI implements and maintains a credentialing scheme for mediators, and audits and ensures that high standards are met with registered partners who run training and/or mediation services.

The SIMC focuses on mediating international commercial disputes with a panel of internationally respected mediators. The SIMC has signed Memoranda of Understanding with other mediation centres in the region to promote and develop mediation in Asia.

The SMC focuses on domestic commercial mediation, and also provides other dispute resolution services, such as adjudication. The SMC has a panel of highly qualified mediators and neutrals, which includes retired Supreme Court Judges, Members of Parliament, former Judicial Commissioners, Senior Counsel, and leaders from different professions and industries.

The SCCDR employs a judge-led court dispute resolution process to ensure that cases in the state courts are managed robustly. In addition to judge-led case management, the SCCDR also conducts neutral evaluation, judicial mediation and conciliation to facilitate the resolution of disputes without trial.

On 1 November 2017 the Mediation Act came into force. The Mediation Act strengthens the enforceability of mediated settlements in providing a legislative framework for mediation. It also provides much-valued certainty for cross-border mediation users in areas where the common law position is unclear or differs from jurisdiction to jurisdiction.

The Mediation Act allows parties to apply to court to have their settlement agreement recorded as a court order in order to strengthen its enforceability. It also provides that communications made in mediation cannot be disclosed to third parties to the mediation and cannot be admitted in court or arbitral proceedings as evidence, except under the circumstances set out in the Mediation Act. For example, a person may disclose a mediation communication to a third party to the mediation if the disclosure is made with the consent of all the parties to the mediation (including the maker of the communication). The Mediation Act also allows parties to apply to court to stay ongoing court proceedings in relation to the same dispute.

On 7 August 2019 a treaty to facilitate the enforcement of settlement agreements that have been entered into with the assistance of mediation was signed. This is known as the UN Convention on International Settlement Agreements Resulting from Mediation (the 'Singapore Convention on Mediation'). To date, 52 countries have signed the Singapore Convention on Mediation, which will

come into force on 12 September 2020, following the deposit of the instruments of ratification by Fiji, Qatar and Singapore.

The Singapore Convention on Mediation seeks to promote the use of mediation as a key means to resolve commercial disputes more amicably, quickly and cost-effectively. Where a written settlement agreement is entered into between two or more parties who have their place of business in different states that have acceded to or ratified the Singapore Convention on Mediation, the party seeking enforcement may apply directly to the courts of the state where the assets are located. This obviates the need of first obtaining judgment on the dispute before being able to seek enforcement.

In addition, the enforcement procedure is simple. The party seeking enforcement need only provide the following to the relevant authority in the state where enforcement is sought:

- a copy of the signed settlement agreement; and
- evidence that the settlement agreement resulted from mediation.

To give effect to the convention, the Singapore Convention on Mediation Act, 2020 was enacted to provide the legislative framework for a party to enforce or invoke an international settlement agreement in Singapore. This will come into force on 12 September 2020.