

DOING BUSINESS IN SINGAPORE

1. TYPES OF BUSINESS PRESENCE

1.1 Business in Singapore may be conducted through a variety of business vehicles. Some of the common vehicles are:

- (a) a sole proprietorship
- (b) a partnership
- (c) a limited liability partnership
- (d) a limited liability company (commonly known as a private limited company)
- (e) a branch company
- (f) a representative office.

1.2 For foreign corporations intending to commence business in Singapore, the choice is usually between establishing a branch of the foreign corporation or a subsidiary company of that foreign corporation. The choice between these two entities is usually determined by the activities which are intended to be carried out in Singapore and, to a lesser extent, tax considerations.

(a) Sole Proprietorship

A sole-proprietorship is a business owned by one person and the sole-proprietor has absolute say in the running of the business.

However, the law does not view the sole proprietorship as a legal entity separate from the owner of the business and he will be held personally liable to an unlimited extent for debts and obligations of the business. Although a sole proprietor is the single owner of the venture, he may employ staff.

Unlike other business structures which are governed by specific legislation, the sole proprietorship is characterized by a lack of formality and a sole proprietor only has to comply with general legislation and register his venture under the Business Registration Act. This registration is easily and inexpensively done through the Registry of Businesses.

Professionals who become sole proprietors must also comply with the relevant qualifications and conditions stipulated for their respective practice. Taxation of business revenue is on a personal basis and the sole proprietor enters the profit or losses of the business into his or her income tax returns. Sole proprietorships are dissolved upon the bankruptcy or death of the owner.

(b) Partnership

A partnership is defined under the *Partnership Act* as the relation which subsists between persons "carrying on a business in common with a view to profit".

The partners in a partnership must number from 2 to 20, with the exception of partnerships engaged in professional practice. Once there are more than 20 partners, the business entity must be registered as a company under the Companies Act.

Like the sole proprietorship, a partnership does not constitute a separate legal entity from its members, and accordingly debts or obligations are directly of the partnership are attributed to the partners.

Partnerships also have flexibility in deciding their own internal management arrangements and can, by the terms they incorporate into their partnership agreement, share management functions equally or assign management functions to certain partners. A partner can assign his interest in the partnership to someone else but that person does not become a partner and merely has the financial benefits attached to that interest. If a partner decides to leave the partnership or if a new partner decides to join, the existing partnership is dissolved and a new partnership must be formed.

Bankruptcy and death of a partner will also lead to the dissolution and reconstitution of the partnership. Since a partnership is not a separate legal entity, the profits it gains are attributed to the partners who will then be taxed on an individual basis.

(c) Limited Liability Partnership (LLP)

Limited liability partnerships combine the features of general partnerships and companies. Like a general partnership, members may adopt whatever form of internal organization they prefer but like a company, their liabilities are limited to what they had contributed in terms of capital to the venture and members are not directly liable for the partnership's debts and obligations.

Although the limited liability partnership is treated as a separate entity from its partners, partners will be taxed on their share of the profits in accordance with their personal income tax rates. Also, the partnership does not dissolve upon the departure of partners and it enjoys business continuity like a company does.

In the case of a limited liability partnership, partners are not held personally liable for any business debt incurred by the partnership. Nevertheless, a partner will be personally liable when losses were incurred from his own wrongful act or omission. However, he would not be personally liable for the wrongful act or omission committed by any other partner of the partnership.

(d) Limited Liability Company

When a company is limited, it means that the liability of the members to contribute towards the assets of the company on winding up is limited. A company can be limited by shares or by guarantee. In a company limited by shares, a member cannot be asked to pay more than the amount unpaid on his shares when the company is wound up. In a company limited by guarantee, a member need only contribute the amount that he agreed to guarantee as stated in the company's memorandum of association. A company incorporated in Singapore is a separate legal entity from its shareholders.

A limited company may either be a private or public company, the main distinction being that a public company has no restrictions on its transfer of shares.

There are two types of private companies - an exempt private company and a non-exempt private company. An exempt private company is one in which no corporation holds a beneficial interest and which has no more than 20 members.

A proposed company name will not be approved if it is identical to, or so nearly resembles the name of another company, foreign company or business firm as to be mistaken for it. Undesirable names, including offensive or vulgar names will also not be approved.

Certain types of activities need the necessary approval and license from other government authorities before conduct of the proposed business activity.

(i) Every company must have:

- at least one shareholder. That shareholder can either be an individual or a corporate entity.
- at least 1 director who must be ordinarily resident in Singapore, i.e. a citizen or a permanent resident or the holder of an employment pass. The director may also be the initial shareholder in the company. The directors are required to give their consent before they can be made directors of any company. Some individuals for e.g. bankrupts, are disqualified from being directors. A director cannot resign unless there is one other director remaining in the company who is a local resident.
- from the date of incorporation, there must be a registered office within Singapore to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than 3 hours during ordinary business hours on each day, Saturdays, weekly and public holidays excepted.
- a company secretary. The secretary is responsible for ensuring that the company complies with the various regulations under the Companies Act such as the holding of meetings, maintenance of registers and the filing of the Annual Returns. The office of secretary shall not be left vacant for more than 6 months at any one time.
- a company auditor. The directors of a company shall, within 3 months after incorporation of the company, appoint a person or persons to be the auditor or auditors of the company, and any auditor or auditors so appointed shall hold office until the conclusion of the next annual general meeting of the company where new appointments can be made. However, a company exempt from audit requirements under the Companies Act is exempt from the requirement to appoint an auditor.

- There is no minimum level of authorised capital which a company must have. The concepts of authorised share capital and par value were abolished effective from 30 January 2006.
- Audited accounts and the corresponding annual return must be filed at the Registry of Companies annually.

(ii) **Exceptions to Audit Requirement**

- A company that is dormant from date of incorporation or dormant since the end of the previous financial year.
- An exempt private company is to be exempted from audit requirements in respect of a financial year on and after 15 May 2003 if its revenue on that year does not exceed the prescribed amount of s\$2.5 million and \$5 million for financial years starting on and after 1 June 2004.
- However, the company still has to prepare the profit and loss account and balance sheet which are to be sent to all shareholders.
- The Registrar of Companies and Businesses may compel a company to lodge audited accounts and an auditors' report if he is satisfied that there is a breach of the accounting requirements, or if it is in the public interest to do so.
- Every company is required to hold its first Annual General Meeting within 18 months from the date of incorporation. Subsequent meetings must be held every calendar year and the interval between each such Annual General Meetings must not be more than 15 months.

(e) **Branch**

The alternative to incorporating a company is for a foreign corporation to have a branch in Singapore. The branch being part of the foreign corporation is not a separate legal entity. As such, it can only engage in activities authorised under the Memorandum of Association or Constitution of

the foreign corporation but its liabilities extend to all the assets of the company as a whole. A branch is subject to similar filing and reporting requirements as an incorporated company in Singapore.

(i) Basic requirements:

Registration with the Registrar of Companies by filing the following documents and a certified translation where the documents are not in English:

- A certified copy of the Certificate of Incorporation of the foreign company;
- A certified copy of the Memorandum and Articles of Association of the company;
- Particulars of the foreign company's directors. If any of the directors are resident in Singapore and are members of the local board of directors, a memorandum stating the powers of the local directors is required;
- Memorandum stating powers of local directors;
- Memorandum of appointment or power of attorney stating the names and addresses of 2 or more Singaporeans, Permanent residents or Employment Pass holders authorised to act as agents in Singapore;
- A Statutory Declaration by the Agents of the Foreign Company; and
- A Notice of address of the foreign company's registered office in Singapore.

(ii) Payment of registration fees

(iii) A foreign company shall within 2 months of the annual general meeting of its head-office, file at the Registrar of Companies a copy of its balance sheet of its last financial year together with a statutory declaration verifying the contents therein. In addition to the balance sheet, a profit and loss statement must be lodged. This statement must show its assets used in and liabilities arising out of its operation in Singapore as at the date to which its balance sheet was made up to.

(iv) The full name of the foreign company and the country of its incorporation must appear outside its registered office and every other place of business which it establishes in Singapore, as well as in all correspondence and documents issued by the branch.

(v) If the original documents of the foreign corporation are not in English, certified translated copies in English must be filed.

- (vi) The fees payable on registration of a branch are based on the authorised share capital of the foreign corporation. The appropriate fees prescribed for a Singapore subsidiary company are also applicable for the registration of a branch.

Branch versus Subsidiary:

If a foreign company intends to carry on business in Singapore, including the entering into of contracts, or the performance of contracts in Singapore, it must register either a branch or incorporate a subsidiary. Broadly speaking, there is little difference between a branch office and a subsidiary since both are subject to similar reporting and filing obligations with the Registry of Companies. The following are various tax factors to consider in deciding whether to set up a branch or subsidiary:

- (a) Profit-making operation: The tax rate of about 18% (year 2006 onwards) for every Singapore dollar of chargeable income applies to both. The head office of a branch may also be taxed on the same income, although credit may be given for Singapore tax paid. The basis of corporate taxation in Singapore is residence of the corporate entity. If the control and management of a business is in Singapore, it will be deemed to be resident in Singapore. The place of registration of the company, while indicative, will not be conclusive evidence of its place of residence. Where the business expects to receive substantial foreign income, it is more favourable to incorporate a subsidiary in order that the company may be deemed to be resident in Singapore and enjoy certain tax exemption.

A branch is unlikely to be deemed resident in Singapore as the management and control of the branch will usually be in the country of domicile of the foreign company. A resident subsidiary receiving foreign-sourced income will be able to take advantage of Singapore's tax treaty benefits, which would not be available to a non-resident branch.

- (b) Loss-making operation: Where a foreign corporation is taxed on its worldwide income, the losses of a branch may be offset against the profits of the head office or other branches. It is unlikely that the losses of a foreign subsidiary can be used for consolidation in calculating the taxable income of the parent company or the group.
- (c) Distribution of after-tax profits: There is no withholding tax on the repatriation of branch profits or payment of dividends remitted to the overseas head office or foreign parent, but a resident subsidiary must ensure that there are sufficient tax credits, as well as revenue reserves available to impute to the dividends paid. There are no such restrictions applicable to a branch.

- (d) Tax incentives: Tax incentives are seldom granted to a branch, although there are exceptions to the rule. Generally, tax incentives and rebates are extended to locally incorporated companies.
- (e) Tax treaties: Certain tax treaties provide for tax-sparing credits on specified types of income derived from Singapore. An overseas head office is usually unable to take advantage of these tax-sparing credits on branch profits as the tax treaties grant such credits only to resident companies and branches are normally considered non-resident in Singapore.

Other factors:

- (a) A branch office is required to file audited accounts both of its Singapore operation, and of the foreign company itself. A subsidiary, however, need only file its own audited accounts.
- (b) Some foreign companies may prefer to operate through a subsidiary for the purpose of avoiding possible exposure to legal action being taken against them in their country of domicile rather than in Singapore.
- (c) The nature of the business of the foreign company is an important consideration. For example, banks would necessarily establish a branch instead of a local company, for reasons of consolidation of assets. A manufacturer wanting to manufacture in Singapore would usually incorporate a subsidiary here.

The preference by international companies has been to incorporate a separate company in Singapore for various reasons such as closer identity with the country within which the operations are being carried out and a more ready acceptance of the local subsidiary as a local corporate citizen. It is also the better alternative from certain operational aspects, such as the signing of resolutions to open bank accounts, which are more easily dealt with at the subsidiary level than at the head office.

A foreign company using Singapore merely as an occasional base or stop-over for purchasing and not as a base for business operation may find the workings of a branch operation more appropriate.

(f) **Representative Office**

A representative office is a special entity under the administration of International Enterprise Singapore ("IE") which was formerly known as the Singapore Trade Development Board.

IE issues guidelines on permissible activities which the representative office can carry out. These activities are strictly limited to promotion and liaison such as marketing, advertising and market research but it may not be involved in negotiating contracts, the order acceptance process, invoicing, collection of payments or after sales service or provide services for a fee.

An additional restriction is that IE only registers representative offices from the manufacturing, trading, trade logistics and trade-related services sectors. IE will not register representative offices from other sectors, such as, banking, finance, insurance, education, travel agency, consultancy and management services, legal, real estate and property development. IE usually grants approvals for one or two years initially but this may be extended at IE's discretion.

(i) Application Procedures:

Foreign companies who wish to apply for or renew their Representative Office registrations may either apply online or via hardcopy application.

(ii) All new applications must be accompanied by the following:

- An attachment (in English or an official English translation) of the parent Company's Certificate of Incorporation. If application was made online and in the event that softcopy versions of the necessary documents are not available, the applicant can submit hardcopies to IE Singapore HQ after filing the online application. If the applicant is unable to provide the above requested documents, the applicant can write in to IE Singapore to seek for waiver and provide a set of the company brochures and self-declare the needed information;
- The parent company's latest annual report and audited accounts. Renewal applications are not required to submit the parent company's latest annual report and audited accounts but IE Singapore has the prerogative to request for it, if necessary; and
- Payment of the prescribed processing fees.

2. IMMIGRATION REQUIREMENTS

Foreigners who wish to take up employment or to do business in Singapore must have valid work passes. Under Singapore's work pass framework, there are 6 main types of work passes:

(i) *Employment Pass:*

An Employment Pass (EP) is a Work Pass issued to a foreigner who holds acceptable degrees, professional qualifications or specialist skills and whose monthly basic salary is above SGD\$2,500 if he/she wishes to work or do business in Singapore.

(ii) *S Pass:*

An S Pass is a new category of Work Pass which replaces the current Q2 Employment Passes with effect from 1 July 2004. The objective of S Pass is to meet needs for skilled manpower at the middle level. A foreigner who is offered a monthly basic salary of at least SGD\$1,800 may be eligible to apply for the S Pass. S Pass applicants will be assessed on a points system, taking into account multiple criteria including salary, education qualifications, skills, job type and work experience. Applicants are given points based on how far they meet the criteria whereby the points allocated for each category of criteria will vary over time depending on market conditions.

(iii) *Work Permit:*

A Work Permit is issued to a skilled or an unskilled foreigner with a monthly basic salary of not more than SGD\$1,800 to work in Singapore. Work Permits are generally issued according to industrial sectors such as the construction, non-construction and domestic sectors.

(iv) *Short-term Employment Pass:*

A Short-Term Employment Pass is for foreigners with a monthly basic salary above S\$2,500, who hold acceptable tertiary or professional qualifications, who wish to work in Singapore on a specific project or assignment.

(v) *Professional Visit Pass:*

Foreigners need a Professional Visit Pass (PVP) to undertake short-term professional assignments in Singapore if they are participating in prescribed categories of work. The pass allows them to work for 3 months and can be extended.

(vi) *EntrePass*:

An EntrePass is for entrepreneurs who wish to establish ready a business in Singapore and who will be actively involved in the operation of the business in Singapore.

(vii) Personalised Employment Pass:

This is a new scheme introduced in 2007 to encourage contribution from global talents to Singapore. This pass is not tied to any employer and will be granted on the individual merits of the applicant. A holder of this pass is entitled to remain in Singapore for up to 6 months in-between jobs.

We hope this Fact Sheet has been helpful. If you require more information, please do not hesitate to contact any of the following persons:

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