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# Doing Business in Singapore

2005

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# Table of Contents

# 1. INTRODUCTION

Singapore, a Republic with a multi-racial population of over 4 million, is an attractive place in which to do business. It has an enviable record of political stability and the government actively encourages investment by foreign business interests. All of these factors combine to make the country extremely attractive to multinational companies.

# 2. LEGAL BACKGROUND

For historical reasons, the Singapore legal system is based on English law. Many of Singapore's Acts of Parliament are modelled on English Acts, and English common law applies in many areas. In mercantile matters, a number of statutes passed by the English Parliament have been incorporated into Singapore law.

Court procedure is also similar to that which exists in England. Foreign judgments from certain Commonwealth jurisdictions are indirectly enforceable in accordance with the Reciprocal Enforcement of Commonwealth Judgments Act. It is also possible to enforce a judgment obtained from a superior court of other states by bringing a fresh action on the judgment in a Singapore court. Arbitration is also available as a means of dispute resolution, and Singapore is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which means that arbitral awards from other countries party to the convention can be enforced in Singapore, and arbitral awards from Singapore can also be enforced in those countries.

# 3. TYPES OF PRESENCE

Business in Singapore may be conducted through a variety of vehicles:

a. Sole proprietorship or partnership;
b. Company;
c. Branch; and
d. Representative office.

The choice of organisational form is dictated partly by the activities which are intended to be carried on in Singapore and partly by tax considerations. Each of the four possibilities are discussed in detail below.limited available spaces.

# 4. SOLE PROPRIETORSHIP AND PARTNERSHIP

Any individual can engage in business as a sole proprietor provided he obtains approval of his business name and registers the business with the Accounting and Corporate Regulatory Authority[1] (**"ACRA"**) through ACRA's online portal, **Bizfile**. Individuals wishing to carry on business in partnership must also be registered with ACRA through Bizfile.

The maximum number of partners permissible is 20 for most businesses, and 10 for banking partnerships, but the position is different in the case of certain professional partnerships otherwise regulated by law.

With effect from 15 August 2003, a one-time business registration fee of S$65 (of which $15 is the name approval fee) is payable to ACRA. Thereafter, an annual renewal fee of S$20 is payable to ACRA.

1 The ACRA Act establishes ACRA , formed from the merging of the Registry of Companies and Businesses (**"RCB"**) and the Public Accountants Board (**"PAB"**). The RCB used to regulate the formation of business firms and companies and acted as a centre of information for registered particulars of business entities, while the PAB previously controlled and regulated the practice of accountancy by public accounts and accounting corporations. The ACRA currently discharges various functions including administering the Accountants Act 2004, Business Registration Act, Companies Act and the Trust Companies Act.

# 5. LIMITED LIABILITY COMPANY

A limited liability company incorporated under the *Companies Act, Cap. 50* (the "**Act**") is a separate entity from its parent. Equity participation by Singaporeans is not a requirement. A foreign company can thus set up a wholly-owned subsidiary in Singapore; it can also establish a branch. Joint ventures may also be established.

## 5.1 Establishing a Limited Liability Company

To establish a limited liability company, the proposed name must first be approved by ACRA. Every limited company must have the word "Limited" or "Ltd." at the end of its name, and a private limited company must have the word "Private" or "Pte." before the word "Limited" or "Ltd.".

From 1 October 2004, all companies will have to include their unique registration numbers in company documents (e.g. business letters, statements of account, invoices, official notices, publications) and will no longer be required to display the company name on the outside of its office premises. There is no minimum capitalization requirement.

With effect from 1 April 2004, a Singapore company must have one director who must be resident in Singapore. An expatriate in Singapore on an employment pass is acceptable for this purpose. Where this requirement is not satisfied, ACRA and the Courts may compel members of a company to appoint one director that is resident in Singapore. Members of a company may also be made liable for the debts of the company if the company continues operating for more than 6 months without having a resident director. All directors must be natural persons. Where the company only has one director, that director must not also function as the Company Secretary.

With effect from 1 April 2004, a Singapore company may have only one shareholder instead of two shareholders. In practice, a shareholder will typically subscribe to one share of par value S$1.00 per share each. No-par value and bearer shares are not permitted.

All corporate filings, including filings required for the incorporation of a limited liability company, is through ACRA's Bizfile.

With Bizfile, the time taken to approve/reject a name application is almost instantaneous. The process of incorporation of a company is also considerably

reduced, and can be completed within a few hours from the time the on-line forms are submitted to ACRA. ACRA will charge a fee of S$15 for each successful proposed company name and a flat fee of S$300 for the incorporation of a company. An email notification of incorporation from ACRA serves as evidence that the company has been incorporated. The notice of incorporation will contain particulars such as the company registration number and the effective date of incorporation. A certificate of confirmation of incorporation by ACRA can be obtained upon application and payment of a prescribed fee of S$50.

Registration of foreign companies, business registration services, information services, as well as lodgment of other company forms with ACRA are also made through Bizfile.

## 5.2 Continuing Requirements

The Act, which is similar to its Australian and U.K. counterparts, lays down various continuing filing and reporting requirements which must be observed by a Singapore company. The most important of these is the requirement to prepare audited accounts annually, comprising a profit and loss account, balance sheet and directors' report. Copies of the accounts must be filed with ACRA and are open to public inspection. The company may also distribute its statutory reports via e-mail or host such reports on its company website (if certain conditions set out in the Companies Act are met).

"Exempt private companies" need not file accounts with ACRA. An "exempt private company", is a private company, the shares of which are not held directly or indirectly by any corporation and which has not more than twenty shareholders. However, exempt private companies with an annual turnover that exceeds S$2.5 million must still prepare audited accounts.

Dormant companies (defined as companies with no significant business transactions) and exempt private companies with an annual turnover of $2.5 million or less are not required to prepare audited accounts. However, shareholders representing at least 5% of the outstanding ordinary shares are entitled to require such companies to prepare audited accounts. ACRA is also empowered to require a company to submit audited accounts.

In addition, every Singapore registered company must maintain a register of members, directors, managers and secretaries, directors' interests in the company and group shares or debentures, mortgages and charges and a minute book of meetings.

Where the company has only one director, it must maintain a minute book containing all written resolutions and declarations made by the company, and which will be open to public inspection.

The Act also contains a number of other restrictions (for example, restrictions on loans to directors) and lays down extensive disclosure requirements (for example, directors must disclose their interests in shares, including shares and options in any holding company). These are designed to ensure that the privileges of limited liability are not abused. The Act also provides a measure of protection to directors who rely on advice and information from professionals and experts provided that the directors act in good faith, make proper inquiry if necessary in the circumstances and have no knowledge that such reliance is unwarranted. The Act is administered strictly by ACRA, which can be expected to take action against any contraventions of the Act which come to its attention.

# 6. BRANCH OF A FOREIGN CORPORATION

As an alternative to incorporating a local company in Singapore, a foreign corporation wishing to establish a business presence in Singapore can set up a branch here. The branch office, being a part of the foreign corporation and not a separate legal entity, can only engage in activities authorised under the by-laws or other constitutional documents of the foreign corporation.

## 6.1 Establishing a Branch

A foreign corporation which wishes to establish a place of business or to carry on business in Singapore must register with ACRA before commencing operations in Singapore.

The Act, requires that a branch name be approved first before it can be registered. All filings for the application to approve the name, as well as for branch registration are conducted online, through Bizfile.

A one-time registration fee of S$300 is payable to ACRA, if the foreign corporation establishing the branch has an authorised share capital. If the foreign corporation has no share capital, the one-time registration fee payable to ACRA is S$1,200.

It should be noted that ACRA has the power to refuse to register a foreign company with a name which is "undesirable". It is therefore necessary to seek approval of the name prior to registration of the branch. A branch must maintain at least two local agents resident in Singapore who are authorised to accept service on behalf of the corporation and who are answerable for doing all things required of the corporation under the Act.

## 6.2 Continuing Requirements

A branch is subject to similar filing and reporting requirements as those applicable to companies incorporated in Singapore. In particular, the foreign corporation must periodically report its financial status to the ACRA. There are two specific requirements here:

a. Firstly, a foreign company must lodge with ACRA, within two months of its annual general meeting, a copy of its balance sheet made up to the end of its last financial year. The balance sheet should be in the form required by the foreign corporation's country of incorporation. ACRA has the power to

require further information to be provided to supplement the balance sheet delivered to her if she considers that the balance sheet does not sufficiently disclose the foreign corporation's financial position.

b. Secondly, a foreign corporation is required to prepare and lodge with ACRA (at the same time as the balance sheet referred to above), an audited statement showing its assets used in and liabilities arising out of, its operations in Singapore as at the date to which its balance sheet referred to in (a) above was made up. The foreign corporation must also submit an audited profit and loss account relating to its operations in Singapore.

Exemptions from the second requirement outlined above can be sought in certain situations. However, in any event, audited accounts for the foreign corporation's Singapore operations will have to be prepared for tax purposes.

The performance of certain restricted types of activity in Singapore by a foreign corporation will not give rise to the need to register a branch. Activities which fall into this category include the soliciting of orders which are accepted and become binding contracts only outside Singapore, the maintenance of a bank account and the investment of funds.

# 7. REPRESENTATIVE OFFICE

Representative offices are presently administered by the International Enterprise Singapore ("**ieSingapore**"). Their status is not acknowledged by any statute but is governed by a number of administrative guidelines. Application to establish a representative office is made to the ieSingapore and should be accompanied by a copy of the foreign company's audited accounts for the past one year and preferably also by a brochure describing the company's activities and its products. Processing time takes about one to three weeks generally.

The activities of a representative office are strictly limited to "promotion and liaison". It may carry out marketing, advertising and market research but must not become involved in negotiating contracts, the order acceptance process, invoicing, collection of payments or after-sales service. Provided the office remains within the guidelines, it is not viewed as having a corporate presence and accordingly there are no corporate filing requirements under the Act. Moreover, the functions of a representative office must be carried out only on behalf of its head office and other branches of the same company. A representative office should not act on behalf of other companies in the same group.

ieSingapore grants approvals for one year at a fee of S$200 per annum. Renewals are possible. ieSingapore expects the representative office to be a temporary measure and expects representative offices to eventually upgrade to a branch or company.

# 8. TAXATION IN SINGAPORE

## 8.1 Income Tax - General

Singapore income tax is payable on all income derived from Singapore or received in Singapore from outside Singapore. Recent Budgets have made substantial inroads into the receipt basis of taxation. With effect from 1 June 2003, foreign-sourced income in the form of dividends, branch profits and services income which are received in Singapore from outside Singapore are exempt from income tax in Singapore so long as they are derived from jurisdictions with headline tax rates of at least 15%, and if the specified foreign income has been subjected to tax in the foreign jurisdiction from which it was received. With effect from 1 January 2004, all foreign-sourced income received in Singapore by resident individuals is exempt from tax. There is no capital gains tax as such but gains of a recurring nature will often be assessable as income. Gains arising from the sale of assets which have enjoyed capital allowances and are sold for more than their written-down value are also taxable as income.

The general tax rate for companies in Singapore (both resident and non-resident) is a flat 20%. A company is resident in Singapore if it is managed and controlled here.

With effect from year of assessment 2002, three quarters of corporate income up to the first S$10,000 and half of the income for the next S$90,000 will be exempted from corporate tax. For newly incorporated companies which satisfy certain requirements, the first $100,000 of its normal chargeable income will be exempt from tax for each of their first three years of assessment that fall within the period YA 2005 to YA 2009. In order to qualify for the exemption for a newly incorporated company, the company must be a private exempt company incorporated in Singapore and a tax resident of Singapore for the particular year of assessment for which the exemption is claimed.

Individuals resident in Singapore are subject to personal income tax on income accrued in or derived from Singapore, the sliding scale for personal income tax ranges from 0% on the first S$20,000 of "chargeable" income to 22% for income greater than S$320,000 (with effect from year of assessment 2003). With effect from 1 January 2004, all foreign-sourced income received in Singapore by resident individuals is exempt from tax. For individuals not resident in Singapore, but who exercise employment here, their income is exempt from tax if the non-resident remains in Singapore for not more than 60 days in a calendar year. If the non-resident remains in Singapore for more than 60 but not more than 183 days, income sourced or received here is subject to tax at the same rate as is applicable to resident individuals or 15%,

whichever yields the greater tax. If the individual is physically present or is employed in Singapore for 183 days or more in any calendar year, he is considered a resident and taxed as such. Specific rules, in particular double tax treaties, may change the 60/183 day rules stated above.

Representative offices are generally not subject to tax on the theory that they carry on no "business" and hence generate no income. This is an administrative practice only and in some cases representative offices may be assessed to tax on a notional profit equal to 5% of their operating costs.

Expenses "wholly and exclusively" incurred in the production of taxable income are generally deductible (including interest on "capital employed in acquiring income"). Capital allowances are available in respect of industrial buildings and structures, plant and machinery. There is an initial allowance of 25% for most industrial buildings and structures, followed by an annual allowance of 3%. For plant and machinery, the initial allowance is 20% and the annual allowance is calculated on a straight-line basis over the expected working life of the asset. Alternatively, accelerated allowances of 33 1/3% p.a. for three years can be claimed in respect of plant and machinery. In some instances, a 100% allowance is provided. Unutilized capital allowances (and trading losses) can be carried forward indefinitely provided that ultimate control of the company does not change.

## 8.2 Dividends

The one-tier corporate tax system has replaced the former imputation system for the taxation of dividends. There is a 5-year transition period, ending in 2008, during which companies may still frank their dividends under the imputation system.

Under the former imputation system, tax paid on corporate profits is credited to a franking account. When a resident company pays a dividend to its shareholders, it must deduct a notional tax at a rate equal to the current corporate tax rate. This notional tax is deducted from the franking account. If there is an insufficient balance in the account, the difference must be paid by the company to the Inland Revenue Authority of Singapore as an additional tax charge. This tax charge can be carried forward for use as a credit against future income tax assessed against the profit of the company.

Under the former system, a dividend paid by a Singapore resident company to a shareholder is taxable in the hands of the shareholder, but the shareholder is entitled to a tax credit equal to the notional tax deducted by the payment company. So far as a

foreign shareholder is concerned, the main practical result of the dividend taxation rules is that dividends paid by a Singapore resident company out of a pool of profits taxed at ordinary tax rates will not be subject to any further Singapore tax in the hands of the foreign shareholder.

Under the current one tier corporate tax system, taxes paid by the company on its chargeable income are final, and all dividends are exempt from tax in the hands of its shareholders. Foreign dividends remitted back to Singapore remains taxable in the hands of the shareholders, but the applicable foreign tax credit will continue to be granted. However, please note the tax exemption on foreign-sourced income as stated in Paragraph 8.1 above, and the two conditions that the exemption is subject to.

There will be a five-year transitional period when no amount can be credited to the franking accounts. Companies may opt to move into the new system from 1 January 2003, forfeiting their franking account credit balances, or do so only when they have completely utilised their franking account credit balances. Any remaining franking account credit balances will be forfeited at the end of the transitional period. All companies will move to the one tier system on 1 January 2008.

## 8.3 Withholding taxes

Withholding taxes at the rate of 15% or 20% apply to a number of types of payments sourced in Singapore and made to non-residents, including interest, royalties, technical assistance fees and management fees. In the case of the 20% rate, the withholding tax is a non-final tax and partial refunds can in theory be claimed by filing tax returns and claiming deductions for expenses incurred in earning the income in question. The withholding tax does not apply to technical assistance fees where the technical assistance is provided wholly outside Singapore. Straightforward expense allocations between related companies are also regarded as outside the scope of withholding tax provided there is no profit element in the amount allocated to the Singapore company. There is also no withholding tax for payments made by end-users to non-resident persons for online information and digitised goods. It is also pertinent to note that the withholding tax rate for royalties will be reduced to 10% with effect from 1 January 2005.

## 8.4 Inter-company pricing

So far as inter-company pricing is concerned, there is an anti-avoidance provision in the general law which allows the Singapore tax authorities to assess a non-resident to

tax in the name of a resident where dealings between them have not been on an arm's-length basis. In addition, a general anti-avoidance provision empowers the Comptroller of Income Tax to adjust transfer pricing arrangements where he is satisfied the arrangement reduces Singapore tax payable, provided one of the principal reasons for the arrangement in question is the reduction of tax.

## 8.5 Double Tax Treaties

Singapore has entered into approximately 47 double tax treaties with other countries. No treaty has been signed with the U.S. Most of the treaties reduce the rate of withholding tax on interest and royalties significantly, even, in some cases, to zero.

Treaty benefits may be claimed, in general, by a person resident in Singapore. Where tax is paid in a foreign jurisdiction with which Singapore has a tax treaty, credit can be claimed against Singapore tax payable with respect to that foreign tax. Credit claims are restricted on a source by source, jurisdiction by jurisdiction basis, and excess credits cannot be carried forward to future years or used to shelter tax on income from another source or from a similar source in a different jurisdiction. The benefit of foreign tax credits claimed is preserved under the dividend franking system, as discussed above.

For non-treaty jurisdictions, foreign tax credits may also be available:

i. in relation to specific types of income from certain countries, for which Singapore grants unilateral tax credits; and
ii. under restrictive reciprocal Commonwealth tax relief provisions.

## 8.6 Unilateral Tax Credit

Unilateral tax credit is given in respect of foreign tax paid in certain countries which has no double tax treaty with Singapore, on certain types of income. This is to prevent double taxation of income remitted to Singapore after being taxed in a foreign jurisdiction. The foreign income falling within the Scheme includes income derived from prescribed professional, consultancy and other qualifying services rendered in specified non-treaty countries, employment income, dividends and profits derived by an overseas branch of a Singapore resident company. To encourage firms to hold their IP rights in Singapore, unilateral tax credit will be extended to all royalties remitted from all non-treaty countries with effect from YA 2003.

## 8.7 Loss-Transfer of Group Relief

Current year unutilised losses and capital allowances of one company may be set off against the profits of a related company in the same group for the year of assessment in question. This applies only to Singapore-incorporated companies. Such companies will be deemed to be related only where one company either directly or indirectly owns at least 75% of the other company. Such companies are also deemed to related where a third Singapore-incorporated company owns at least 75% of both companies.

## 8.8 Taxation of Branches

In almost all cases, a branch of a foreign corporation registered in Singapore will be non-resident for tax purposes. Singapore sourced income, or offshore income received in Singapore, of the branch, is subject to ordinary income tax at 20%. However, this tax base is expanded by S.12(1) of the *Income Tax Act*, which states that where a non-resident person (whether a company or an individual) carries on trade or business of which only a part is carried on in Singapore, the gains or profits of the trade or business are deemed to be derived from Singapore to the extent to which such gains or profits are not directly attributable to operations carried on outside of Singapore.

A non-resident taxpayer who carries on part of his trade or business in Singapore thus has the onus of clearly delineating that portion of his total income not attributable to a Singapore source. To the extent he is unable to do so, he is, in theory, liable to tax on the remaining income. In practice, this onus can generally be discharged provided separate accounts are carefully kept.

## 8.9 Taxation of Partnerships

A partnership is not a separate legal entity and is not treated as a separate assessable entity for Singapore tax purposes. Individual partners are assessed separately on their respective share of income from the partnership. Resident partners are taxed at the applicable marginal individual rates noted above. A non-resident partner of a partnership regardless of whether the partner is a corporation or an individual conducting business in Singapore is assessed on his share of income computed in accordance with the general provisions of the *Income Tax Act*. However, because of his non-resident status, the graduated rates of tax do not apply, and he is taxed at a flat rate of 20% on every dollar of partnership income which accrues to him.

# 9. TAX INCENTIVES

Singapore offers an attractive package of tax incentives. These are found in both the *Income Tax Act* itself and in the more comprehensive *Economic Expansion Incentives (Relief from Income Tax) Act* ("**EEIA**"). The various incentive schemes are largely administered by the Economic Development Board ("**EDB**"), a flexible and highly responsive government body which has offices in many major commercial centres in Asia, Europe and North America. The EDB is happy to discuss proposed investments on an informal basis and frequently gives quick "in principle" responses to written applications.

## 9.1 Concessionary Rates of Tax

Within the *Income Tax Act* itself, concessionary rates of tax (most frequently at 10%) are applied to income from certain specialised activities. These activities include income from offshore business of Asian Currency Units, certain income of insurance companies, income of members of the Singapore International Monetary Exchange, trading and brokerage income of corporate members of the RAS Commodity Exchange, certain income of approved oil traders and qualifying income of Headquarters organisations (discussed in more detail below).

There are incentives such as the Global Trader Programme ("**GTP**") administered by the of IE Singapore. Companies with the GTP status enjoy concessionary tax rates of either 5% and 10% on international trading activities in approved commodities and products, depending on the company's turnover and business spending.

Further, corporate profits derived by shipping enterprises may also be exempt from tax provided the profit is derived from ships which fly the Singapore flag, and international shipping profits can be exempt, if approved, even if the ships are registered outside Singapore.

## 9.2 Headquarters Programme

All four of the Headquarter Awards previously available - the Business HQ, Manufacturing HQ, Operational HQ and Global HQ Awards - have been consolidated into one Headquarters Programme. The Headquarters Programme is two-tier in nature, with a "fast-tracked" Regional Headquarters Award ("**RHQ Award**") and a International Headquarters Award ("**IHQ Award**").

Companies applying for the RHQ Award will be assessed based on the information they provide in a prescribed form, and will be conferred RHQ status if they satisfied all of the published criteria for the RHQ award. A company with RHQ status enjoys a concessionary rate of 15% for 3 years on incremental qualifying income, which may be in the form of foreign management fees, service fees, sales, trading income and royalties. The concessionary rate of 15% may be extended for a further 2 years provided all the conditions of the RHQ Award are satisfied at the end of the initial 3 year period.

The IHQ Award is available to companies which are willing to make commitments that are substantially more than what is required under the RHQ Award. Applicants interested in the IHQ Award have to enter into discussions with EDB for customised incentive packages with lower concessionary tax rates on qualifying income.

## 9.3 Other Tax Incentives

A large number of tax and investment incentives are offered in Singapore under the EEIA. These incentives include:

1. Pioneer Status;
2. Pioneer Service Companies;
3. Expansion of Existing Business Incentive;
4. Export Entreprise Incentive;
5. Investment Allowance Incentive;
6. International Trade Incentive;
7. International Consultancy Services Incentive;
8. Warehousing and Servicing Incentive;
9. Investment in New Technology Company Incentive;
10. Overseas Investment and Venture Capital Incentives; and
11. Overseas Enterprise Incentive.

A tax incentive called the Development and Expansion Incentive (DEI) was introduced in 1996. The incentive is intended to encourage companies to engage in high value added activities; to invest in high technology projects in Singapore; and to upgrade existing equipment and operations in Singapore. The incentive is designed for companies which do not otherwise qualify for pioneer status in Singapore. The initial

period for the incentive will not exceed 10 years. An extension of the incentive after the initial period may be granted. Each extension will not exceed a period of 5 years and the total period for this incentive will not exceed 20 years.

Under this incentive, income from qualifying activities will be taxed at a concessionary rate of not less than 5%. Companies may qualify for both the Pioneer Incentive on some activities and the DEI on other activities.

# 10. OTHER TAXES

## 10.1 Property Tax

Property tax is payable at the rate of 10% (with effect from 1 July 2001) of the annual value of property. Rebates of property tax are occasionally given on a "one-off" basis.

For owner-occupied residential property, the rate of property tax is 4% of the annual value of the property.

## 10.2 Stamp Duty

Stamp duty is levied on instruments and agreements enumerated in the *Stamp Duties Act* at ad *valorem* rates or at fixed rates, depending on the document concerned. The stamp should be affixed on any such instruments or agreements which are executed in Singapore, or which, if executed outside Singapore, are received in Singapore. Currently, stamp duty is only levied on instruments which relate to stocks and shares and immovable properties.

## 10.3 Death and Estate Duties

Estate Duty is levied at graduated rates on the value of a deceased's real and personal property located in Singapore. In the case of a deceased person who was, at the time of his death, domiciled in Singapore, his movable property forms part of his taxable estate wherever it is located. If a deceased person is not domiciled or resident in Singapore, the moveable assets of his estate will be exempt from estate duty.

A deceased person is treated as having been resident in Singapore if during the period of twelve months ending on the date of his death he had resided in Singapore notwithstanding any temporary absence abroad or had spent, in the aggregate, 183 days in Singapore.

The full value of the deceased's interest in residential properties (up to an aggregate of S$9 million), whether or not occupied by him, is exempt. In addition, the first S$600,000 of the balance of his estate is exempt. The rates of duty charged are 5% on an estate valued up to S$12 million and 10% on every dollar exceeding S$12 million.

## 10.4 Goods and Services Tax

A goods and services tax ("**GST**") became effective April 1, 1994. The GST is broad-based with few exemptions for specific industries, the main exemptions being for financial services and residential real estate. Businesses with annual sales of less than S$1,000,000 are not required to register for GST purposes and to charge GST on their supplies. Exports are zero-rated.

The standard rate of GST is 5% with effect from 1 January 2004.

# 11. RESIDENTIAL PROPERTY

The *Residential Property Act* (the "Act") of Singapore contains substantial restrictions on the transfer of residential property to "foreign persons".

In the first instance, all transfers of residential property to foreign persons are, subject to certain exceptions, prohibited and null and void. "Transfers" here include beneficial transfers, testamentary transfers and transfers of any estate or interest in the residential property except by way of mortgage, charge or reconveyance. The Act contains a detailed definition of "residential property". The definition of residential property specifically excludes commercial and industrial properties and buildings and premises permitted to be used as a commercial or industrial property, any registered hotels, and such other land or building as the Minister may from time to time declare. "Foreign persons" include non-citizens of Singapore, permanent residents, companies not incorporated in Singapore and societies not formed in Singapore, which have not been specially exempted or approved by the Minister.

The major exception to the basic rule is that foreigners may purchase flats in buildings in excess of 6 storeys or approved condominiums. This exception is subject to the proviso that a foreigner cannot acquire all of the units in a building or all of the condominiums in a development without the approval of the Minister, unless such acquisition is by way of agreement, lease or assignment for a term not to exceed 7 years. (It should be noted that leases to "foreign persons" may in any case not exceed 7 years.)

Singapore companies holding residential property are not permitted to have non-citizen members or directors, and are required to amend their Memorandum or Articles accordingly. Similar requirements apply to Singaporean societies. There are a series of mechanisms in the Act that provide procedures for persons seeking exemption from these fundamental prohibitions.

# 12. EMPLOYMENT

## 12.1 Employment of Expatriates

The Singapore government has adopted a liberal policy with regard to the employment of expatriates in Singapore. The government naturally encourages foreign companies to train Singaporeans both at the factory floor level and at managerial level. Grants may be available from the Skills Development Fund for this purpose, in appropriate cases. Even though the issuance of employment passes is purely discretionary, they are, at present, relatively easily available for suitably qualified expatriates brought in to fill senior positions. In practice, this means either having a recognised university degree or at least relevant working experience.

## 12.2 Work Permit/Employment Pass/S Pass

As a general rule, all foreigners, except Singapore Permanent Residents, taking up employment in Singapore must secure work permits if earning up to S$2,500 and employment passes if earning more than S$2,500. Work permits or employment passes are normally issued for one to five years, subject to renewal.

The particulars of the employer must be submitted to the Ministry of Manpower. The applicant must have a local entity as sponsor. A pre-arranged employment is a pre-requisite and the application incorporates an undertaking from the employer to pay for the employee's repatriation on request by the Ministry of Manpower.

An employment pass application generally takes two weeks to be processed whereas a work permit application takes one day, when filed electronically.

In issuing the employment pass, the Ministry of Manpower will take into consideration the qualifications of the applicant and the reputation of the employer. For wives and children of employees issued with certain categories of employment passes, dependants' passes can be applied for.

In issuing the work permit, the demand for the services will be taken into account.

The Ministry of Manpower ("**MOM**") has recently announced that it will be introducing a new category of work pass available to foreigners who wish to be employed in Singapore with effect from 1 July 2004. The rationale behind the introduction of the "S" pass is to meet the need for "middle level" skilled manpower.

Applications for "S" passes will be assessed on a points system, which will take into account various criteria such as salary, educational qualifications, skills, work experience and type of job. It is anticipated that applicants for the new "S" pass will be required to have a minimum basic monthly salary of S$1,800. In addition, instead of requiring the applicant to possess acceptable tertiary qualifications, the applicant will only be required to have a diploma or technical qualifications, and relevant work experience. Upon initial grant, the "S" pass will be valid for two years, and renewable for three years thereafter.

Professional visit passes may be obtained for those who are in Singapore on specific short-term assignments, e.g. consultants, entertainers, etc.

## 12.3 Employment Laws

The *Employment Act* applies only to employees who have entered into or work under a contract of service. It also does not apply to any persons employed in managerial, executive or confidential positions. This Act contains general provisions on terms of employment including payment of salary, termination and period of notice of termination and liability for breach of contract. There are certain other minimum requirements such as hours of work, annual leave, and sick leave which apply only to employees earning S$1,600 or less per month.

In cases where the *Employment Act* does not apply, actual conditions and terms of employment are left to be agreed between the employer and the employee. These conditions are usually written into a contract of service and signed by both the employer and the employee. As such, for employees outside the *Employment Act*, the terms of employment depend on what is negotiated between the parties and set out in the contract of service.

## 12.4 Central Provident Fund

### Singapore or Permanent Resident Employees

Employers have to make mandatory contributions to the Central Provident Fund ("**CPF**") accounts of employees who are Singapore citizens or who have permanent resident ("**PR**") status, based upon the wages earned by each employee. CPF contributions are prohibited in respect of expatriate employees.

The CPF contribution currently payable to the CPF Board by the employer for an employee who is under the age of 55 is 33% of the monthly salary of the employee.

Of the 33% contributed, the employer is entitled to recover 20% by deduction from the employee's agreed salary, so that the employer effectively contributes only 13% of the monthly salary.

For employees who are above 50 and up to 55 years old, it is anticipated that the contribution for this age group will be further reduced to 30% with effect from 1 January 2005, and to 27% with effect from 1 January 2006.

During the first year of acquiring permanent resident status, CPF contributions are at the reduced rate of 9% (of which 5% can be deducted from the employee's salary). During the second year of acquiring permanent resident status, CPF contributions are at the reduced rate of 24% (of which 15% can be deducted from the employee's salary). The contribution rate for a permanent resident during his or her subsequent years is the same as those for Singapore citizens (as mentioned above, currently 33%).

If CPF contributions have to be made at the full rate of 33%, the maximum amount to be contributed by the employer on ordinary wages (i.e., wages that are payable on a monthly basis) is currently S$1,815 per month (of which the maximum amount deductible from the employee's salary is S$1,100). In other words, the maximum ordinary wages on which CPF is levied is S$5,500 per month. No CPF contribution is required on any amount in excess of S$5,500, except in the case where the remuneration paid is above the basic wages (such as bonuses). There is a separate maximum contribution on bonuses, commissions and other additional wages (additional wages are wages not granted wholly and exclusively for the month).

The Government has decided to reduce the maximum monthly ordinary wages on which CPF contributions are levied from S$5,500 (currently) to S$5,000 with effect from 1 January 2005. with a further reduction from S$5,000 to S$4,500 with effect from 1 January 2006.

### Foreign Employees

No mandatory contributions have to be made by employers in respect of foreign employees. Foreign employees may not choose to make any voluntary contributions.

## 12.5 Foreign Worker Levy

Foreign employees holding work permits are not covered by the CPF scheme. Instead, the employer must pay a Foreign Worker Levy currently between S$30 and

S$470 per month depending on the industry sector, whether the foreign workers are skilled or unskilled, and the percentage of foreign workers to local employees who are engaged by the employer.

## 12.6 Other

A Skills Development Fund levy of 1% of the remuneration in any month or S$2, whichever is the greater, is payable in respect of workers earning S$1,500 or less per month.

# 13. MISCELLANEOUS MATTERS

## 13.1 Exchange Control

Singapore suspended exchange controls in 1978. No exchange control approvals are therefore required for inward investment into Singapore, for the remittance of dividends or profits or for the repatriation of capital.

## 13.2 Manufacturing Licences

Under the *Control of Manufacture Act*, a licence is required for the manufacture of certain items. However, the list of items for which a licence is required in Singapore is short and is unlikely to concern most incoming multinational corporations. Examples of items on the list include certain steel and iron products, refrigerators, air-conditioners, photographic equipment, beer and stout, cigars and chewing gum products.

## 13.3 Import and Export Controls

Historically, Singapore has been a free port. There are very few controls on imports and exports. The documentation required for imports and exports is relatively straightforward. However, under the *Strategic Goods (Control) Act* ("**SGCA**"), the transfer as well as brokering the acquisition or disposal of goods and technology relating to munitions, biological , chemical products and items which have both civilian and military use are regulated via a permit and registration regime.

Only a few items are dutiable, the principal items being liquor, tobacco, petroleum products and motor vehicles.

## 13.4 Free Trade Agreements ("FTAs")

While Singapore is a staunch supporter of the multilateral trading system (i.e. the World Trade Organisation ("**WTO**"), Singapore has also attempted to actively develop a network of bi-lateral trading arrangements with other major and strategic trading partners in the hope of accelerating the momentum of trade liberalisation. It is hoped that these FTAs will, among others, lead to an enhancement of trade and investment flows by providing lower tariffs for exports, improved market access for various commercial and professional services and better terms for investment in foreign countries.

Singapore has concluded FTAs with New Zealand, Japan, the European Free Trade Association (which includes Switzerland, Liechtenstein, Iceland and Norway), Australia and the United States. Discussions with ASEAN and the People's Republic of China, Canada, India, the Hashemite Kingdom of Jordan, South Korea, Mexico, the Pacific Three (which includes New Zealand and Chile), Panama and Sri Lanka are ongoing.

## 13.5 Intellectual Property Law

Singapore's intellectual property law is mostly legislated. The registration and protection of trade marks in Singapore is governed by the Trade Marks Act; copyright by the Copyright Act, industrial designs by the Registered Designs Act; patents by the Patents Act; and integrated circuits by the Layout-Designs of Integrated Circuits Act. Confidential information, unregistered trade marks and trade names remain protected by the common law. A more comprehensive overview of the intellectual property laws in Singapore is set out in our Intellectual Property Guide which is available upon request.

## 13.6 Competition Regime

On 12 April 2004, Singapore's Ministry of Trade and Industry ("**MTI**") released a Consultation Paper seeking feedback from the public on a draft Competition Bill ("**draft Bill**").

The policy behind the introduction of competition laws in Singapore is to help reinforce Singapore's competitive business environment. By preventing companies from engaging in restrictive anti-competitive practices, the MTI hopes to enhance the efficient functioning of local markets and strengthen Singapore's microeconomic competitiveness.

On a macro level, the draft Bill seeks to incorporate relevant international best practices whilst realising that Singapore's economy is relatively small and open. Also, it is hoped that regulatory costs will be kept to a minimum and not to force businesses to face undue regulation, which would add to costs and reduce Singapore's international competitiveness.

MTI will conduct two rounds of public consultation on the draft Bill - the first round in April/May 2004 and the second round in July/August 2004. The public consultation will be accompanied by an *Outreach Programme* to gather further feedback on the draft Bill. MTI targets to table the draft Bill in Parliament in the last quarter of 2004.

## 13.7 Membership to the Singapore Business Federation ("SBF")

On 1 April 2002, the *Singapore Business Federation Act* ("**SBFA**") came into operation and the Singapore Business Federation ("**SBF**") was formed. The objective of the SBF is to be the apex chamber of commerce to address the concerns of businesses with a substantial presence in Singapore.

Under the SBFA, a local company with a paid-up capital of or above S$500,000 shall become a member of the SBF. Similarly, a local branch where its foreign head office has an authorised share capital of or above S$500,000 shall become a member of the SBF. Membership to the SBF for such companies is automatic and compulsory under the SBFA. Members of the SBF are required to pay an annual subscription to the SBF. Annual subscription fees are determined by the Council of the SBF. These fees are pegged to the amount of a company's paid up or the foreign head office's authorised share capital.

Currently, the subscription fees are as follows:

| Company's Paid up capital / Foreign Head Office's Authorized share capital | Annual fees (without GST) |
|---|---|
| S$10m & above | S$800 |
| S$5m to less than S$10m | S$600 |
| S$1m to less than S$5m | S$400 |
| S$0.5m to less than S$1m | S$300 |

Under the SBFA, any subscription payable to the SBF may be recovered by the Council by an action for a debt in any court of competent jurisdiction. The Council also has the option of lodging a claim for payment of the subscription fees with the Singapore Small Claims Tribunal.

Pursuant to the Singapore Business Federation (Exemption) Order 2002, gazetted on 13 September 2002, companies which have no employees are exempted from compulsory SBF membership. This exemption has been effective from 1 April 2002. In order to benefit from this exemption, the company must submit to the SBF Council:

- a declaration by any of its directors that the company did not or does not have any employee during that particular period; and
- the most recent annual audited accounts.

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