



Singapore

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GUIDE TO DOING BUSINESS IN SINGAPORE



Contents

Introduction	2
Dispute Resolution Systems	4
General Contract Law Principles	6
Business Structures	7
Closing Down of Business	10
Licensing Of Business Activities	12
Incentives for Setting Up Business in Singapore	13
Competition Law	14
Intellectual Property	15
Immigration	16
Employment Regulations	19
Workplace Health and Safety Regime	22
Taxation	23
Foreign Investment	26
About Rajah & Tann	27
Contact Information	28

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Introduction

Singapore is a small island city-state located near the southern tip of the Malay Peninsular. With a multi-racial population of approximately five million people comprising of four major ethnic groups – Chinese, Malay, Indian and Eurasian – the four national languages are Malay, English, Chinese (Mandarin) and Tamil, although the main language of business is English. As such, Singapore is often touted as being the bridge between East and West, and is seen as an ideal location to serve as a gateway to other markets in the region, with many multi-national corporations choosing to situate their businesses in Singapore in order to use Singapore as a hub from which to run their regional and global business operations.

Despite Singapore's small size and lack of natural resources, it has one of the highest GDP per capita ratios in the world, and is an attractive place for doing business, due to the government's pro-business and pro-foreign investment outlook, which has resulted in a free market economy that is open and corruption-free. The government has also invested heavily in developing a strong and stable infrastructure to support businesses and encourage economic development, including an extensive network of transport and telecommunications links with various countries all over the world which help to make Singapore a top global transportation hub. In addition, Singapore possesses a highly educated

and skilled workforce, and is generally very receptive to welcoming skilled foreign talent.

Singapore is ranked as the world's third most competitive country by the International Institute for Management Development in its World Competitiveness Yearbook 2015. Singapore also continues to be ranked as the world's easiest place to do business by ranking number one in the World Bank's Doing Business 2015 Report. Further, Singapore has also been ranked as the second-most competitive economy in the world by the World Economic Forum in its Global Competitiveness Report 2015-2016 five years running.

Government and Legal System

Singapore's governmental system is a parliamentary system that is based on the British Westminster system of unicameral parliamentary government representing constituencies.

The organs of state comprise:

(1) The Executive: Head of State and Head of Cabinet

Executive power rests with the Cabinet, which is led by the Head of Cabinet, the Prime Minister, and the President, the Head of State. The President is elected through popular vote for a fixed term of 6 years, and possesses veto powers in respect of certain key decisions such as the use of the national reserves and the appointment of judges, but otherwise occupies a largely ceremonial post.

(2) The Legislature: Parliament

Parliament serves as the legislative branch of the Singapore government, and is elected by general election every five years. Legislation is enacted through Bills which are then passed by Parliament and assented to by the President. The Members of Parliament ("MPs") consist of elected, non-constituency and nominated members. Elected MPs are voted into parliament on a "first-past-the-post" basis and represent either single-member or group-representation constituencies.

(3) The Judiciary: The Supreme Court and the State Courts

The judiciary is one of the three constitutional pillars of government along with the Legislature and the Executive. The Supreme Court comprises the Court of Appeal and the High Court. The State Courts (previously known as the Subordinate Courts) comprise several courts including various other specialised courts such as the Family Court and the Small Claims Tribunal.

The legal and judicial system in Singapore is robust and efficient and Singapore is reputed for its tough stance against corruption. Due to Singapore's history as a British colony, Singapore's legal system is generally modelled on the English legal system.

Dispute Resolution Systems

(1) Litigation

The Singapore courts are divided into two tiers – the lower tier consisting of the State Courts (comprising the District Courts, the Magistrates' Courts, and various other specialised Courts such as the Family Court and the Small Claims Tribunal mentioned above), and the higher tier consisting of the Supreme Court (comprising the Court of Appeal and the High Court).

Out of the courts that make up the State Courts, the District Courts and Magistrates' Courts hear both civil and criminal cases. In respect of civil cases, the Magistrates' Courts deal with cases involving claims which do not exceed S\$60,000, whilst the District Courts deal with cases involving claims which do not exceed S\$250,000. The other specialised courts hear cases in respect of certain specified persons or subject matters, such as the Juvenile Court, which deals with cases involving offences committed by persons below 16 years of age, and the Family Court, which deals with various family-related matters such as divorce proceedings or issues of maintenance.

The High Court exercises original and appellate jurisdiction in both civil and criminal cases, as it hears cases in the first instance as well as cases on appeal from the State Courts. Generally, if a civil case involves a claim for a value of more than

S\$250,000, the action must be commenced in the High Court. Although the High Court has the power to hear all criminal cases, it typically hears criminal cases involving offences which are punishable with death or with imprisonment for a term which exceeds 10 years. The High Court is also empowered to reverse decisions from the State Courts, or ask the State Courts to conduct a new trial on the matter.

The Singapore International Commercial Court ("SICC") was established in 2015 as a division of the High Court and it is designed to deal with transnational commercial disputes. The SICC offers the option of a court-based dispute resolution mechanism, adjudicated by a panel of experienced judges comprising specialist commercial judges from Singapore and international judges from both civil law and common law traditions. The SICC allows parties to avoid the following problems which they often encounter in arbitration:

- (i) delay in, and rising costs of arbitration;
- (ii) the lack of consistency of decisions and absence of developed jurisprudence;
- (iii) the absence of appeals; and
- (iv) the inability to join third parties to the arbitration.

Hence, with the addition of SICC, the High Court provides a more holistic route for parties to settle their commercial disputes.

The Court of Appeal hears appeals of civil and criminal cases from the High Court, and is presided over by the Chief Justice, and in his absence, a Judge of Appeal or a Judge of the High Court. The Court of Appeal is usually made up of three Judges, although there may be certain instances where appeals may be heard by only two Judges, or five or any greater uneven number of Judges.

(2) Mediation

Mediation is a process whereby disputing parties mutually agree to appoint a neutral party known as a mediator to assist the parties in negotiating with each other to reach a settlement amicably.

Mediation can be conducted by different organisations, but the more popular organisations are the Singapore Mediation Centre and the State Courts Centre for Dispute Resolution. Due to the fact that the disputing parties must mutually agree to submit their case for mediation, mediation is most ideal for situations in which both parties genuinely desire to find a mutually acceptable solution to their dispute.

The main advantages of mediation are as follows:

- (i) the mediation process is generally faster than other dispute resolution methods;
- (ii) parties can retain control over the outcome of the mediation; and
- (iii) privacy is maintained as parties are not exposed to the media and the public.

However, the main disadvantage of mediation is that it may not be final, and even if a final decision is reached, such a decision is not binding on the parties. If the parties cannot reach an appropriate settlement, they may have to resort to other forms of dispute resolution, such as arbitration or litigation.

(3) Arbitration

Arbitration is a consensual process whereby parties submit their dispute to a neutral arbitrator for a binding and final decision, and is less formal than a trial in court.

Arbitration does not need not to be conducted in Singapore but if the parties choose Singapore as the venue for the arbitration, the Singapore

International Arbitration Centre can be used for both international and domestic disputes.

Some of the advantages of arbitration are as follows:

- (i) speedier resolution of a dispute than if it goes to trial in court;
- (ii) lower costs than if the matter were to go to litigation; and
- (iii) the ability of parties to choose an arbitrator who has the technical knowledge in a particular field.

Theoretically, the parties can agree to go for arbitration before or after a dispute between them occurs. However, the general practice in Singapore is that most parties would typically only go for arbitration if they have pre-agreed in their contract that they would do so. Thus, if the parties wish to arbitrate in the event of a dispute, they should expressly provide for this in their contract.

General Contract Law Principles

As such, Singapore contract law is generally quite similar to English contract law, and for situations in which there is no Singapore authority on a particular point of law, *prima facie* the position that is assumed to apply will be that of the position under English law.

Contract law in Singapore is largely based on the common law of contract in England. There is no single piece of legislation that codifies the principles of Singapore contract law. As such, contract law in Singapore is still largely reliant on judge-made rules that may be modified in certain circumstances pursuant to certain specific pieces of legislation. For example, the Civil Law Act (Chapter 43) sets out certain types of contracts which are required to be in writing in order for an action which is brought in respect of such a contract to be valid (for example, contracts in relation to the sale or disposition of immoveable property). Likewise, the Conveyancing and Law of Property Act (Chapter 61) provides that a conveyance of any estate or interest in land (other than a lease for a period of less than 7 years) must be made by deed in the English language.

Many of the statutes in Singapore that contain provisions in relation to certain areas of contract law are either taken from original English statutes that were incorporated as part of Singapore's statutory law by virtue of Section 4 of the Application of English Law Act (Chapter 7A), or have been drafted based on existing English statutes or statutes from other jurisdictions. Examples of such legislation include the Contracts (Rights of Third Parties) Act (Chapter 53B) and the Consumer Protection (Fair Trading) Act (Chapter 52A).

Business Structures

There are various types of business vehicles which can be used to establish business operations in Singapore. The principal forms of such business vehicles are as follows:

(1) Sole Proprietorship

A sole proprietorship is a business that is owned by an individual or a single corporate entity. A sole proprietorship may generally carry out any type of business activity in Singapore except for those business activities which are required by statute to be conducted by a corporate entity, such as banking, finance and dealings in securities. Due to the fact that a sole proprietorship does not have separate legal personality, the owner of a sole proprietorship will be personally liable to creditors for all debts and liabilities incurred in the name of the business without limitation.

In the case of a foreign investor seeking to establish a sole proprietorship in Singapore, a local manager who will be responsible for the management of the business must be appointed. The local manager does not have to be a Singapore citizen or permanent resident. An expatriate holding a work pass granted by the Controller of Immigration, and physically resident in Singapore, could qualify for appointment as a local manager. As an alternative to appointing a local manager, the foreign investor may opt to obtain a work pass.

(2) Partnership

A general partnership is a business consisting of at least two but less than 20 partners. Once there are more than 20 partners, the partnership must be registered as a company under the Companies Act (Chapter 50). The partners of a partnership may either be natural persons or corporate entities. Similar to a sole proprietorship, a general partnership is not a separate legal entity, and thus the partners of the partnership will be jointly liable to creditors for all debts and liabilities incurred in the name of the partnership without limitation.

(3) Limited Partnership

A limited partnership (“LP”) is a partnership which consists of at least one general partner and one limited partner. Both the general partners and limited partners may be either natural persons or corporate entities. An LP does not have separate legal personality. As such, a general partner, who would generally take part in the management of the LP, will be responsible for all debts and liabilities incurred in the name of the LP without limitation. Conversely, a limited partner, who is prohibited from taking part in the management of the LP (if he does so, he will be deemed to be a general partner), will not be liable for the debts and liabilities incurred in the name of the LP beyond the limited partner’s agreed contribution in the LP.

(4) Limited Liability Partnership

A limited liability partnership (“LLP”) is a corporate entity that comes into being by being registered under the Limited Liability Partnership Act (Chapter 163A). An LLP has a legal personality separate from that of the partners of the LLP. Thus, a partner of an LLP shall generally not be personally liable for the debts and liabilities incurred in the name of the LLP except in certain exceptional circumstances, such as when an obligation arises as a result of the partner’s own wrongful act or omission. However, a partner would not be personally liable for the

wrongful act or omission of any other partner of the LLP.

Every LLP is required to keep accounting and other records that will give a true and fair view of the state of affairs of the LLP. Although the LLP's accounts are not required to be audited, such records must be kept for at least 5 years. An LLP is also required to report its financial status of solvency or insolvency annually.

(5) Singapore Incorporated Company

A company is a business entity registered pursuant to the Companies Act. It has a separate legal personality from that of its members, and thus will generally be responsible for its own debts and liabilities, and has the right to own property, to sue or be sued in its own name, and has perpetual succession.

However, it should be noted that companies in Singapore are generally subject to greater statutory regulation than the other forms of business vehicles, such as the various ongoing compliance requirements under the Companies Act.

There are various types of companies in Singapore, which are as follows:

(i) *Private Company Limited by Shares*

A private company limited by shares is the most common business entity for setting up a business in Singapore. A private company limited by shares must have not more than 50 shareholders, and the right to transfer shares of the company must be restricted. Shareholders of a company would generally only be liable for the company's debts up to the amount of share capital they have subscribed. It is quite common for foreign companies that wish to set up subsidiaries in Singapore to choose to structure the subsidiary as a private company limited by shares as the foreign company can

retain control over the Singapore subsidiary by being the sole or a major shareholder of the Singapore subsidiary.

An exempt private company must prepare its balance sheet and profit and loss account annually, but it need not submit these documents with its annual return. An exempt private company is also permitted to make loans to its directors and to companies in which its directors are interested.

(ii) *Public Company Limited by Shares*

Any company which is not a private company is a public company. The number of shareholders of a public company can be more than 50. A public company is generally subject to more regulation than a private company, such as the requirement that it must register a prospectus with the Monetary Authority of Singapore before making any public offer of shares and debentures.

(iii) *Public Company Limited by Guarantee*

A company limited by guarantee is essentially a company with no shares, and in place of shareholders, it is controlled by one or more members with liability limited to the amount each member agrees to guarantee, which can be a sum as small as S\$1. In addition, a company limited by guarantee is generally prohibited from distributing profits to its members. As such, the public company limited by guarantee structure is typically used by not-for-profit organisations.

Where a company limited by guarantee is wound up and does not have sufficient funds to meet the claims of its creditors, each member's liability is limited to the amount it has agreed to guarantee, which is typically provided for in the

constitution (previously called the memorandum and articles of association).

(6) Branch of a Foreign Corporation

A foreign company may opt to register a branch under the Companies Act. A branch is not a separate legal entity in that its debts and liabilities are part and parcel of the debts and liabilities of the head office of the foreign corporation.

There is an obligation on the foreign corporation to appoint one person resident in Singapore as its authorised representative (the "Representative") to accept service of process and any notice required to be served on the corporation. A corporation cannot be appointed as a Representative. The Representative must be ordinarily resident in Singapore. A Singapore citizen, Singapore Permanent Resident or a foreigner living in Singapore and holding an Employment Pass or Dependant Pass issued by the Controller of Immigration will be deemed to be ordinarily resident in Singapore. The functions of the Representative is limited and, as long as the obligations under the Companies Act are complied with, the role and responsibility of the Representative is generally less demanding and onerous than that of a director of a company incorporated in Singapore.

(7) Representative Office

In the case of a foreign investor which is a corporation that does not wish to conduct business activities in Singapore, but nevertheless desires to have some presence in Singapore for promotion and liaison purposes, it may consider establishing a representative office. A representative office is prohibited from engaging in business activities.

Closing Down of Business

Depending on the type of business vehicle utilized, the procedure for the closing down of a business would vary. Such procedures are as follows:

(1) Private Company Limited by Shares

A private company limited by shares may be voluntarily closed in Singapore by a members' or creditors' voluntary winding up, compulsorily closed pursuant to an Order of Court or struck off the Register of Companies by submitting an application to the Accounting and Corporate Regulatory Authority of Singapore ("ACRA"). The procedures for these methods are set out below.

(i) Members' Voluntary Winding Up

In a members' voluntary winding up, the directors of the company would be required to file a declaration of solvency with the ACRA to the effect that the directors are of the opinion that the company will be able to pay its debts in full within 12 months after the commencement of the winding up. The shareholders of the company must subsequently approve the voluntary winding up via the passing of a special resolution, and would also be required to pass an ordinary resolution appointing a liquidator to conduct the winding up. Once all the affairs of the company have been fully wound up, the liquidator would then have to convene a final meeting of shareholders to present the final accounts of the company. Upon the expiry of 3 months from the final meeting, the company will then be dissolved and the winding up will be completed.

(ii) Creditors' Voluntary Winding Up

If the directors of the company are unable to file the solvency statements, or if the liquidator is of the opinion that the company will not be able to pay or provide for the payment of its debts in full within 12 months after the commencement of the winding up, the liquidator is required to summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company. The creditors may then choose to appoint another person to act as liquidator. If the creditors choose to do so, the winding up will proceed thereafter as if it were a creditors' voluntary winding up.

(iii) Compulsory Winding Up

A company may be wound up pursuant to an Order of the Court under certain circumstances (for example, the company is unable to pay its debts). A liquidator may be appointed by the Court to wind up the affairs of the company or, in the absence of such appointment by the Court, the Official Receiver shall be the liquidator of the company. The liquidator will wind up its affairs and file the necessary notifications required under the Companies Act.

(iv) Striking Off

A company may apply to the ACRA to be struck off the Register of Companies. However, in order to do so, it should be noted that the company must have ceased trading or must not have commenced business from the date of incorporation of the company. The company must also not have any current or contingent assets and liabilities. These are very stringent requirements that the company may find difficult to fulfill.

If the company is able to meet the above requirements, an online application may be submitted to the ACRA to strike the company off the Register of Companies. If there are no

objections to the striking off application within 4 months, a final notice will be published in the Singapore Government Gazette stating that the company has been struck off the Register of Companies.

(2) Branch

In the event that a foreign company ceases to have a place of business in Singapore or to carry on business in Singapore, or has undergone liquidation in its place of incorporation, the Representative of the branch would be required to file either a Notification by A Foreign Company of the Cessation of Business or a Notification by the Foreign Representative of a Foreign Company of the Liquidation or Dissolution of a Company respectively with the ACRA.

(3) Limited Partnership

Where a LP has been dissolved or has ceased business, a Notification of Cessation of Limited Partnership would need to be filed with the ACRA by a general partner of the LP. In the case of a dissolution, the affairs of the company would generally be wound up by the general partners of the LP.

(4) Limited Liability Partnership

The methods of effecting a voluntary closure of an LLP are similar to that of a private company limited by shares.

(i) Members' Voluntary Winding Up

An LLP may be voluntarily wound up if the partners of the LLP are of the opinion that the LLP will be able to pay its debts in full within 12 months after the commencement of the winding up. The LLP has to appoint a liquidator to wind up its affairs and file the necessary notifications required under the LLP Act.

(ii) Creditors' Voluntary Winding Up

If the partners of the LLP are of the opinion that the LLP cannot by reason of its liabilities continue its business, a meeting of its creditors would need to be convened to allow them to consider its proposal for the company to be wound up. If the creditors agree to the winding up, the LLP has to appoint a liquidator or provisional liquidator to wind up its affairs and file the necessary notifications required under the LLP Act.

(iii) Compulsory Winding Up

An LLP may be wound up pursuant to an Order of the Court under certain circumstances (for example, the LLP is unable to pay its debts). A liquidator may be appointed by the Court to wind up the affairs of the LLP or, in the absence of such appointment by the Court, the Official Receiver shall be the liquidator of the LLP. The liquidator will wind up its affairs and file the necessary notifications required under the LLP Act.

(iv) Striking Off

An LLP may apply to the ACRA to strike its name off the Register of Companies. The ACRA may approve the application if there is reasonable cause to believe that the LLP is not carrying on business and the LLP is able to satisfy the criteria for striking off.

Licensing Of Business Activities

Whichever form of business organisation is utilised and apart from the registration process, the need to obtain approvals or licences from the relevant government departments or statutory authorities may arise depending on the proposed business activity which is to be conducted through the form of business organisation in question. Examples of business activities for which special approvals or licences are required, regardless of whether they are conducted by locals or foreign investors, include the following:

- (i) banking and insurance business;
- (ii) dealing in securities or acting as a financial adviser;
- (iii) manufacture of goods listed in the First and Second Schedules to the Control of Manufacture Act (Chapter 57);
- (iv) dealing in chemicals falling within the statutory definitions of “poison”, “hazardous substance”, “toxic industrial waste” or “radioactive material”;
- (v) operating an employment agency;
- (vi) operating a hotel or a travel agency;
- (vii) money-lending; and

- (viii) activities which can only be conducted by professionals possessing qualifications laid down by statute, for example lawyers and accountants.

The LicenceOne (accessible at <https://licence1.business.gov.sg>) is a one-stop portal operated by the government providing licensing information and resources, as well as an integrated licence application service to existing businesses and start ups operating in Singapore. Generally, most business licences can be applied for online via LicenceOne, and a business can apply for multiple licences simultaneously. The licences can also be updated, renewed and terminated through this portal. However, certain licences must be applied for separately through other governmental agencies. For example, an application for a Capital Markets Services Licence must be submitted to the Monetary Authority of Singapore, whilst an application must be made to the Attorney-General’s Chambers for the setting up of a foreign law practice in Singapore.

The typical processing time for licences applied for through LicenceOne ranges from between 1 week to 2 months, depending on the type of licence that is being applied for. However, the processing time for licences applied for through other governmental authorities may vary, again depending on the type of licence that is being applied for.

Incentives for Setting Up Business in Singapore

The Singapore government offers certain tax incentives for newly established Singapore companies. If a Singapore company is tax resident in Singapore (i.e. the control and management of the company is exercised in Singapore) and has no more than 20 shareholders (where all of the shareholders are individuals beneficially and directly holding the shares in their own names, or at least one shareholder is an individual beneficially and directly holding at least 10% of the issued ordinary shares of the company), it may be entitled to enjoy various tax exemptions.

Businesses in Singapore may also be eligible for various government grants and incentives, depending on which industries the business belongs to as well as the areas in which the business wishes to apply for assistance for. Some examples of such grants and incentives are:

- (1) **the International Headquarters Award and the Regional Headquarters Award** – Eligible foreign companies will be provided with certain tax incentives if they are using Singapore as a base for conducting headquarters management activities to oversee, manage and control their regional and global operations and businesses;
- (2) **the Research Incentive Scheme for Companies** – Eligible businesses will be given grants for the purpose of defraying the cost of research and development activities in certain areas of strategic technologies; and
- (3) **Training Grants** – Eligible businesses will be given government training grants to encourage manpower capability development in applying new technologies, industrial skills and professional know-how.

Competition Law

Singapore's Competition Act (Chapter 50B) imposes three main prohibitions on anti-competitive behaviour.

Firstly, any agreements which have as their object or effect the appreciable prevention, restriction or distortion of competition within Singapore would automatically be prohibited under the Competition Act, unless such agreements are excluded or exempted. Such a prohibition applies even if the agreement is entered into outside of Singapore, or if any party to the agreement is incorporated or situated outside of Singapore.

Certain agreements may be excluded from the prohibition under the Competition Act if it can be proven that the agreement has a net economic benefit, i.e. that the agreement contributes to the improvement of production or distribution or promotes technical or economic progress, and that it neither imposes on parties to the agreement restrictions which are not indispensable to the attainment of those objectives nor provides the parties with an opportunity to eliminate competition in respect of a substantial part of the goods or services that are subject to the agreement.

Secondly, the Competition Act forbids any conduct of an undertaking (i.e. any person, being an individual, a body corporate, an unincorporated body of persons or any other entity capable of carrying on commercial and economic activities relating to goods or services, regardless of whether they are foreign or Singapore-owned) that amount to an abuse of a dominant position. Under this

prohibition, there is a two-stage test. Firstly, it is determined whether the undertaking is dominant in a relevant market either in Singapore or elsewhere (i.e. whether it has substantial market power, such as having the ability to profitably sustain prices above competitive levels or to restrict output or quality below competitive levels, or weaken competition by raising barriers to entry.) Secondly, if it is dominant, whether it has abused that dominant position in a market in Singapore.

Thirdly, there is a prohibition against mergers that substantially lessen competition. Mergers include amalgamations, schemes of arrangements, acquisitions of undertaking or the acquisitions of the assets of undertakings. The creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity, may also be deemed to be a merger.

Intellectual Property

The various forms of intellectual property that are protected in Singapore are patents, trade marks, registered designs, copyright, layout-designs of integrated circuits, geographical indications, trade secrets and confidential information, as well as plant varieties.

In order to obtain a patent, an application must be made to the Registry of Patents in Singapore. Generally, the following three criteria must be satisfied before a patent application will be approved:

- (i) the invention must be new – it should not have been made known to the public anywhere in the world;
- (ii) the invention must be inventive – it must be an improvement over any existing product or process that is already available; and
- (iii) the invention must be of practical use, and must be capable of being made or used in any industry.

A registered patent would be protected for a period of up to 20 years, subject to an annual renewal fee. Similarly, a design must be registered with the Intellectual Property Office of Singapore in order to be protected. The design registration system in Singapore operates on a first-to-file basis; in other words, the first person to file for an application will, in general, have priority over others.

Trade marks do not need to be registered in order to be protected under Singapore law, although it should be noted that in cases where a trade mark is not registered, the owner of such a trade mark would only be able to rely on the common law action of "passing off" to protect his mark against imitation or infringement. Should an owner of such a trade mark bring a claim against an alleged infringer, he would be required to prove his goodwill or reputation, that there has been a misrepresentation by the infringer and that he has suffered damage to his goodwill as a result. The requirement of proving goodwill may be difficult if the owner's business, or the use of the trade mark, has not been established for a substantial period of time.

Likewise, in the case of copyright, the author of a work to which copyright applies automatically enjoys copyright protection as soon as he creates and expresses his work in a tangible form, and there is no need to file for registration to get copyright protection. A copyright work created by a Singapore citizen or resident is protected in many countries overseas by virtue of international agreements, and such works would be protected in countries that are party to the international agreements as though the work was made there. Examples of such international agreements include the Berne Convention for the Protection of Literary and Artistic Works, as well as the Agreement on Trade-Related Aspects of Intellectual Property Rights. Examples of other countries which are party to such international agreements are the United States of America, the United Kingdom, Switzerland, Germany and Thailand.

However, it should be noted that it may be difficult for a person to prove the authorship of a copyrighted work, and in situations where infringement proceedings are instituted, the Singapore courts will need to decide if there is sufficient evidence to prove the authorship.

Immigration

(1) Work Permits and Visas

Generally, foreigners who wish to work in Singapore would be required to apply for a work pass with the Ministry of Manpower (“MOM”). Singapore citizens and Singapore Permanent Residents are not required to obtain such work passes and may freely work for any organizations in Singapore without the need for a work pass.

However, there are certain restrictions on the number of foreigners that a company may employ, depending on the class of worker or the industry in which he is employed. For example, the number of foreigners holding S-Passes (as defined below) that a company can employ is capped at 15% of the company's total workforce in the services sector or 20% of the company's total workforce in all other sectors. Companies may also be prohibited from hiring employees of certain nationalities in respect of certain industries.

Foreigners applying for work passes would be required to meet certain salary requirements in order to be eligible to apply for a work pass. The various types of work passes available to a foreigner intending to work in Singapore are as follows:

- (i) Employment Pass – for professionals, managers, executives or specialists who earn a fixed monthly salary of at least S\$3,300 or more, depending on their qualifications and experience (with effect from 1 January 2017, the minimum fixed monthly salary requirement will be raised to S\$3,600) and possess certain recognised qualifications;

- (ii) S Pass – for mid-level skilled workers who will be paid a fixed monthly salary of S\$2,200 or more and possess certain educational qualifications and relevant work experience; and
- (iii) Work Permit – for foreign workers from approved source countries working in the construction, manufacturing, marine, process or services sector.

Foreigners who wish to apply for an EntrePass may start a private limited company with at least \$50,000 in paid-up capital registered with ACRA and hold at least 30% of the shares, where the company meets at least one of the requirements which will be assessed based on merits:

- (i) has funding from a government-accredited venture capitalist or business angel;
- (ii) holds an intellectual property;
- (iii) has research collaboration with A*STAR or a university; and
- (iv) is an incubator at a government-supported incubator.

In addition, there are certain types of activities whereby foreigners may be permitted to perform such activities in Singapore for up to a maximum period of 60 days or a cumulative total of 90 days in a calendar year without the need to apply for a work pass. These exempted activities include, inter alia, performances (although foreigners who wish to perform at certain approved bars, discotheques, lounges, night clubs, pubs, hotels, private clubs or restaurants may be required to apply for a work permit that is valid for a maximum period of up to 6 months), journalism activities, sports, exhibitions, seminars and conferences and the provision of specialised services.

A foreigner performing any of the aforementioned exempted activities is still required to submit an online notification to the MOM upon his arrival in Singapore. The notification must be submitted before he performs any of the exempted activities. The foreigner may also apply for an extension for the period of stay in Singapore up to a further maximum of 60 days, provided that the foreigner applies for and is similarly granted an extension to the short term visit pass issued to him by the Immigration and Checkpoints Authority (“ICA”).

Foreigners may also be required to apply for a work pass with a maximum validity period of up to 60 days (i.e. a Miscellaneous Work Pass) if they intend to engage in certain activities involving issues of religion, race, community or politics, or if they are foreign journalists covering an event or writing a story in Singapore.

(2) Permanent Residence

(i) Application for Permanent Residence

There are generally four categories of foreigners who may apply for Singapore Permanent Residence. The four categories are as follows:

- (A) Spouse and unmarried children (below 21 years of age) of a Singapore citizen or Singapore permanent resident;
- (B) Aged parents of a Singapore citizen;
- (C) Employment Pass or S Pass holders; and
- (D) Investors.

One of the relevant factors that the ICA would look at when deciding whether or not to grant the application would be the applicant's length of stay in Singapore. The longer the length of stay, the more likely the ICA would be to grant the application. Thus, it is recommended that

applicants wait for at least 2 years before submitting an application for PR.

In addition, foreigners will also be able to apply for Singapore permanent residence under the Global Investor Programme (“GIP”) which is administered by the Singapore Economic Development Board. Under the GIP, an applicant would have to invest a minimum amount of S\$2.5 million in Singapore by either (a) setting up a new business in Singapore; (b) injecting additional capital into an existing Singapore-registered company for expansion; or (c) investing in a GIP-approved fund. The minimum investment period is 5 years. The investor's spouse and unmarried children below 21 years of age may also be included in the investor's GIP application.

The GIP Scheme is open to individuals who are able to meet the above investment requirements and whose existing business meets the following turnover requirements:

- (A) S\$50 million in the most recent year; and
- (B) S\$50 million on an average for each of the last three years.

Such an applicant must submit audited financial statements of his company for the last three years. If the applicant owns more than one business, he must submit the financial statements of the company with the highest turnover. An applicant is free to consolidate his businesses in order to meet the minimum annual turnover criteria. The Singapore authorities will also consider the following factors when reviewing the application:

- (A) the applicant's percentage shareholding in the company;
- (B) the applicant's role and position in the company; and

(C) the profitability of the company.

Persons who are senior corporate managers without any entrepreneurial and business track record may also apply under the GIP if they are able to meet the investment requirements, and have a minimum of 10 years of corporate management experience. The applicant must also currently be holding a senior management position (for example, CEO, CFO, CTO or Chairman) in the company in which he is employed. Such company must have a minimum annual turnover of S\$100 million.

(ii) *Aspects of Permanent Residence status*

Some aspects of PR status are as follows:

- (A) A Singapore PR is able to work in Singapore without requiring a work pass.
- (B) PR status is usually granted for 5 years, at the end of which such status will have to be renewed. Though there is no requirement as to the length of time that the PR holder has to remain in Singapore during the 5 year period, if the PR holder has spent large amounts of time out of Singapore, the ICA may, at the time of renewal of PR status, question why this was the case. From our experience, valid reasons to justify such absence would include a secondment overseas, or travelling overseas for business/work reasons.
- (C) Separately, if an applicant's sons (if any) obtain PR status as well, they may be liable to enlist for national service when they reach the appropriate age.
- (D) As a PR, it is mandatory for both the individual and the individual's employer to make contributions in respect of the individual to the Central Provident Fund ("CPF").

- (E) There are certain tax savings for a PR since a portion of CPF contributions are tax exempt.

(3) Citizenship

Singapore citizenship offers a range of benefits, such as allowing citizens to enjoy subsidized housing, healthcare, and education. Singapore passport holders also enjoy a high degree of travel freedom and have very few travel restrictions, and also enjoy liberal visa requirements when travelling to certain countries such as the USA.

Subject to certain exceptions, foreigners and Singapore permanent residents are prohibited from owning certain types of residential property (i.e. vacant residential land, landed property such as detached houses, semi-detached houses and terrace houses, and landed property in strata developments which are not approved condominium developments under the Planning Act (Chapter 232)).

A person who is at least 21 years of age and who has been a Singapore Permanent Resident for a minimum qualifying period of time may apply for Singapore citizenship on his or her own merits. Applicants for citizenship must be of good character, have satisfied the residential requirement and have the intention to reside permanently in Singapore. They must also be able to support themselves and their dependents financially.

It should be noted that Singapore immigration laws and policies are subject to frequent reviews.

Employment Regulations

Under Singapore law, the employer-employee relationship is regulated by a mixture of statutory law and common law. In particular, the Employment Act (Chapter 91) (“EA”) is the main piece of employment legislation that regulates employer-employee relations in Singapore. Pursuant to the EA, employers are required to provide their employees with certain minimum statutory entitlements in relation to certain key aspects of the employment relationship (such as salary payments and leave entitlements).

However, it should be noted that the EA does not apply to all employees. The following categories of persons would not be covered under the EA:

- (i) seamen;
- (ii) domestic workers;
- (iii) government employees;
- (iv) any person employed in a managerial or an executive position (although it should be noted that such persons who earn a monthly salary not exceeding S\$4,500 (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance howsoever described) will be regarded as an employee for the purposes of certain sections of the EA); and
- (v) any class of persons whom the Minister for Manpower declares not to be employees.

Generally, employers are free to negotiate the employer-employee relationship by way of contract. In the case of employees who fall under the ambit of the EA (“EA employees”), their employment contracts must comply with certain prescribed requirements under the EA. However, for employees who do not fall under the ambit of the EA (“non-EA employees”), employers are not required to provide them with such minimum prescribed statutory entitlements. The terms of a non-EA employee’s employment would thus be dependent on the terms of the employment contract entered into with his employer.

Under the EA, some of the key minimum prescribed statutory entitlements are as follows:

(1) Working Hours

Generally, EA employees may not be required to work more than six consecutive hours without a break, and not more than eight hours in one day. The average number of hours worked over any continuous period of three weeks must not exceed 44 hours per week. However, an EA employee may be required to work overtime by his employer, and in such cases would be eligible to receive overtime pay, as detailed in (b) below. Every EA employee is also entitled to one whole rest day in each work week.

There are no restrictions on the number of hours a non-EA employee may be required to work.

(2) Overtime

Any work performed in excess of 44 hours per week is considered overtime for which the employee must be paid at least one and one-half times his basic hourly rate of pay. The maximum permitted overtime in any one month is 72 hours, unless the Minister for Manpower grants an exemption under Section 38 of the EA.

An EA employee cannot be compelled to work on a rest day unless the nature of the work is such that it must be carried out continuously by a succession of shifts. If an EA employee works on a rest day at the employer's request, the employee is entitled to be paid an additional sum for such work.

It is not compulsory for employers to provide overtime pay to non-EA employees.

(3) Annual Leave

Under the EA, an EA employee who has worked for his employer for not less than 3 months is entitled to 7 days' paid annual leave for his first year of service, and an additional 1 day annual leave for every subsequent 12 months of service, subject to a maximum of 14 days. Annual leave entitlement is calculated in a manner proportionate to the number of completed months of service.

This annual leave is in addition to rest days, other holidays, and sick leave to which an employee is entitled. An employer may also choose to provide an EA employee with more than 14 days annual leave.

There is no minimum stipulation for annual leave in respect of non-EA employees, but companies in Singapore typically provide such non-EA employees with 14 to 28 days of annual leave.

(4) Paid and Unpaid Childcare Leave

Under the provisions of the EA and the Child Development Co-Savings Act (Chapter 38A) ("CDCA"), an employee who is also a parent may be entitled to up to 6 days of statutory paid childcare leave per year if he fulfils certain conditions. Such childcare leave will generally be pro-rated according to the employee's length of service with his employer.

Employers may also be entitled to claim partial reimbursement from the Singapore Government in

respect of employees who are eligible for such statutory paid childcare leave.

(5) Maternity Leave

Under Singapore law, the EA and the CDCA provide for certain maternity benefits and protection for female employees. Depending on whether or not a female employee fulfils certain conditions under the EA or the CDCA, she may be entitled to a maximum of 16 weeks of maternity leave.

It is an offence for an employer to dismiss a female employee during her maternity leave. In addition, if a female employee is dismissed within certain stipulated periods prior to her confinement, her employer would be obligated to pay her the maternity benefits that she would otherwise be entitled to if she had not been so dismissed.

If a female employee does not fulfil any of the requirements under the EA or the CDCA, she has no right to maternity benefits by law, and will have to rely instead on the terms of her employment contract.

Employers may also be entitled to claim partial reimbursement from the Singapore Government in respect of employees who are eligible for such statutory paid maternity leave.

(6) Paid Sick Leave

An EA employee who has been employed for at least 6 months is entitled to a paid sick leave of 14 days per year if no hospitalisation is required, and 60 days per year if hospitalisation is necessary. The employee must obtain a medical certificate from a medical practitioner appointed by the employer or a medical officer before he or she can avail of such entitlement.

There is no minimum stipulation for paid sick leave in respect of non-EA employees. However, companies in Singapore typically provide such non-

EA employees with the minimum entitlements under the EA.

(7) Minimum Wage

Notwithstanding recent debate on the subject, there is no stipulated minimum wage under Singapore law. Hence, wage increments, reductions, or pay freezes are matters for contractual negotiation between the parties. Employees are also not statutorily entitled to an annual wage increase.

Workplace Health and Safety Regime

The Workplace Safety and Health Act (Chapter 354A) (“WSHA”) regulates the safety and health of employees in Singapore. Under the WSHA, employers or occupiers of a workplace have a duty to take, as far as is reasonably practicable, measures to ensure that the workplace, all means of access to or egress from the workplace, as well as any machinery, equipment, plant, article, or substance kept therein are safe and without risks to the health of its employees.

Prior to 1 September 2011, the WSHA covered all factories and workplaces of various risk levels and industries. A factory permit is required for the operation and use of a factory. However, recent amendments to the WSHA which took effect from 1 September 2011, extended the scope of the WSHA to cover all workplaces.

Under the WSHA, employers or principals (i.e. a person who, in connection with any trade, business, profession or undertaking carried on by him, engages any other person otherwise than under a contract of service to (a) supply any labour for gain or reward, or (b) do any work for gain or reward) are required to take reasonably practicable measures to ensure the safety and health of employees working under their direct control, as well as all persons who may be affected by the employees’ work. In addition, the WSHA provides that principals must ensure any contractor they

engage has the necessary expertise to carry out the work which the contractor was engaged to do, and that the contractor has taken adequate safety and health measures with respect to the contractor’s employees. Likewise, occupiers of a workplace are required, as far as reasonably practicable, to ensure that the workplace, all entrances to and exits from the workplace, and all machinery, equipment, plants, articles and substances within are safe and without risk to the health of any person within those premises, even if the person is not one of the occupier’s employees.

The WSHA also requires employers to establish safety and health management arrangements in the company, such as the appointment of a safety and health committee, health officers, co-ordinators, and auditors.

Under the Workmen Injury Compensation Act (Chapter 354) (“WICA”), employees who have sustained injuries in a work-related accident or contracted an occupational disease may claim work injury compensation from their employers pursuant to the WICA. Dependents of employees who died in a work-related accident are also eligible for compensation. Claimable compensation includes medical leave wages, medical expenses and permanent incapacity or death. Under the WICA, an employer is required to maintain insurance for employees who are involved in manual work or non-manual work where his total earnings do not exceed S\$1,600 per month. It is not mandatory for employers to buy insurance for all other employees. However, employers will still be required to pay compensation in the event of a valid claim under the WICA, even if they do not buy insurance for exempted employees.

Taxation

In Singapore, tax is imposed on income “accruing in or derived from Singapore or received in Singapore from outside Singapore.” Essentially, this means that there are two bases of taxation in Singapore, the territorial basis and the remittance basis. Under the territorial basis, income is liable to tax if the source of income is in Singapore, while under the remittance basis, income having a source outside Singapore will be liable to Singapore tax only if such income is received in Singapore, unless such income is specifically exempt from tax.

Tax treatment – for example, the applicable tax rates, the exemption of income, the availability of reliefs and foreign tax credits – may differ between a Singapore tax resident and a non-Singapore tax resident.

Both companies incorporated in Singapore and foreign corporations which have registered branches in Singapore are liable for tax at the prevailing rate of 17% of the chargeable income accruing, derived or received in Singapore unless their businesses qualify for and are granted tax relief for a period under the Economic Expansion Incentives (Relief for Income Tax) Act (Chapter 86) or enjoy concessionary tax benefits by virtue of the aforesaid Act or the provisions of the Income Tax Act (Chapter 134).

Taxes which may be payable on business operations in Singapore are as follows:

(1) Income Tax

Unless otherwise exempted, income tax is generally payable on gains or profits from, for example, the carrying on of a trade, business,

profession or vocation, employment, investments, etc. Income derived in Singapore by non-Singapore residents would also be subject to tax in Singapore and may be collected by imposing an obligation to withhold on the payer in Singapore, which is discussed in paragraph (5) below.

(2) Goods and Services Tax

Goods and Services Tax (“GST”), a broad-based consumption tax similar to Value-Added Tax, is a tax that is imposed on any supply of goods or services made in Singapore if it is a taxable supply made by a taxable person (i.e. a person who is or is required to be registered under the GST Act) (Chapter 117A) in the course or furtherance of a business carried on by such person.

It is compulsory for businesses to register for GST when their turnover in the past 4 quarters exceeds, or is expected to exceed in the next 12 months, S\$1 million. Businesses that do not exceed S\$1 million in turnover may register for GST voluntarily.

A GST-registered business must charge GST at the current rate. This GST that a GST-registered business charges and collects is known as output tax, which has to be paid to the Comptroller of GST. GST incurred on business purchases and expenses (including import of goods) is known as input tax. A GST-registered business can claim input tax if conditions for claim are satisfied. Input tax will be granted as a credit against output tax. This credit mechanism ensures that only the value added is taxed at each stage of a supply chain.

A GST-registered business is required to submit a GST return to the Comptroller of GST at the end of each prescribed accounting period (usually on a quarterly basis). The due date for the filing of the GST return is one month after the end of the accounting period.

The business will report its output tax and input tax for that prescribed accounting period in the GST

return. The difference between output tax and input tax will be the net GST payable to, or GST refundable from, the Comptroller of GST.

The net GST payable may be paid by cheque or cash or via electronic funds/telegraphic transfer not later than the due date for the filing of the GST return, that is, within one month after the end of the accounting period. If the GST-registered business subscribes to the general interbank recurring order ("GIRO") scheme, payment will be deducted from the designated bank account 15 days after the due date. The net GST refundable will usually be made within 3 months for quarterly prescribed accounting period from the date of receipt of the GST return.

The prevailing rate for GST is 7%. Although GST is levied on nearly all supplies of goods and services in Singapore and the importation of goods, these are standard-rated supplies (i.e., chargeable at the current rate of 7%). GST is chargeable at 0% for the export of goods and the provision of prescribed international services (i.e. zero-rated). The input tax directly attributable to zero-rated supplies may be claimed.

The sale and lease of residential properties and the provision of most financial services are exempt supplies. GST is not chargeable on exempt supplies. Generally, input tax incurred in the making of exempt supplies is not claimable.

(3) Property Tax

Generally, property tax is payable on immovable properties, which include leases, houses, buildings and land. A property owner pays property tax yearly which is calculated by applying the applicable property tax rate to the annual value of a property ("AV"). The AV of a property is the estimated gross annual rent at which the property may be let from year to year with the landlord paying all the expenses of the upkeep (for example, maintenance, insurance, etc.). Where the use of the estimated gross annual rent is inappropriate,

5% of the estimated value of the property may be used. The Chief Assessor is the appointment holder responsible for ensuring that the AVs of all properties liable to property tax are current and updated. The Chief Assessor reviews the AVs on a yearly basis to ensure that AVs are in line with current market conditions. Methods used to determine the AVs include the rental comparison method, contractor's test or profits method.

Property tax for the year is payable by 31 January of each year but if permitted, property tax may be paid monthly by way of up to 12 monthly interest-free installments.

The current property tax rate is 10% unless the owner-occupier's tax rate or any tax concession or relief is applicable.

(4) Stamp Duty

Stamp duty is a tax levied on executed documents relating to properties or interest in properties and shares or interest in shares.

Stamp duty is payable only on documents described in the First Schedule to the Stamp Duties Act (Chapter 312), which include a lease, sale and purchase, gift or mortgage of property. A document may be subject to *ad valorem* or fixed or nominal duty.

Documents are required to be stamped and duty paid within 14 days from the date of execution if the document was signed in Singapore or within 30 days of its receipt in Singapore if the document was signed overseas.

(5) Tax on Branch of a Foreign Company

A branch of a foreign company is subject to income tax and would be taxed in the same way as a company on its gains or profits from, for example, its trade or business activities. A branch may remit its after-tax profits to its head office without such

after-tax profits being subject to further tax obligations.

A branch of a foreign company in Singapore is normally not considered to be a tax resident of Singapore, which means that certain categories of income it may receive could be subject to withholding tax; for example, interest. The requirement to withhold tax may be waived subject to certain conditions if the branch is carrying on or exercising a trade, business, vocation or profession in Singapore.

(6) Withholding Tax

Under Singapore law, withholding tax is applicable when a person in Singapore makes certain types of payments to a non-Singapore resident. When the person in Singapore becomes liable to pay a non-Singapore resident, the person making payment would be required to withhold a certain amount of the payment at the prevailing applicable withholding tax rates, and must notify the Comptroller of Income Tax immediately in writing. The amount withheld from the payment must then be paid to the Comptroller within the prescribed periods. The payments from which withholding tax is deductible include:

- (i) interest, commissions, fees and other payments relating to loans or indebtedness;
- (ii) royalties or other lump sum payments for the use of or the right to use any movable property;
- (iii) payments for the use of or the right to use scientific, technical, industrial or commercial knowledge or information;
- (iv) fees for technical assistance and service fees; and

- (v) management fees.

Rates of withholding range from 0% to 22% depending on the type of income derived in Singapore, the form and resident status of the recipient (i.e., whether derived by a company, an individual, etc.), etc. It should be noted that the payments from which Singapore tax may be deducted may also be subject to provisions in tax treaties concluded by Singapore with other jurisdictions which are in force.

(7) Tax Incentives

There are two types of tax incentives given to companies, namely the partial tax exemption scheme and the start-up tax exemption scheme. The partial tax exemption scheme was introduced to help maintain Singapore's competitiveness by alleviating the tax burden of less profitable businesses in Singapore. The partial tax exemption applies to the first \$300,000 of normal chargeable income where a 75% tax exemption is allowed on the first \$10,000 of normal chargeable income and the 50% tax exemption is allowable on the next \$290,000 of normal chargeable income. On the other hand, the start-up tax exemption was introduced to help provide newly-incorporated qualifying companies to grow and establish themselves in order to create a vibrant economy for Singapore. The start-up tax exemption scheme allows a 100% tax exemption on the first \$100,000 of normal chargeable income and 50% tax exemption on the next \$200,000 of company's chargeable income, but it does not apply to investment holding companies. Normal chargeable income refers to the chargeable income of a company that is not subject to a concessionary rate of tax.

Foreign Investment

The Government policy of encouraging private enterprise and foreign investment, together with a well-developed infrastructure, a highly skilled workforce, political stability and harmonious labour relations, has made Singapore a popular choice for global investors. Investors also appreciate the country's efficient and transparent bureaucracy and extensive preferential trade links.

There are generally no restrictions imposed on foreign investment in Singapore. There are, however, certain exceptions, some of which are set out below:

- (i) equity participation by foreigners in banks incorporated in Singapore is restricted;
- (ii) the ownership of companies in the newspaper publishing industry is regulated by statute, namely, the Newspaper and Printing Presses Act (Chapter 206); and
- (iii) the ownership of residential property in Singapore by foreigners requires the approval of the Controller of Residential Property save for residential premises in buildings of at least six floors and approved condominiums.

There is generally no requirement to register or report the investment of foreign capital, loans or technology agreements.

About Rajah & Tann

Times (FT) Asia Pacific Innovative Lawyer Awards 2016 and named “Singapore National Law Firm of the Year” at Chambers Asia Pacific Awards in 2013 and 2015. The firm has also been highly ranked in various legal publications such as The Legal 500 - Asia Pacific, Chambers Global and Chambers Asia Pacific, IFLR1000 and Asian Legal Business.

Rajah & Tann Singapore is a prominent full service law firm in Singapore and one of the largest in South East Asia. Over the years, our firm has been at the leading edge of law in Asia, having worked on many of the biggest and highest profile cases in the region. We have a vast pool of talented and well regarded lawyers dedicated to delivering the very highest standards of service across all the firm's practice areas.

Rajah & Tann Singapore has formed strategic alliances with leading local firms across South East Asia and this has led to the launch of Rajah & Tann Asia in 2014, a network of over 600 lawyers. Through Rajah & Tann Asia, our firm has both the reach and the resources to deliver extensive legal services to clients based in Singapore and in the region, including Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines (effective January 2017), Thailand and Vietnam. All the individual firms of Rajah & Tann Asia are fully qualified to advise on and practise the laws of their respective jurisdictions, and will collectively have 12 offices in the major cities of South East Asia and Shanghai.

Our geographical reach includes Singapore based regional desks focusing on Japan and South Asia. Further, as the Singapore member firm of the Lex Mundi Network, we are able to offer our clients access to excellent legal support in more than 100 countries globally.

As a reflection of our pursuit for excellence, Rajah & Tann Singapore is recognised as the “Most Innovative Law Firm in ASEAN” in the Financial

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