Singapore

Chapter 1: Introduction

Dinesh Dhillon, Allen & Gledhill, Singapore

Fay Fong, Allen & Gledhill, Singapore

1.1 Political and constitutional structure

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

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

1.2 Legal structure

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

The judiciary consists of the Supreme Court and the state courts. The head of the judiciary is the Chief Justice. The Supreme Court comprises the Court of Appeal and the High Court, and specialised courts, such as the Singapore International Commercial Court (SICC) and the family justice courts. The Court of Appeal hears appeals of civil and criminal cases from the High Court. The state courts comprise several courts, including specialised courts such as small claims tribunals and employment claims tribunals.

1.3 Economy

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

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

Chapter 2: The business environment

Vivien Yui, WongPartnership, Singapore

Tan E-Zen, WongPartnership, Singapore

2.1 Government structure

The Singapore government is modelled on the UK's Westminster system. It consists of three branches: the legislature, executive and judiciary. The Prime Minister is the head of the government, while the President is the Head of State. The Chief Justice is the head of the judiciary.

The legislature, responsible for making laws, comprises the President and Parliament. The legislature is led by the Speaker of Parliament. The proceedings of the legislature can be found in the Official Reports of the Singapore Parliamentary Debates, also referred to as the Hansard.

The executive comprises the Cabinet and is responsible for implementing laws. The executive is led by the Prime Minister, who is advised on legal matters by the Attorney-General. The Attorney-General also acts as the Public Prosecutor and has the discretion to decide whether to prosecute cases (ie, prosecutorial discretion).

The judiciary is responsible for interpreting the law through the courts. These include: the Supreme Court (made up of the Court of Appeal, which is the highest court in the Singapore judiciary system, and the High Court); the state courts (which includes the Small Claims Tribunals); and the Family Justice Courts. The Singapore International Commercial Court (also referred to as the SICC), a specialised division of the High Court, focuses on resolving transnational commercial disputes, with cases adjudicated by a panel of local and international judges from both civil and common law traditions.

2.2 Legal system

Singapore operates under a common law legal system, where laws, encompassing both criminal and civil matters, are derived from statutes and cases. The Singapore Constitution is the supreme law of the Republic, rendering any law implemented after the commencement of the Constitution that is inconsistent with it, void to the extent of its inconsistency.

Statutes are passed by Parliament are accessible online at Singapore Statutes Online. Key statutes governing commercial law include the Companies Act 1967 (the Companies Act), the Employment Act 1968 and the Competition Act 2004. Key statutes governing criminal law are the Penal Code 1871 and the Criminal Procedure Code 2010.

Case law comprises the body of cases decided by the judiciary over time, many of which are reported and can be found in online depositories. In cases which involve statutory provisions, the courts may interpret these provisions in the process of deciding the case. As such, a full understanding of a statutory provision may necessitate a review of the relevant case law.

Courts in Singapore also adhere to the doctrine of binding precedent or *stare decisis*, where lower courts must follow the decisions of higher courts in similar cases. For example, the decisions of the Court of Appeal are binding on the High Court. While decisions from other Commonwealth jurisdictions are not binding on Singapore courts, English cases are often cited in Singapore courts, especially when there is no direct local authority on a topic.

Deciding on the appropriate court to bring a particular case involves several considerations, including the significance of the dispute. Disputes where the claim exceeds SGD 250,000 (approx US$194,000) are heard by the High Court, and claims below SGD 20,000 (approx US$15,500) are commonly heard by the Small Claims Tribunal.

Alongside the courts, arbitration has been widely favoured as an alternative dispute resolution mechanism. The Singapore International Arbitration Centre (SIAC) is a global arbitration institution which offers cost-effective and efficient case management services to parties worldwide. Apart from cases, Singapore's arbitration laws are also codified in statutes such as the Arbitration Act 2001 and the International Arbitration Act 1994. Singapore is also a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention), which allows Singapore arbitration awards to be enforced in numerous countries. The Singapore courts also actively support arbitration, allowing parties to arbitration agreements to seek various critical interim orders from the Singapore courts to aid in the arbitration process.

Certain regulatory bodies in Singapore also have the power to impose penalties for breaches of legislation, regulations and licences. For example, the Monetary Authority of Singapore has imposed civil penalties for breaches of the Securities and Futures Act 2001 on multiple occasions. Similarly, the Infocomm Media Development Authority has also taken enforcement action for breaches of issued licence terms. Given that these penalties can be significant, it may be worth considering making written representations to the relevant authorities when an enforcement issue arises. Depending on the situation, it may also be worth initiating internal corporate investigations. Singapore laws protect privileged communications, which means it is crucial to understand your legal rights at an early stage of any potential enforcement action.

Chapter 3: Business and corporate structures

Vivien Yui, WongPartnership, Singapore

Tan E-Zen, WongPartnership, Singapore

3.1 Common forms of legal entities

Companies incorporated in Singapore are business entities that are principally governed by the Companies Act and regulated by the Accounting and Corporate Regulatory Authority (ACRA). Before formally registering their chosen business structure, applicants have the option of selecting from the following forms of corporate structures, depending on their various business needs.

3.1.1 Sole proprietorship

A sole proprietorship is a business owned and controlled by an individual, a company or a limited liability partnership (LLP). It is not a separate legal entity from its sole proprietor. As such, the sole proprietor has unlimited liability and is personally liable for all liabilities incurred during the course of business. A sole proprietorship can also sue or be sued in the proprietor's name. A sole proprietorship structure is usually recommended for small-scale businesses with no or negligible risk, but may not be ideal for businesses that intend to recruit staff or pursue rapid expansion.

3.1.2 Partnership

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

3.1.3 Limited liability partnership (LLP)

An LLP is a vehicle that gives business owners the flexibility to operate as a partnership while having a separate legal identity, like a private limited company. This means that all of its partners are liable only up to the limit of their contributions and are not personally liable for the debts and obligations of the LLP except in situations where those debts and obligations arise as a result of their own wrongful acts or omissions. Further, unlike partnerships, an LLP can sue, be sued and acquire and hold property in its own name. The mutual rights and duties of the LLP and its partners are governed by a LLP agreement. The LLP has perpetual succession, and any change in the partners of an LLP will not affect its existence, rights or liabilities.

Registration costs are also lower than that of a company, and there are fewer formalities and procedures to comply with. An LLP structure is typically used by chartered professionals, such as lawyers and accountants.

3.1.4 Limited partnership (LP)

An LP is another vehicle for doing business in Singapore consisting of a minimum of two partners, including at least one general partner and at least one limited partner, without any limit as to the maximum number of partners. In contrast to an LLP, an LP does not have a separate legal personality and therefore cannot sue or be sued, or own property, in its own name. While the general partner is liable for the actions of the limited partnership, including its debts and obligations, a limited partner generally is not liable for the debts or obligations of the LP beyond its agreed contribution, provided that they do not take part in the management of the LP.

In Singapore, the LP structure is and is commonly found in the private equity and fund investment businesses as it offers both limited liability and tax transparency to investors who do not wish to participate in management. As such, it may not be suitable for business owners who do not want to be personally liable for the debts and obligations of the business.

3.1.5 Private company limited by shares

A private company limited by shares is one of the most commonly used vehicle for doing business in Singapore. There are two types of private companies in Singapore, namely: (1) an exempt private company with 20 or fewer members and where no corporation holds a beneficial interest in the company's shares; and (2) a private company with 50 or fewer members.

A private company limited by shares has separate legal personality and therefore can own property in its own name, incur debts and liabilities on its own behalf, and sue and be sued in its own name. However, this also means that shareholders' liabilities extend only to contributing the amount that remains unpaid (if any) on shares for which they have subscribed. As such, where shares have been issued on a fully paid basis, shareholders will have no further liability to the company, even if the company is wound up.

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

3.1.6 Branch

A branch is an extension of a foreign company, often used by foreign companies wishing to conduct business in Singapore. Instead of incorporating a Singapore subsidiary company to carry on business in Singapore or transferring its registration to Singapore via the inward re-domiciliation regime, a foreign company may carry on business in Singapore by registering the foreign company as a foreign company with ACRA.

Through the branch, the foreign company carries out its Singapore operations while using its own name. The branch is usually recommended for a foreign company wishing to leverage its existing name and reputation. However, the branch is not a separate legal entity as it is considered to be merely an extension of the foreign company that is incorporated outside Singapore. Accordingly, any liabilities or obligations which arise against it in Singapore may be enforced against all the assets of the foreign company. It is therefore not usually recommended for a foreign business requiring a separate legal entity in Singapore.

3.1.7 Representative office

Similar to a branch, a representative office is an extension of its foreign parent company and is not a separate legal entity from the parent company. However, unlike a branch, it is not permitted to

conduct any commercial activities and is temporary in nature, usually for one year with the potential to renew for a maximum of three years.

Generally, a representative office is typically used to conduct activities relating to market research and feasibility studies, without incurring incorporation and compliance costs, often as a precursor to the commencement of full-scale operations in Singapore. As such, it is usually recommended for foreign companies to register a representative office in Singapore if it wishes to assess the business environment in Singapore before it makes investment decisions or sets up a permanent establishment in Singapore.

3.2 Ongoing reporting and disclosure obligations

3.2.1 Sole proprietorship

Sole proprietorships are generally not required to file annual returns nor financial statements. However, sole proprietors are required to file their annual tax return that includes the profits of the sole proprietorship to the Inland Revenue Authority of Singapore (IRAS).

3.2.2 Partnership

Partnerships are not required to file annual financial statements with ACRA and do not need to pay income tax on the income earned by the partnership. However, while the partnership does not pay tax, the partnership is still required to file an annual income tax return showing all income earned by the partnership and deductions claimed for expenses incurred in carrying on the partnership. Further, each partner will be taxed on their individual share of the income on the partnership. Where the partner is an individual, their share of income will be taxed based on the individual income tax rate. Where the partner is an entity, the partner's share of income will be taxed on the corporate income tax rate.

3.2.3 Limited liability partnership (LLP)

Similar to partnerships, an LLP will not be liable to tax at the entity level, but each individual partner will be taxed on their share of the income from the LLP. An LLP is also not required to file its financial statements or have them audited but it is however required to keep its accounting records, profit and loss accounts, and balance sheets up-to-date, so as to explain sufficiently all the transactions and financial position of the LLP. Further, the manager of an LLP must submit an annual declaration of solvency or insolvency to ACRA, which will be made available to the public. The first annual declaration must be lodged within the first 15 months from the date of the registration of the LLP. Subsequently, a declaration must be lodged once every calendar year and not more than 15 months after the last declaration was lodged.

3.2.4 Limited partnership (LP)

Similar to LLPs, LPs will also not be liable to tax at the entity level, but each individual partner will be taxed on their share of the income from the LP. An LP is also not required to file its financial statements or have them audited, but is required to keep its accounting records, profit and loss accounts and balance sheets that will sufficiently explain the LP's transactions and financial position.

3.2.5 Private company limited by shares

All private companies, including exempt private companies, are required to file their annual returns with ACRA within seven months of the company's financial year-end. The annual return is an electronic form that provides important particulars of the company, such as the names of the directors, secretary, its members and the date to which the financial statements of the company are made up to. This provides critical information that helps company stakeholders make informed decisions. Private companies and insolvent exempt private companies are required to file their full set of financial statements with their annual returns, whereas solvent exempt private companies are exempt from filing their financial statements.

Private companies are also required to have their financial statements audited. The directors of a company must appoint at least one ACRA-approved accounting entity to be the company's auditor within three months of the company's incorporation. Companies exempt from audit requirements include dormant companies and small companies, as defined in the Companies Act.

3.2.6 Branch

Together with its foreign parent company, a branch office is required to lodge with ACRA its financial statements made up to the end of the financial year, within 60 days of the date on which its annual general meeting is held, or within such period as the directors of the foreign company would have been required to lodge its financial statements if the company were a public company incorporated under the Companies Act and does not keep a branch register outside Singapore.

The foreign company and branch office must also lodge audited statement of its assets used in and liabilities arising out of its Singapore operations, an audited profit and loss account for the last preceding financial year of the company which complies with accounting standards prescribed by the Companies Act, and a statement of the name of the auditor who audited these documents. Where a branch office is dormant, it may be exempt from audit requirements.

3.2.7 Representative office

A representative office is not required to file annual returns with ACRA or annual tax returns with the IRAS.

3.3 Management structures

3.3.1 Sole proprietorship and partnership

In order to set up a sole proprietorship or a partnership, the sole proprietor or at least one partner of the partnership must be: (1) at least 18 years old; and (2) a Singapore citizen, a Singapore permanent resident or an eligible foreigner holding a relevant long-term pass to work in Singapore.

Nevertheless, a foreigner (or foreigners in the case of a partnership) residing overseas may set up a sole proprietorship or a partnership, provided that they appoint at least one locally resident authorised representative, who must be: (1) a natural person; (2) at least 18 years of age; (3) of full legal capacity; and (4) ordinarily resident in Singapore. A person is considered to be 'ordinarily resident in Singapore' if they are a Singapore citizen, a permanent resident or a foreigner who has been issued a relevant work pass. If the foreigner wishes to be present in Singapore to manage the operations of the sole proprietorship or partnership, they must obtain the relevant work pass from the Ministry of Manpower (MOM) after registering the entity.

3.3.2 Limited liability partnership (LLP)

Every LLP must have at least two partners, who can be an individual, local company, foreign company or another LLP. The LLP is also required to appoint at least one manager who must be: (1) a natural person; (2) at least 18 years of age; (3) of full legal capacity; and (4) ordinarily resident in Singapore. The manager takes part in the management of the LLP, but need not be a partner.

The manager will be held responsible should the LLP fail to comply with the requirements of the Limited Liability Partnerships Act 2005 relating to: (1) the filing of a declaration of solvency; (2) the registration of any change in particulars of the LLP; and (3) the publication of the LLP's name, registration number and limited liability status on its invoices and correspondence. As such, in contrast with partners, the manager of the LLP shoulders heavier responsibilities.

Similar to a sole proprietorship and LLP, a foreigner who wishes to register an LLP in Singapore is also required to appoint a locally resident manager, and obtain the relevant work pass from MOM if the foreigner wishes to be present in Singapore to manage the operations of the LLP.

3.3.3 Limited partnership (LP)

An LP must consist of a minimum of two partners, with at least one general partner and one limited partner, with no limit to the maximum number of partners. The general partner of an LP can be an individual or a company; and the limited partner of an LP can be an individual, company or unregistered foreign company.

Where the registered general partners of an LP are not ordinarily resident in Singapore, ACRA may require the appointment of a manager who is ordinarily resident in Singapore. The local manager of an LP is responsible for discharging all obligations of the LP, and are subject to the same responsibilities, liabilities and penalties as a general partner of the LP, if the general partner defaults

on such obligations. The manager must not be an undischarged bankrupt, unless they have obtained permission from the High Court or the Official Assignee.

Similar to LLPs, a foreigner who wishes to register an LLP in Singapore is required to appoint a locally resident manager, and obtain the relevant work pass from MOM if the foreigner wishes to be present in Singapore to manage the operations of the LLP.

3.3.4 Private company limited by shares

A company must have at least one director who is at least 18 years old and ordinarily resident in Singapore. As such, if there is only one locally resident director, they may not resign or vacate their office until a replacement is found. The Companies Act also bans certain classes of people from acting as director or taking part in the management of the company, such as undischarged bankrupts.

A company must also have at least one company secretary. The company secretary must be a natural person and resident in Singapore, cannot be debarred from acting as a secretary under the Companies Act, and must be appointed within six months from the date of incorporation of the company. A director can be the secretary of the company provided that they do not act in the capacity of the director and the secretary at the same time. Accordingly, a sole director of a company may not act or be appointed as its secretary.

In addition, the Companies Act requires every company to appoint an ACRA-approved auditor within three months from the date of incorporation, unless the company is exempt from audit requirements. Such company auditor can be a public accountant, an accounting corporation, an accounting firm or an accounting limited liability partnership, and must hold office until the conclusion of the first annual general meeting of the company.

3.3.5 Branch

To register itself as a branch, the foreign company must appoint at least one authorised representative, who must be ordinarily resident in Singapore, to act on its behalf.

3.3.6 Representative office

A representative office can have a maximum of five staff members, and must be represented by staff from its own headquarters or its Singapore staff, with a chief representative stationed in Singapore who will be responsible for the representative office's matters in Singapore.

3.4 Director, officer and shareholder liability

3.4.1 Sole proprietorship, partnership and Limited liability partnership (LLP)

To register a sole proprietorship, partnership or LLP, a name application must first be made to ACRA to determine the availability of the proposed name for its use in Singapore. A fee of SGD 15 (approx

US$11.60) is payable for each approved name. If the name application is approved, the name will be reserved for 120 days after the applicant is notified of the approval.

Registration of the relevant entity with ACRA costs an additional fee of SGD 100 (approx US$77). Such a registration can be completed within a day, provided all the supporting documents are correctly lodged. However, if ACRA needs to refer the application to another government authority for approval or review, approval of the application may take between 14 to 60 days.

3.4.2 Limited partnership (LP)

Before a LP can be registered, a name application must first be submitted to ACRA to determine the availability of the proposed name for its use in Singapore. A fee of SGD 15 (approx US$11.60) is payable for each approved name. If the application is approved, the name will be reserved for 120 days after the applicant is notified of the approval.

Registration of the LP with ACRA costs an additional fee of SGD 100 (approx US$77) for a one-year registration or SGD 160 (approx US$124) for a three-year registration. Such a registration can be completed within a day, provided all the supporting documents are correctly lodged. However, if ACRA needs to refer the application to another government authority for approval or review, approval of the application may take between 14 to 60 days.

LP registrations must be renewed up to 60 days before the expiry date, and such a renewal with ACRA costs SGD 30 (approx US$23.20) for a one-year registration or SGD 90 for a three-year registration.

3.4.3 Private company limited by shares

Before a company can be incorporated, a name application must first be submitted to ACRA to determine the availability of the proposed name for its use in Singapore. A fee of SGD 15 (approx US $11.60) is payable upon approval of each name. If the application is approved, the name will be reserved for 120 days after the applicant is notified of the approval.

After the company name has been approved, the company can be incorporated. A registration fee of SGD 300 (approx US$232) is payable for a private company limited by shares. A copy of the company's constitution and such other documents as may be prescribed must also be submitted to ACRA. The incorporation application is generally processed within the same working day after the payment of the registration fee. However, it can take between 14 and 60 days if ACRA needs to refer the application to another government authority for approval or review.

3.4.4 Branch

Similar to the setting up of a private limited company, sole proprietorship and different forms of partnerships, a name application must first be submitted to ACRA for a fee of SGD 15 (approx US$11.60). If the application is approved, the name will be reserved for 120 days after the applicant is notified of the approval.

Registration of a branch office on ACRA will cost an additional SGD 300 (approx US$232), and the applicant must file certain documents with ACRA including, among others, a notice of the situation of the foreign company's registered office in Singapore, and a notice in prescribed form containing the registration number of the foreign company as indicated on the foreign company's certificate of incorporation, a description of the business carried out by the foreign company, and the type of legal form or legal entity of the foreign company.

Provided that all the necessary documents are in order, the application to register the branch of a foreign company will usually be processed within the same working day once the registration fee is paid.

3.4.5 Representative office

A foreign company in the manufacturing, international trading, wholesale, trade and trade-related business sectors that wishes to register a representative office in Singapore must: (1) have been established in its home country for at least three years; (2) have incurred a sales turnover greater than US$250,000; and (3) have a maximum of five staff in the representative office.

Such representative office must be registered with Enterprise Singapore. The application forms for registration can be obtained and submitted through the Enterprise Singapore website. Applicants must also submit the following documents along with the application form: (1) copies of the parent company's latest audited accounts; and (2) copies of the parent company's certificate of incorporation. For any document not in English, an official English translation must be submitted to the online portal pursuant to the application. The processing fee for setting up a representative office and renewing the representative office each year is SGD 200 (approx US$155).

A foreign company in other sectors such as banking, finance, financial exchanges, insurance and law should approach the relevant regulator if they wish to register a representative office.

Chapter 4: Takeovers (friendly M&A)

Lee Kee Yeng, Allen & Gledhill, Singapore

4.1 Legal and regulatory framework

Where an entity is listed in Singapore and is being acquired or taken over, such an activity is principally governed by an advisory body known as the Securities Industry Council (SIC). The SIC is the principal regulator that administers and enforces the Singapore Code on Takeovers and Mergers (the 'Takeover Code'). The SIC comprises members appointed by the Minister of Finance and most members are from the private sector, including industry representatives, finance sector professionals and legal experts. The day-to-day business of the SIC is conducted by a professionally staffed, full-time secretariat.

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

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

4.2 Merger control and statutory shareholding restrictions in specific industries

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

Other statutes relating to particular industries or entities designated as critical to Singapore's national security interest also govern takeover activity in Singapore, insofar as they limit or require prior regulatory approval for ownership in entities engaged in those industries. Such industries may include banking, finance, insurance and the media.

4.3 Types of takeover offers

4.3.1 Mandatory offers

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

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

4.3.2 Voluntary offers

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

4.3.3 Partial offers

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

4.3.4 Scheme of arrangement

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

4.3.5 Amalgamation process

As an alternative to the scheme of arrangement, the acquisition of a Singapore incorporated public company may be carried out through an amalgamation process. Such a process may involve either two or more companies amalgamating and continuing as one company, or two or more companies

amalgamating and forming a new company. The main difference in terms of the amalgamation process is that it does not require the approval of the High Court.

4.4 Directors' duties

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

4.5 Shareholder disclosures

The parties to a takeover and their associates are required to disclose their dealings in securities of the target, as well as dealings in the securities of the offeror (in the case of an offer which involves a share swap), in accordance with the requirements of the Takeover Code. Save for certain limited categories of dealings, which may be privately disclosed to the SIC, disclosure is typically required to be made publicly on a daily basis. The term 'associate' will normally include a holder of five per cent or more of the equity share capital of the offeror or target company. Apart from the Takeover Code, shareholder disclosure obligations are found in the Companies Act and the SFA and are required by the SGX in regard to listed companies. Disclosure obligations arise when a shareholder becomes a substantial shareholder, that is, a shareholder who has an 'interest' of five per cent or more of the total votes attached to all the voting shares in a company. Disclosure must subsequently be made if there is a change in the substantial shareholder's interest in the voting shares of a company, in threshold bands of one per cent.

4.6 Suspension of trading and compulsory acquisition

The SGX may suspend the trading of the shares in a target company if the number of shares in public hands falls below ten per cent. An offeror who acquires not less than 90 per cent of the issued target company shares pursuant to a takeover offer (excluding those shares held at the date of the offer by, or by a nominee for, the offeror or the specified persons in Section 215 of the Companies Act) is entitled to compulsorily acquire any remaining target shares under Section 215(1) of the Companies Act. Conversely, dissenting shareholders of the target company have a right to be bought out by the offeror if the offeror and the specified persons under Section 215(3) of the Companies Act hold 90 per cent or more of the issued target company shares after the offer.

Chapter 5: Foreign investment

Tan Shao Tong, WongPartnership, Singapore

5.1 Introduction

Singapore, known for its strategic location, robust economy, and political stability, has been an attractive location for foreign investment. The city-state's open and well-regulated market serves as the gateway to ASEAN and the Asia-Pacific region, offering investors a conducive environment for growth and expansion. The Singapore government's forward-looking policies have consistently nurtured a business-friendly climate, which is underpinned by a strong legal system, a skilled workforce, and an efficient infrastructure. The Singapore government has also set up various organisations to encourage foreign investments. Various tax incentives are also offered to promote growth in specific sectors.

5.2 Foreign investment control/restriction

5.2.1 Introduction

Singapore generally welcomes foreign investment. However, the Significant Investments Review Act 2024 (SIRA) which came into force on 28 March 2024, introduces certain requirements when there are specified changes in the ownership and control of designated entities.

In addition, certain specific sectors, such as the broadcasting, newspaper and real estate sectors, are subject to additional regulatory controls and restrictions for foreign investment. The Singapore government controls these sectors through licensing regimes (applying both qualitative and quantitative criteria depending on the sector involved) and legislative restrictions.

These controls and restrictions are discussed in greater detail in the following sections.

5.2.2 Foreign investment control

Singapore has relatively minimal foreign investment control. For foreign individuals or corporations who intend to invest in a Singapore company, there are no special post-closing or filing requirements. Nevertheless, the SIRA, which came into force on 28 March 2024, introduces certain requirements when there are specified changes in the ownership and control of designated entities. The SIRA complements existing sectoral legislation and manages significant investments into critical entities, to safeguard Singapore's national security interests. The list of designated entities is published in the *Government Gazette* and is also available online at https://www.osir.gov.sg/designation/designated-entities.

Parties (whether local or foreign) will need to notify or seek approval if they are involved in transactions that meet the prescribed thresholds for the designated entities. The default obligations, which may be varied by the Minister of Trade and Industry), are: (1) notifying the Minister within seven calendar days of becoming a five per cent controller in a designated entity; and (2) seeking the Minister's approval prior to becoming a 12, 25 or 50 per cent controller in a designated entity.

5.2.3 Restrictions on investment in the broadcasting sector

Broadcasting is a restricted sector which requires licensing in Singapore. Unless approved by the IMDA, a company must not be granted or hold a relevant licence if: (1) any foreign source(s) holds at least 49 per cent of the shares in the company or its holding company, or if any foreign source(s) is in a position to control 49 per cent of the voting power in the company or its holding company; or (2) all or a majority of persons having the direction, control or management of the company or its holding company are appointed by or accustomed or under an obligation to act in accordance with the directions, instructions or wishes of any foreign source(s).

In this regard, a relevant licence means any free-to-air licence, or any broadcasting licence under which a subscription broadcasting service may be provided, which permits broadcast which is capable of being received in 50,000 or more homes. But it not include any class licence in the case of (1) and (2) (in the above paragraph), or any other broadcasting licence that IMDA may specify in the public interest or in the interests of public security or order, or national defence.

The CEO of a broadcasting company and at least half of the directors of the broadcasting company must be Singapore citizens.

A person must also not receive any fund from any foreign source for the purposes of financing any broadcasting service owned or operated by any broadcasting company without the prior consent of the IMDA.

5.2.4 Restrictions on investment in the newspaper sector

Newspaper companies are required to issue two classes of shares: management shares and ordinary shares. At least one per cent of a newspaper company's issued and paid-up capital must be management shares and such management shares can only be issued or transferred to Singapore citizens or approved corporations. In addition, all directors of a newspaper company must be Singapore citizens.

Similar to companies in the broadcasting sector, a person who has been granted a newspaper permit must not receive on behalf or for the purposes of any newspaper any funds from a foreign source without the prior consent of the IMDA.

In addition, any person (whether local or foreign) who becomes a substantial shareholder or controller of a newspaper company must also seek the approval of the IMDA.

5.2.5 Restrictions on investment in the real estate sector

Another sector that is restricted by legislation in Singapore is real estate. Most residential property in Singapore is subject to foreign ownership restrictions while commercial and industrial properties are generally not subject to foreign ownership restrictions.

In this regard, foreigners are generally not permitted to purchase public housing flats (ie, Housing and Development Board flats (or HDB flats)) unless the purchase is made jointly with their spouse/parent/child who is a Singapore citizen. Under the Residential Property Act 1976, approval must be sought from the Land Dealings Approval Unit for the acquisition of restricted residential property, which includes vacant residential land, terraced houses, semi-detached houses, bungalows/detached houses, strata landed houses not within an approved condominium development under the Planning Act 1998 (eg, town houses or cluster houses), landed residential property at Sentosa Cove, shop houses (for non-commercial use), association premises, places of worship, workers' dormitories/serviced apartments/boarding houses (not registered under the provisions of the Hotels Act 1954), and mixed commercial and residential properties.

In addition to foreign ownership restrictions, foreigners are also subject to higher rates of Additional Buyer's Stamp Duty (ABSD) when purchasing residential property, which is 60 per cent of the purchase price or market value of the property (whichever is higher) with effect from 27 April 2023. Nevertheless, pursuant to certain free trade agreements to which Singapore is a party, nationals of some countries are accorded the same ABSD treatment as Singapore citizens, ranging from nought to 30 per cent depending on the number of residential properties they already own.

In addition, when non-resident property traders sell real estate property situated in Singapore, the purchaser of such real estate property will be required to withhold tax at a rate of 15 per cent on the purchase price of the property.

5.3 Foreign exchange control and income taxation

5.3.1 MAS

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

5.3.2 Capital injection

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

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

5.3.3 Income taxation and repatriation of funds

Taxes that are applicable to businesses operating in Singapore (including permanent establishments of foreign businesses) affect the amount of profits that may be repatriated out of Singapore. Such taxes include income tax, which is generally payable on the gains or profits accruing in or derived from Singapore or received in Singapore from outside Singapore, regardless of the tax residency status of the corporate entity, subject to applicable tax exemptions. For example, foreign-sourced dividends received in Singapore may be exempt from tax if: (1) the taxpayer is tax resident in Singapore; (2) the dividends (or the income from which the dividends are paid) have been subject to tax in the relevant foreign jurisdiction; (3) the headline corporate income tax rate in the relevant foreign jurisdiction is at least 15 per cent; and (4) the Comptroller of Income Tax is satisfied that the tax exemption is beneficial to the taxpayer.

Additionally, certain types of income derived in Singapore and received by non-resident businesses may be subject to withholding taxes.

In relation to dividends, Singapore operates a one-tier taxation system. This means that dividends are exempt from tax in the hands of the recipient. The amount from which the dividends are paid are subject to Singapore corporate income tax. Therefore dividends paid to shareholders (including foreign shareholders) by a company tax resident in Singapore are exempt from further income tax.

5.4 Applicable tax incentive or grant

Singapore has various tax incentive schemes which may help reduce the effective income tax rate of eligible persons engaged in prescribed activities or industries that are aligned with Singapore's economic development. These schemes are set out in the Income Tax Act 1947 and the Economic Expansion Incentives (Relief from Income Tax) Act 1967.

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

5.4.1 Key tax incentives offered by the EDB

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

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

5.4.2 Key tax incentives offered by Enterprise Singapore

One of the key tax incentives offered by Enterprise Singapore is the Global Trader Programme (GTP). The GTP is targeted at companies engaged in the international trading of commodities or commodities derivatives. Approved companies under the GTP will be entitled to concessionary tax rates of five, ten or 15 per cent on qualifying trading income.

Enterprise Singapore also administers the Venture Capital Fund Incentive (VCFI) for venture capital and private equity funds and the Fund Management Incentive (FMI) for fund management companies. Approved venture capital and private equity funds under the VCFI are entitled to tax exemptions for up to 15 years on qualifying investment income, while approved fund management companies under the FMI are entitled to a concessionary tax rate of five per cent for up to ten years on management fees and performance bonuses, provided that the applicable conditions for each of the schemes are met.

5.4.3 Key tax incentives offered by the MPA

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

The MSI comprises three awards granted for three types of activity: (1) the MSI – Approved International Shipping Enterprise Award is targeted at ship owners and ship operators which establish their commercial shipping operations in Singapore, and companies which meet the conditions for the award may enjoy tax exemption or an alternative basis of tax on qualifying shipping income for up to ten years; (2) the MSI – Maritime Leasing Award covers vessel and container financing operations in Singapore, and approved companies may enjoy concessionary tax rates of ten per cent on qualifying income for up to five years; and (3) the MSI – Shipping-related Support Services Award is available to companies in which provide shipping-related support services, such as ship broking, forward freight agreement trading, ship management, ship agency, freight forwarding and logistic services, and corporate services rendered to qualifying approved related parties.

Approved companies under the MSI – Shipping-related Support Services Award will enjoy concessionary tax rates of ten per cent on qualifying income for a five-year renewable period.

5.4.4 Key tax incentives offered by the MAS

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

The MAS also administers the Insurance Business Development Scheme (IBDS) for insurance and reinsurance companies. Approved insurers or reinsurers under the IBDS may enjoy tax exemption or concessionary tax rates of five, eight or ten per cent, depending on the scope of the tax incentive granted.

5.4.5 Grants

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

The EDB offers a variety of grants, including: the Research and Innovation Scheme for Companies for technology development and innovation activities to bring about the development of product and processes from Singapore; the Training Grant for Company to encourage manpower capability development in applying new technologies, industrial skills and professional know-how through the support of training programmes for companies' employees; and the Land Intensification Allowance to encourage the intensification of industrial land use towards more land-efficient and higher value-added activities.

The MPA offers various grants to companies in the maritime sector. These include the Maritime Cluster Fund which supports manpower and business development efforts as well as productivity improvements, and the Maritime Innovation and Technology Fund which aims to expand Singapore's maritime innovation and technology ecosystem.

The MAS, under its Financial Sector Development Fund, issues grants for a range of financial sector activities, the issuing of including bonds, listing on the Singapore Exchange (SGX) and the development of solutions or technology for the financial sector.

Chapter 6: Restructuring and insolvency

Andrew Chan, Allen & Gledhill, Singapore

6.1 Introduction

Insolvency law in Singapore is broadly divided into personal insolvency (or bankruptcy) and corporate insolvency. The main statute governing this area is the Insolvency, Restructuring and Dissolution Act and the subsidiary legislation in relation to the Act.

Penalties for non-compliance with the Insolvency, Restructuring and Dissolution Act and the subsidiary legislation in relation to the Act can be imposed upon insolvent debtors for failure to comply with certain standards set by the statutes. Some acts by creditors are also prohibited in certain circumstances, but the penalties are largely civil rather than criminal.

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

6.2 Liquidation

6.2.1 Description

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

6.2.2 Types of liquidation

There are two main types of liquidation: voluntary and compulsory. The main difference lies principally in the manner in which the liquidation process is initiated and the date of its commencement pursuant to the Insolvency, Restructuring and Dissolution Act. For voluntary liquidation to occur, the company generally initiates the process by passing a resolution in a general meeting of shareholders to liquidate the company. For compulsory liquidation to occur, the company, or some other party with the necessary right (eg, a creditor), initiates the process by making an application to the court to liquidate the company. In the context of corporate insolvency, two common types of insolvent winding up are creditors' voluntary liquidation and compulsory liquidation, pursuant to Section 125(1)(e) of the Insolvency, Restructuring and Dissolution Act.

6.2.3 Effect of the commencement of liquidation

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

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

6.2.4 Avoiding liquidation consequences

To avoid the consequences of liquidation (ie, dissolution), an insolvent company has three options: (1) attempt to enter into a scheme of arrangement with its creditors; (2) seek to be placed under JM; or (3) enter into an arrangement with its creditors under Section 187 of the Insolvency, Restructuring and Dissolution Act.

6.3 Schemes of arrangement and compromise

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

To facilitate restructuring, and to help enhance Singapore's restructuring framework and its status as a centre for international debt restructuring, Singapore's regime contains features, such as:

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

6.4 Judicial management (JM)

6.4.1 Description

An application may be made to the court, as well as out of court, to place a company under JM. The JM regime aims to provide a company that is or is likely to become unable to pay its debts, as and when they fall due, with some 'breathing space', so that it or part of its business can be nursed back to financial health, a scheme of arrangement can be achieved, or the company may achieve a better realisation of its assets than it would in liquidation. There are some parallels between the court and out-of-court process. Below is a description of the court-based JM process.

6.4.2 Commencing a court-based JM process

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

6.4.3 Granting a JM order

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

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

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

6.4.4 Effecting a JM order

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

6.4.5 Discharging a JM order

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

The result of a JM's successful completion largely depends on the judicial manager's proposals and the circumstances in each case. If the proposals lead to a scheme of compromise, this may result in part of the company's debts being extinguished or reduced in accordance with the scheme. The failure of JM will result in the company reverting to its pre-JM position. However, it may well lead to

liquidation because one of the prerequisites for a JM application is a company's inability or likely inability to pay its debts, which is also a ground for liquidation.

6.4.6 Out-of-court JM process

In general, save for the initial process of commencing JM or appointing a JM, the out-of-court JM proceeding is similar to that of the in-court process. The company may place itself into judicial management through a creditors' resolution at a meeting of its creditors without the need for a court order, under Section 94 of the Insolvency, Restructuring and Dissolution Act. In doing so, the company must first consider if the company is, or is likely to become, unable to pay its debts and that there is a reasonable possibility of achieving one or more of the purposes of judicial management, as mentioned above in [6.4.3].

The process begins with the company giving at least seven days' written notice of its intention to appoint an interim judicial manager (IJM). This notice must be sent to both the proposed IJM and any person entitled to appoint a receiver or manager of the company's assets. The company's directors are responsible for appointing the IJM, but this can occur only if specific conditions are met, including authorisation by the company's members or its board (if permitted by the company's constitution) and the written consent of all parties who received the notice.

After the IJM is appointed, the company must notify the relevant authorities and publish the appointment notice in a local newspaper. The IJM assumes the functions and powers of a judicial manager and is responsible for adjudicating creditor claims for voting purposes.

Within 30 days of appointing the IJM, the company must convene a creditors' meeting to vote on commencing JM. Creditors must be given at least 14 days' notice and a full statement of the company's affairs. For JM to proceed, the majority of creditors, both in value and number, must vote in favour of JM. Once approved, a licensed insolvency practitioner (who is not the auditor of the company) is appointed as the JM.

6.5 Receivership

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

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

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

Kelvin Wong, Allen & Gledhill, Singapore

7.1 Employees' rights and protection

7.1.1 Introduction

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

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

7.1.2 Employees' rights and protection

The primary legislation governing employment in Singapore is the Employment Act. The Employment Act applies to all employees, except seafarers, domestic workers and public servants, and sets out minimum terms relating to such matters as annual leave, sick leave, holidays, termination, salary payment and maternity benefits.

Employees who are regarded as more vulnerable receive additional levels of protection under the Employment Act, such as:

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

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

An employment contract that is less favourable to an employee than any of the minimum conditions prescribed by the Employment Act is illegal, null and void to the extent that it is less favourable.

Employers who fail to employ their workforce based on the minimum terms may be liable to fines and/or imprisonment.

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

7.1.3 Other statutory protections for employees

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

The Retirement and Re-employment Act (RRA) provides for a prescribed minimum retirement age (currently 63 years old). Under the RRA, an employer is prohibited from dismissing on the grounds of age any employee who is below the prescribed minimum retirement age unless certain exemptions apply. An employer is also required to offer re-employment to any employee who has attained the prescribed minimum retirement age, as long as the employee fulfils certain eligibility criteria and is willing to continue to work.

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

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

7.1.4 Industrial relations

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

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

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

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

7.2 Statutory contributions and minimum wage

7.2.1 Central Provident Fund

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

7.2.2 Minimum wage

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

7.3 Work passes

7.3.1 Work passes for foreign employees

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

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

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

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

- work permits are issued to unskilled or semi-skilled foreign workers in the construction, manufacturing, marine shipyard, processes or services sectors, as well as foreign domestic workers;
- S passes are issued to mid-skilled foreign employees who earn at least SGD 23,150 per month (as of 1 September 2023 and tentatively to be increased to at least SGD 3,300 per month from 1 September 2025) and meet certain criteria in terms of their qualifications and work experience;
- employment passes are issued to foreign professionals, managers and executives who earn at least SGD 5,000 per month (for all sectors, except financial sectors) and meet certain qualification criteria. For more experienced candidates, a higher salary level will be required to qualify. The MOM has announced that from 1 January 2025, the qualifying salary for new applications will be increased to at least SGD 5,600 per month (for all sectors, except financial sectors); and
- personalised employment passes (PEPs) are issued to: (1) existing employment pass holders who earn a fixed monthly salary of at least SGD 22,500 (as of 1 September 2023); and (2) overseas foreign professionals who have a last drawn fixed monthly salary (within the period of six months from the application) of at least SGD 25,000 (as of 1 September 2023).

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

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

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

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

Further, the Overseas Networks and Expertise Pass (the 'ONE Pass') is a newly introduced personalised pass for top talent across all sectors, including business, arts and culture, sports, as well as academia and research. It allows eligible applicants to concurrently start, operate and work for multiple companies in Singapore at any one time. Candidates for the ONE Pass must either: (1) have earned a fixed monthly salary of at least SGD 30,000 (or its equivalent in foreign currency) within the last year; or (2) will earn a fixed monthly salary of at least SGD 30,000 from their future employer based in Singapore. The MOM has also stated that if an individual has outstanding achievements in arts and culture, sports, or academia and research, such individual can qualify as a candidate for a ONE Pass, even if they do not meet the salary criteria.

Chapter 8: Tax law

Sunit Chhabra, Allen & Gledhill, Singapore

8.1 Taxes applicable to individuals

Singapore tax-resident individuals are subject to tax on their employment income on a progressive scale, with the maximum tax rate being 24 per cent. The employer is required to complete the annual Return of Employee's Remuneration (Form IR8A and accompanying appendices) and issue the completed form to the employee by 1 March each year, reporting all the remuneration received by the employee for the preceding calendar year, and the employee is required to include the information in the Form IR8A and its accompanying appendices in their income tax return to the IRAS, unless the employer has arranged for such information to be transmitted directly to the IRAS.

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

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

8.2 Taxes applicable to businesses

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

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

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

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

Withholding tax may be chargeable on certain payments, such as interest, royalties and directors' fees made by a Singapore tax resident or Singapore-based entity to a non-tax resident person, at a rate

between ten and 24 per cent, depending on the nature of such a payment. The rate may be reduced by an applicable tax treaty between Singapore and the country in which the recipient is a tax resident.

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

8.3 Other taxes

Stamp duty is generally payable in regard to the contract or agreement for the sale of or an instrument for the transfer of immovable property in Singapore or shares registered in Singapore, as well as on mortgages and leases. The rate of the buyer's stamp duty is up to six per cent (the higher the consideration or value of the property) for the transfer of immovable property, and the top marginal buyer's stamp duty rate of six per cent will apply to the portion of residential property the value of which is in excess of SGD 3m. For a transfer of shares, stamp duty is payable at the rate of 0.2 per cent the higher the consideration or value of such shares. Generally, stamp duty is payable by the transferee of the property or shares. However, relief from stamp duty may be available in certain circumstances, subject to certain qualifying conditions.

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

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

Chapter 9: Intellectual property

Lam Chung Nian, WongPartnership, Singapore

9.1 Introduction

Singapore has established a well-regarded legal framework for the protection of intellectual property, recognising its importance as a strategic asset for businesses in the digital age, and as a driver for innovation and creativity.

Singapore is a signatory to many international conventions relating to intellectual property, ensuring that its intellectual property regime conforms with international standards, and facilitating the registration and protection of intellectual property rights in Singapore and overseas.

9.2 Copyright

Copyright is a bundle of exclusive rights over works in certain specified categories of subject matter.

9.2.1 Criteria for protection in Singapore

In Singapore, there is no requirement of registration for work to enjoy copyright protection.

The Copyright Act 2021 (CA) outlines specified categories of subject matter in which copyright may subsist, as follows: (1) authorial works, that is, literary, dramatic, musical or artistic works; (2) published editions of authorial works; (3) sound recordings; (4) films; (5) broadcasts; and (6) cable programmes.

The CA further outlines additional conditions which must be met before copyright may subsist in a work, which differ depending on the specific subject matter. The key conditions are discussed in greater detail below.

Authorial work

Under the CA, to enjoy copyright protection, an authorial work must generally be: (1) connected with Singapore or a reciprocating country; (2) fixed in a material form; and (3) original. A reciprocating country in this instance is a member country of the Berne Union or the World Trade Organization (WTO).

Connection to Singapore may be established through several ways specified under the CA, including if a published authorial work is first published in Singapore or a reciprocating country. In relation to unpublished authorial works, this element may be established if the author is a citizen or resident of Singapore or a reciprocating country at the time the work is made.

The requirement of fixation in a material form applies only to a literary, dramatic or musical work and is established when a work is fixed: (1) in writing; (2) by storage in a computer, on any medium by electronic means, or on any other medium from which the work, or a substantial part thereof, can be directly reproduced; or (3) if it is in the form of sounds, embodied in an article.

Originality is generally established through the expansion of sufficient 'human intellect'.[1]

Published editions of authorial works, sound recordings, films, broadcasts and cable programmes

Published editions of authorial works, sound recordings, films, broadcasts and cable programmes must likewise be connected with Singapore or a reciprocating country. However, the reciprocating countries differ depending on the specific subject matter.

9.2.2 Duration of copyright protection

The CA defines the duration of protection for copyrighted works according to the subject matter of the work and the facts surrounding each work. For instance, in the case of an authorial work where the author is identified within 70 years of the year in which the work is made, copyright protection lasts for the lifetime of its author and the subsequent 70 years. However, broadcasts are generally only protected for 50 years after its creation.

9.2.3 Ownership of copyright

The CA provides that ownership of copyright generally vests in the first creator of the work. For instance, the author is the default first owner of an authorial work, and the maker of a film is the default first owner of a film.

However, there are exceptions to this general rule. For instance, the ownership of the copyright of an authorial work created by an employee pursuant to a contract of service belongs to the employer unless the parties have agreed otherwise.

9.2.4 Copyright infringement and exceptions

A copyright owner is conferred various exclusive rights over his copyrighted work depending on the subject matter of the copyrighted work, including to:

- make a copy of the work;
- publish the work;
- perform the work in public, or cause it to be seen or heard in public;
- communicate the work to the public;
- make an adaptation of the work;

1 *Global Yellow Pages Ltd v Promedia Directories Pte Ltd* [2017] 2 SLR 185 at [24].

- do any of the acts discussed above in relation to an adaptation of the work; and
- enter into a commercial rental arrangement in respect of the work.

By way of illustration, the CA provides that the copyright owner of a computer program would have all of the abovementioned exclusive rights, while the copyright owner of a published edition of authorial work would only have the exclusive right to make a copy of that edition.

The most direct form of copyright infringement occurs when a defendant does any of the acts reserved exclusively to the copyright owner, without either owning the copyright or having the licence of the copyright owner. The CA also specifies other forms of infringement, including a recent addition involving the commercial dealing in devices or the provision of services that facilitate access to works communicated to the public without the copyright owners' authority. These devices include physical devices and computer programs.

Notably, copyright infringement requires a causal connection between the infringing work and the copyrighted work. On this basis, infringement would not be established if the defendant had independently created the allegedly infringing work.[2]

Notwithstanding the above, the CA specifies several permitted uses of copyrighted work. These include uses in relation to education, research and development, the dissemination of news, incidental use of the work, and work deemed to be fair. The use of work for computational data analysis such as machine learning has recently been included as a category of permitted use, subject to specified conditions.

Permitted uses may be excluded or restricted only by fair and reasonable contract terms.

9.3 Patents

A patent is a legal right over an invention to exclusively make, use, import or sell the invention.

9.3.1 Registration criteria

According to the Patents Act 1994 (PA), a patentable invention must: (1) be novel; (2) involve an inventive step; (3) be capable of industrial application; and (4) not generally be expected to encourage offensive, immoral or anti-social behaviour.

Novelty

An invention is novel when it has not been made available to the public in any way, anywhere in the world, at the priority date of the invention. The priority date refers to the date of the filing of the patent application, unless the patent application claims priority from an earlier application filed in a country other than Singapore that is a party to the Paris Convention or a member of the WTO. In such cases, the priority date is the date of the filing of the earlier application.

2 *Chua Puay Kiang v Singapore Telecommunications Ltd* [1999] 1 SLR(R) 1 at [110].

Generally, publicly available information that provide 'clear and unmistakable directions' to the invention would anticipate the invention,[3] preventing the invention from being deemed novel.

Inventive step

An invention involves an inventive step if the inventive concept embodied in the invention is not obvious to a normally skilled person in the field of the invention. This normally skilled person is imbued with common general knowledge in the field of the invention.[4]

By way of illustration, an inventive concept that goes against the conventional understanding in the field would generally not be deemed obvious,[5] and could constitute an inventive step.

Industrial application

An invention is capable of industrial application if it can be made or used in any kind of industry.

9.3.2 Registration in Singapore

A patent application in Singapore may be filed as a national application with the Intellectual Property Office of Singapore (IPOS), or initiated through an international application under the Patent Cooperation Treaty (PCT) entering the national phase in Singapore.

Briefly, the PCT simplifies the filing of patent applications in multiple PCT contracting states by allowing an applicant to file a single international patent application. This allows the applicant to establish a filing date in other PCT contracting states, if the applicant subsequently enters into the national phase(s) of those contracting state(s).

9.3.3 Timeline for the grant of a patent

According to IPOS, a patent is generally granted two to four years after the patent is applied for, depending on the complexity of the claimed invention.

However, the patent prosecution process may be accelerated via various programmes offered by IPOS. These include the Patent Prosecution Highway (PPH), the Association of Southeast Asian Nations (ASEAN) Patent Examination Co-operation (ASPEC), the Collaborative Search and Examination (CS&E), and the SG IP Fast Track (SG IP FAST).[6] These are discussed in greater detail below.

PPH and ASPEC

The PPH and ASPEC are work-sharing programmes between participating intellectual property (IP) offices to expedite the examination of qualifying patent applications, by referencing the examination

3 *FE Global Electronics Pte Ltd v Trek Technology (Singapore) Pte Ltd* [2006] 1 SLR(R) 874 at [38].

4 *Merck & Co Inc v Pharmaforte Singapore Pte Ltd* [2000] 2 SLR(R) 708 at [50].

5 *Mühlbauer AG v Manufacturing Integration Technology Ltd* [2010] 2 SLR 724 at [100].

6 https://isomer-user-content.by.gov.sg/61/3c47b6fd-e858-475f-bf8c-659f1cc342c2/patents-formalities-manual.pdf last accessed 23 June 2025.

results from other IP offices. These allow IPOS to tap on the examination results from IP offices in China, Europe, Japan and Malaysia, among others.

CS&E

CS&E is a newly introduced pilot programme between IPOS and the IP office of Vietnam, that allows both IP offices to enhance and expedite the examination of qualifying patent applications, for applicants who seek patent protection in both countries.

Among other benefits, the CS&E programme allows an applicant who files a qualifying patent application at either IP office to receive search and examination results derived through the combined expertise from both IP offices. This is useful for the applicant to decide whether to make a corresponding patent application at the other IP office.

SG IP FAST

SG IP FAST supports applicants in accelerating the patent grant process of qualifying patent applications in Singapore.

9.3.4 Duration of patent protection

A patent granted in Singapore is generally protected for up to 20 years from the date of filing the patent application, subject to annual applications for the patent's renewal after the fourth year from the date of filing the patent application.

9.3.5 Ownership of a patent

A patent is generally granted to the inventor of the claimed application, or to the joint inventors, as the case may be. Inventorship is established when the person(s) claiming the same is the actual deviser of the invention, that is, the person(s) must have 'formulated or contributed to the formulation of the inventive concept' of the invention.7 Two notable exceptions however include: (1) The grant of a patent may be made to a third party who is entitled to the property in the invention under any law or enforceable contract entered into with the inventor. For instance, an employer would be entitled to the grant of a patent for an invention created by his employee in the specified situations under the PA. (2) The grant of a patent may be made to the successor(s) in title of any person who would otherwise be entitled to the grant of the patent.

9.3.6 Patent infringement and exceptions

A patent is infringed where a defendant engages in certain acts that exploit the patented invention without the patent owner's consent. Such acts include where the invention is:

7 *Cicada Cube Pte Ltd v National University Hospital (Singapore) Pte Ltd* [2018] 2 SLR 940 at [62].

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

The PA also provides defences to the abovementioned prohibited acts, including:

- acts which are undertaken privately and for non-commercial purposes;
- acts that are carried out for experimental purposes; and
- subject to the qualifications outlined in the PA, importing into Singapore a patented product, a product obtained by means of a patented process, or a product to which a patented process has been applied, if the same was produced with the consent of the proprietor of the patent.

9.4 Trademarks

A trademark is a sign that may be used to differentiate the proprietor's goods or services from other goods or services. Trademarks may be protected in Singapore through an action for deceptively presenting (or 'passing off') under the common law, or statutorily through registration under the Trade Marks Act 1998 (TMA).

9.4.1 Passing off

The essential elements that must be established for an action for passing off are: (1) the plaintiff has goodwill; (2) a misrepresentation made by the defendant led to confusion among the public; and (3) damage to the plaintiff's goodwill resulted from such misrepresentation.

Goodwill

Goodwill refers to the 'attractive force [of a business] which brings in custom'8 in Singapore.

Misrepresentation

Misrepresentation may be established when a defendant misrepresents that their goods or services are those of the claimant, or that an economic linkage exists between the claimant and defendant's businesses.9 Subsequently, the likelihood of confusion is assessed in light of relevant factors including the similarity of the claimant's sign and the allegedly infringing sign.10

8 *Singsung Pte Ltd v LG 26 Electronics Pte Ltd (trading as L S Electrical Trading)* [2016] 4 SLR 86 at [32].

9 *The Singapore Professional Golfers' Association v Chen Eng Waye* [2013] 2 SLR 495 at [42].

10 *The Singapore Professional Golfers' Association v Chen Eng Waye* [2013] 2 SLR 495 at [54].

Damage to the claimant's goodwill is established if the claimant proves 'a real and tangible risk of substantial damage', including through a diversion of business to the defendant.11

9.4.2 Registration criteria

Protection of a trademark may also be obtained via registration. Notably, the registration of a trademark does not extinguish a proprietor's rights under the common law.

The TMA outlines various criteria for a trademark to be registrable. These include:

- the sign has to satisfy the TMA's definition of a trademark, that is, it has to be a sign capable of being represented graphically and which is capable of distinguishing goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person;
- the trademark must have distinctive character (which would not be the case if the trademark is a generic description of a product or service); and
- the trademark must not be contrary to public policy or to morality, or of such a nature as to deceive the public.

In addition to the above, a trademark that conflicts with an earlier trademark is not registrable. The TMA outlines several grounds on which such conflict may be established, including:

- a trademark is identical with an earlier trademark, and the goods or services for which the trademark is sought to be registered are identical with those for which the earlier trademark is protected;
- there exists a likelihood of confusion on the part of the public, as the trademark is – (1) identical with an earlier trademark; and (2) to be registered for goods or services similar to those for which the earlier trademark is protected; and
- a likelihood of confusion exists on the part of the public, as the trademark is – (1) similar to an earlier trademark; and (2) to be registered for goods or services identical with or similar to those for which the earlier trademark is protected.

9.4.3 Registration in Singapore

A trademark application in Singapore may be filed as a direct national application with IPOS, or initiated through designating Singapore in an international application made under the Madrid Protocol.

11 *Novelty Pte Ltd v Amanresorts Ltd* [2009] 3 SLR(R) 216 at [97] and [105].

9.4.4 Timeline for the registration of a trademark

The registration of a trademark generally takes 12 months from its filing date, subject to objections to the trademark, in which case the processing time would be likely to take longer.12

9.4.5 Duration of trademark protection

A registered trademark in Singapore is generally protected for ten years from the date of registration. It may subsequently be renewed for further periods of ten years at the proprietor's request, accompanied by the prescribed renewal fee.

9.4.6 Trademark infringement and exceptions

A trademark is infringed where a defendant uses a trademark in the course of trade without the consent of the trademark proprietor, where the use of a trademark is:

- identical with the registered trademark, in relation to goods or services identical with those for which the registered trademark was registered;
- identical with the registered trademark, in relation to goods or services similar to those for which the registered trademark was registered, leading to a likelihood of confusion on the part of the public; and
- similar to the registered mark, in relation to goods or services identical with or similar to those for which the registered trademark was registered, leading to a likelihood of confusion on the part of the public.

The TMA outlines various exceptions to the abovementioned prohibited acts, including:

- the use of one's own name;
- descriptive use such as to indicate the kind, quality, quantity, intended purpose, value, geographical origin or other characteristic of goods or services; and
- use for comparative commercial advertising.

9.5 Designs

The Registered Designs Act 2000 (RDA) defines a design as the features of shape, configuration, colours, pattern or ornament applied to any article or non-physical product that give that article or non-physical product its appearance. However, this definition excludes certain subject-matters, including:

- a method or principle of construction;
- designs that are dictated solely by the function that the article or non-physical product has to perform; and

12 S2.3, IPOS, *Trade Marks Infopack* https://isomer-user-content.by.gov.sg/61/d19a8611-cf44-4b24-9a45-7f7a2975df9b/trade-marks-infopack.pdf accessed 12 May 2025.

- designs that enable the article or non-physical product to be connected to, or placed in, around or against, another article or non-physical product so that either article or non-physical product may perform its function.

9.5.1 Registration criteria

The RDA provides that new designs which fall within the abovementioned definition may be registered in Singapore, unless the publication or use of it would be contrary to public order or morality, or it is a computer program or layout-design.

Under the RDA, a design is not considered new if it is the same as a design that is registered, or published in Singapore or elsewhere, in respect of any article or non-physical product before the date of the application for registration of the design at issue. A design is also not considered new if it differs from such a design in immaterial ways.

9.5.2 Registration in Singapore

A design application in Singapore may be filed as a national application with IPOS, or initiated through Singapore's designation in an international filing made under the Hague Agreement Concerning the International Registration of Industrial Design (Hague System).

Under the Hague System, an applicant may file an international design application, in which he may designate the countries for which protection is sought. Subsequently, the designated countries will examine the international registration in accordance with their national laws.

Any interested person may apply for a registered design to be revoked, on the same grounds for which the design could have been refused registration.

9.5.3 Timeline for the registration of a design

The registration of a design generally takes four months from its filing date, subject to deficiencies in the application, in which case the processing time would likely be longer.[13]

9.5.4 Duration of design protection

A registered design is protected for five years from the date of filing the application. The registration may be renewed for further periods of five years upon the application for an extension and the payment of renewal fees, up to a maximum of 15 years.

9.5.5 Ownership of a design

The designer of the design is generally treated as the owner of the design. However, the RDA specifies exceptions to this rule, including that an employer is treated as the owner of the design

13 https://isomer-user-content.by.gov.sg/61/cd6ed076-da63-462f-8b70-d56001037c0a/registered-designs-infopack.pdf last accessed 23 June 2025.

created by an employee in the course of their employment, subject to any agreement to the contrary between the parties concerned.

9.5.6 Design infringement and exceptions

The RDA confers exclusive rights upon a design owner over any article in respect of which the design (or a design that is not substantially different from that design) is applied, or any device for projecting a non-physical product to which the design (or a design that is not substantially different from that design) is applied, as the case may be. These include the rights to sell, make or import into Singapore for commercial purposes such articles or devices.

On this basis, prohibited acts include the doing of anything which is the exclusive right of the registered owner without the consent of the registered owner.

However, the RDA specifies various exceptions, including: (1) the doing of any act for the purpose of evaluation, analysis, research or teaching; and (2) the import, sale, hire, or offer or exposure for sale or hire of any article to which the design has been applied, or any device for projecting a non-physical product to which the design has been applied, if such article or design was placed on the market by or with the consent of the registered owner.

9.6 Others

In addition to the IP rights discussed above, other types of IP rights recognised in Singapore include:

- geographical indications, which refer to an indication used in trade to identify a product that originates from a particular geographic location, that has given the product a specific quality or reputation. For instance, 'Champagne' is utilised to signify wine produced in the Champagne region. Geographical indications are protected under the Geographical Indications Act 2014;
- layout designs of integrated circuits, which are protected under the Layout-Designs of Integrated Circuits Act 1999;
- plant varieties rights, which are protected under the Plant Varieties Protection Act 2004; and
- undisclosed information, which is protected under the common law breach of confidence.

Chapter 10: Financing

Francis Mok, Allen & Gledhill, Singapore

10.1 Licensing requirements for banks

10.1.1 Licensing requirements for banks

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

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

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

10.1.2 Types of banks

The MAS currently issues three types of bank licences under the Banking Act: (1) a full bank licence; (2) a wholesale bank licence; and (3) a merchant bank licence.

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

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

Merchant banks are also licensed under and governed by the Banking Act. The scope of activities a merchant bank may undertake is generally narrower than that for licensed banks: merchant banks can only conduct the activities prescribed in the Banking Act and Banking (Merchant Banks)

Regulations (including alternative financing and leasing business) and they are not allowed to accept deposits or borrow from the public (except from banks, finance companies, shareholders and companies controlled by shareholders).

10.1.3 Bank representative office

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

10.1.4 Licensing process and admission criteria

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

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

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

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

- Singapore-incorporated full bank: paid-up capital and capital funds of at least SGD 1.5bn;
- Singapore-incorporated wholesale bank: paid-up capital and capital funds of at least SGD 100m;
- Singapore-incorporated merchant bank: paid-up capital and capital funds of at least SGD 15m; and
- foreign-incorporated full, wholesale or merchant bank: head office funds of at least the equivalent of SGD 200m.

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

10.1.5 Digital banks

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

MAS announced in December 2020 that it had issued licences to two digital full banks and two digital wholesale banks, therefore allowing these entities to conduct digital banking businesses in Singapore. The regulator is currently not granting new digital bank licences. A digital full bank is allowed to take deposits from and provide banking services to retail and non-retail customer segments, while a digital wholesale bank may only serve businesses and other non-retail customer segments. Digital full banks are not allowed to operate ATMs or cash deposit machines (CDM), or join any existing ATM/CDM networks. This is because the objective is for digital banks to adopt innovative digital ways of serving customers and supporting the future digital economy. Digital banks are required to meet the same minimum capital requirements as traditional banks.

Chapter 11: Data protection

Lam Chung Nian, WongPartnership, Singapore

11.1 Introduction

The Personal Data Protection Act (No 26 of 2012 of Singapore) (PDPA) prescribes a regulatory framework for the protection of personal data. It is a consent-based regime where consent of the individual is generally required for any collection, use and disclosure of personal data in Singapore, unless statutory exceptions apply.

The PDPA establishes a baseline standard of protection for personal data by complementing sector-specific legislative and regulatory frameworks. Organisations will therefore have to comply with the PDPA as well as the common law and other relevant laws applicable to the handling of personal data. For example, personal data can potentially constitute confidential information and consent will similarly be required for the use and disclosure of the confidential information.

For the purposes of the PDPA, 'personal data' means data, whether true or not, about an individual who can be identified from: (1) that data; or (2) that data and other information to which the organisation has or is likely to have access.

11.2 Key data protection obligations under the PDPA

The key data protection obligations under the PDPA are outlined as follows:

Consent, purpose limitation and notification obligations

Before collecting, using or disclosing personal data in Singapore, an organisation shall: (1) notify the individual of the purposes for which it will be collecting, using or disclosing that personal data; and (2) obtain the individual's consent for the collection, use or disclosure (as the case may be) of their personal data against notified purposes, which must be purposes that a reasonable person would consider appropriate in the circumstances.

An organisation shall not, as a condition of providing a product or service, require an individual to consent to the collection, use or disclosure of personal data about the individual beyond what is reasonable to provide the product or service to that individual.

On giving reasonable notice to the organisation, an individual may at any time withdraw any consent given in respect of the collection, use or disclosure by that organisation of personal data about the individual for any purpose. On receipt of the withdrawal notice, the organisation concerned shall inform the individual of the likely consequences of withdrawing their consent, and cease (and cause its data intermediaries and agents to cease) collecting, using or disclosing the personal data, unless such collection, use or disclosure (as the case may be) without the consent of the individual is required or authorised under the PDPA or other written law.

Access obligation

An organisation shall ensure that upon request by an individual, it shall, as soon as reasonably possible, provide the individual with: (1) the personal data about the individual that is in the possession or under the control of the organisation; and (2) information about the ways in which that personal data has been or may have been used or disclosed by the organisation within a year before the date of the request.

Correction obligation

Unless an organisation is satisfied on reasonable grounds that a correction should not be made, an organisation shall, upon receiving a request from an individual to correct an error or omission in their personal data that is in the possession or under the control of the organisation: (1) correct the personal data as soon as practicable; and (2) send the corrected personal data to every other organisation to which the personal data was disclosed by the organisation within a year before the

date the correction was made, unless that other organisation does not need the corrected personal data for any legal or business purpose.

Accuracy obligation

An organisation is required to make a reasonable effort to ensure that personal data collected by or on its behalf is accurate and complete, if the personal data is likely to be: (1) used to make a decision that affects the individual concerned; or (2) disclosed by the organisation to another organisation.

Protection obligation

An organisation is required to protect personal data in its possession or under its control by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks to the personal data in question.

Retention limitation obligation

An organisation shall cease to retain documents containing personal data, or remove the means by which the personal data can be associated with particular customers, as soon as it is reasonable to assume that: (1) the purpose for which the personal data was collected is no longer being served by retention of the personal data; and (2) retention is no longer necessary for legal or business purposes.

Transfer limitation obligation

An organisation shall not transfer any personal data to a country or territory outside Singapore except in accordance with requirements prescribed under the PDPA, to ensure that organisations provide a standard of protection to personal data so transferred that is comparable to the protection under the PDPA.

In practice, the most common way to comply with the Transfer Limitation Obligation in Singapore is to enter into a data transfer agreement with the overseas recipient that: (1) requires the recipient to provide to the personal data transferred to the recipient a standard of protection that is at least comparable to the protection under the PDPA; and (2) specifies the countries and territories to which the personal data may be transferred under the contract.

Accountability obligation

An organisation shall undertake measures in order to ensure that they meet their obligations under the PDPA and demonstrate that they can do so when required. Some of these measures are specifically required under the PDPA. In particular, an organisation shall: (1) develop and implement data protection policies and practices that are necessary for the organisation to meet its obligations under the PDPA; (2) develop a process to receive and respond to complaints arising with respect to the PDPA; (3) designate one or more individuals to be responsible for

ensuring that the organisation complies with the PDPA (commonly referred to as the data protection officer), and make available to the public the business contact information of at least one of the individuals designated; (4) communicate to its employees information about its data protection policies and practices; and (5) make available on request information in relation to its data protection policies and practices, including processes to receive and respond to complaints.

In addition to the data protection regime outlined above, the PDPA also contains the Do-Not-Call (DNC) provisions. These provisions generally prohibit organisations from sending marketing messages to Singapore telephone numbers registered with the DNC Registry, unless clear and unambiguous consent has been obtained, or statutory exceptions or exemptions apply.

11.3 Enforcement and offences

Among other remedies, contraventions of the PDPA may result in financial penalties of up to SGD 1m (approx US$0.77m), or ten per cent of an organisation's annual turnover in Singapore if the organisation's annual local turnover exceeds SGD 10m (approx US$7.74m).[14]

The PDPA also defines certain offences relating to personal data and anonymised information, including for certain forms of unauthorised disclosure of personal data, improper use of personal data, and unauthorised re-identification of anonymised information.

Chapter 12: Competition law

Daren Shiau, Allen & Gledhill, Singapore

12.1 Introduction

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

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

14 PDPC Singapore, 'Amendments to Enforcement under the Personal Data Protection Act (PDPA) in updated Advisory Guidelines and Guide', 1 October 2022, https://www.pdpc.gov.sg/news-and-events/announcements/2022/09/amendments-to-enforcement-under-the-personal-data-protection-act-in-updated-advisory-guidelines-and-guide accessed 28 June 2024.

12.2 Cartel regulation

12.2.1 Application

Section 34 of the Competition Act 2004 prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices that have as their objective or effect the prevention, restriction or distortion of competition within Singapore (the 'Section 34 Prohibition').

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

12.2.2 Prohibited matters

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

- directly or indirectly fixing purchase or selling prices, or any other trading conditions;
- limiting or controlling production, markets, technical development or investment;
- sharing markets or sources of supply;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

As set out in Chapter 2 of the CCCS Guidelines on the Section 34 Prohibition, other typically prohibited activities include: bid-rigging (collusive tendering); joint purchasing or selling; sharing information; exchanging price and non-price information; restricting advertising; and setting technical or design standards.

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

12.2.3 Vertical agreements

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

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

12.2.4 Infringement decisions

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

12.3 Abuse of dominance

12.3.1 Application

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

12.3.2 Definition of 'dominance'

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

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

12.3.3 Definition of 'abuse'

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

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

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

12.3.4 Notification

An undertaking that is unsure whether its agreement, decision or conduct infringes the Section 34 and/or Section 47 Prohibitions may notify the CCCS either for guidance or a decision. Generally, the CCCS will take no further action once it has provided guidance or a decision, unless certain matters are brought to its attention, such as complaints from third parties.

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

12.4 Merger control

12.4.1 Application

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

12.4.2 Notification

The CCCS requires all merger parties to conduct a mandatory self-assessment on whether a merger filing is necessary. A merger control filing to the CCCS is expected and advisable if the findings of the self-assessment are that the merger exceeds the indicative quantitative thresholds. Further, the CCCS amended its merger guidelines in 2022, with a greater focus on innovation and to address killer acquisitions. The articulated focus of the CCCS on innovation markets also means that deals can be called in while not meeting the conventional definition of markets and market shares.

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

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

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

- undertakings that have conducted a self-assessment may still be found to have intentionally or negligently infringed the Section 54 Prohibition if they proceed to close a transaction without notifying the CCCS: despite the parties in *Grab/Uber* having conducted a self-assessment, the CCCS disagreed with the findings of the self-assessment and found that the parties had intentionally or negligently infringed the Section 54 Prohibition by failing to notify the transaction; and
- the CCCS may reject undertakings' post-completion merger control filings and instead conduct an investigation: while the Singapore merger control regime allows for post-completion merger control filings, the CCCS prefers pre-completion filings and may reject post-completion filings or call-in unnotified transactions, opting instead to investigate the merger.

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

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

The CCCS may also, and as a matter of practice does, call-in and investigate transactions that fall below the Quantitative Thresholds. The test as to the existence of a substantial lessening of competition is qualitative rather than quantitative. Qualitative factors include the ease and

speed of supply-side substitution, countervailing buyer power, market transparency and cost stability in the market. In particular, the CCCS has also investigated transactions six years after the transaction was completed.

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

12.5 Consequences of infringement

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

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

Chapter 13: Dispute resolution

Dinesh Dhillon, Allen & Gledhill, Singapore Fay Fong, Allen & Gledhill, Singapore

13.1 Structure of the courts

13.1.1 Introduction

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

13.1.2 Litigation

COURT STRUCTURE

The legal profession in Singapore does not divide lawyers into barristers and solicitors. The civil court structure comprises two tiers: the Supreme Court and the state courts.

The principal courts under the state courts are magistrates' courts and district courts. The magistrates' courts generally hear disputes in which the amount claimed or the value of the subject matter in dispute does not exceed SGD 60,000. District courts generally hear cases where the amount claimed or the value of the subject matter in dispute is between SGD 60,000 and SGD 250,000, or up to SGD 500,000 (for road traffic accident claims or claims for personal injuries arising out of industrial accidents). State courts also consist of specialised courts that deal with specific types of claims. For example, small claims tribunals provide a quick and inexpensive forum for the resolution of small claims that fall within certain categories, such as disputes arising from contracts for the sale of goods or the provision of services. Employment claims tribunals provide a speedy and low-cost forum for the resolution of employment-related disputes, within prescribed claim limits.

The Supreme Court comprises the High Court and the Court of Appeal. The High Court consists of the Chief Justice and the Judges of the High Court, while the Court of Appeal consists of the Chief Justice and the Judges of Appeal. The High Court comprises the Appellate Division of the High Court and the General Division of the High Court. The General Division of the High Court has original jurisdiction to hear disputes where the amount claimed or the value of the subject matter in dispute is greater than that which the state courts have jurisdiction to hear, and also hears appeals from district courts and magistrates' courts. The Court of Appeal hears certain prescribed categories of appeals from the High Court and the Appellate Division of the High Court hears those appeals that are not allocated to the Court of Appeal. Unlike the Court of Appeal, the Appellate Division of the High Court does not have criminal jurisdiction and does not hear appeals relating to criminal cases.

In January 2015, the SICC was launched as a division of the General Division of the High Court and part of the Supreme Court of Singapore. The SICC is designed to deal with transnational commercial disputes, where the claim is of an international and commercial nature. The SICC was established to address the increase in commercial litigation and international commercial arbitration in Singapore, such as cross-border commercial disputes governed by foreign law, and enhances Singapore's position as a key legal and business hub in Asia.

The SICC has several unique features that effectively meet the growing demand for effective transnational dispute resolution in this region. For instance, the SICC bench comprises a diverse panel of eminent international and local judges, who are experienced specialist commercial judges in their own right. As of June 2024, the SICC panel of judges comprises 21 judges from ten different civil and common law jurisdictions, including Australia, Canada, China, France, Hong Kong, India, Japan, Singapore, the UK and the US. Another important feature of the SICC is that it allows foreign lawyers to represent parties in certain circumstances, so long as they are registered with the court and subject themselves to a Code of Ethics.

The procedures of the SICC are also flexible and may be tailored to suit parties' preferences in regard to several aspects. For complex disputes, the SICC has recently established the Technology, Infrastructure and Construction List (the 'TIC List'), with various protocols and enhanced features for efficient resolution. A Litigation–Mediation–Litigation Protocol has also been established with the Singapore International Mediation Centre to provide parties with options for multi-tiered dispute resolution.

TRIAL PROCESS

With a view to improving the efficiency of court proceedings, Singapore became the first country in the world to introduce a compulsory, nationwide paperless court filing system in 2000. The electronic filing system made provision for documents to be filed, served, delivered or otherwise conveyed using electronic services. In January 2013, an integrated electronic litigation system (known as eLitigation) was launched, as an enhanced version of the electronic filing system to provide law firms and court users with an integrated platform for the filing and service of court documents, and for the active management of case files throughout the litigation process. Singapore's first technology court was also launched on 8 July 1995, incorporating a wide variety of computer systems and audio-visual equipment to assist with hearings. The availability of such video-conferencing facilities make it convenient for foreign witnesses to give evidence in court without having to be physically present. This has been proven to be extremely useful, especially during the Covid-19 pandemic. In addition, Singapore courts actively manage cases with a focus on the expeditious conduct of claims. Registrar's Case Conferences are scheduled shortly after the commencement of proceedings, for parties to update the court on the proceedings' status, to indicate the need for and intention of the parties to make interlocutory applications, and for the court to set timelines. As a result, it is not uncommon for a trial to be concluded within six to 12 months of proceedings being commenced.

ENFORCEMENT OF FOREIGN JUDGMENTS

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

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

13.1.3 Expert determination

Expert determination is a means by which parties to a contract instruct a third party to decide on an issue. The third party is ordinarily an expert chosen for their expertise in relation to the issue between the parties. Singapore courts have decided that where the expert's determination has been agreed between the parties as final, that expert's determination will be binding on them. This dispute resolution tool has proven very useful in shipping cases, particularly when highly technical matters are at issue.

13.2 Use of arbitration

13.2.1 Arbitration

Singapore courts encourage the use of arbitration as a means to resolve disputes and this is evidenced by the fact that they recognise arbitration agreements and have stayed legal proceedings because of such agreements. Statutory rules have been enacted in the form of the Arbitration Act (which deals with domestic arbitration), as well as the International Arbitration Act (which deals with international arbitration), to provide for the said stay of legal proceedings in such cases.

The legislative framework concerning arbitration in Singapore has been frequently revisited by the Singapore government (amendments were recently made in 2012 and 2020) in order to ensure that the arbitration regime is on par with other jurisdictions and that Singapore remains an attractive venue for arbitration.

The SIAC was established in July 1991 as a not-for-profit, non-governmental organisation to meet the demands of the international business community for a neutral, efficient and reliable dispute resolution institution in Asia. The SIAC comprises a Court of Arbitration, which oversees the case administration and arbitral appointment functions of the SIAC; and the Board of Directors, which oversees its corporate and business development functions. On 30 December 2016, the SIAC announced the official release of the first edition of the Investment Arbitration Rules by the Singapore International Arbitration Centre, a specialised set of rules to address the unique issues present in the conduct of international investment arbitration. The SIAC Investment Arbitration Rules 2017 came into effect on 1 January 2017. As of 2024, the SIAC has an experienced international panel of over 600 expert arbitrators from over 40 jurisdictions. This includes over 100 experienced arbitrators in the energy, engineering, procurement and construction sectors, from more than 25 jurisdictions.

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

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

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

The Civil Law Act was amended on 28 June 2021 to extend the existing framework for third-party funding in Singapore not only to international arbitration, but also to domestic arbitration proceedings, certain proceedings before the SICC and related mediation proceedings. This offers businesses further alternatives to fund meritorious claims. Third-party funding is already available in other international arbitration centres and such introduction in Singapore strengthens the country's position as a key arbitration seat in the world. Entities that provide third-party funding must meet certain specific criteria set out in the regulations.

13.3 Other forms of dispute resolution

13.3.1 Mediation

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

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

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

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

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

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

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

On 7 August 2019, a treaty to facilitate the enforcement of settlement agreements that have been entered into with the assistance of mediation was signed. This is known as the UN Convention on International Settlement Agreements Resulting from Mediation. As of June 2025, 58 countries have signed the Convention, which came into force on 12 September 2020.

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

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

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

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