



## Doing Business in Singapore

Entrepreneurs intending to do business in Singapore would have to set up business entities, registered inter alia with the Accounting and Corporate Regulatory Authority (“ACRA”), for that purpose. There are several business vehicles available in Singapore, the more popular forms being sole proprietorships, partnerships, companies, and more recently – the limited liability partnerships and limited partnerships. Failure to register the appropriate business vehicle may lead one to being charged with an offence, which is then punishable with a fine of up to \$5,000, or imprisonment for a term not exceeding twelve months, or both.

### Business Firms

#### *Sole Proprietorships or partnerships?*

A sole proprietorship is a business firm owned by one person or one company. The sole proprietor has absolute say in the running of the business firm, but also bears all costs and risks, and may be **personally** accountable for the debts and losses of the business.

A partnership is a business firm owned by between *two to twenty* partners. Decisions must be agreed by all partners. A partnership is automatically dissolved where one partner exits the partnerships or passes away. The partners are also **personally accountable** for business debts and a partner can be made accountable for the loss caused by another partner.

### Companies

A company is a separate legal entity in its own right. Therefore, it may sue or be sued in its own name, and can own or hold any property. A company is owned by shareholders, with a minimum shareholding of one share per shareholder, and the liability of each shareholder in respect of the debts and losses of the company are limited to the value of the shares held.

In Singapore, at least one director of the company must be “ordinarily resident in Singapore”, which means that the director’s usual place of residence is in Singapore. A person who is ordinarily resident in Singapore includes a Singapore Citizen, Singapore Permanent Resident, Employment Pass (“EP”) holder or an EntrePass holder who is ordinarily resident here.

Generally, a company that employs an EP Holder can appoint the said EP Holder to be one of its directors. This is not the case for a company who wishes to appoint an EP Holder that is not its employee. Under prevailing laws and regulations on employment of foreign manpower, the aforementioned company is required to seek MOM’s consent for the said appointment. MOM’s approval for the said employment is usually through the issuance of a Letter of Consent.

The Constitution of the company will govern how the company is run. There are more formalities and procedures to be complied with, in comparison to the other business vehicles, for example, for the appointment of company officers, filing of annual returns, etc.

In general, there are four types of companies. Firstly, entrepreneurs can incorporate a private company, which is the most common form. This is a locally incorporated company where it can have a maximum of 50 shareholders. Secondly, entrepreneurs can incorporate an *exempt* private company which has not more than 20 shareholders (and none of the shareholders is a corporation or an entity that is wholly owned by the Government and which the Minister, in national interest, declares by notification in the Gazette to be an exempt private company). Thirdly, entrepreneurs can incorporate a *public* company limited by shares. This type of company limited by shares is a locally incorporated company in which the number of shareholders can be more than 50. The company may raise capital by offering shares and debentures to the public. A public company must however register a prospectus with the Monetary Authority of Singapore before making any public offer of shares and debentures. The final type of company which entrepreneurs can incorporate, is a public company limited *by guarantee*. This type of company usually carries out non-profit making activities that have some basis of national or public interest, such as for promoting art, or charity etc. The Minister may approve the registration of the company without the addition of the word "Limited" or "Berhad" to its name.

### **Limited Liability Partnerships ("LLP")**

An LLP combines the limited liability features of a company, and the flexibility of a partnership. Like a company, the LLP has its own legal personality. It is therefore capable of suing and being sued in its own name, acquiring and holding property, and doing such other acts and things in its name as a body corporate may lawfully do and suffer. Any change in the partners of a LLP will not affect its existence, rights or liabilities.

An LLP shall have at least two partners. The partners of the LLP will not be held personally liable for any business debts incurred by the LLP. A partner may, however, be held personally liable for claims from losses resulting from his own wrongful act or omission, but will not be held personally liable for such wrongful acts or omissions of any other partner of the LLP. Every LLP must have at least one manager (a natural person) who is an ordinary resident in Singapore (i.e. a Singaporean citizen or Singapore PR). An LLP is also required to have a registered office in Singapore.

An LLP is required to keep accounting records, profit and loss accounts and balance sheets that will sufficiently explain the transactions and financial position of the LLP. In the event the LLP does not do this, the LLP and every partner shall be prosecuted and the penalty may be a fine or imprisonment, or both. In addition, the LLP shall submit to the Registrar an annual declaration of solvency or insolvency (i.e. being able or unable to pay its debts respectively) which will be made available to the public.

The mutual rights and duties of a LLP and its partners are governed by a LLP agreement, or if there is no LLP agreement, by the provisions set out in Schedule 1 of the Limited Liability Partnership Act, Cap 163A.

### **Limited Partnerships ("LP")**

A new business vehicle called the Limited Partnership is available since 4 May 2009. A LP is a partnership consisting of two or more persons, with at least one general partner and one limited partner. A general partner is actively involved in the management of business whereas a limited partner is not. Each general partner bears unlimited liability while each limited partner bears limited liability for the debts and obligations of the LP. Unlike the LLP, a LP does not have a legal personality separate from its partners.

An LP must appoint a local manager (who is at least 18 years of age) if all the general partners are not “ordinarily resident” in Singapore. The local manager will be personally responsible for discharging all obligations of the LP. He is subject to the same responsibilities, liabilities and penalties as a general partner of the LP if the general partner defaults in respect of such obligation.

### **Registering a Foreign Branch in Singapore**

Foreign companies wishing to conduct business in Singapore can do so by registering as a foreign branch under the Singapore Companies Act. However, foreign companies are required to bear in mind that a branch office is merely treated as an extension of the foreign company and is not a separate legal entity from its parent company. Therefore, the head office is still ultimately responsible for all liabilities arising from any acts carried out by the branch office. A foreign branch office is also classified as a non-resident entity, and therefore is not entitled to receive tax exemptions as well as incentives which are made available to local companies in Singapore. As such, setting up a branch office is an option that is not as popular for small to mid-sized businesses. In addition, the name of the Singapore branch office needs to be identical to the head office. It has to be approved first, before the branch office is registered with the relevant authorities in Singapore. Generally, the company registrar will consent to register the proposed name unless a name is the same as that of an existing company in Singapore. In addition, the Singapore Companies Act states that a foreign company is required to appoint two local agents from Singapore who are resident and able to accept on its behalf service of process and notices required to be served on the company. These local agents are required to be natural persons. They will be: -

1. Answerable for the doing of all acts, matters and things which are required to be done by the foreign company under the Act; and
2. Personally, liable for all penalties imposed on the foreign company for any contravention of any of the provisions of the Act unless he can convince the Court that he should not be so liable.

If registration is successful, the Singapore branch office is permitted to carry out any form of business activity that falls within the scope of its parent company. The portion of the income attributable to its operations in Singapore will be subject to Singapore’s existing corporate tax rates.

*This article is intended to only discuss the various forms of setting up a company in Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice. Please contact us at [sg@gateway-law.com](mailto:sg@gateway-law.com) if you need legal advice or you wish to discuss the above article. This article is updated as at 27 February 2018.*