DOING BUSINESS IN SINGAPORE

1. WHAT ROLE DOES THE GOVERNMENT OF SINGAPORE PLAY IN APPROVING AND REGULATING FOREIGN DIRECT INVESTMENT?

Registration Requirement

Save for the restrictions discussed under Question 5 below, there is generally no prohibition or limit on foreign capital investment or foreign ownership of business entities in Singapore. However, every business in Singapore needs to be registered under the Business Registration Act (Chapter 32), Limited Liability Partnership Act (Chapter 163A) or Companies Act (Chapter 50). These are administered by the Accounting and Corporate Regulatory Authority in Singapore ("**ACRA**"), which undertakes the registration of all such businesses in Singapore and the regulation of such registrations.

Investment Climate

The Economic Development Board, a dedicated statutory agency of the Ministry of Trade and Industry, undertakes the promotion of investments and the planning and implementation of industrial development in Singapore.

The Singapore economy is exceptionally open and internationalised, underpinned by a stable and orderly government with transparent and consistent policies and extensive trade links. These encourage foreign direct investments which play a pivotal role in the economic development and growth of Singapore.

Besides a stable macroeconomic and business environment, a range of governmental incentives are also available to businesses operating in Singapore, such as tax incentives for investment and non-tax incentives in the form of financial grants for certain activities, training and research and development.

2. CAN FOREIGN INVESTORS CONDUCT BUSINESS IN SINGAPORE WITHOUT A LOCAL PARTNER? IF SO WHAT CORPORATE STRUCTURE IS MOST COMMONLY USED?

No Local Partner Requirement

Subject to the restrictions discussed under Question 5 below and the need for a director, a manager or agents (as the case may be) who is or are ordinarily resident as mentioned below within this Question 2, foreign investors may conduct business in Singapore without a local partner.

Vehicles for Conducting Business

Business may be conducted in Singapore through a: (i) company, which is a separate legal entity owned by at least one shareholder who may be either an individual or a company; (ii) branch of a foreign corporation, which is not separate from but an extension of its head office; (iii) partnership firm, which is not effectively distinguishable from and whose liabilities are not separate from those of its partners, comprising a minimum of 2 and a maximum of 20 individual or corporate partners; (iv) limited liability partnership firm which, like an ordinary partnership, may be formed with a minimum of 2 partners but unlike an ordinary partnership, is not subject to any maximum number of partners and whose partners may protect their personal assets from the

liabilities of such partnership; and (v) sole proprietorship firm, which is in effect and whose liabilities are assumed by the sole proprietor himself.

Currently, the further option of a limited partnership is being studied, whereby partners are distinguished between: (i) general partners who are responsible for the liabilities of the partnership; and (ii) limited partners who are not liable for the liabilities of the partnership beyond their respective capital contributions to the partnership. This however has not yet been passed into law at the time of going to print.

Ordinarily Resident Requirement

Every business (including that of a foreign investor) registered with ACRA in Singapore will need to appoint at least: (i) one director in the case of a company; (ii) 2 agents in the case of a branch of a foreign corporation; and (iii) one manager in the case of a sole-proprietorship or partnership firm, in each case who is or are ordinarily resident in Singapore. Such local residence may be met by a person who is a citizen or permanent resident of Singapore or who holds a Singapore employment or dependant's pass.

Common Structure

A structure commonly used by corporate foreign investors to conduct business in Singapore is the private company limited by shares held by that corporate foreign investor, so that the Singapore company becomes its subsidiary (whether wholly owned or otherwise).

Representative Office

Foreign companies keen on exploring the viability of doing business in Singapore and/or the surrounding region, may wish to set up a Representative Office ("**RO**") through International Enterprise Singapore. Although an RO is restricted from conducting business as such in Singapore, it has the benefit of allowing a foreign company to undertake promotional activities and/or test out the business environment in Singapore and/or the region before committing to any investment decisions. It is to be noted however, that a foreign company wanting to maintain long term operations or conduct business in Singapore will be required to register its business with ACRA.

3. HOW DOES THE SINGAPORE GOVERNMENT REGULATE COMMERCIAL JOINT VENTURES BETWEEN FOREIGN INVESTORS AND LOCAL FIRMS?

Commercial joint ventures between foreign investors and local firms are not specifically regulated by the Singapore government as such but are generally treated as a matter of contract between the parties.

However, the activities of such a joint venture may be restricted on account of the foreign investor's participation (see restrictions under Question 5 below) or may otherwise be generally regulated by industry-specific laws e.g. those which control, regulate or prohibit the importation, sale and distribution of certain goods that the government determines as posing a threat to health, security, safety and social decency.

4. WHAT LAWS INFLUENCE THE RELATIONSHIP BETWEEN LOCAL AGENTS AND DISTRIBUTORS AND FOREIGN COMPANIES?

As with commercial joint ventures between foreign investors and local firms, the relationship between local agents and distributors and foreign companies are also generally treated as a matter of contract between the parties.

Nonetheless, such a relationship may be influenced by the laws potentially affecting contracts, so that where the provisions of such laws are not commercially intended and to the extent legally permitted, the contract will need to expressly provide otherwise, such as from those under the: (i) Consumer Protection (Fair Trading) Act (Chapter 52A) which provides for the protection of consumers against sellers who engage in unfair practices; (ii) Consumer Protection (Trade Descriptions and Safety Requirements) Act (Chapter 53) which prohibits misdescriptions of goods supplied in the course of trade; (iii) Contracts (Rights of Third Parties) Act (Chapter 53B) which allows a third party who is not privy to but mentioned in a contract, to enforce rights or benefits expressly accorded to him under such contract; (iv) Limitation Act (Chapter 163) which makes available the defence of time bar against proceedings commenced after 6 years from the date the cause of action accrued on which those proceedings are based; (v) Sale of Goods Act (Chapter 393) which addresses matters relating to the sale of goods and imposes obligations on sellers with respect to the description and quality of and title to goods; (vi) Unfair Contract Terms Act (Chapter 396) which restricts the extent to which liability for breach of contract, negligence or other breach of duty may be contractually excluded; (vii) common law on contracts, including in relation to the formation and construction of a contract; (vii) common law on agency which attributes the authorised acts of an agent to its principal; and (viii) common law on conflicts of laws principles which determine the appropriate jurisdiction and applicable governing law.

The Multi-Level Marketing and Pyramid Selling (Prohibition) Act (Chapter 190) prohibits businesses or companies proposing to promote multi-level marketing or pyramid selling schemes in relation to the distribution and sale of goods, services, rights or other property. However, legitimate business schemes such as insurance businesses, master franchises and direct selling schemes which fulfill certain criteria are excluded from such prohibition under the Multi-Level Marketing and Pyramid (Excluded Schemes and Arrangements) Order.

5. WHAT STEPS DOES THE SINGAPORE GOVERNMENT TAKE TO CONTROL MERGERS AND ACQUISITIONS WITH FOREIGN INVESTORS OF ITS NATIONAL COMPANIES OR OVER ITS NATURAL RESOURCES AND KEY SECTORS (E.G. ENERGY AND TELECOMMUNICATIONS)?

Mergers and acquisitions involving foreign investors may be affected by the following restrictions imposed by the Singapore government.

Government-Linked Companies

Foreign investment in Singapore's government-linked companies (established, substantially owned and controlled by the Singapore government) is subject to restrictions, depending on the sectors they operate in. For example, the aggregate foreign shareholding limit in PSA Corporation (which operates Singapore's ports) is 49% and foreign ownership in Singapore designated airlines may be restricted based on the requirements of air services agreements signed by Singapore. Further, in the absence of special permission, equity ownership by individual investors (local and foreign) is limited to a range of 5% to 15% in government-linked companies like Singapore Technologies Engineering, PSA Corporation, Singapore Airlines and Singapore Power.

Print Media

Under the Newspaper and Printing Presses Act (Chapter 206) ("**NPPA**") the publication of any newspaper in Singapore can only be undertaken by a Singapore public company: (i) which has issued both management and ordinary shares; (ii) such management shares being held only by Singapore citizens who and corporations which have been approved by the Minister; and (iii) all the directors of whom are Singapore citizens. Further, the prior approval of the Minister is required for: (i) any foreign source funds to be received on behalf or for the purposes of any newspaper (approval for this may be granted if the funds are intended for genuine commercial purposes); and (ii) any person (local or foreign) to act with another on the acquisition, holding, disposal or exercise of rights of more than 5% of the voting shares in any newspaper company.

The NPPA also requires the chief editor or proprietor of every newspaper in Singapore to have obtained a permit for its publication, in the absence of which nobody is allowed to print or publish it or assist in doing so. Further the sale or distribution of any offshore newspaper in Singapore is not allowed unless its proprietor or agent has been granted a permit to do so. Where a newspaper published outside Singapore has been declared as engaging in the domestic politics of Singapore, no person may sell or distribute it in Singapore without the prior approval of the Minister.

Broadcasting

The Broadcasting Act (Chapter 28) ("**BA**") prohibits a company from being granted a broadcasting licence without the specific approval of the Media Development Authority of Singapore ("**MDA**") if 49% or more of its shares or voting power is held or all or a majority of the persons having management control over it, are appointed by any foreign source(s).

The BA further mandates that the approval of MDA is required for: (i) any person to (a) be appointed chief executive officer, director or chairman; or (b) become a substantial shareholder; or (c) gain control over the voting power, of a broadcasting company in Singapore; and (ii) any broadcasting company in Singapore to receive funds from any foreign source(s) for the purposes of financing any broadcasting service owned or operated by such a company.

Telecommunications

Although the Singapore telecommunication services market has been fully liberalised since 1 April 2000, the Telecommunications Act (Chapter 323) provides that any person operating and providing telecommunication systems and services in Singapore has to be licensed by the Info-communications Development Authority of Singapore. Further, although there are no foreign equity limits or restrictions imposed on licensees, any such licensee must be a company incorporated in Singapore.

Water

Under the Public Utilities Act (Chapter 261), no person other than the Public Utilities Board ("**PUB**") may supply piped water for human consumption in Singapore other than with the approval of the PUB.

Energy

Under the Electricity Act (Chapter 89A) and the Gas Act (Chapter 116A), no person is permitted to supply or engage in activities related to the supply of electricity or gas respectively in Singapore without the appropriate licence to do so issued by the Energy Market Authority of Singapore ("**EMA**"). There are no express foreign equity restrictions imposed on such licensees, although certain types of licences issued by EMA may be subject to conditions on the ownership or transfer of shares in the licensees.

Residential Property

Under the Residential Property Act (Chapter 274), foreign persons may not acquire (including through holding shares in a Singapore company which owns or has any interest in) any residential landed property or any apartment in any building of less than 6 levels, without the prior approval of the Controller of Residential Property.

Financial Services

Although there are generally no restrictions against foreign interests engaging in financial services business, banks, finance companies, insurance companies and stockbroking companies require special licences to be obtained under various statutes primarily regulated by the Monetary Authority of Singapore.

Professional Services

The provision of professional services in Singapore, such as legal, accountancy, engineering, architectural and medical services are licensed and regulated, with varying degrees of entry barriers to foreigners. For example, foreign law firms cannot practise Singapore law or employ Singapore-qualified lawyers to practise Singapore law or litigate in the local courts, while engineers and architects (both local and foreign) who are registered with the Professional Engineers Board and Architects Board respectively, can practise in Singapore.

Competition Law

Under the Competition Act (Chapter 50B), any merger or acquisition that has resulted or may be expected to result in a substantial lessening of competition within any market in Singapore for goods or services is prohibited, unless it is expressly excluded from such prohibition.

6. HOW DO LABOR STATUTES REGULATE THE TREATMENT OF LOCAL EMPLOYEES AND EXPATRIATE WORKERS?

Employment Act

The primary statute on employment in Singapore is the Employment Act (Chapter 91) ("**EA**"), which applies to all employees other than seamen, domestic workers and persons employed in a managerial, executive or confidential position and which operates alongside the common law on employment.

The EA takes a protective approach towards employees falling within its ambit who earn no more than SGD1,600 per month or who are "workmen" by mandating minimum requirements in relation to rest days, hours of work, holidays, annual leave, sick leave, retrenchment and

retirement benefits and variable payments and by securing the priority payment of employees' salaries over other creditors of the employer.

Although parties are at liberty to determine the terms in a contract of service, any term which is less favourable to the employee (who falls within the ambit of the EA) than that prescribed by the EA is illegal, null and void to the extent so less favourable. As for employees who do not fall within the ambit of the EA, they may freely negotiate their terms of employment with their employers.

Industrial Relations Act

Matters relating to employer-employee relations of unionised workers and collective agreements are governed by the Industrial Relations Act (Chapter 136), which provides for the establishment of the Industrial Arbitration Courts having jurisdiction over disputes relating to such matters.

Workmen's Compensation Act

The Workmen's Compensation Act (Chapter 354) provides for the payment of compensation to workmen (who undertake manual labour or whose earnings do not exceed SDG1,600 a month) for injuries or occupational diseases sustained in the course of work.

Expatriate Workers

Pursuant to the Employment of Foreign Workers Act (Chapter 91A) and the Immigration Act (Chapter. 133), an employer must generally apply for a work permit or employment pass for a foreign employee. The applicable type of work permit or employment pass depends on the skills, qualifications, job and salary of the foreign employee concerned. In addition, there is the EntrePass which is a specific category of employment pass for a foreign entrepreneur setting up business in Singapore.

Apart from the need for such passes and the differentiation on the payment of Central Provident Fund contributions and foreign worker levy discussed under Question 8, foreign or expatriate workers in Singapore are not differentiated in treatment from local employees.

7. HOW DO LOCAL BANKS AND GOVERNMENT REGULATORS DEAL WITH THE TREATMENT AND CONVERSION OF LOCAL CURRENCY, REPATRIATION OF FUNDS OVERSEAS, LETTERS OF CREDIT, AND OTHER BASIC FINANCIAL TRANSACTIONS?

Although the Exchange Control Act (Chapter 99) exists, it has been held in abeyance since 1 June 1978, so that there are effectively no currency exchange control restrictions in Singapore. Currency is freely convertible and profits made may be repatriated without restriction, subject to tax payable.

However, banks in Singapore are prohibited them from lending more than SGD5 million to any non-resident financial institution unless certain conditions are met.

8. WHAT TYPE OF TAXES, DUTIES AND LEVIES SHOULD A FOREIGN INVESTMENT IN SINGAPORE EXPECT TO ENCOUNTER?

Corporate Income Tax

Under the Income Tax Act (Chapter 134), income derived from or accrued or received in Singapore by a company (whether incorporated or registered in Singapore or elsewhere) is liable to corporate income tax at the current prevailing rate of 20% in respect of the Year of Assessment 2007 (i.e. for 2006 income), which is expected to be reduced to 18% in the following year. To alleviate the tax burden so as to encourage entrepreneurship and to position Singapore as a business hub: (i) capital gains are not subject to tax; (ii) certain exemptions on chargeable income may apply (e.g. for new companies and foreign-sourced income); (iii) certain expenses may be tax-deductible; and (iv) losses and capital allowances can be deducted from assessable income.

Withholding Tax

Because a non-resident is liable to pay tax on Singapore-sourced income, withholding tax is chargeable on specified payments (e.g. interest and commission on loans, royalty and rent on use of movable property, fee for use of technical information or know-how, management fee, payment for real estate to property dealer) made to non-residents at such rate depending on the nature of the payment in question.

Goods and Services Tax

Subject to certain exemptions (i.e. in relation to financial services and sale and lease of residential properties), Goods and Services Tax ("**GST**") is charged at the current prevailing rate of 7% on: (i) the supply of goods and services made in Singapore by a GST-registered business (see below); and (ii) goods imported into Singapore as if it were customs or excise duty. Notably, the GST on the supply of international services is presently zero-rated.

It is compulsory for a business to be GST-registered where its annual taxable turnover exceeds or is expected to exceed SGD1 million, although even where such condition is not met, it is possible to voluntarily register a business for GST purposes. The significance of being a GST-registered business it that such business is: (i) on the one hand, obliged to collect and pay over the "input" GST on its supply of goods and services; and (ii) on the other hand, entitled to offset such "input" GST against the "output" GST charged to it by its suppliers.

Customs and Excise Duty

Intoxicating liquors, tobacco products, motor vehicles and petroleum products manufactured in Singapore or imported into Singapore are subject to payment of customs and excise duty at varying rates depending on the nature and quantity of the goods concerned.

Stamp Duty

Stamp duty is payable on documents relating to transfers, conveyances and mortgages of immovable property, stocks and shares and leases of immovable property at varying rates depending on the transaction relating to the document in question.

Tax on Real Property

Owners of real estate have to pay property tax at the current rate of 10% on the annual value of the property (being the gross amount at which the property can reasonably be expected to be let), subject to a concessionary rate of 4% of the said annual value for residential property which is owner-occupied.

Central Provident Fund Contributions

Employers who hire Singaporean employees in Singapore are required to make monthly contributions to the account of each such employee maintained with the Central Provident Fund ("**CPF**"), which is a compulsory savings scheme administered by the CPF Board. The current rate of such employer CPF contributions is 14.5% of the employee's monthly salary or of SGD4,500 whichever is lower, and represents an additional cost to the employer on top of salaries.

In addition to such employer contributions, the employee is required to make monthly CPF contributions at the current rate of 20% of the employee's monthly salary or of SGD4,500 whichever is lower. Such employee contributions are deducted at source by the employer and paid over to the CPF Board together with the above employer's contributions.

CPF contributions are not mandatory in relation to employees who are non-Singaporeans, although with respect to Singapore permanent residents, the CPF contributions would be graduated upwards over a 2-year period from the time of first attaining permanent resident status until the generally applicable rates apply from the 3rd year onwards.

Skills Development Levy

Employers are also required to pay a Skills Development Levy to the CPF Board (on behalf of the Singapore Workforce Development Agency) for each employee whose monthly salary is SGD2,000 or less at the rate of 1% of the gross monthly salary or SGD2, whichever is greater.

Foreign Worker Levy

Employers who hire foreign workers issued with work permits (other than employment pass holders) are required to pay a fixed monthly levy in such amount depending on the industry sector which such workers belong to and whether they are skilled or unskilled.

9. HOW COMPREHENSIVE ARE THE INTELLECTUAL PROPERTY LAWS OF SINGAPORE, AND DO LOCAL COURTS AND TRIBUNALS ENFORCE THEM OBJECTIVELY, REGARDLESS OF THE NATIONALITY OF THE PARTIES?

As a signatory to no less than 12 international conventions on the protection of intellectual property ("**IP**"), Singapore's IP laws are comprehensive and fully compliant with the Agreement on Trade Related Aspects of Intellectual Property Rights ("**TRIPS**") administered by the World Trade Organization.

Such IP laws are addressed by both the common law, which touches on unregistered trade marks, passing off, trade secrets and confidentiality, as well as IP statutes comprising the: (i) Patents Act (Chapter 221); (ii) Copyright Act (Chapter 63); (iii) Trade Marks Act (Chapter 332); (iv) Geographical Indications Act (Chapter 117B); (v) Registered Designs Act (Chapter 266); (vi)

Layout-Designs of Integrated Circuits Act (Chapter 159A); and (vii) Plant Varieties Protection Act (Chapter 232A).

The importance that Singapore places on the enforcement of IP rights is illustrated by its establishment of the Intellectual Property Rights Branch within the Singapore Police Force as a specialised crime division devoted to the investigation and suppression of IP rights violation in Singapore.

Testament to Singapore's objective enforcement of IP rights, regardless of the nationality of the parties, is its rankings as: (i) No. 1 Asian nation for IP protection by the World Economic Forum's Global Competitiveness Report 2006; (ii) No. 9 nation in the world for IP protection by the World Economic Forum's Global Competitiveness Report for 2006; (iii) No.1 Asian nation where IP rights are being adequately enforced in the World Competitiveness Yearbook 2005 and 2006 by the Institute of Management Development; and (iv) most IP-protective in Asia by the Political and Economic Research Consultancy for the years 2003 and 2004.

10. IF A COMMERCIAL DISPUTE ARISES, WILL LOCAL COURTS OR WILL ARBITRATION OFFER A MORE BENEFICIAL FORUM FOR DISPUTE RESOLUTION TO FOREIGN INVESTORS?

The choice of resolving commercial disputes through local courts or arbitration is not necessarily different for a foreign investor than for any local party in Singapore.

Where arbitration is preferred for its benefits of privacy and confidentiality of proceedings, flexibility and autonomy of the disputing parties to determine procedures and arbitral tribunals, such as may be desired for technical matters, and the finality of arbitral awards (other than a limited scope of appeal in a domestic arbitration if not excluded by contract), arbitration in Singapore preserves these. It cannot be said, however, that arbitration necessarily secures speed, cost efficiency, competence or neutrality in a way that litigation in Singapore does not.

Singapore Courts

The Constitution of Singapore provides for the independence of the judiciary, who man the hierarchy of courts in Singapore, comprising (i) the Subordinate Courts (made up of Small Claims Tribunals, Coroners' Courts, Juvenile Courts, Magistrates' Courts and District Courts); and (ii) the Supreme Court (made up of the High Court and the Court of Appeal, the latter being the final appellate court in the land). Such hierarchical structure facilitates the system of appeals whereby litigants are provided the opportunity of appealing to a higher court against the decision of a lower court, on stipulated conditions.

Within such court structure has been in-built a mechanism whereby parties would be invited to voluntarily attempt, before trial, without prejudice mediation or out-of-court settlement.

Singapore Arbitration

Arbitration in Singapore is governed by the International Arbitration Act (Chapter 143A) ("**IAA**") and the Arbitration Act (Chapter 10) ("**AA**"). In the absence of the arbitration agreement providing for the applicability of other rules of arbitration, either of these Acts will govern arbitration proceedings in Singapore as follows: (i) the IAA (which adopts the UNCITRAL Model Law on Commercial Arbitration) will apply by choice of the parties or will apply to

arbitration determined to be international in nature in that it meets one of the following criteria, viz. (a) one of the parties has its place of business outside Singapore; (b) the arbitration agreement provides for a place of arbitration which is outside either party's place of business; (c) a substantial part of the obligations under the commercial relationship is to be performed in a country outside either party's place of business; (d) the subject-matter of the dispute is most closely connected to a country which is outside either party's place of business; or (e) the parties have agreed that the subject-matter of the arbitration agreement relates to more than one country; (ii) otherwise, the AA (which is less extensive than the IAA) will apply.

The Singapore International Arbitration Centre ("**SIAC**") provides a comprehensive range of services for international and domestic arbitration in Singapore. It administers cases before it under its own SIAC Rules of Arbitration although it is also able to do so under other rules agreed to by the parties.

Notably, foreign lawyers may act in arbitration proceedings in Singapore.

As a signatory to the New York Convention on the Recognition of Foreign Arbitral Awards, Singapore is bound to recognise arbitral awards issued in the other member states to this convention and ought to be similarly assured of the enforceability of awards issued out of arbitration proceedings in Singapore.