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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA

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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA

PREPARED BY MERITAS LAWYERS IN ASIA

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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA

This is the fourth revised edition of Successful Strategies for Doing Business in Asia, which was first published in 2006. Prepared by lawyers from 13 leading Meritas member law firms in the Asia region, this book targets foreign investors and business people looking to pursue investment opportunities throughout Asia. Each chapter contains general information and guidelines and offers practical insights as opposed to specific legal advice.

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The following currency notations are used throughout this book.

RMB	Chinese Renminbi	PHP	Philippine Peso
HKD	Hong Kong Dollar	SGD	Singapore Dollar
INR	Indian Rupee	TWD	New Taiwan Dollar
IDR	Indonesian Rupiah	THB	Thai Baht
JPY	Japanese Yen	USD	United States Dollar
KRW	Korean Won	VND	Vietnamese Dông
MYR	Malaysian Ringgit		

In 2008, the world experienced its worst financial crisis in 70 years. Today, while many countries and economic regions are still suffering, Asia continues to be a bright spot. Home to 3.8 billion people, Asia is playing a major role in driving the global economy back to healthier times. At first, China rebounded quickly, though this momentum has slowed somewhat recently. India exhibits signs of long-term growth potential, as do Singapore, Malaysia and others in Asia, but serious challenges remain.

For over 30 years I have worked on behalf of multinational companies in their pursuit of investment and business opportunities throughout Asia. What I have learned is that countries in the Asian region can appear similar and at the same time be remarkably different. While local legal systems and government regulations will vary, every country has universal opportunities and challenges that foreign investors will face. This book is designed to provide both practical and timely insights into the 12 most frequently-asked questions that potential investors in Asia should consider:

1. What role will the government play in approving and regulating opportunities for foreign direct investment?
2. Is it possible for foreign investors to conduct business without involving a local partner? What corporate structure is most commonly used and best for foreign investors?
3. How does the government regulate commercial joint ventures composed of foreign investors and local companies or individuals?
4. What specific laws will influence the commercial relationship between local agents/distributors and foreign companies?
5. In what manner does the government regulate merger and acquisition activities by foreign investors? Are there any specific areas or industries that are heavily restricted or completely prohibited to foreign investors?
6. How do local labor statutes regulate the treatment of employees and expatriate workers?
7. What role do local banks and government agencies play in regulating the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?
8. What types of taxes, duties and levies should a foreign investor expect to encounter in negotiating an inbound investment?

9. Do comprehensive intellectual property laws exist, and do they provide the same levels of protection for foreign investors as local companies? Will local courts and tribunals enforce IP laws uniformly, regardless of the nationality of the parties?
10. If a commercial dispute arises, given the choice between local courts or an international arbitration venue, which would offer a more beneficial forum for fair dispute resolution for foreign investors?
11. What recommendations can you offer for how best to negotiate and conduct business in your country?
12. What practical advice can you share with investors who decide to do business in your country?

Thirteen Asian law firms within the Meritas alliance have generously contributed to this book. These firms are comprised of leading local lawyers who possess broad practical experience in advising international clients on how best to conduct business in their respective countries. Each law firm was presented with these "Twelve Questions" and invited to write a chapter providing an overview of the laws in their jurisdiction along with timely insights and advice. In a concise manner, this book hopes to provide readers with a clear understanding of the similarities and differences, strengths and weaknesses of countries in the Asian region.

One final thought: For those who are waiting for Asia to become more predictable or financially stable before pursuing business or investment opportunities, do not wait too long. Most successful multinationals are already actively conducting business throughout Asia. Those who delay will find themselves missing out on one of the greatest economic expansions in history. There are risks, certainly, but also great rewards for the savvy – and educated – investor.

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

REGISTRATION REQUIREMENT

Save for the restrictions discussed under Question 5, 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), Limited Partnerships Act 2008 (No. 37 of 2008) 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 internationalized, 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. IS IT POSSIBLE FOR FOREIGN INVESTORS TO CONDUCT BUSINESS IN SINGAPORE WITHOUT A LOCAL PARTNER? WHAT CORPORATE STRUCTURE IS MOST COMMONLY USED AND BEST FOR FOREIGN INVESTORS?

NO LOCAL PARTNER REQUIREMENT

Subject to the restrictions discussed under Question 5 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 company, which is a separate legal entity owned by at least one shareholder who may be either an individual or a company.
- A branch of a foreign corporation, which is not separate from but an extension of its head office.
- A partnership firm, which is not effectively distinguishable from and whose liabilities are not separate from those of its partners, comprising a minimum of two and a maximum of 20 individual or corporate partners.
- A limited liability partnership firm which, like an ordinary partnership, may be formed with a minimum of two 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.
- A limited partnership firm, which may be formed with a minimum of two partners, one of whom being a general partner responsible for the liabilities of the partnership, and the other being a limited partner who is not liable for the liabilities of the partnership beyond his agreed contribution, provided he does not take part in the management of the partnership.
- A sole proprietorship firm, which is in effect and whose liabilities are assumed by the sole proprietor.

ORDINARILY RESIDENT REQUIREMENT

Every business (including that of a foreign investor) registered with ACRA in Singapore will need to appoint at least:

- One director in the case of a company;
- Two agents (poised to be reduced to one authorised representative when proposed amendments take effect as scheduled in the second quarter of 2015) in the case of a branch of a foreign corporation; and
- 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 dependent'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 (unless the business relates to banking or insurance, in which case this would be done through the Monetary Authority of Singapore).

Although an RO is restricted from conducting business as such in Singapore, it has the benefit of allowing a foreign company to manage and coordinate noncommercial activities such as gathering information with respect to markets and clients, product demand, price expectations, user requirements and building of trade contacts. However, a RO can only operate in Singapore for a maximum of three years from the date of its inception. Thus, 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 GOVERNMENT OF SINGAPORE REGULATE COMMERCIAL JOINT VENTURES COMPOSED OF FOREIGN INVESTORS AND LOCAL COMPANIES OR INDIVIDUALS?

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. Foreign investors are not required to enter into joint ventures with nor cede management control to local interests.

However, the activities of such a joint venture may be restricted on account of the foreign investor's participation (see restrictions under Question 5) 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 SPECIFIC LAWS WILL INFLUENCE THE COMMERCIAL RELATIONSHIP BETWEEN LOCAL AGENTS/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:

- Consumer Protection (Fair Trading) Act (Chapter 52A) which provides for the protection of consumers against sellers who engage in unfair practices;
- Consumer Protection (Trade Descriptions and Safety Requirements) Act (Chapter 53) which prohibits misdescriptions of goods supplied in the course of trade;
- 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;

- Limitation Act (Chapter 163) which makes available the defense of time bar against proceedings commenced after six years from the date the cause of action accrued on which those proceedings are based;
- 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;
- 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;
- Common law on contracts, including in relation to the formation and construction of a contract;
- Common law on agency which attributes the authorized acts of an agent to its principal; and
- 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 multilevel 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. IN WHAT MANNER DOES THE GOVERNMENT OF SINGAPORE REGULATE PROPOSED MERGER AND ACQUISITION ACTIVITIES BY FOREIGN INVESTORS? ARE THERE ANY SPECIFIC AREAS OR INDUSTRIES THAT ARE HEAVILY RESTRICTED OR COMPLETELY PROHIBITED TO FOREIGN INVESTORS?

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 in which they operate. 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:

- Which has issued both management and ordinary shares;
- Such management shares being held only by Singapore citizens who and corporations which have been approved by the Minister; and
- All the directors of whom are Singapore citizens.

Further, the prior approval of the Minister is required for:

- 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
- 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 license 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:

- Any person to
  - be appointed chief executive officer, director or chairman; or
  - become a substantial shareholder; or
  - gain control over the voting power, of a broadcasting company in Singapore; and
- Any broadcasting company in Singapore receiving 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 liberalized 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 (IDA). Further, although there are no foreign equity limits or restrictions imposed on licensees, any such licensee must be a company incorporated in Singapore.

The IDA may designate any telecommunication licensee (DTL) or any trust (DT) or any business trust (DBT) operated by such licensee to be subject to additional restrictions. In particular, IDA approval is required for:

- The appointment of chairman chief executive officer or director of any DTL; and
- Any person to acquire any part of the business as a going concern of, or certain prescribed levels/forms of control over a DTL, DT or DBT.

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 license 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 licenses 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 vacant residential land, any landed residential property, or any apartment in a building which is not an approved "condominium" development without the prior approval of the Controller of Residential Property.

FINANCIAL SERVICES

There are generally no restrictions against foreign interests engaging in financial services business, although banks, finance companies, insurance companies and stockbroking companies require special licenses 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, a foreign law firm cannot practice in Singapore or employ Singapore-qualified lawyers to practice Singapore law or litigate in the local courts unless it has been issued with a Qualifying Foreign Law Practice (QFLP) license. With such a QFLP license, the foreign law firm would be able to practice Singapore law in permitted areas (excluding domestic litigation and domestic general practice, e.g., criminal law, retail conveyancing, family law and administrative law) through Singapore-qualified lawyers employed by the firm. In comparison, engineers and architects (both local and foreign) who are registered with the Professional Engineers Board and Architects Board, respectively, can practice 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 LOCAL LABOR STATUTES REGULATE THE TREATMENT OF 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, regardless of nationality, who are under a contract of service with an employer, other than seamen, domestic workers and persons employed in a managerial or executive position with a monthly basic salary in excess of SGD4,500 and which operates alongside the common law on employment.

Provisions of the EA which prescribe certain minimum requirements regarding rest days, hours of work, holidays, annual leave, sick leave, payment of retrenchment benefits, retirement benefits and certain other conditions of service only apply to:

- An employee who earns a monthly basic salary of SGD2,000 or less and does not hold a managerial or executive position; and
- A worker who earns a monthly basic salary of SGD500 or less.

Although parties are at liberty to determine the terms in a contract of service, any term which is less favorable 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 favorable. 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 unionized 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.

WORK INJURY COMPENSATION ACT

The Work Injury Compensation Act (Chapter 354) provides for the payment of compensation to all employees (whether manual or non-manual workers and regardless of their level of earnings) for injuries or occupational diseases sustained in the course of work.

EXPATRIATE WORKERS

Pursuant to the Employment of Foreign Manpower 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. WHAT ROLE DO LOCAL BANKS AND GOVERNMENT AGENCIES PLAY IN REGULATING 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.

Notwithstanding such lack of exchange control currency restrictions, anti-money laundering and anti-terrorist financing regulations require banks in Singapore to exercise prescribed customer due diligence measures when:

- Establishing business relations with any customer;
- Undertaking any transaction valued above SGD20,000 for any customer;
- There is a suspicion of money laundering or terrorist funding; or
- The bank has doubts about the veracity or accuracy of any information previously obtained

Additionally, banks in Singapore are prohibited from lending more than SGD5 million to any nonresident financial institution unless certain conditions are met.

8. WHAT TYPES OF TAXES, DUTIES, AND LEVIES SHOULD A FOREIGN INVESTOR EXPECT TO ENCOUNTER IN NEGOTIATING AN INBOUND INVESTMENT IN SINGAPORE?

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 17% with effect from the Year of Assessment 2010 (i.e., for 2009 income). To alleviate the tax burden so as to encourage entrepreneurship and to position Singapore as a business hub:

- Capital gains are not subject to tax;
- Certain exemptions on chargeable income may apply (e.g., for new companies and foreign-sourced income);
- Certain expenses may be tax-deductible; and
- Losses and capital allowances can be deducted from assessable income.

WITHHOLDING TAX

Because a nonresident 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, nonresident directors' remuneration) made to nonresidents 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:

- The supply of goods and services made in Singapore by a GST-registered business (see below); and
- 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 registration on a voluntary basis is possible where turnover is less than SGD1 million. GST-registered businesses are:

- Obliged to collect and pay over the "input" GST on its supply of goods and services; and
- Entitled to offset such "input" GST against the "output" GST charged to it by its GST-registered 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 *ad valorem* 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 a rate which differs for nonresidential properties (e.g., commercial and industrial buildings) and residential properties. The current rate for nonresidential property is 10% on the annual value of the property (being the gross amount at which the property can reasonably be expected to be let). The residential property rate is based on a progressive scale ranging from 10% to 20% on the annual value of the property, subject to a concessionary tax rate for a 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 17% of the employee's monthly salary or of SGD5,000, 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 SGD5,000 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.

Such employer and employee contribution rates decrease once an employee reaches the age of 50 years.

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 two-year period from the time of first attaining permanent resident status until the generally applicable rates apply from the third 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 all employees, at a rate of 0.25% of up to the first SGD4,500 of gross monthly salary, or SGD2 per month, 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 to which such workers belong and whether they are skilled or unskilled.

9. DO COMPREHENSIVE INTELLECTUAL PROPERTY LAWS EXIST IN SINGAPORE AND DO THEY PROVIDE THE SAME LEVELS OF PROTECTION FOR FOREIGN INVESTORS AS LOCAL COMPANIES? WILL LOCAL COURTS AND TRIBUNALS ENFORCE IP LAWS UNIFORMLY, 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 trademarks, passing off, trade secrets and confidentiality, as well as IP statutes comprising the:

- Patents Act (Chapter 221)
- Copyright Act (Chapter 63)
- Trade Marks Act (Chapter 332)
- Geographical Indications Act (Chapter 117B)
- Registered Designs Act (Chapter 266)
- Layout-Designs of Integrated Circuits Act (Chapter 159A)
- 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 specialized 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 and the value placed on IP in general, are its rankings as:

- No.1 in Asia and No. 2 in the world for having the best protection of IP by the World Economic Forum's Global Competitiveness Report 2014-2015;
- Asia's most innovative country in the Global Innovative Index 2014 as compiled by the INSEAD Business School in collaboration with the World Intellectual Property Organization of the United Nations; and
- No. 1 in Asia and No. 5 in the world for IP protection in the International IP Index 2015 as compiled by the Global Intellectual Property Centre, an affiliate of the U.S. Chamber of Commerce.

10. IF A COMMERCIAL DISPUTE ARISES, GIVEN THE CHOICE BETWEEN LOCAL COURTS OR AN INTERNATIONAL ARBITRATION VENUE, WHICH WOULD OFFER A MORE BENEFICIAL FORUM FOR FAIR DISPUTE RESOLUTION FOR 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.

Arbitration is usually 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 or specialized 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 benefits. 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:

- The State Courts (made up of Small Claims Tribunals, Coroners' Courts, Family Courts, Youth Courts, Magistrates' Courts and District Courts); and
- 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, out-of-court settlement or alternative dispute resolution processes such as without prejudice mediation, neutral evaluation and arbitration.

SINGAPORE INTERNATIONAL COMMERCIAL COURT

The Singapore International Commercial Court (SICC) was launched on 5 January 2015 as a division of the Singapore High Court, with jurisdiction to hear international commercial disputes, including those that are governed by foreign law. The panel of SICC judges comprises international jurists with foreign law expertise and existing judges of the Sinapore Supreme Court. Appeals from the SICC are heard by the Singapore Court of Appeal, for which appellate judges may be drawn from the panel of SICC judges. The SICC broadens Singapore's suite of dispute resolution services and complements its thriving arbitration sector.

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:

- 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:
  - One of the parties has its place of business outside Singapore;
  - The arbitration agreement provides for a place of arbitration which is outside either party's place of business;
  - A substantial part of the obligations under the commercial relationship is to be performed in a country outside either party's place of business;
  - The subject matter of the dispute is most closely connected to a country which is outside either party's place of business; or
  - The parties have agreed that the subject matter of the arbitration agreement relates to more than one country;
- Otherwise, the AA (which is less extensive than the IAA) will apply.

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

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. SIAC also offers a unique Arb-Med-Arb procedure whereby parties in arbitration proceedings can agree to suspend the proceedings in favour of without prejudice mediation administered by the Singapore International Mediation Centre. If such mediation yields a settlement, this can be recorded as a consent arbitration award. Otherwise, the parties are to resume the SIAC arbitration proceedings.

In 2010, Maxwell Chambers was opened in Singapore as the world's first integrated dispute resolution complex to provide a venue for hearing facilities and arbitral institutions. Maxwell Chambers also houses many international arbitration institutions.

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

11. WHAT RECOMMENDATIONS CAN YOU OFFER FOR HOW BEST TO NEGOTIATE AND CONDUCT BUSINESS IN SINGAPORE?

LANGUAGE AND CULTURE

Although Singapore is a multilinguistic, multicultural and multireligious Asian society, it is a secular state where English is the *lingua franca* in commerce. The negotiation of international business transactions in English is therefore a default practice that does not require conversion from any other different local practice.

That said, there is a distinct "brand" of English that is widely spoken in Singapore, affectionately termed as "Singlish." To the uninitiated, certain expressions, turns of phrases, grammatical structure and indeed, the typical accent of "Singlish" may sound unusual and, in limited instances, possibly incomprehensible (especially if the "Singlish" accent is thick). Where "Singlish" is used and not understood, it would not be untoward and, in fact, it would be advisable to politely request clarification. Sometimes, this creates an opportunity for an injection of humour, which is always a welcomed factor in negotiations.

With its history as a British colony, and its limited geography and market that have necessitated adoption of an open-door economic policy, Singapore has evolved with strong Western and Anglo Saxon influences. As a consequence, the general business mentality in Singapore would be relatively accessible and less mysterious or inscrutable to a Western business counterpart.

In comparison with some other Asian countries, and putting aside general business protocol, manners and practices, there is relatively less to grapple with in terms of specific cultural protocol in Singapore in the business context.

BUSINESS PRAGMATISM

Singapore lends itself to an ethos of business pragmatism that is easily discernible in commercial exchanges, perhaps borne out of a political history that has required the country to be useful and relevant to others as an immediate means of survival. Local enterprises are therefore generally open to considering proposals that make good business sense, are synergistic in the pooling of resources or offer opportunity for mutual gain, even where personal connections are not strong or are absent.

This is not to suggest that personal relationships are not valued. Like everywhere else in the world, business in Singapore founded on good personal relationships goes a long way.

GOVERNMENT IN BUSINESS

The business scene in Singapore includes the direct or indirect participation of government-linked companies (GLCs) or enterprises in commercial activities for profit alongside private enterprises. This is not regarded in any way as inappropriate or to be cause for concern. Negotiating with GLCs in relation to for-profit business transactions is considered as regular business in Singapore.

12. WHAT PRACTICAL ADVICE CAN YOU SHARE WITH INVESTORS WHO DECIDE TO DO BUSINESS IN SINGAPORE?

REGULATORY AND POLICY CONSIDERATIONS

In embarking on a business venture in Singapore, it is useful to get a handle on the lay of the land on the industry in question and to determine the prevailing regulatory and economic policies affecting that industry, e.g., knowing that an industry has been identified as a key driver of the economy can aid in a practical understanding of the applicable regulatory framework and how to navigate any regulatory requirements under such framework.

Furthermore, there may be specific tax and related incentives available for certain business activities and transactions worth taking advantage of. Some of these may not be immediately obvious, so a conscious effort at seeking them out may make a difference to learning of them. Advance planning in light of the availability of such incentives may be potentially helpful in bringing about a more strategic approach to the overall business planning process. It is also possible that such incentives may tip the scales in favor of choosing Singapore as the place to establish a business presence in the region.

LOCAL AGENTS AND DISTRIBUTORS

Using agents or distributors is a common (and can be an effective) way to serve the Singapore market where a direct business presence is not desired or not appropriate at the given point in time. Singapore firms are generally aggressive when it comes to representing new products and are typically responsive to new opportunities.

REGIONAL OPPORTUNITY

As Singapore is itself a relatively small market, many business enterprises established in Singapore take advantage of the opportunities presented by the geographical proximity and density of the other markets in the region. A Singapore business establishment typically works very well as a regional hub, given the excellent business infrastructure within Singapore and easy accessibility to the surrounding markets from Singapore. With a strong history of trade, Singapore companies are particularly successful in taking products to the region.

HUMAN RESOURCES

Singapore currently faces a challenge in relation to the issue of manpower management at the national level. Having become dependent on foreign labor and human resources in its economic development over the years, Singapore is now at the crossroads of finding the right balance between continuing to allow the influx of such foreign human resources (with all its social and consequent political implications in a country as geographically limited as Singapore) and stemming its tide in a measured and sustainable way for the foreseeable future.

This challenge has translated to some real business difficulties arising from a curtailing of approvals for work passes of foreign employees working or proposing to work in Singapore at all levels of hiring. Compounded with a general (even if not critical) manpower squeeze, it is advisable to address manpower planning for doing business in Singapore in advance. The ability to secure required work passes for expatriate personnel working in Singapore, and in time to meet business operational needs, should no longer be assumed. Reasonable time and planning ought to be dedicated to ensure that such work passes can in fact be obtained by the time they are required according to the proposed business plans.

Notably, the level of education in Singapore is generally high and plugging into the local talent pool should remain a business option in most instances. Indeed, it is necessary to have first explored this option before approval is given to hire foreign personnel in Singapore in relation to certain levels of human resource deployment.

REAL ESTATE AND CAR COSTS

For all its attractions as a place for doing business in Asia, Singapore is not necessarily a cheap place insofar as real estate, especially in the city centre, is concerned. In seeking to establish a business presence in Singapore, it is worth noting that there is various commercial real estate available,

including suburban industrial parks and other alternatives, some of which are conditionally offered at subsidized rates to encourage business activities.

Another notably pricey item in Singapore is motorcar ownership and maintenance, so that where a business intends to offer perquisites to management personnel which include such a benefit, the detailed sums of doing so are worth working out carefully.

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The firm provides the full range of corporate and commercial legal services with particular strengths in intellectual property, information technology, telecommunications, media and entertainment.

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- Company Regulatory Compliance
- Employment and Immigration
- Intellectual Property
- Information Technology
- Telecommunications and Broadcasting
- Media and Publishing
- Entertainment
- Dispute Management and Litigation
- Arbitration, Mediation and Other Alternative Dispute Resolution

Local and International Experience

The firm routinely operates in a cross-border setting, managing local and foreign elements and dimensions as second nature, with its strong and keen multi-jurisdictional awareness and approach to the matters at hand.

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