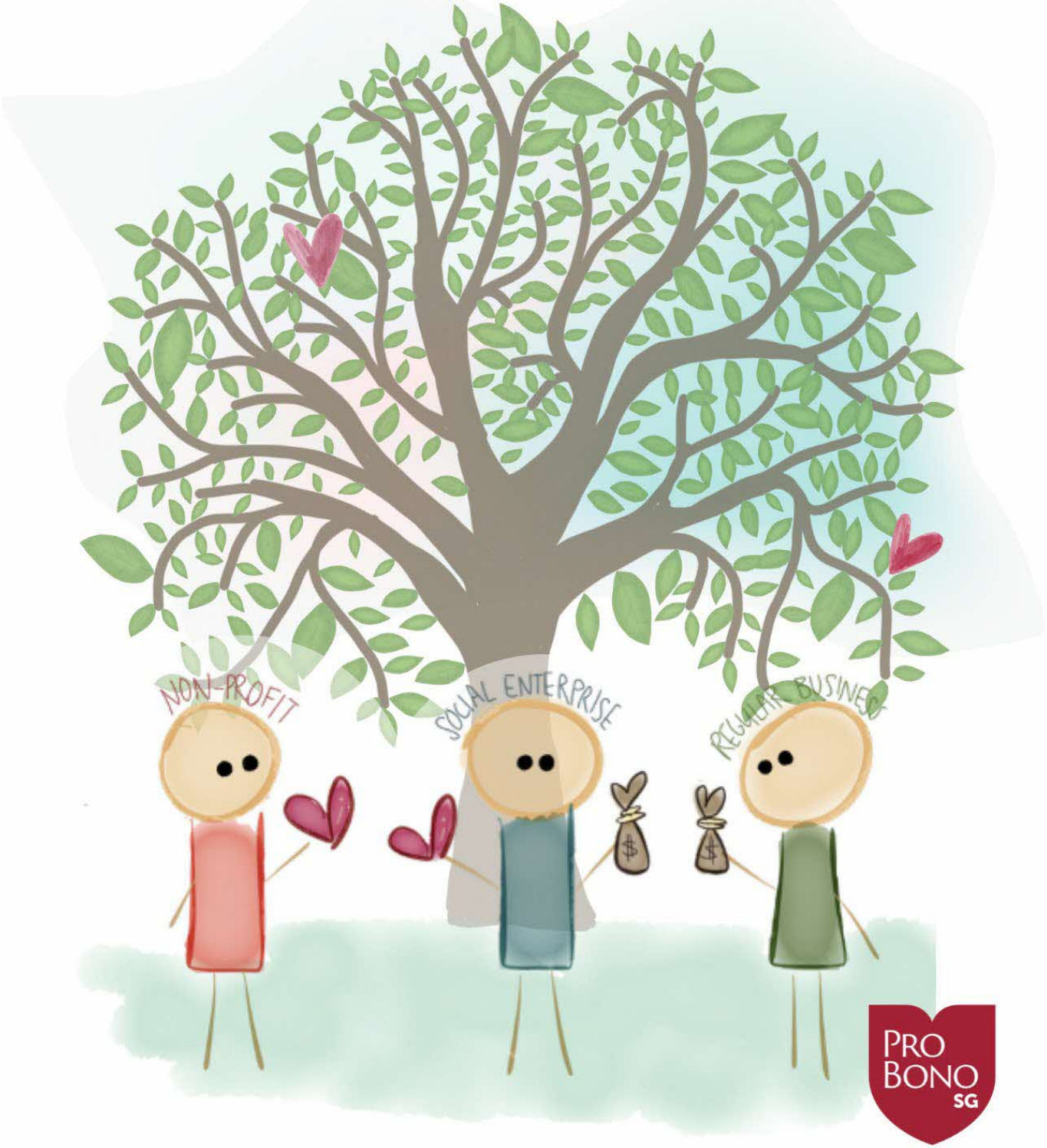
LEGALESE

A LEGAL HANDBOOK FOR COMMUNITY ORGANISATIONS

3rd Edition



PRO BONO SG

JUSTICE FOR ALL

LEGALESE: A legal handbook for community organisations

Published by Pro Bono SG.

Disclaimer

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LEGALESE Third Edition

Foreword

The landscape of social entrepreneurship and not-for-profit work in Singapore has evolved significantly since *Legalese* was first introduced in 2013 and subsequently refreshed in its second edition in 2016. In the years since, we have seen a growing awareness of social impact work and a rise in organisations taking on missions that balance purpose and sustainability. As of March 2025, close to 700 enterprises are registered members and aspiring social enterprises with the Singapore Centre for Social Enterprise ("**raiSE**"). There are also over 3,100 charities and over 1,000 ground-up initiatives in Singapore today. Alongside this growth, sector research continues to highlight the importance of legal literacy in helping non-profits and social enterprises select appropriate organisational structures, navigating regulatory responsibilities, establish sound governance, and sustain their operations over time.

Legalese was developed to meet these needs, providing clear, practical legal guidance to help organisations operate responsibly, sustainably and with confidence. It reflects a shared vision, where purpose-driven businesses are empowered to align their commercial missions with social responsibility, and where non-profit organisations have the knowledge to sustain good work in an increasingly complex environment.

In this latest edition, *Legalese Third Edition* introduces a new chapter on legacy giving, in response to the sector's development and the growing momentum around planned and meaningful philanthropy. This addition reinforces Pro Bono SG's commitment to supporting the long-term impact and sustainability of non-profit organisations and social enterprises working to create positive social change.

As part of this continued commitment, and to better reflect the nature of our services, Pro Bono SG's services for non-profit organisations have also been rebranded this year from AssistNPOs to Non-Profit Legal Services ("**NLS**"). Charities, social enterprises, ground-up initiatives, and other non-profit organisations seeking legal support are encouraged to connect with our NLS team.

Get in touch with our NLS team:



https://bit.ly/PBSG_NLS

This publication would not have been possible without the dedication of our volunteer lawyers from Allen & Gledhill LLP and Latham & Watkins LLP who have generously contributed their time, expertise and experience. We also extend our appreciation to the members of Pro Bono SG's Project Law Help Committee and Content Management Committee editorial team for their steadfast commitment to the review of the publication. Our gratitude also goes to our social enterprise and non-profit partners, whose lived experiences shape the relevance and practicality of this resource.

The journey continues. *Legalese Third Edition* stands as a testament to the enduring collaboration between the legal community and the pioneers of social change. May this edition continue to be a practical guide and a catalyst for confidence, enabling organisations to drive positive social impact with clarity, integrity and purpose.

Mr Dinesh Dhillon
Chairman
Pro Bono SG

Messages

I am delighted to extend my heartfelt commendation to Pro Bono SG for the release of the updated edition of *Legalese*. As Chairperson of the Charity Council of Singapore, it is with great enthusiasm that I express our continued support for this invaluable resource.

While the Charity Council's primary focus lies in ensuring the robust governance and compliance of charities and Institutions of a Public Character ("**IPC**"s), I believe that the principles of legal literacy are equally pertinent to social enterprises, social entrepreneurs, and non-profit organisations. In an environment characterised by rapid evolution and increasing complexity, legal literacy emerges as a non-negotiable asset for all stakeholders. For social enterprises, it facilitates the alignment of their social mission with legal obligations, fostering credibility and trust among stakeholders. Social entrepreneurs benefit from a nuanced understanding of legal structures and mechanisms, enabling them to navigate legal challenges and seize opportunities for growth and impact. Likewise, non-profit organisations stand to enhance their operational efficiency and mitigate legal risks through a comprehensive grasp of legal requirements and best practices.

Since its inception in 2013, *Legalese* has been an indispensable legal toolkit, offering comprehensive guidance tailored to those embarking on the journey of establishing and operating social enterprises. In 2016, they extended that scope to cover non-profit organisations. *Legalese* stands as a beacon of clarity and accessibility, presenting complex legal concepts in a manner that is both lucid and approachable.

In this regard, the Charity Council urges all charities to familiarise themselves with the contents of *Legalese* in conjunction with the Charities Act and Regulations. By doing so, charities can fortify their understanding of their legal obligations and pave the way for robust governance practices.

As we collectively strive to create a thriving ecosystem for social good, I urge all stakeholders—be they IPCs, charities, social enterprises, social entrepreneurs, or non-profit organisations—to prioritise investment in legal literacy. Let us harness the power of legal knowledge to realise our shared vision of a more equitable and compassionate society.

Ms Theresa Goh
Chairperson
Charity Council

On behalf of raiSE, I extend my warmest congratulations to Pro Bono SG on the publication of this latest edition of *Legalese*.

Singapore's social enterprise ecosystem has grown steadily over the past decade. More founders are stepping forward with the conviction that business can and should address pressing social needs. As the sector matures, clarity around legal structures, governance and regulatory responsibilities becomes even more important. These are not technical formalities. They are crucial in determining whether an organisation can sustain its mission over time.

At raiSE, we emphasise intentionality, additionality and proportionality as hallmark characteristics of social enterprises. These principles are not only about impact measurement. They are about building enterprises with clear purpose, sound governance and disciplined business thinking from the outset. Legal literacy strengthens this discipline. It enables founders and boards to make informed structural decisions, steward resources responsibly and navigate growth with confidence.

Legalese continues to play a valuable role in demystifying complex legal concepts and making them accessible to both aspiring and established social entrepreneurs. By equipping leaders with practical guidance, this handbook contributes to a more robust and trusted social enterprise landscape in Singapore.

We are grateful to Pro Bono SG for its steadfast support of the sector. I am confident that this latest edition of *Legalese* will continue to be an indispensable guide for both aspiring and established leaders seeking to build organisations that are principled, sustainable and impactful.

Mr Alfie Othman
Chief Executive Officer
Singapore Centre for Social Enterprise

Preface

In 2013, we embarked on a mission to empower the burgeoning community of youth social entrepreneurs with the first edition of the *Legalese* handbook—a legal toolkit designed to guide them through the intricacies of starting and sustaining their ventures. The enthusiastic response exceeded our expectations, prompting us to expand our horizons with an update in 2016, moving beyond social enterprises to cover non-profit organisations. Now, in 2025, we are thrilled to present an updated edition of *Legalese*, which takes into account the revised Code of Governance for Charities and Institutions of a Public Character which comes into effect on 1 January 2024, as well as introducing a new chapter on Legacy Giving.

In reflecting on the journey that has led us to the latest update to *Legalese*, I am struck by the remarkable growth and dynamism of the social enterprise landscape in Singapore. In the past decade, we have witnessed a surge of entrepreneurial spirit among young people, driven not only by profit but by a deep-seated desire to effect positive change in society.

It is heartening to see more young people embarking on ventures that not only strive for financial success but also seek to address pressing social needs. Your passion, ingenuity, and unwavering commitment to making a difference inspire us all.

As we unveil the latest edition of *Legalese*, I am confident that it will serve as a valuable resource for all social entrepreneurs. In its pages, you will find clear and concise guidance on navigating the legal intricacies of your ventures, from selecting the most suitable legal entity as you start out or expand, to important legal considerations for your operations, and where to seek legal assistance. There is an entire section dedicated to expanding your business. It is our hope that *Legalese* will equip and empower you to chart a course towards success while upholding the highest standards of governance and compliance.

I am immensely grateful to the dedicated volunteers who have poured their time, expertise, and passion into the review and update of *Legalese*. Their tireless efforts are a testament to the spirit of volunteerism and the belief in the power of the law as a force for good. In particular, I would like to express my deep gratitude to the following individuals:

Volunteer contributors from Allen & Gledhill LLP:

Emelyn Aw Min Li, Kenneth S Lim, Liew Wan Lin, Ruth Sim and Vaibhav Nag.

Volunteer contributors from Latham & Watkins LLP:

Chew Hui-Yan, Isabel Yu, Luo Yiheng, Marc Tan, Ng Min Yee, Sharon Lau, Siana Bell, Sirada Chayabunjonglerd, Wee Howe Min and Zoe Wang.

Members of the Project Law Help Publications Subcommittee 2023/2024 and Content Management Committee 2025:

Bestlyn Loo, Boxall Lynette Maureen, Leong Shi Min Nicole, Lim Sui Yin Jeffrey, Nicole Carmen Tan Yi and Usha Chandradas.

Your generosity and commitment have been instrumental in bringing *Legalese Third Edition* to fruition, and for that, we are profoundly grateful.

As we embark on this next chapter, I am filled with hope and optimism for the future of social enterprise and non-profit organisations ("**NPO**"s) in Singapore. Together, let us continue to harness the power of entrepreneurship and innovation to create a more inclusive, equitable, and sustainable society.

Mr Richard Tan Ming Kirk
Chair, Project Law Help Committee 2020–2025
Pro Bono SG

About Pro Bono SG

Since 2007, Pro Bono SG has advanced its mission of enabling access to justice for the vulnerable and disadvantaged in Singapore. A registered charity and IPC, we work to ensure that legal help is not a privilege, but a lived reality for individuals and communities who need it most.

Formerly part of the Law Society of Singapore, we became a company limited by guarantee in 2017 and rebranded as Pro Bono SG in 2022 to reflect our belief that access to justice is a collective, national responsibility.

Our work is anchored in three interconnected pillars—Awareness, Guidance, and Representation—which together form a continuum of support.

AWARENESS: EMPOWERING COMMUNITIES THROUGH LEGAL LITERACY

Many people encounter legal issues without knowing their rights, responsibilities, or where to seek help. Through our legal awareness programmes, we make the law understandable and relevant to everyday life.

Each year, we reach tens of thousands through:

- **Legal talks, webinars, and workshops** across heartland spaces, schools, charities, and workplaces.

- **Tailored programmes** such as *LawWorks*, *Advocates for the Arts,* and the *Legal Health Check for Charities.*

- **Publications and legal guides** made freely accessible online on LawGoWhere.sg, a digital first-stop that provides basic legal information and helps users navigate the justice system.

These initiatives build legal confidence, promote early intervention, and help prevent escalation of legal problems.

GUIDANCE: FIRST-RESPONDER LEGAL SUPPORT THROUGH CLINICS AND COMMUNITY PROGRAMMES

Legal issues can be complex and intimidating. Our legal clinics provide a safe, accessible first step for people seeking clarity on personal legal matters.

Across Singapore, we run:

- **Community Legal Clinics**, in partnership with the five Community Development Councils;

- **Two Community Law Centres** in Hougang and Woodlands, embedded within trusted community spaces;

- **Specialised clinics** serving youth, migrant workers, non-residents, National Trades Union Congress members, artists, accused persons, and survivors of violence; and

- **Non-Profit Legal Clinic**, which supports charities, social enterprises, and ground-up initiatives.

In 2024, we expanded our community-based model with the launch of the Transnational Family Care Centre—Singapore's first integrated socio-legal initiative supporting lower-income transnational families. In 2025, we set up Migrant Workers' Law Centre @ MWC to provide specialist legal support for migrant workers.

Through these touchpoints, thousands of individuals and community organisations receive personalised legal guidance each year.

REPRESENTATION: ENSURING FAIRNESS FOR THOSE WHO CANNOT AFFORD LEGAL HELP

For individuals facing court proceedings, legal representation can be life-changing. Our representation programmes ensure that no one is left behind because of financial or social barriers.

We provide representation through:

- **Criminal Legal Aid Scheme**;
- **Family Justice Support Scheme**;
- **Ad Hoc Pro Bono Scheme**; and
- **Pro Bono Legal Assistance** for charities and community organisations requiring corporate legal support.

These programmes support accused persons, families in distress, and community organisations navigating regulatory and governance issues.

OUR COMMUNITY: VOLUNTEERS, PARTNERS AND SUPPORTERS

Our impact is made possible through the collective effort of:

- over 600 volunteer lawyers;
- hundreds of student and skills-based volunteers;
- law firms anchoring clinics and schemes; and
- partners across the social, legal, and public sectors.

Together, we advance a vision of a Singapore where justice is accessible to all, regardless of background or circumstance.

For more information about Pro Bono SG and our services, visit **probono.sg** or email **help@probono.sg**.

OVERVIEW: FOR PROFIT STRUCTURES (SOCIAL ENTERPRISES)

					
WHAT IS IT?	A business that can be owned and controlled by an individual, a company or a limited liability partnership.	An association of two or more persons carrying on business with a common view to profit.	A partnership with limited partners, who bear limited liability (limited to their individual contributions); and at least one general partner, who bears unlimited liability.	Combines the features of a partnership and a company. The business has an existence apart from the persons who formed it, but the management structure and internal workings resemble a partnership. For instance, the mutual rights and duties of the partners are governed by the partnership agreement.	An incorporated association. Once formally incorporated, it has an existence apart from the persons who formed it.

					
HOW MANY OWNERS? 	One	Two to 20 If more than 20 partners, must incorporate as a company.	Two or more. At least one general partner and one limited partner. An individual or a corporation may be a general partner or a limited partner.	Two or more. An individual or a corporation may be a partner.	**Exempt Private Company** 20 members or less and no corporation holds beneficial interest in the company's shares. **Private Company** 50 members or less. **Public Company** More than 50 members.
SUITABLE FOR? 	Small business with one owner. The owner is willing to take on all the risks of the business.	Small business with multiple owners. The owners are willing to take on all the risks of the business.	Partners or investors who want limited risks in the business, and do not wish to participate in the day-to-day management of the company.	Partners who want the business to take on the form of a company, but retain the flexibility of managing the business as a partnership.	Members who want limited risks in the business. Certain Government incentives may also be available only to companies.

					
WHO CONTROLS MANAGEMENT? 	Sole proprietor has exclusive control of the management.	Partners have equal control of the management (unless otherwise agreed).	General partner controls the management. Limited partners cannot take part in management.	Partners have equal control of the management (unless otherwise agreed).	Directors control the management. Members cannot take part in management, but can exercise certain rights.
CAN OWNER SUE OR BE SUED? 	Sole proprietor can sue or be sued in his or her own name.	Can sue or be sued in the partners' names.	Can sue or be sued in the partners' names.	Firm (not individual partners or members) can sue or be sued.	
WHO OWNS PROPERTY? 	Property is owned in sole proprietor's own name.	Property is owned by partners.	Property is owned by partners.	Property is owned in the Limited Liability Partnership ("**LLP**")'s name.	Property is owned in the company's name.

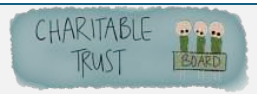
					
WHO IS RESPONSIBLE FOR DEBTS AND LOSSES? 	Sole proprietor is personally liable for all debts and losses.	Partners are personally liable for all of the debts and losses incurred by the partnership's and/or other partners.	General partner is liable for all debts and obligations. Limited partner's liability is restricted to his or her agreed contribution, provided he or she does not take part in the management.	Generally, partners are not personally liable for any business debts incurred by LLP. Partners not personally liable for debts and losses incurred by other partners. However, a partner may be held personally liable if losses arose from his or her wrongful act or omission.	Liability limited by value of shares owned. Members are not personally liable for debts and losses of company.

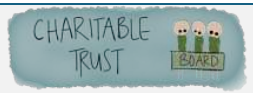
					
HOW TO REGISTER? 	**All registration is through Accounting and Corporate Regulatory Authority ("ACRA").**				
	If sole proprietor not resident in Singapore, must appoint a local manager.	If all partners not resident in Singapore, must appoint a local manager.	General partner must be lodged with Registrar of Limited Partnerships. Limited partner must be registered with ACRA. If all general partners not resident in Singapore, must appoint local manager.	Every partner must be lodged with the Registrar of Limited Liability Partnerships. Must appoint at least one manager (ordinarily resident in Singapore).	Submit constitution and other prescribed information to ACRA. At least one shareholder. At least one director ordinarily resident in Singapore.
SETUP FEES (Please also check the ACRA website for updates) 	$115/$175 ($15 name application fee and $100 registration fee for one year or $160 for three years)			$115 ($15 name application fee and $100 registration fee)	$315 ($15 name application fee and $300 registration fee)

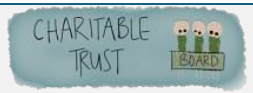
					
TAX ON PROFITS 	Personal income tax rates (Sole proprietor's/Partners')		Partners' personal income tax rates (if individual) Corporate tax rate (if corporation)		Corporate tax rates
REGULATORY REQUIREMENTS 	Minimal compliance requirements		Limited Partnership ("**LP**") must keep accounting and other records which sufficiently explain its transactions and financial position for at least five years. Need not be lodged with ACRA but may be required by the Registrar of LPs for inspection.	LLP must keep accounting and other records which sufficiently explain its transactions and financial position for at least five years. Annual declaration of solvency must be filed with ACRA.	Must appoint: company secretary within six months of incorporation; and auditor within three months after incorporation. Must file annual returns with ACRA. Must comply with statutory requirements for annual general meetings, directors, share allotment, etc.

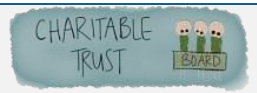
					
HOW LONG DOES IT LAST? 	Exists as long as the owner is alive and desires to continue the business.	Exists subject to the partnership agreement.	Exists subject to partnership agreement. If no limited partners, LP registration will be suspended. But once a new limited partner is appointed, LP registration will be restored.	Exists until wound up or struck off.	

OVERVIEW: NON-PROFIT LEGAL STRUCTURES

				
WHAT IS IT?	A society is a club, company, partnership or association of ten or more persons.	A charitable trust is a trust which is set up to benefit a segment of the public.	A type of company where a member need only contribute the amount that he or she agreed to guarantee.	An entity which has both a social mission and business objectives.
SUITABLE FOR? 	Membership or volunteer-based groups that are small and do not depend heavily on donations or external funding. Relatively easy and inexpensive to establish.	Typically used by individuals who wish to set aside some of their assets or income for charitable causes. Costs of establishing and managing charitable trust can be quite high.	Organisations that want the advantages of incorporation without engaging in business.	Organisations that are business-oriented and aim to remain financially viable. Members make equitable contributions to the capital required and accept a fair share of the risks and benefits.
WHO CONTROLS MANAGEMENT? 	Management rests with the committee of management.	Managed by a board of trustees to give effect to the specified charitable purpose.	Management rests with directors of the company.	Management rests with the committee of management.

				
CAN OWNERS SUE OR BE SUED/OWN PROPERTY? 	Registered societies can sue or be sued in its own name. Properties of registered societies are held by trustees or governing body.	Trustees may sue or be sued. Trustees own property on behalf of the trust.	Company limited by guarantee can own property and sue or be sued in its own name.	Registered co-operative can own property and sue or be sued in its own name.
WHO IS RESPONSIBLE FOR DEBTS AND LOSSES? 	Registered society liable in its own name.	Trustees liable for all losses.	Limited to the guarantee given by each member.	Limited to the shares of or guarantee given by each member.

				
REGISTRATION 	Must submit proposed constitution to Registry of Societies ("**ROS**") for approval. There needs to be ten or more persons in a society before it can be registered.	Submit Trust Deed or other instrument to the Commissioner of Charities. Board of Trustees containing at least three persons (at least two of whom shall be Singapore citizens or permanent residents).	Submit constitution and other prescribed information to ACRA. The company can subsequently apply for charity status with the Commissioner of Charities.	Setup Pro-tem Committee with at least three members to undertake a feasibility study, to determine the economic and financial viability. Submit viability statement, particulars of each committee member, draft by-laws to Registry of Co-operative Societies. Convene preliminary meeting of at least five persons qualified for membership to adopt the by-laws and pass resolution. Submit application form, personal details of at least five potential members, proposed by-laws, business plan and three-year financial projections, minutes of preliminary meeting and signatures of all those present at the meeting.

				
TAX 	**Registered Charity** Full tax exemption. NPO must prove to the Commissioner of Charities' satisfaction that NPO has: • an exclusively charitable objective; • at least three governing board members (two of whom are Singapore citizens or permanent residents); and • purposes that will wholly or substantially benefit the community in Singapore. **Deductions** Donations made to an IPC will entitle donors to tax deductions of up to 2.5 times the value of the qualifying donations made.			Income of any co-operative society registered under the Co-operative Societies Act 1979 ("**CSA**") is exempt from tax.
REGULATIONS 	Governed by the Societies Act 1966 ("**Societies Act**"). Constitution cannot be altered without approval from the Registrar of Societies. Must have a registered address. Required to submit annual return and audited account, if requirements are met.	Governed by the Trustees Act 1967. Strict accounting and auditing regulations.	Governed by the Companies Act 1967 ("**CA**"). Stringent statutory obligations, including annual audit of accounts, holding of Annual General Meetings ("**AGM**"s) and filing of annual returns with ACRA. Prohibited from paying dividends and profits to its members.	Governed by CSA. Submit annual report with copy of audited financial statements and audited report to Registrar of Co-operative Societies.

STARTING UP



1

WHAT ARE SOCIAL ENTERPRISES AND NON- PROFIT ORGANISATIONS?



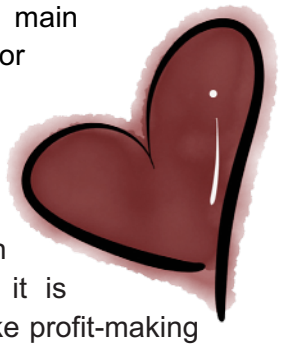
WHAT IS A SOCIAL ENTERPRISE?

Social enterprise is essentially a business with a social objective—it harnesses the forces of the marketplace, applying business practices to achieve its social mission in a financially sustainable manner. Unlike ordinary commercial businesses which tend to have a single (i.e. financial) bottom-line, social enterprises usually have double (the other bottom-line being in the need to achieve their social mission, for example, to provide employment to the needy and disadvantaged and to meet environmental targets). Social enterprise ventures encompass a wide range: they can be restaurants, retailers, fair trade organisations, travel agencies, tailors, moving companies and even career consultancies.

On top of attaining their social goals, social enterprises, like any other commercial entity, aim to make a financial profit. They have a conventional bottom-line to measure financial performance, a second bottom-line to determine social outcomes (double bottom-line) and sometimes even a third bottom-line to assess environmental outcomes (triple bottom-line). As organisations operating in the commercial sector but having, at their core, interests which are traditionally associated with the non-profit sector, the work of social enterprises is both challenging and invigorating.[1]

WHAT IS THE DIFFERENCE BETWEEN A SOCIAL ENTERPRISE AND A NON-PROFIT ORGANISATION?

Social enterprises combine a social mission with a profit generating business model, distinguishing them from NPOs because NPOs do not seek to earn a profit. In other words, a social enterprise would have a business model to generate profits while serving a social need.



NPOs are legally constituted organisations whose main purpose is to support or engage in activities of public or private interest without any commercial or monetary profit. Unlike social enterprises which may raise funds by selling products and services to the public, NPOs obtain money through fundraising efforts, charitable donations and sometimes government support. When NPOs earn money over and above their expenses, it is retained by the organisation for its future activities. Unlike profit-making organisations and some social enterprises, NPOs do not distribute their earnings among members. NPOs, including Social Service Agencies ("**SSAs**") in Singapore, can be registered under the law as a public company limited by guarantee, society, or charitable trust.

WHAT IS "PROFIT"?



Most groups need money to carry out their activities. A group may raise money by charging its members fees, holding raffles, seeking donations from the public, applying for grants of money from the government or in other ways. A group will have a "profit" (a surplus) if it has extra money left over, after it has paid all its bills and expenses (for example, room hire, coffee and tea expenses, telephone bills, insurance premiums and employee wages).

CAN AN NPO MAKE PROFIT?

Non-profit groups can make a profit in the sense that they can generate funds over and above their expenses. In fact, it might be a good idea for a non-profit group to aim to have a small profit each year to be able to pay for unexpected expenses or to start new programmes.

Non-profit groups can also:

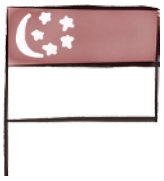
- employ people and pay them reasonable salaries;
- make money by charging members of the public for services;
- make money by selling or leasing property; and
- invest money in shares and receive moneyback.

It is what the group does with the profit, rather than whether it has made a profit, which makes the group non-profit. In a non-profit group, profits (such as from the sale of services or property) must be used to carry out the group's purpose and must not be distributed to members or any other individuals.

WHAT IS THE DIFFERENCE BETWEEN AN NPO AND A BUSINESS?

In a "for-profit" group (such as a business), the profit may be distributed to the group's owners or to individuals, members or shareholders. In a "for profit" group, people who are involved in the group are entitled to receive a personal benefit from the profits of the group (such as a dividend, or money when they sell their shares, or a payment directly from the profit). Identifying NPOs can be a little confusing as some "for-profit" groups operate in the community sector (for example, in childcare and aged care). The main difference between NPOs and businesses is that businesses can adopt a for-profit structure while NPOs may not distribute the profits amongst their members.

SOCIAL ENTERPRISES IN SINGAPORE



A social enterprise is not a legal structure but a way of doing business. Social enterprises in Singapore can be recognised through their membership with the Singapore Centre for Social Enterprise, raiSE.

Established in 2015 through a cross-sector collaboration by the Ministry of Social and Family Development, National Council of Social Service, Social Enterprise Association, and Tote Board, raiSE champions social enterprises in Singapore by setting the standards for what constitutes credible social enterprises through its social impact framework, and empowering social enterprise members through an ecosystem of resources from capacity building to funding.

As of March 2025, close to 700 enterprises are registered members and aspiring social enterprises, with the majority taking the form of private companies. Some of these social enterprises are set up by registered charities to undertake revenue-generating activities aligned with their mission. Together, they address a wide range of social needs, from skills-training and employment for the disadvantaged and underprivileged, to designing inclusive products and services to enhance affordability and access for disadvantaged individuals, and capacity building for social service organisations. The impact and business model of these enterprises are reflected on raiSE's social enterprise directory: https://www.raise.sg/raise-membership-directory/.

While social enterprises in Singapore can be registered in different legal forms, including private companies and limited liability partnerships, they tend to share the following intrinsic characteristics, including those articulated through raiSE's social impact framework of intentionality, additionality, and proportionality:

A contextually relevant social mission at (re)birth with a business model

From the time of its inception, a social enterprise has a clearly articulated and institutionalised social mission or purpose that it seeks to address through business processes or products and services. This reflects the intentionality of the enterprise in committing to integrating social impact into its business.

A social mission which flows through the products, services and operations, and where all social impact achieved is consistent with the mission

The social mission of the social enterprise should be evident not only through the products and services it offers, but also in the way it operates and the impact it achieves on the ground. Unlike traditional businesses conducting projects as part of corporate social responsibility, the social good done by a social enterprise is a part of the core business of the company. This reflects the additionality of the enterprise in embedding its social mission in its processes, such as creating inclusive workspaces, or implementing beneficiary focus initiatives or policies.

Underscoring the intertwined nature of social impact creation and business growth, the social impact achieved by the social enterprise is measured in relation to its key business metrics of manpower, revenue, or user base, depending on the way in which they create impact. This reflects the proportionality of the enterprise.

An intention and roadmap to sustainable financial performance (may have multiple revenue streams)

A social enterprise is not a charity, so the business model should not depend on government grants and charitable donations as its primary source of funding. Even if it initially received grant-funding to kick start its operation, it should have a clear aim to become sustainable through earned revenue and have a well-designed plan to achieve this goal. This may require multiple revenue streams, including some element of grant-funding, but the organisation's continued existence should not depend on this alone.

Based on business processes and thinking

Having business processes and thinking to underpin a social enterprise is central to its characteristic. From the conceptualisation stage, the strategic integration of social impact creation within the business model is fundamental to ensure both a strong social problem-solution fit and product-market fit. This is unlike a regular for-profit engaging in corporate social responsibility and designing the project to leverage the company's pre-existing business advantage. A social enterprise should run on strong business fundamentals designed to address the social objective.

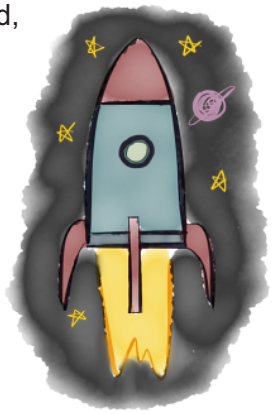
Embracing the dynamic balance of the double bottom line

A social enterprise operates with a clear commitment to both financial sustainability and social impact creation. This requires the continuous balancing of dynamic tensions between business performance and social outcomes.

There may be additional investments required such as adapting processes or providing more support to employees from vulnerable backgrounds. While these may affect short-term efficiency and costs, they are intentional decisions to achieve meaningful social outcomes.

Importantly, social impact can become a value creator. A strong social mission can strengthen the social enterprise's brand, attract customers and partners, engage employees, and open up new opportunities. By being intentional in incorporating social impact, social enterprises reflect a clear management commitment to achieving the double bottom line.

WHAT IS THE FUTURE FOR SOCIAL ENTERPRISES?



As the world becomes more urbanised and interconnected, challenges such as climate change, pandemics, cyber attacks, geopolitical tensions and economic instability can impact many countries at the same time. There are a few implications:

Firstly, as some social and environmental concerns become borderless, the solutions may need to transcend geographical borders.

Secondly, the solutions need to be designed to scale and adapt, allowing them to respond effectively to changing circumstances.

Thirdly, the growth of a social enterprise depends on the entrepreneur's compassion, resilience, and capability. It begins with a belief that collective impact is greater than individual efforts—a conviction that often surpasses any incentive offered by governments, agencies, or corporations.

While there are no precise estimates of the size of the global social enterprise space, evidence suggests that more new organisations and movements are emerging to address issues ranging from education, healthcare, environmental protection, access to microcredit, landmine eradication, to even the creation of an international criminal court. [2] In 2021, in the United Kingdom alone, there were more than 100,000 social enterprises, contributing 60 billion pounds to the economy and providing jobs to about two million people.[3] In 2022, the British Council estimated the total number of social enterprises around the world to be nearly 11.5 million.[4] These are not trivial figures. It is clear that the role of social enterprises in communities and economies around the world is increasing, and the time is ripe for you to consider starting one of your own.

SHOULD YOUR ORGANISATION BE A SOCIAL ENTERPRISE OR AN NPO?

In deciding what type of structure your organisation should have, it is important to first have a clear idea about the aim and proposed structure of your group.

This will help you to make decisions about the best way to set up your group, as well as to highlight any legal issues that your group may need to consider, both at present and in the future. Though you may be just starting out, it is important to think about the long-term goals of your organisation.

Answering the following questions below will give you a clearer idea of what the aim of your group is and what the best structure for your group will be.

Questions about your group



1. What are the aims and purposes of your group? What does your group aim to achieve and what is the need it will fulfil? Does it have a feasible business model?

2. Are there groups that already exist that have similar aims or purposes to the group you want to start? If so, is there still a reason for starting a new group? Have you or your group considered joining the existing one rather than starting a new one? (Remember, there can be extra expenses and paperwork involved in running a separate group.) List any similar groups that currently exist and the reasons why a new group is needed.

3. Is your group forming to produce a one-off, short-term project (for example, organising a one-off event, raising awareness about an upcoming issue)? Or will the group be a long-term venture (for example, assisting youth from a particular cultural group, starting a self-help group for people suffering from a certain condition)?

Questions about the people involved

1. Do you have people who are interested in being involved in the group? If so, how many people might get involved now? And in the future? If not, how will you attract people to join your group?

2. Will the group have members? Who will be the members of the group? If there are members, are there membership requirements? Will there be a membership fee?

3. How will the group be organised? Are there (or will there need to be) rules by which the group operates? If there are rules, are they written down or just 'known' by the group? Will the group have a formal structure (for example, hold regular meetings, have people who hold positions in your group) or just be informal?

4. How will the group be managed or run? Will it have a board or committee of management? Will it be run completely by volunteers, or will it employ staff? What about in the future?

5. If the group is going to employ staff (either now or in the future), will it employ a person involved in setting up the group or a member of the group?

Activities of your group

1. What will be the main activities of the group, or what programmes or services will the group provide?

2. Where will the group be located? Where will the group operate or where will its activities take place? (For example, within Singapore or overseas?) What about in the future?

3. Will your group be providing activities, programmes or services to the public generally, to a targeted group of the public or just to members of the group?

4. What equipment, buildings or infrastructure will be needed to carry out the activities of the group?

Money and resources

1. Do all the people involved in your group agree that it is going to be a "non-profit" group, with all of the funds going back to the group?

2. How much money (funding) or other resources do you estimate that your group will need to carry out its activities?

3. Does your group currently have any money or access to any resources?

4. How is your group planning to raise money or resources for its activities? (Possible sources include: government grants, philanthropic (private) or corporate funding, membership fees, fund-raising activities, fee for services, investments, bequests or donations, etc.)

Once your group is clear about its aims, membership and activities, your group will need to decide whether it is going to operate as a social enterprise or non-profit group.

WHY MUST YOU DETERMINE WHETHER YOUR ORGANISATION IS A SOCIAL ENTERPRISE OR A NON-PROFIT?

There are different laws that apply to for-profit and non-profit groups. Many of these laws treat non-profits favourably, as the resources of the group will be put back in to helping the community.

For example:

- Legal structure: if your group wants to adopt a legal structure, there are particular legal structures that are only available to non-profit groups (such as a charity);

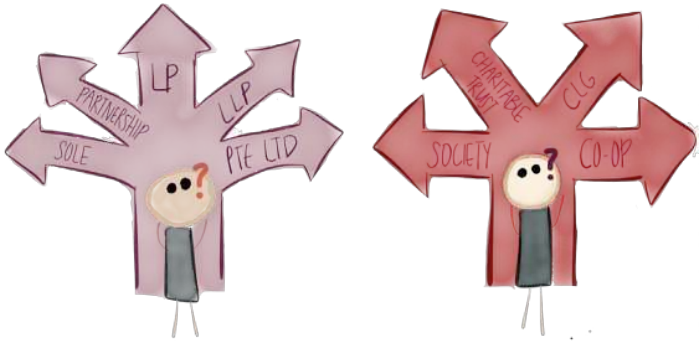
- Tax laws: the tax laws offer a number of tax exemptions, concessions or benefits to eligible non-profit groups (although being non-profit is only one of a number of requirements);

- Funding: some government grants and private philanthropic bodies are set up only to fund non-profit groups; and

- Fundraising: some laws only allow non-profit groups like charities and community groups to apply for registration to conduct certain fundraising activities (like minor gaming activities).

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LEGAL STRUCTURES FOR SOCIAL ENTERPRISES AND NON-PROFIT ORGANISATIONS



WHY ADOPT A LEGAL STRUCTURE?

Adopting a legal structure for your organisation has various potential benefits, depending on whether the organisation is an NPO or social enterprise:

1. Protects organisers from legal responsibility

Business owners, volunteers, employees and officers are protected from personal responsibility for any debts or legal responsibilities when undertaking activities on behalf of your organisation (unless arising out of your own fraud or negligence) except for sole proprietorships and partnerships as explained below.

2. Encourages proper management and governance

Adopting a legal structure promotes administrative compliance that encourages proper management and governance within your organisation.

3. Provides tax benefits

Adopting the legal structure of a charity qualifies your organisation for tax benefits. For more information, please refer to Chapter 7 of this handbook on Taxation.

4. Promotes public recognition and trust

Adopting a more complex legal structure can ensure the protection, sustainability and accountability of your organisation because your officers work according to rules, hold meetings and provide financial information to government. This formal legal structure in turn promotes recognition, public support and trust for the cause of your organisation.

5. Enables perpetual succession

Some legal structures allow your organisation to exist in perpetuity because the organisation has a legal identity separate to that of the people involved in it. This means that your organisation will continue to exist even when its membership changes.

BENEFITS OF NOT ADOPTING A LEGAL STRUCTURE

Nonetheless, not adopting a legal structure for your organisation may also have its benefits:

1. Informality

Your organisation can remain informal and does not have to hold meetings in a specific format (although it still can have rules or a constitution to govern these matters).

2. Privacy

Your organisation does not have to register with the government or tell the government or the public who its members are or what its financial situation is.

3. Reduced administrative costs

Your organisation does not have to pay any registration or annual fees to the government.

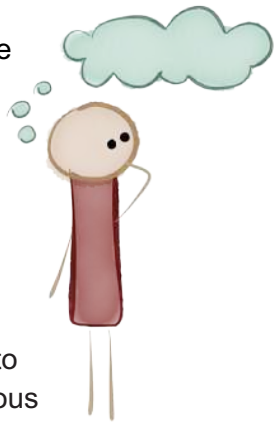
If your organisation has ten or more persons, it is compulsory under the Societies Act for you to have a legal structure. The Societies Act provides that every society (defined as any club, company, partnership or association of 10 or more persons) that is not registered is deemed an unlawful society and those who manage or are members of an unlawful society are guilty of an offence. On the other hand, if your organisation is under ten persons and decides not to adopt a legal structure, it should regularly review its position at least every year or when there is a significant change (for example, upon employing a paid staff member). In addition, if your organisation grows and wants to take on further activities or seek funding, it may wish to re-consider its decision about adopting a legal structure.

Organisations that do not adopt a legal structure will still have legal obligations and will need to comply with employment laws, occupational health and safety laws, tax laws and a range of other laws that apply to all organisations, regardless of whether they adopt a legal structure or not.

CHOOSING THE RIGHT LEGAL STRUCTURE

Your choice of a legal structure will depend on a number of different factors.

Here are some questions you might want to ask yourself (and a lawyer) before deciding on the type of structure to adopt:



(a) What kind of potential legal liability might you face in the course of your operations?

(b) Do you intend for the organisation to start out big? How many partners or investors would you have? Do all of them expect to have a say in how the organisation is to be run? Do you want to have full control of the organisation?

(c) Are you prepared to spend time on compliance issues to ensure that the organisation is in compliance with the various rules and regulations applicable to the legal structure chosen?

(d) Do you intend to undertake any general fund-raising from the public or will the social mission of your enterprise be self-funded entirely from the profits generated by the business? Do you want to be able to have relatively quick access to additional funding (e.g. banks, financial institutions)?

(e) Will operations be limited to Singapore? If you intend to conduct part of your operations overseas, will the chosen legal structure have any effect on

cross-border issues? (For example, if you are transferring profits or funds overseas, would the legal entity receiving or paying the funds face any restriction or have to pay any additional tax on such funds? Would the position be different if a different legal entity is chosen?)

Choosing the right legal structure will help your NPO/social enterprise to start off on the right foot. The different types of legal structures discussed below are broadly categorised into "For-profit Legal Structures" and "Non-profit Legal Structures" and are accompanied by the advantages and disadvantages of each structure.

FOR-PROFIT LEGAL STRUCTURES

If you are setting up a social enterprise (i.e. a business with a social mission), you will be running a business with some kind of profit-making structure, so you need to consider adopting one of the for-profit structures for your business. NPO structures are also included toward the end of the Chapter in case that structure makes more sense for your organisation.

There are a number of different social enterprise models that you can consider. Some people may even choose to set up different arms for the same social enterprise and have each arm adopt a different legal structure. For example, under the "plough-back profit" model of a social enterprise, one may choose to set up a purely commercial business (i.e. under a for-profit legal structure), whereby such profits earned are subsequently channelled into a separate IPC or charity, which has been set up by the same founders of the commercial business, for the purpose of executing a particular social mission.

For-profit legal structures are applicable if you intend your organisation to be a social enterprise. However, if you intend your organisation to be a charity, you cannot adopt the for-profit legal structures of sole-proprietorship, general partnership, limited partnership, limited liability partnership and private limited company, because charities are not supposed to distribute profits.

Sole Proprietorships

A sole proprietorship is the simplest and most flexible business structure. Owned by one person, the sole-proprietorship has no partners and the proprietor has absolute say regarding its daily operations and management affairs. This structure is suitable for small individually-owned enterprises whose business carry minimal risks.

Pros



1. Sole proprietorships are simple to set up due to their minimal administrative requirements.

2. Sole proprietorships are also relatively easier to maintain and manage.

3. Sole proprietorships can be terminated swiftly with fewer legal formalities.

Cons

1. Little legal protection is afforded to sole proprietors because sole proprietorships are not distinct legal entities from the person running them. The sole proprietor's personal wealth and assets may not be protected from business risks. The sole proprietor will be held personally accountable for all the liabilities arising from his or her business.

2. The limited availability of tax benefits, grants, funding opportunities or incentives for sole- proprietors may restrict capital needed for expansion.

3. Issues of perpetual succession may arise in the event of the demise or departure of the proprietor due to the sole proprietorship's lack of a separate legal personality.

General Partnerships

A partnership is a business firm formed by more than one individual. All general partnerships must be registered with the ACRA and the maximum number of partners in a partnership is capped at 20 partners. Partnerships with more than 20 partners must be registered as a company under the CA (as discussed below).

Pros



1. Partnerships are relatively easy to set up and administer.

2. As partners are taxed on their respective shares of income from the partnership at their respective tax rates (i.e. an individual partner will be taxed at his or her personal rates of income tax), paying tax purely in respect of personal income may be more advantageous than setting up a company and being liable for corporate tax which is currently fixed at a rate of 17%. However, this is dependent on the level of income of the partners.

3. Funding may also be easier to obtain compared to sole-proprietorships, as a wider assembly of partners may provide access to a bigger pool of funds or assets for the purpose of providing security if loans are to be obtained from banks.

4. Partners are incentivised to contribute by pooling expertise and experience to increase the partnership's profitability.

Cons

1. Partnerships are not distinct legal entities. As such, in any legal action, the partnership can be sued in the names of individual partners, which may be detrimental to each partner.

2. As with sole proprietorships, there is also no perpetual succession of partnerships. The partnership will thus dissolve with the departure or the death of any one of the partners. However, most partnership agreements provide for these types of events, with the share of the departed partner usually being purchased by the remaining partners in the partnership.

Limited Partnership ("LP")

An LP offers both limited liability and tax transparency to those who do not wish to participate in the day-to-day management of a partnership. The liabilities of limited partners (in respect of the partnership's debts and obligations) are limited to their individual contributions to the venture in accordance with what had been agreed at the outset. Such partners forgo their rights to be involved in the management of the business in return for their limited liability protection. They will however have access to the partnership's books and may offer advice on the state of the business.



If, however, a limited partner participates in the management of the business, he or she forfeits his or her "limited liability status" and will then be liable for the debts and obligations incurred by the LP during his or her period of forfeiture.[1] The First Schedule to the Limited Partnerships Act 2008 ("**LPA**") contains a list of "safe harbour activities" which are activities a limited partner may undertake that will not be construed as taking part in management. Examples of "safe harbour activities" include: contracting with the LP, and acting as an agent or employee of the LP within the scope of the authority conferred by the partners.

An LP requires one or more persons to be registered as a limited partner pursuant to the LPA. If the LP fails to have a limited partner, its LP status will be suspended and the general partners will become registered under the Business Names Registration Act 2014 ("**BNRA**").[2] In addition to having at least one limited partner

in the LP, there must, at the point of registration, be at least one general partner who will undertake full liability for all the debts and obligations incurred by the business. The general partners of an LP are, in all major aspects, in the same legal position as the partners of a conventional general partnership.[3] They have management control and are jointly and severally liable for the debts of the LP.

Like a general partnership, an LP is not required by law to have its accounts audited or filed with the regulators. It is only required to keep proper accounting records that will enable true and fair financial statements to be prepared if necessary. There is also no maximum number of partners in an LP. Partners can either be individuals and/or foreign or local corporations.

Pros



1. In practice, LPs are relatively easier to administer, with only basic account-keeping requirements and without the need to formally file annual returns unless requested by ACRA. The limited partners are not required to disclose the capital contributions made at the point of registration.

2. As an LP is not considered a separate legal entity, it will be tax transparent and each partner will be taxed on an individual basis for the profits he or she gains from the LP.

Cons

1. As an LP is not considered a separate legal entity, the general partner(s) would be personally liable for all the debts and obligations incurred by the business.[4] On the other hand, the legal responsibilities of limited partners (in respect of the firm's debts and obligations) are limited to their individual contributions to the venture in accordance with what had been agreed at the outset.[5]

Limited Liability Partnership ("LLP")

An LLP combines the features of a partnership and a company. Governed by the Limited Liability Partnerships Act 2005 ("**LLPA**"), an LLP gives partners the flexibility of operating as a partnership while protecting their investment in ways similar to private limited companies.

Pros



1. LLPs have separate legal identities, can own properties, enter into contracts and sue or be sued in their own names. Therefore, a partner of an LLP enjoys limited personal liability and thus will not be held personally responsible for the wrongful acts of another partner with the exception of such claims and losses that result from his or her own wrongful act or omission.

2. LLPs benefit from perpetual succession. Thus, the resignation or death of any of the partners does not affect its existence, rights or liabilities.

Cons

1. An LLP must be registered with ACRA and is required to keep accounting records that adequately explain the transactions and financial position of the LLP.[6]

2. An LLP must also submit to ACRA an annual declaration of solvency or insolvency (i.e. being able or unable to pay its debts) which will also be made publicly available.[7]

Private Limited Company

An incorporated company has the fundamental characteristic of having a separate legal personality. It can be limited by shares and the liability of its members is confined to each member's capital contribution towards the company. Regardless of its private or public status, registered companies are taxed at the prevailing corporate tax rate. Note however, that private companies limited by shares are limited to not more than 50 shareholders under the Companies Act ("**CA**") though exempt private companies can have a maximum of 20 shareholders. Every company must have a constitution which governs the company and its members.[8]

Pros



1. A company's existence does not depend on the continued membership of any of its members. As a company is regarded as a separate legal entity, it may:

    - raise capital from investors or banks;
    - sue and be sued in its own name without incurring further liability to its members; and
    - hold land in its own name.

2. Certain government incentives may also be available only to companies.

Cons

1. Public and private companies have to comply with a number of requirements under the CA, including those concerning the appointment of directors, the conduct of AGMs and the appointment of company auditors and the company secretary.

NON-PROFIT LEGAL STRUCTURES



If you are setting up an NPO, you will need to consider adopting one of the non-profit legal structures below that will be suitable for your purpose.

With non-profit legal structures, the relevant legal considerations are not so much the advantages and disadvantages of the different legal forms. Rather, the question is whether the legal structure chosen is a suitable vehicle which will enable the founders to achieve the end result sought by them.

Society

Governed by the Societies Act, societies are usually NPOs whose core structure is not profit-driven. Societies are suitable for membership or volunteer-based groups that are small but strongly linked to communities and do not depend heavily on donations or external funding. Members of societies may be required

to contribute to the funds of the society by way of subscription or annual fees, although many societies generate funds through donations from the public and fund-raising activities. A society would have to submit its proposed constitution to the ROS for approval before the society may be formed.

Upon formation, the constitution cannot be altered without approval from the ROS. In general, the constitution sets out:

- the aims and objects for which the society is formed, or which it may pursue, or for which its funds may be applied;
- the qualifications for membership and for the holding of any office;
- the method of appointment or election to any office;
- the rules by which the society is to be governed;
- the formation of committees to carry out approved projects and programmes of the society;
- the formulation of by-laws which do not conflict with the constitution for carrying out the day-to-day administration of the society; and
- the method and manner by and in which any of the above matters may be amended.[9]

For a sample constitution and further instructions, please refer to the ROS website. Societies can have a president, a secretary and members of the committee of a society. These officers do not require particular qualifications. However, no person shall act as an officer of a registered society if he or she has been convicted for an offence involving the unlawful expenditure of the funds of the society or of other criminal offence(s).[10]



Societies are required to hold its AGM in accordance with the provisions in the society's constitution. The society is required to submit the annual return and audited accounts within one month of the holding of its AGM to the Registrar of Societies, or if no AGM is held, once in every calendar year within one month after the close of its financial year.

One practical benefit of establishing a society is the fact that it is relatively easier and inexpensive to establish, as compared to other legal structures. Societies can also be appealing to donors who prefer donating and funding entities which are formally and legally recognised. Societies which are registered charities do not have to pay any income tax.

An example of a registered society is the Singapore Children's Society, which aims to protect and nurture children and youth of all races and religions, with a special focus on children and youth who are being abused, neglected, and/or are from dysfunctional families. Other examples include the Securities Association of Singapore and the Photographic Society of Singapore.

Charitable Trusts

A charitable trust is a trust which is set up for a specific charitable purpose. These purposes can be classified under four main categories:

- relief of poverty;
- advancement of education;
- advancement of religion; or
- other purposes beneficial to the community which include, amongst others:
    - promotion of health;
    - advancement of citizenship or community development;
    - advancement of arts, heritage or science;
    - advancement of environmental protection or improvement;
    - relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantages;
    - advancement of animal welfare; and
    - advancement of sport, where the sport promotes health through physical skill and exertion.

Charitable trusts are governed under the Trustees Act, along with all other types of trusts in Singapore. They are typically managed by a Board of Trustees, which may sometimes involve a corporate entity (such as the HSBC Trustee (Singapore) Limited), or include the family members of the individual.

A charitable trust does not require (i) a permanent place of business or (ii) regular AGMs to be conducted. Trustees of charitable trusts have the power to manage the trust fund to give effect to the specified charitable purpose and, must do so to the best of their knowledge and experience.

A charitable trust does not have a separate legal personality. All liabilities arising from the charitable trust will be borne by its trustees. This will not be ideal if the charitable trust is involved in many daily transactions as that may expose its trustees to an excessive number of liabilities. Generally, there are strict accounting and auditing regulations that must be complied with by the trustees, and failure or negligence in doing so will result in a penalty. Consequently, the costs of establishing and managing a charitable trust can be quite high.

Some examples of charitable trusts in Singapore include: Chen Su Lan Trust, Isaac Manasseh Meyer Trust Fund, and the Mrs. Lee Choon Guan Trust Fund.

Company Limited by Guarantee ("CLG")

Unlike a company limited by shares, a CLG is primarily used for NPOs with a corporate status (i.e. trade associations, educational and religious bodies or professional societies). Similar to a company limited by shares, every CLG has a constitution that governs the conduct and relationships between the company and its members, with liabilities limited to the guarantee given by each member. It is also prohibited from paying dividends and profits to its members. In the event of a winding up, any residual property left behind shall not be distributed to its members, but instead to institutions having similar objects as the CLG or to a registered charity as determined by the Commissioner of Charities.[11]

The amount guaranteed by each member of the CLG can be nominal. It may sue or be sued in its own name, as the CLG is considered to have separate legal identity. The CLG may enjoy full tax exemption on its income if it has been awarded charity status.

Similar to non-exempt private companies and public companies limited by shares, a CLG is required to meet stringent statutory obligations under the CA, including those related to the annual audit of accounts, the holding of AGMs and the filing of annual returns with ACRA.

Some examples of CLGs in Singapore include: Singapore Mediation Centre, the Singapore Internet Exchange, the Singapore Chamber of Maritime Arbitration, and the Singapore Insurance Institute.

Co-operative

A co-operative is a business entity which is underpinned by a social mission. Co-operatives are often created for the purpose of uplifting the socio-economic well-being of their members. A co-operative identifies social problems and attempts to provide solutions to alleviate or address such issues. It serves the needs of its members without sacrificing the financial bottom line of the co-operative.

Compared to most non-profit legal structures, co-operatives are more mindful of their financial position and aim to remain economically viable. Members make equitable contributions to the capital as required by the co-operative and accept and undertake a fair share of the risks and benefits. Co-operatives work on the principles of self-help and mutual assistance to provide services to their members.

An example would be the NTUC FairPrice Co-operative Limited (a chain of supermarkets run by the National Trades Union Congress, commonly known as NTUC FairPrice). Since its inception, NTUC FairPrice has aspired to be Singapore's leading world-class retailer with a heart. As a co-operative, NTUC FairPrice provides to its group of 500,000 strong members affordable food staples and other essentials.

A co-operative is governed by the Co-operatives Societies Act 1979 and the Co-operative Societies Rules 2009 of Singapore and has to be registered with the Registry of Co-operative Societies. There are generally two pre-requisites:

- Members of a co-operative get together to undertake feasibility study of the society including its objects, constitution and by-laws; and

- They have to submit a business plan of the co-operative to the Registrar. For more information on setting up a co-operative, please refer to Chapter 3.

REGISTRATION OF AN NPO AS A CHARITY/IPC

Charity

If your NPO is registered as a charity, it can enjoy certain tax benefits. Charities are organisations which:

- operate on a not-for-profit basis;
- are set up exclusively for charitable purposes; and
- carry out activities to achieve these purpose(s) which benefit the public.

Before awarding the charity status, the NPO must prove to the Commissioner of Charities' satisfaction that the NPO's objectives (i) meet an exclusively charitable objective, (ii) have at least three governing board members (at least two of whom are Singapore citizens or permanent residents) and (iii) have purposes that will wholly or substantially benefit the community in Singapore.

As long as your organisation is set up as above, it must apply to be registered within three months of its establishment.

The following are recognised as charitable purposes:

- relief of poverty;
- advancement of education;
- advancement of religion; or
- other purposes beneficial to the community, which include commonly recognised ones such as:
    - promotion of health;
    - advancement of citizenship or community development;
    - advancement of arts, heritage or science;
    - advancement of environmental protection or improvement;
    - relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantages;
    - advancement of animal welfare; and
    - advancement of sport, where the sport promotes health through physical skill and exertion.

If your NPO is registered as a charity, it can enjoy certain tax benefits. The Commissioner of Charities has to be satisfied that the NPO's objectives meet a charitable objective before awarding this status.

The key benefits of obtaining charity status include:

- tax exemptions; and
- greater credibility of NPOs so as to encourage donations and funding, especially where donors require recipients to be recognised charities.

For more information regarding the tax exemptions available to charities, please refer to Chapter 7 on Taxation.

IPC

An IPC status is independent of charity status. If your NPO registers itself as an IPC, it may issue "Tax-Deductible" receipts which will qualify the donor for tax relief in relation to donations made to the IPC. In order to qualify as an IPC, your NPO must first have a legal structure and be administrated by a group of independent board members, at least half of whom are required to be Singaporean citizens.[12] It is worth noting that IPC status is granted to a NPO that serves the community as a whole and not merely the sectional interests of specific groups based on race, belief or religion. Your NPO must also comply with other requirements under the Charities Act 1994 ("**Charities Act**"). and accompanying regulations such as the Charities (Institutions of A Public Character) Regulations.

The tax benefits associated with entities having IPC status are addressed further in Chapter 7 on Taxation. However, given the IPCs' appeal to donors in attracting donations, an entity having IPC status will require greater administrative upkeep. This includes:

1. the need for transparency;
2. making information public and available online;
3. providing clear records of donations; and
4. changing the IPC's auditors at least once every five years.

CONCLUSION

Whether an organisation chooses to adopt a particular legal structure would depend in part on the objectives sought by it as well as the business model being contemplated. Admittedly, there are advantages of not adopting a legal structure, such as the informality and flexibility afforded. The absence of onerous administrative compliance can also translate to lower overall costs for a start-up business.

However, a legal structure offers numerous benefits including legal insulation, continuity, tax benefits and better accountability to stakeholders, amongst others. Regardless of the objective of your organisation, it is thus prudent to consider the use of formal structures, including the pros and cons of each structure, when determining the framework that best meets the needs of your organisation.

3

SETTING UP A LEGAL STRUCTURE FOR THE SOCIAL ENTERPRISE OR NON-PROFIT ORGANISATION



Chapter 2 dealt with the different kinds of vehicles which you may set up for your social enterprise or NPO. Chapter 3 will describe how you can go about setting up each of the different business vehicles.

SETTING UP A LEGAL STRUCTURE FOR A SOCIAL ENTERPRISE

To recap, a social enterprise may be set up as a:

- sole proprietorship;
- general partnership;
- LP;
- LLP; or
- private limited company.

SETTING UP A FOR-PROFIT LEGAL STRUCTURE

Sole Proprietorship or Partnership

If you intend to set up a sole proprietorship or partnership (maximum 20 partners in total), prior to carrying on business in Singapore, you must register the business unless you are exempted from such a requirement, failing which, this will constitute an offence.

In a partnership, you and your partners should draw up a partnership agreement which defines certain partnership matters such as the roles and responsibilities of the partners as well as how the profits are to be distributed amongst the partners.

Where the sole proprietor or all the partners of the partnership reside outside Singapore, the Registrar will require a local manager (who must be ordinarily resident in Singapore) to be appointed.

Limited Partnership

A LP may be registered if a general partner of the LP lodges with the Registrar of Limited Partnerships a statement containing certain particulars.

The partners of the LP should draw up an LP agreement to govern the various matters related to the LP, such as the contribution of the partners to the LP and the relationship between these partners.

The LP will be required to appoint a local manager if every general partner is ordinarily resident outside Singapore. The local manager will be subject to the same responsibilities, liabilities and penalties as a general partner.

Additional regulations will apply in relation to the setting up of the LP if the LP is set up primarily for investment funds.

Any partnership (or club, company or association) of ten or more persons, whatever its nature or object, should seek registration with the ROS, unless you are any of the following:[1]

- any company registered under any written law relating to companies for the time being in force in Singapore;

- any company or association constituted under any written law;

- any limited liability partnership registered under the LLPA;
- any trade union registered or required to be registered under any written law relating to trade unions for the time being in Singapore;
- any co-operative society registered as such under any written law;
- any mutual benefit organisations registered as such under any written law relating to mutual benefit organisations for the time being in force in Singapore;
- any company, association or partnership, consisting of not more than 20 persons formed for the sole purpose of carrying on any lawful business that has for its object the acquisition of gain by the company, association or partnership, or the individual members thereof;
- any class, society or association of foreign insurers carrying on insurance business in Singapore under any foreign insurer scheme established under Part 2A of the Insurance Act 1966; or
- any school or management committee of a school constituted under any law regulating schools for the time being in force in Singapore.

Limited Liability Partnership

An LLP may be registered if a statement by every person who is to be a partner of the LLP is lodged with the Registrar of Limited Liability Partnerships.

You and your partners should also draw up an LLP agreement to govern matters such as the mutual rights and duties of the partners as well as the mutual rights and duties of the LLP and its partners. In the absence of this agreement, the provisions set out in the First Schedule of the LLPA will apply.

The LLP will also need to appoint a manager (who is ordinarily resident in Singapore and who is a natural person at least 18 years of age, and of capacity).

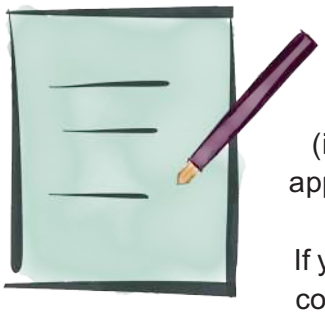
Company

A company may be incorporated by submitting the constitution of the proposed company together with such information that ACRA may prescribe and by paying the prescribed fee (see below).

As a starting point, for companies limited by shares, you may wish to consider adopting or referring to the sample constitution which is provided by ACRA.

REGISTERING A BUSINESS

How to register a company, sole proprietorship, partnership, LLP or LP



You may register a company, sole proprietorship, partnership, LLP or LP through ACRA by submitting an application online via BizFile. Alternatively, you may wish to engage the services of a professional firm (i.e. a corporate secretarial firm) to submit an online application but these options will cost more.

If you are submitting an online application, ACRA's website contains a useful step-by-step guide.

You should first refer to information that is available on the ACRA's BizFile website. The BizFile service is available 24 hours a day, seven days a week.

If you require further assistance, you may contact the ACRA Helpdesk.

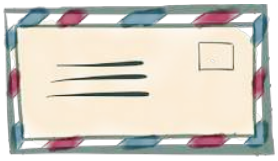
What can the business be called?

If you are intending to set up a company, sole proprietorship, partnership, LLP or LP, the name of your social enterprise will generally not be accepted if the relevant Registrar is of the opinion that the name:[2]

- is undesirable;
- is identical to that of another business;
- is identical to a name already reserved by another business; or
- is a name of a kind that the Minister has directed the Register not to accept for registration (e.g. Temasek).

The relevant Registrar has the discretion to direct a change of your social enterprise's name if your social enterprise's name so nearly resembles the name of another business as to be likely to be mistaken for it.[3]

What sort of address may be used for the business?



Generally, a post office box cannot be used as a business address. You may use a residential address as a business address if you satisfy certain terms and conditions under the Home Office Scheme.[4]

The Home Office Scheme is available to the owners, tenants or authorised occupiers of Housing Development Board ("**HDB**") flats or certain private residential property who operate a home office. Further, the business has to be one which is either registered with ACRA unless it is exempted from registration under the BNRA. One of the conditions of the Home Office Scheme is that the business can only be a small-scale business with not more than two non-resident employees. The requirements, terms and conditions, and restrictions on the type of business that may be carried out on residential premises under the Home Office Scheme may vary depending on the type of property.

Private residential properties are managed by the Urban Redevelopment Authority ("**URA**"). More information on both schemes is available at the URA website: https://www.ura.gov.sg/Corporate/Guidelines/Home-Business/Home-Office-Scheme.

The website also provides information on what businesses are permissible under the Home Office Scheme. Registration for the scheme can be done through the GoBusiness Licensing which is also a one-stop online licensing portal (covering most licences and permits) set up by the Singapore government (see Chapter 5 on "Regulatory Requirements"). Registration for the Home Office Scheme can be done through the GoBusiness Portal, https://www.gobusiness.gov.sg/. A non-refundable administration fee of $20 is payable on registration for the Home Office Scheme. Approval is immediate upon online registration.

The HDB also operates a separate Home-Based Business Scheme, under which you may use a HDB flat to conduct certain business activities that meet the relevant guidelines. No prior approval from the HDB is required under this scheme. The URA and HDB websites provide guidelines for the scheme as well as a list of permitted businesses under the scheme.

How much will it cost to name and register your business?

The name reservation fee is $15. Registration fees vary:

- company limited by shares:[5] $300
- sole proprietor/partnership:[6] $100
- LLP:[7] $100
- LP:[8] $100

How long will it take?

A company, sole proprietorship, LLP or LP can usually be incorporated or registered within 15 minutes after the registration fee is paid. However, it may take between 14 days and two months if the application needs to be referred to other authorities for approval or review (e.g. the setting up of a private school will need to be referred to the Ministry of Education).

SETTING UP A LEGAL STRUCTURE FOR NON-PROFIT ORGANISATIONS

If your organisation is an NPO and not a social enterprise, you may be registered under the law as a:

- society;
- charitable trust;
- public company limited by guarantee; or
- co-operative.

You will need to decide which legal structure may best suit the aims, activities and culture of your group. As a general rule, you need to choose between (1) more flexibility but with more legal responsibility; or (2) less flexibility and less legal responsibility.

For example, a small non-profit group with few members may be more efficiently run as a society than a public company limited by guarantee.

The process of registering a society has already been explained above. The processes for registering a charitable trust and a public company limited by guarantee are set out in the following sections.

Society

The Societies Act prescribes that the Registrar of Societies shall refuse to register a society that is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Singapore; or if it would be contrary to Singapore's national security or interest for the specified society to be registered.

For certain "specified" societies, the Registrar of Societies must also be satisfied that the rules of the specified society are sufficient to provide for its proper management and control. In the case of any specified society which is a political association, its rules must provide for its membership to be confined to citizens of Singapore and it should not have affiliation or connection with any organisation outside Singapore which is considered to be contrary to Singapore's national security or interest. Specified societies under the Schedule of the Societies Act include the following: [9]

- any society whose object, purpose or activity, whether primary or otherwise, is to represent, promote any cause or interest of, or discuss any issue relating to any religion, ethnic group, clan, nationality or a class of persons defined by reference to their gender or sexual orientation;

- any society whose object, purpose or activity, whether primary or otherwise, is to represent persons who advocate, promote or discuss any issue relating to any civil or political right (including human rights, environmental rights and animal rights);

- any society whose object, purpose or activity, whether primary or otherwise, is to discuss any matter relating to the governance of the Singapore society; and

- any society whose object, purpose or activity, whether primary or otherwise, is to promote or discuss the use or status of any language.

REGISTERING A SOCIETY

How to register a society



You must register your society with ROS. There are two types of registration processes: Automatic and Normal, as explained in the following paragraphs.

It is relatively cheap to register your society online via the Registry of Societies ("**ROS**") eServices. The three key office bearers of the society (i.e., President,

Secretary and Treasurer) will be required to verify and submit the application online using their SingPasses.

As part of the application for registration, you will first need to submit a proposed constitution. A sample may be found at the ROS' website. For societies affiliated to another entity, you will also need to submit:

- a copy of the affiliated body's constitution; and
- a letter from the affiliated body supporting the registration of the society.

The ROS may require additional information on the society including the place of business and information on the members. If your society does not fall under any of the specified societies listed in the Schedule of the Societies Act, you will be eligible for the 'automatic' registration process, in which case, your society will be able to start its activities upon registration.

Otherwise, you will need to go through the 'normal' process, in which case, you will be required to await the Registrar's in-principal approval first before you can proceed to pay the registration fee and have your society registered. Your society will be able to start its activities once its registration is published in the Gazette.


You should first refer to the website of the ROS for the most updated information.

Naming a society

Your society's name should not be the same or similar to that of another entity that is already registered. To check, you may refer to the Unique Entity Number's website.

- Acronyms/abbreviations are not encouraged. Where an acronym/abbreviation is used, its meaning must be clearly explained. Specifically, the word "Singapore" or its abbreviation can generally be used only within brackets at the end of the society's name to indicate the society's place of registration, (e.g. ABC Society (Singapore)).
- The word "Foundation" cannot generally be used unless the society is an institution or association with a permanent fund dedicated to charitable, educational, religious, research or other benevolent purpose, and the society is financed by a donation endowment or legacy to aid the society's intended charitable purposes.

- In addition, if you are using any of the following words as part of the name of the proposed society, you would require a letter of support from the relevant authorities:[10]

    - Academy;
    - Asean;
    - College (with exception of an alumni);
    - Council;
    - Government;
    - Institute (with exception of an alumni);
    - Merlion;
    - Ministry;
    - National;
    - Republic;
    - Registry;
    - State; or
    - Temasek.

Generally, names of locations such as Orchard, Sentosa or Raffles Place require a letter of support from the relevant authorities. Please refer to the ROS website for more details.

What is a "registered address" for societies?

A "registered address" is defined in the Societies Act as the address of the society that is kept and maintained with the Registrar as the registered address of the society. The following addresses are prohibited from use as the society's place of business: [11]

- HDB flat;
- post office box;
- undeveloped sites;
- mobile premises (e.g. containers);
- unofficial addresses (e.g. rooftops or void decks);
- embassy/high commission; or
- public places (e.g. hawker stalls or retail stores).

A letter of consent from the relevant authorities would be required if any of the following addresses are used as a place of business:[12]

- community centre;
- government agencies or statutory boards;
- schools; or
- hospitals.

Mailing address

Your society's mailing address should be the same as your registered address, because the ROS will send all correspondences to your society's place of business.

How much does it cost?

The approval fee for a specified society is $400 for applications supplied online. For a society other than a specified society, the approval fee is $300.[13]

How long will it take?

A society can usually be registered immediately under the "automatic" registration process or in approximately two months under the "normal" registration process.

What obligations does your society have upon successful registration?

Registered societies are generally self-governing. In carrying out your activities, your society has to abide by the prevailing laws in Singapore and by the rules of your own respective constitutions. Under the Societies Regulations, registered societies are required to:

- maintain proper accounts and records of the transactions and affairs of the society and get its accounts audited annually;
- submit an Annual Return and its audited of statement of accounts to the ROS annually;
- submit to the ROS an audited statement of accounts of any fundraising appeal 60 days after its completion;
- make an application to change its name, place of business and rules when the need arises; and
- make an application to use any flag, symbol, emblem, badge or other insignia when such a need arises.

SETTING UP A CHARITABLE TRUST

To set up a trust for charitable purposes under the Office of Commissioner of Charities, a trust deed is required as the governing instrument of the trust. A board of trustees containing at least three persons is also required. The trust deed should generally include the following.[14]

(a) Objectives of Establishing the Charity

- The objects must be exclusively charitable and must also be clearly and concisely stated. The purposes of the charity must be wholly or substantially beneficial to the community in Singapore.

(b) Management

- There should be at least three trustees, at least two of whom shall be Singapore citizens or permanent residents. The duties and terms of office of the trustees should be specified.

(c) Conflict of Interest Policy

- There should be proper procedures in place to manage conflicts of interest. Whenever a trustee in any way has an interest (either directly or indirectly) in a transaction, project or other matter to be discussed at a meeting, the trustee should disclose the nature of his or her interest before the discussion on the matter begins.

- In addition, the trustee concerned should not participate in the discussion or vote on the matter, and should also offer to withdraw from the meeting. The board of trustees shall then decide if the matter should be approved.

(d) Quorum

- The number of trustees present to form a quorum for any meetings should be clearly stated.

(e) Dissolution

- The circumstances under which the trust can be terminated should be clearly stated. Upon ceasing to be a registered charity under the Charities Act, any remaining funds and assets (after

settling all debts and liabilities) should be given to other registered charitable organisations or exempt charities with similar objectives.

You should also refer to the Charities (Registration of Charities) Regulations and the Charities Portal, www.charities.gov.sg for more information.

REGISTERING A PUBLIC COMPANY LIMITED BY GUARANTEE



Before you can set up an NPO as a public company limited by guarantee, a company needs to be set up first through ACRA by submitting an application online via BizFile. The constitution must be lodged in order to register the company. A model constitution for CLGs can be found in the Second Schedule of the Companies (Model Constitutions) Regulations 2015.

How much will it cost?

The name reservation fee is $15 and the application for incorporation of a public company limited by guarantee is $300.

How long will it take?

A CLG can usually be incorporated or registered within 15 minutes after the registration fee is paid. However, approval may take up to 14 days or longer in some circumstances.

REGISTERING A CO-OPERATIVE



Naming your co-operative

Your co-operative society's name will not be accepted if the Registrar of Co-operative Societies is of the opinion that the name: [15]

- is likely to mislead members of the public as to the true character or purpose of the society;

- is identical to or so nearly resembles the name of some other society as is likely to deceive or confuse members of the public or members of either society; or is undesirable in the opinion of the Registrar.

Special information for co-operative societies

The following are general steps which are required to form a co-operative society:[16]

1. You will need to first set up a Pro-tem Committee with at least three members to undertake a feasibility study to determine the economic and financial viability of the proposed society, prepare a viability statement, and consider the objectives, constitution and by-laws of the society.

2. You will then need to submit, for the Registrar of Co-operative Societies' comments:

    - a viability statement (containing a business plan and the cash flow projections for at least three years);

    - particulars of each committee member, including name, National Registration Identity Card ("**NRIC**") number, date of birth, citizenship, occupation, address and contact numbers; and

    - draft by-laws which include matters spelled out in the Schedule of the CSA.

3. After obtaining the Registrar's comments, you will need to convene a preliminary meeting of at least five persons qualified for membership to:

    - adopt the by-laws (which have incorporated the Registry's comments; and

    - pass the resolution to accept all the rights, duties and legal responsibilities prescribed by the by-laws.

    In order to qualify for membership, an individual member must:

    - be at least 16 years old (or at least 12 years old if it's a school co-operative);

    - be a Singapore citizen or resident in Singapore;

- not be legally or mentally disabled;

- meet residence, employment and profession requirements as prescribed in the by-laws;

- be able to meet any other requirements prescribed by the by-laws; and

- for members of a credit society, belong to a pre-existing common bond of association or community of interest.

An institutional member of a co-operative must be a registered co-operative society itself or trade union.

4. You will then have to submit the following documents to the Registrar to apply for registration:

   - the duly completed relevant application form providing the necessary details (name, NRIC or foreign identification number, nationality, occupation and address) and signatures of at least five potential members;

   - by-laws;

   - business plan (which should include the co-operative's business strategy, products and service, target customers, expected demand etc.) and three-year financial projections (which should include the balance sheet, income and expenditure as well as cashflow statements of the co-operative); and

   - minutes of the preliminary meeting, with the signatures of all who were present at the meeting.

   - The time taken by the Registrar to process and approve the registration will depend on the complexity of the application. No fees are payable for the registration of a co-operative society.

5. Upon registration, the Pro-tem Committee shall continue to manage the affairs of the co-operative society until the first meeting of the members which must be held within three months after receiving the notice of registration and shall include the election of officers who shall serve until the first AGM.

You should first refer to information that is available on the website of the Registry of Co-operative Societies and the Ministry of Culture, Community & Youth ("**MCCY**") website. If you require further assistance, you may contact the Registry of Co-operative Societies directly for general assistance or advice.

REGISTERING AS A CHARITY



Applications for registration may be made through the Charities Portal found at the website www.charities.gov.sg, which is also an excellent source for more information on this process and a list of all registered charities in Singapore. The following documents must be submitted together with the application form: [17]

- signed copy of the governing instrument (e.g. constitution for a society, trust deed for a charitable trust or constitution for a public company limited by guarantee);
- certified statement of accounts for the last three financial years (if applicable);
- two-year activities and fund disbursement plan; and
- particulars of all governing board members, trustees or key officers (name, passport or NRIC number, address, date of appointment and the position of the office held).

You will also need a valid SingPass Account to proceed with the registration.

Each application takes about three months to process, but there is no fee charged for registering a charity under the Charities Act.

If the Commissioner of Charities (or a Sector Administrator delegated to assist the Commissioner) is satisfied that the application will not be against public interest, he or she will register the organisation as a charity. In assessing the application, the Commissioner or Sector Administrator will consider the following:

- whether the organisation is related to any other institutions that has been removed from the Register of Charities or has been refused registration as a charity;

- whether the organisation has flouted any law or provided any false, misleading or inaccurate information;
- the policies and plans of the organisation;
- whether the governing board members, trustees or key officers will be able to administer the charity properly; and
- whether the activities planned are sufficient to further the charitable purposes of the organisation.

Although you may conduct charitable operations in Singapore without registering as a charity, it will be difficult to engage in any meaningful and sustainable activities unless you are a registered entity. In addition to having to pay taxes, you may have difficulty raising funds from non-members or otherwise successfully soliciting donations, since many donors use registration as an important criteria to evaluate requests for funds.

To be deemed a charity, you must register with the Commissioner within three months after establishment or such longer period as the Commissioner may, in his discretion, allow. In the event that the application is not submitted in a timely manner or is rejected, operations do not have to cease, but the organisation will ultimately be required to pay income tax as it will not be eligible for the benefits associated with being a registered charity.

Your organisation must set up as a legal entity before it can apply for charity status through the Charity Portal. To transact with the Charity Portal, your organisation must also have a valid SingPass account.

REGISTERING AS AN IPC



For an institution/fund to be an IPC, its activities must be beneficial to the community in Singapore as a whole, and not confined to sectional interests or group of persons based on race, creed, belief or religion, unless otherwise approved by the Minister, and must meet its objectives under its governing instrument and the objectives of the relevant Sector Administrator.

The institution/fund must also be administered by a group of independent trustees/governing board members, of which at least half must be citizens of Singapore.

You may apply for IPC status online via the Charity Portal with the following information:[18]

- a valid ROS or unique entity number;
- list of planned activities, donations and expenditures for the next two financial years;
- past two years' of donations if the charity has not submitted its annual reports for the relevant financial years;
- particulars of the organisation;
- particulars of the appointed auditor;
- completed declarations relating to the pre-requisites for IPC to ensure that the charity satisfies all of the conditions;
- information of the person making the declaration and submitting the application; and
- SingPass account.

The Commissioner of Charities will consider the following, amongst other factors, during its assessment of your application:

- whether your charity has failed to comply with the Charities Act or any regulations made under the Charities Act;
- whether there is or has been any mismanagement, misconduct, incompetence or negligence in the administration of your charity;
- whether the governing board members will be able to exercise proper administration of your charity;
- whether your charity's policies and plans are sufficient to ensure its proper administration;
- whether the activities planned by your charity are sufficient to further its charitable purposes; and

- whether your charity has any qualified audit report and whether appropriate action has been taken to address the concerns raised.



All grants of IPC status are subject to a validity period which is on a case-by-case basis. IPCs may apply for its approval as an IPC to be extended upon expiry of its validity period, where the application will be reviewed accordingly. IPCs are also subject to rules related to the issuance of tax deduction receipts and the retention of donor records.

RELATED MATTERS AND OTHER CONSIDERATIONS

Licences and permits

Depending on the type of business that your social enterprise is engaged in, you may need to apply for certain licences or permits from the relevant authorities or agencies before you can commence business, failing which your business activities may constitute an offence. Licensing issues are discussed further in Chapter 5, which covers regulatory frameworks.

There are basically three types of licences and permits:

1. Compulsory Licences

These are licences which are required by law (such as a Child Care Centre licence) before you are allowed to commence a particular business. The failure to obtain such compulsory licences before the commencement of business would constitute an offence.

2. Occupational Licences

These are licences which are required if you are providing certain professional services (e.g. doctors, lawyers, architect and accountants). Application for these licences would usually be made directly with the respective professional organisations or bodies.

3. Business Activity-Specific Licences

These are licences which are required for certain types of business activity, such as the sale of liquor or the import or export of goods for sale.

Business planning

Preparation in advance of the set-up of your social enterprise can minimise business risk. Careful and thorough market research, business planning and due diligence should be undertaken before you embark on your social enterprise. As a starting point, raiSE (https://www.raise.sg) provides more information about social enterprises in Singapore, as well as programmes and resources to help you in your planning.

The SME Centre@SICCI website (https://www.smecentre-sicci.sg/) provides a useful guide and summary of the considerations which you may wish to take into account in planning the business that your social enterprise will undertake. In addition, the Enterprise Singapore (an agency under the Ministry of Trade and Industry) website contains various useful toolkits which you may refer to for guidance on various aspects of running a business (such as financial management, customer service, human resource, marketing and productivity).

The SME Centre@SICCI and Enterprise Singapore websites also contain further information on grants, incentives, loans and other types of financial assistance that may be available to a social enterprise.

Laws and regulations

Depending on the type of entity used to set up your social enterprise, you will be required to comply with different laws and regulations in Singapore.

To better understand how these laws and regulations may affect your social enterprise, you may wish to consider attending seminars and courses organised by organisations such as the Singapore Business Federation and the Association of Small & Medium Enterprises. You should also consider engaging professional advisers such as auditors, consultants and/or lawyers who will be able to give you more detailed and specific advice.

4

BUSINESS VEHICLES AND CORPORATE GOVERNANCE



Corporate governance refers to the procedures by which an organisation is operated and managed, including its obligations of financial disclosure and accountability to, amongst others, its owners, members, or shareholders. It involves the ways in which rights and responsibilities are distributed among different stakeholders, and also provides the structures and rules which govern decision-making within an organisation.

The corporate governance requirements for social enterprises vary depending on the business vehicle chosen (see Chapter 2) because of different public interest needs. For instance, a company is a separate legal entity and may incur its own liabilities. As such, higher governance standards are required to, for example, prevent a director of a company from placing his or her own interests above those of the company. On the other hand, the higher governance standard imposed on a company is not imposed on a business owner of a sole-proprietorship as a sole-proprietor is personally accountable for all liabilities incurred during the course of the business.

Once you have chosen a particular business vehicle for your social enterprise, you will need to ensure that your social enterprise complies with all the corporate governance requirements applicable to that business vehicle on a continuing basis. The corporate governance requirements for each business vehicle are generally governed by statute law. Each statute usually governs a specific category of business vehicle. These statutes include the CA, BNRA, Partnership Act 1890, LPA, LLPA and CSA.

Failure to comply with the corporate governance requirements applicable to your chosen business vehicle for your social enterprise may lead to criminal sanctions and/or financial penalties imposed on you or your social enterprise.

This chapter sets out a brief summary of the corporate governance requirements for each business vehicle that you may choose for your social enterprise.

SOLE-PROPRIETORSHIP

Sole-proprietorships, which do not enjoy separate legal entity status, generally have minimal compliance requirements to fulfil since they are the simplest and most flexible business vehicle which your social enterprise can adopt.

The management of a sole-proprietorship rests with the owner, who has exclusive control and management of the business, with full liberty to make all decisions concerning the business.

Sole-proprietorships are not required to audit their accounts annually or file annual returns with ACRA. However, sole-proprietorships should still keep proper accounts and records of all business transactions which have been carried out.

PARTNERSHIP

A partnership, like a sole-proprietorship, is not a separate legal entity.

The management of a partnership rests with all the partners of the partnership, who will have equal rights in the management and decision-making of the partnership unless there is a partnership agreement specifying otherwise.

A written partnership agreement is not a statutory requirement. However, having a written partnership agreement allows you and your partner(s) to formally structure your business relationship. A partnership agreement may address the following issues: responsibilities of each partner, management and control of the partnership, capital contributions and methods of funding the partnership, profit

and loss allocation, salaries of partners, and dissolution of the partnership. A written agreement, as opposed to an oral one, can spell out which partner is responsible for what activities and what authority is vested in that partner. Setting out the duties and responsibilities of a partner in a partnership agreement clearly will ensure that each partner knows his or her role in the partnership.

A partnership is not required to audit its accounts annually or submit its annual returns to the ACRA. However, the partnership should still keep proper accounts and records of all business transactions which have been carried out.

LIMITED PARTNERSHIP

Like a partnership, an LP, which must consist of a minimum of two partners (at least one general partner and one limited partner), is not a separate legal entity.

The management of an LP rests with the general partner, and not the limited partner. If a limited partner participates in the management of the LP, he or she will be treated as a general partner and lose his or her limited liability status.

Like a partnership, a written partnership agreement for an LP is not a statutory requirement. However, having a written partnership agreement allows you and your LP partner(s) to define the scope of the rights and liabilities of a general partner as well as the extent of the liability of the limited partners for the debts and obligations of the LP.

An LP is not required to audit its accounts annually or submit its annual returns to ACRA. However, the LP must keep accounting and other records which sufficiently explain its transactions and financial position for at least five years. Although these records need not be lodged with ACRA, they may be required by the Registrar of LPs to be produced for inspection.

LIMITED LIABILITY PARTNERSHIP

An LLP operates as a partnership while having a separate legal identity like a private limited company. Every LLP must have at least two partners at all times. The partners can be individuals or companies.

Generally, all partners in the LLP may take part in the management of the LLP, unless otherwise agreed. In addition, every LLP must appoint at least one manager. A partner of the LLP can also be the LLP's manager. The manager is required to file annual declarations with ACRA stating whether the LLP, as of the filing date, is able to pay its debts as they become due in the normal course of the LLP's business.

The mutual rights and liabilities of the partners and their rights and duties in relation to the LLP are governed by the LLP agreement or, in the absence of any agreement as to any matter, by the relevant provision relating to that matter set out in the First Schedule to the LLPA.

An LLP is not required to audit its accounts annually or submit its annual returns to ACRA. However, an LLP is required to keep accounting and other records which sufficiently explain its transactions and financial position, as well as prepare profit and loss accounts and balance-sheets. These documents need not be lodged with ACRA, but the LLP must keep the above-mentioned records for not less than five years and may be required to produce such records to the Registrar of LLPs for inspection. If the LLP does not comply with any of these requirements, the LLP and every partner of the LLP would be guilty of an offence. If a partner of the LLP commits such an offence, he or she would be liable on conviction to a fine or imprisonment, or both.

COMPANY

A company has its own legal personality that is distinct from its shareholders and directors.

Constitution

Every company must have a constitution. The constitution sets out the basic structure and objects of the company, as well as the internal regulations of the company. The company must abide by the rules and regulations as set out in its constitution.

Directors

Directors of a company play a principal role in a company's management. Every company must have at least one director who is ordinarily resident in Singapore. Directors have certain duties pursuant to the CA. A director who breaches any of these duties may be subject to very serious criminal or civil sanctions. A director should familiarise himself or herself with these directors' duties. The following two cases illustrate directors' duties.

CASE STUDY 1

Directors' duty of reasonable diligence and care

The Singapore high court case of *Lim Weng Kee v PP* [2002] 2 SLR(R) 848 provides a good example of the extent of skill and care required of a director. In this case, the managing director ("**MD**") of three pawnshops, who had been in the business for 20 years, released certain pawned jewellery items without waiting for the cheque that was used as payment for the goods to be cleared. The court held that a reasonable MD having 20 years' experience in operating three pawnshop businesses of similar scale would not have released the pawned items before the cheque had been cleared. The court held that the MD had failed to exercise reasonable diligence and had committed an offence under s.157(1) of the CA. Hence, the court upheld the MD's conviction and total fine of $12,000. It is important to note that if the MD had lacked experience or knowledge, he would have been expected to demonstrate a reasonable standard of care. However, in this case, the MD had been running the business for 20 years. In possessing this special experience, he was expected to demonstrate a higher standard of care.

CASE STUDY 2

Directors' fiduciary duties to the company

In *DM Divers Technics Pte Ltd v Tee Chin Hock* [2004] 4 SLR(R) 424, there were two directors of a company (i.e. Company A). One director was not involved in the day-to-day operations of Company A, while the other director was the MD of Company A. The MD was subsequently discovered to have misappropriated Company A's funds. He had also placed himself in a situation of conflict by employing his wife from another of his companies (i.e. Company B) and charging Company B's expenses to Company A. Further, he failed to disclose material information to the detriment of Company A. The court noted that directors owed fiduciary duties to the company and shareholders, which included the duty to act honestly and in good faith in the best interests of the company; not to exercise their powers for an improper purpose; and not to place themselves in a position in which there is a conflict between their duties to the company and their personal interests or duties to others. The court found that the MD had breached all the fiduciary duties set out above. In an action brought by Company A, the MD was ordered to pay back all amounts misappropriated (in excess of $300,000) and to indemnify Company A for fines resulting from summonses issued by the authorities.

Company secretary

The company secretary also plays an important role in the governance of a company. A company secretary should have the experience and requisite knowledge to discharge the functions and duties required of his or her role. A public company is required to appoint a suitably qualified person, details of which are prescribed in legislation, as a company secretary. A private company, however, does not have to satisfy this requirement unless required by the Registrar of Companies. The position of company secretary cannot be left vacant at any time for more than six months.

Annual general meeting

Generally, every company is required to hold an AGM once in every calendar year within six months after the company's financial year end (for non-listed companies) and within four months after the company's financial year end (for public listed companies). Matters dealt with at an AGM usually include obtaining shareholders' approval for the audited accounts, the election of directors and the appointment of auditors for the new financial year.

Audits and annual returns

Generally, a company's financial reports must be audited. A small company may qualify for audit exemption if it is a private company and meets at least two of the three criteria relating to total annual revenue, total assets and number of employees for two consecutive financial years:

- Total revenue is not more than $10 million;
- Total assets are not more than $10 million;
- Not more than 50 employees.

All companies are required to lodge an annual return with ACRA. In addition, every company is required to keep accounting and other records which sufficiently explain its transactions and financial position, as well as enable true and fair profit and loss accounts and balance-sheets (collectively known as financial statements), and any documents required to be attached to them, to be prepared from time to time. Such records must be kept in such manner as to enable them to be conveniently and properly audited and for a period of not less than five years from the end of the financial year in which the transactions or operations to which those records relate are completed. If any of these requirements is not complied with, the company and every officer of the company

who is in default would be guilty of an offence and would be liable on conviction to a fine or imprisonment, or both.

CO-OPERATIVE SOCIETY

An example of a co-operative society in Singapore is NTUC FairPrice, which was established with the social mission to moderate the cost of living in Singapore.

A co-operative society may make its own by-laws that are necessary or desirable for the purposes for which the co-operative society is established, subject to the approval of the Registrar of Co-operative Societies. A co-operative society must make by-laws dealing with certain matters mentioned in the Schedule to the CSA, which include the objects of the co-operative society and the purposes to which the co-operative society's funds may be applied.

The management of a co-operative society rests with the committee of management. A co-operative society is required to provide in its by-laws for an AGM to be convened by the committee of management and to be held as soon as practicable, but not later than six months after the end of its financial year, unless the approval of the Registrar of Co-operative Societies has, within that six-month period, been obtained to extend that deadline. The AGM is meant to consider issues such as the approval of the financial statements and the election or removal of members from the committee of management.

As soon as practicable but not later than six months after the close of each financial year, a co-operative society is required to submit to the Registrar of Co-operative Societies an annual report on its activities during the year together with a copy of its audited financial statements and its audit report for that year. Any co-operative society which fails to provide such financial statements in compliance with accounting standards to give a true and fair view of the position and performance of the co-operative society would be liable on conviction to a fine.

Every co-operative society is also required to keep proper accounts and records of its transactions and affairs and must do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in custody of, the co-operative society, and over the expenditure incurred by the co-operative society. Every co-operative society, officer, agent, employee or member of a co-operative society or other person who fails to comply with this requirement would be liable on conviction to a fine.

USEFUL LINKS

Singapore Statutes Online

https://sso.agc.gov.sg/

All the statutes mentioned in this chapter can be found at this website.

MAS Code of Corporate Governance

https://www.mas.gov.sg/regulation/codes/code-of-corporate-governance

The MAS Code of Corporate Governance is intended to be a guide for public companies whose shares are listed on a stock exchange, but it provides a useful blueprint for best practices that may be adopted by social enterprises structured as companies.

Corporate secretarial services

https://isca.org.sg; https://csis.org.sg/; https://www.lawsociety.org.sg/

Please refer to the information provided by the Institute of Singapore Chartered Accountants ("**ISCA**") (formerly known as the Institute of Certified Public Accountants of Singapore), the Chartered Secretaries Institute of Singapore (formerly known as the Singapore Association of the Institute of Chartered Secretaries and Administrators), and the Law Society of Singapore for listings of professionals who are able to provide you with corporate secretarial services.

Co-operative societies

https://www.mccy.gov.sg/sectors/co-ops

Please refer to the information provided by the MCCY on co-operative societies.

https://www.sncf.coop/form-a-co-op

The Code of Corporate Governance for Co-operatives was launched by the Singapore National Co-operative Federation in 2006. The said code is meant to assist all co-operative societies to examine and raise their governance standards. It provides principles and guidelines in several areas, including board matters, conflict of interest policy, and accountability and audit.

5

REGULATORY REQUIREMENTS



KNOW YOUR REGULATORY FRAMEWORK

Under Singapore law, social enterprises are recognised and regulated just like any other business. It is the underlying legal structure you choose for your business that will determine your legal rights and obligations.

The common legal structures which may be considered (and their respective corporate governance requirements) have been addressed in previous chapters. In this chapter, we seek to explain the wider regulatory framework within which NPOs and social enterprises operate, and which you should take note of, regardless of your particular business vehicle.

CHARITY STATUS

If your organisation is:

- a CLG, a society or a trust;

- is set up for exclusively charitable purposes beneficial wholly or substantially to the community in Singapore;

- has at least three governing board members, of whom two are Singapore citizens or permanent residents; and

- carries on its activities, including business activities, to achieve these charitable purposes,

you may wish to consider applying to register as a charity with the Office of the Commissioner of Charities, also known as the Charities Unit, under the MCCY. Applications are made online through the Charity Portal.

Registered charities automatically enjoy full income tax exemption. Further, upon application and review by the Comptroller of Property Tax at the Inland Revenue Authority of Singapore ("**IRAS**"), charities may also be exempted in full from property tax for properties used exclusively for charitable purposes or partially if only parts of the property are used for charitable purposes.

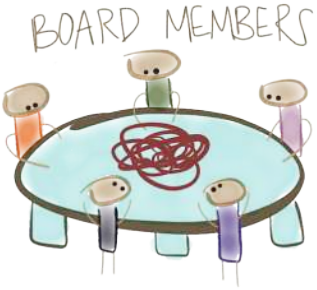
Contrary to popular belief, a charity may carry on business activities. However, there are limits on the scope of business that the charity may be engaged in that must be observed. An organisation registered as a charity is expected to focus its efforts in carrying out its primary purpose activities, which are the activities, including business activities, which contribute directly to the advancement of the charitable objects for which the charity was set up to promote, and as stated in its governing instrument. For example, a theatre charity promoting the arts in Singapore may sell tickets for a theatre performance.

Other incidental activities which support the advancement of the charity's objects may also be carried out. Following on from our theatre charity example, the charity may sell drinks and snacks in a concert hall operated by it, to provide convenience for theatre-goers and to enhance the theatre-going experience. However, a charity wishing to engage in non-primary purpose business activities that do not directly advance or support the objects of the charity (usually involving the provision of goods and/or services solely in return for income) must set up a business subsidiary to undertake them, unless such business activities have no material impact on the financials of the charity and do not expose the assets of the charity to significant risk. The subsidiary can be 100% owned by the charity, but there must be an arm's length relationship between the charity and the subsidiary to ensure that the charitable resources are protected from significant risk exposure. Do note that, if necessary, the Commissioner of Charities can direct a charity to cease funding or to terminate its business activities in order to protect its charitable assets. Charity boards are responsible for the proper use of their charities' assets

and resources, and if investments are made, they must ensure that their investment decisions are transparent and accounted for. Such investments must not deviate from the charity's core purposes.

Charities must comply with the requirements and obligations set out in the Charities Act and its regulations. We discuss the more important ones here:

Board members



The charity's governing board must have at least three members, of whom at least two must be Singapore citizens or permanent residents. The board is responsible for the charity's performance, including ensuring that the charity is delivering the charitable outcomes for which it has been set up and also that it is solvent. The Code of Governance for Charities and IPCs, which sets out principles and best practices on key areas of management, should be followed by the charity board. There is also the Guidance for Charities Engaging in Business Activities, which is useful in guiding charity boards in managing both their business and social and/or environmental objectives. These guides can be found on the Charity Portal website.

Annual reports and statements of accounts



The annual report and statement of accounts of the charity must be filed with the Commissioner of Charities. The annual report must set out certain required information, including a review of the policies, activities, and financials of the charity for that financial year. If your organisation charity or IPC has annual income or expenditure over $500,000, financial statements must be audited by a public accountant and a summary of your organisation's financial information must also be posted online on the Charity Portal. More details as to the audit thresholds are as follows:

Gross Income or Total Expenditure	Minimum Requirement
(A) $250,000 or less	Accounts can be examined by an independent person (also known as the Independent Examiner*) who is reasonably believed by the governing board members to have the requisite ability and practical experience to carry out a competent examination of the accounts.

Gross Income or Total Expenditure	Minimum Requirement
(B) Between $250,000 and $500,000	Accounts can be examined by an independent person who is a member of the ISCA or who possesses the necessary qualifications to be a member of the ISCA.
(C) Above $500,000; and (D) All IPCs	Accounts shall be audited by a public accountant.

For more information, please refer to the Guide on Preparing Annual Submissions on the Charity Portal website.

Large charities

Large charities are charities with gross annual receipts of $10 million or more in each of the last two financial years. There must be at least ten governing board members for large charities. The charity's auditor must first be approved by the Commissioner of Charities and must also be changed every five years.

INSTITUTIONS OF A PUBLIC CHARACTER STATUS

IPC status is conferred by the Office of the Commissioner of Charities (Charities Unit, MCCY) on NPOs whose activities are beneficial to the community at large in Singapore. IPCs are authorised to issue tax deduction receipts for tax-deductible donations received. Donors to the IPC are allowed tax deduction for 2.5 times the amount of donations made to these organisations until 2026 as part of the Singapore government's bid to encourage greater charitable giving. By contrast, donations made to a charity without IPC status are not tax-deductible. Because of this latter feature, IPCs are governed by stricter guidelines as compared to charities. More information on the requirements and application for IPC status and compliance requirements under the Charities (Institutions of a Public Character) Regulations can be found on the Charity Portal.

If your organisation is intended to be for-profit or if you envisage your business activities to expose its charitable assets and financials to significant risk, the IPC or charity may carry on its business activities through a separate business subsidiary, or any non-charitable entity owned by one or more IPCs or charities to carry on a trade or business on their behalf. The profits of the business subsidiary

can then be ploughed back to the IPC or charity in the form of dividends to enable it to fulfill its charitable objectives.

While the subsidiary can be 100% owned by the IPC or charity, do note that there must be an arms-length relationship between the IPC or charity and the subsidiary, such that the IPC or charity's assets are protected from the risks of the business and creditors. Such an arrangement ensures that the organisation's businesses are independent of its charitable activities and that charitable resources are protected from significant risk exposure. Further, the governing board of the IPC or charity must always act in the best interests of the IPC or charity when making decisions relating to the business subsidiary.

LICENSING REQUIREMENTS



Depending on the nature of the business activities your organisation is carrying out and subject to exemptions granted under law, licences may have to be obtained from the relevant authorities before you may legally commence operations. Application for the necessary licences should be done at the time you register your organisation with ACRA or the ROS, as may be applicable.

You can get a general indication of the licence(s) you may need to run your organisation by searching the GoBusiness Licensing website. Licence applications are also to be made on the GoBusiness Licensing website, which is a one-stop portal for application of all the government registrations and licences you may be required to hold. While most trades do not require any licences to carry on business, please ensure that you obtain the correct licences where these are necessary.

The following is a list of licenses and permits commonly applied for:

REGULATORY AUTHORITY	LICENCE OR PERMIT
Building and Construction Authority	Outdoor advertisement licence
Urban Redevelopment Authority	Use of premises and zoning regulations

REGULATORY AUTHORITY	LICENCE OR PERMIT
Composers and Authors Society of Singapore Limited	Copyright licence and permit
Ministry of Social and Family Development	Licence to operate a children's home Licence to operate an old folks' home
Ministry of Education	Certificate of registration of schools including early childhood centres
Early Childhood Development Agency	Licence to operate an early childhood development centre (e.g. kindergartens and child care centres)
Ministry of Manpower ("**MOM**")	Employment and work permits Employment agency licence

EMPLOYMENT

Employment issues in Singapore are largely governed by the MOM. We highlight three main issues here that you may wish to take note of.

Terms of employment

While the terms of employment between your organisation and its employees are generally a matter of negotiation between the parties, the Employment Act 1968 (the "**EA**") provides for certain minimum protections for the employee. Where the employment contract is in violation of these minimum standards, it may be invalid. It should be noted, however, that while the EA covers all employees except seafarers, domestic workers and public servants, Part 4 of the EA, which provides for rest days, hours of work, and other conditions of service, only applies to workmen (doing manual labour) earning a basic monthly salary of not more than $4,500 and employees earning not more than $2,600. Part 4 of the EA does not cover all managers or executives. Further detailed information on the EA can be found in Chapter 11.

Age of employment

You may wish to take note that the minimum legal age to work in Singapore is 17 years old. You are permitted to employ children and young persons aged between 13 years and 16 years old, subject to restrictions on the type of work that these young persons can perform.

For instance, children 13 to below 15 years of age can only engage in light work, and cannot work in any industrial undertaking or vessel unless in the personal charge of his or her parent.

At the other end of the spectrum, under the Retirement and Re-employment Act 1993 ("**RRA**"), while there is a statutory minimum retirement age of 63, employers are required by the RRA to offer re-employment to eligible employees who turn 63, up to the age of 68. With effect from 1 July 2026, the statutory minimum retirement age will be raised to 64, employers are required by the RRA to offer re-employment to eligible employees who turn 64, up to the age of 69. The criteria and conditions of re-employment as well as the penalties for non-compliant employers are set out in the RRA.

Foreign employees

If your organisation intends to employ foreign employees, you need to obtain a work pass such as an employment pass or work permit for them before they can commence work in Singapore. You should take note of the different categories of passes and their requirements, generally categorised based on the qualifications of the foreign employee. Employment pass applications, as well as passes for dependents accompanying the employee, can be made online on the MOM website. Similarly, where your organisation carries out its operations overseas and hires the locals there, the employment laws of the foreign country must be complied with.

All employers are required by law to make monthly contributions to the Central Provident Fund ("**CPF**") accounts of any employee who is a Singapore citizen or permanent resident, as long as the employee earns more than $50 a month. This requirement applies equally to student-employees, family member-employees, and part-time casual employees. CPF contributions for employees who are foreigners on employment and work passes are not required.

CENTRAL PROVIDENT FUND

If you are a sole proprietor, or a partner in a partnership or LP falling within the prescribed criteria, you are only required to contribute to your MediSave account at the prevailing mandatory rate. These contributions can be used for your healthcare needs. Additional voluntary contributions to your MediSave account will only entitle you to tax relief in the following year of assessment.

Employers must be registered with the CPF Board to make the requisite contributions to their employees' accounts. CPF contributions are calculated based on the employee's total earnings for the month, including bonuses, commissions and allowances. The CPF Board has several online contribution calculators to assist you in calculating the amounts payable. Do also take a look at the CPF website (https://www.cpf.gov.sg/employer/employer-obligations), which will provide you with a better understanding of your statutory obligations relating to CPF matters.

TAX ISSUES

The governmental authority responsible for taxation in Singapore is the IRAS. More information on taxation may be found in Chapter 7.

All employers must report employee earnings to IRAS using the requisite forms (i.e. Form IR8A) and the relevant appendices, on or before 1 March every year. Employers with five or more employees are required by law to participate in the IRAS Auto-Inclusion Scheme for Employment Income, which allows employers to submit details of their employee's employment income to IRAS online.

Under this Scheme, employers no longer need to distribute hardcopies of the Form IR8A and the relevant appendices to their employees, as the electronically submitted income and deduction information will be automatically included in the employees' income tax assessment, and they may view their annual remuneration via their payslips or online through the IRAS tax portal. If you have less than five employees (as an employer), you may also volunteer to participate in the Auto-Inclusion Scheme for Employment Income.

If you hire foreign employees in your organisation, do note that, subject to certain exceptions, IRAS requires an employer to notify IRAS and seek tax clearance that a foreign employee (i.e. an employee who is not a Singapore citizen nor permanent resident) has paid all his or her taxes, when this foreign employee ceases employment with you in Singapore or plans to leave Singapore for more than three months. Tax clearance must be sought at least one month before the foreign employee ceases to work for you or leaves Singapore in the

abovementioned scenario, otherwise there may be a fine of up to $5,000 imposed on you as employer. Further, where your foreign employee has outstanding taxes, you as employer are required by law to withhold all monies due to him or her for onward payment to IRAS. Not withholding such monies when required, and not having a valid reason for the non-compliance, may result in you as employer being held liable for the tax that is owed by your foreign employee.

Finally, do note that IRAS requires all employers to keep in safe custody sufficient accounting records including that of your employees' remuneration for at least five years.

LIABILITY WHEN SELLING GOODS

If your organisation engages in the selling of consumer goods and perishables, you should take note of the aptly named 'lemon law', set out in the Consumer Protection (Fair Trading) Act 2003 ("**CPFTA**"), which makes it compulsory for a seller of a defective product (i.e. lemon) to repair, replace, refund or reduce the price of the defective product. The 'lemon law' does not apply to real property (i.e. land and rental goods).

Should you as the seller refuse to make good on the defective product, the customer may bring the issue up to the Consumers Association of Singapore ("**CASE**"), a non-profit, non-governmental organisation which will investigate into the matter.

Find out more about the lemon law in Chapter 14.

CESSATION OF BUSINESS



The process for the cessation of a business is relatively simpler for business structures which are not separate legal entities from their owners. Thus, for the sole proprietorship, the partnership, and the LP, owners of the business can close their business by filing a Cessation of Business notification with ACRA.

On the other hand, separate legal entities such as the LLP and the company may be struck off (provided that they satisfy the relevant criteria), or alternatively, may have to go through a winding-up process where the assets of the business are used to pay off any debts of the business before being returned to the owners (if possible), in accordance with a formal procedure.

The issues associated with winding-up are discussed further in Chapter 20.

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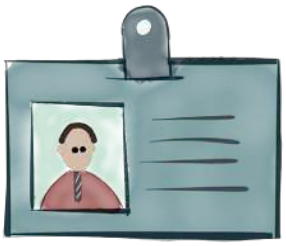
SINGAPORE'S PERSONAL DATA PROTECTION ACT



*The Personal Data Protection Act 2012 ("**PDPA**"), entered into full force on 2 July 2014, establishes a general data protection law governing organisations' collection, use and disclosure of personal data, administered and enforced by the Personal Data Protection Commission ("**PDPC**"). The PDPA also introduces certain rules in relation to the Do-Not-Call Registry ("**DNC Registry**").[1] You need to ensure that your organisation complies with all the requirements set up by these rules.*

This chapter should provide you with a rough overview of the data protection and DNC Registry rules. Do note that a key component of compliance can also be found in the PDPC's various publicly available guides and advisory guidelines,[2] which go into greater detail on operational and technical matters. This chapter will only cover the topic of PDPA compliance at an introductory level.

WHAT IS PERSONAL DATA?



'Personal data' simply refers to information about an individual person who can be identified either from that data alone, or from that data in conjunction with any other information to which the organisation has or is likely to have access. Data that may be considered personal data include an individual's name, occupation, marital status, address, contact information and photographs. Nevertheless, an individual's business contact information (e.g. business telephone number) is not subject to the main data protection obligations under the PDPA.

WHY THE NEED FOR THE PDPA?

In today's business environment, there is a real economic value attached to data and information, which can be used to analyse trends and provide key insights into consumer behaviour. Additionally, many products and services target the average consumer based on the personal data collected from apps, devices and other technologies. The PDPA aims to enhance Singapore's competitive advantages as a secure hub for data hosting and management whilst offering accountability and protection to the average individual in connection with the collection, use, disclosure or processing of personal data.

The data protection rules were instituted in recognition of the rights of individuals to protect their personal data, and to ensure that the use of such data by organisations is legitimate and reasonable. The DNC Registry rules complement this, by allowing individuals to register their telephone numbers for the purpose of 'opting-out' of telephone marketing initiatives.

Both the data protection and the DNC Registry rules will be explained in further detail in this chapter.

Consequences of breaching the PDPA

For breach of the protection obligation, organisations can face up to $1 million dollars, or (for organisations whose annual turnover in Singapore is more than $10 million) a maximum of 10% of the organisation's annual turnover in Singapore. Non-compliance with certain provisions may also constitute an offence, for which a fine or a term of imprisonment (or both) may be imposed.

For example, s.51 of the PDPA sets out various offences in relation to neglect or refusal to either provide any information or produce any document which the organisation or person is required to provide or produce to the PDPC, or to attend before the PDPC as required.

TO WHOM DOES THE PDPA APPLY?

The PDPA applies to private sector organisations in Singapore, regardless of their size, and it is quite likely that your organisation will fall within the scope of the PDPA. An 'organisation', as defined by s.2(1) of the PDPA, includes any individual, corporate body, association or body of persons, whether or not it is formed or recognised under Singapore law, or is a resident or has an office or place of business in Singapore.

Sole proprietorships, private exempt companies and partnerships are all 'organisations' for the purposes of the PDPA.

However, the following groups do not fall within the scope of the data protection obligations set out in the PDPA:

(a) individuals acting in a personal or domestic capacity (for example, an individual's personal address book with information on his or her friends' addresses, birthdays and telephone numbers);

(b) employees acting in the course of their employment, except that the employer organisation may be held liable if the employee was acting within the scope of the employer's instruction or authorisation in breaching the PDPA; while employees are generally not subject to any data protection obligations, any mishandling of personal data in the possession of or under the control of an organisation or a public agency by an individual, including an employee, are criminal offenses under the PDPA and may be subject to administrative penalties; and

(c) public agencies, except that private sector organisations acting on behalf of a public agency in relation to the collection, use or disclosure of personal data may still be liable under the PDPA.

If your organisation engages volunteers, you may wish to take note that the PDPA's definition of an 'employee' includes a volunteer. Thus, individuals who undertake work without any expectation of payment would also fall within the exception carved out for employees at (b) above. Similarly, if a volunteer breaches

the PDPA while acting under the instructions or authorisation of the enterprise, the enterprise will be held liable for the breach.

If an organisation merely processes data on behalf of another organisation, then the former organisation will be considered as a 'data intermediary'. For example, a data intermediary could be a company that provides hosting or storage services of personal data for an organisation. Where these arrangements exist, the data intermediary will only be required by the PDPA to comply with the rules on the protection and retention of personal data. In particular, the data intermediary must:

- make reasonable security arrangements to protect such data; and
- cease to retain data where there is no longer any legal or business purpose for keeping it.

However, the organisation that engages the data intermediary will have to comply with all the data protection obligations under the PDPA.

If you engage a data intermediary, you must recognise that you could be liable for breaches of the PDPA obligations that arise from the acts or omissions of your data intermediary. It is therefore essential to have contractual, administrative, technical and operational controls in place over your data intermediaries.

OBTAINING CONSENT FROM INDIVIDUALS

Under the PDPA, organisations must obtain consent from an individual before collecting, using or disclosing his or her personal data, unless:

- the collection, use or disclosure is required/authorised by law (for example, in the course of an investigation conducted by a governmental agency); or
- an exception under the PDPA applies.

Some examples of the exceptions under the PDPA, which are set out in the First and Second Schedules of the PDPA are:

- where the personal data is publicly available;
- where the collection, use or disclosure is necessary for any investigation or proceedings;
- where the collection, use or disclosure is necessary for the purpose of debt recovery;

- where the collection, use or disclosure is necessary for evaluative purposes; and

- where the collection is by an employer and is reasonable for the purpose of entering into an employment relationship or managing or terminating the employment relationship.



Personal data may be collected, used, or disclosed for certain purposes only. An organisation cannot collect, use or disclose personal data for purposes other than those to which the individual has consented, unless an exception under the PDPA applies.

Where specific individuals are concerned, donees appointed by a Lasting Power of Attorney under s.11(1) of the Mental Capacity Act 2008 may generally provide consent on behalf of an individual who lacks mental capacity. In the event that an individual loses capacity but there is no proxy decision-maker, an application can be made to the court to appoint a deputy for him or her to make such decisions on his or her behalf. For minors below the age of 21, the practical rule of thumb is that a minor who is at least 13 years of age is able to give consent, unless there is evidence to suggest that he or she does not have sufficient understanding of the nature and consequences of giving consent.

Furthermore, even if consent is provided, it may not be valid under s.14(2) of the PDPA. Consent is not valid if it is not reasonable for an organisation to require such consent as a condition of it providing a product or service to an individual. For example, if a spa refuses to provide any therapy services unless the customer consents to his or her personal data being sold to a third-party marketer, this is likely to be considered as unreasonable.

There will also be no valid consent, if the organisation provides false or misleading information, or uses deceptive or misleading practices to obtain consent. Examples of such practices include using illegible font in a consent form, or not giving the individual an opportunity to read through the clauses in a contract before asking him or her to sign it.

Consent may be ‘deemed’ (i.e. need not be expressed). This could be the case where an individual voluntarily provides the personal data to the organisation for the purpose for which the organisation is collecting, using, and disclosing it; and it is reasonable for the individual to do so. For example, a customer who uses a credit card to buy a movie ticket is deemed to have consented to the cinema and relevant banks using his or her personal data for processing the payment of his or her booking. Consent may also be deemed to have been provided where organisations notify their customers of the new purpose for which they plan to

collect, use or disclose personal data and provide customers with a reasonable period of time to opt out. Before doing so, organisations must conduct a risk assessment and conclude that the collection, use or disclosure of personal data in this manner will not likely have an adverse effect on the individual.

Withdrawal of consent

Individuals can choose to withdraw any consent previously given to an organisation to collect, use or disclose their personal data. S.16(1) of the PDPA provides for how the withdrawal of consent works:

- first, the individual needs to give reasonable notice to your organisation (it is not prescribed what 'reasonable notice' means, and this will depend on the individual facts of each case);

- upon receipt of such notice, your organisation must inform the individual of the likely consequences of his or her withdrawal of consent;

- however, your organisation should not prohibit the individual from withdrawing consent; and

- where the individual has withdrawn his or her consent, your organisation must inform its data intermediaries or agents to stop collecting, using or disclosing that individual's personal data.

PERSONAL DATA MUST BE ACCURATE

Organisations must ensure that personal data is accurate and complete.

Your organisation must make a reasonable effort to ensure that personal data which they collect is accurate and complete, if it is likely to be used to make a decision that affects the individual, or disclosed to another organisation.

What constitutes 'reasonable effort' will depend on the exact circumstances at hand, and will likely depend on factors such as the nature of the data and its significance; the purpose for the collection, use or disclosure of the data; the reliability and currency of the data; and the impact on the individual concerned if the data is inaccurate or incomplete. You can refer to the illustrations and examples in the PDPC's Advisory Guidelines on Key Concepts in the PDPA for further guidance on this issue.

RETENTION OF PERSONAL DATA

Personal data should not be retained for longer than necessary

Organisations may keep or retain personal data as long as they serve any legal or business purpose. However, personal data should not be kept 'just in case' it may be needed. As long as the organisation retains the data, it is responsible for complying with the rules under the PDPA. Such legal or business purposes include:

- where the personal data is required for an on-going legal action involving the organisation;
- where the organisation needs to retain the data to comply with its obligations under other laws; or
- where the organisation requires such data to carry out its business operations, such as to generate annual reports or performance forecasts.

Generally, if one or more of the purposes for which the data was originally collected are still valid, the organisation may continue to retain it. However, if personal data is no longer needed for all purposes for which it was collected, then your organisation should take reasonable steps to remove it permanently and completely.

Data intermediaries are also subject to this requirement.

SECURITY ARRANGEMENTS

Organisations must make reasonable security arrangements

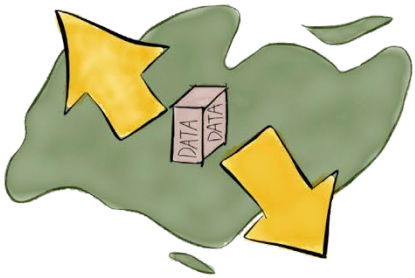
Organisations must make reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks to personal data in their control or possession. Data intermediaries are also subject to this requirement.

Ultimately, how the data is to be protected depends on the nature of the data, the form in which it was collected, the form in which it may be leaked, and the possible impact to the individual if it is obtained, modified and/or disposed of by a third party.

Security arrangements include the following:

- locking up physical logbooks containing visitor information;
- encrypting personal data before transferring the personal data to other online databases;
- having reliable and well-trained personnel responsible for ensuring information security;
- putting in place robust policies and procedures for ensuring security for personal data of varying levels of sensitivity; and
- being prepared and able to respond to information security breaches promptly and effectively.

TRANSFERRING DATA OUT OF SINGAPORE



Restrictions on cross-border transfers of personal data

Under s.26(1) of the PDPA, your organisation cannot transfer personal data out of Singapore, unless a standard of protection comparable to that under the PDPA will continue to apply to the personal data that is transferred.

How the standard of protection can be satisfied may be found in the Personal Data Protection Regulations 2021, specifically Regulations 10, 11 and 12.

For example, the transferring organisation must ensure that the recipient is bound by legally enforceable obligations to provide the personal data with a standard of protection that is comparable to that under the PDPA. 'Legally enforceable obligations' include obligations imposed under any law, contract, binding corporate rules (where the transferring organisation and recipient are 'related') or any other legally binding instrument.

However, organisations are deemed to have satisfied this requirement if:

- subject to certain conditions, the individual consents to the transfer of his or her personal data;

- the transfer is necessary to perform a contract between the organisation and the individual, or to do anything at the individual's request with a view to the individual entering a contract with the organisation;

- the transfer is necessary for the conclusion or performance of a contract between the organisation and a third party which is entered into at the individual's request, or which a reasonable person would consider to be in the individual's interest;

- the transfer is necessary for a use or disclosure in certain situations where the consent of the individual is not required under the PDPA, for example where the use or disclosure is necessary for any purpose which is clearly in the interests of the individual (and consent cannot be obtained in a timely way), or to respond to an emergency that threatens the life, health and safety of an individual;

- the personal data is data in transit; or

- the personal data is publicly available in Singapore.

INDIVIDUALS' RIGHTS IN RESPECT OF THEIR PERSONAL DATA

Access to personal data

An individual has a right to request for access to:

(a) his or her personal data that is in the possession or under the control of an organisation; and

(b) information about the ways in which that personal data has been or may have been used or disclosed by the organisation up to one year before the date of request.

Organisations are allowed to charge a reasonable fee to recover the incremental costs of responding to the access request.

Nonetheless, organisations are not required to comply with an access request in certain situations, such as in respect of:

- 'opinion data' kept solely for an evaluative purpose (e.g. a post-interview assessment of a candidate seeking employment);

- a document related to an ongoing prosecution;

- personal data which is subject to legal privilege (i.e. confidential communications between a lawyer and his or her client);

- personal data which, if disclosed, would reveal confidential commercial information that could, in the opinion of a reasonable person, harm the competitive position of the organisation;

- personal data collected, used or disclosed without consent for the purposes of an investigation if the investigation and associated proceedings and appeals have not been completed; and

- any request:

    - that would unreasonably interfere with the organisation's operations because of the repetitious or systematic nature of the requests;

    - if the burden or expense of providing access would be unreasonable to the organisation or disproportionate to the individual's interests;

    - for information that does not exist or cannot be found; or

    - for information that is trivial, or otherwise frivolous or vexatious.

Moreover, organisations are not allowed to comply with an access request where doing so could reasonably be expected to:

- threaten the safety or physical or mental health of an individual other than the requesting individual;

- cause immediate or grave harm to the safety or to the physical or mental health of the requesting individual;

- reveal personal data about another individual;

- reveal the identity of an individual who has provided personal data about another individual and who does not consent to the disclosure of his or her identity (except for user activity data or user-provided data); or

- be contrary to the national interest.

In addition, organisations must not inform an individual if it has disclosed that individual's personal data to a prescribed law enforcement agency without his or her consent, pursuant to the exceptions to consent under the PDPA or under any other written law.

Correction of personal data

Individuals can also request organisations to correct any error or omission in their personal data that is in the possession or under the control of an organisation.

Your organisation should correct the personal data as soon as practicable, unless reasonably satisfied that the correction should not be made. The corrected data must then be sent to other organisations where the personal data was disclosed within a year before the date of the correction or, with the individual's consent, only to selected organisations. Organisations are not allowed to charge a fee for responding to correction requests.

However, organisations need not correct any error or omission in respect of:

- 'opinion data' kept solely for an evaluative purpose;
- personal data of the beneficiaries of a private trust kept solely for the purpose of administering the trust;
- personal data kept by an arbitral institution or a mediation centre solely for the purposes of arbitration or mediation proceedings;
- a document related to an ongoing prosecution; or
- derived personal data.



APPOINT A DATA PROTECTION OFFICER

Your organisation must designate one or more persons to be your organisation's data protection officer ("**DPO**"). This can either be a person whose scope of work solely relates to data protection or a person in the organisation who takes on this role as one of his or her multiple responsibilities.

The business contact information of at least one DPO has to be made known to the public (e.g. via the organisation's website). This information should be

readily accessible from Singapore and the DPO should be contactable during Singapore business hours.

The DPO is responsible for ensuring that the organisation complies with the PDPA. Hence, it is ideal for the DPO to have oversight of the data processing activities within the organisation. Nevertheless, the DPO will not be held personally liable for your organisation's breach of the PDPA, if any, unless the DPO himself or herself is guilty of an offence under the PDPA (e.g. by obstructing an investigation by the PDPC, or misleading the PDPC). Your organisation is still responsible for carrying out your duties under the PDPA.

DNC REGISTRY



Generally, the DNC Registry rules regulate the sending of telemarketing messages of a commercial nature ("**specified messages**") to Singapore telephone numbers, and apply to all persons (including individuals and companies, associations and other bodies of persons, corporate or unincorporated).

A message will be a specified message if at least one of its purposes is to advertise, promote, or offer to provide:

- goods or services;
- land or an interest in land;
- a business opportunity or an investment opportunity; or
- to advertise or promote a provider of these items.

However, messages sent for the following purposes are exempt from these rules:

- soliciting donations for charitable causes;
- messages sent to organisations for the purpose of the receiving organisation; and
- messages sent by a public agency under, or to promote, any programme carried out by any public agency (not for commercial purposes).

Individuals can subscribe to the DNC Registry to have their phone numbers registered. If an individual's Singapore phone number is registered under the DNC Registry, organisations cannot send telemarketing messages to that number

unless they have clear and unambiguous consent, evidenced in writing or in any other accessible form from the user, or unless it has been specifically exempted under an exemption order.

There are three DNC registers set up, for:

- voice messages;
- text messages (including SMS, MMS and messages sent via any data applications using telephone numbers such as WhatsApp, iMessage, and Viber); and
- fax messages.

All persons sending specified messages to Singapore telephone numbers must:

- check with the DNC Registry, within 21 days before sending the message, to confirm that the number is not listed on the relevant DNC register; and
- include sender information in the message and, in the case of voice calls, not conceal or withhold the calling line identity of the sender.

Organisations in Singapore that outsource telemarketing activities to overseas organisations will also generally be required to comply with these rules. However, organisations do not need to check the DNC Registry to send specified messages to Singapore telephone numbers if they have clear and unambiguous consent to send such messages, which is supported by evidence. In addition, organisations sending text and fax specified messages do not need to check the DNC Registry if they have an ongoing business relationship with the recipients of these messages.

The DNC Registry rules do not apply to post or email. However, please note that for email and instant messaging, you must comply with the data protection rules in the PDPA, as well as the Spam Control Act 2007 (e.g. by inserting an <ADV> in the subject header, and allowing recipients to unsubscribe from or opt-out of receiving such emails).

USEFUL LINKS

Personal Data Protection Commission

https://www.pdpc.gov.sg

A diverse website which provides comprehensive guidance for organisations faced with the challenge of complying with the PDPA. The PDPA and its associated regulations and subsidiary legislation, as well as the PDPC's Advisory Guidelines on Key Concepts in the PDPA, Advisory Guidelines on the PDPA for Selected Topics, and other sector-specific advisory guidelines (e.g. the Advisory Guidelines for the Social Service Sector) can be found here too.

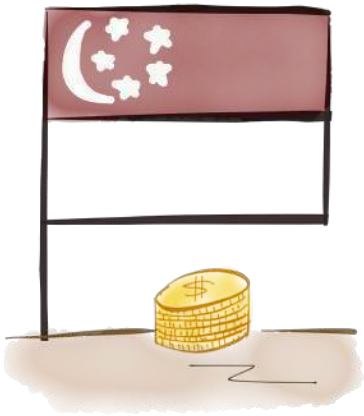
DNC Registry

https://www.dnc.gov.sg

Organisations may check the DNC Registry via this website.

7

TAXATION IN SINGAPORE



The IRAS is the government body responsible for administering tax laws enacted by Singapore's Parliament. Its website can be found at www.iras.gov.sg. The website sets out rates of taxation, and also contains useful information in the form of circulars (or 'e-tax guides') issued by IRAS which explain tax concepts in further detail, as well as the practical application of such concepts.

Singapore's tax policy aims to raise funds for government operations while promoting economic and social goals. Tax rates are generally kept competitive to encourage hard work, promote entrepreneurship and attract foreign investments. This chapter seeks to inform you about the tax system in Singapore, and to highlight issues that might be particularly relevant to your organisation. If you are unsure about any aspect of taxation relating to your social enterprise or NPO, it is best to consult IRAS through its hotline, or to seek help from a lawyer or tax adviser. As an entrepreneur, it would be good practice to check the IRAS website from time to time, and to pay attention to the Minister for Finance's yearly Budget Speech, which typically introduces the main tax-related changes and incentives for the year.

"The art of taxation consists in so plucking the goose as to get the most feathers with the least hissing."—Jean-Baptiste Colbert (France's Minister of Finances, from 1665-1683, under King Louis XIV)

INCOME TAX

Taxability of income



Under the Income Tax Act 1947 ("**ITA**"), various receipts are recognised as being taxable as 'income'; including:

- gains or profits from a trade, business, profession or vocation;
- gains or profits in respect of employment (for example-wages, stock option gains, commissions, bonuses etc.);
- dividends;
- interest;
- rent; and
- royalties, amongst others.

Income which is 'sourced' in Singapore will be subject to Singapore income tax. For businesses, foreign-sourced income will generally not be taxable in Singapore unless it is received (or deemed by law to be received) in Singapore.

Fundamentally, it is important to understand the concepts of income, source and when income is regarded as being received in Singapore:

'Income'

If a person's receipts are 'income' in nature, they may be subject to tax. By contrast, save for certain specific situations which involve the sale of foreign assets, Singapore does not impose tax on 'capital gains'. How then does one tell the difference between a receipt that is income in nature, and one that is capital in nature? An analogy is that of a tree and its fruit. Capital is like a tree that produces fruit, which is income. For example, a house that is rented out to a tenant would be considered as the 'tree', while the rental income obtained from the tenant would be the 'fruit'. The rent received by the landlord would be taxable as income, but if the house were sold, any profits from that sale would not be taxable (unless the seller trades in properties).

'Source'

Income which 'accrues in or is derived' from Singapore will be subject to income tax. A number of factors are considered when determining if a business' income is sourced in Singapore–for example:

(a) Is Singapore the place where the business profits arose from, or where the business' operations are?

(b) Were the key decisions in generating the income made in Singapore?

(c) Were relevant contracts made and executed in Singapore?

If your organisation takes the form of an online business, you may wish to take note that IRAS has also published guidelines on e-commerce, and on how the above principles may be applied in the case of a business that operates through a website. For example, if a manufacturing company has business operations in Singapore but hosts its website with a hosting service provider in a foreign country, the company's income derived from its e-commerce business will still be considered as taxable in Singapore if the company carries out its business obligations mainly through its Singapore operations.

'Received'

Income derived from outside Singapore will be deemed to be 'received' in Singapore if it is:

- remitted, transmitted or brought into Singapore;
- applied towards the satisfaction of any debt incurred in respect of a trade or business carried on in Singapore; or
- applied towards the purchase of movable property which is brought into Singapore.

To summarise, you should remember that because of the above 'deemed source' rule, income from overseas can be taxable in Singapore even if it is not physically remitted or received in Singapore.

Form of organisation–registered charities

Organisations can take many different forms. If your organisation is a registered charity, it will be exempt from income tax and does not need to file income tax returns. As a charity, your organisation may attract 'donations' from people who wish to support your social mission. However, if your organisation is not a registered charity, you should be aware that such contributions may be subject to income tax in the hands of your organisation, depending on the circumstances under which the contribution is made.

TAX RESIDENCY

Tax residency is a very specific term and means different things to companies and individuals:

Individuals



Someone is resident in Singapore if they are:

- ordinarily living in Singapore, except for some temporary and reasonable absence; or
- physically present in Singapore or employed in Singapore (but not as a company director) for at least 183 days in a calendar year.

Companies



A company is considered tax resident in Singapore if its central management and control is in Singapore.

Why is it important to understand the concept of tax residency?

Amongst others, tax residency determines:

(a) the rate at which tax is imposed, if you are an individual (for example, this is relevant if your business is run as a sole-proprietorship). Non-residents are generally charged at flat rates of tax, whereas Singapore residents are taxed at progressive tax rates;

(b) the ability to rely on Singapore's network of tax treaties (commonly referred to as 'Avoidance of Double Taxation Agreements', or "**DTA**"s). Non-residents will not be able to rely on Singapore's DTAs, which could be beneficial if your business derives income and pays tax abroad;

(c) the availability of certain tax exemptions and reliefs (for example, the tax exemption for start-ups mentioned below, and exemptions on certain foreign-sourced income which may be received by companies in Singapore, from outside Singapore);

(d) whether withholding tax in Singapore will be applicable to the various transactions carried out by an entity (explained further below); and

(e) if the entity is a company, whether tax-exempt dividends may be paid (Singapore-resident companies may pay dividends which are exempt from tax in the hands of their shareholders).

BASIS OF TAXATION

The tax treatment of your organisation will depend on the kind of corporate structure that you adopt.

Sole proprietorship

The sole proprietor's business income will be treated as a part of his or her personal income, and will be taxed at the relevant personal income tax rates.

Partnership, LLP and LP

These are 'tax transparent' vehicles, and each partner will be taxed on their own share of the business' income, at their own applicable tax rates. For example, if the partner is an individual, individual rates of tax will apply. If the partner is a company, then the corporate tax rate will apply.

Companies

The current tax rate for companies is 17% with a partial tax exemption for the first $200,000 of profits. If the relevant conditions are met, new start-up companies (including companies limited by guarantee) may be granted enhanced tax exemptions for each of their first three consecutive Years of Assessments ("**YA**"s).

As announced in Budget 2025, to help companies manage rising costs, a Corporate Income Tax ("**CIT**") Rebate of 50% will be granted to all taxpaying companies, whether tax resident in Singapore, or not, for YA 2025. Companies that have employed at least one local employee in 2024 (the "**local employee condition**") will receive $2,000 in cash payouts (the "**CIT Rebate Cash Grant**"). The maximum total benefits of the CIT Rebate and CIT Rebate Cash Grant is subject to a cap of $40,000 for YA 2025. Details on the computation of the CIT Rebate, CIT Rebate Cash Grant and the partial and start-up tax exemptions can be found on the IRAS website (www.iras.gov.sg).

ASSESSMENT OF TAX AND COMPLIANCE

Tax is assessed and payable in Singapore, on a preceding year basis, in respect of a YA. What this means is that the tax payable in any YA generally relates to the income earned in the previous calendar year. If a company's accounting year happens to end on a date other than 31 December, then the preceding accounting year (and not the calendar year) will form the basis period for a YA. For example, if a company has a financial year end of 31 March, its basis period for taxation in YA 2025, will be 1 April 2023 to 31 March 2024.

For each YA, taxpayers are required to file a tax return with IRAS in a prescribed form (which can be found on the IRAS website) along with supporting documentation, declaring their income. In addition to filing the annual tax return, companies need to file an estimate of their chargeable income for each financial year (unless they are exempt from this requirement). These basic procedures are the requirements set out in the ITA. Any failure to comply with these obligations is an offence that may attract penalties and fines.

IRAS will issue a Notice of Assessment ("**NOA**") to the taxpayer after the annual tax return is filed. The NOA contains details of the income tax payable, and the date by which the tax should be paid.



You have a duty to ensure that the information you provide to IRAS is correct. The penalty for submitting incorrect information negligently or without a reasonable excuse is imprisonment of up to three years (with fines and penalties). If you submit fraudulent information with the intention to evade tax or to assist another person to evade tax, you may face imprisonment of up to five years, along with fines and penalties.

DEDUCTIONS



If you are carrying on a trade or business, you may be able to make certain deductions from the income generated by your business (thereby reducing your final tax bill). Some of these basic deductions are as follows:

(a) Expenses which are wholly and exclusively incurred in the production of income are deductible, unless prohibited under the ITA, such that only net income is included in the amount brought to tax. Common examples of allowable deductions include: costs of staff, including employees' salaries, bonuses, allowances, and irrecoverable (or 'bad') debts incurred in respect of your trade or business;



(b) Expenditure incurred in the acquisition of certain assets for the purposes of your trade, profession or business (or "**capital expenditure**")–for example, plant and machinery, intellectual property rights ("**IP**"s)–may be set off against the income derived from the use of those assets; and

(c) Donations made to an IPC will entitle the donors to enhanced deductions of the value of the qualifying donations made. Do take note of this if you wish to set up an IPC yourself, or if your organisation makes donations to IPCs.

- Donations need not be in the form of cash to enjoy this tax treatment. Gifts of shares, computers, artefacts, art and land are also eligible. However, if a donation comes with a benefit to the donor (for example, if a souvenir having commercial value is given to the donor), the full amount of the tax deduction may not be claimed. IRAS has come up with a list of donations bundled with benefits that in its view do not have any commercial value (for example, the purchase of a charity fundraiser ticket that entitles the donor to attend a charity show, complimentary tickets to the Singapore Zoo, or golf tournaments where the donation includes a golf game for the donor). Thus, if such donations are made, the full amount of enhanced tax deductions may be claimed notwithstanding any benefits to the donor.

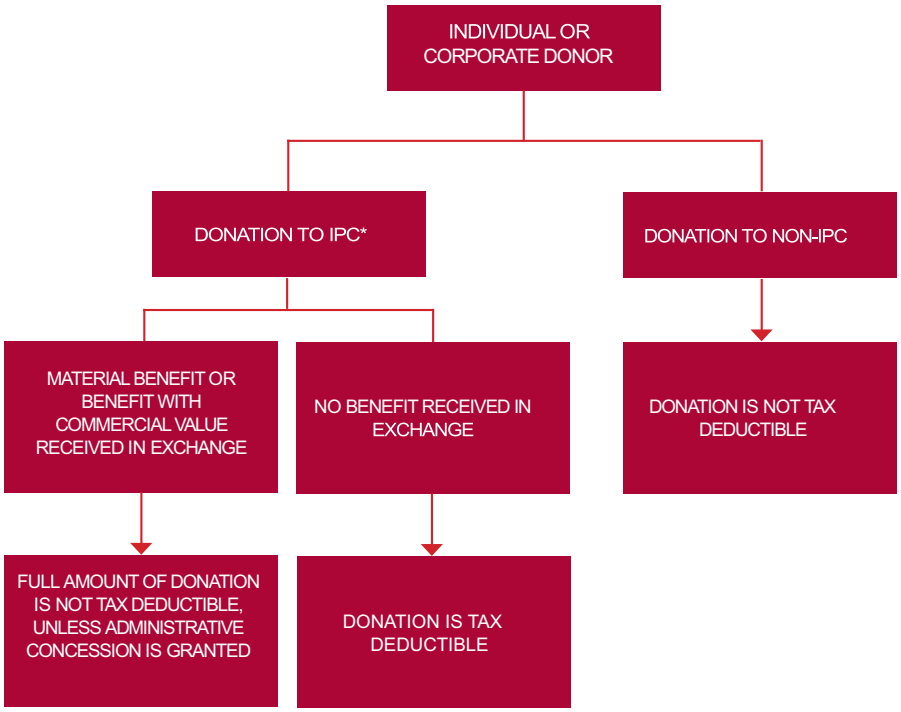
- Tax deductions will not be allowed in cases where the donor is essentially advertising at the IPC facility, event, or programme.

- In addition, where donations or gifts are made for a 'foreign charitable purpose', they are generally not tax deductible even if they are made to an approved IPC (for example, where the donation is made to an overseas relief fund managed by an approved IPC), unless certain specific conditions are met (as mentioned below in relation to the Overseas Humanitarian Assistance Tax Deduction Scheme).

- The Philanthropy Tax Incentive Scheme ("**PTIS**") is an incentive scheme administered by MAS which seeks to encourage greater philanthropic giving among single family offices and the growth of philanthropic capabilities in Singapore. Qualifying Donors ("**QD**"s) approved under the scheme will be able to claim a 100% tax deduction for their overseas donations, provided that these donations are made through Qualifying Local Intermediaries ("**QLI**"s) for a period of five years. This timeframe will start on an 'approved incentive commencement date' within the period from 1 January 2024 to 31 December 2028. The tax deduction is capped at 40% of the approved QD's statutory income.

- Also introduced in 2024, was the Overseas Humanitarian Assistance Tax Deduction Scheme. This is a pilot scheme to encourage Singaporeans to support those in need overseas. Under the scheme, corporate and individual donors will be able to claim a 100% tax deduction for qualifying cash donations made towards approved overseas emergency humanitarian assistance causes through designated charities with a valid Fund-Raising for Foreign Charitable Purposes Permit from the Commissioner of Charities. The scheme is applicable from 1 January 2025 to 31 December 2028.

- Note that not all local registered charities are approved IPCs, and donations made to a charity (or any other entity) without approved IPC status are not tax-deductible from the donor's perspective. A summary of the tax treatment of donations from the donor's perspective is broadly summarised in the following chart:



* And not made for a foreign charitable purpose

UNDERSTANDING WITHHOLDING TAX

When certain payments (for example, interest, royalties, director's fees, payments for the use of or the right to use scientific, technical, industrial or commercial knowledge) are made to persons who are not tax-resident in Singapore, and these payments have (or are deemed to have) a Singapore 'source', withholding tax may be applicable.

What this means is that the payer needs to deduct the amount of tax payable to IRAS (at the relevant withholding tax rate) from the payment due, and pay only the remaining amount to the foreign recipient. Although the burden of the tax is borne by the non-resident recipient of the payment, the ITA states that if the payer does not comply with its collection obligations, then the tax which should have been

withheld will then be borne by the payer. Similarly, late payment of withholding tax to IRAS will also attract a penalty which will be imposed on the payer.

The concept of withholding tax will be most relevant to your organisation if it makes payments to persons which are not tax-resident in Singapore (for example, a foreign business). If so, you should ask yourself:

(a) What is the type of payment that is being made?

(b) Is the payment subject to withholding tax under Singapore's tax laws?

(c) If so, is there any waiver or exemption from the tax that has been granted? Are there any DTAs which might reduce the rate of tax imposed?

(d) If withholding tax is applicable, does the recipient of the payment know this? Do you need to alter your commercial arrangements to accommodate the payment of this tax?

TAXATION OF CLGs

A CLG (if it is not a registered charity) would be liable to pay tax on its income at the prevailing corporate tax rate.

In the very specific situation where a CLG carries on a trade or professional association with members who pay entrance fees and subscriptions, such a CLG may be treated for tax purposes as a 'mutual concern'. Where such a CLG is treated as a 'mutual concern', the amount of the CLG's income which is subject to tax will depend on the proportion of its receipts (i.e. entrance fees and subscriptions) from Singapore members. This treatment however is subject to approval being granted by IRAS, and provided that the CLG is able to meet certain conditions. For example, it must not be set up for the purposes of profit or gain, any surpluses must be used to carry out its not-for-profit objectives, and it must exist for the sole purpose of benefiting its members.

OBJECTION PROCESS

If you disagree with a tax assessment that has been raised by IRAS in respect of your organisation, you may object to it by informing IRAS of your grounds for objection within 30 days for individuals and two months for companies from the date of the NOA. The NOA may be sent to IRAS electronically or in writing. If the NOA is not sent to IRAS within such period, the tax assessment is treated as finalised.

If you are unable to come to an agreement with IRAS on the tax assessment, you may appeal further to a tribunal called the Income Tax Board of Review, and subsequently to the High Court. The tax assessed by IRAS will be payable notwithstanding any such appeals (this means that if you subsequently win your appeal, any excess tax will be repaid).

GOODS AND SERVICES TAX ("GST")



GST is a tax on domestic consumption. Generally, under the Goods and Services Tax Act 1993 of Singapore, GST at a rate of nine percent is generally applicable on supplies of goods or services in Singapore by a GST-registered person (explained below) and on the import of goods into Singapore. GST at a rate of zero percent is applicable on exports of goods from Singapore and on the supply of certain international services. Certain supplies are also exempt from GST in Singapore, or may fall outside the scope of GST altogether. Before embarking on your organisation, you should consider whether the goods or services that you intend to provide will attract any GST and whether you need to register for GST and if so, how this should be reflected (if at all) in the pricing of your goods or services.

WHEN TO REGISTER FOR GST?

Generally, any person making or intending to make taxable supplies in the course or furtherance of a business may register for GST. A person is required to register for GST if the value of taxable supplies made or expected to be made by him or her will exceed one million dollars over a 12-month period. The GST-registered person making the supply will be responsible for collecting and paying the GST to IRAS. Accounting for GST payments and refunds is generally done on a quarterly basis, by the GST-registered person filing GST returns, and should be supported by proper tax invoices.

If your organisation takes the form of a charity, it is required to register for GST if its annual taxable supplies exceed one million dollars. Once a charity is registered for GST, the charity will be required to charge and account for GST on its taxable supplies (such as grants, donations and sponsorships) where benefits are provided in return.

STAMP DUTY

Stamp duty is generally payable on instruments (i.e. documents) for the transfer of interests in:

(a) immovable properties (for example, the sale of houses or apartments, or tenancy arrangements) in Singapore; and

(b) unlisted shares registered in Singapore.

The duty is usually payable by the transferee or buyer of the property or shares, but it is generally open to parties to agree otherwise between themselves. Where certain types of industrial and residential property are bought and sold, seller's stamp duty may also apply, depending on the type of property transferred, when the property was acquired, and the period of time for which the property was held before sale. Additional buyer's stamp duty may also be applicable on the purchase of residential properties in Singapore, and additional conveyance duties may also be payable on the sale and purchase of shares in a company with significant assets (directly or indirectly held by the company) comprising Singapore residential properties.

Stamp duty is also payable on other common instruments, such as mortgages, leases and certain trust documentation. The relevant rates of tax are available on the IRAS website. You should consider whether stamp duty might be payable on any agreements you enter into, when such duty should be paid, and if duty is payable, which party should bear these costs. Stamp duty relief and remissions may also be available in certain circumstances, so do check if they apply to your situation. If you fail to stamp your document in accordance with the law, the document may not be admitted as evidence in the Singapore Courts if you are later involved in any court proceedings that require you to rely on such document.

PROPERTY TAX



Property tax is payable annually on the value of land and immovable property in Singapore by whoever has a legal or beneficial interest in the property (typically the owner of the property). The 'annual value' of such land and immovable property is determined by the Chief Assessor, and further information can be found on the IRAS website. Generally, flat rates of tax are imposed on non-residential buildings and land, whereas progressive rates of tax will be imposed (with effect from 1 January 2014) on residential property. Owner-occupied properties also enjoy special concessionary rates of tax.

The relevant rates of tax are available on the IRAS website, and you should be mindful of the effect property tax might have on your business. For example, if you intend to purchase your business premises, have you factored in property tax as an annual charge that you will need to pay? If you rent your business premises, has your landlord made you contractually liable for any annual property taxes?

Charities that own properties may write in to apply and seek IRAS' approval for exemption (or partial exemption) from property tax on a building or any part thereof used exclusively as a place for public religious worship, for a public school in receipt of grants-in-aid from the government, for charitable purposes, or for purposes conducive to social development in Singapore.

08

FUNDING



WHERE AND HOW TO FIND SOME EXTRA CASH

When you've got a great idea but lack the dollars to go with it, it's time to source for funding. There are many ways you can raise funds to further your organisation, but choosing what's best for you requires careful consideration.

Funding is a fundamental issue with all organisations, social enterprise or otherwise. Your organisation can only function if it has sufficient working capital, which is the amount of money readily available for day-to-day business activities and operations. It is the lifeblood of your organisation—you need it to buy your goods, pay your employees and to meet the short-term liabilities of your business.

Generally, there are four ways to generate money for your organisation:

- *Apply for a grant;*
- *Borrow money (i.e. through debt by obtaining a loan);*
- *Sell part of your business (i.e. through equity); or*
- *Seek crowd funding.*

*If your organisation is a charity, you may also conduct fund-raising activities. Separate grants are also available to NPOs from the National Council of Social Service ("**NCSS**").*

Deciding on the right method will depend on many factors, such as your legal business structure (see Chapter 2), the associated risks, and your obligations to the person or entity giving you the money.

GRANTS

Government



SPRING Singapore (formerly the Standards, Productivity and Innovation Board), a government agency under the Ministry of Trade and Industry, has merged with International Enterprise Singapore, to consolidate and increase the resources to help Singapore companies develop capabilities and internationalise. The two main types of financial assistance offered by the resulting merged entity, Enterprise Singapore, are grants or loans.

Currently, there are several government grants or loan schemes available to start-up companies and entrepreneurs, however these schemes are often renamed, augmented over time, superseded by new schemes or abolished altogether, so your organisation must check on the continued applicability of any schemes that you may have heard of. Enterprise Singapore's schemes provide support for a wide range of businesses with differing needs, ranging from the development and upgrading of capabilities, and the creation of new market opportunities to the nurturing of innovative start-ups throughout various industries and sectors.

Organisations

Some large multinational organisations also offer grant schemes relevant to their field of business to promote ingenuity in social welfare and not-for-profit organisations, as part of their general corporate social responsibility programmes. A quick search on the internet for these organisations might just prove to be worthwhile.

There are also several other government organisations and schemes that offer grants and funding assistance in Singapore. One example is the Young Changemakers Grant scheme administered by the National Youth Council, which aims to provide seed funding for youths to implement projects for the community (see: https://www.nyc.gov.sg/programmes-grants/grants---young-changemakers).

You may also explore funding opportunities through the Community Foundation of Singapore ("**CFS**") (see: https://www.cf.org.sg/), Singapore's oldest community foundation and a trusted partner for purposeful giving. CFS works with donors to support charitable causes across Singapore. Visit its website to learn more about its focus areas and potential opportunities for support.

If your organisation is an NPO, you may seek grant funding from the NCSS. The NCSS administers a number of grants to enable voluntary welfare organisations, including charities, to achieve their aims in projects and services (see: https://www.ncss.gov.sg/grants). In particular, all exempt, registered charities and IPCs can apply for the Charities Capability Fund ("**CCF**"). The CCF aims to enhance governance and management capabilities of charities and IPCs through the following grants:

- The CCF Training Grant provides co-funding for training courses (local classroom-based courses and local or overseas online courses) for charities' board members and staff (who have served in the charities for at least six months with an official designation) in key governance and management areas, to help charities comply with regulatory requirements and build good governance standards. The grant covers local training courses, seminars or conferences that are aimed at improving the governance and management aspects of charities.

- The CCF Consultancy Grant provides co-funding for the engagement of external consultants to review and draft policies and standard operating procedures for the charity, and in attaining organisational excellence certifications and accreditations in key governance and management areas. For example, board governance, conflict of interest and strategic planning.

- The CCF Shared Services Grant provides co-funding for charities that outsource their corporate functions such as payroll, finance, accounting, human resource and information technology functions to third-party service providers in various areas to improve backroom-operations efficiency.

- The CCF Info-Communications Technology ("**ICT**") Grant provides co-funding for charities to harness ICT to facilitate the submission of returns and transactions on the Charity Portal. This grant covers basic

infrastructure components like computers, printers, broadband, video and audio-conferencing tools as well as digital solutions.

More information on the scope of funding for Charities/IPCs is available on the Charity Portal (https://www.charities.gov.sg/Pages/Charities-and-IPCs/Grants-and-Support-for-Charities-IPCs/Charities-Capability-Fund.aspx#).

Applications for CCF may be submitted through the OurSG Portal.

LOANS



A loan is a contractual agreement between the lender (usually, a bank) and a borrower, whereby a borrower receives money from the lender and in return promises to repay the borrowed amount plus interest. Like any contractual agreement, a loan agreement is governed by the terms agreed between the contracting parties to the agreement.

A standard loan agreement normally contains the following types of terms:

(a) Quantum and any restrictions on use of the loan

- The principal sum must be clearly defined so that you are able to manage your repayment obligations. Some lenders may impose restrictions on the purposes for which the loan may be used. Some lenders may also choose to impose restrictions relating to the change of control in your business or change in your business activities. You will need to think about how these conditions and restrictions will impact your activities, and whether it makes sense for you to accept them in exchange for the loan.

(b) Repayment term

- When must the loan be repaid? Can the loan be repaid in stages or by instalments over a period of time? Or must the entire loan be repaid in one lump sum on a specific date?

(c) Interest rate

- How much interest is this particular lender charging? Is the interest rate fixed or floating? Are the rates used subject to a base rate (e.g. Singapore Overnight Rate Average ("**SORA**") etc.), which may in turn be subject to market rates? Depending on your repayment strategies and business needs, certain modes of interest rates calculation (such as monthly rest or daily rest) may be more cost effective.

(d) Acceleration clause (upon event of default)

- This clause provides for the circumstances under which the lender is entitled to immediately demand the repayment of all outstanding loans. Such a clause is typically paired with language providing that a borrower must repay all outstanding loans to the lender immediately upon the occurrence of certain events of default, such as when a borrower misses too many repayments.

(e) Security or collateral

- Banks and financial institutions usually require a borrower to provide security (also known as collateral) to protect itself in the event of the borrower's default (failure to meet repayments).

(f) Guarantor clause

- Some lenders may require you to give a personal guarantee over the obligation of your organisation to repay the loan. This means that even if your organisation takes the form of an entity with limited liability (for example, a private limited company—see Chapter 2), you could be called upon to repay the loan in your personal capacity, if your organisation defaults on the loan. Therefore, you need to be wary of such a clause, and consider whether the risks of providing a personal guarantee outweigh any potential benefits.

A few things to note about loans

Before entering into a loan agreement, you should consider the terms carefully and decide whether your organisation can fulfil them. Once you sign a loan agreement on behalf of your organisation, your organisation will be bound by the terms of the loan agreement. Therefore, it is important that you obtain the appropriate legal advice before your organisation enters into a loan agreement.

As mentioned above, if your organisation is incorporated as a private limited company, it will be an entity separate from yourself. In that case, any loan agreement should be made between the lender and your organisation as the borrower. This, in most cases, absolves you from personal liability if your organisation fails to repay the loan. If, on the other hand, you opt to form a partnership or run your organisation as a sole proprietorship, you could become personally liable for any default on the loan (see Chapter 2 for the pros and cons of each type of entity).

Lastly, exercise caution before you agree to provide a personal guarantee for the loan. Should your organisation default on the loan, the lender may be entitled to rely on the personal guarantee to demand that you repay the loan. In that situation, you will become personally liable for the repayment of the loan even if it was your organisation (private limited company), and not you, that entered into the loan agreement with the lender.

Financial institutions

Most financial institutions, such as banks and credit or finance companies, will be able to provide your organisation with a loan. Do shop around and look out for a loan with the most attractive terms. Of course, you will also need to convince these lenders that your organisation will be able to repay the loan at the end of the loan period. Most financial institutions will typically require your organisation to have some sort of track record (e.g. conduct business for more than two years), ask to inspect the accounts of your organisation or inspect your personal credit records.

After discussions with a financial institution, the financial institution may make an offer to your organisation by way of a document called a Letter of Offer setting out the basic terms of the loan. These are typically accompanied by the financial institution's Standard Terms and Conditions, which contain very detailed loan terms. The Standard Terms and Conditions, together with the Letter of Offer, constitute the loan agreement. As mentioned, once you sign the loan agreement, your organisation is obliged to repay the loan plus interest within certain deadlines. This obligation persists even if your business fails.

Family and friends

Friendship loans are typically from family and friends who believe in your vision and abilities. Borrowing money from a family member or friend requires a great deal of trust on both sides of the arrangement. These loans are often informal, flexible and rarely require collateral. The terms of the loan are flexible and negotiable, such as the interest rate (if any), repayment deadlines and repayment period.

To avoid any misunderstandings or damaging the relationship, it is best to seek legal advice and expertise in setting out the terms of the agreement and have each party sign a document.

Be sure that the lender is aware that the funds are a loan and not in exchange for a share of the profit or business ownership. Depending on the size of the loan, the lender may expect that he or she shall be entitled to play an active role in the management or operation of your business so as to protect his or her investment. Be sure that both parties clearly understand what they are getting in exchange for the loan.

As the borrower, you should also be aware that should your business fail, your obligations under the agreement will continue to survive, even if the loan is a personal one and has not been granted by a bank or financial institution. This means that unless the lender has agreed to waive repayments, you will have to continue with your repayments and repay the borrowed amount by the agreed deadline.

EQUITY



There is always the risk that your organisation cannot repay the loan within the stipulated timeline.

An alternative to financing your organisation without the risk of the inability to repay the loan is by equity financing, which in its simplest form is the sale of a portion of your organisation to investors. This is applicable to organisations in the form of a private limited company; the company offers its shares to investors in return for the price of the shares. If your organisation is in the form of a partnership, you as one of the partners could also sell a share of the partnership to a potential investor—do seek legal advice on this.

One of the biggest advantages of such a method is that the risk of business failure is borne partially by the investors. There is no obligation to repay any money to these investors if your organisation does not do well. There are no additional costs in the form of interest payments in most cases.

The downside to this is that you lose some control over your organisation to the investor. When an investor injects cash into your company in return for shares, the investor gains a level of control over your company in the proportion of his or her shareholding in the company. In this sense, the investor becomes a co-owner and shareholder of the company, together with you. You may need to share your profits

with the investor. You may also need to consult with the investor before any major decision is made on behalf of the organisation.

Shares give voting rights to the shareholder in a general meeting when major decisions are made; the higher the shareholding, the greater the voting 'power'. These are all considerations before you decide how much of your organisation to be sold to investors in return for cash injections. In order to maintain majority voting 'power', you will need to hold at least 51% of the shares in the company, while some matters, such as amending your company's constitution, will require the approval of shareholders holding 75% of the shares in the company.

You can also consider selling preference shares to an investor. A preference share is a form of hybrid equity that has both the properties of a loan and an ordinary share. A preference shareholder may not have voting rights; in which case you would not cede decision-making control of the company to this investor. Subject to the terms of the preference shares, you may however, be required to pay out any dividends of the company to the preference shareholder(s) before the ordinary shareholder(s).

There is flexibility under the current company law for companies to offer different classes of shares bestowing the investor with different types of management rights or varying degrees of entitlement to the companies' profits and capital. You should seek legal advice on this as well.

In the context of a social enterprise, it is very important that a potential investor shares your vision for the social enterprise, because you are no longer the only person making the key decisions in the company. Your control over the social enterprise is limited by your shareholding and generally, you will be unlikely to have any say over how your investor votes in a general meeting. Therefore, you and your potential investor(s) should have a thorough discussion regarding how you would like to develop your social enterprise before you 'sell' control over the enterprise, in the form of equity. After that discussion you and the investor(s) will need to enter into a shareholders' agreement which should again be drafted by a lawyer.

SHAREHOLDERS' AGREEMENT

A shareholders' agreement is a legally binding contract entered into between the shareholders of a company. It is usually entered into before the shares in the company are distributed amongst these shareholders but may also be entered into at any time during the company's existence.

This agreement governs the different rights and obligations of each of the shareholders, as well as the relationship amongst these shareholders. These

agreements vary substantially depending on the nature of the business, but for organisations, it is essential for the shareholders' agreement to clearly provide for certain rules relating to the management of the business that would not detract from the goals of the organisation. If your organisation is in the form of a partnership, the agreement setting out the partners' rights in relation to one another (or each other), typically called a partnership agreement, would be broadly similar in purpose to a shareholders' agreement.

The shareholders' agreement should deal with the following issues:

- who brings what to the table (stating clearly the monetary contributions of each shareholder);

- what decisions require unanimous consent? You may require some decisions, for example, expansion of business into a certain sector, to be agreed upon by all of the shareholders instead of by majority vote. These types of decisions ought to be spelt out at the start;

- the roles and responsibilities of each shareholder/director;

- termination of the shareholders' agreement;

- obligatory transfers of shares;

- exit strategies (e.g. 'Russian roulette' or 'Mexican shoot-out' clauses which could provide for the resolution of a deadlock situation where shareholders own equal numbers of voting shares, but disagree on a particular decision to be made); and

- right of first refusal. This provides for a situation where before a shareholder wishes to sell some or all of his or her shares to a third party, this shareholder must first offer these shares to existing shareholders on the same terms as those offered to the third party, and also reveal the identity of the third party. As a result, the existing shareholders are afforded an opportunity to buy these shares if they wish, to block the third party from becoming a co-owner and shareholder of the company.

You and your fellow shareholders need to consult with lawyers before drafting and entering into a shareholders' agreement. Such agreements are rather complex and need to be tailored specifically to the needs and nuances of the organisation envisaged by you and your fellow shareholders. If drafted well, you would have laid the groundwork for a smooth working relationship amongst the shareholders of the organisation.

CROWDFUNDING



One common model of crowdfunding sources small contributions from many individuals in order to finance a project or venture. The process is often facilitated through public platforms such as websites.

This is very viable for organisations that have a product or service to offer but require funds to put a prototype into production or raise the initial capital to render the proposed service.

Members of the online community pledge money towards a project because they share your vision, they like the idea of your product, or they want to see your idea succeed. Backers do not share any ownership in your enterprise or reap any of the profits. In return, backers are usually offered a reward such as access to your product or service before it is publicly available on the open market.

Usually, if your project does not receive enough pledges to meet your goal, you will not get any of the pledged money. It is only when you reach your goal that the pledged money is realised.

You should be conscious of your IPs before listing a project for crowdfunding. Be sure that you have first secured your IPs, such as patents or trademarks, before listing your project. Alternatively, accept that your idea is out there and utilise the momentum before someone can copy or recreate your project. For more information on Intellectual Property, please see Chapter 12.

You should also note that some types of crowdfunding companies are regulated by MAS and subject to closer scrutiny by the authorities. The Financial Institutions Directory on the MAS website (www.mas.gov.sg) provides a list of these regulated entities. Do note that 'donation-based' crowdfunding models—such as the one described above—are generally not subject to MAS regulation.

FUND-RAISING



There are different requirements on starting a fund-raising campaign, depending on whether the fund-raising appeals are made in the capacity of a charity, an IPC or the general public.

For more information on fund-raising requirements, including your duty to donor, the usage of donations, the documents to be submitted and the 30/70 fund-raising efficiency ratio, visit the Charity Portal: https://www.charities.gov.sg/Pages/Fund-Raising/Fund-Raisers-Duties-and-Obligations.aspx.

Applying for permits

Depending on the type of fund-raising activity you have in mind, you may need to apply for permits or licences from the relevant agencies.

For instance, if your organisation's fund-raising campaign involves the collection of money or property by means of visits from house to house or by soliciting in streets or other places, or by both such means, a 'House To House and Street Collections' permit is required unless your organisation has been otherwise exempted. However, the following types of collections do not require a licence:

- a private collection that is confined to friends or relatives;
- making an appeal through the telephone or the media such as the internet and newspapers;
- sending out appeal letters by post; or
- a collection that is carried out by a full or associate member of the NCSS or the Community Chest, with a written approval from the Chief Executive Officer of the NCSS.

Information on permits and licences can be found at the GoBusiness Licensing (https://www.gobusiness.gov.sg/licences/#new-licence).

Foreign charitable purposes

Any person who raises funds for foreign charitable purposes is required to apply for a permit from the Commissioner of Charities.

Whether your event involves public or private fund-raising can have a significant impact on whether funds may be used for foreign charitable purposes, i.e. benefiting those outside of Singapore.

- Where public fund-raising for foreign charitable purposes is concerned, funds raised are subject to the '80/20 rule', which requires that at least 80% of the net proceeds of the funds raised must be applied within Singapore.

- However, where private fund-raising applies or funds are raised in aid of providing immediate disaster relief, all funds raised can be directed to the foreign beneficiary.

The Charities Commissioner has introduced some guidelines indicating how he or she might decide whether fund-raising is public or private. It is more likely that the fund-raising will be regarded as private when the target donors are sufficiently informed about how their money is being used before making the donation, in particular, that their donation will be directed to overseas beneficiaries. In brief, these guidelines consider the following main factors:

- The closer and more direct the relationship between the fund-raiser and the potential donor, the more likely the potential donor will be able to understand how the money donated will be spent. Family members, friends and business associates are more likely to be considered as donors who are more well-informed about how their money will be used.

- Where the fund-raising is conducted internally within an organisation, such as a business association, alumni network or schools, it is more likely that the donors will be informed about how the money is being used.

- The more sophisticated the donor, the more likely the donor will be informed about how his or her money will be used. Such donors may include corporate foundations and business corporations.

- The more private the character of any fund-raising event, the more likely the fund-raising will be regarded as private. A more private event is likely to have less participants and lower accessibility to the public. For example, an invitation-only gala dinner is more likely to involve private fund-raising than soliciting donations on the street through a roadshow.

USEFUL LINKS

Governmental grants

- Enterprise Singapore at https://www.enterprisesg.gov.sg/
- NCSS, CCF at https://www.charities.gov.sg/Pages/Charities-and-IPCs/Grants-and-Support-for-Charities-IPCs/Charities-Capability-Fund.aspx#

Venture building grants and programmes for social enterprises

- Singapore Centre for Social Enterprise, raiSE VentureForGood and Energise Grant at https://www.raise.sg/funding-opportunities/
- The Majurity Trust Venture Building Grants at https://www.majurity.sg/funds-and-grants/
- Singapore University of Social Sciences ("**SUSS**") Venture Builder Programme and Ngee Ann Kongsi–SUSS Impact Grant at https://www.suss.edu.sg/life-at-suss/student-experiences/entrepreneurship/venture-builder
- Singapore University of Technology and Design Create4Good Innovation Fund at https://www.sutd.edu.sg/enterprise/venture-innovation-entrepreneurship/create4good/

Governmental loans

- Enterprise Financing Scheme administered by Enterprise Singapore at (see: https://www.enterprisesg.gov.sg/financial-support/enterprise-financing-scheme)

Crowdfunding

- The Monetary Authority of Singapore's website for regulatory issues and summary by Money Sense of regulatory requirements at https://www.moneysense.gov.sg/crowdfunding-what-you-need-to-know/
- Kickstarter at www.kickstarter.com
- Indiegogo at www.indiegogo.com

9

LEGACY GIVING



This chapter describes how your organisation may receive planned gifts, known as legacy gifts, from donors, as well as other donations. Legacy gifts may come in different forms and may be given in a variety of ways. In this chapter, we seek to briefly summarise the types of legacy gifts, how legacy gifts may be distributed and how your organisation should manage legacy gifts to ensure compliance with the law. We also touch briefly on other kinds of donations that you might encounter.

WHAT IS A LEGACY GIFT?

A legacy gift is a planned, future gift to a charity which has been allotted from a person's assets.

TYPES OF LEGACY GIFTS

There are several types of legacy gifts which a donor may decide to leave to charity. These may include the following:

Cash



This is usually the simplest way for a donor to leave a gift to charity. This gift will typically be a specified amount set out in the donor's will.

Central Provident Fund nominations

Another way that a donor might leave a gift to charity is through CPF nominations. The donor will typically make a CPF nomination online via the CPF website, where the donor can specify the percentage of CPF monies that is to be given to each nominee. This gift usually be received in cash when the CPF monies are distributed.

Insurance policy nominations

A donor may choose to leave a gift to charity under his or her insurance policies. This gift will typically be a specified portion of the death benefit of each policy for which the organisation is nominated as a beneficiary under the policy and will usually be received in cash when the death benefit is distributed. It is important to note that nominations of charitable organisations as the beneficiary can be made only for certain types of insurance policies.

Other assets

A donor may also choose to donate other types of assets, such as marketable securities, real estate, art and so on. These gifts are typically more complicated, and the relevant organisation will need to have governance mechanisms and processes in place to accept these types of gifts.

HOW LEGACY GIFTS MIGHT BE RECEIVED

There are several ways donors may choose to leave, and by which your organisation may receive, legacy gifts. The following describes three such possible ways.

1. Outright donation in a will



Typically, the most straightforward way that a donor may leave a gift is by making a bequest of cash or other assets to your organisation under the donor's will. This means that when the administration of the donor's estate takes place (see below), your organisation can typically expect to receive the cash amount or assets specified by the donor in his or her will.

2. Trusts, private foundations and other establishments

Another way that a donor may leave a legacy gift is by setting up a trust, private foundation or other type of legal entity or establishment, and granting or awarding funds through such entity or establishment. A donor might establish a trust, private foundation or other entity during his or her lifetime or through his or her will.

A donor may establish a trust and name your organisation as a beneficiary. Alternatively, the donor may set up a charitable trust which is a trust set up for a specific charitable purpose. Both types of trusts can be established by a trust deed, or through the donor's will. In all instances, the donor (also known as the "**settlor**") transfers a portion of his or her property and transfers that trust property to one or more persons (also known as "**trustees**") to administer or manage for the benefit of the beneficiaries, or to apply towards the charitable purpose. Please refer to Chapter 2 for further discussions of these points.

As a settlor of a trust transfers property to the trustees, it is the trustees that legally own the trust property. The trustees must administer the trust according to the terms of the trust deed and certain legal rules applicable to trusts, and are bound by duties that are generally set out in the Trustees Act 1967 (see below).

To establish a trust, certain requirements need to be met. The settlor must indicate with reasonable certainty his or her intention to create the trust, what the trust property shall be, the persons intended to be beneficiaries and the purpose of the trust. However, a charitable trust does not need to identify individual or specific beneficiaries, and need only be expressed to promote a charitable purpose which, as discussed in Chapter 2, can be classified under the following main categories:

- relief of poverty;
- advancement of education;

- advancement of religion; or

- other purposes beneficial to the community which include, amongst others:

    - promotion of health;
    - advancement of citizenship or community development;
    - advancement of arts, heritage or science;
    - advancement of environmental protection or improvement;
    - relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantages;
    - advancement of animal welfare; and
    - advancement of sport, where the sport promotes health through physical skill and exertion.

To establish a charitable trust in Singapore, the board of trustees must consist of at least three persons, of whom two must be Singaporean citizens or permanent residents, and the trust deed must also state that the benefit of the trust is wholly or substantially to the community in Singapore.

As trusts are not separate legal entities and all liability arising from the trust is borne by the trustees, the trustees are generally subject to significant legal duties, and the operation and maintenance of trusts can be administratively complex and costly, trusts may not be popular structures for the granting of legacy gifts.

Private foundations are increasing in visibility in Singapore due to the prominence of establishments such as the Lee Foundation, the Lien Foundation and the Shaw Foundation. Large corporate and business groups are also increasingly establishing foundations for charitable purposes. These foundations may be established as charitable trusts or other non-profit vehicles (see Chapter 2).

3. Donor-advised funds

An example of a provider of donor-advised funds is CFS, a charity and IPC that facilitates legacy giving through its donor-advised fund ("**DAF**") programme.

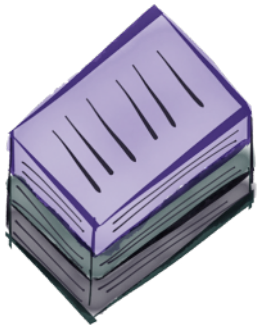
To establish a DAF, the donor makes a donation to CFS either during his or her lifetime, or through his or her will and/or CPF and insurance policy nominations, or through a combination of these methods. The donor (or a representative appointed by the donor) can then make grant recommendations to CFS, which CFS will make reasonable efforts to comply with. Ultimately, CFS will disburse grants from the DAF to charities with a priority focus on the donor's designated causes, as well as other causes and projects in line with CFS' own charitable objectives (excluding politics and religion).

Generally, DAFs can be established much more quickly, and at a much lower cost, than charitable trusts or private foundations. According to CFS, a DAF at CFS can be established within four weeks, with no setup costs and with limited administrative costs; additionally, CFS carries out the administrative duties in respect of a DAF. With a DAF, donors can enjoy upfront tax deductions in Singapore at the prevailing tax deduction rate on eligible donations, on the basis that CFS itself has IPC status (please refer to Chapter 7).

CFS is Singapore's first and largest holder of donor-advised funds and has raised over $353 million in donations, including legacy gifts.

For more information on DAFs, including how to establish them and other requirements, please refer to https://legacygiving.sg/.

STEPS TO TAKE TO FACILITATE A LEGACY GIFT



To help ensure that legacy gifts are successful, it is important that your organisation is identifiable when the executors of the deceased donor's estate begin distributing the donor's assets according to his or her will. As such, it is important that donors are aware of the information that needs to be included in his or her will that clearly identifies your organisation. To ensure that your organisation is clearly identifiable, the following information in relation to your organisation should be included in the donor's will:

- full legal name;
- unique entity number; and
- registered address.

Prominently displaying the above information on your organisation's website so that it is readily accessible is one way to make it easier for donors to include the required information during the will making process. Some organisations also provide sample will drafting language on their websites for easy reference by potential donors. If you would like to do the same, it is important that a probate lawyer is consulted to help ensure that the sample language posted will be enforceable.

It is also important to take note of any additional conditions that may need to be satisfied for particular types of legacy gifts. For example, in relation to legacy gifts of CPF nominations, a nominee must be a legal entity capable of receiving money

in its own right. In other words, the nominee must be recognised under the law as being capable of doing certain things in its own name such as owning property. Companies (including companies limited by guarantee) registered under the CA, limited liability partnerships registered under the LLPA and societies registered under the Societies Act will satisfy this requirement. For more information, please refer to Chapter 2.

WHAT HAPPENS WHEN MY ORGANISATION IS GRANTED A LEGACY GIFT?

After the passing of a donor, the executors of the donor's will will be informed of their appointment and begin administering the donor's estate according to the donor's wishes, as stipulated in his or her will. Generally, the executors will seek to obtain all the relevant documents that they would need to apply for a grant of probate.

A grant of probate is a court order and empowers the executors to carry out the instructions in the will. This will include the distribution of the donor's assets to the specified beneficiaries, such as charities.

The executors should prepare a list, known as a schedule of assets, of all the assets and liabilities of the donor. Once all of the donor's debts, taxes and expenses are paid off, the executors will distribute the donor's assets according to the will. This process typically takes about two to six months if the case is non-contentious, and may take longer if the case is more complex. At this stage, your organisation may be contacted by the executors to make the necessary arrangements to receive the gift.

1. Outright donation in a will

If the will states that the donor wishes to leave your organisation a lump sum amount of money or specified assets, the executors may contact you to arrange a transfer of the specified amount or assets.

2. Trusts, private foundations or other establishments

If the donor has established a trust, private foundation or other establishment, you may be contacted by the executors of the donor's estate to discuss the next steps. These will depend on the instructions that the donor has left in his or her will and in the trust deed. As an example, if a charitable trust has been established for a purpose that aligns with your organisation's work, you may be contacted by the trustees to receive a donation from the trust property.

Procedure

Though your organisation would likely not be involved in this process, set out below for your information is a quick overview describing the process for an executor of a will to apply for a grant of probate:

- Obtain the death certificate of the deceased and have the original will at hand;

- Prepare the appropriate forms to file the application (available at https://www.judiciary.gov.sg/family/how-to-file-grant-of-probate);

- Attend before a solicitor to certify the required supporting documents;

- Proceed to the LawNet & CrimsonLogic Service Bureau and conduct searches on the court's record of probate cases based on the deceased's identification number;

- Submit the prepared forms, certified true copies of supporting documents and filing fees at the LawNet & CrimsonLogic Service Bureau and submit the original will at the Probate Section;

- Wait for the court to process the application. Where the application is in order, the court will accept the documents, assign a Family Court Probate number to the application and fix a hearing date;

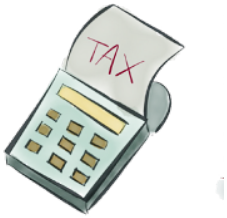
- Prepare and file a supporting affidavit and administration oath within 14 days of filing the application;

- Attend before a Commissioner for Oaths to swear the supporting affidavit and administration oath, and wait for the court to grant the application and wait for the letter regarding the Request to Extract the Grant;

- If the schedule of assets has not been filed, prepare the Supplementary Affidavit and Schedule of Assets, attend before a Commissioner for Oaths to swear or affirm the document, and wait for the letter from the court regarding the Request to Extract the Grant; and

- Prepare and file the Request to Extract the Grant and collect the grant from the LawNet & CrimsonLogic Service Bureau.

Tax



As discussed in Chapter 7, donations made to IPCs and to Qualifying Grantmakers where no benefit is received in exchange entitles donors to certain enhanced tax deductions. As part of the 2023 Budget Statement announced by the Singapore government, the 250% tax deduction provisions for qualifying donations will be extended for another three years until 31 December 2026, as part of efforts to foster and sustain a spirit of giving. It is important to note, however, that not all registered charities are approved IPCs or Qualifying Grantmakers, and donations made to a charity or any other entity that are not IPCs or Qualifying Grantmakers will not qualify for the 250% tax deduction.

Non-profit entities such as private foundations and community foundations which only give out grant monies to specific charitable causes are known as grantmakers. As noted above, only donations to Qualifying Grantmakers qualify for a 250% tax deduction. Entities that wish to register as a Qualifying Grantmaker must submit a letter of undertaking to IRAS and certain conditions must be met. A full list of these conditions is available on the IRAS website and includes that the organisation must:

- either be a registered charity under the Charities Act or a grantmaker approved under the NPO tax incentive scheme administered by the Singapore Economic Development Board;

- channel any tax-deductible donations intended for IPCs to a segregated account or fund that is designated for donations to IPCs only; and

- be responsible for issuing a tax deduction receipt for a tax-deductible donation to the donor, and must distribute such donations to IPCs within five years of receipt of the donations from the donors.

Some examples of Qualifying Grantmakers include the NTUC FairPrice Foundation Limited, the Anglo-Chinese Schools Foundation Limited and the CapitaLand Hope Foundation.

IPCs and Qualifying Grantmakers are authorised to issue tax deduction receipts for qualifying donations. If your organisation has IPC or Qualifying Grantmaker status, you should ensure that it has the documented policies and procedures in place so that tax deduction receipts are issued for qualifying donations and the receipts are properly authorised by your IPC or Qualifying Grantor prior to issuance.

A tax deduction receipt should:

- include the following language:

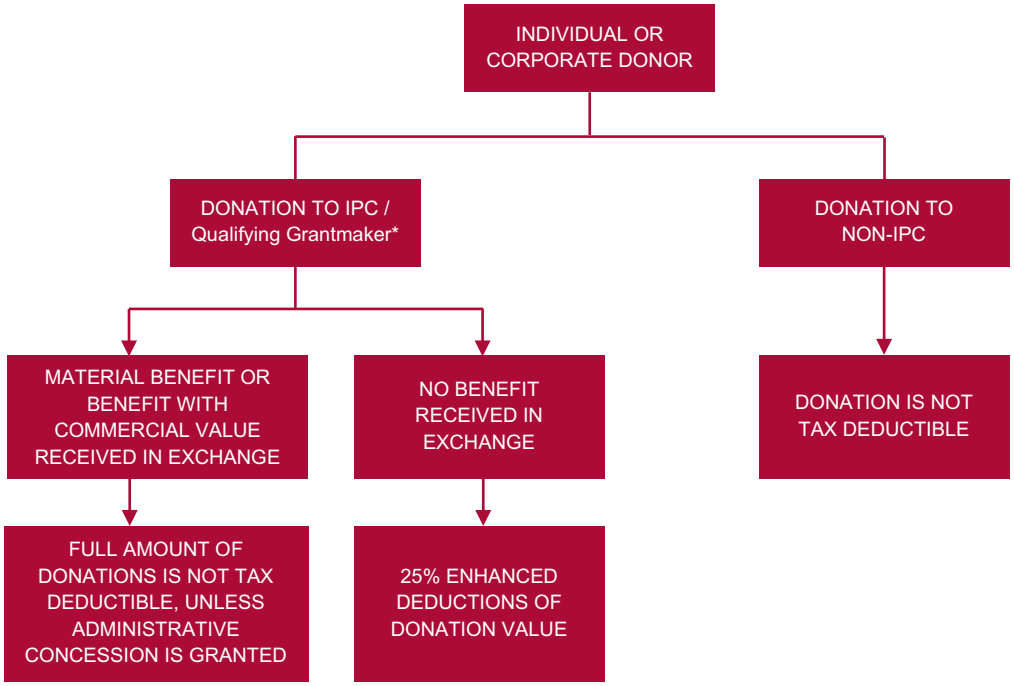
  "This receipt is for your retention. This donation is tax-deductible and the deduction will be automatically included in your tax assessment as you have provided your Tax Reference number (e.g. national registration identity card number, foreign identification number or unique entity number). You do not need to claim the deduction in your tax form."

- where applicable, state the name of the sector administrator. At the time of writing, these may be any of the following:

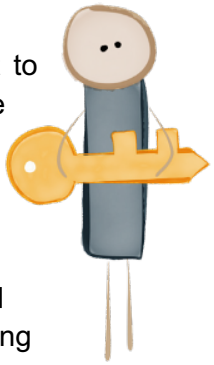
  - the Ministry of Education;
  - the Ministry of Health;
  - the Ministry of Social and Family Development;
  - People's Association; and
  - Sports Singapore; and

- be serially numbered.

Tax diagram



Using a legacy gift



After your organisation has received a donation, it is important to determine how to manage the donation. This includes how to use the donation, record keeping and the duties of the board members and staff to your organisation. In particular, with respect to charities, there are various laws, regulations and guidelines that govern how to use donations. As such, it is imperative for charities to have appropriate internal structures and procedures in place to facilitate managing legacy gifts and ensuring compliance with these legal requirements.

Provided that the legacy gift instrument does not restrict the way a receiving charity uses the gift, there are several ways that a legacy gift may be used. Legacy gifts may be applied to directly further the purpose of a charity. For example, if a charity's purpose is to alleviate hunger in a certain community, that charity may use a legacy gift of cash to purchase food and distribute that food to those in need. However, there are other ways that legacy gifts can be used. In deciding how to use legacy gifts, charities should take note of the Guidance for Charities Engaging in Business Activities ("**GCEBA**") and the Charities (Institutions of Public Character) Regulations ("**the Charities (IPC) Regulations**").

(a) Guidance for Charities Engaging in Business Activities

Under the GCEBA, charities with large reserves or endowment funds may invest their funds in financial instruments such as fixed deposits, equities and bonds to preserve the value of their funds or generate further income to support the charity's purpose. If a charity chooses to make any investments using its funds, it is important to ensure transparency in relation to those investments and that the charity's main charitable purposes remain the priority while conducting investment activities. The board of the charity must also take into account the potential risks and returns of such investments and must not expose the charity's assets to significant risk. Significant risk is defined in the GCEBA as the potential use of a charity's resource to cover the losses incurred from investments or running a business activity. Donors will expect charities to use their assets to further their charitable purposes, or to invest them prudently. Assessing risk will require the board of the charity to make certain judgments and as such, a charity should always consider seeking professional advice before engaging in business activities.

(b) Charities (Institutions of Public Character) Regulations



If a charity has IPC status, it would also be subject to the Charities (IPC) Regulations. The Charities (IPC) Regulations state that a donation shall be used for such specified lawful purpose as the donor intended, or which has been communicated to the donor. Where no purpose has been specified or communicated (as the case may be), the donation may be used by the IPC to fund any activity carried out by it.

Notwithstanding the above, however, an IPC must only use donations for a purpose or activity that is within the scope of its governing instrument (such as a trust deed or constitution). Further, where a tax deductible receipt has been issued by an IPC in respect of a donation, such donation can only be used where the donor did not specify a purpose to advance the interests of a particular race, belief or religion, or of a particular person or persons, and the donor did not specify or imply that any part of the donation that cannot be used for the specified purpose must be returned to the donor or given to any other person other than the IPC. For more information on tax matters, please refer to Chapter 7. The Charities (IPC) Regulations also provide that an IPC may invest any donation that is not immediately required for use for any purpose or activity specified by the donor or carried out by the IPC.

Additionally, the Charities (IPC) Regulations require IPCs to maintain donation records. The records must show the particulars of every tax-deductible donation that a charity has received. In relation to each donation, this record must include the following:

- the receipt number (in numerical sequence);
- the name of the donor;
- the identification number, or corporate or business registration number, of the donor;
- the date on which the donation was received;
- the type of donation received;
- the amount or value of the donation received; and
- any terms and conditions under which the donation was made.

Records must be maintained for a minimum period of five years from the end of the year of assessment relating to the year in which the donation was received.

It is important that the requirements of the Charities IPC Regulations are followed closely, as failing to maintain donation records or misusing donations is an offence. The penalties include a fine not exceeding $10,000 or imprisonment for up to three years (or both) and in the case of a continuing offence, a further fine not exceeding $100 for every day or part of a day during which the offence continues after conviction.

(c) Fiduciary duties

Another category of duties and responsibilities that should be considered when managing legacy gifts are fiduciary duties. A fiduciary is a person that stands in a special relationship of trust, confidence, or responsibility to another. Board members and staff that have general control and management of the administration of a charity are fiduciaries with respect to the charity they serve and as such, have certain duties and responsibilities.

There are three broad categories of duties applicable to the fiduciaries of a charity. First, such fiduciaries are under a duty of good faith, and must always act in the best interest of the charity when carrying out their duties, for example, when choosing how a legacy gift should be used or spent. Among other things, legacy gifts to the charity should not be spent on non-primary purpose business activities.

Fiduciaries also owe the charity for which they work a duty of loyalty, and should not profit from their positions. As such, it is important to ensure that when managing legacy gifts and donations, no profit is made by any board member or other fiduciary. Additionally, clear policies and procedures should be established and measures taken to declare, prevent and address conflicts of interest. Under the Code of Governance for Charities and IPCs, a conflict of interest is a situation where a board member or other fiduciary with an existing or potential financial interest or other material interest might impair his or her independence or objectivity in discharging his or her responsibilities and duties to the charity.

Further, board members and other fiduciaries are also under a duty of care and prudence to ensure that good governance practices are maintained in the charity, financials are managed prudently, and appropriate due diligence is exercised in managing donor, partner and beneficiary business. For instance, adequate care must be taken to ensure that there are no red flags or suspicious activities relating to donors or legacy gifts that the charity receives.

(d) Other Recent Developments in Philanthropy and Giving



As announced in 2023's Budget Statement, a new Philanthropy Tax Incentive Scheme for Family Offices will be implemented. This new scheme is intended to strengthen Singapore's position as a regional philanthropy hub and encourage family offices to anchor their giving operations in Singapore. Starting in the year 2024, this new tax incentive scheme will be piloted for five years for qualifying donors with tax-incentivised family offices operating in Singapore. Under the scheme, qualifying donors will be able to claim a 100% tax deduction for overseas donations made through certain qualifying local intermediaries. The tax deduction will be capped at 40% of the donor's statutory income.

Another donation scheme relevant to charities, will also be expanded and extended with effect from 1 January 2024. Under the Corporate Volunteer Scheme, a qualifying person can, subject to conditions, enjoy a total of 250% of tax deductions on qualifying expenditure such as wages incurred by the person from 1 July 2016, till 31 December 2026 in respect of either the provision of services by the person's qualifying employee to an IPC during that period; or the secondment of the person's qualifying employee to an IPC during that period. The scope of qualifying volunteering activities will also be expanded to include activities which are conducted virtually (e.g. online mentoring and tuition support for youth/children) or outside of the IPCs' premises (e.g. home visits to beneficiaries). In addition, the cap on qualifying expenditure per IPC per calendar year will be doubled from $50,000 to $100,000. What this means is that a charity can accept 'donations' of human resources in the form of employees, as well as cash. If qualifying employees contribute their time to the charity, their employers may claim enhanced tax deductions on the value of their wages which have been borne by such employers.

CASE STUDY

A notable real-life example that illustrates the importance of the proper use of donations, and of carefully observing fiduciary duties, is the National Kidney Foundation ("**NKF**") case that spanned 2005 to 2007. During this episode, serious corporate governance issues at the NKF and allegations of breaches of fiduciary duties by certain former executive directors came to light.

The NKF filed claims that former board members allowed the then-Chief Executive Office of the NKF to benefit at the expense of the NKF and sanctioned conflicts of interest, as the NKF was party to contracts with two companies which were owned by a personal acquaintance and business partner of the then-Chief Executive Officer of the NKF.

The NKF case led to the formation of a committee to review the regulatory framework for charities and IPCs. The Charities Act was subsequently amended based on the recommendations of this committee, and strengthened the regulatory role of the Commissioner of Charities.

USEFUL LINKS

Legacy giving

- Community Foundation of Singapore on Legacy Giving at https://legacygiving.sg/

Charitable trusts

- Basic features and regulation of charitable trusts and other information at https://www.mlaw.gov.sg/trusts/charitable-purpose-trusts/

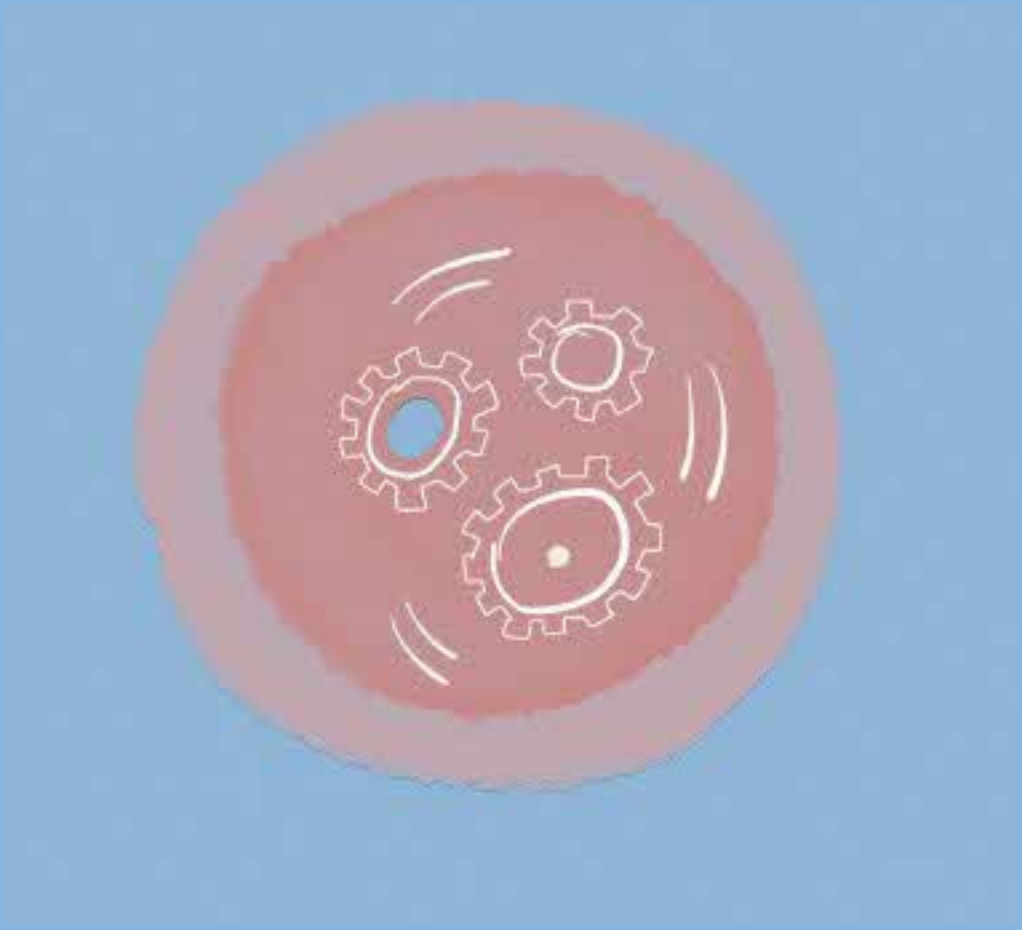
Tax

- Tax deduction scheme for Qualifying Grantmakers at https://www.iras.gov.sg/taxes/other-taxes/charities/tax-deduction-scheme-for-grantmakers
- Information on Sector Administrators at https://www.charities.gov.sg/Pages/AboutUs/Commissioner-of-Charities.aspx
- Collecting donations and issuing tax deduction receipts for IPCs at https://www.charities.gov.sg/Pages/Charities-and-IPCs/Manage-Your-Charity/Issuing-TDR-for-IPCs.aspx#

Guidelines and Codes:

- Charities (Institutions of a Public Character) Regulations at https://sso.agc.gov.sg/SL/CA1994-RG5?DocDate=20110826&ProvIds=P1I-#P1I-
- Code of Governance for Charities and IPCs at https://www.charities.gov.sg/Pages/Charities-and-IPCs/Manage-Your-Charity/Code-of-Governance-for-Charities-IPCs.aspx#
- Guidance for charities engaging in business activities at https://www.charities.gov.sg/Pages/Charities-and-IPCs/Manage-Your-Charity/Governing-Board-Duties-and-Responsibilities.aspx#

OPERATIONS



10

WRITTEN AGREEMENTS

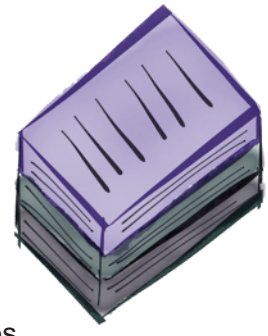


FORMING CONTRACTS: THE BASICS

Social enterprises and other organisations are unable to function on their own. At some point in time, you will need to hire employees or enter into agreements with other parties for the supply of goods and services.

The aim of a contract is to set out the key terms of such arrangements, which you and the contracting parties will adhere to. While verbal contracts can also be effective, a written agreement will assist to serve as a clear record of what has been agreed and what each party's obligations are, which would reduce uncertainty significantly.

WHAT TO CONSIDER WHEN PREPARING A CONTRACT



Contracts should be drafted in an ACCURATE manner. That means that the contract should correctly and clearly set out the arrangements agreed between the parties. For example, when the contract is about goods or services, an accurate description of what has to be delivered, or is expected to be received, together with the price, must be described in as much detail as possible. The standards and quality expected of the goods or services should also be included.

Times and dates, such as when the goods or services are to be delivered, or when payment is to be made, should also be included.

Contracts should also be EXACT. All possible details of the arrangement should be set down in the contract. Assume that you are reading the contract for the first time, without the benefit of discussions with the person whom you will be contracting with. Are you able to appreciate clearly, just from the contract, what it is you have to perform, or what you will receive under the contract?

Contracts should also be COMPLETE. The contract must seek to provide for all possible scenarios that are likely to happen. Plan ahead. Think of the worst-case scenario. Ask 'what if' questions such as:

- What if you were faced with a delay preventing you from fulfilling your part of the contract?
- What if there were some quality or other concerns with the goods or services you require, or are providing?
- What if the contract depended on some other event which did not materialise at all, or did not occur exactly as expected?
- What if the relationship between the parties sours and one of the parties tries to back out of the contract? Would they then be able to do so? And if so, how?
- What if you are not paid on time? Or what if you are late with payments that you need to make?

Having prepared the contract, read it afresh, ideally with your lawyer. Assume you are the other party to the contract, and think to yourself—"If I really wanted to wiggle out of the contract, or do less than promised, would I be able to do so while still falling within the wording of the contract?" If the answer is yes, then the contract is not ready. Revise the contract to make sure there is no such 'wiggle room'.

WHAT IF YOU WERE MISTAKEN, OR MISUNDERSTOOD WHAT THE OTHER PARTY MEANT?

For example, A may buy furniture, mistakenly believing it to be of high quality, but not clarifying this with the seller beforehand or stating it clearly in the contract. A only realises that the furniture is of extremely low quality when it arrives.

In this case, the contract between A and the seller is valid and A is unlikely to get out of the contract[1] because of his or her own mistaken belief. Generally, parties are not able to escape an agreement simply because a mistake has been made.

However, in certain circumstances, and subject to certain legal requirements being made out, a mistake may mean the contract can be rendered void:

- For instance, if one party contracts to buy specific goods without knowing that the goods have perished at the time when the contract is made, the contract is void.[2]

- The contract may also be rendered void if one party knows of the other party's mistake and tries to take advantage of it.[3] For example, A mistakenly sells an item for $30 although it should be sold at $30,000. B knows of the mistake, but grabs the opportunity and immediately buys the item before A realises their mistake. In this scenario, the agreement is void.

It is rare that a contract is made invalid simply because a party had been mistaken about something in the agreement. Where important agreements are involved, it is best to double-check and be sure of what your contractual duties are, or ask for legal advice.

TYPICAL PARTS OF A CONTRACT

Typical contractual terms found in most agreements are often referred to as 'boilerplate clauses'. Examples of such provisions are set out below.

Parties

A contract must identify who the parties to the contract are, that is, those persons that accept to be bound by the contract.

Interpretation

Most contracts have an interpretation clause to define important terms or terms that are used often in that contract. Such defined terms are usually capitalised.

Responsibilities

A contract must set out each party's responsibilities, that is, what each party has to do or what the other party expects to receive out of the contract.

Price

A contract must set out the price, including the relevant exchange rate if the payment is made in foreign currency, and how and when the price will be paid. The price need not always be in cash and can, for instance, take the form of other goods and services (i.e. barter contracts), shares or loan notes.

Duration

The term or duration of the contract has to be specified. If timing is critical, you should state so in the contract by using statements such as "time is of the essence" or a similar phrase. Where time is not made of the essence, parties are generally permitted to perform their obligations within a reasonable time.

Representations & Warranties

Consider if the contract should include representations and warranties. These are statements of fact you require the other party to make to you. Include the statements that have persuaded you to enter into the contract with the other party. For example, if you are entering into the contract because the other party has said they have a certain qualification or background, include such a statement in the contract. This is done by stating in the contract: “Mr. A (the other party) warrants or represents to Mr. B (you) that...” Representations and warranties are important because they provide you with a definite scope of information which persuaded you to enter into the contract, and when breached, they provide you with compensation in the form of damages. Nevertheless, do note that there are differences between representations and warranties. Representations are normally not a term in the contract, though they may be included in the contract as well. A claim in misrepresentation may arise when a false representation which induces the receiving party to enter into the contract is made. Such a claim in misrepresentation may allow the receiving party to set aside the contract entirely, and any damages awarded will try to put him or her back in the position they were in before the contract was made.

On the other hand, a warranty is a term of the contract, and a false warranty will result in a breach of contract. Such a breach will result in damages aimed to put the receiving party in a position that they would have been in, had the contract been performed correctly. If the breach is fundamental to the contract and deprives the aggrieved party of substantially the whole of the benefit of the contract, this will even allow for the termination of the contract, with damages assessed at the time of termination.

Thus, do note that the way in which a statement of fact is presented in a contract (i.e. whether as a representation or as a warranty) can affect the types of damages that you may be awarded by a court, if the statements turn out to be false or inaccurate.

Conditions precedent

Consider if certain obligations or actions to be taken under the contract depend on other events first occurring. These are known as ‘conditions precedent’. These may include governmental approvals, third party consents, the grant of licences, or certain documents being first provided to you or the other party.

This is provided for by stating in the contract “Mr. A’s obligation to perform [describe the obligation] under the contract is conditional upon [describe the event]”. This will help to protect you if you are in a situation where you cannot perform your obligations under the contract because of something beyond your control.

Termination provisions

List out the events that can allow either party to terminate, or end, the contract. Also, state the termination process, for example, if termination is by written notice. This is done by stating in the contract “This contract may be terminated [describe method of termination, e.g. in writing] [describe the time period within which the contract may be terminated, e.g. within 30 days of the date of this contract] by [describe which party can terminate the contract] if [describe the event] occurs”.

Indemnities

Certain contracts may include indemnities. These are promises to compensate the other party for losses arising from certain prescribed situations, such as delays or a failure to perform. If the contract provides for a specific amount of compensation for such delays or failures, the amount must be reasonable and intended to compensate for loss and not to punish the other party or to act as a penalty. Like representations and warranties, indemnities are a means of allocating risks between the parties.

Unlike a warranty, under an indemnity, the person making the claim for the loss suffered is entitled to recover the full compensatory amount as agreed between parties, and is not required to prove anything further.

Limitation of liability

Contracts may also include clauses limiting liability. These ‘limitation of liability’ clauses exclude liability in certain circumstances, or place a limit on the amount that can be claimed for a breach of contract, regardless of the actual loss suffered by that party. These clauses can be helpful if you are concerned that the loss suffered by the other party due to any failure on your part may be higher than what you expect to receive under the contract. Provisions like this can state “Mr. A’s liability under the contract will in no circumstances exceed [state the amount]”.

Governing law

Contracts usually contain a governing law clause to indicate which country's law the contract is governed by, and a jurisdiction clause to indicate the country in which court proceedings on disputes arising out of the contract should be initiated in.

Entire agreement

Such clauses stipulate that all the terms agreed between the parties are to be found in the contract, and any promises or assurances made in the course of negotiations will have no contractual force if they are not reduced to writing in the contract.

Tax

When the contract price will involve taxes (e.g. in a supply of goods contract), such contracts will usually include a tax clause to determine which party should bear any taxes which may be due.

Notice

This clause identifies the ways in which parties are able to serve notices on each other, as well as the address at which notices are to be served.

As there may be discrepancies as to when a notice is considered as 'received' by the other party, contracts generally have a notice clause to standardise when a party is deemed to have received a notice.

Variation

As contract law allows for parties to amend a contract both by oral or written agreement, it is common for parties to include a variation clause in the contract to ensure that only changes made in writing and signed by both parties will be effective.

Assignment

Such clauses provide for the circumstances in which a party may assign its rights and obligations under a contract to a third party. If you wish to ensure that you continue to deal with the same party that you originally entered into the contract with, then you should seek to either restrict assignment under the contract or only allow for assignment with your written consent.

Third party rights

If you want a third party to benefit from the contract, you should expressly state that the third party may enforce a term of the contract. When mentioning third parties in the agreement, the party can be identified by name, as a member of a group, or as fitting a particular description. The party need not be in existence at the point in time when the written agreement is entered into.[4]

Severability

Most contracts will also include a severability clause to ensure that the remainder of the contract is valid, legal and enforceable even if one part of the contract is determined to be invalid, illegal or unenforceable.

Counterparts

This clause allows for contracts to be executed (or signed) in more than one copy, and each copy will be taken as the original.

Together, the different signed copies will be taken as a whole. This clause is especially useful when the parties are not in the same jurisdiction.

Exhibits

If exhibits or other documents are relevant and important to the contract, attach them to the contract. Exhibits provide specific examples or give more details as to the intention of the parties and, where included, should be referred to within the contract.

WHAT IF THE OTHER PARTY HAD LIED OR WAS DISHONEST IN ORDER TO GET YOU TO SIGN THE DOCUMENT?

If you have signed a written document, knowing it to be a contract, the courts will generally take that you have read and understood its terms.[5]

However, if the other party lied or was dishonest in order to get you to sign the document, it is possible for you to seek to get out of the contract. Under the Misrepresentation Act 1967, the contract can be rescinded, which means to release you from future obligations under the contract, and to restore the parties, as much as possible, to the positions they were in before the contract was entered into. Alternatively, as the victim, you can seek to be financially compensated.

There are several common scenarios that may be relevant:

- If the other party was simply exaggerating or giving their opinion (e.g. "This is the best house ever!"). This is generally not considered to be fraud or a false representation.

- If the other party had made an outright false statement, told a half-truth, or used conduct to imply something false. This can be considered misrepresentation and the victim can try to rescind the contract or ask for financial compensation.

The statement must have played a real and substantial part in misleading you to enter into the agreement. It must also be directed towards the misled party. If you are told a statement by B who obtained that relevant information from A, who had no intention or knowledge that you would receive that information, it is unlikely that you will be able to sue A under the Misrepresentation Act 1967.

BEWARE OF THE 'STANDARD FORM'!



Often, people or companies entering into negotiations with you will claim that the contracts they are showing you are 'standard form' contracts and may suggest to you that you should accept all terms because they cannot be modified. While it is correct that businesses operating in certain industries, such as banking or insurance, do have 'typical' clauses in their contracts to reflect industry norms, it is certainly not the case that you should blindly accept all contractual terms presented to you, without first checking them.

You should do the following:

- Read the contract in its entirety.
- If you do not understand certain clauses, seek help (from a lawyer, ideally).
- Do not be afraid to ask the other side what they mean, if they include terms that you do not understand. If there is no need for a term to be included in a contract, and the other side cannot give you a good explanation for retaining it, do not be afraid to ask for it to be removed.
- Remember, contracts are agreements negotiated between parties. Save for clauses which are included for compliance with laws or government regulations, generally, most clauses may be negotiated between parties.

FORMALITIES: WHAT FORM SHOULD CONTRACTS BE IN?

A contract will only be formed when there is proper offer and acceptance, and both of these can be made expressly by words or by conduct. If you reply to an initial offer with a different offer of your own, your counter-offer is not considered an acceptance of the initial offer.

This situation could occur like this:

B offers to sell to A an item for $5,000 and A counter-offers, asking B to sell it at $4,500 instead.

If B rejects A's counter-offer and sells the item to another party, A can no longer hold B to the initial offer of $5,000.[6]

A counter-offer is different from a request for more information. Taking the earlier example, B offers to sell to A an item for $5,000 and A asks if $5,000 includes delivery. The original offer ($5,000) is still valid because A had only asked for more information about B's offer and had not counter offered.[7]

Consideration also forms a necessary part of a contract—this refers to the benefit each party receives from the contract. As mentioned above, the consideration does not have to be in cash. Also, while the consideration has to be sufficient, it does not mean that the value of the consideration has to be commensurate with the value of the promise.

There is also a requirement of an intention to create legal relations in contract law, and such requirement is used to sift out cases that are not appropriate for court action, such as agreements made in the social and domestic contexts (e.g. an invitation to dinner). Contracts entered into by a social enterprise will usually be contracts made in a commercial context, and should raise a presumption that parties do intend to create legal relations through the contract.

While most people and companies can enter into contracts freely, you should be careful when entering into contracts with minors and persons with mental incapacity, as there is a risk of such contracts being invalid. Minors (persons under the age of 18) are generally not bound by contracts they enter into, except for contracts for necessaries (which are the important and basic things that a person needs to live, such as food and clothing), or contracts for training or education. A contract entered into with a person with mental incapacity will also be invalid if it is established that the person did not understand what he or she was doing when entering into the contract, and you know or ought reasonably to have known of the disability. However, as with minors, persons with mental incapacities will be bound by contracts for necessaries.

While contracts can be verbal, they should preferably be in writing.

The general rule is that where there is a written contract, terms that are not included in the written contract will not be recognised, even if both the parties had verbally agreed on something before signing the contract.[8] In that way, the written agreement is assumed to be the final agreement. If you want to argue that the contract was partly an oral agreement, you will likely face many difficulties with evidence and proof. It is thus very important to ensure that you include all the terms, rights and obligations you want in the written contract.

While having written contracts may be more costly than oral agreements, this upfront cost will give you peace of mind knowing that all-important terms are in writing and can be proven, and can potentially save you from having to incur more losses when disputes over the agreement arise. Similarly, in core business relationships such as supply contracts or employment contracts, it is helpful to have everything written down to prevent disputes over agreed terms from ruining long-term business relationships.

As you may face bargaining power constraints as a small start-up when negotiating with big players, a written contract is even more important to detail the promises these big players have made to you.

Written contracts are best signed in the presence of a witness, who can be any adult. The witness should also sign on the contract, while indicating that he or she is signing as a witness.

WHAT ELSE TO CONSIDER WHEN DRAFTING THE CONTRACT?

Make full use of available resources. First of all, if you are able to, do engage a lawyer to assist with drafting the contracts required. For your own knowledge and information, you may want to look at samples of contracts when preparing or reviewing your own contracts. These are available on the internet or in contract guides.

However, use these standard forms only as a guide, to understand terms that are usually included in contracts. Understand in particular the concerns and contingencies that these standard form contracts cover. Do not rely on a single standard form of contract and certainly do not copy indiscriminately. Standard forms may or may not be applicable to a particular situation, and they might have been drafted for the benefit of the other party. Wholesale copying of other people's work is also against the law.

While you may not want to incur significant costs in the early stages of running your organisation, you should be aware that the drafting of contracts requires technical skill and legal expertise, and if you do not engage a lawyer, your interests may not be adequately protected.

Some examples of the more technical aspects of contract drafting are as follows:

Penalty clauses

The rule on penalty clauses is that contractual clauses requiring certain payments on breach of contract have to set the amount payable at a reasonable level, which is enough to fairly compensate the aggrieved party without punishing the defaulting party. If the clause is punitive (in other words, a 'penalty clause') then it will not be enforceable. For example, where a clause requires a payment of $1 million for a delay in delivery of goods costing only $100, it is likely that a court will hold it to be a penalty clause and accordingly unenforceable.

Non-competition clauses

In these clauses, one party usually agrees not to carry out certain activities for a period of time. Non-competition clauses are often used in the employment context, especially in the employment contracts of key employees. Such clauses will prevent employees from carrying out certain activities for a period of time after leaving the employment of the company, such as entering into an industry in competition with the company, or soliciting the clients and other employees of the company. The courts have found that restraint of trade clauses are enforceable only if there are legitimate business interests to protect. These kinds of clauses must also be reasonable in terms of scope, geographical area, and duration—they must balance employers' needs to safeguard their businesses and employees' ability to earn a living, and should not be used simply to stifle business competition or gain an unfair advantage. These clauses, if too excessive or unreasonable, cannot be enforced.

Exclusion clauses or limitation of liability clauses

As noted above, contracts may include such clauses to totally exclude liability, provide a maximum cap to the liability that will be incurred, or to limit the circumstances in which liability can arise. However, such clauses may be subject to the Unfair Contract Terms Act 1977, and if so, will only be upheld by courts if they are considered to be reasonable. Clauses that limit or exclude a party's liability for negligently caused death or personal injury will be unenforceable.

These are just three examples, but there are many other legal issues surrounding the proper drafting of a contract. Do be aware that if you do not consult a lawyer when drafting your contract, you run the risk of creating a contract that is not able to serve its intended function.

Above all, when reviewing or drafting a contract, always keep the worst-case scenario in mind, and provide rules in the contract that regulate how future disputes can be prevented and if they cannot be prevented, how they may be resolved.

11

EMPLOYMENT CONTRACTS



This chapter aims to provide organisations with a basic understanding of employment laws in Singapore. It also serves as a reference point for organisations when they take on the role of an employer and highlights some of the points that they need to consider when hiring employees (whether Singaporeans or foreigners, whether on a part-time or full-time basis).

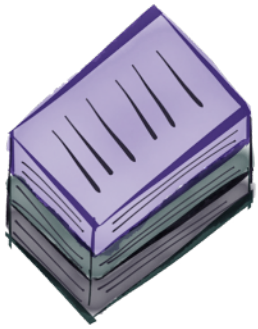
WHERE DOES EMPLOYMENT LAW IN SINGAPORE COME FROM?

In Singapore, employment law comes mainly from the following sources:

- The common law (i.e. case law and precedents); and
- Legislation, read in light of directives, rules, and policy statements issued by government bodies (e.g. the MOM).

WHAT ARE SOME OF THE EMPLOYMENT-RELATED PIECES OF LEGISLATION IN SINGAPORE?

Employment Act 1968



This sets out the basic terms and conditions of employment that an employer must provide or comply with. It should be noted that the EA applies only to certain categories of employees.

Employment of Foreign Manpower Act 1990

This sets out the requirements and conditions relating to the employment of foreign employees.

Work Injury Compensation Act 2019

This regulates the payment of compensation to employees for injuries suffered in the course of their employment.

Retirement and Re-employment Act 1993

This sets out the provisions relating to the minimum retirement age and matters relating to the re-employment of employees in Singapore.

Workplace Safety and Health Act 2006 ("WSH")

This sets out the provisions relating to the safety, health and welfare of persons at workplaces. It imposes obligations on employers to provide a safe workplace for employees.

Industrial Relations Act 1960

This regulates the relationship of employers and employees in relation to trade disputes and sets out the provisions for the prevention and settlement of such disputes by collective bargaining.

Other legislation, such as the Central Provident Fund Act 1953, the Child Development Co-Savings Act 2001, the Holidays Act 1998, the ITA and the PDPA also impose specific obligations and provide assistance to employers and employees.

WHO DOES THE EA APPLY TO?

The EA is the primary statute governing employment law in Singapore. The EA applies to all employees in Singapore except seamen, domestic workers and persons employed by a statutory board or the government of Singapore.

Although managers and executives are entitled to the core protections under the EA (relating to e.g. salary payment, paid annual leave, paid sick leave, paid public holidays, employment records and recourse for wrongful dismissal), such persons are not entitled to the protections under Part 4 of the EA (relating to e.g. normal hours of work, payment for overtime work and rest days).

The MOM takes a broad view of what might be considered a managerial or executive position, indicating that managers and executives are employees with supervisory or executive functions. These functions include the authority to influence or make decisions regarding issues such as recruitment, discipline, termination of employment, assessment of performance and reward, involvement in the formulation of strategies and policies of the enterprise, or the management and running of the business. According to the MOM, managers and executives also include professionals with tertiary education and specialised knowledge or skills, and whose employment terms are comparable to those of managers and executives. In other words, a person may be regarded as a "manager" or

"executive" for the purposes of the EA, even if he or she has not been officially appointed as one.

If an employee who falls within the scope of the EA is hired on a part-time basis, his or her employment will be recognised and regulated by the Employment (Part-Time Employees) Regulations 1996. A 'part-time employee' is someone who works less than 35 hours a week.

You may also need to distinguish between a contract of service between an employer and employee, and a contract for service where an independent contractor (e.g. a vendor or self-employed person) is engaged for a fee to carry out an assignment or project. The MOM website has some helpful pointers on determining whether there is an employer-employee relationship. An employee working under a contract of service may be covered by the EA, but an independent contractor would not be.

WHAT HAPPENS IF THE EA APPLIES?

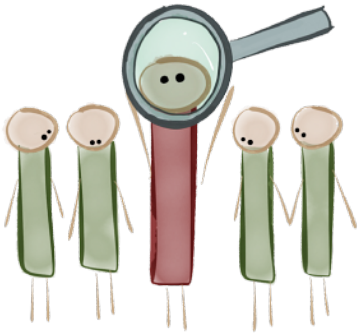
The EA provides for the basic terms and conditions at work for employees covered by the EA. If an employee falls within the scope of the EA, the employer must comply with the applicable obligations imposed on employers under the EA and provide terms which are no less favourable than those in the EA. Any clause in the employment contract that is less favourable than that in the EA will be null and void and the relevant provision in the EA will take precedence over the particular contractual term that is less favourable. For example, under the EA, an employee is entitled to paid public holidays in Singapore. Although most employers would provide public holiday leave benefits as a matter of customary practice to all employees (whether or not they fall under the EA), an offence will be committed if the employer does not provide these benefits to an employee who falls within the scope of the EA. Generally, an employer who does not comply with the requirements of the EA may be liable, on conviction, to a fine of up to $5,000 or to an imprisonment term of up to six months or both, and if there is a subsequent offence, a fine not exceeding $10,000 or to an imprisonment term of up to 12 months or both.

IF THE EA DOES NOT APPLY, CAN I CHOOSE TO PROVIDE ANY EMPLOYMENT TERM THAT I LIKE IN THE CONTRACT?

If an employee falls outside the scope of the EA, it will be generally up to you and the employee to come to mutual agreement on the terms of the employment. However, there are certain terms that you legally cannot contract out of (e.g. maternity benefits and CPF contributions). You must also bear in mind the

common law duties of an employer. For instance, employers owe a basic duty of trust and confidence to the employee. This duty requires the employer not to, without reasonable and proper cause, conduct himself or herself in a manner that may destroy or damage the relationship of confidence and trust between him or her and the employee. In addition, whether or not employees fall within the EA, employers are encouraged to adopt employment practices that are fair and equitable to all workers. These practices are set out in the Tripartite Guidelines for Fair Employment Practices. The government also encourages businesses to implement work-life strategies such as flexible work arrangements so that employees can enjoy better work-life harmony and employers can benefit from having a more engaged and productive workforce.

HIRING OF EMPLOYEES



As an employer, you should appoint competent and qualified employees. This means that your organisation should ensure that employees are properly qualified and are, if necessary, able to deal with special dangers. This can be performed by:

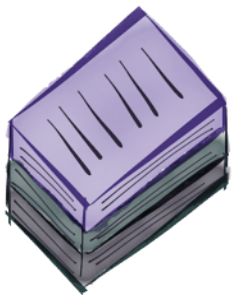
- Recruitment, Screening and Declaration:

Screening of prospective employees should include checks on candidate's employment and financial background. Candidates should be required to declare relationships (if any) with existing paid staff, volunteers and board members. Board members should be responsible and take part in the recruitment and appraisal of key senior staff.

- Employment Contract and Appraisal:

All staff should be recruited under a proper contract of employment. Annual appraisal should be conducted to assess the staff performance and this should be documented.

ADMINISTRATIVE ISSUES



Keeping of employee records

Under s.95 of the EA and the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016, every employer shall prepare and keep a register showing the:

1. personal particulars (i.e. name, address, date of birth, gender, identify card or foreign identification number);

2. employment period, salary period and (if applicable) overtime period;

3. hours worked (including the duration of any breaks, dates of public holidays and other holidays taken, dates of leave taken);

4. the basic rate of pay, allowances and (if applicable) overtime pay;

5. the amount of deductions made from the earnings of each employee employed by him or her; and

6. such other particulars as may be prescribed from time to time.

Keeping of safety records

Under s.18 of the WSH, the occupier of a workplace must keep the following records in the workplace for at least five years:

1. every document issued in respect of the workplace by the Commissioner for Workplace Safety and Health under the provisions of the WSH;

2. a copy of every notice furnished to the Commissioner for Workplace Safety and Health as required under the WSH; and

3. all reports and particulars prepared in respect of the workplace under the WSH.

Incident reporting

Accidents, dangerous occurrences and occupational diseases may sometimes occur in your organisation's workplace. When this happens, an incident report must be submitted to the Commissioner of Workplace Safety and Health and the MOM. In addition, employers and occupiers are required to keep a record of all incident reports for three years.

The most crucial information is:

1. date and time of the incident;

2. place of the incident;

3. name and identification number of the injured or deceased, if any;

4. name of the employer and occupier;

5. brief description of the incident; and

6. name and contact details of the person making the notification.

Further guidelines on what action should be taken after an accident are found on the Workplace Safety and Health Council's website.

For more details on the reporting of work-related accidents, please refer to https://www.mom.gov.sg/workplace-safety-and-health/work-accident-reporting/what-and-when-to-report.



Failure to make an incident report is an offence under the law.

OBLIGATIONS OWED TO YOUR EMPLOYEE[1]

Employee-employee conduct

As an employer, you are required to ensure that your employee is not a danger towards other employees. Generally, if you are able to anticipate that the relevant employee is likely to engage in misconduct and be dangerous towards other employees, you may be held liable for the consequences of the misbehaving employee's actions.

For example, certain employees may be inclined to play potentially dangerous pranks on other employees, or frequently get into fights with other employees. Other situations could involve sexual harassment or workplace bullying. As an employer, you may be held liable to the victims of such behaviour.

Calling for medical assistance

As an employer, you could also have a duty to call for medical assistance if you know your employee is seriously ill or injured at work.

Giving references

As an employer, you are not legally obliged to give references or testimonials for your current or past employees. You do not need to answer any questions posed by your employee's potential employer.

If you decide to give a reference, however, you should not be negligent. This means that you should not give a reference which is untrue, inaccurate or unfair. Even if the facts are correct, the overall impression given to the potential employer should not be misleading.

If the reference is given while the person is still an employee and the reference is given negligently, the employee may be allowed to resign on the spot without having to give notice or salary in lieu of notice. The basis for this is the breach of a 'trust and confidence' term.

Property loss

The employer is generally not liable for property damage suffered by the employee. This is mainly because it would not be fair for the employer to need to use insurance to protect against such losses.

Rest days

These rules only apply to workmen (i.e. involving manual labour) receiving a salary not exceeding $4,500 a month (excluding overtime pay, bonus or other allowance or wage supplements) and other employees (other than workmen, managers or executives) receiving a monthly salary not exceeding $2,600 (excluding overtime pay, bonus or other allowance or wage supplements), as set out in more detail in the EA.

The employee is allowed one day each week to be a rest day, without pay. The day is generally Sunday, however it can be determined from time to time by the employer. In the case of a shift worker, a rest day would be equivalent to a continuous period of 30 hours.

Payment on a rest day

The employee, who at his or her own request, works on his or her rest day is entitled to be paid:

1. The basic rate of pay for half a day's work if the period of work is not longer than half his or her normal work hours.

2. The basic rate of pay for a whole day's work if the period of work is longer than half but is not longer than his or her normal hours of work.

3. In addition to the amount in paragraph 2 above, a sum not less than 1.5 times his or her hourly basic rate of pay for each additional hour if the period of work is longer than his or her normal hours of work or part thereof.

The employee, who at the request of the employer, works on his or her rest day is entitled to be paid:

1. The basic rate of pay for a whole day's work if the period of work is not longer than half his or her normal hours of work.

2. The sum at the basic rate of pay for two days' work if the period of work is longer than half but not longer than his or her normal hours of work.

3. In addition to the amount in paragraph 2 above, a sum not less than 1.5 times his or her hourly basic rate of pay for each additional hour or part thereof.

The employer is very unlikely to be able to simply substitute a day off in lieu of the day designated as the rest day. If the employee works from Monday to Friday and is asked to work on Saturday, it is unlikely that he or she can claim the payment rates of a rest day. The rest day is more likely to be Sunday. Despite this, the employee's work would amount to overtime work and his or her payment would be according to that (which is not less than 1.5 times his or her hourly basic rate of pay).

This rest day entitlement applies to part-time employees who work at least five days in a week. However, the hourly basic pay only increases to 1.5 times his or her hourly basic rate of pay to the extent that his or her working hours are longer than the normal work hours of a full-time employee, if not, there is likely to be a situation in which part-time employees are paid more than the full-time employees for doing the same job for the same number of hours.

Overtime pay

These rules only apply to Part 4 employees as defined in the EA.

No employee is required to work for more than eight hours in a day or for more than 44 hours in one week. However, there are certain exceptions:

1. When the employee works less than eight hours on any particular day, he or she may be required to work for more than eight hours on another day; or

2. When the employee works for not more than five days in a week, he or she may be required to work more than eight hours a day.

For both paragraphs 1 and 2 above, the employee cannot be required to work more than nine hours in a day or for more than 44 hours in a week.

1. When by agreement under the contract of service, the number of hours of work in every alternate week is less than 44, the limit of 44 hours in one week can be exceeded. However, no employee can be required to work for more than 48 hours a week or for more than 88 hours in any continuous period of two weeks.

2. For shift workers, the periods of time as mentioned may exceed as long as the average number of hours worked over any continuous period of three weeks is not more than 44 hours per week.

The employee who, at the request of the employer, works overtime is entitled to be paid at the rate of not less than 1.5 times of his or her hourly basic rate of pay.

However, if the employee does not finish his or her work within the normal hours when he or she could have, and stays back on his or her own accord to finish the work, he or she cannot claim overtime.

If the employer sends the employee for training after office hours or on a Saturday (assuming that it is a non-working day), and the employee does not have the chance to refuse the employer's request, the hours may have to be taken into account.

If the employee is at home but is 'on call', only if he or she is actually called and is back at work, then do the hours count.

If the employee takes some leave (for example, sick leave, childcare leave or annual leave) during the week, or if there is a public holiday during the week, it is likely that the employee would be considered to have worked during those days when calculating the 44 hours limit.

DO I NEED TO PREPARE A WRITTEN EMPLOYMENT CONTRACT FOR MY EMPLOYEES?

Employers must issue a written record of the key employment terms to employees not later than 14 days after the day that the employee starts employment, unless exceptions apply. Key employment terms include the job title, main duties and responsibilities, start date of employment, work arrangements, salary period, salary, leave, medical benefits, probation period and notice period. Detailed requirements of these terms can be found at https://www.mom.gov.sg/employment-practices/contract-of-service/key-employment-terms.

Other than the key employment terms, there is no legal requirement that you need to prepare a written employment contract, however, it is customary and good practice to have employment contracts in writing so that disputes (if they do happen) can be more easily resolved (See Chapter 10 on the importance of written agreements). Written contracts can serve to protect both the employee and the employer. Some of the key terms to be included are: the commencement date, the remuneration, probation terms (if any), hours of work, benefits (e.g. medical benefits, bonuses) and termination procedures (e.g. one month's written notice).

There are also certain terms which are implied into an employment contract. Both the employer and employee are deemed to have certain implied rights and duties under the contract, even if these are not expressly stated in the contract (e.g. where the employment contract is very brief). These terms of the contract can be implied based on the parties' presumed intentions and are necessary to give business efficacy to the contract, based on longstanding custom or usage or by the law. Examples include the duty to pay salary, the duty to take reasonable care

of the employees' safety and the duty to reimburse the employee for expenses properly incurred when carrying out his or her duties.

Do note that employers must issue itemised pay slips to all employees covered by the EA, which are to be issued together with payment to the employee (or within three working days of payment) and in the case of termination or dismissal, together with outstanding salary. Detailed requirements such as what items to include and when and how to give itemised payslips can be found at https://www.mom.gov.sg/employment-practices/salary/itemised-payslips.

IS THERE ANYTHING ELSE I NEED TO BEAR IN MIND?

Yes. Apart from the above, other legislation may apply and you will need to be aware of your obligations as an employer and comply with the applicable requirements. An example is where you employ female workers. Even if they do not fall within the EA, they will be entitled to certain statutory maternity leave benefits if they meet specified conditions (e.g. where the child is a Singapore citizen). Likewise, parents will also be entitled to certain leave entitlements (e.g. childcare leave). These obligations are imposed pursuant to the Child Development Co-Savings Act 2001.

CAN I EMPLOY FOREIGNERS?

Yes, however, you must ensure that you apply for and obtain an appropriate work pass for the foreign employee before they commence employment with your organisation. These requirements are imposed pursuant to the Employment of Foreign Manpower Act 1990. There are various categories of work passes available, ranging from Employment Passes for professionals, managers, or executives who earn a fixed monthly salary of at least $5,600 (and have acceptable qualifications), 'S' passes for mid-level skilled workers who earn a fixed monthly salary of at least $3,300 (with relevant qualifications and work experience), to work permits which are generally issued to foreign unskilled workers.

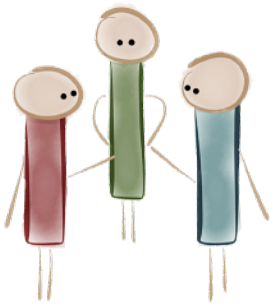
The MOM will take into account a wide range of factors when assessing each work pass application. More information on the qualifying criteria and application process is available on the MOM website.

Employers are required to consider Singaporeans fairly before hiring foreigners on Employment Passes, pursuant to the Fair Consideration Framework. Employers must advertise job vacancies on a jobs bank and the advertisement must be open to Singaporeans for at least 14 calendar days. These

advertisements should comply with the Tripartite Guidelines on Fair Employment Practices, and avoid stating a preference for nationality, age, race, religion, language, gender, marital status or family responsibilities. Firms with discriminatory hiring practices will be subject to scrutiny and may have their work pass privileges curtailed. These changes are in place to reinforce expectations for employers to consider Singaporeans fairly for job opportunities and to enhance job market transparency.

Do note that in Singapore, quotas are placed on the number of foreign workers that may be hired by an entity. These quotas vary depending on the type of sector (e.g. under the construction sector only seven work permit holders may be hired for every full-time local employee). These quotas are subject to change and you should check with the MOM website on the quotas applicable to your business.

RESOLVING DISPUTES



There sometimes will be disagreements and conflicts between people in the workplace. Should these disputes become serious, there are some ways of resolving them. The usual ways are through:

1. Litigation;

2. Arbitration; or

3. Mediation (at the Singapore Mediation Centre or within the court system). For more information, please refer to the Singapore Mediation Centre website.

Other means of resolving employment disputes include:

1. Filing a claim for mediation at the Tripartite Alliance for Dispute Management ("**TADM**").

2. If your dispute is unresolved after mediation at TADM and you have been issued a claim referral certificate by an approved TADM mediator, you can file an employment claim for certain types of employment claims at the Employment Claims Tribunals upon payment of a nominal fee. However, note that there is a time limit that differs depending on the situation and not all employees are covered by the EA.

3. For union members with collective bargaining or limited representation rights, they can approach their union for help to resolve the dispute internally.

4. Disputes between the union and the employer can be taken to the MOM for a conciliation process which often successfully resolves the conflict. The dispute can also be brought to the Industrial Arbitration Court, though this is less common.

SAFETY FOR YOU AND YOUR EMPLOYEES



Workplace safety is governed by the WSH. As an organisation and an employer, you are expected to abide by the WSH and ensure the safety and health of your employees at work.

Do note that volunteers, prisoners, and casual or temporary workers could be considered employees of your organisation.[1]

In addition, a workplace can refer to any premises where a person is 'at work'. The workplace need not be the primary workplace and can be any workplace.[2] As an organisation, 'workplace' could possibly cover any location where events or operations (such as fundraising and carnivals) are held. However, domestic premises are not considered 'workplaces'.[3] Similarly, places wholly or partly owned or occupied by the Singapore Armed Forces are exempted from the WSH.[4]

You may refer to the following guidelines to better ensure your employee's safety.[5]

Providing and maintaining a safe working environment which is without risk to health

1. The employer must ensure that the workplace is safe.

2. Ensuring that the employee has a safe place of work could be done by giving instructions regarding obvious dangers and safety equipment to deal with the danger.

3. This could cover matters such as insufficient lighting, but often this is relevant when an employee is sent to work in a place over which the employer has no control.

4. Employers may also have a duty to do a risk assessment to find out about the potential dangers before sending the employee to that place of work.

5. However, if the danger could not have been expected or foreseeable, despite employers having done a risk assessment, employers may not be liable.

Ensuring adequate safety measures are taken in your employee's use of any machinery, equipment, plant or process

1. The employer must ensure that the equipment used by employees is safe.

2. The scope of this area is wide. It covers the need to provide adequate or suitable equipment, for example, providing belts, boots, goggles or protective clothing in certain circumstances.

3. Employers need to note that it is not sufficient just to have the safety equipment available in the workplace:

    - The employer may also need to specifically hand the safety equipment over to the employee (this depends on various factors such as the risk of injury, the experience of the employee, and the distance the employee has to go to get the equipment).

    - In addition, the employer may need to educate the employee as to why the equipment is necessary, and even give firm instructions or have proper supervision to make sure that the equipment is being used correctly.

    - Also, the employer may have a duty to maintain and check the equipment regularly, especially if the equipment has caused problems before. However, if the equipment's latent defect caused the injury (and the equipment was purchased from a reputable manufacturer), the employer is generally not liable.

4. Providing adequate facilities and welfare arrangements at the workplace.

5. Ensuring that your employees are not exposed to hazards arising out of arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things in their workplace or near their workplace and under the employer's control.

6. Developing and implementing procedures for dealing with emergencies that may arise while your employees are at work.

7. Ensuring that your employees have adequate instruction, information, training and supervision as is necessary to perform his or her work.

Other necessary measures

1. Providing and maintaining first aid boxes and appointing first-aiders in the workplace.[6]

2. Submitting reports to the Commissioner of Workplace Safety and Health in respect of accidents causing death, dangerous occurrences, occupational diseases and certain types of non-fatal accidents at the workplace within ten days.[7]

Approved Codes of Practice

Codes of practice approved by the Workplace Safety and Health Council ("**Approved Codes of Practice**") can be referred to as a yardstick to assess whether your organisation has taken reasonable practicable measures to ensure safety and health standards.

The Approved Code of Practices is available on the Workplace Safety and Health Council website. The Code of Practices and Singapore Standards published by Enterprise Singapore can be purchased at https://www.singaporestandardseshop.sg/.

Penalties

There are general penalties for offences for which no penalty is prescribed under the WSH. For more information, please refer to https://www.mom.gov.sg/workplace-safety-and-health/workplace-safety-and-health-act/liabilities-and-penalties.

DO I HAVE TO MAKE ANY COMPULSORY CONTRIBUTIONS OR PAY LEVIES FOR EMPLOYEES?

You will need to make CPF contributions to employees who are Singapore citizens or Singapore Permanent Residents ("**SPR**"). For Singapore citizens, the employer's rates of contribution are dependent on the employee's age group, and for SPRs, generally on the length of period that the employee has been an SPR in

Singapore. In addition, you must pay a Skills Development Levy for all employees (whether full-time, casual, part-time, Singaporean or foreigners) up to the first $4,500 of their monthly gross salary at a rate of 0.25%. The minimum is $2 for an employee earning less than $800 a month and the maximum is $11.25 for an employee earning more than or equal to $4,500 a month. If your employee is employed on a work permit or 'S' pass, a foreign worker levy must be paid at a rate to be determined based on various factors, such as the worker's qualifications. These rates and fees payable are further explained on the CPF and MOM websites.

Besides employee-related CPF liabilities, you should be aware of your own CPF liabilities. If you are a social entrepreneur, you may be deemed a 'self-employed' person for the purposes of CPF contributions. While, as a self-employed person, you will be exempted from making mandatory CPF contributions, you may wish to build up your retirement savings by making voluntary CPF contributions, up to the approved limit. In addition, as a self-employed person, you must make mandatory contributions to your MediSave account if you earn a yearly net trade income of more than $6,000. This is to ensure that you have sufficient MediSave savings for your healthcare needs. If you are employed by your social enterprise, then the same general considerations that would apply to your employees would also apply to you.

How about volunteers?

As an organisation, you may seek volunteers to assist in your activities (e.g. to provide administrative support or services). As volunteers do not get paid for the services that they perform, employment contracts are customarily not provided to them, and an employment relationship does not normally arise between a volunteer and the organisation with which he or she volunteers. However, depending on the activities that your organisation is involved in, it may be prudent to set out the main responsibilities (e.g. conduct, behaviour, ethics) expected of your volunteers and, possibly, get them to sign a letter of understanding so that they are aware of their actions and resulting consequences. For example, if you operate an organisation that employs persons from marginalised communities (e.g. people with disabilities), you may want to make clear that the ill-treatment or bullying of your beneficiaries will not be tolerated. If your organisation handles confidential information, you can consider entering into a legally binding agreement with your volunteers to ensure that they keep any information that they come across during the course of volunteering, strictly private and confidential.

Do note that volunteers could be considered employees.[8] Hence, legislation applicable to employees above may be similarly applicable to volunteers.

Other duties owed to volunteers

Under s.2(5) of the Contracts (Rights of Third Parties) Act 2001, remedies will not be withheld from the third party on the basis that he or she is a volunteer.

Under s.6(2) of the WSH, an employee can be a volunteer who does work for another person with the knowledge and consent of the other person, and does the work on an ongoing and regular basis for that other person, being work that is in connection with any trade, business, profession or undertaking carried on by that other person.

Duties owed by volunteers

Volunteers owe a duty towards other persons that other regular persons would owe. Beyond this, volunteers may owe other duties. Volunteers who give advice must take particular care. If they give out bad information they may be liable in negligence. These are the conditions:

1. the volunteer must be in the business of giving advice;

2. the volunteer must claim to be, or seem to be, skilled and able to give advice;

3. it must be foreseeable that the other person would rely on what the volunteer said;

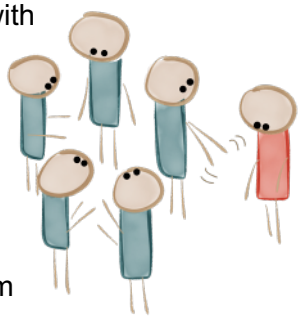
4. the other person must have relied on what the volunteer said; and

5. the other person must have suffered a loss or damage as a result.

Special duties arise where the volunteers are involved in outdoor activities, driving, preparing printed matters, or organising special events and fundraisers. You should ensure that volunteers are properly trained in the area of work they are involved in.

Although the volunteer's organisation can be held liable for the volunteer's actions, the volunteer himself or herself is not completely shielded from responsibility. The volunteer must always be responsible for his or her own actions. If his or her actions are unreasonable and out of the scope of his or her work duties, he or she may be liable for his or her actions.

EMPLOYING PEOPLE FROM MARGINALISED COMMUNITIES



People from marginalised communities include persons with disabilities, ex-offenders and ex-drug abusers, youth at-risk, persons recovering from psychiatric illness and individuals from low-income families who may face multiple problems. As a social entrepreneur, you may be keen to hire and help such people in order to boast a workforce that reflects the diversity of society, while fulfilling your social mission. The hiring process is often similar to that of employing people from non-marginalised communities. However, there are some additional issues that you should take into consideration.

In respect of persons with disabilities, you can enter into employment agreements with them if you advertise for a job and they apply for it, you are pleased with their credentials, and they have the ability or capacity to enter into a contract. If you need help with hiring persons with disabilities, many SSAs help place persons with disabilities and can help to facilitate the recruitment process.

To encourage employers to offer employment opportunities for persons with disabilities, the government operates an Open Door Programme ("**ODP**") and an enhanced Enabling Employment Credit scheme ("**EEC**"). The ODP helps employers to defray the costs associated with the hiring of persons with disabilities, such as those incurred in job redesign, workplace modification and the provision of support programmes. Employers can also tap on the ODP to receive subsidies in providing apprenticeships for persons with disabilities. The EEC scheme is a wage offset scheme, which is available up to December 2028, to support the employment of persons with disabilities. Under this scheme, employers may receive a credit of 20% of the monthly income of disabled employees aged 13 and above and earning below $4,000 per month, with such credit capped at a maximum of $400 per month per employee. An additional 20% offset, capped at $400 per month per employee for the first nine months of employment, is available if such disabled employee has not been working for the past six months prior to being hired.



If you are interested in hiring offenders or ex-offenders, you can register your enterprise with the Yellow Ribbon Singapore. Yellow Ribbon Singapore is a statutory board established under the Ministry of Home Affairs and it plays an important role in the Singapore correctional system through the provision of rehabilitation and aftercare services to inmates and ex-offenders. Yellow Ribbon Singapore provides employment assistance to offenders under various work release schemes. It also operates a

private sector participation scheme whereby social enterprises may set up factories within prisons and provide management, supervision, equipment and technical expertise and raw materials, while Yellow Ribbon Singapore and the Singapore Prison Service manages the welfare and discipline of the offenders.

Whatever the case, when you employ persons from marginalised communities, you must, as an employer, be respectful of their feelings and vulnerabilities, and for persons with physical disabilities, you must be open to providing the appropriate physical facilities (e.g. building ramps for employees in wheelchairs). Each person (whether or not they are from marginalised communities) should be provided equal respect and access to career development, training and advancement opportunities.

Practical considerations when hiring people from marginalised communities

To build an inclusive and supportive workplace, here are some key considerations to reflect on as you prepare to hire someone from a marginalised community:

- Is the prospective employee capable of entering into a contract? Does he or she understand the terms you are trying to propose?

- Is it acceptable for you, as a prospective employer, to talk to the employee's caregiver or should you approach the relevant NPO?

- How might you equip yourself to deal with consequences of your employee's actions? For example, if your employee with a physical disability inadvertently spills a drink on a customer in your food and beverage business, are you prepared to take responsibility for his or her actions? How would you then deal with the employee (if at all)?

- How might you design or build additional or special accommodation in your organisation for employees with disabilities?

- How might you accommodate persons with special needs? For example, if you hire a single mother, can you adjust HR policies to provide flexible working hours?

- How might you find the resources or talent to train or teach such persons to acquire the skills needed to work in your social enterprise?

- How might you inform or educate your customers on ways to work with your staff from marginalised communities?

IF I AM NOT INTERESTED IN KEEPING AN EMPLOYEE, HOW DO I LET HIM OR HER GO?

For employees who are covered by the EA:

1. The EA provides minimum notice periods, ranging from 24 hours to four weeks' notice depending on the length of employment. This does not prevent either party from waiving his or her right to receiving the notice; and

2. If there are grounds of misconduct or wilful breach of the employment contract by the employee, it is possible to terminate the contract without notice (i.e. summary dismissal). An employer is obliged to conduct due inquiry if he or she wishes to summarily dismiss an employee for misconduct. Essentially, due inquiry means that the employee must be afforded procedural fairness prior to dismissal. Although there is no prescribed procedure for the conduct of the inquiry, the MOM has issued guidelines on how an inquiry may be conducted. As a general guideline, the person hearing the inquiry should not be in a position which may suggest bias and the employee being investigated for misconduct should have the opportunity to present his or her case.

If the employee is not covered by the EA:

1. The employer may terminate the contract by providing notice, as stated in the employment contract. If no notice period is fixed in the contract, 'reasonable notice' must be given. What is reasonable will depend on factors such as the nature of the employment and the employee's length of service.

2. It is also possible for the employer to terminate the contract without notice on grounds of the employee's misconduct, or in the event of any wilful breach by the employee of a condition of the contract. When an employee is summarily dismissed, the company must be able to justify its grounds for the summary dismissal. If the grounds seem incorrect or insubstantial, the dismissal can be challenged. Nonetheless, the employee who is not covered by the EA is generally not entitled to an internal inquiry unless the employment contract expressly provided for it.

USEFUL LINKS

Grants and support for disability-inclusive hiring
https://www.sgenable.sg/your-first-stop/hiring-employment/employers/employ#open-door-programme--odp-

EA
https://sso.agc.gov.sg/act/ema1968

Yellow Ribbon Singapore
https://www.yellowribbon.gov.sg/

Employment of Foreign Manpower Act 1990
https://sso.agc.gov.sg/Act/EFMA1990

MOM
https://www.mom.gov.sg/

Central Provident Fund
https://www.cpf.gov.sg/employer

Tripartite Alliance for Dispute Management
https://www.tal.sg/tadm

Employment Claims Tribunals
https://www.judiciary.gov.sg/civil/file-employment-claim

Singapore National Employers Federation
https://snef.org.sg/

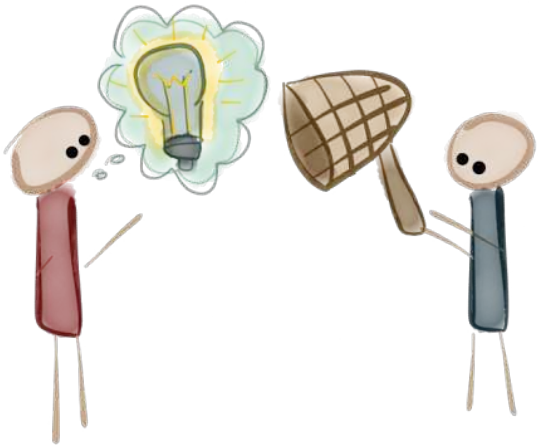
Made for Families
https://www.madeforfamilies.gov.sg/

Employment assistance for persons with disabilities
https://www.msf.gov.sg/what-we-do/help-those-in-need/article/programmes/employment-assistance-for-persons-with-disabilities

Support for working parents
https://www.profamilyleave.msf.gov.sg

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PROTECTING YOUR BUSINESS' INTELLECTUAL PROPERTY



WHAT IS INTELLECTUAL PROPERTY?

IP is a form of personal property, unlike land or your house, which are considered real property. IP is intangible in nature, which means that it is not a physical thing. It is in fact the fruit of intellectual effort and labour. IP is everywhere and is involved in every aspect of our daily lives. For instance, in the smart phone that you just texted your friend on (patents); in the book you are now holding and reading (copyrights); in the chair you are now sitting on (design); and the branded fast food you just had for lunch (trade marks).

As with all forms of property, IP can be exclusively owned, reproduced and commercially exploited. This would include being sold, licensed, franchised or even used as security for loans. With ownership or the proper authorisation, it is also possible to prevent others from owning, reproducing or commercially exploiting IP.

For instance, let us consider a book that you might currently be reading. You may have bought the book for money, but the purchase of a book does not give you the authority to make copies of the same book and to sell the copies. While you may have purchased a copy of the book (the physical article), the right to commercially exploit the book other than by selling the physical copy owned by you, belongs to someone else (the writer and/or the publisher).

The exclusive nature of rights relating to IP has made it possible for business owners to differentiate themselves from their competitors. Some business owners have in fact managed to raise millions, if not billions, of dollars from their IP. IP also very much forms an asset of a business (in the same way that land or buildings are), and can enhance the intrinsic value of a business.

This exclusivity is restricted to a fixed time frame depending on the type of IP. For example, patent protection lasts a maximum of 20 years; for registered design, protection lasts a maximum of 15 years; for copyrights, protection covers the life of an author and a further period of 70 years after his or her death; and for trade marks, registrations are valid only for a term of ten years although theoretically it is possible to keep renewing these terms indefinitely.

IP is also territorial in nature, meaning that the rights acquired in Singapore are enforceable only in Singapore and do not allow you the right to enjoy protection on a worldwide basis. For protection in another jurisdiction, you will need to acquire those rights in that jurisdiction either directly or through the auspices of the international offices set up by treaties signed between countries such as the Berne Convention, the Madrid Protocol or the Patent Cooperation Treaty.

*More information on IP can be found at the website of the Intellectual Property Office of Singapore ("**IPOS**").*

TYPES OF IP

The following types of IP are recognised in Singapore:



Registrable rights

These include:

- patents;
- trade marks;
- geographical indications;

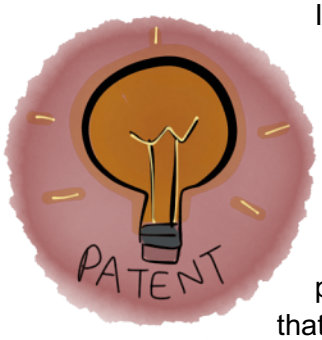
- industrial designs; and
- plant varieties.

Non-registrable rights

These include:

- copyrights;
- layout-designs of integrated circuits; and
- trade secrets and know-how.

PATENTS



In a nutshell, patents are granted for inventions which are novel.

As the owner of a patent, you will have the exclusive right to prevent others from the unauthorised use of the patented invention. Such uses include the making, using, importing or selling of products based on the invention. A patentable invention can be a new product, a new process that is a new technical solution to an existing problem or simply an improvement of an existing product or process.

The right to patent protection generally belongs to the inventor(s). However, s.49 of the Patents Act 1994 ("**PA**") provides that should the invention be developed in the course of work, then the right to the patent vests with the employer.

Patents do not arise automatically and an application must be filed in order for a patent to be granted.

The PA provides that in order for an invention to be patentable, it must satisfy the following criteria:

Novelty

An invention is considered novel if, prior to the filing date of the application for patent protection, the invention is not anticipated by anything which is publicly known, in any way, on a world-wide basis (i.e. all material elements of the invention should not have been found in something that was not kept a secret).

Until an application is filed to patent the invention, the owner of the invention should treat the invention as a trade secret or as confidential information (which is explained further below).

If the idea has already been disclosed, commercially exploited, advertised or demonstrated to would-be investors or collaborators, then there is a chance that the novelty of the invention may have already been compromised. For the protection of the invention, a non-disclosure agreement ("**NDA**") should be executed prior to disclosure.

It is a common misconception that concluding an NDA with someone will protect your invention. An NDA merely provides evidence that a specific piece of information has not been made public by handing it over to your contractual partner. It cannot protect the subject matter if the disclosure was made by someone who is not your contractual partner or controlled by your contractual partner.

Inventive step

The invention's improvement over an existing product or process should not be obvious to a person with the relevant technical skills or knowledge in the invention's particular field.

In practice, most inventions that are new are also seen as inventive, unless the invention is a combination of known features that are obvious. For example, adding one more known tool such as special type of pliers to a Swiss pocket knife could be seen as obvious, while providing a new method of making Swiss pocket knives more economically may be likely to be seen as inventive.

Capable of industrial application

The invention must have some form of practical application that allows it to be made or used in some form of industry. For example, an invention of a method of treatment of the human or animal body, by surgery, therapy or diagnosis practised directly on the human or animal body, is deemed to be not capable of industrial application and therefore is not patentable, while surgical instruments and medical devices such as diagnostic apparatus are patentable because they are made using industrial processes.

Once it is granted, a patent grants the owner of the invention 20 years' exclusivity (explained further below) starting from the date of the filing of the invention, and subject to the payment of annual renewal fees.

Although it is not mandatory to apply for patent protection in Singapore prior to seeking patent protection overseas, the PA requires any person residing in Singapore to first obtain National Security Clearance in the form of a written authorisation from the Registrar of Patents before seeking protection overseas. Contravention of this requirement is a criminal offence and any person convicted of such an offence is liable to a fine not exceeding $5,000 and/or imprisonment for a term not exceeding two years, although the offence may be compounded.

Territoriality

Patents are territorial in nature, meaning to say that they can only exist where a patent application has been filed. As the applicant, you can choose to file locally, or overseas by directly filing patent applications in the respective countries or by using an international or regional collective patent application, such as a Patent Cooperation Treaty patent application which is valid for about 150 international countries.

Making claims about patent rights

As the owner of a patent, you will be able to prevent the unauthorised making, disposal of, offering to dispose of, usage or importation or keeping of a product containing or utilising your patent.

However, please note that it is a criminal offence to make unauthorised claims about patent rights or patents applied for. This usually means that you cannot claim an invention to be 'patented' prior to the actual grant of the patent, or that the invention is 'patent pending' when there is no valid application for grant. Threatening someone with a cease and desist letter on the basis that you own a patent or that you have a pending patent when you do not may result in the other party bringing civil proceedings against you for groundless threats of infringement.

The PA sets out a list of statutory defences to an action for patent infringement. These include, amongst other things, the 'private user' defence: where the infringing act was done privately and not for commercial purposes.

For example, re-producing a patented mosquito trap for one's own home use is not considered to be a patent infringement, while selling the copied mosquito trap is a patent infringement.

TRADE MARKS



Trade marks are signs used by a business owner to distinguish the goods or services offered by his or her business from his or her competitors. Using a trade mark, you can 'educate' your customers as to the goods and services offered, particularly in the aspect of building goodwill and reputation.

Some examples of famous trade marks include Tiffany's, Coca Cola, McDonalds, Microsoft, Mercedes-Benz and Rolls-Royce.

A trade mark may be registered by making an application to the Registry of Trade Marks, either by the organisation itself or more commonly by an agent who acts on its behalf. Such an application may be made at any time, regardless of whether the trade mark has already been used or not.

A registrable trade mark must be a sign that is capable of being represented graphically and capable of distinguishing goods or services provided by one trader from another. A trade mark registration can last indefinitely, provided that you renew the registration every ten years and the registration is not challenged successfully.

A trade mark may be refused registration on the following grounds:

Absolute grounds (reasons) to refuse registration

If your trade mark is indistinct (e.g. a common laudatory word, such as 'Best') or is descriptive of the goods or services claimed (such as 'Durians' for a business selling fruits), the application for registration may be rejected so as to ensure that common words or descriptors remain available for use by the public.

A common word with a meaning that has nothing to do with the respective goods for which protection is sought may however be perfectly registerable as a trademark (e.g. the word 'apple' for computers).

Generally speaking, a descriptive or indistinct trade mark cannot be registered as a trade mark, unless it has acquired distinctiveness through use, meaning to say, the trademark has through your use become known to be a reference to your goods or services.

Relative grounds (reasons) to refuse registration

If your trade mark is considered identical or so similar that it is likely to be confused with an earlier registered trademark, the application for registration will be rejected.

Passing off

The law recognises another legal regime governing trade marks, in what is also known as the common law action for passing off. It is complementary to the registration regime under the Trade Marks Act 1998 and the registration of a trade mark does not extinguish the owner's entitlement to seek this legal recourse.

This is typically used to protect owners of unregistered trade marks. For example, passing off may be effective against infringers when the business owner are not 'first to market' locally, but whom have in fact gained popularity in other jurisdictions.

To succeed in an action for passing off, you must prove the following:

- There is sufficient goodwill associated with your business or trade acquired through the trademark or get-up used by you on your goods or services. Goodwill is a form of property constituting the market perception of the value and quality of a business and its products. Only this goodwill can be protected against interference or damage by passing off;

- There is a misrepresentation by the other party, leading to confusion or deception; and

- You have suffered or are likely to suffer damage as a result of the other party's misrepresentation.

Territorial

Trade marks are territorial in nature. Overseas trade mark filings can be made either through national filings of trademark applications or by using a collective system, such as the Madrid Protocol system, again administered by World Intellectual Property Organisation. The Madrid Protocol facilitates the filing of trade mark

applications in other Member States concurrently and produces the same effect as if a national trade mark application has been filed with the national trade mark office in each country designated by the applicant.

No need for secrecy

Secrecy does not protect trade marks. Prior use is effective in proving that the trade mark has in fact gained distinctive character (through its use) and is therefore registrable.

Some trade marks are so 'famous' that they are considered to be 'well-known marks'. These marks are offered greater scope of protection, even though they are not registered in Singapore. The owner of a well-known mark is entitled to take action against the use of a trade mark or business identifier if:

- Use of the trade mark or business identifier would indicate a connection between those goods or services and the owner of the well-known mark, and is likely to damage the interests of the owner of the well- known mark.

- The trade mark or business identifier is already well-known to the public at large in Singapore, where the use of the trademark or business identifier would cause 'dilution' in an unfair manner of the distinctive character of the well-known mark, or take unfair advantage of the distinctive character of the well-known mark.

'Dilution' happens when there is a lessening of the capacity of the trade mark to identify and distinguish goods or services (regardless of whether there is actually any competition between the owner of the trade mark and the other party), or where there is any likelihood of confusion on the part of the public.

A number of factors are considered in determining whether a mark is well- known in Singapore:

- the degree of knowledge and recognition by the relevant sector of the public in Singapore;

- the duration, extent and geographical area of the use or promotion of the trade mark;

- any registration or application for registration in any country;

- any successful enforcement of the trade mark in any country; and

- any value associated with the trade mark.

Generally, if a trade mark is well-known to a relevant sector of the public in Singapore, it can be considered as well-known in Singapore. The 'relevant sector' includes suppliers, distributors, competitors, customers and other relevant stakeholders in the industry.

GEOGRAPHICAL INDICATIONS



Geographical Indications ("**GI**") are signs that can be used in identifying products originating from a particular location. Traditional and well-known examples of GIs include 'Bordeaux' (red wine), 'Champagne' (sparkling wine), 'Darjeeling' (tea) and 'Modena' (balsamic vinegar).

A GI is not the same creature as a trade mark. A GI informs the public that a particular product originated from a specific place or region and has special qualities due to that specific place or region. The GI is exclusive to all producers or traders whose products originate from that specific place or region and which share those special qualities. A trade mark, on the other hand, is a sign used by a business to distinguish its goods or services from those of its competitors. A trade mark gives its owners the right to prevent others from using the mark.

Under the Geographical Indications Act 2014, GIs may be registered to enjoy enhanced protection where GI labels cannot be used on products which do not come from the place indicated by the GI, even if consumers would not be misled as to the products' true geographical origin. Once a GI is registered, it will be protected for ten years from the date of registration. A GI may not be protected if, amongst other things, it is:

- immoral or against public order;

- no longer in use or no longer protected in the country of origin; or

- the common name in Singapore for the goods or services which it identifies.

INDUSTRIAL DESIGNS



Registered industrial designs (or plainly registered designs) protect an article's features, which include shapes, configurations, patterns and ornaments. Under the Registered Designs Act 2000 ("**RDA**"), the owner of a registered design has the statutory right to prohibit the unauthorised use of the design for maximum of 15 years subject to the payment of renewal fees every five years.

In order for a design to be accepted for registration, it must be new or novel. This means that the design must not have been registered or published anywhere in the world before the date of the first application for registration. In order to preserve the novelty in the design, the owner of a design must avoid disclosing the design until a design application is filed.

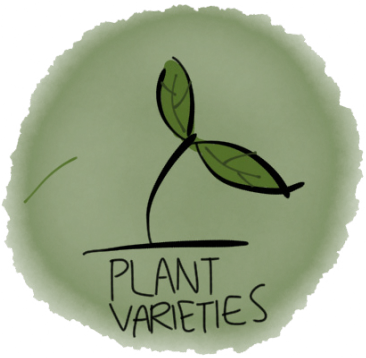
An example of a registered design would be the packaging in which your products are displayed or the shape of your product.

Under the RDA, the following cannot be registered as a design:

- designs that are contrary to the public order or morality;
- computer programs or layout-designs of integrated circuits;
- designs applied to certain articles which may be protected by other IP;
- any method or principle of construction;
- designs which are purely functional; or
- designs that are dependent upon the appearance of another article, of which it is intended by the designer to form an integral part; or enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function.

Generally, the RDA provides that the designer is usually the owner of the design. However, this position can be contractually amended. The RDA recognises that where a party has created a design in the course of his or her employment, then his or her employer shall be deemed to be the owner of the design.

PROTECTION OF PLANT VARIETIES



Under the Plant Varieties Protection Act 2004 ("**PVPA**"), a breeder may apply for and be granted protection for plant varieties cultivated by the breeder. In doing so, the breeder is able to prevent others from doing any of the following acts in respect of the propagating material and/or harvested material of the protected plant variety:

- production or reproduction;
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other forms of marketing;
- exporting;
- importing; and
- stocking for any of the purposes mentioned above.

It is also possible for the breeder to seek protection under the PA, insofar as the variety or biological processes can satisfy patenting requirements. However, the breeder must choose one or the other.

Protection under the PVPA requires novelty, distinctness, uniformity and stability. Like all other registrable IP, registration grants to the owner exclusivity in the commercialisation and exploitation of the registered plant variety.

COPYRIGHTS



Copyright law protects the original expression of ideas contained in a tangible form. This includes written articles, songs, videos, or photographs which you or your organisation may produce from time to time. However, copyright law does not protect the idea itself. Therefore, protection under copyright law does not extend to concepts, discoveries, procedures, methods or techniques, unrecorded speech or writing and information or works that are already in the public domain.

Singapore's Copyright Act 2021 ("**CoA**") grants protection to a range of works broadly categorised as 'Literary' (novels, poems), 'Dramatic' (plays, dances), 'Musical' (songs) and 'Artistic Works' (paintings, photographs) (collectively, literary, dramatic, musical or artistic, "**LDMA**"), as well as neighbouring rights or entrepreneurial rights such as recordings, broadcasts and live performances (also known as derivative or secondary rights). Copyright exists in all 'original' works. Copyright is not found only in high-brow works of art, and can include works with purely functional writing or drawings (such as computer programs or diagrams). 'Originality' simply means that the work must have been created by the author independently.

However, copyrights are not registrable. Anyone claiming infringement must prove (i) ownership and (ii) unauthorised use.

Earlier, it was mentioned that copyrights are protected for the lifetime of the author plus 70 years. However, secondary rights have a shorter protection period of between 25 years (layouts of published editions of LDMA works), 50 years (from the end of the year of making a broadcast or cable programme) and 70 years (from the end of the year of a performance or release of the recording or film).

Generally, the owner of the copyright is the author of the work. [1] This includes situations where the author was paid under an agreement (i.e. commissioned) to create the work (this is subject to contract, which means that the author and commissioner can agree in writing that someone else will own the copyright instead). There are some exceptions to the rule, for example, if the work is created pursuant to terms of employment, then the employer owns the copyright in the work.

Consent is usually required for the use of copyright work. However, certain uses of copyright work without consent (also known as 'fair use'), are permissible. In order for 'fair use' to be established, the following factors must be considered in totality:

- purpose and character of the dealing (is it commercial or non-profit?);
- nature of the work being copied;
- portion of the work being copied (is it substantial or material?); and
- effect on the potential market or value of the work being copied.

Other exceptions under the CoA include:

- copying for the purposes of study or research;
- fair dealing for the purposes of criticism, review, or reporting current events where sufficient acknowledgement of the copied work is given;
- copying for the purposes of judicial proceedings, or seeking or rendering professional legal advice;
- performance of LDMA of a religious nature, in the course of services at a place of worship or other religious assembly; and
- parallel importation of an article which is not an infringing copy.

So how would you know if your action amounts to 'fair use' or an exception permitted by the CoA? It is really a question of fact that can only be answered on a case-by-case basis. However, there are guidelines that may prove to be useful:

- Is the copy an infringing copy (made without permission or consent)?
- If it is an infringing copy, did you manufacture, sell (five or more copies), possess, import or distribute the infringing copy?
- Did you fail to acknowledge the author or owner?

If the answer to any one question is 'Yes', then it is likely that you may have committed copyright infringement.

The forwarding of emails containing copyrighted materials without consent may also constitute infringement. Likewise, downloading of information from the internet without consent can also constitute infringement.

Infringement of copyrights may result in both criminal and civil liability.

LAYOUT-DESIGNS OF INTEGRATED CIRCUITS ("IC"S)



The Layout-designs of Integrated Circuits Act 1999 ("**LDICA**") protects essentially the three-dimensional character of the elements and interconnections of an integrated circuit.[2]

As with the other types of intellectual property, the protection pivots on whether an original layout-design exists. An integrated circuit's layout design can be considered 'original' if it is based on the creator's ideas or studies and if there is nothing like it made by others at the time of its creation.

Protection of the layout-design is automatic, provided that its owner qualifies for protection under Singapore law. This means that the owner must be either:

- a qualified person (i.e. a citizen or resident of Singapore or a member country of the World Trade Organisation, or a country designated by Singapore as 'qualifying'), who has a real and effective industrial or commercial establishment for the creation of layout-designs or for the production of integrated circuits in Singapore or that a qualifying country;[2] or

- a person who is the owner of the lay-out design which was not commercially exploited anywhere else in the world before it was commercially exploited in Singapore, or in a qualifying country.

The qualified owner must be either the creator of the layout-design, the commissioning party or the employer of the party who created the layout- design.

Any IC created after 15 February 1999 (i.e. the date of enactment of the LDICA) will be protected for a period of ten years if it is first used commercially within five years of creation. In any other case, it will be protected for 15 years from the date of its creation.

The owner can exercise his or her rights under the LDICA by taking legal action against the infringing party, including seeking relief in the form of an injunction to stop the infringing action, demanding for the profits gained by the infringing party at his or her expense and/or seeking damages for the loss suffered.

TRADE SECRETS AND KNOW-HOW



As its name suggests, trade secrets cover information and know-how that may be confidential and unknown to the public. It is usually taken to mean information that has commercial value and could include recipes, methods or techniques. Not all pieces of information are considered to be trade secrets. In Singapore, trade secrets or know-how are protected primarily through the law of confidence. Three elements need to be satisfied in order for the court to find a breach of confidence; in particular the information must have:

- a quality of confidence (meaning that the information must not be freely available in the public domain);
- been imparted under circumstances importing an obligation of confidence; and
- been used in an unauthorised fashion generally (although this is not always necessary), to the detriment of the originating party.



Marking a document or a set of information as "PRIVATE & CONFIDENTIAL", "RESTRICTED", "EYES ONLY" or "TOP SECRET" does not necessarily make that document or information confidential or a trade secret. Such measures are not conclusive. They are, at best, indicative of one's intention, and the circumstances must be assessed as a whole.

By their very nature, trade secrets or know-how cannot be protected by registration. The only way to protect confidential information or trade secrets is to not disclose such information and ensure it is kept hidden away (if in physical form). Where disclosure is necessary for the advancement of your commercial objectives, then keep a clear record of to whom and when a particular piece of confidential information or trade secret was disclosed. It is critical that you bind the receiving

party with non-disclosure obligations (e.g. by way of a NDA or such other formal contract).

If a license agreement is based on a trade secret, the respective confidential information must be provided in written form and it must be relevant for the license agreement, otherwise the license agreement may potentially be void under the prevailing anti-competition legal framework.

As trade secrets become free public knowledge upon publication, even if this is a result of a breach of contract, it is best to protect one's trade secrets by registering them as patents or industrial designs.

WHY DOCUMENT OR REGISTER YOUR IP?

As discussed above, IP accords your organisation with protection over your intellectual assets against infringement.

Notwithstanding the fact that your business is an organisation serving a social need or charitable purpose, the registration of IP can enhance the value of your goods or services to your customers. This helps ensure that your organisation maximises its earnings and thus reaches its commercial and social goals in a more efficient manner.

Proper documentation and registration reduce the anxiety and stress that come with inadequate protection. It will be too late to start thinking of IP rights once they are violated, or once you unwittingly violate those of others. As the old adage goes, a stitch in time saves nine.

As the owner or holder of IP, you will be able to prevent the continued unauthorised usage, seek an account of profits from the infringer, and/or request for compensation. It is also possible to request for the delivery up of the infringing articles.

Though great steps have been taken in the past years to simplify the registration processes for various IP rights in Singapore, it is often the case that business owners may continue to find the registration and/or documentation processes to be daunting, time-consuming or simply a distraction from your pursuit of your passions, concerns and business. IPOS has on its website useful guidelines for use in figuring out the registration process. However, when in doubt, always seek help from your lawyer and where applicable, your patent agent.

So how do you differentiate between the different IP rights? Is it even necessary to know the difference? Knowing the difference is half the battle won in gaining control of and exploiting the IP rights crucial to your organisation's growth and continued operations.

DETERMINING THE TYPE OF IP PROTECTION NEEDED

One useful but non-exhaustive rule of thumb in deciding which IP rights are crucial to your business is this: what is the originality that you are seeking to protect?

For instance, a social enterprise operating a food and beverage business will have to ensure that its recipes are protected as trade secrets. In the same breath, the same social enterprise may find that it has little or no use for patents in a 'mature' industry that thrives on branding or the 'personality' attached to the goods or services provided. Thus, patent protection may not be relevant.

A fashion business may find it profitable to register its more popular original T-shirt designs and prints as industrial designs, as this would help to ensure that competitors do not copy its designs and undercut it, in terms of pricing.

In contrast, a social enterprise attempting to create cheap and powerful computers or daily consumables from sustainable and biodegradable sources will find that patents are more important to it than any other types of IP.

All businesses at some point will find it useful to protect their trademarks. Invariably, all businesses will need to create brand identity, awareness and loyalty so as to separate themselves or their goods and services from their competitors. Registering one's trademarks is in most cases a vital and necessary step.

VOLUNTEERS AND IPS

Unlike IP created by contractors who are commissioned or employees in the course of their employment, the line of ownership over IP created by volunteers working with your organisation may be blurred due to the fact that most volunteers work for free.

This problem can often be resolved by ensuring that the volunteers sign a legally binding release form or at the very least, agree to your terms of engagement that states that they have agreed to assign all IP rights to you. For instance, in contributing to this book, each volunteer lawyer was made fully aware of the term

that Pro Bono SG will own the copyright in the contributed literary works created by each volunteer lawyer.

INCENTIVES AVAILABLE

In order to incentivise businesses to hold and commercialise IP in Singapore, the government has implemented various schemes over the years (some no longer applicable), including:

- the Productivity and Innovative Credit ("**PIC**") Scheme—PIC benefits are given to qualifying expenditures, such as expenses incurred in the filing and registration and acquisition of IPs. The PIC scheme has expired after YA 2018. Businesses are not allowed to claim PIC benefits on expenditure incurred after the basis period of YA 2018.

- In Budget 2019, the government extended the granting of writing-down allowances on capital expenditure incurred for IP rights acquisitions up to the last day of the basis period for YA 2025.

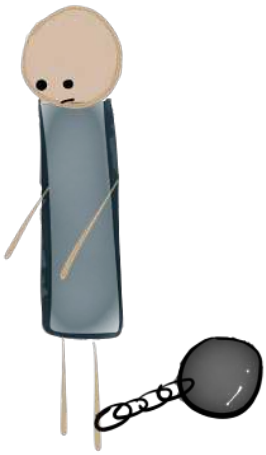
- As announced in Budget 2023, under the Enterprise Innovation Scheme ("**EIS**"), to encourage more firms to engage in IP-related activities and use innovations to improve their productivity and outcomes, the writing-down allowances will be extended to capital expenditure incurred in respect of qualifying IP rights acquired on or before the last day of the basis period for YA 2028.

For the purpose of claiming write-down allowances, capital expenditure excludes legal fees, registration fees, stamp duty and other costs related to the acquisition of the IP rights. Companies should seek the assistance of a tax adviser on how best to maximise their tax incentives and benefits.

Some other incentive schemes related to innovation that may be available to businesses that are provided by the Economic Development Board include the IP Development Incentive, which aims to encourage the use and commercialisation of IP arising from research and development activities.

13

RESTRAINT OF TRADE



Saying goodbye is part and parcel of running any organisation. For example, some of your employees may decide to leave your business and work somewhere else, while you yourself may decide to sell your business. This section briefly sets out some of the ways you can protect your organisation when your employee, or perhaps even you, decide to move on to work for another business. One of the main ways to do so is to insert a restraint of trade clause in a contract regarding the sale of a business or the terms of employment. However, restraint of trade clauses will be closely scrutinised by the courts and will need to be very carefully drafted in order to have legal effect.

You should also note that the clauses described below typically arise in an employer-employee relationship. You may also request that your volunteers or employees agree to such clauses to protect your business interests, trade secrets and confidential information. In practice, it may be difficult to persuade these volunteers to do so, and it may be helpful to explain to them why these issues are important for your business or to the cause that you are working for.

CAN I PREVENT AN EX-EMPLOYEE FROM BECOMING MY COMPETITOR?

Yes, you can—with a restraint of trade clause, but only within reasonable limits. It is common for a restraint of trade clause to be included in an employment contract. The essence of such a clause in an employment contract is that an employee agrees with their employer to restrict the employee's liberty in the future to do similar work for other persons. For example, the clause might stipulate that an employee cannot work for your direct business competitors for a certain period of time after leaving your employment. Alternatively, the clause may stipulate that the employee may not establish their own business in the same industry if that would bring them into direct competition with you, their previous employer. Such clauses may provide that breach would result in payment of a penalty sum, or forfeiture of a loyalty payment.

While it may seem fair to you that an employee should be prohibited from competing against you after they leave your business, the reality is that the courts frown upon restraint of trade clauses because such clauses are generally contrary to public policy. Restraint of trade clauses discourage competition and may, in extreme cases, take away the livelihood of the person suffering the restraint. Consequently, the default position is that restraint of trade clauses are not enforceable, unless it can be shown that they are reasonable and genuinely protect a recognised interest (e.g. the goodwill of the company). Some important factors that the courts will look at in considering whether the clause is justified include:

- **The geographical scope of the clause**



A restraint of trade clause is more likely to be found to be reasonable if it covers a smaller and definitive area of land. For example, in a Singapore case, the courts appeared to take the view that a clause prohibiting a dentist from practicing within a three-kilometre radius from one of his employer's clinics could be valid. In another case, the courts held that a restrictive clause which extended to Malaysia was not reasonable as the company did not have any ongoing business in Malaysia. (Note however, that this does not mean that clauses which relate to foreign customers or business presence, are automatically unenforceable. See the table on page 200 for more detailed examples.)

- **The duration of the restriction in the clause**

A clause that is unlimited in time is very likely to be struck down by the courts. There are no specific acceptable durations and an acceptable clause depends on the circumstances of the case. Relevant factors include the nature of the ex-employee's involvement in the company, the scope of the services and activities, and also the industry in question. Generally, shorter durations such as six to nine months are more likely to be thought of as reasonable than longer durations such as two years.



- **The scope of activities that the clause captures**

The wider the scope of the clause is, the less chance there is of the clause being upheld. For example, if your restraint of trade clause restricts your employee from performing tasks that are not related to your organisation, it is likely to be deemed unenforceable.

Ultimately, the courts will consider the specific facts of each case in deciding whether a clause is justified. What may be reasonable and justified based on one set of facts may well be found to be unreasonable in a different context, based on the type of industry, nature of work, length of time, and other specific factors. This can be seen from the table on the following page, which sets out some examples of restraint of trade clauses and how they were interpreted by the courts.

More significantly, if the restraint of trade clause in an agreement is found to be unenforceable, there is a possibility that your entire contract may be void if the restraint of trade clause cannot be 'severed' from the contract. Thus, while it is understandable that you may want to restrict your ex-employees from competing against you, you must be very careful to make sure that any restraint trade of clauses in any employment contract will be accepted before the Singapore courts. When starting your business, you should thus:

1. Firstly, consider if all of your employees need to sign a restraint of trade agreement or have a restraint of trade clause in their contract, or whether this can be limited to certain employees who hold key positions in your business.

2. Next, obtain legal advice on how to word your restraint of trade clause or agreement so that the courts are more likely to find this clause or agreement enforceable.

RESTRICTION IMPOSED BY CLAUSE	COURT'S DECISION
Clause restrained a performing artiste's ability to make a living (i.e. by writing or performing music).	Clause was invalid as it was unduly restrictive and one-sided, with prolonged duration (e.g. no fixed duration).
Clause allowed employer to forfeit employee's deferred bonus if employee were to quit and join competitor during the effective period of a non-compete clause.	Clause was valid as the clause did not prohibit employee from competing with ex-employer, but merely financially discouraged him from doing so.
Clause prohibited employee from working with businesses in Singapore and Malaysia in competition with employer for a period of two years post-employment.	Clause was valid because the employer had legitimate proprietary interest and the scope of protection was reasonable. Employer operated in the marine winch industry, which is a relatively small and specialised industry with only a select group of potential customers, and the restriction was limited to the employer's particular industry and not the marine industry as a whole.
Clause prohibited an employee from engaging in competition with the employer for a period of one year after employment in the electronic components market.	Clause was invalid as the shelf-life of electronic components was volatile, and newer and better components were being released into the market all the time.
Clause prohibited employee from being employed by or engaged in business with any other business in the cybersecurity or intelligence industry.	Clause was unreasonably wide in scope, especially given the restriction had a term of 12 months and lacked geographical limitations.

CAN I PREVENT AN EX-EMPLOYEE FROM SOLICITING OR 'POACHING' MY EMPLOYEES?



Companies are also entitled to protect their interest of maintaining a stable, trained workforce via a non-solicitation clause. Such a clause may restrain the employee from soliciting the employment of other employees in the company.

Like restraint of trade clauses, the starting position is that a non-solicitation clause is not enforceable, unless it can be shown that it is justified. A non-solicitation clause is valid if, in the court's opinion, it is reasonable when considering the interests of the involved parties (the company and the employees) as well as the interests of the public. The court must be satisfied that the clause offers adequate protection to the party, and at the same time does not injure the public interest.

In determining whether the clause is reasonable, the court will consider the background in which the clause was made. The questions the court will ask may include the following:

1. What is the category of employees covered by the clause? Does it cover all employees, regardless of seniority? Does it cover employees even though their work involves minimal (or no) expertise? If the answer is yes, it will be more difficult to persuade the court that the clause is reasonable.

2. What is the duration of the non-solicitation clause? Is it for a few weeks, a few months or a few years?

3. Was the non-solicitation clause agreed upon in good faith? Were all parties satisfied with the clause? Or was the employee forced into agreeing to the clause?

Before signing an employment contract containing a non-solicitation clause, both the company and the employee should review the wording of the clause carefully, seek legal advice and carefully consider whether the clause is acceptable to them.

Case Study

In 2010, Albert and Bryan established Company X together. Company X's business involves selling customised chocolates for parties and weddings. Company X hires non-mainstream workers to wrap the chocolates.

Their jobs only involve gluing the wrappers together. They are not involved in the design or the production of the wrappers, nor are they involved in marketing or publicity.

In 2011, Albert and Bryan have a fight, following which Bryan decides to leave Company X. Bryan sets up Company Y, which replicates Company X's business model. Bryan approaches Dawn and Evan, who were employed by Company X to wrap chocolate. Bryan asks Dawn and Evan to join Company Y, and he promises to pay them double what Company X had paid. Dawn and Evan agree. Albert finds out about this and he is furious. It turns out Bryan's employment contract with Company X stated that Bryan was preventing from soliciting the employment of any of Company X's employees (including employees like Dawn and Evan) for a period of 20 years. If Albert sues Bryan for breach of the non-solicitation clause, it is likely that the court will hold that the non- solicitation clause was unreasonable and invalid. The clause is too wide given that it covers employees whose work involves minimal expertise, such as Dawn and Evan. Moreover, the non-solicitation clause's duration is too long—it lasts for 20 years—even though Bryan only worked in Company X for one year.

IF I BUY A BUSINESS, CAN I STOP THE SELLER FROM COMPETING WITH ME?

If you are thinking of buying or selling your business, or any part of it, you may wish to consider including restrictive covenants in the sale and purchase agreement. These provisions may restrict the seller from:

1. soliciting customers or suppliers of the business for a specified period;

2. soliciting and employing employees of the business for a specified period; and

3. competing generally with the business for a specified period within a specified area.

If you are buying a business, you may wish to ensure that the seller agrees to such restrictive covenants. If not, you run the risk that the seller may then set up a competing business, which may in turn entice the customers, suppliers and employees of your newly acquired business.

If you are selling your business, the buyer is likely to insist on such restrictive covenants to ensure that the business they are buying retains its value. Restrictive covenants are often hotly negotiated because they may impact the value of the business that is being sold, and the purchase price.

The starting point is that all restrictive covenants are void and unenforceable, unless the buyer can show that:

1. the clause is reasonable in the interests of the parties and the public; and

2. there is a legitimate interest to be protected, such as the trade connections and goodwill of the business.

The restrictive covenant should go no further than necessary to protect the buyer's legitimate interests in order to be deemed reasonable.

Therefore, it is essential for any buyer to identify the relevant field of business, geographical area and period for restrictions required for the protection of the target business and not to seek restrictions greater than those actually needed.

In general, the Singapore courts are more likely to uphold restrictive covenants in the context of sale or business, than a restraint of trade clause in an employment contract. This is because in a business sale, the buyer is also buying the goodwill of the business, which could suffer if the restrictive covenant is not upheld. The negotiation will also depend on the relative bargaining power of both the buyer and seller. Nevertheless, it is still important to draft such covenants carefully and precisely and seek legal advice on this. Depending on the facts of your case, your lawyer may also be able to suggest ways to draft the restrictive covenants so that they are more likely to be enforceable.

There is also another legal limitation on restrictive covenants in a sale of business. S.34 of the Competition Act 2004 prohibits any agreement that has the object or effect of preventing or restricting competition in any market in Singapore. Any person that infringes the s.34 prohibition may be fined. However, where agreements are directly related and necessary to the implementation of an acquisition or merger, these are exempt from the s.34 prohibition. You may also wish to refer to the Guidelines issued by the Competition and Consumer Commission of Singapore, which set out further information on how the s.34 prohibition is applied.

It is important to ensure that any restrictive covenants that you agree to should be directly related and necessary to the implementation of the sale of your business.

Case Study

In 2012, Anne and Melvin set up Company Y, which runs a successful cafe in New Town GRC selling food, drinks, and handicrafts made by underprivileged women. In 2013, Anne and Melvin decide to concentrate on the handicrafts business alone, and sell the food and drinks business to Company Z. Company Z insists that as part of the sale of business, Company Y may neither set up another cafe nor sell handicrafts in New Town GRC for the next six months. The restrictive covenant preventing Company Y from selling handicrafts in New Town GRC is likely to be unenforceable as it is wider than necessary to protect Company Z's legitimate interests in the food and drinks business that it is buying. Company Y may wish to ask for this portion to be removed from the agreement on the sale of business. This would allow Company Y to sell handicrafts in New Town GRC, without the risk that it may breach the agreement.

CAN I PROTECT MY TRADE SECRETS AND CONFIDENTIAL INFORMATION?

It is prudent to incorporate specific confidentiality clauses into your employment contracts to prevent the dissemination and use of your business' confidential information, including trade secrets. Such clauses seek to prevent your employees from divulging your business' confidential information during and after their employment, and are sometimes incorporated into the restrictive clause of an employment contract.

When drafting such clauses, try as far as possible to define what you consider to be a trade secret or more generally, 'confidential information'. You should seek to protect only information which is truly relevant to your business, or you may compromise your position should the matter have to be decided in court. If you claim confidentiality over all types of information, the courts are likely to conclude that you do not seriously have any trade secrets to protect. Refer to Chapter 12 on Protecting Your Business' Intellectual Property, to find out more about what constitutes 'confidential information'.

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PRODUCT LIABILITY



WHAT IF SOMETHING IS WRONG WITH YOUR PRODUCT?

If there is something wrong with my product, will my organisation be exposed to any liability? Will customers be able to make claims against my organisation? What liabilities will my organisation be exposed to? These are some of the things that you may be concerned with if you are running a social enterprise or NPO.

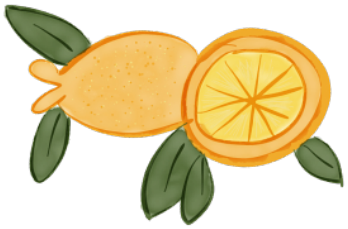
WHICH LAWS APPLY?

1. 'Lemon Law', officially known as Part 3 of the CPFTA;

2. Sale of Goods Act 1979 ("**SOGA**"); and

3. The common law tort of negligence.

WHAT TYPES OF PRODUCTS ARE COVERED?



The Lemon Law and SOGA cover all new and second-hand consumer goods purchased in Singapore, except real property (i.e. land or buildings) and leased goods.

For example, services and virtual goods are not covered by the Lemon Law and SOGA. However, physical goods bought online, such as clothing sold online at 'blogshops', are covered by the Lemon Law and SOGA.

WHAT DEFECTS ALLOW A CUSTOMER TO MAKE A CLAIM?

A consumer can sue you under the Lemon Law if you have provided the consumer with a defective product. The Lemon Law can be found under Part 3 of the CPFTA. A defective product is defined as something that does not conform to the agreement at the time of delivery.

Under the Lemon Law and SOGA, a product is defective where:

1. The product does not correspond with its description in the contract of sale between you and the customer.

   For example, you advertise on your website a bottle of red wine but deliver a bottle of white wine instead.

2. The product is not of satisfactory quality. Factors affecting quality include:

   - fitness for all the purposes for which goods of that kind are commonly supplied;
   - appearance and finish;
   - freedom from minor defects;
   - safety; and
   - durability.

   For example, a baby chair which has a tendency to topple over, or a wooden chair with splinters sticking out of the seat.

3. The product does not correspond to the sample you had shown to the customer on which they had based their decision to buy your product.

   For example, the customer orders a leather sofa based on the leather sample seen in the showroom, but the leather sofa delivered differs from the sample in that it has many blemishes and is of a different colour.

TIMING OF THE CUSTOMER'S COMPLAINT

Under the Lemon Law, if a customer reports a defect in your product to you within six months of taking delivery, the law presumes that the defect existed at the time of delivery and you will have to rectify the defect. If you want to prove otherwise, the onus is on you to disprove the presumption.

If the customer reports the defect after six months of taking delivery, the customer will have to prove that the defect was there at the time of delivery.

WHAT YOU HAVE TO DO TO MAKE IT RIGHT—THE 4 'R'S

Under the Lemon Law, if you are obliged to rectify the defective product, the consumer can ask you to either:

1. **R**epair the product; or
2. **R**eplace the product.

If repair or replacement is possible, you have to do so. You have to repair or replace the product within a reasonable time, without causing significant inconvenience to the customer, and bear any necessary costs incurred in doing so.

However, if repair or replacement is impossible or disproportionate in cost to the remedies below, you can choose to either:

3. **R**educe the price to be paid by an appropriate amount; or
4. **R**escind the contract of sale (i.e. you refund the consumer in exchange for the return of the product).

Note that rescinding the contract of sale leads to the customer having a right to a cash refund. The customer is not obliged to accept any vouchers or discounts in lieu of this cash refund.

The Lemon Law applies to both new and second-hand goods. However, the age and the price paid for a second-hand good will be taken into consideration when determining whether a claim should succeed. For example, a person buying a second-hand table set cannot expect the table set to be in excellent condition unless it is advertised as being in 'excellent condition'. However, the buyer can expect the table set to serve its basic function such as being able to stand properly. If defects or limitations in the product have been pointed out by you to the buyer before the transaction takes place, and the buyer accepts and acknowledges them, you will not be found liable for these defects.

OTHER TYPES OF CLAIMS

Under the SOGA and contract law, a customer who has purchased a defective product can, depending on the circumstances, exercise one or more of the following remedies against you:

- Repudiate the contract of sale (i.e. he or she can reject the defective goods and claim for damages).

- Claim the difference between the market value of the product and the actual value of the defective product.

- Claim the additional or wasted expenses arising out of your supply of the defective product if it was within the reasonable contemplation of (i.e. envisaged by you and your customer at the time of entering the contract that such additional or wasted expense would be incurred by your customer should your product be defective).

- For example, your business customer spent money advertising the launch of a new product you were supposed to supply to them. However the product was defective and was never launched. As a result, they were out of pocket for the advertising cost due to no fault of theirs. They may then claim or recover this advertising cost from you.

- Claim for any loss of profit caused by the defective product if it was envisaged by you and the customer at the time of entering the contract that your customer was intending to use the product to make a profit.

- Claim for damage caused to other property of your customer if it was envisaged by you and your customer at the time of entering the contract that the product if defective was not unlikely to cause loss of, or damage to, other property belonging to your customer.

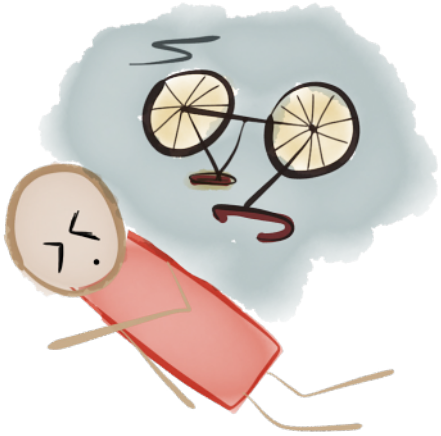
  For example, you supply gas tanks to coffee shops. The gas tanks are defective. One gas tank explodes and damages a coffee shop. The owner of the coffee shop may claim against you for damage to their property.

- Claim for injury caused to persons if it was envisaged by you and your customer that the product if defective was not unlikely to cause injury. For example, you manufacture and sell tee-shirts. Your customer gets dermatitis and there is a report that proves that the disease was caused by the use of certain chemicals in the manufacture of your tee-shirts. You may be liable for the customer's medical bills.

- Claim for disruption to the buyer's business caused by the defective product.

  For example, you supply batteries to a car manufacturer and these are installed in their cars. Your batteries are defective and cannot be used and their production line has to be stopped. The cost incurred in having to shut down the production line and to source for an alternative battery supplier may be claimed against you.

NEGLIGENCE



The Lemon law and the SOGA allow a customer to claim against you for defective products under a contract of sale. Some instances where a contract may arise between an organisation and a consumer are if the organisation runs a charity shop, or sells goods and services online, or by telephone, or away from its premises such as on the streets.

However, even where there is no contract of sale between you and a claimant, the law allows this claimant to sue you under negligence for any injuries or loss suffered if these injuries or loss are caused by your defective product.

Case Study

In the classic case involving ginger beer sold in bottles, the claimant's friend had bought a bottle of ginger beer for the claimant from a cafe, which the claimant drank, only to discover the remnants of a decomposed snail in the bottle. She suffered from shock and severe diarrhoea. She sued the ginger beer manufacturer for failing to provide a system of working his business which would not allow snails to get into the ginger beer bottles and for failure to inspect the bottles before filling them up. The court found that the ginger beer manufacturer was negligent and awarded damages to the claimant. This was in spite of the fact that there had been no direct contract between the manufacturer and the claimant.

This English case (*Donoghue v Stevenson* [1932] AC 562) has been followed and considered good law in Singapore. The Singapore courts have also consistently found that manufacturers of goods are under a duty of care to ensure that their products are not defective in the hands of the final consumers.

Therefore, if your product is defective, you may be liable not only to the person who has purchased the product from you, but also to other persons who have not dealt with you directly but have suffered injuries or loss due to the defect in your product. And you may be liable to compensate them for these injuries or loss.

There are three steps before a negligence claim will succeed:

1. You owe the claimant a duty of care. In Singapore, the test for duty of care includes:

i. Threshold of factual foreseeability

This refers to whether it was foreseeable that your negligence would result in the damage that the claimant suffered.

ii. Proximity

This concerns your closeness with the claimant in relation to physical, circumstantial and causal proximity.

iii. Policy considerations

This depends on whether the court finds that you should not be found negligent for your actions based on public policy reasons.

For example, the court might not find you negligent in light of the fact that if the court did so there would be a flood of claims of the same type.

2. You breached that duty of care to the claimant. There are some factors that will determine if you have breached the duty of care:

i. the likelihood or probability of the risk manifesting itself;
ii. the seriousness or gravity of the foreseeable risk;
iii. the practicability of avoiding or minimising the risk;
iv. the justifiability of taking the risk;
v. the time for assessing the risk; and
vi. The relevant characteristics of the foreseeable claimant.

3. The breach caused the claimant recoverable damage. Damages that may* be recoverable include:

i. Physical harm to person or property;
ii. Psychiatric harm; and
iii. Pure economic loss (any loss that does not arise from (i) above but constitutes monetary loss).

*Do take note that the duty owed with respect to psychiatric harm and pure economic loss is more restricted.

WARNING LABELS ON YOUR PRODUCT

If your product is inherently dangerous, you should place labels or warnings to caution users of the dangers, so as to discharge the duty of care placed on you under the law of negligence. For example, if you manufacture and sell small toys intended for toddlers, you should warn potential buyers that they may be choking hazards. Other examples are hair dye that may cause skin problems or hair spray that may be highly flammable in certain conditions or may cause allergic reactions.

The Consumer Protection (Trade Descriptions and Safety Requirements) Act 1975 also prevents sellers from applying mis-descriptions of goods supplied in the course of business. Certain goods such as electrical appliances/gas systems also attract the requirement for the seller to affix safety labels on such goods.

EXCLUSION AND LIMITATION CLAUSES

In a commercial relationship, exclusion and limitation clauses can be effective if reasonable. However, these clauses do not apply in situations where you supply products to a consumer. S.7(2) of the Unfair Contract Terms Act 1977 provides that "As against a person dealing as consumer, liability in respect of the goods' correspondence with description or sample, or their quality or fitness for any particular purpose, cannot be excluded or restricted by reference to any such term." For example, if you are supplying batteries to a car manufacturer you may be able to contract to exclude or limit your liabilities to the car manufacturer should your product be defective but if you are selling one battery to a car owner (i.e. a consumer), the law does not allow you to exclude or limit your liability in relation to them. For more information on exclusions and limitation of liability clauses, please refer to Chapter 10.

If you run a business or charity that provides donated food to beneficiaries, you may wish to take note that the Good Samaritan Food Donation Act 2024 offers a waiver for food donors from any civil or criminal liabilities arising from death and personal injuries caused by the food they donated, subject to conditions being met. Primarily, food donors must also fulfil four conditions to be granted liability waivers:

- The food must not have been 'unsafe' and 'unsuitable' for consumption when it left the possession or control of the food donor.

- The food donor must have also informed the recipient of the food of the handling requirements to ensure that it remained safe and suitable for consumption after it left the possession or control of the food donor.

- The food donor must inform the recipient of the food of the time limit for consumption.

- The food donor, before donating the food, took all reasonable measures to comply with any applicable requirement under any written law relating to food safety and food hygiene when handling the food.

INSURING YOURSELF AGAINST PRODUCT LIABILITY

It may be worthwhile to purchase product liability insurance because claims due to defective products can be fairly large. Such insurance typically provides coverage against claims for personal injury and property damage caused by defective products, and legal costs and expenses in defending against product liability claims. For more information on insurance, please refer to Chapter 15.

LIMITATION PERIOD

The law prevents claimants from making claims against your organisation after a certain period of time.

Generally speaking, the rule is that for claims founded on contract, these cannot be brought against your organisation after the expiration of six years from the date on which the cause of action accrued (i.e. the date you delivered the defective product to your customer).

For negligence claims, once the damage has occurred, such claims must be brought within six years; or should the damage only be discovered later, the claimant has three years from the date they knew of and had the right to bring an action, to commence their action, whichever is later.

Specifically for negligence claims where there are personal injuries caused by your defective product, such actions cannot be brought after:

- three years from the date on which the cause of action;
- comes into existence; or
- three years from the date on which the claimant had the knowledge required for bringing the action, whichever is later.

In all cases claimants can no longer bring an action after 15 years from the date on which the cause of action comes into existence.

‘UNFAIR PRACTICES’ IN RESPECT OF YOUR GOODS

You may wish to note that customers can also sue you for ‘unfair practices’ if, for example, you make a false claim about your product (or services). What is ‘unfair practice’ is explained in s.4, s.5 and s.6 of the CPFTA. Schedule 2 of the CPFTA sets out some examples:

- representing that goods or services have sponsorship approval or affiliation when they do not;
- representing that goods are new or unused when they are not;
- representing the availability of facilities for repair of goods or of spare parts for goods if that is not the case;
- representing in relation to a voucher that another supplier will provide goods or services at a discounted or reduced price when it is not true; or
- using small print to conceal a material fact from the customer or to mislead a customer.

If you are found to have engaged in an ‘unfair practice’, you can be ordered by a court to refund the money to the customer or to compensate the customer for any loss or damage suffered. The limitation period for a customer to sue for ‘unfair practice’ differs, depending on what type of ‘unfair practice’ it is. This is set out in s.12 of the CPFTA. Generally, the action has to be commenced no later than two years from the date of the occurrence of the last main event on which the action is based or no later than two years from the earliest date the customer had knowledge of the ‘unfair practice’.

USEFUL LINKS

Ministry of Trade and Industry on the CPFTA
https://www.mti.gov.sg/resources/laws-and-regulations/consumer-protection-fair-trading-act/

CASE
https://www.case.org.sg/

https://www.case.org.sg/wp-content/uploads/2022/10/CPFTA-Revised-2018-Edition-280119-FA.pdf

Limitation Act 1959
https://sso.agc.gov.sg/Act/LA1959

15

INSURANCE



Insurance is a pervasive feature of modern life. Most of us have some combination of medical, life and vehicle insurance. The types of insurance available to social enterprises and NPOs taking the form of companies are more diverse in order to cater to the greater scope of activities that are undertaken by these organisations.

When choosing from the many forms of insurance available to your organisation, you should be guided by industry practice, professional advice as well as your own business acumen. Sufficient and comprehensive insurance coverage can vary considerably between different organisations.

SOCIAL ENTERPRISES

A common misperception is that personal insurance policies cover your corporate assets. They do not, if you choose a company, rather than a partnership or sole-proprietorship, as your business vehicle.

This is because the assets you intend to protect with insurance may belong to the company, not you. Even if the company is wholly-owned by you, you are not deemed to have an insurable interest in the asset.

Consider this example: Green Life Pte Ltd ("**Green Life**") is a company which is wholly-owned by a single shareholder, George. George has a personal insurance policy to cover property damage. Green Life owns a retail property, which is damaged in a flood. George's insurance policy will not cover the damage to the shop or its contents as the shop is owned by Green Life, not George.

This is a natural consequence of Green Life enjoying a separate legal identity, which is distinct from George (see Chapter 2). Partnerships and sole-proprietorships, existing only as extensions of their owners, cannot own property and do not face this issue.

The following is a non-exhaustive list of the different types of insurance available to companies:

1. Business Interruption: to protect against temporary interruptions to your business such as pandemics (e.g. Severe Acute Respiratory Syndrome (SARS), or Covid-19), haze-related work stoppages etc.;

2. Livestock: to protect the business from financial loss from the death of animals resulting from natural disasters or disease etc.;

3. Credit Risk: to cover the risk of non-payment by customers or suppliers; and

4. Vehicle and Property: to protect against losses resulting from damage to vehicles, inventory, or capital assets such as warehouses.

Additionally, do note that companies in certain industries are required by law to purchase insurance. As a business owner, the onus is on you to find out if your company is required to do so. Given the complexity of legislation, it would be prudent for business owners to verify with their legal or insurance advisors whether they are required to obtain insurance.

The above list is not comprehensive, and may not be applicable for every organisation. To determine whether you should insure against a particular type of risk, you should consider factors such as:

1. the likelihood of damage occurring and who or what may be damaged or hurt;

2. the effect of the damage on your business—would the loss prove to be catastrophic?

3. the extent of coverage—does the insurance policy adequately compensate you for loss? You should also examine the exclusions in the policy, otherwise you may find that you have invalidated the policy by engaging in prohibited activities. You should seek clarification relating to any exclusions which are unclear to you; and

4. cost of premiums—this determines whether an insurance policy is cost effective when balanced against your overall profit margins and organisational costs.

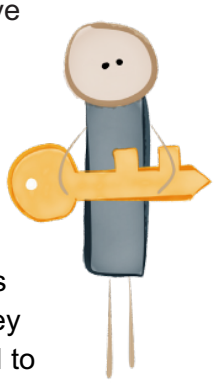
NON-PROFIT ORGANISATIONS

Non-profit organisations may be held legally responsible for the effects of a variety of things, such as natural disasters and even criminal activity It is important for non-profit organisations to have insurance as a form of financial protection for both the organisation and its various Board members and employees.

The most common insurance claims against non-profit organisations concern accidents and injuries at non-profit locations and special events. Other less common areas of claim include improper employment practices, professional errors and omissions.[1]

Even if an NPO has a risk management department that attempts to avoid activities that could expose the organisation to potential lawsuits, this does not remove the need for insurance. In light of cost considerations, it would be wise to insure against risks that cannot be avoided even with careful risk management, and to weigh them up against the consequences of being uninsured. Organisations should look into industry practice as well as consider their own unique needs and financial constraints.[2]

KEYMAN INSURANCE



A large company like Apple can endure the loss of its Chief Executive Officer and enjoy continued success because of its vast resources, deep talent pool and continuity planning. In contrast, small and medium-sized organisations may depend on one or two key personnel ("**keymen**") to drive growth and generate revenue.

You may not be able to tap a large talent pool but you can institute continuity planning by taking out keyman insurance. This protects your business against the loss of profits caused by the death of key personnel. The payouts can then be used to hire a replacement and to allow your business the time to regroup.

Keyman insurance is similar in concept to a football team insuring its players. For instance, if Cristiano Ronaldo were forced to retire during his contract period, his employer, Real Madrid could use the insurance payout to purchase a replacement player.

Premiums may be tax deductible if the following circumstances are met:

1. The purpose of the policy is to insure the business against loss of profits arising from the death or disability of a keyman;

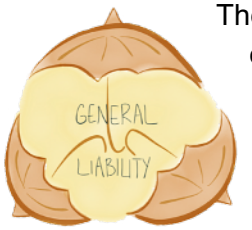
2. The capital sum insured is directly related to the extent of the annual profits directly attributable to the services of the keyman;

3. The insurance policy remains the property of the business, and there must not be any assignment of the benefits under the policy to the insured or the insured's family;

4. The insurance policy does not provide for a cash surrender or investment value; and

5. The loss of the keyman does not affect the business' entire profit-making structure.

GENERAL LIABILITY



The most basic of policies is one that covers general liability of the organisation. Policies for general liability will protect the organisation against claims for bodily injury, property damage and other injuries arising from the operation of the organisation's events and products or happening on the organisation's premises.

Moreover, if contractors or vendors are hired, one can consider requiring the organisation to be named as an 'additional insured' on the vendor's or contractor's general liability policy to avoid being named in a lawsuit for another party's negligence.[3] A general liability policy for NPOs can also be tailored to protect not only the organisation but also a director, officer, employee or volunteer of the organisation.[4]

DIRECTORS & OFFICERS LIABILITY INSURANCE ("D&O INSURANCE")



In Chapter 4, we discussed directors' duties and liabilities. Directors and officers are subject to regulation by various government entities such as ACRA, the Ministry of Health, the Competition and Consumer Commission of Singapore, the Charities Commissioner, etc. Accordingly, they may be liable to penalties such as fines or jail for their failure to comply with such regulation.

In such situations, directors and officers will naturally want to engage legal counsel to defend themselves. D&O insurance will cover these costs (subject to claim limits), thereby avoiding out-of-pocket expenditure.

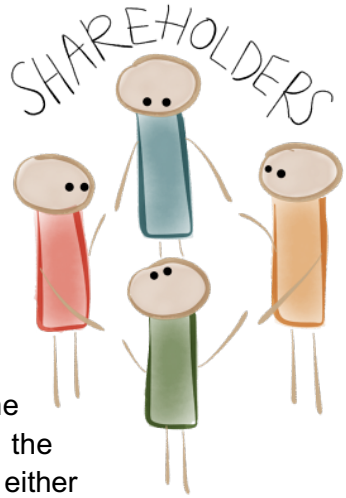
Even if a claim is never made, D&O insurance can help in attracting talent to your business, by assuring prospective candidates that their interests will be protected, should difficulties arise. It is not uncommon for candidates to insist on D&O insurance coverage before joining a company.

D&O insurance is also applicable to charities. Directors of charities may also be brought to court for the alleged breach of their fiduciary duties. As charities expand their scope of activities into the commercial sphere, their exposure to liability increases commensurately, necessitating greater protection.

Despite the fact that general liability insurance policy can be tailored to protect a director and officer, employee or volunteer, it is still advisable to obtain separate D&O insurance. D&O insurance acts as specific third-party insurance to protect a director or officer from personal liability arising from participation on the board or management of the charitable organisation, while general liability insurance focuses mainly on liability arising from physical injury and property damage.

For example, if an individual applies for a grant of clothes and food from your NPO and is turned down, the individual may claim that the officers of your NPO negligently denied their application. The D&O insurance is designed to cover such claims.[5]

SHAREHOLDER PROTECTION PLAN



In many ways, small businesses are like families. The owners, even if they hold minority stakes, have significant sway in the administration of the business. The relationship between the owners, if not collegial, should at least be workable; otherwise the business runs the risk of paralysis.

Business operations may also be hindered when one owner dies and their next-of-kin inherits their stake in the business. It would be quite natural for the next-of-kin to either want to assume the role previously held by the deceased, or to extract their share of capital from the business.

The remaining owners may not want the next-of-kin as a business partner, but may not be financially capable of buying them out. It is common for companies to have constitutions which limit the ability of shareholders to transfer their shares, and the next-of-kin may feel aggrieved that they are unable to sell their shares to a third party. Whatever the case, requiring an unwilling owner to hold on to their shares is not a recipe for harmony in the business.

One solution is for the company to purchase a life insurance policy on each shareholder with the proviso that upon receipt of the death benefit, the next-of-kin are legally obligated to transfer the shares belonging to the deceased to the remaining owners of the business.

This arrangement could be given effect in a shareholder's agreement with a 'put' or a 'call' option. A 'call option' is simply a financial contract that gives the buyer the right, but not the obligation to **buy** shares at a particular price during a fixed timeframe. A 'put option' conversely gives the other party the right, but not the obligation to **sell** the shares at a predetermined price during a fixed timeframe. In this example, depending on how the terms of the agreement are drafted, the next-of-kin could exercise the put option and the remaining business owners, the call option.

You should be careful to ensure that the shares are transferred to the other owners and not the company, as this is a more complicated process that will constitute a reduction in capital of the company and require a court order.

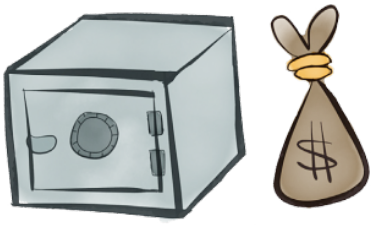
Additionally, the shareholder's agreement should be prepared by a legal professional as it can be highly technical and complicated and its terms may need to be tailored according to your particular circumstances.

The premiums for the life insurance policy may be tax-deductible as a business expense in providing an employee benefit.

Shareholder protection plans can be a useful tool in persuading prospective investors to take ownership stakes in a company. It demonstrates foresight on the part of the owners by allowing their stakes in the business to be monetised after their death.

On a related note, it would also be advisable to prepare a will as some life insurance policies taken out by businesses or employers do not permit the policy holders to nominate their beneficiaries. As such, the insurance money will be directed to the estate of the deceased and distributed according to the will or rules of intestacy. Distribution of assets pursuant to a will is much faster and cheaper than in an intestacy. A will puts money in the family's hands much quicker.

MONEY AND VALUABLES



Money insurance should be purchased for valuables in the office and in transit. Furthermore, supplies, inventories and fixed assets should also be safeguarded with insurance coverage. Insurance for money and valuables usually cover for loss of the money when travelling to and fro, or from secured places such as a locked safe, strong room, drawer, cabinet or cash register.

Moreover, it is also an option to insure for loss of physical property which could arise from fraud or dishonest acts committed by employees or third parties.

WORKERS' COMPENSATION

It is useful to have workers' compensation insurance to protect the organisation against the cost of lawsuits and medical bills that may arise from one of the employees or volunteers getting injured. Accidents are unpredictable and can happen even with precautions taken to avoid their occurrence. Most workers compensation insurance also includes Employment Practices Liability Insurance that provides an employer with protection against claims made by employees regarding discrimination, wrongful termination of employment, sexual harassment and other related claims.

GUIDELINES WHEN PURCHASING INSURANCE

There are several guidelines that one may consider when buying insurance:

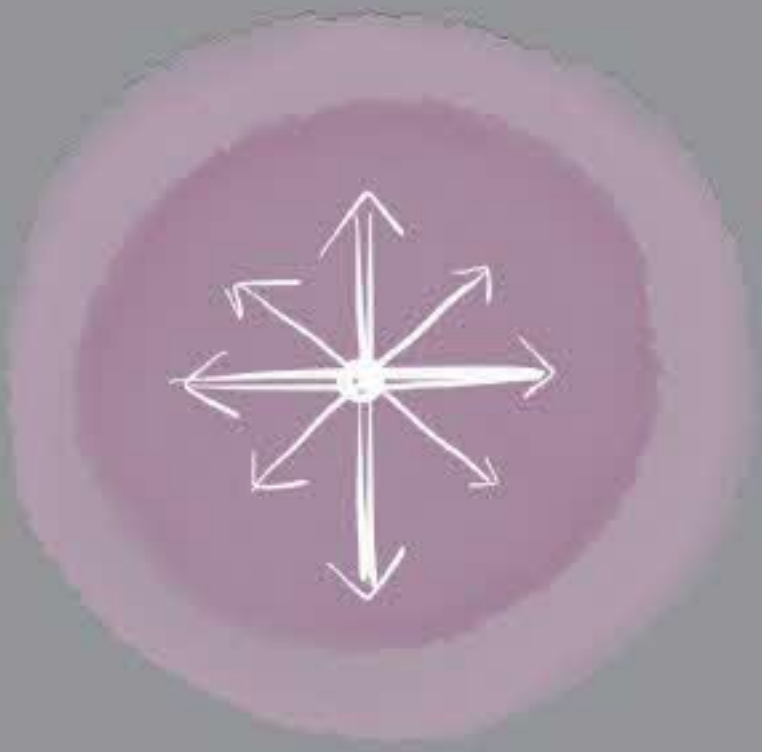
1. Take stock of all the possible risks that your organisation faces, taking into consideration the fact that NPOs interact with many different groups of people such as employees, clients, beneficiaries, the general public and volunteers. Thus, the potential for legal responsibility is great.

2. Find an insurance agent or broker who has a strong knowledge of NPOs. This will ensure that the organisation can get insurance that is best tailored to its own needs and the common standards of legal responsibility in the industry. Furthermore, you can also receive better advice on add-ons or gaps in your coverage.

3. Read the fine print and make sure you know what you are buying. It is important to know what is covered and what is not covered by your insurance such as the exclusions, limits and deductibles, amongst other things. Even though it is in the best interest of NPOs to purchase cheap and cost-effective policies, if there is no adequate coverage in the form of insurance, serious financial and reputational harm can be done should liability arise.

4. Obtain independent advice—If the organisation relies on an insurance agent or broker who has a conflict of interest (for example, they also serve on the board of directors of the organisation), do not be afraid to get a new agent or broker.

EXPANSION



16

E-COMMERCE



TAKING YOUR SOCIAL ENTERPRISE ONLINE

Have you ever purchased anything online? If you live in Singapore, chances are that you have. According to a report released by Meta and Bain & Company, e-commerce sales in Singapore is expected to reach US$14 billion ($19.6 billion) by 2027.[1] The Singapore government is also actively encouraging smaller local firms to offer online shopping services by introducing various schemes and grants. While the online market growth forecast is robust, it is important to be aware of your legal position when doing business online.

This chapter will cover three main areas of doing business online:

- *The terms and conditions governing the use of a website;*
- *The privacy policy of a website; and*
- *Forming contracts online.*

When reading this chapter, do remember that the same principles that apply in the real world also apply in the virtual world. Do not fall into the trap of believing that because you are in the virtual world, you are somehow exempt from the rules that all businesses face and are subject to or that you cannot be traced or held accountable. The legal obligations that a business faces in the real world are the same as those that a business operating in the virtual world faces.

TERMS AND CONDITIONS



On most established websites, you will see a link at the bottom or top of the page labelled 'Terms and Conditions'. Clicking on the link will bring the user to a page with many, many words. For buyers or users of the site's services, it is tempting to ignore these words but this isn't advisable!

'Terms and Conditions' are extremely important because they govern the relationship between you (the owner of the website) and the users of the website (consumers). This is the area where you set out the conditions on which users may use your website, including when they are shopping on your website, and also limit liability to yourself for the misconduct of users. Thus, it is important to have a carefully drafted set of terms and conditions to govern the relationship between you or your organisation and your users or consumers.

Generally, the terms and conditions should set out clearly the legitimate purposes for which your website may be used and other processes such as the registration and maintenance of user accounts, the treatment of personal data, cookie policies, payment card data that is transmitted as well as explain how you intend content ownership and other intellectual properties on your website be treated. Similarly, you should also set out what you define to be illegal or prohibited activities. Finally, you need to protect yourself by expressly stating that you (as the owner of the website) will not be liable for the misconduct of users on your website or for any liability or losses incurred by users through the use of your website.

It is not advisable to try to create your set of terms and conditions on your own, or worse, to try to 'copy and paste' the terms and conditions of another site for your own site. Unless you are legally trained, you may not know the precise legal effect of the terms and conditions you have drafted. You may also leave out things that become important when a dispute arises. Other sites may also have crafted their terms and conditions differently, taking into account how their own businesses are organised and what priorities they may have set for their own arrangements. As websites become more varied, the fabled 'cookie-cutter' or 'standard' terms and

conditions, if it existed at all, probably no longer fit the precise requirements of your business. For instance, if you plan to offer or sell goods to consumers who are located out of Singapore, you may want to specify some terms and conditions which apply to such cross-border transactions, especially since consumers located out of Singapore may have certain rights given to them under their laws regardless of what governing law you choose to apply or say you apply in your terms and conditions. Other considerations may include the currency that the transaction will use or how the conversion rate of the foreign exchange will be calculated. In addition, you should always seek legal advice prior to offering your goods and services to foreign jurisdictions as you may unintentionally incur legal liability otherwise. For example, the sale and purchase of certain types of items to some countries is prohibited under international law. As a member of the United Nations, Singapore implements the resolutions imposed by the United Nations Security Council, including sanctions on activities relating to certain countries, goods and services, and/or entities, such as North Korea, Democratic Republic of the Congo, Libya, Somalia, South Sudan, Sudan, Iran, Syria. Again, these issues are not peculiar to e-commerce facilitated agreements, but they may become magnified due to the cross-border reach of internet-driven sales or services.

Also, it is important to select a governing law to govern the transactions carried out on your website. Depending on the jurisdiction you choose, a set of rules relating to consumer protection or sale of goods may automatically apply and may even override the terms and conditions you have set. For instance, if you choose that Singapore law is to apply to the transactions taking place on your website, the CPFTA will apply automatically. Furthermore, Part 2 of the CPFTA will apply as long as the supplier or consumer is resident in Singapore or the offer or acceptance relating to the consumer transaction is made in or is sent from Singapore. You have to be aware of what these rules are, in order to avoid unintentionally contravening them. The governing law also becomes important if disputes arise over the transaction. Different jurisdictions have different laws relating to consumer transactions, and not all of these laws can be avoided simply by choosing Singapore law as your governing law. One best practice is to state explicitly the law you wish to apply to contracts formed via the website (e.g. Singapore law) in your terms and conditions, and seek legal advice if you expect that a significant portion of your sales will be in/targeted at consumers in another country. Do not assume that just because you have a Singapore domain name, Singapore laws will automatically apply!

Once you have selected a governing law to govern the transactions carried out on your website, it would be useful to specify how any potential disputes are to be resolved. For example, as a business located in Singapore, you may wish to choose mediation in Singapore, which is a cost-effective and faster alternative than court action, as a means of settling any disputes. Again, special rules may apply to consumer transactions.

PRIVACY POLICY

In Singapore, the PDPA regulates the collection, use and disclosure of personal data. To comply with the PDPA, a website should have a link, which is usually in the footer of each page of the website, to give website visitors notice of the website's approach to data protection issues (including in relation to sales through the website). It is often entitled 'privacy policy', although it is about data protection rather than about privacy. It gives notice of the website's approach to the collection of personal data about users and what the website owner will do with that personal data—how the website owner will use and disclose it.

It is important to have a properly drafted privacy policy or data protection notice that gives notice about your internal data protection policies and, where relevant, standard operating procedures. Here it is particularly important not to simply 'copy and paste' a privacy policy from some other website—the copied privacy policy may or may not be correct in the context of the source website and it will only by chance reflect your specific approach to data protection and/or your specific cookie practices. To the extent that you plan to target your sales to consumers who are located out of Singapore, other data privacy laws may apply, such as the European Union General Data Protection Regulation 2016.

Under the PDPA, unless a relevant exception applies or the concept of 'deemed' consent applies, you have to obtain the consent of an individual before you may collect, use or disclose personal data about them. Before an individual can give consent (including where deemed consent by notification applies), they must first be informed of the purposes for the collection, use or disclosure of the personal data. You also need to provide the business contact information of an individual (usually called a DPO, who may be within your organisation or may be a third-party service provider) who can answer questions about your collection, use or disclosure of personal data.[2]

The privacy policy should also, minimally, inform the individual of:

- what information the website will be collecting (including where e-commerce transactions are conducted through your website);
- the purpose(s) of collecting such information and how it will be used or disclosed by you; and
- the rights given to individuals under the PDPA (such as the right to access and correct personal data about them and the right to withdraw any consent given to you).

If an individual has given (or is deemed to have given) consent to the disclosure of personal data about the individual by one organisation to another organisation for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal data for that purpose by that other organisation. You may utilise these provisions if the requisite conditions stated are met. For example, when an individual voluntarily presents their payment card information—a payment card might be a credit card, a debit card, a prepaid card, a charge card etc. —for the purpose of making payment, the individual is deemed to have consented to the collection, use or disclosure of their payment card number and other related personal data for the processing of the payment. The individual's deemed consent extends to all other parties involved in the payment processing chain. These parties include, for example, the supplier of the goods or services being acquired, the supplier's payments processor and bank, the banks' processers and the credit card scheme's payment system providers. That being said, however, you still have a responsibility under the PDPA to ensure the protection of any payment card data that is transmitted to you as well as obligations under the Payment Card Industry Data Security Standard.

We recommend checking the PDPC website (https:www.pdpc.gov.sg) on a regular basis for information about updates to the PDPA, the PDPC's various guidelines, guidances and training (including e-learning programmes) in relation to the PDPA.

You will have to be updated on the law and also have regular audits of your company's practices to ensure that you comply with the PDPA and other applicable data privacy laws. If your company does not comply or uphold the practices stated in your privacy policy, customers may not trust you with their personal data and, even worse, you may contravene the PDPA and be fined by the PDPC. This is all detrimental to your online business.

Protection and security of digital data

The Computer Misuse Act 1993 protects computers, computer programs, and data that is stored in computers from unauthorised access or modification among other things. The Cybersecurity Act 2018 is about taking measures to prevent, manage and respond to cyber threats and incidents among other things. Furthermore, the PDPA also requires organisations to make reasonable security arrangements to protect personal data from unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks and the loss of any storage medium or device on which personal data is stored (storage mediums or devices include mobile phones and thumb drives that you might use in connection with your online business).

When a web user accesses a website or makes an online purchase, a record of their preferences and personal data is stored online. Given that you (the e-retailer) might have access to or possess some personal or confidential information about your customers, you must make reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification or disposal of this information, or take steps against similar risks.[3]

To take reasonable security arrangements, your organisation should:[4]

1. design and organise its security arrangements to fit the nature of the personal data held by the organisation and the possible harm that might result from a security breach;

2. identify reliable and well-trained personnel responsible for ensuring information security;

3. implement robust policies and procedures for ensuring appropriate levels of security for personal data of varying levels of sensitivity; and

4. be prepared and able to respond to information security breaches promptly and effectively.

Some examples of security arrangements include:[5]

- Administrative measures: Requiring employees to be bound by confidentiality obligations in their employment agreements and implementing robust policies and procedures (with disciplinary consequences for breaches) regarding confidentiality obligations.

- Technical measures: Adopting appropriate access controls (e.g. considering stronger authentication measures where appropriate) and encrypting personal data to prevent unauthorised access.

- Physical measures: Storing confidential documents in locked file cabinet systems, and proper disposal of confidential documents that are no longer needed, through shredding or similar means.

The PDPC also provides guidance for organisations on protecting personal data. Examples include its Guide to Securing Personal Data in Electronic Medium and its Guide to Data Protection Practices for ICT Systems.

Also, do not over-promise things to your users in your privacy policy as you may not be able to live up to their expectations. For example, do not promise never to disclose users' personal data to third parties without their consent. You may be forced to go back on your promise in certain circumstances such as where the disclosure is necessary for any investigation or proceedings or where the disclosure is necessary due to national interest.[6] It would therefore be wise to have a comprehensive privacy policy that details the instances in which you as the e-retailer may have to disclose user personal data.

Please also bear in mind that Singapore's PDPA is just one of many data protection/privacy laws coming into force all over the world. As at January 2025, 144 countries have data protection and privacy laws in effect, and the number continues to grow every year.[7] The responsible use of personal data, using the personal data only for the purposes for which you were authorised, is the simplest way to comply with most of these laws, and being transparent about these purposes and giving options to data subjects (i.e. individuals whom the data identifies) is key.

In the face of there being many different requirements and the possibility of some foreign requirements applying to your website or e-commerce business depending on how and where you operate and direct your marketing efforts, the best practice is to first seek legal advice to ensure that your privacy policy and practices are tailored to each of the jurisdictions' data privacy and protection laws that may apply to you.

For an overview of the key privacy and data protection laws and regulations across different jurisdictions as well as other information on data protection, you may wish to refer to DLA Piper's Data Protection Laws of the World Handbook at https://www.dlapiperdataprotection.com/#handbook/about-section.

FORMING CONTRACTS ONLINE

Now that you have your website properly set up, we turn to briefly examine the business aspect of your website-forming contracts. The basics of contract formation are covered in Chapter 10. Here, we shall look at how this applies to online contracts in particular.

The rules that govern the online formation of contracts are the same as those which govern the formation of contracts in real life. In a typical online transaction, the steps of the formation of a contract are as follows:

1. Invitation to treat

This may take the form of displaying products on your website.

2. Offer

This occurs when the buyer gives notice of their intention to buy the item by submitting an order. Do note that what constitutes an offer can vary depending on the language you use in your website. Please also note that the buyer needs to have 'contractual capacity'—that is, for example, they need to be at least 18 years old and not be suffering from an intellectual impairment (whether temporarily or permanently).

3. Acceptance

This occurs when the seller (you) sends a confirmation of the order to the buyer's e-mail address.

4. Intention to create legal relations

The parties must intend for the offer and acceptance to be legally binding, and not 'mere puff'. A 'mere puff' is a statement, which by its nature, and in the context in which it is made, is not intended to form the basis of a binding contract.

5. Consideration

Consideration is anything of value promised to another when making a contract, such as money, services or performance or non-performance of an act.

The contract is then formed and is enforceable by each/both of the parties to it—that is, by both the seller and the buyer.

Please be aware that when forming contracts of sale online, it is important that the description of the goods on your website matches the goods in real life. This is because, under Singapore law, it is an implied condition of the contract of sale that the goods will correspond with the description. If this implied condition is breached, the buyer may have the right to terminate the contract with you.

How do you incorporate your website's 'Terms and Conditions' into online contracts?

To successfully incorporate the terms and conditions, sufficient steps have to be taken to bring the terms to your buyer's attention. Some suggested methods of incorporation include:[8]



- display of the terms in a dialogue box, where at the final stage of the order process (for example, after a review of the order), the customer is made to scroll through the terms set out in a dialogue box before clicking on the "submit" button. This method appears to be the most satisfactory from a legal perspective as the customer is forced to review the terms and to agree to the terms via some positive action on their part (the "click"); or

- display of a clearly-labelled link to the terms at the bottom of the webpage—that is, in the footer of each page of the website. There is greater weight in terms of notice as the terms are displayed on the webpages themselves for the customer's perusal.

In contrast, a mere display of the terms on a separate webpage (for example, on a linked hypertext) without specific notification of the location of the terms to customers may result in the customers not being bound by such terms due to insufficient notice.

Also, do note that even if your website has an 'auto-accept' programme such that your website automatically sends out confirmation e-mails without human verification, the contract may still be voided—that is, made ineffective—on other grounds such as mistake.

Indeed, 'auto-accept' arrangements can create issues if you in fact want to reserve the right to reject an order, or cannot link up or have live updating of your stock management (or Enterprise Resource Planning) systems with the actual orders coming in. Always take legal advice on how best to manage the ordering system and what messages or information are being sent to the user.

Please note that contracts formed online or through other forms of electronic communication will be binding so long as the elements of contract formation are present. This may take the form of an e-signature or by conduct, such as the buyer clicking on 'I accept' or similar on the website when the buyer is asked to accept the seller's terms and conditions. Always be sure to keep retrievable records of each buyer's online acceptance of your terms and conditions.

It is relatively common for an electronic 'signature' or acceptance to serve as confirmation of authenticity. All that is required for a signature in the virtual world is:

(a) a method is used to identify that person and to indicate that person's intention, and

(b) the method used is either as reliable as appropriate for the purpose it was used for or is proven in fact to have fulfilled the requirements in (a) above.

Even if you, the seller, do not 'sign' on any document online, you may still be held liable to the buyer who does so for making promises to perform or for any agreements made through email, SMS, instant messaging or even on social networking sites. It is very common for lawyers to produce agreements made or concluded between parties over instant chat messages or SMS in court as evidence that parties had come to an agreement.

Which consumer protection laws must you be aware of?

As an e-retailer, you must also be aware of certain provisions outlined in specific statutes that relate to the protection of consumer rights. These provisions apply to all consumer transactions, including transactions conducted over the internet. Such statutes include:

- The Unfair Contract Terms Act 1977, which regulates exclusion clauses and limited liability clauses in most consumer and standard form contracts;

- The SOGA, which governs contracts for the sale of goods in Singapore. According to the SOGA, any contract entered into for the sale of goods carries with it certain implied terms. For example, goods should be of satisfactory quality or goods that are sold on the basis of a sample or description should in reality correspond with that sample or description. If the goods sold contravene these implied terms then the SOGA entitles your buyer to reject the goods and terminate the contract or claim damages;

- The Misrepresentation Act 1967, which holds you accountable if your website contains untrue pre-contractual statements that affect your customer's decision-making process;

- The CPFTA and regulations issued under it set out a list of specific unfair trade practices and empowers consumers to seek civil remedies. It is the

responsibility of the business to prove that it did not commit the unfair practice; and

- 'Lemon Law', which are provisions under the CPFTA which apply in the event of non-conformity to contract at the time of delivery (for example, in a sale of goods contract). Under the Lemon Law, if a defect is detected within six months, it is presumed that the defect existed at the time of sale or delivery unless the seller can prove otherwise. Beyond six months, consumers can still seek remedies but they will need to prove that the defect existed at the time of delivery. Remedies available to the consumer include demanding the seller to repair or replace the defective product.

If the seller fails to repair or replace the goods within a reasonable time or without significant inconvenience to the consumer, the consumer may ask for a reduction in price or return the product for a refund. The seller can offer an alternative remedy from the one demanded by the consumer if the cost of the remedy demanded is disproportionate in comparison.

For more information on product liability, please refer to Chapter 14.

CONCLUSION

It is a common misconception that the internet is the 'Wild, Wild Web'. This is incorrect. Just like in the real world, the internet is highly regulated and the same rules that apply in real life to protect consumers also apply online.

We hope this chapter has gone some way in highlighting the important areas for you to take note of. However, this chapter is but an introduction to the rules that apply. It is always prudent for you to seek legal advice before launching your online business to ensure that you minimise any potential legal liability. Good luck!

17

ADVERTISING

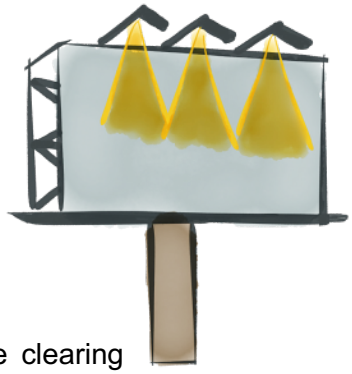


ADVERTISING AND PROMOTING YOUR BUSINESS: WHAT'S LEGAL?

That catchy jingle that you never can seem to get out of your head, that tear-jerking 30-second viral video advertisement that you shared on your Facebook page because it touched on the very heart of giving… We all know that a good advertisement does more than move products off a store shelf. A good advertisement may go a long way in attracting people's attention to your organisation.

Depending on the nature of your organisation, you may invest a lot of time and money in the creation and development of your advertising content. However, before you start on your advertising campaign, you should familiarise yourself with the laws regulating the advertising industry.

ADVERTISING STANDARDS IN SINGAPORE



In Singapore, the key governing body is the Advertising Standards Authority of Singapore ("**ASAS**"). ASAS is an Advisory Council to CASE, set up in 1976 to promote ethical advertising in Singapore. The ASAS is the self-regulatory body of the advertisement industry, and comprises representatives from advertisers, advertising agencies, government agencies, media owners and other supporting organisations. Amongst other things, ASAS:

- provides advice and guidance (though it is not the clearing house for approval of advertising);
- handles complaints on advertising practices;
- advises on advertisements when such help is required; and
- issues sanctions that are applied by media owners.

The governing ideals, which set the framework for ASAS, are set out in the Singapore Code of Advertising Practice 2008 ("**SCAP**"). The SCAP applies to all advertisements for any goods, services, and facilities appearing in any form, or any media (including social media) so anything you use to promote your organisation, regardless whether by way of flyers or posters, traditional placements in magazines or online, newspapers or television or in any other way that modern technology has rendered possible, would need to comply by these guidelines.

WHAT HAPPENS IF YOU DO NOT COMPLY?

ASAS mainly relies on voluntary compliance on the part of the organisations involved, rather than punitive measures. For example, ASAS is empowered to ask you to amend or withdraw your advertisement if ASAS is of the opinion that your advertisement is contrary to the SCAP. ASAS may also ask you to withhold any advertisement from publication until it is modified to conform to the SCAP. Furthermore, ASAS might request its members to impose sanctions on their contracting parties through clauses in the relevant advertisement contracts if the SCAP is violated. Sanctions may consist of the withholding of advertising space or time from advertisers. ASAS is empowered to rule on any disputes relating to breaches of the SCAP between members of the various advertising associations in Singapore and such rulings shall be binding on members of the associations.

However, you may trigger legal proceedings if your non-compliance with the SCAP results in a violation of other statutes or breach of contractual terms.

Therefore, whenever you are not sure if an advertisement is suited for public consumption, you should take a closer look into the terms of the SCAP to ensure you are on firm ground to avoid trouble.

WHAT ABOUT ADVERTISING USING SOCIAL MEDIA?



Social media is an increasingly popular platform for advertisements. For example, endorsement or review posts by social media personalities or influencers. As yet, there is no legislation on advertising using social media specifically, although the ASAS has published Guidelines for Interactive Marketing Communication & Social Media, which sets out guidelines relating to the identification of commercial messages; clarity of the offer and conditions; respect for consumers, competitors, public groups and review sites; digital marketing communication and children; disclosures; and use of social engagement tools.

In the meantime, if in doubt, do ensure compliance with the general principles of the SCAP. For example, the traits of honesty and truthfulness.

Unethical advertising methods can be more easily uncovered in the online space; and if so uncovered, can bring your organisation into disrepute. If you are choosing social media influencers, do note that most credible and savvy personalities tend to disclose how their online presence generates income for themselves (for example, in blog frequently asked questions). This creates an atmosphere of trust between the influencer and his or her audience, and may in turn result in more effective advertising for your organisation.

ARE THERE ANY SPECIFIC RULES FOR CHARITIES?

There is no legislation explicitly discussing advertising guidelines for charities.

Nonetheless, you should keep in mind broader guidelines found in statutes which specifically govern charities, such as the Charities Act (full list of statutes available at the Charity Portal).

In particular, in relation to public image, the Code of Governance for Charities and IPCs lays down the general principle that charities should accurately portray its image to its members and donors (and stakeholders, if any), so as to build up an image consistent with its objectives.

Furthermore, the Charities Act and accompanying regulations set out rules on fund-raising appeals (including any such promotional ventures, representations and solicitations), which would need to be complied with.

WHAT ARE THE GENERAL PRINCIPLES LISTED BY THE SCAP?

The 14 general principles laid out in Part II of the SCAP which you should always take into consideration are:

- legality;
- decency;
- honesty;
- fear, superstition and violence;
- truthful presentation;
- safety;
- portrayal of persons;
- children and young people;
- social values;
- family values;
- non-denigration;
- non-exploitation of goodwill or intellectual property;
- non-imitation; and
- use of national symbols.

Legality

Your advertisements should not contain anything that is illegal or might incite anyone to break the law. This means that the content of your advertisements should not appear to encourage or lighten the gravity of acts of violence or anti-social behaviour, such as vandalism.

It is also important that the audience of your advertisements are made aware that you are promoting your organisation. Under the SCAP you should visibly identify yourself as the advertiser and, where it may be unclear, state that the piece is published for advertising purposes and not, for example, editorial matter.

When you want to promote products or services linked to health, such as medicinal products, you will have to consider the restrictions placed by the relevant regulations, such as the Medicines (Advertisement and Sale) Act 1955 and Health Products Act 2007.

Decency

When creating your advertisement you should pay special attention to the predominant social and family values in Singapore and ensure that no part of your message contradicts or undermines these values. Messages to children should be treated more stringently as children are more easily influenced by their surroundings and (depending on their age) may not have the capacity to properly evaluate the validity or propriety of your content. Special regulations in the SCAP apply to protect minors. Essentially, all advertisements should not contain anything that may offend the sense of decency of its potential audience.

Honesty

Your advertisements should not abuse the trust of the target audience or exploit their lack of experience, expertise or knowledge. For example, if your advertisement is for the purpose of seeking donations for your charity, you should be clear about where the donated funds will go and avoid any hidden costs. For the purposes of fair competition, your advertisements should also avoid making inaccurate comparisons to other companies or charities.

Fear, superstition and violence

Advertisements should not play on fear without a justifiable reason. While you may use fear to encourage prudent behaviour, your advertisements should not cause unwanted anxiety. Your advertisements should not include unproven claims, such as suggesting that viewers may suffer from adverse consequences if they do not donate.

Advertisements, likewise, should not exploit superstitious beliefs and 'prey' on the superstitious. Your advertisements should also not promote violence or appear to condone the same.

Truthful presentation

Your advertisements should not mislead in any way by inaccuracy, ambiguity, exaggeration or omission. You should always be truthful in your advertisements. When you use research data or testimonies, these have to be truthfully represented and should not be altered to fit a purpose. Your advertisements may not contain any information to mislead your target audience into believing that any untrue matter is true. Statistics should not be so presented as to imply a greater validity than they really have. You should be prepared to furnish proof for the stated information, which ASAS may request for.

Safety

Unless it serves an educational or social purpose, advertisements should not appear to disregard safety through visual presentations of dangerous practices. Drinking and driving should be discouraged and a higher standard of care should be observed in launching advertisements directed at young, impressionable minds.

When you want to display outdoor advertisements, you will also have to consider the Building Control (Outdoor Advertising) Regulations 2004, which mainly focus on ensuring that outdoor advertisements are properly displayed, well maintained and safe.

Portrayal of persons

Persons must be depicted in a dignified manner. Your advertisements must not disrespect them. For example, your advertisements should not have sexist connotations.

Children and young people

Children's innocence, inexperience and naiveté should not be exploited. Advertisements should not exploit the susceptibility of children towards charitable appeals and should explain the extent to which their participation will help in any charity-linked promotions.

Social values

Your advertisement should not downplay the importance of or discredit social values, including:

- patriotism and national unity;
- national issues, including the quality of life in Singapore;
- Singapore's status as a democratic country;
- having a caring and compassionate attitude for the less fortunate members of the community; and
- racial harmony.

Be careful when broaching the topic of national problems or national policies. Your advertisement should not adopt or encourage a confrontational approach to resolving these issues.

Family values

Your advertisement should, as much as possible, strengthen the family as the basic unit of society and must not denigrate the love between family members and the sense of comfort and security derived from such ties.

Non-denigration

When you advertise, you must not put other organisations or professions (such as other charities or another business) in a bad light or ascribe negative things to them, whether directly or indirectly.

Non-exploitation of goodwill or intellectual property

In your advertisements, you must not make unjustified use of the trade marks, logos or take unfair advantage of the goodwill built by others.

Non-imitation

You must strive for originality and creativity in your advertisements and not merely copy the work of others. Furthermore, the International Code Council Code discourages advertisers from using advertising campaigns already run by and associated with other international advertisers, such that the international advertisers would be unfairly prevented from extending their campaigns in the countries showing the copycat advertisement within a reasonable period of time.

Use of national symbols

There are laws governing the use of Singapore's coat of arms, flag, the national anthem, national pledge, lion head symbol, public seal and national flower. for example, the private use of the state crest for advertisements or commercials are prohibited by law. .

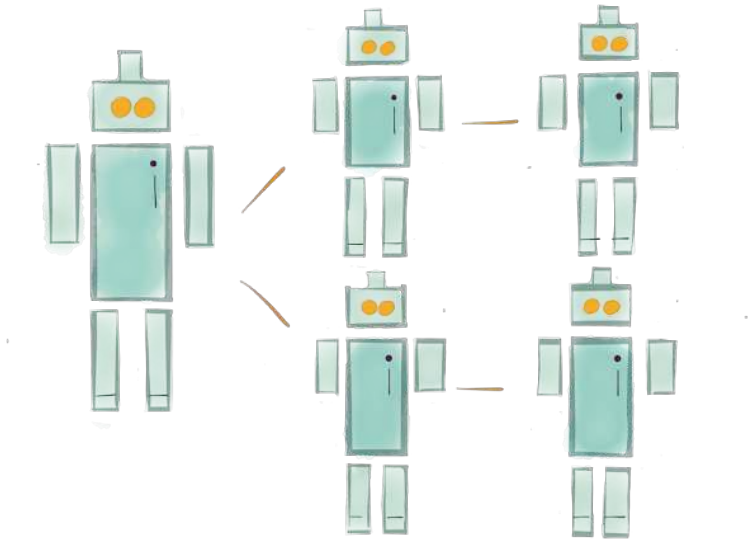
Brief guidelines to the usage of national symbols are available at the National Heritage Board website. You may also verify the details of these guidelines with the Offices of the Prime Minister or the MCCY.

CONCLUSION

To avoid a dent in your organisation's reputation, you should consult SCAP and familiarise yourself with the applicable statutes before green-lighting your advertising campaign. That aside, feel free to use all your creative inspiration and ideas to advertise your organisation!

18

FRANCHISING



FRANCHISING YOUR SOCIAL ENTERPRISE

When we think of franchises, we often think of large-scale commercial examples such as Subway and McDonald's. One way to think about franchises is to first think about what makes a Subway and McDonald's restaurant distinct. Each of these chains has their own particular look and feel (the store's 'get-up'), and the same brands are used in each outlet—such as trademarks (e.g. "Big MacTM"). There is a certain way the food is prepared. Each outlet has the same menus, and (usually) the same pricing in each territory. Customers go to any Subway or McDonald's outlet expecting the same standards, the same menu and the same customer experience. What makes each restaurant distinct is, essentially, the intellectual property used in each chain: trademarks, trade secrets, copyrighted works etc.

*Now think about this from the perspective of the owner of the intellectual property in the McDonald's chain (the "**franchisor**"). Their trademarks, their recipes, and their store get-up is immensely valuable because these are all*

*things which would make a customer choose a store that uses their intellectual property over one that doesn't. Rather than set up a restaurant in every location in every country at its own expense, the McDonald's franchisor instead grants permission (a "**licence**") to use the intellectual property to others (the "**franchisees**") to set up McDonalds' stores in different locations. In exchange, the franchisee pays a fee for the right to use the intellectual property, and for some key promises.*

What would some of these key promises be? Consider what's important to McDonald's. As a franchisor, it will want to ensure that every restaurant using its trademark does indeed give the same quality consumer experience to its customers as McDonald's would expect from every store. It would be concerned to not allow the McDonald's image and quality standard to deteriorate or be harmed in any way. As such, some of the key promises the franchisor will want from the franchisee who uses its intellectual property would be to ensure that it uses the intellectual property correctly (i.e. to meet standards the franchisor would require), or (sometimes) require the franchisee to purchase products from the franchisor's approved suppliers.

Franchising is not limited to just F&B outlets, but it can occur in other industries, whether it is selling clothes or computer equipment or providing spa services.

In a nutshell, a franchise is a contractual relationship under which the owner of an existing business (the franchisor's business) grants rights to another party (the franchisee) to run a business using the franchisor's already established and proven business know-how, business model, methods, and intellectual property. This is done in exchange for franchise fees and royalty fees, which the franchisee will have to pay to the franchisor to continue enjoying the grant of such rights.

Once entered into, this contractual relationship may allow the franchisor to retain control over various aspects of the franchisee's business, depending on the express terms of the franchise agreement. Such control usually includes a franchisee's ability to sub-franchise, geographical boundaries, employment of key personnel, operational procedures, supply and procurement, promotional and advertising activities, and the use of the franchisor's intellectual property and proprietary information. The autonomy of a franchisee is therefore very much dependent on the terms and conditions of the franchise agreement, and may vary significantly depending on the franchisor's preferences and the parties' negotiations prior to entering into the franchise agreement.

Franchising is becoming an increasingly popular business model as business risks are apportioned and resources are shared amongst the franchisor and franchisees. A franchisee may find a quicker route to business success through affiliating itself with a reputable brand and adopting a proven business format, rather than having to 'reinvent the wheel'. Also, having a larger number of franchise participants, whether franchisees or sub-franchisees, would also result in economies of scale for such participants. The franchisor, on its part, benefits from the franchisee's local knowledge and sharing of local investment risks. The franchisor is therefore able to scale up rapidly and expand into different countries, while risking less of its capital.

The principles of commercial franchising can be equally applied to a social enterprise. The model of franchising social enterprises is known as social franchising. A social entrepreneur desiring to maximise his or her impact with limited resources may look to the scalability promised by the franchise model, particularly if the social enterprise is dependent on donor money. This chapter compares social franchising to its commercial counterpart.

KEY ELEMENTS OF A SOCIAL FRANCHISE

A social franchise shares many key elements with its commercial franchise counterpart. Whether you are creating a franchise or evaluating potentially acquiring rights to operate an existing franchise, the key elements that you should consider are:

1. Business model and franchise manuals

The business model should be clearly detailed and communicated in a way that allows the franchisee to replicate the processes and systems that the franchisor has used to achieve business success. The business model is usually written out in the franchise manuals with comprehensive guidelines on how to run the business, such as:

- methods of operations;
- advertising and promotional guidelines;
- pricing of the franchise business' products and services;
- standards of etiquette expected of service staff; and
- staff training manuals.

All these define the parameters of what the franchisor expects of the franchisee, and will help detail what the franchisee should do. It is usually shared with the franchisee on a strictly confidential basis. While franchise manuals do not tend to be binding legal documents in and of themselves, the franchise agreement may refer to or make certain standards and steps described in the franchise manual into binding obligations. Unlike the franchise agreement, franchise manuals may be frequently updated as the business model of the franchise evolves.

2. The franchise agreement

The franchise agreement is the main legal contract between the franchisor and the franchisee that sets out the rights and obligations of each party towards the other. As the relationship between the franchisor and the franchisee involves on-going cooperation between the parties, it is important to ensure that key terms such as the term (i.e. the length of the contractual relationship), geographical boundaries, franchise fees, and continuing obligations, are expressed clearly in the franchise agreement. A discussion of key terms of a franchise agreement is set out further below. The extent to which the franchise agreement can be negotiated will depend significantly on the relative strengths of the franchisor and franchisees.

Stronger franchisors with existing franchise networks may require potential franchisees to sign non-negotiable contracts with standard terms, while franchisees with local networks that the franchisor needs may be in a more dominant position and may therefore be able to negotiate much more customised arrangements for themselves.

3. The brand and IPs

The attractiveness of a franchise to potential franchisees depends largely on the strength of the franchisor's brand and its market appeal. Reputable and recognisable brands with established customer markets facilitate the franchisee's ability to sell products or services under that brand. It is in the franchisor's interest to protect its intellectual property relating to its brand to the greatest extent possible. If any of the franchisor's intellectual property is used in any way that is not permitted by the franchisor, the brand's reputation and goodwill may be damaged and diminished. Adiscussion of intellectual property and how it may be protected may be found in Chapter 12.

4. Standardised training and support system

Many franchisors operate training and support systems to train their franchisees or the employees of their franchisees. These training and support systems range from accreditation programmes, periodic seminars and courses, to mandatory training regimes (which may involve substantial training fees) all share the common goal of strengthening the franchise relationship and ensuring that the franchisee introduces and implements systems that are in line with the franchisor's requirements. The particulars of the training and support system are usually set out in the franchise agreement and the franchise manuals. A strong and well-implemented training programme facilitates knowledge sharing, which is essential to ensure that the business format of the franchise is replicable and that standards are consistent across the franchise. The extent to which such programmes can limit a franchisee's operating flexibility or put burdens on a franchisee can be a source of tension in the relationship between the franchisor and the franchisee.

Understanding the extent to which the franchisor will require the franchisee to implement and comply with such programmes is therefore a crucial part of the process for both the franchisor and the franchisee to work out the terms of their relationship before entering into an agreement.

5. Quality assurance system

Strong franchise brands that have built up significant goodwill do so by providing consistent pricing of goods and/or services, brand experience and corporate culture, and ensuring that their franchisees meet the standards expected by the customers of such brands. Such franchisors have systems in place to inspect and evaluate the performance of their franchisees. The franchisor may pass on some of these inspection and evaluation costs to the franchisee through the franchise agreement (for example, the personnel and travel costs for facilitating site visits by franchise auditors and inspectors as part of the franchisor's quality assurance checks). The franchise agreement or the franchise manual(s) may set out some of the qualitative and quantitative measures that the franchisor may use to assess its franchisee's performance and may also provide for the termination or censuring of franchisees who do not meet such standards.

KEY DIFFERENCES BETWEEN COMMERCIAL FRANCHISING AND SOCIAL FRANCHISING

Some of the key differences between commercial franchising and social franchising are as follows:

1. Incentivisation or motivation of parties

In commercial franchises, both parties are usually motivated by profit, as commercial franchise fees payable to the franchisor tend to correlate with the franchisee's financial performance. Successful franchisees also improve the brand presence of the franchise and raise the value of the franchise.

A social franchise is established for the purpose of promoting one or several social ends. Although certain types of social franchises do also make money, this is rarely the main objective. With multiple incentives, it is more difficult for parties to align goals and priorities. Social impact is also more difficult to benchmark than financial performance–while a franchisee's financial performance can be generally ascertained through examining its revenue and profit, the way social impact is measured depends on the objective of the social franchise which could be subjective or difficult to quantify.

2. Selection of franchisees

Commercial franchisors tend to select franchisees on the basis of their commercial potential. Factors they may consider include the potential franchisee's industry experience and expertise, its financial strength and the commonality of its financial objectives with those of the franchisor.

Social franchisors have to assess a larger range of attributes of their potential franchisees beyond their financial and operational ability to run the franchise. For example, 'softer' criteria such as the franchisee's own reputation within the local community, cultural background and shared values, if any, may also be key considerations for selection by the social franchisor.

3. Funding

Banks and other mainstream investors are more comfortable with commercial franchises, as compared to social franchises, as commercial franchises are for-profit enterprises, with less risk of defaulting on loan repayments.

Investors in social franchises tend to be donors such as trusts and foundations, which have their own internal policies, objectives and investment criteria. The social franchise will need to manage the preferences of these non-profit investors in order to ensure their continued investment in the social franchise.

4. Sharing of investment risks

Under commercial franchises, franchisees share and reduce the investment risks of their franchisors. The risk of their own financial loss helps to motivate franchisees towards ensuring the success of the franchise.

With the more limited range of funding options available to social franchisees, franchisors may have to provide significant capital support to the social franchisee and bear much of the associated investment risk. This often leads to the franchisor requiring more control over the operations of the franchisee, which may in turn result in fewer franchising opportunities.

5. Fee structures

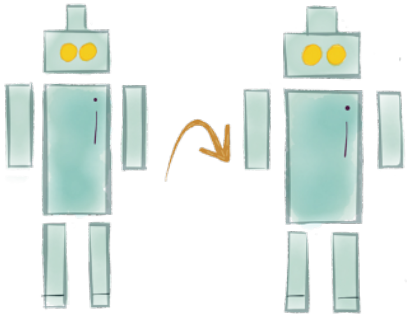
Social franchises, unlike commercial franchises, are not motivated mainly by profit. Social franchisors may have to contend with lower fees or request alternative forms of non-monetary consideration, such as requiring the franchisee to collect and share key data.

The franchise agreement is usually prepared by the franchisor's lawyers and the tendency is for the franchise agreement to favour the franchisor.

FRANCHISING MODELS

There are a variety of franchising models that can be adopted when franchising an organisation, depending on the nature of the organisation as well as the degree of control that the franchisor wishes to retain over the organisation.

1. Dissemination



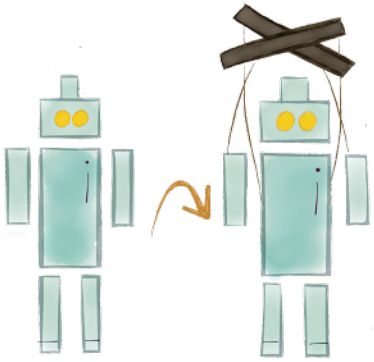
Under this model, the franchisor provides resources to the franchisee and the franchisee is able to replicate the organisation set up, with generally no ongoing legal and financial relationship between the franchisor and franchisee.

This franchising model provides flexibility for both franchisors and franchisee.

This model suits charities that are centered around ideas that can be easily adopted and carried out by a franchisee with little supervision needed from the franchisor.

Examples may be toolkits on how to run clubs in schools, or materials or information to help a franchisee bring a campaign to a new place.

2. Affiliation



Under this model, the franchisor has an ongoing legal and financial relationship with the franchisee and the franchisor charges the franchisee fees.

This franchising model allows a franchisor to retain more control over the franchise of the organisation, and suits organisations that require the franchisor's expertise, resources and guidance to closely guide the franchisee to successfully achieve the social goals of the organisation.

KEY ELEMENTS OF A FRANCHISING AGREEMENT

Key terms of the franchise agreement that parties should consider carefully and with the benefit of independent legal advice are as follows:

1. Exclusivity of rights granted

The franchisor may either grant an exclusive franchise to the franchisee within a specified territory or reserve its rights to grant multiple, non-exclusive franchises. Franchisors that grant exclusive franchises risk becoming overly dependent on a particular franchisee for the expansion and the performance of the franchise in the territory specified. Conversely, franchisees may benefit from exclusive franchises as these rights can limit competition from other franchisees within the territory, and give the franchisee greater leverage with the franchisor once the franchise agreement has been signed. Exclusive franchisees may, however, be subject to greater scrutiny or stricter performance targets by their franchisors given the dependence of their franchisors on their performance.

2. Geographical boundaries and territory

The territory specified for the grant of a franchise affects the value of the franchise, as the business potential of the franchise depends on the economic size and value of the potential customer base within the specified territory. Where an exclusive franchise is granted, the territory specified also determines the area in which the franchisee is able to operate without competition. Territory is generally specified along geographical lines, and both franchisors and franchisees should consider carefully how this may impact any cross-border business operations that they may have. For example, enterprises with business assets and customers in different countries will have to review the drafting of this clause to ensure that they are able to sell to their expected customers without violating the territorial limitations specified.

3. Duration of the term

It is common for commercial franchises to be entered into for an initial term of up to five years or even ten years, with options for further and subsequent renewals of the term. The option to renew existing terms is often built into the franchise agreement.

Alternatively, the option to renew may be subject to renegotiation of terms on the basis of prevailing market conditions or the performance of the franchisee seeking the renewal at or near the time of renewal. Conditions may be imposed by the franchisor for the option to renew, such as payment of renewal fees, achievement of pre-agreed performance benchmarks and the absence of material breaches by the franchisee.

4. Fees

The fee structures of commercial franchises generally include a payment of initial fees as well as on-going royalty fees tied to the financial performance of the franchisee's business. An example of a common fee structure comprises:

- a one-time initial set-up fee;
- a periodic royalty or management fee equivalent to a percentage of the gross monthly turnover of the franchisee;
- a periodic advertising fee equivalent to a percentage of the gross monthly turnover of the franchisee; and
- ad-hoc training fees for training courses and programmes provided by the franchisor.

Parties should look at the calculation mechanics and payment timings for such fees to ensure that the basis upon which these fees are calculated accords with the franchisee's internal accounting methods, and that the franchisee has the ability to pay on time.

Financial metrics such as gross monthly turnover may be adjusted after the auditing of the franchisee's financials, and the franchise agreement may specify an adjustment mechanism under which audited figures are provided to the parties after the relevant accounting period. The party holding on to the excess amount after reconciling of accounts is then required to refund such amount to the other party, and the withholding party may also be liable to pay additional interest for the withheld sum, which is to be calculated at rates prescribed in the franchise agreement. The franchisor may also require franchisees to disclose their books and records, or require periodic independent inspection and auditing of such books and records to ensure that fees are properly calculated and paid.

As discussed above, social franchises may have different fee structures given the non-profit nature of the enterprise. Franchisors may also request other forms of consideration such as the provision of data under social franchise agreements.

If such alternative forms of consideration are contemplated, the way the consideration is valued and furnished should be carefully negotiated and drafted to avoid ambiguity.

5. Obligations of the franchisor

The franchisor's initial obligations primarily relate to assisting the franchisee in setting up its business. These include advice on the selection of premises and hiring and training of staff, the provision of the franchise manual(s), assistance with setting up human resource and management functions, advertising and management support, and assistance with supply and procurement of equipment and products. The franchisor may also have ongoing obligations to supply the franchisee with specified products or provide continued business development.

6. Obligations of the franchisee

The franchisee's obligations may include compliance with the franchise manual(s) and the standards required by the franchisor, requiring the proper use of the franchisor's IPs and requiring that the franchisee provides appropriate training and development to its employees, etc. The franchisor uses these legal obligations to uphold standards that the franchisor would require, and to ensure the franchisor can sue the franchisee if it fails to comply with those requirements, or does acts damaging to the franchisor's image or intellectual property. The general obligation to comply with franchise manuals (usually pertaining to operations, etiquette and training) also gives flexibility to the franchisor, as the franchisor typically reserves the right to update franchise manuals from time to time and to impose new requirements on the franchisee, without having to amend the executed franchise agreement.

The franchisee may also be subject to obligations to provide the franchisor with its financial statements and management accounts on a periodic basis, to facilitate the franchisor's monitoring and evaluation of the franchisee's financial performance.

There may also be covenants and contractual promises agreed by the franchisee seeking to restrict or limit the ability of the franchisee to compete with the franchisor or continue a similar business—even if such a clause is agreed to, the enforceability of such restriction will depend on the circumstances in each case and the scope of the restriction on the franchisee.

7. Advertising and marketing

Where the franchisor carries out centralised advertising and marketing activities in exchange for a monthly levy on the franchisee, there may be provisions prescribing the scope and type of advertising and marketing activities to be conducted by the franchisor.

The franchisor has an interest in presenting a consistent brand appearance and preventing damage to its brand reputation. Consequently, the franchisee is usually only permitted to carry out advertising and marketing activities with the prior authorisation of the franchisor and only if such activities are in accordance with the policies and instructions of the franchisor, such as the placement or usage of any of the franchisor's trade name and trade marks on such advertising and marketing materials.

8. Insurance

The franchisor may require the franchisee to take out insurance, where the scope of coverage accounts for third party liability, and includes its employees, loss of profit and property damage. To protect its own interests, the franchisor may also require the franchisee to ensure that the franchisor and its interests are formally recognised on the policies and demand that the franchisee provide copies of such insurance policies to the franchisor. Alternatively, the franchisor may also require the franchisee to partake in the franchisor's group insurance schemes, if any.

9. Termination and suspension

The termination provisions of a franchise agreement tend to be crafted to allow the franchisor to revoke or suspend the franchise rights granted to the franchisee if the franchisee commits a material breach of the terms of the franchise agreement.

The list of breaches deemed material enough to trigger an immediate termination is usually set out or referenced in the same provision. Other grounds for termination that parties may consider includes a change of control of a party or the commencement of insolvency proceedings against a party.

10. Dispute resolution

Other than standard court resolutions, franchise agreements usually include alternative dispute resolution provisions that may specify negotiation and 'cooling off' timelines, or provide for the appointment of third-party mediators, or for the submission of disputes to arbitration.

For social franchises, dispute resolution mechanisms such as mediation could be preferred as they enable greater flexibility in taking into account the social mission and values of the franchisor and franchisee, rather than aiming for purely adversarial outcomes.

LAWS THAT GOVERN TERMS IN FRANCHISE AGREEMENTS

A franchise agreement is a contract between the franchisor and the franchisee and thus it is governed by contract law. It is also regulated by laws such as the Contracts (Right of Third Parties) Act 2001, the Unfair Contract Terms Act 1977, the tort of deceit (a cause of action under common law), the Misrepresentation Act 1967, and the Competition Act 2004.

Social franchises in specific sectors (e.g. education, healthcare, financial services etc.) may also be governed by codes, regulations, laws, and other binding rules pertaining to these sectors and these laws could also impact the franchise agreements.

1. Contract Law

At its core, the franchise agreement is a detailed commercial contract, and its validity, interpretation, and enforcement are subject to Singapore's established contract law. Contract law governs essentially aspects such as the formation of the binding relationship, the meaning and effect of its various clauses (many of which are common in such written agreements, as explored in Chapter 10), and the consequences of non-performance by either party, including rights for the innocent party to terminate the agreement if the other party breaches a term of the franchise agreement.

2. Contracts (Rights of Third Parties) Act 2001

The Contracts (Rights of Third Parties) Act 2001 entitles a third party to enforce contracts directly, when the conditions laid out in the Act are satisfied.

This Act applies to franchise agreements. Thus, the franchisor and franchisee should consider if the franchise agreement should grant enforceable rights to third parties, or whether to exclude such rights for some or all third parties.

3. Unfair Contract Terms Act 1977

The Unfair Contracts Terms Act 1977 requires that certain provisions in a contract, including a franchise agreement, must be fair and reasonable, having regard to the circumstances that were, or ought reasonably to have been known to or in the contemplation of the parties when the contract was made. A discussion of this Act may be found in Chapter 10.

4. Tort of Deceit

This area of law protects the franchisor and the franchisee from false statements made by either party in relation to the franchising arrangement. While this area of law is not enshrined under any legislation per se, this area of law remains to be further developed by the Singapore courts through case law over the years.

5. Misrepresentation Act 1967

The Misrepresentation Act 1967 provides that: where a misrepresentation has been made by one contracting party to another, the party making the misrepresentation is liable to the other and has to pay damages (as if it was a fraudulent misrepresentation) unless he or she can prove that he or she had reasonable grounds to believe and did believe up to the time that the contract was made that his or her statement was true.

6. Competition Act 2004

Parties to the franchise agreement should be mindful that the franchise agreement does not entail the franchisor and the franchisee engaging in economic activities in an anti-competitive manner that could go against the Competition Act 2004.

Examples of anti-competitive behaviour include price-fixing, market sharing agreements, and predatory behaviour to hinder competitors.

STATUTES AND REGULATIONS THAT GOVERN CHARITIES AND FRANCHISEES

1. Office of the Commissioner of Charities Guidance for Charities Engaging in Business Activities

If your organisation is a charity, and the charity is engaging in incidental business activities that involves the provision of goods and services, your organisation is subject to the guidelines laid out by the Office of the Commissioner of Charities "Guidance For Charities Engaging In Business Activities" (referred to in this section as the "**Guidance**"). Following the Guidance, entering into a franchise agreement may constitute an incidental business activity that supports the achievement of its charitable objects, for instance, where fees are paid by franchisees to your organisation in furtherance of their primary purpose activity.

The Guidance provides that these business activities must not undermine the organisation's focus and distract the organisation from its charitable object. Organisation boards should also be prudent and must not expose their charitable assets to significant risk.

Where business activities may expose charitable assets to significant risk, they must be carried out by a business subsidiary. A business subsidiary means any non-charitable company owned by one or more charities to carry on a trade or business on their behalf.

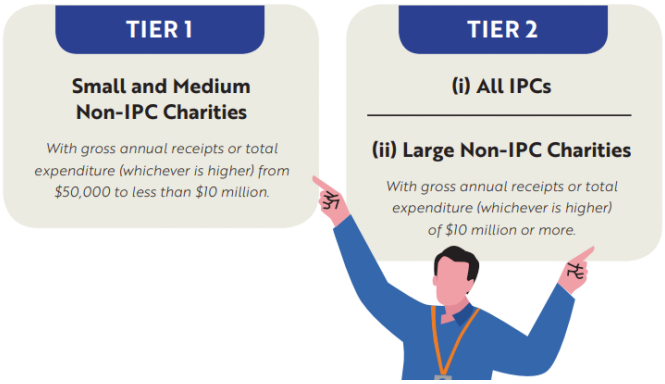
The parent organisation and the subsidiary should operate as two parties free and independent of each other, so as to protect the former's assets from business risks and creditors. In addition, when making decisions related to a business subsidiary, the organisation board must work in the best interests of the parent organisation.

Ultimately, organisation boards are responsible for the proper use of their resources, and are accountable for their investment decisions. However, if necessary, the Commissioner of Charities can direct an organisation to cease funding or terminate its business activities, in order to protect its charitable assets.

2. Code of Governance for Charities and IPCs

The Code of Governance for Charities and IPCs (referred to in this section as the "**Code**") applies to your organisation and its franchisees if your organisation and its franchisees are registered as charities in Singapore, unless otherwise exempted.

Charities are divided into two different tiers, depending on whether they are registered as IPCs and depending on the scale of their gross annual receipts or total expenditure. The tier classification determines the applicable governance principles that they must comply with.



All charities and IPCs to which the Code applies are required to submit a Governance Evaluation Checklist ("**GEC**") online via the Charity Portal. Charities that have gross annual receipts or total expenditures, whichever is higher, of less than $50,000 are excluded from the submission of the GEC, but are still strongly encouraged to refer to the Code and apply the principles.

The Code operates on the principle of 'comply or explain'. Unless exempted, charities are required to:

- submit a GEC on the Charity Portal, of which disclosure of the checklist is made available for public viewing;
- explain why it cannot fully comply or can only partially comply with certain guidelines and the Code; and
- indicate the steps it plans to take to comply or explain why it is unable to comply with the guidelines and the Code.

For IPCs, the extent of their compliance with the Code and the reasons for any non-compliance will be considered by Sector Administrators when assessing the IPC's application to extend its IPC status and in determining the length of the extension. IPCs with GEC scores above 80% will be considered more favorably.

3. Charities Act 1994

If your organisation and its franchisees are registered as charities, your organisation and its franchisees have to abide by the Charities Act and regulations which outline the rules on areas such as:

- registration;
- deregistration;
- submission of accounts, reports, and other returns; and
- fund-raising.

4. Companies Act 1967

Your organisation and franchisee are most likely subject to provisions of the Companies Act which outlines crucial requirements for a company's incorporation, ongoing operations, the duties of its directors, and financial reporting. Non-compliance can lead to various penalties and regulatory actions. Specifically for companies registered under the Charities Act, local or foreign companies that have their sole object or principal objects as a charitable purpose, if such company is convicted of an offence under the Charities Act or any regulations made thereunder that is deemed to be a company or foreign company that is being used for purposes prejudicial to public welfare, the Companies Act provides that they may be wound up (for local companies) or struck off the register (for foreign companies).

5. Societies Act 1966

If your organisation and its franchisees fall within the definition of a "society" under the Societies Act, your organisation and its franchisees are subject to the provisions of the Societies Act which outline rules on:

- registration;
- place of business;
- constitution (also known as "**rules**");
- officers; and
- annual general meetings.

FRANCHISING AND LICENSING AUTHORITY (SINGAPORE)

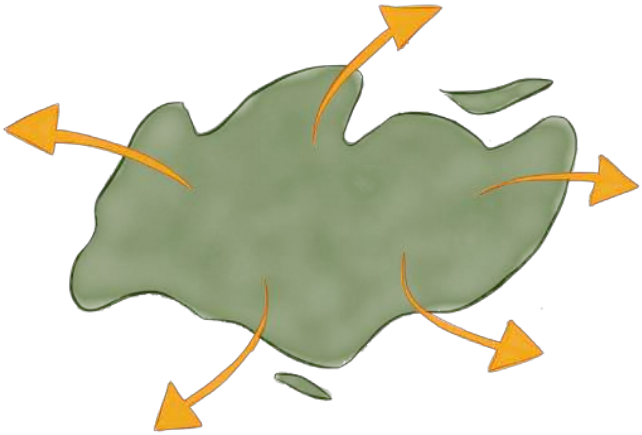
There are currently no government agencies that regulate the sale and formation of franchises in Singapore.

The Franchising and Licensing Association (Singapore) ("**FLA**") is a membership organisation that is self-regulating. Companies can opt to join the FLA as members. Members of the FLA are required to comply with the FLA's Code of Ethics.

The FLA's Code of Ethics contains rules on misleading promotion, full information on investment requirements, disclosure, the importance of obtaining independent legal advice, the right of potential franchisees to contact existing franchisees, no imitation of other's trademarks, proper selection of franchisees, provision of proper training, business guidance, accessibility of the franchisor to franchisees, transferability of the franchise, standards of conduct, notice of breach and time for remedy, termination only with good cause, and dispute resolution.

19

CROSS-BORDER OPPORTUNITIES



CROSS-BORDER TRADE: WHAT TO LOOK OUT FOR

In helping your organisation grow, you may consider opportunities beyond Singapore's borders.

*For the purposes of this guide, we will broadly define any such international opportunity as a "**cross-border**" opportunity. Cross-border opportunities may present a number of advantages for your organisation, whether through access to cheaper, higher quality or more varied supplies, or by opening new markets in which you can sell your goods or services.*

Although there may be great potential for expanding your organisation outside of Singapore, you should satisfy yourself that you are fully informed of the potential and possible operational and legal risks related to your proposed venture and its industry. This chapter briefly outlines some of these business and legal considerations.

CROSS-BORDER OPPORTUNITIES: KEY CONSIDERATIONS	
BUSINESS	LEGAL
• Strategy formulation • Finding the right country • Finding the right partner • Foreign currency risk • Changes to applicable tax and duty regimes	• Choosing legal representation • Choosing an appropriate operating structure • Conducting due diligence • Drafting agreements (contracts) • Local laws and regulations

LEGAL CONSIDERATIONS FOR CROSS-BORDER OPERATIONS

Choosing legal representation

Local legal representation can be crucial to the success of your venture. Local legal counsel are equipped and qualified to advise you on a myriad of issues pertinent to the local legal landscape. Examples include property-related issues (such as the rent or purchase of business premises), tax-related issues (such as applicable value added tax, sales tax or corporate income tax) or employment-related issues (such as advising on employment contracts and working conditions for potential employees).

Although high legal fees are a concern for most business persons, most lawyers are happy to meet with potential clients prior to signing any engagement letter or demanding fees of any sort. Such preliminary meetings give potential clients the opportunity to conduct informal interviews and fact-find as a means of ascertaining if they are comfortable with the lawyer in question, and to gauge the quality of their legal advice. Furthermore, you do not need to seek out the biggest or most sophisticated law firm available since a small firm may provide the same quality of service and be the most appropriate advisor for your new business. Foreign law expertise is available locally through Singapore Law Practices ("**SLP**"s) with foreign desks or offices, as well as through Qualifying Foreign Law Practice ("**QFLP**"s) licensed to practise in Singapore. For assistance and information on these entities please contact the Law Society of Singapore (for SLPs) or the Ministry of Law (for QFLP).

You can also seek out references for local legal counsel through word of mouth or through your potential business partners in the relevant foreign jurisdiction. Regardless of the manner by which you select your local legal counsel, a competent local legal counsel will be invaluable as you expand your business across borders.

Choosing an appropriate operating structure

The structure you choose for your business is dependent on your business plans, local labour and legal requirements, foreign exchange controls and taxation policies etc. Each structure possesses its own distinct advantages and disadvantages, and you should discuss this in greater detail with your appointed foreign lawyer.

For example, you may choose to establish a branch office or subsidiary in the country, which would usually mean hiring local employees or sending someone from Singapore to work in that country. Local employees can provide a loyal local presence that represents your enterprise and may provide you with valuable market information in a timely manner. However, establishing a branch office takes up valuable finite resources such as your time and money. This may leave you more susceptible to taxes and lawsuits in the foreign country as you now have an established presence in the country. This may also increase your compliance costs as you now have to comply with foreign employment laws and regulations as well as local income taxes, to the extent that they apply to your branch office's work and employees. Alternatively, relying mainly on your foreign business partners is certainly more cost effective, but may leave you beholden and give them leverage over you.

Conducting your due diligence

You must ensure that you conduct appropriate due diligence on your business plan and your potential foreign business partners. Due diligence is the process by which you verify or obtain information about material business concerns, such as your business partner and its operations, the legal and political climate of the country, or identify other material issues that may affect your cross-border operations.

Due diligence may also be conducted on your behalf by hired professionals, such as accountants, risk management and market consultants or lawyers. This can be an expensive process.

Regardless of how you choose to conduct due diligence, it remains a necessary ingredient for the successful expansion of your cross-border operations. The findings of your investigations can have a substantial effect on the commercial terms of your cross-border operations as they can help you to identify and potentially quantify the relevant commercial risks to your cross-border business plan. For example, your due diligence work may reveal that a potential foreign supplier lacks the necessary machinery in their operations to consistently provide you with high-quality supplies. As a result you may decide that the risks of receiving low-quality supplies from this particular supplier are so great that it is not worth engaging the supplier at all.

Contracts

Any contract that you sign with foreign parties will constitute the legal framework of your operations abroad. You must give careful attention to the content and form of these agreements. It is very important that you reach a clear agreement with your counterparty as to what the overall purpose of the contract will be.

The purpose of the contract has a direct impact on a contract's scope, terms, and legal implications.

Some of these legal issues take on particular importance in the context of cross-border transactions:

1. Language

Both parties must agree on the language in which the contract will be drafted. In certain cases, both parties can agree that the contract be drafted in English and another foreign language. This will allow for greater understanding of contractual terms by both sides, as the terms should be identical across both languages. However, the parties must decide which document will be the operative document in the case of inconsistencies between the English and foreign language versions.

Some countries such as Indonesia may also have specific requirements for the language of contracts in order for them to be legally enforceable. Therefore, you may need to make enquiries or consult a lawyer to understand any particular language requirements of the foreign country.

2. Payment

From a commercial perspective, the point at which funds change hands between parties is a very important event that a contract has to clearly account for. The risks associated with payment can generally be divided into either:

- paying too soon and not receiving the good or service in return; or
- not receiving payment despite having already provided the good or service.

Contracts can help to mitigate these payment risks by specifying exactly when and how payment will be made. You can choose to build into your contract specific payment mechanisms, such as letters of credit or escrow accounts, that can help to ensure that the funds are transferred between parties at the appropriate time.

A letter of credit is a document issued by a bank to another bank that guarantees the payment by a specified person (or entity) upon specific conditions being met.

Escrow accounts are accounts into which funds can be deposited by one party. Such funds will not be released to the counterparty until the escrow agent, a neutral third party, has determined that certain previously specified conditions have been met.

Essentially, both letters of credit and escrow accounts serve as mechanisms for the parties to manage their risks while still guaranteeing payment so long as the goods or services are provided in a satisfactory manner. Additionally, in the case of international contracts, it is of particular importance that the contract should specify a mutually agreed currency in which payment should be made.

When certain cross-border payments are made (e.g. interest payments or licence fees), withholding tax deductions may be made by the payer in the country where payments are made from. Refer to Chapter 7 for details on withholding tax and what it is. You should check with foreign or international tax advisers whether withholding tax is applicable to payments made from the foreign country and factor those additional costs into your evaluation of whether the business expansion makes sense financially.

3. Governing law and forum

The governing law of a contract is the law of a particular jurisdiction under which the terms of the contract will be interpreted. The governing law should be specified in the contract to prevent uncertainty should disputes arise.

The laws of different countries may differ, such as in matters of interpretation of words, the treatment of certain issues, or the allocation of responsibility and risks, making the choice of governing law a sensitive matter. Both parties will typically want their own country's law to be the governing law of the contract. The governing law can also be the law of the jurisdiction in which performance of the contract takes place. Alternatively, the governing law need not be the law of the jurisdiction of either party, and can be the law of a recognised, developed legal system.

For example, English law is often selected as the governing law for commercial contracts, even though neither party is an English corporation. This is because English law provides a more stable basis for interpreting any disputes under the contract. It is also a growing trend to subject the contract to Singapore law, due to Singapore's international reputation as a highly regulated financial and business hub with a highly efficient legal system. Insisting on Singapore law is advantageous as it gives you 'home ground' advantage and greater familiarity.

The 'forum' clause of a contract specifies the exact dispute resolution process for any disputes under the contract and the physical location where such a process will take place.

Forum clauses may also state whether any disputes would be interpreted under the exclusive or non-exclusive jurisdiction of the courts of a certain legal system. Claiming non-exclusive jurisdiction means that court proceedings may be brought in any other jurisdiction aside from the jurisdiction specified in the contract, whereas claiming exclusive jurisdiction means that any dispute would be heard by the courts of the legal system named in the contract. Exclusive jurisdiction can provide more certainty for you and your business as to where potential legal disputes may arise, while non-exclusive jurisdiction affords you the flexibility to change the forum, if appropriate. This body of law is commonly referred to as 'conflict of law' rules, and there may be situations which justify a departure from the parties' agreed choice of jurisdiction (whether exclusive or non-exclusive). Whether you choose exclusive or non-exclusive jurisdiction would primarily depend on your comfort level with the legal system specified in the contract.

The dispute resolution process can either be undertaken through the court system or through arbitration. This choice is discussed in greater detail under "Arbitration, litigation and mediation" below. If, for example, a forum clause states that arbitration will be the method of dispute resolution, the forum clause may go on to specify that the arbitration must take place in Singapore. In turn, the governing law clause may specify that the arbitration rules and procedures that would be used to govern that arbitration are the rules of the Singapore International Arbitration Centre.

Forum clauses can be very important as you will want to minimise travelling expenses for attending proceedings and the general inconvenience of attending proceedings in a remote location that may be unconnected to the dispute at hand. When one party holds a negotiation advantage over another, the terms of the forum and governing law clauses may be dictated to the weaker party.

Both forum and governing law clauses are very important in maximising the likelihood of achieving a successful resolution to any dispute. Subjecting yourself to the jurisdiction of the courts or governing law of a country with an underdeveloped legal system can profoundly increase the overall risk and uncertainty associated with your cross-border activities in that country. On the other hand, it may allow you to enforce any judgment you might obtain against a foreign counterparty with greater ease. Consequently, the importance of governing law and forum contractual terms should not be underestimated.

4. Arbitration, litigation and mediation

Parties may specify in the contract that disputes shall be resolved through litigation, arbitration and/or mediation. Each method has its own advantages and considerations.

Litigation involves resolving disputes through the court system. It is often seen as a formal process with established procedures and the ability to appeal decisions. However, litigation can be time-consuming and costly, and outcomes may be unpredictable in foreign jurisdictions.

Arbitration is a private dispute resolution process where an arbitrator, rather than a judge, makes a binding decision. It is often chosen for its perceived efficiency and confidentiality compared to court proceedings. While arbitration can avoid some delays associated with litigation, it is not without costs and may limit opportunities for appeal.

Mediation is a collaborative approach where a neutral third-party mediator assists the parties in reaching a mutually agreeable solution. It is typically less formal and can be a cost-effective way to resolve disputes before resorting to litigation or arbitration, but requires both parties to be willing to negotiate and compromise. The mediation process and its results are typically confidential.

Ultimately, the choice between these methods depends on the specific circumstances of the dispute, the relationship between the parties, and their comfort with the legal systems involved.

Each method offers distinct pathways to resolution, and parties should carefully consider their priorities and the nature of their dispute when deciding on the most appropriate approach.

5. Intellectual property

Often, you may find yourself in a situation where you will be sharing your intellectual property with your cross-border business partners. Intellectual property may come in a variety of forms, but commonly includes trade secrets and trademarks (such as your logo), designs (products' look and feel) and patents (inventions). At the very least, your rights and the rights granted to the other party should be outlined and set out in a contract. Such a contract should specify what is being licensed, the duration and purpose of the licence and the remedy in case of any infringement of the licence. You should also seek intellectual property protection in the jurisdictions in which you operate. Although it might provide greater security to seek protection in as many jurisdictions as possible, the cost of doing so may become prohibitively expensive. Typically, the three largest jurisdictions for patent filing are the United States, the European Union and Japan. For further details on intellectual property, please refer to Chapter 12.

Local laws and regulations

Local laws and regulations may vary widely across countries. The following points are potential local wrinkles that may materially affect your cross-border operations:

1. Tax

Singapore benefits from a relatively simple corporate tax system, but the same cannot be said of many countries in the region. Local tax advice will prove invaluable in determining whether you need to pay tax, and if you do, how much. The advice may even help you make decisions on other aspects of your expansion. For example, tax advice may directly impact the corporate structure you choose to adopt for your expanded operations. It is also possible that your overseas business operations will create a taxable presence in the foreign country for you. For example, your foreign branch office, or employees seconded overseas could constitute a 'permanent establishment' in the foreign country. Under international tax principles, this means that profits attributable to that branch, or those employees may be taxed overseas.

You may wish to speak to international tax advisers to understand the limits of this exposure, and whether any treaties for the avoidance of double taxation are in place to relieve it. Refer also to Chapter 7 for further information on taxation.

2. Foreign ownership

Many countries have strict and wide-ranging rules governing foreign ownership of property, corporations or other types of assets. These rules may have an impact on your ability or interest in investing in a particular jurisdiction. For example, rules may require joint ownership of property with a citizen of that jurisdiction and if you are unable to locate a desirable partner, you may wish to invest elsewhere. Another point of consideration is the rights of foreign investors or foreign property owners in that jurisdiction, as a jurisdiction that restricts foreign ownership may also curtail the rights and benefits of foreign investors and property owners. Countries may also institute rules and regulations to prevent the use of 'dummy' organisations or trustees to circumvent such prohibitions. Some countries may also have rules in place for the possible nationalisation of assets in key industries. Very broadly speaking, this tends to happen more often in developing countries or in situations of unstable political leadership, but is a risk that should be kept in mind.

3. Foreign exchange controls

Although Singapore has a freely convertible currency, many countries, particularly in Asia, have implemented relatively stringent foreign currency conversion controls. This means that your enterprise may encounter difficulty in converting certain foreign currencies into Singapore dollars. This may not be problematic if you intend to continue to utilise the profits generated in the foreign currency in the foreign jurisdiction (for example, to purchase additional supplies or for other working capital needs), but may be a significant issue should you intend to repatriate the funds back to Singapore, which may then require permission from the local authorities. Foreign exchange controls are particularly relevant in a scenario where you are earning income in the foreign currency (for example, from sales of your goods or services in that country) and you wish to repatriate such currency back to Singapore to use as desired. There are also tax implications to consider when funds are received from overseas. In Singapore, for example, foreign-sourced income can be taxable in the hands of the recipient unless certain conditions are met. Refer to Chapter 7 on taxation for details.

4. Industry-specific regulations

Depending on the industry in which you operate, you may have to deal with specific industry regulations in the foreign jurisdiction that may be entirely unlike what you are exposed to in Singapore. It is vital that you adequately research the applicable local laws and regulations that affect your cross-border operations so that you appreciate the issues raised. For example, your cross-border operations may require that you obtain various licenses to do business in the foreign jurisdiction of your choice. Alternatively, your business may be affected by rules and regulations governing the import and export of certain types of materials or equipment. You may hear anecdotally that 'under-the-table' payments or bribes are common in some foreign jurisdictions and that they are just part and parcel of the cost of doing business overseas. Do note that regardless of the apparent prevalence of these practices overseas, they remain illegal and can expose you to criminal liability in your home country as well. In Singapore, for example, local laws prohibit the bribery of a foreign public official outside Singapore by a Singaporean citizen.

5. Employment

Where your cross-border operations envisage the employment of persons in the foreign jurisdiction, you must take special care to ensure compliance with all applicable employment laws and regulations of that jurisdiction. Countries can have widely differing rules that govern any number of employment-related areas such as minimum wage, frequency of pay, working conditions, hours of work, vacation, termination, pensions, employee-related taxation and benefits. It is important that you or the appropriate person in charge of employment matters is well versed in these regulations to ensure that your organisation does not fall foul of the law.

6. Intellectual property

As noted above, you may find yourself in a scenario where you are sharing your intellectual property with your foreign business partners. Prior to sharing such information, it is important that you assess the effectiveness of the foreign jurisdiction's judicial system in protecting intellectual property. For example, some countries may have widespread piracy and counterfeiting, or lack enforcement against pirated or counterfeit products. Only after identifying such risks can you decide if the commercial terms of the transaction are acceptable.

7. Cross-border personal data transfers

One increasingly common feature of doing business overseas involves collecting, using, disclosing or processing personal data. Often these activities include disclosing, sharing or making available personal data to your business counterpart in another country—these are effectively transfers of personal data across borders. You should be aware that various countries, including Singapore, have enacted legislation which regulates activities in relation to personal data. These laws may be described as data privacy laws or data protection laws, but they may also be information technology laws, or laws addressing information technology-enabled activities such as e-commerce activities. One feature often found in such laws are rules relating to the cross-border transfer of personal data. Different countries have different rules concerning such transfers and your contract with your counterparty may need to address the allocation of risks and responsibilities concerning transfers. Some jurisdictions apply mandatory or prescribed standard form terms to facilitate cross-border transfers known as standard contractual clauses, which are meant to be used as part of your contract with your counterparty. The terms of these standard contract clauses are prescribed by a regulatory authority. There may be limited opportunities to deviate from these standard terms. If you intend to transfer personal data to a foreign counterparty, you should consult a lawyer to ensure you abide by local laws when doing so.

BUSINESS CONSIDERATIONS FOR CROSS-BORDER OPERATIONS

Although this chapter focuses on legal considerations for cross-border operations, there are a number of basic business considerations which you should consider when you determine the extent of cross-border operations of your organisation. These considerations include, but are not limited to:

1. Formulating a strategy

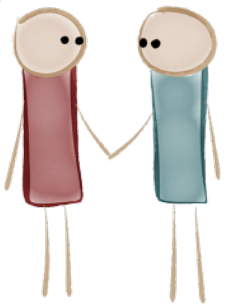
Before looking abroad, you will want to ensure that you identify the benefits to your organisation of such an expansion. You should be sure that such benefits are worth the additional risk of doing business with partners outside of Singapore. For example, would you consider taking on a supplier based in another country, with no proven track record in Singapore, and no references, if doing so would only lead to a minimal increase in your profit margin?

2. Finding the right foreign market

This goes hand-in-hand with formulating your strategy for international expansion. In identifying a country into which to expand your organisation, you will want to take into account not just geographic proximity, but also its political and macroeconomic stability, the fairness and clarity of the legal system, any potential language barriers and its business culture. Not only should you concern yourself with 'macro' reasons such as the economy and stability of a country, you should also conduct research on the particulars of the market in that country for your goods or services. This includes investigating the extent of potential demand for your goods or services as well as the existence of competition or substitute goods and services in that jurisdiction. You may consider hiring a consultant that is particularly knowledgeable about your industry, the potential foreign market, or, preferably both, to help you make an informed decision.

3. Finding the right partner

After you have identified a strategy and destination for your international operations, you need to undertake the necessary steps to identify your future business partners, including conducting business due diligence. Effective business due diligence allows you to confirm that potential business partners can uphold their end of the bargain and to identify any potential issues that may jeopardise your operations. In your search for your future partners, you should consider factors such as cost, track record and cultural fit.



You can conduct due diligence yourself by visiting your partners at their business sites. For example, if you are signing a supply agreement with a foreign supplier, you should strongly consider visiting the factory where they expect to produce the goods that you are buying. Site visits are an effective way to ensure that the quality of the production process and the raw materials meet your requirements. You can also conduct due diligence through interviews with your business partners in order to better understand their business and how they can help your operations.

4. Foreign currency risk

Depending on the exact business objective of your cross-border operations, you will want to consider the risk of the relevant foreign currency appreciating or depreciating against the Singapore dollar.



Generally speaking, any appreciation of the Singapore dollar against a foreign currency will make the purchase of goods and services in Singapore from that foreign country cheaper, while the depreciation of the Singapore dollar against a foreign currency will make any goods and services you may sell in the foreign country that are produced in Singapore relatively cheaper.

Banks and financial institutions may be able to provide you with hedging instruments that help to limit your foreign exchange risk, but such instruments can be extremely risky if not properly structured, and the accounting and tax treatment of such instruments can be complicated.

5. Applicable tax and duty regulations

You will need to consider if your business operations may incur tax liabilities in a jurisdiction outside of Singapore. If so, this will likely complicate matters for you and may require you to hire persons in the relevant foreign country to assist you in calculating and paying your liability. Duties for goods being imported into Singapore or for goods being exported to the foreign country of choice may also have a material impact on your bottom line as they can quickly add to your overall costs. You should also be aware that both taxes and duties are subject to changes beyond your control. Such changes can take place for entirely political reasons, and may quickly reduce the financial viability of your cross-border operations.

ADDITIONAL GUIDELINES FOR NPOS

NPOs may consider conducting fund-raising activities overseas for local charitable purposes or locally for overseas charitable purposes. For more information about fund-raising locally and overseas, please refer to Chapter 8 in relation to funding.

When expanding your NPO, the guidelines laid out above would still be relevant. In addition, in order to operate your organisation in the foreign country, you may have to register the charity in the foreign country. The registration process and requirements will depend on the laws of the country the charity is now operating in.

CONCLUSION

The lists above are not intended to be exhaustive. You should conduct your own research through formal means (such as reaching out to the relevant government agencies in the foreign country of choice) and informal means (such as reaching out to business associates and colleagues with experience either in operating in your industry or in the relevant jurisdiction).

You may also wish to consider approaching Enterprise Singapore, the government agency which spearheads the overseas growth of Singapore-based companies and promotes international trade.

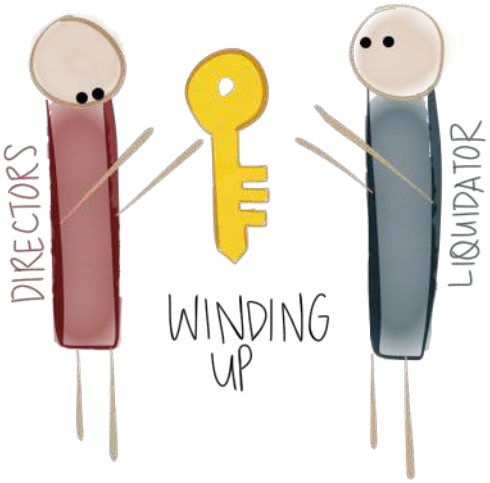
If you have the available funds, you may wish to consider hiring a consultant in Singapore that can advise you on cross-border expansion by providing you with solutions tailor-made to your business strategy.

WINDING UP



20

WINDING UP



CLOSING? YOUR LEGAL OBLIGATIONS DO NOT END THERE

Previous chapters have focused primarily on the formation of your organisation and its operation. Winding up would most probably be the last thought to cross your mind. However, the risk of a business failing, resulting in the entity or its founders becoming insolvent or bankrupt is a real danger which must be addressed.

WHAT DOES 'INSOLVENCY' OR 'BANKRUPTCY' MEAN?

We talk about insolvency where a company or business entity is unable to pay its debts. On the other hand, we talk about bankruptcy where an individual is unable to pay their debts. It is not uncommon for businesses to face the problem of insolvency at some stage. Some may successfully trade themselves back to solvency (in other words, try to continue with the business with the aim of making the business profitable again), but if not, they may eventually be made 'bankrupt' (in the case of an individual) or be 'wound up' (in the case of a company).

This chapter focuses on what can be done if you are unable to trade your organisation back into solvency.

As discussed in earlier chapters, there are different legal vehicles (incorporated and unincorporated entities) which can undertake business transactions. What can be done in the face of insolvency or bankruptcy depends on which legal vehicle has been selected for your organisation.

UNINCORPORATED ENTITIES

For unincorporated entities, such as sole proprietorships or partnerships (but not including LLPs and LPs), when the business becomes insolvent, you, the sole proprietor or partner of the firm, may face personal bankruptcy. This can be dealt with by:

- attempting to trade back into solvency (a voluntary arrangement); or
- winding down and applying for bankruptcy.

Voluntary arrangement

In essence, a voluntary arrangement is a court process where you try to get your creditors to agree to a compromise or arrangement to allow you more time to repay your debts.

Once the process has commenced, you appoint a nominee (an independent party who is typically a registered accountant or a lawyer) to help you put together a repayment proposal. In the meantime, you may get a reprieve from your creditors in the sense that they cannot commence legal action against you. As part of this process, you then try to convene a creditors' meeting for the creditors to consider your proposal to repay your debts. If a majority of your creditors (holding at least 75% in value of the outstanding debt-claims) agree to such a proposal and the court approves it, it will bind every creditor who had notice of the meeting and was entitled to vote at the creditors' meeting, including minority creditors who voted against the proposal or who did not vote at all.

Bankruptcy

A bankruptcy application can be made by a creditor or by the debtor. It is not an instant remedy for debt problems. A bankruptcy application should only be filed as a last resort after all other avenues for debt recovery or settlement have failed.

When making a Bankruptcy Order, the Court will also appoint a trustee to administer the bankrupt's estate (typically a private trustee in bankruptcy ("**PTIB**"), except for cases where the Official Assignee ("**OA**") consents to be appointed as the trustee in bankruptcy. Such administration will involve the investigation of the bankrupt's conduct and affairs, adjudication of creditors' claims, realisation of the bankrupt's assets (i.e. by the selling of assets, save for certain protected properties), issuance of reports to creditors on any proposals that the bankrupt intends to make and the distribution of the estate's funds amongst creditors with proven debts (in order of statutory priority, subject to the retention of such sums necessary for the expenses of the bankruptcy).

For a bankruptcy application to be successful, the debtor must:

- reside in Singapore;
- have property in Singapore; or
- reside, or carry on business, in Singapore one year before the bankruptcy application.

The applicant will also have to prove that the debtor is unable to pay their debts. One of the most common ways to do so is to show that the debtor is unable to pay a debt due immediately of at least $15,000 within 21 days of receiving a demand in a prescribed form (called a 'statutory demand').

Under an expedited bankruptcy application process, the applicant need not wait for the 21-day period to be over before making the bankruptcy application if the applicant is able to show that the debtor's assets are at risk of being significantly diminished before the 21-day period ends.

If the bankruptcy order is granted against you, you will be required to submit a statement detailing your financial position within 21 days to the OA or PTIB, as may be applicable. Failure to do so may result in imprisonment or a fine.

The OA will sell off your assets and the proceeds will be used to pay your creditors who have submitted proof of the debts that you owe them. These creditors will be paid in a fixed order of priority (which can be found in s.352 of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**").

If your debts are not fully repaid due to insufficient proceeds, you will be required to submit your accounts to the OA every six months. Your income will also have to be handed over to the OA in order to repay your debts. A reasonable amount, however, may be retained for the maintenance of yourself and your family.

Typically, bankrupt persons will need to obtain the approval of the OA before they can travel out of Singapore. Bankrupts are generally not permitted to be appointed as a director of a company. This restriction against being a company director generally lasts for as long as the person remains a bankrupt.

It should also be noted that, generally, only the assets or property (except for the bankrupt person's HDB flat) that belong to the bankrupt, will come under the control of the OA. Bankruptcy usually does not affect the assets or property of spouses or family members. An exception to this is where the debtor improperly transfers assets or property to their spouse or family members to avoid claims by creditors. In such cases, the OA may claim for the return of such assets from the recipients.

Pitfalls of declaring bankruptcy

One common misconception is that since the assets of a bankrupt person's family are generally safe from creditors, the declaration of bankruptcy is an easy way to avoid one's financial obligations, while still managing to enjoy a comfortable lifestyle. As mentioned, the deliberate transfer of your assets to your family in order to protect these assets from creditors is an action that can be unwound. Additionally, bankruptcy creates a blot on the bankrupt person's credit history, and a declaration of bankruptcy will make it much harder for that person to obtain loans, credit cards and mortgages in future. Thus, voluntary initiations of bankruptcy proceedings should be avoided unless absolutely necessary.

Discharge from bankruptcy

If the debts have been repaid, you may apply for discharge of your bankruptcy status.

However, that is not the only way a bankruptcy may be discharged. Even if your debts have not been fully repaid, your bankruptcy status can still be discharged through the court, after evaluating your conduct and financial position. Alternatively, it may be obtained from the OA via a certificate of discharge in accordance with the differentiated discharge framework, which allows debtors who are still unable to pay the debt amount in full after a number of years, to be

discharged. This is provided that the debtor is able to make certain levels of repayments to creditors. These conditions would differ depending on whether the debtor is a first-time bankrupt or a repeat bankrupt, and repeat bankrupts would generally be subject to more stringent conditions:

- First-time bankrupts may be eligible for discharge in as early as three years if they succeed in paying the target contribution which is equivalent to 52 monthly contributions and creditors do not object to the discharge.

- Bankrupts who do not meet the target contribution will only be eligible for discharge after seven years.

- The target contribution for repeat bankrupts will be equivalent to 76 monthly contributions.

- Bankrupts who pay their target contribution in full will have their names and particulars removed from the bankruptcy register five years after discharge.

- Bankrupts who fail to pay their target contribution in full prior to discharge will have their records kept permanently on a publicly available register.

A bankruptcy can also be terminated by an annulment order issued by the court. The court has to either be satisfied that the order should not have been made or that you have paid or secured all debts.

INCORPORATED ENTITIES

When your company is wound up, the business is closed down, its assets are sold off, creditors are paid and the balance of the assets (if any) would be distributed to the members of the company (i.e. shareholders). At the end of the whole process, the company is dissolved and ceases to exist.

This process is also known as liquidation.

For incorporated entities, such as companies, winding up can either:

- be ordered by the court; or

- occur voluntarily through the members of the company or its creditors.

Winding up by the court

Winding up of your company by the court begins with an application to the court by someone who has the right to make such an application. Who such a person is, can be found in s.124(1) of the IRDA (or Schedule 5, Paragraph 2 of the LLPA).

The most common applicants are the company itself, any creditor or contributory (a person who is liable to contribute to the assets of the company).

To be considered for a winding up order, one of the grounds for winding up needs to be established. Grounds for winding up which are acceptable to the court are found in s.125 of the IRDA (or Schedule 5, Paragraph 3 of the LLPA). One of the most common grounds relied upon under the IRDA is (as in the case of individuals facing bankruptcy) the company's inability to pay a debt of more than $15,000 within three weeks of receiving a demand in a prescribed form (called a 'statutory demand').

If the court finds that there is nothing to support the ground on which the application is based, the application will be dismissed. If there are sufficient grounds, a winding up order may be made.

What happens when a winding up order is made?

There are many effects of a winding up order, the most significant being:

- directors no longer have power to manage the company—the liquidator takes over management of the company;
- all legal proceedings against the company are halted; and
- all contracts of employment may be terminated.

You may have debts owed by your business partners, for example, suppliers or other contracting parties, who are subsequently wound up or made bankrupt. In such a situation, you will not be able to sue, or continue to sue, the party which has been wound up or made a bankrupt to claim for the debt. You can only file a proof of debt with the liquidator (for a company) or the OA (for an individual) and share equally with the other unsecured creditors against any assets belonging to the party being wound up or made bankrupt.

Voluntary winding up

There are two types of voluntary winding up: (1) members' voluntary winding up, and (2) creditors' voluntary winding up. A members' voluntary winding up must be decided by members of your company (or partners of your limited liability partnership) at a general meeting. For this to occur, however, the company must be solvent to begin with.

1. Members' voluntary winding up

There are many reasons for a company to be wound up despite being solvent. For instance, the purpose for which the company had been incorporated may have been achieved, or the company may be merging with another company.

For a members' voluntary winding up to occur, the directors (or if there are more than two directors in the company, a majority of the directors) of the company must make a declaration of solvency.

What is the declaration of solvency?

A declaration of solvency is essentially a declaration made by directors. It contains the directors' opinion that the company will be able to pay its debt in full within 12 months after the commencement of the winding up.

For the declaration of solvency to be effective, it must comply with all of the following requirements:

(a) it must be made at a directors' meeting;

(b) it must not be made earlier than five weeks before the passing of the resolution for the voluntary winding up of the company; and

(c) it must be lodged with the Registrar of Companies before the date on which the notices of the meeting called to pass the resolution for winding up are sent out.

Following an accurate and effective declaration of solvency, the members will appoint one or more liquidators to wind down and deal with the assets and affairs of the company.

If this declaration is made, but is inaccurate, such that the creditors will not be paid within the stated period, the directors who made the statement without reasonable grounds may be guilty of an offence.

2. Creditors' voluntary winding up

If a company is insolvent, it may be wound up by way of a creditors' voluntary winding up. The key difference from a members' voluntary winding up is the requirement of a statutory declaration of solvency in a members' winding up.

Steps for creditors' voluntary liquidation

The main steps for commencing a creditors' voluntary liquidation are as follows:

(a) If a company cannot carry on its business by reason of its liabilities, the directors may make and lodge a statutory declaration with the Official Receiver and Registrar to that effect and must then appoint a provisional liquidator.

(b) a notice of the appointment of a provisional liquidator together with a copy of the declaration lodged with the Official Receiver must be advertised in the *Gazette* and at least one English local daily newspaper, within 14 days of the appointment of the provisional liquidator.

(c) meetings of the company and of its creditors must be held within 30 days of the making of the declaration. At the meetings, the shareholders and creditors will vote separately to place the company under voluntary winding up and to appoint a liquidator.

Appointment of liquidator

The appointment of a provisional liquidator would cause all the powers of the directors to cease. The responsibility of administering the assets of the company would, accordingly, fall on the provisional liquidator, at least until a liquidator is appointed at the creditors' meeting, at which point the liquidator takes over control of the company, its assets and affairs. Generally, the primary duty of the provisional liquidator is to preserve the status quo until the resolution to wind up the company is passed and the liquidator is appointed.

Before commencing any liquidation process, it would be advisable to engage a lawyer to advise on the key steps and implications because any non-compliance may result in you inadvertently committing an offence.

Who are liquidators?

A liquidator is a person who brings the directors' powers to a halt, and becomes responsible for dealing with the assets and affairs of the company.

The liquidator's main task is to sell off the assets of the company so that creditors can be paid, and any surplus amount is distributed to the members of the company. The liquidator will also investigate if there has been any wrongdoing by the directors of the company, or if there have been any wrongful transfers of the company's assets which may then be clawed back or recovered under the law. An example would be where the company improperly transfers assets to another party without getting anything in return, or in exchange for something substantially less valuable (in legal terms, a transaction at an undervalue). In such cases, the liquidator may have a basis to claim against the recipient of the assets for their return.

Order of priority for distribution of company's assets

Once the liquidator has ascertained the debts of the company, the order in which these debts will be paid will be in accordance with the prescribed priority of claims (found in the IRDA or the LLPA).

A simplified version of the order of priority is as follows.

Secured creditors (that is, creditors with a security interest such as a charge over the company's assets or a mortgage over the company's real property) are entitled to priority over the unsecured creditors.

Further, there are also certain preferential debts which are given priority over unsecured creditors and debts secured by floating charges (i.e. a form of security usually over assets which fluctuate in nature, such as stock-in-trade), namely:

(a) costs and expenses of the winding up;

(b) wages and salaries of employees;

(c) retrenchment benefits and ex-gratia payments of employees;

(d) amounts due in respect of workmen's injury compensation;

(e) amounts due in respect of contributions payable in a stipulated period to employees' superannuation or provident funds;

(f) remuneration payable in respect of vacation leave for employees; and

(g) tax assessed, including GST.

Note that the amount payable under (b), (c) and (f) above cannot exceed the lower of (i) five months' salary or (ii) $13,000 per employee.

Upon the commencement of liquidation, the liquidator is also required to inform the IRAS of such liquidation, and to file relevant documentation pertaining to the company's tax matters, for the purpose of ensuring that the company's outstanding tax matters are resolved before completion of the liquidation process.

Dissolution

In a winding up by court, upon the completion of the winding up, the liquidator must apply to the court for an order of dissolution. Once this order has been granted, your company will be dissolved.

In a voluntary winding up, the winding up process ends when the liquidator calls a final meeting of the members of the company (together with the company's creditors in the case of a creditors' voluntary winding up).

The liquidator presents a final account showing how the winding up has been conducted and how the assets have been disposed of. A return will be filed with the Registrar of Companies and the Official Receiver by the liquidator, and the company will be deemed to have been dissolved three months after.

CHARITIES

The process of winding up your charity depends on the type of legal structure you have adopted. If your organisation is registered as a charity, you may continue to be bound by certain legal duties under the Charities Act after your organisation ceases to exist.

Trust

A trust may be wound up and its assets distributed according to the provisions set out in the trust deed. The trustees may also apply to court for the dissolution of the trust.

Company Limited by Guarantee

A CLG is wound up in accordance with the same procedures for winding up a company. Please refer to the earlier section on winding up by the court and voluntary winding up.

Society

If no rules are specified in the objects of the society regarding dissolution, then at least three-fifths of the members residing in Singapore must vote for dissolution delivered in person or by proxy at a general meeting convened for that purpose. If a registered society dissolves itself according to its rules, then it shall inform the Registrar of Societies in writing and send a certificate of dissolution to the Registrar within one week of dissolution. The certificate should be signed by the president, the secretary and the treasurer, or by officers of the society holding analogous positions.

A set of supporting documents is also required—the list may be found at the ROS FAQ page on voluntary dissolution.

The Registrar of Societies will then publish the dissolution of the society in the *Gazette*.

The assets would be disposed according to the applicable rules of the society. In the event of any dispute, the matters shall be referred to the High Court. It may be prudent to specifically provide in the objects of the society, for the distribution of assets in the event of dissolution of the society.

LEGAL ASSISTANCE



21

SEEKING LEGAL ASSISTANCE



ENGAGING A LAWYER

Lawyers are trained to give legal advice and to represent you in Court. Seeing your lawyer early can save you a lot of time, trouble and money. Lawyers can provide a range of important and useful services in setting up, running, or winding up your organisation, so if you believe you need legal advice or guidance, or feel you wish to seek help with any potential legal aspect arising from your organisation—such as those canvassed in this handbook—you should seek to speak with a lawyer without delay.

THE LAWYER-CLIENT RELATIONSHIP

You must be able to build a relationship of trust and confidence with your lawyer.

Legal professional privilege

Your lawyer has the responsibility to keep your information confidential. Ordinarily, even the court cannot force a lawyer to reveal conversations you may have had with them when seeking legal advice, without your permission.

Your lawyer's firm

When you hire a lawyer, you are also hiring the law practice the lawyer works for. All members of the law practice and its staff have the same duties of confidentiality toward you and your matter as does your own lawyer.

Conflict of interest

Your lawyer is acting for you alone, and cannot represent or be involved personally with someone who may be against your interests in your matter without your permission.

Your instructions

Your lawyer will try to understand from you what you hope to achieve within the law and the lawyer's professional duties. Your lawyer cannot follow instructions from you that would break any law, or breach the lawyer's duties to the Court or to the legal profession.

Know-your-client any suspicious transactions

Just as with banks or financial institutions, your lawyer has a duty under the law to check the background of your organisation which can include checks on the identity of shareholders, partners, parent companies (and their shareholders, including ultimate beneficial owners) before they can proceed to act for you. Do co-operate with your lawyer when asked to provide information and copies of documents—this is a legal necessity. Your lawyer may also be obliged to refresh or update his or her records from time to time so be prepared to co-operate if you are asked from time to time to provide updates or re-confirm information.

CHOOSING A LAWYER

The Ministry of Law has an online directory of the names, addresses and other useful information of all law practices and practising lawyers in Singapore, and may be accessed at https://eservices.mlaw.gov.sg/lsra/lsra-home. You can also search the list of law practices that have advertised specialist practice areas on the Law Society website at https://www.lawsociety.org.sg/find-a-lawyer-2025/, but note that the Law Society is not permitted to recommend lawyers to you.

The recommendations of friends, family and other people who have faced similar legal or potential problems may also be helpful in your selection.

To avoid any misunderstanding later on, it may be useful to reach an early agreement on the legal fees and also have the lawyer give you an estimate of the disbursements likely to be incurred. The terms of your engagement with your lawyer should ideally be set out in writing—e.g. via a retainer or mandate letter so that you have a record of what was agreed. In addition, you should be independently satisfied that your lawyer has the necessary expertise, knowledge and experience to assist you in your matter. You should also be satisfied that your lawyer is in a position to give you independent legal advice, for example a lawyer acting for an opposing party in a dispute cannot represent you except under particular circumstances with your permission. You may seek a second opinion from another lawyer.

DUTIES YOUR LAWYER OWES YOU

Lawyers are required under their professional conduct rules to:

- exercise diligence and honesty in their dealings with you;
- inform you of matters relating to their legal fees;
- provide statements of accounts in a timely manner upon your request;
- undertake work in such a manner so as not to unnecessarily or improperly escalate their legal fees;
- complete any work on your behalf within a reasonable time;
- provide you competent representation;

- keep you reasonably informed of the progress of your matter and fees incurred;
- generally respond to your telephone calls, e-mails and messages promptly and keep appointments made with you;
- clearly explain proposals of settlements, other offers or positions taken by other parties which affect you;
- keep your information regarding your matter confidential, even after your lawyer stops representing you;
- act only in your best interests; and
- generally evaluate with you if the consequence of your matter justifies the expense or the risk involved.

MEETING YOUR LAWYER

Before you see your lawyer:

- think about all the information the lawyer will need and gather it in advance;
- list the events as they happened;
- collate all important papers and supporting documents;
- list the names, addresses, and telephone numbers of everyone involved in your matter; and
- list the questions or issues you wish to discuss with your lawyer during the meeting.

The more organised you are, the less time you will spend during your meeting thus reducing the time-costs chargeable to you by your lawyer.

To avoid future disputes, clarify the likely legal fees involved. Enter into a proper fee agreement (preferably in writing) that sets out these charges clearly. Inform your lawyer in advance of any budgetary constraint. Lawyers usually charge their clients based on the time that they spend working on their matters (i.e. by hourly rates).

These rates will generally be fixed within the law firm, with more experienced lawyers charging higher rates than less experienced lawyers. Some lawyers may be willing to assist you on a fixed-fee basis (i.e. they agree to charge you a fixed sum, no matter how much time they actually spend on the work), but this would be subject to negotiation between you and your lawyer.

Also note that if you and your business are based entirely in Singapore, a lawyer might charge you GST as well on their services rendered, which is a potential cost you should take into account.

When you meet your lawyer:

- tell the lawyer everything important;
- answer your lawyer's questions fully, even if you may not understand the purpose of the question at the time; and
- ask questions to clear all your doubts.

A full and thorough discussion of the issues will help the lawyer give you a realistic expectation of the prospects for success in what you are hoping to achieve, as well as a realistic estimate of the fees you can expect to pay should you proceed. Be mindful that your lawyer may not be able to give you full and complete advice at the first meeting. The law changes often, and your lawyer may need to first check on new laws or on decisions made by the court, as well as review documents provided by you.

WORKING WITH YOUR LAWYER AFTER THE FIRST MEETING

Arrange to correspond and have follow-up meetings with your lawyer at agreed times. Ask for copies of correspondence and documents filed in court or regulatory bodies if relevant, and if you do not understand the documents, have your lawyer explain these.

Be honest with your lawyer

It is difficult for your lawyer to give you the best advice if you do not fully disclose details of your matter and documents as early as possible and as soon as new issues arise.

Manage your expectations

Your lawyer is not in a position to guarantee that you will succeed as many factors are beyond your lawyer's control and in litigation, the final decision is with the court. Always evaluate your case with your lawyer at regular intervals and keep an open mind. Remember, your lawyer is not a judge or government authority.

Control your legal cost

Although you need to keep your lawyer fully informed of your matter, do remember that your lawyer may charge accordingly for their time spent on your matter. Focus your communication with your lawyer to the essential facts and information of your matter. Also, you may want to ask for regular fee updates, if the matter is expected to take some time to resolve (e.g. ask your lawyer to update you on the costs incurred at the end of each week, or when a certain dollar amount has been exceeded).

LEGAL FEES

Your lawyer is entitled to charge fair and reasonable fees for legal work done on your behalf. As no two matters are completely alike and some matters require more time and expertise to resolve, fees may vary between clients and cases.

Legal expenses will generally comprise fees and disbursements. Disbursements are out-of-pocket expenses, and can include costs for filing and serving documents, long-distance calls, meals, photocopying, subpoena fees (i.e. for summoning another person to court), and medical or other reports. Your lawyer is not obliged to finance or pay these disbursements without first securing a deposit for these amounts, so you may need to pay some monies into a client account, which is an account which has been set up by the lawyer to receive monies from clients to be used for settling disbursements and/or fees. Deposits might also be requested in anticipation of professional fees. These deposits are protected by law and your lawyer must abide by specific rules before accessing or using these funds.

It is important that you speak to your lawyer about your expectations on the scope of work you require your lawyer to perform, because lawyers have different ways of calculating fees, depending on the types of services required and the lawyer's billing practices. The usual methods are:

1. Hourly rate

This is the usual way of billing, especially for a court case. The amount of time you will require your lawyer's services will not be known at the outset.

2. Fixed rate

This method may be used in matters such as transactions where it is reasonably straight forward and predictably measured. The fee is a fixed amount regardless of the amount of time actually spent by the lawyer working on the matter. If this method is chosen, you should clarify the specific scope of the lawyer's work. For example, will the work include liaising with any government authorities or other third parties? How many rounds of additional questions may be asked by you, the client? How many draft legal opinions issued by the lawyer are to be included within the fee quote?

It is recommended to enter a written fee agreement at the outset. Note that lawyers are generally not permitted to enter into contingency and/or conditional fee agreements for any matter. Contingency and/or conditional fee agreements are agreements in which the lawyer's fees are, for example, payable only in the event of success in the case or are proportionate to the amount which may be recovered by you in the matter, or any profits received from a business transaction or sale of business assets which the lawyer assist in.

Although contingency fee arrangements are not permitted, for contentious matters, certain prescribed categories of legal proceedings (such as international and domestic arbitration proceedings, certain proceedings in the Singapore International Commercial Court, and related court and mediation proceedings) can be conducted on a conditional fee arrangement—i.e. "win, more fees", "no win, no fees" or "no win, less fees" arrangements. Such arrangements must be in writing and signed by you. The fees under these arrangements cannot be calculated as a percentage of monies recovered from the opposing party in these proceedings. You cannot recover the uplift of any fees from the opposing party—this is between you and your lawyer.

For contentious matters, your lawyer will explain to you:

- that you are personally liable for payment of your own legal fees to your lawyer;

- if you lose, you may have to pay part of your opponent's legal fees as well as your own;

- if you win, your opponent may not be ordered to pay the full amount of your legal fees and may not be able to pay what has been ordered; and

- the circumstances under which a lawyer can be discharged.

Your lawyer may ask you to pay a deposit before starting work on your matter. This money is meant to meet expected costs and disbursements. If the deposit is not completely used, the lawyer will refund you the remaining amount.

You should always ask for a receipt from the law practice for monies you have paid. This should indicate if the money is paid into the law practice's client account for your benefit (e.g. monies held on trust for you for the purchase of certain equipment) or is paid into the law practice's office account (e.g. the monies were paid to settle a bill from the law practice).

DISPUTES OVER FEES

The Law Society of offers a legal costs dispute resolution scheme, known as 'Cost Dispute Resolve' scheme, to assist lawyers, their clients and third parties to resolve disputes on legal costs amicably and economically. The scheme provides for mediation as the first step to resolve such disputes. If mediation is unsuccessful, parties can move on to the simple and expedited arbitration process. More information on the Cost Dispute Resolve and the applicable rules can be found here: https://www.lawsociety.org.sg/support-schemes/cost-dispute-resolve-scheme/.

DISCHARGING YOUR LAWYER'S SERVICES

You may change your lawyer at any time. However, you should pay any outstanding costs to your current lawyer before engaging another lawyer unless there are exceptional reasons for not doing so. Where the outstanding fees of the current lawyer are not agreed or paid, that lawyer is entitled to request an undertaking that it retains the property of your case file (a 'lien').

Your lawyer can discharge themselves if:

1. their discharge does not cause significant harm to your interest and you are fully informed of the consequences and voluntarily assent to it;

2. your lawyer reasonably believes that continued engagement in the case or matter would likely have a serious adverse effect upon their health;

3. You breach an agreement with your lawyer regarding fees or expenses to be paid or regarding your conduct;

4. you make material misrepresentations about the facts of the case or matter to your lawyer;

5. your lawyer has an interest in the case or matter which is adverse to your interest;

6. such action is necessary to avoid contravention by your lawyer of the lasting power of attorney or any legislation; or

7. any other good cause exists.

In the case of discharge, the lawyer has to take reasonable care to avoid foreseeable harm to you, including:

1. giving due notice to you;

2. allowing reasonable time for substitution of a new lawyer;

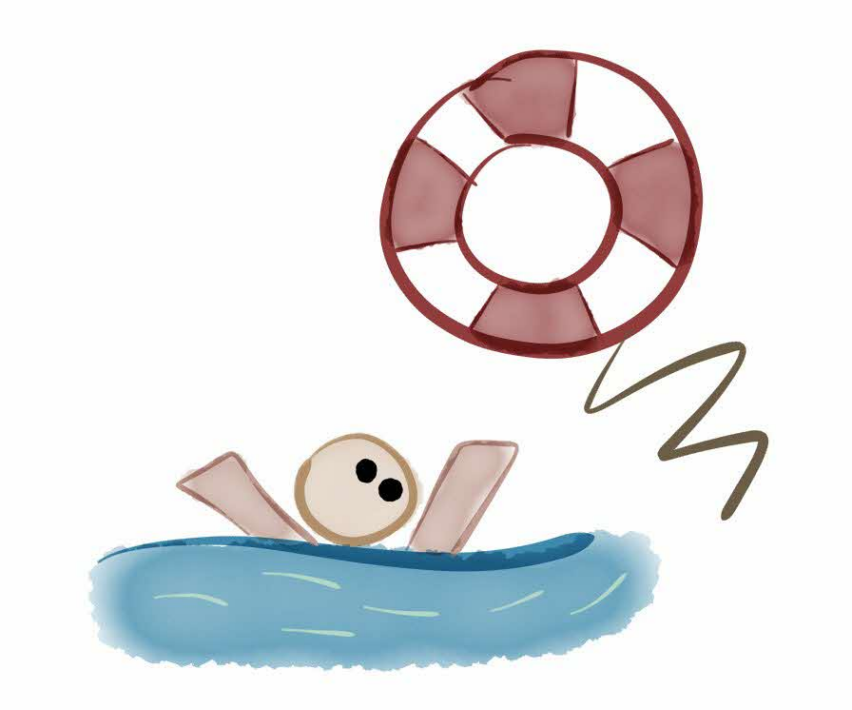
3. co-operating with your new lawyer; and

4. subject to the satisfaction of any lien your lawyer may have, paying to you any money and handing over all papers and property that you are entitled to.

In the unfortunate event that you think that your lawyer has been dishonest or failed to deliver an adequate standard of professional service to you, it is possible for you to file a complaint with the Law Society of Singapore. More information can be found here: https://www.lawsociety.org.sg/our-community/complaints-against-lawyers/. Do note however that the Law Society is not empowered to recover on your behalf any financial loss or damages suffered by you because of the conduct of a lawyer.

22

LEGAL SUPPORT FOR NON-PROFITS AND SOCIAL IMPACT ORGANISATIONS



Running a charity, ground-up initiative or social enterprise often means navigating complex legal and governance questions, often without in-house legal expertise or the resources to secure paid advice. To support the social impact sector, ***Pro Bono SG*** *offers dedicated NLS to help organisations access reliable legal guidance, strengthen governance, and operate confidently and sustainably.*

NLS programmes are designed for ***all social impact organisations****, including charities and IPCs, CLGs, ground-up initiatives (“****GUI****”s), and raiSE-registered social enterprises.*

1. Non-Profit Legal Clinics ("NPLC"s)



What it is:

A one-time, 45-minute legal consultation conducted by a volunteer lawyer. The aim is to help organisations understand their legal issue(s) and obtain **preliminary, general legal guidance**.

Common issues covered include:

- entity legal structure and constitution-related queries;
- employment and volunteer management;
- policies and procedures;
- intellectual property and data protection;
- contracts and vendor relationships; and
- reviewing of documents adapted from Pro Bono SG's templates.

How it works:

- Apply online via a single consolidated NLS application form.
- Once accepted, NLS matches your organisation with a suitable volunteer lawyer.
- Clinics are held via Zoom during office hours.
- Guidance is general and non-transactional (i.e. no drafting or representation).

If further work is required, NLS may refer your organisation to other schemes.

2. Pro Bono Legal Assistance ("PBLA")

What it is:

A matching programme that pairs eligible non-profits with volunteer law firms that provide **free transactional, non-litigious legal services**.

Types of matters handled:



- drafting or reviewing contracts or memoranda of understanding;
- governance and compliance advisory;
- assistance with structuring and incorporation of new entities or charity registration; and
- intellectual property, personal data, and licensing matters.

Eligibility:

Your organisation should generally have:

- less than $1 million in unrestricted reserves; and
- reserves under two years of annual operating expenses.

PBLA is available primarily to:

- Charities (societies and CLGs);
- raiSE-registered social enterprises; and
- Certain incorporated non-profits on a case-by-case basis.

Cases accepted into PBLA are matched to a law firm, which then works directly with the organisation.

3. Legal Health Check for Charities ("LHC")

What it is:

A free, structured legal "check-up" that helps charities assess governance and compliance risks across core operational areas.



Adapted from PILnet HK's Legal Health Check for Civil Service Organisations and customised for the Singapore context, the LHC is delivered in a modular format through an in-person session where volunteer lawyers work with the charity to identify potential red flags and recommend practical next steps.

Current focus areas include**:**

- people and governance;
- branding, communications and data protection;
- dealing with suppliers and third parties.

There are plans to expand to more sections in future iterations.

Outcome:

Each charity receives a written LHC Report summarising risk levels (green/amber/red) and recommended follow-up actions.

Eligibility:

The pilot phase is open to **all registered charities**, with plans to extend the programme to GUIs and social enterprises.

4. Low Bono Assistance Scheme ("LBAS") (where applicable)

For organisations that do not meet pro bono eligibility criteria but still require affordable legal support, NLS may refer them to participating law firms offering reduced-fee services for non-litigation matters.

Eligibility:

Charities should generally have:

- between $1 million and $1.5 million in unrestricted reserves**;** and
- reserves under two years of annual operating expenses.

Other organisations are assessed on a case-by-case basis.

5. Legal Resources and Capacity-Building

NLS also curates sector-specific legal resources to help non-profits operate safely and confidently. These include:

- legal awareness talks and governance workshops;

- webinars on charity law, personal data protection, employment, contracts, compliance and many others; and
- templates and guidance notes for common organisational needs (e.g. constitutions, policies) such as the Governance Toolkit for Singapore Charities (https://www.lawgowhere.sg/media/p4fdbdye/governance-toolkit-for-singapore-charities-20-august-2025.pdf) and the Employment Law Handbook for Singapore Charities (https://www.lawgowhere.sg/media/m0mcxonl/employment-law-handbook-for-singapore-charities-20-august-2025.pdf).

These resources are continually expanded based on insights from clinics, PBLA matters, and LHC reports.

6. What NLS Does Not Cover

NLS does **not** provide:

- legal representation in court;
- litigation support;
- legal guidance on personal law matters for individuals; and
- support for commercial/for-profit entities without social impact purpose.

7. How to Apply

Applications for NPLCs, PBLA, LBAS are submitted through a single intake form:

https://forms.office.com/Pages/ResponsePage.aspx?id=2SIByMB8W06hRKsXHMIqYr3Q72Xv1UhFq1xUl4uuJxBURVJMUkgzRVE1UVJEMVMzRVNFUVFUVjNTUCQlQCN0PWcu

You may also email us to enquire about the LHC programme.

For enquiries, contact: **NLS@probono.sg**



8. Conclusion

Through a combination of free legal clinics, transactional legal support, structured governance tools and capacity-building resources, Pro Bono SG's NLS empower organisations to pursue their missions with clarity, confidence and stronger governance foundations.

Together with our dedicated pool of volunteer lawyers and partner firms, NLS remains committed to strengthening Singapore's social impact ecosystem, one organisation at a time.

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