

DOING BUSINESS IN SINGAPORE



COMPANY FORMATION IN SINGAPORE

MAIN FORMS OF COMPANY/BUSINESS IN SINGAPORE

The different types of business entities in Singapore are:

- Private Limited Liability Company
- Branch Office/Foreign Company
- Representative Office
- Limited Liability Partnerships
- Sole Proprietorship and Partnerships

Companies may be formed by individuals or existing companies. Most companies in Singapore are private companies_limited by shares. There are also a small percentage of unlimited private companies and public companies. Private and_public companies are incorporated and regulated under The Companies Act, Cap. 50.

PRIVATE LIMITED LIABILITY COMPANY

The main features of a private limited liability company are as follows:

- The liability of a shareholder is limited by Memorandum of Association to the amount if an unpaid on his shares.
- There is a minimum of one shareholder and a maximum of fifty.
- The right to transfer shares in the company is restricted.
- The invitation to the public to subscribe for any shares or debentures is prohibited.

Incorporation of a Private Limited Liability Company

A company incorporated in Singapore must comply with certain registration requirements, and the most important requirements are:

- The company's name must be approved by the Registrar of Companies for incorporation. The approved name will be reserved for two months or for an extended period upon request. For specialized business activities, prior approval from the relevant government authorities must be obtained.
- The company must maintain a registered office in Singapore. Any changes in the registered office address should be lodged with the Registrar of Companies within fourteen days of the change.

Shareholders

From 1 April 2004, the statutory minimum for a company is one member. There is no restriction on the citizenship or residence status for shareholders.

Directors and Secretary

Directors must be natural persons. There must be at least one director, who is ordinarily a resident in Singapore. A person who meets the residence requirement would be either a Singapore citizen, permanent resident or a holder of a valid employment pass.

The secretary must be a natural person who is resident in Singapore. A secretary of a public company must possess the professional qualifications prescribed under the Companies Act. A public company refers to a company which has more than 50 shareholders or a company whose stocks are listed and traded in a stock exchange.

Where a company has only one director, he must not be the secretary of the company.

Annual General Meeting

The Directors of a company are required to present audited financial accounts to the members at general meetings. Private companies that are dormant and exempt private companies with an annual turnover of S\$5 million or less are exempted from having their accounts audited. The First Annual General Meeting (AGM) must be held within eighteen months of incorporation of the company. Subsequent AGMs are to be held every calendar year and not more than fifteen months after the holding of the last preceding AGM.

BRANCH OFFICE/FOREIGN COMPANY

Foreign companies wishing to operate in Singapore may set up subsidiaries or register as foreign company branches. Both are under the legislation of the Companies Act, Cap. 50. Under the Companies Act, an overseas company may register as a foreign company branch by filing the following documents with the Registrar of Companies with a certified copy of the Certificate of Incorporation and charters, statute or memorandum and articles of the foreign company; and a memorandum of appointment of two or more local agents of the foreign company.

REPRESENTATIVE OFFICE

A foreign company may establish a presence in Singapore by setting up a representative office. A representative office, as the name suggests, should operate as the representative of the foreign company. It must confine its activities to promotion or acting as a liaison office on behalf of its parent company. And it must not engage in any trading (including import and export) or business activities directly or on behalf of the parent company.

LIMITED LIABILITY PARTNERSHIP (LLP)

A Limited Liability Partnership (LLP) is a body corporate formed by being registered under the LLP Act. It is essentially a separate legal entity from that of its partners, meaning that it has perpetual succession and any change in the partners of the LLP will not affect its existence, rights or liabilities. A LLP can also enter into contracts and hold property. Combining the benefits of partnerships with those of companies, a LLP offers much flexibility in its operation.

SOLE PROPRIETORSHIP AND PARTNERSHIP

Persons carrying on business under a sole proprietorship or partnership are required to register under the Business Registration Act. A partnership cannot have more than twenty members. Although a LLP remains fully liable to its clients for the actions of its partners, the LLP gives the benefit of limited liability to its partners. Nevertheless, a partner may be held personally liable for claims from losses resulting from his/her own negligence. For other partners who were not negligent, their liabilities will be limited only to the amount they have contributed to the LLP. A LLP must have at least 2 partners, who may be individuals or a body corporate. A business or company may convert to LLP, following the conditions and conversion process as set out in the LLP Act.

ACCOUNTS

All Singapore-incorporated companies are required under the Companies Act to comply with Financial Reporting Standards (FRS). The FRSs are based on International Accounting Standards or International Financial Reporting Standards issued by the International Accounting Standards Board. Other than private exempt company, all companies are required to file their annual accounts with the government authorities and these accounts are available for inspection by the general public.

PERMANENT ESTABLISHMENT IN SINGAPORE: BRANCH OR SUBSIDIARY?

DEFINITION OF A PERMANENT ESTABLISHMENT

A Permanent Establishment (PE) as defined under the Singapore Income Tax Act is a fixed place where business is wholly or partly carried on including a place of management, a branch, an office, a factory, a warehouse, a workshop, a farm or plantation, a mine, oil well, quarry or other place of extraction of natural resources, a building or work site or a construction, installation or assembly project. A person shall be deemed to have a PE in Singapore if that person carries on supervisory activities in connection with a building or work site or a construction, installation or assembly project. A person shall also be deemed to have a PE in Singapore if that person has another person acting on that person's behalf in Singapore who has and habitually exercises an authority to conclude contracts, maintains a stock of goods for the purpose of delivery on behalf of that person, or habitually secures orders wholly for that person or for such other enterprises as are controlled by that person.

DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A subsidiary is a company which is wholly owned or which has more than 50% of its equity being held by another company. The holding company may be a local Singapore incorporated entity or a foreign incorporated company. In this regard, a subsidiary is a separate legal entity independent of the holding company. A subsidiary company is subject to the regulatory compliance requirements and laws of its place of incorporation independent of the jurisdiction where the holding company is. A subsidiary that is incorporated in Singapore would be regulated by the Companies Act and subject to Singapore laws.

A foreign registered company who wishes to establish a place of business or starts to carry on business in Singapore must be registered under the Companies Act as a branch of the foreign registered company in Singapore. The Singapore branch of a foreign registered company is therefore not a Singapore incorporated entity. It is registered as a Singapore branch office of a foreign incorporated company. The Singapore branch office is regulated by the Companies Act by virtue of its registration as a branch office of the foreign registered company in Singapore.

TAX AND ACCOUNTING OBLIGATIONS

Generally, tax-residents and non-residents are taxed on income accruing in or derived from, or received in Singapore. However, foreign-sourced income remitted to Singapore by individuals, foreign dividends, branch profits and service income remitted to Singapore by companies are tax exempt (subject to conditions). The current company tax rate is 17% and the goods and services tax rate is 7%.

TAX TREATIES

Tax treaties entered into by Singapore are based on the Organization for Economic Co-operation and Development (OECD) model. The tax relief pattern is a combination of territorial taxation and exemption of foreign income unless received in Singapore. Presently, Singapore has tax treaties with more than 70 countries and tax exemption agreements relating to aircraft and shipping income with Chile, Hong Kong, and the USA.

ADMINISTRATION

The income tax system in Singapore is administered by the Inland Revenue Authority of Singapore (IRAS) under the direction of the Comptroller of Income Tax. Income tax is assessed annually in Singapore on a preceding year basis. The Year of Assessment begins on 1 January and ends on 31 December. In the case of a trade, business, profession or vocation, the accounting year forms the basis period for a Year of Assessment.

RESIDENCE

A company is considered to be resident in Singapore if its control and management are exercised there. Control and management are normally considered to be exercised at the place where the directors' meetings are held.

FINANCIAL STATEMENTS

All Singapore-incorporated companies are required under the Companies Act to prepare annual financial statements. The financial statements prepared must comply with the Financial Reporting Standards (FRS). FRSs are based on International Accounting Standards or International Financial Reporting Standards issued by the International Accounting Standards Board. Other than private exempt company, all companies are required to file their financial statements with the government authorities and statements are available for inspection by the general public.

REGISTRATION FORMALITIES

(A) Procedures for Incorporation of a company in Singapore

- 1) Apply to Accounting & Corporate Regulatory Authority (“ACRA”) for the approval and reservation of the company name for incorporation.
- 2) A Singapore company must have at least 1 director who is a Singapore resident i.e. either a Singapore citizen, a Singapore permanent resident or a foreigner working in Singapore with a valid employment pass.
- 3) The company must maintain a registered office address in Singapore and a company secretary who is a Singapore resident.
- 4) The Memorandum and Articles of Association and other connected documents are electronically filed with ACRA for the incorporation of the Company. Upon successful submission, ACRA will issue the newly formed Company with a unique entity number (UEN).

(B) Procedures for Registration of a foreign branch in Singapore

- 1) Apply to Accounting & Corporate Regulatory Authority (“ACRA”) for the approval and reservation of the foreign name of the company for registration. The foreign name submitted for approval must be the same as that registered in the country of its incorporation.
- 2) The foreign company must appoint at least 2 agents for the Singapore branch. The agent acting for the Singapore branch must be ordinarily a resident of Singapore i.e. either a Singapore citizen, a Singapore permanent resident or a foreigner working in Singapore with a valid employment pass.
- 3) Submits to ACRA the company’s corporate profile information and the stipulated documents required for registration. Upon successful registration, ACRA will issue the branch with a unique entity number (UEN).

STANDARD LEGAL OBLIGATIONS AND FORMALITIES FOR A BRANCH

1. Notify ACRA of any change made to the charter, statutes or memorandum and articles or in the particulars of the foreign company e.g. change in directors or change in registered office in Singapore.
2. Annual Filing with ACRA of the foreign company’s balance sheet for the financial year concerned together with documents accompanying the balance sheet filed overseas. In addition, the foreign company is required to file an audited statement of its assets and liabilities and its profit and loss accounts of its branch operations in Singapore.
3. Display the foreign company’s name and its place of incorporation outside its registered office and every place of business established by it in Singapore and on all the Company’s bills, letters, notices, prospectuses and other official publications as per below example:

ABC Pty Ltd (Singapore Branch)
(Incorporated in Australia)

HOW TO HIRE MY FIRST EMPLOYEE IN SINGAPORE

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

There are no legal requirements in hiring a local employee who is a Singaporean or a Singapore permanent resident (PR). For hiring of foreigners, the company must apply to the Ministry of Manpower (MOM) for an Employment Pass (EP) or a Work Permit (WP) for the foreigner. EP is mainly issued to foreign professionals who are hired to work in Singapore. There are various grades of EP and it differs depending on the monthly remuneration earned by the employee, his or her academic qualification and working experience. The current minimum monthly salary for the highest EP (Grade P1) is S\$8,000. Besides monthly salary, the MOM also examines the academic qualification and past working experience of an applicant.

WP is mainly issued to foreign workers with vocational skills.

The approval for EP and WP depends on the overall availability of job vacancies in Singapore and the specific knowledge and skill of the applicant. Applicants with knowledge or skill that are in demand and not available in Singapore will stand a better chance of getting the approval.

Besides EP and WP, the company must register itself as an employer with the Central Provident Fund Board (CPF) of Singapore. As a registered employer, the company is required to deduct and contribute monthly CPF contribution for local employees, and Skill Development Levy (SDL) for both local and foreign employees.

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

An employment contract in Singapore may be written or oral, expressed or implied. A contract of employment need not be in writing and it need not in any particular form. Having said that, most of the employers in Singapore has entered into written contract of employment with their employees. A typical contract of employment should cover the following essential aspects of an employment:

- Official Appointment;
- Date of commencement of employment;
- Description of duties and responsibilities;
- Reporting hierarchy;
- Remuneration package;
- Medical and other benefits;
- Annual leave entitlement;
- Probation period;
- Duration of the contract (if applicable); and
- Termination procedure.

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

A Singapore business entity can engage the services of external service providers. These service providers are not employees of the business entity. Since they are not employees, the business entity is not required to comply with the requirements for hiring of employees.

The business entity can also outsource its internal functions to third party service providers. It is common in Singapore for business entities to outsource their accounting function, payroll processing, information technology and human resource activities to qualified external service providers.

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