



C L I F F O R D
C H A N C E

Singapore:
Essential tips for
successful investment



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Political stability, an efficient government, a robust legal system, excellent infrastructure and communications systems and a developed financial services sector are just a few factors that make Singapore an attractive investment destination. Singapore's proximity to the emerging economies in South East Asia and easy access to global markets makes it an ideal location for investors amidst a region of opportunities and growth.

In a recent report, US-based research institute Business Environment Risk Intelligence ranked Singapore as the city with the best investment potential. Singapore's place as an ideal investment destination is further reinforced by its first place ranking in the KOF Globalisation Index 2014 in terms of economic globalisation, as well as being ranked by the World Bank as the easiest place in the world to conduct business.

Here are our top legal tips for successfully investing in Singapore.

Relationships are key

As with most other Asian countries, establishing and maintaining relationships is at the heart of doing business in Singapore. As many businesses are family-owned or controlled, decisions made by Singaporean partners can be influenced by the strength of relationships. It is therefore important to invest the time and effort to build trust and a rapport with your proposed Singaporean partner.

Establishing a presence

It is relatively easy to establish a legal presence in Singapore and it is typical for foreign investors to set up private limited companies. Amongst other requirements, a Singapore company must have one director who is ordinarily resident in Singapore as well as a resident company secretary. In practice, foreign investors would typically appoint corporate secretarial firms which will be able to provide incorporation services and to assist with ongoing compliance of regulatory requirements.

Joint venture arrangements

Most decisions of a Singapore company require the approval of only a simple majority of shareholders, so a majority shareholding is normally sufficient for effective control of a company. However, there are some decisions which require the approval of a 75% majority of shareholders, such as changes to the company's constitutional documents, reductions in share capital or the winding up of the company. You should bear the relevant shareholder approval thresholds in mind when determining the size of your investment.

Minority protection rights (eg reserved matters) are common in joint venture agreements and articles of association, and are enforceable under Singapore law.

Foreign investment restrictions

Shares

Singapore is generally an open economy with minimal foreign ownership or investment restrictions. There is, however, legislation relating to particular industries which limits or requires prior regulatory approval for share ownership in companies engaged in those industries. Those industries are generally industries perceived to be critical to national interests, such as banking, insurance and media. It is therefore important to identify any restrictions or approvals that will be required at the outset of a transaction and to engage with the relevant regulators at an early stage of the transaction process.

Real property

A foreign person (which is defined to include a foreign-owned company) is restricted from owning certain classes of residential property in Singapore without the approval of the Minister for Law.

The importance of due diligence

You should conduct a comprehensive due diligence exercise to understand and evaluate the risks associated with the target and/or your proposed Singaporean partner. You should also be mindful of the history of your proposed Singaporean partner's other joint venture relationships, which could provide a useful insight into the way in which they do business.

Structuring an investment

An acquisition of a business may generally be structured either as an acquisition of shares of the Singapore company that carries on the business or an acquisition of the business (ie certain identified assets and liabilities) of the Singapore company. In the case of a share acquisition, the investor does not have to have a legal presence in Singapore. In the case of a business acquisition, however, the investor must have a legal presence in Singapore in order to carry on business in Singapore.

A share acquisition tends to be more straightforward than a business acquisition as a business acquisition would involve various transfer formalities depending on the assets being transferred. Such transfer formalities may have an impact on the transaction timeline and costs of implementing the transaction.

Merger control

The Competition Act prohibits certain business practices that restrict competition in the market and prohibits mergers and acquisitions that substantially, or may be expected to substantially, lessen competition within the Singapore market. It is not mandatory for merger parties to notify the Competition Commission of Singapore of their merger or anticipated merger but parties may nevertheless do so if they have serious concerns as to whether their merger or anticipated merger will contravene the provisions of the Competition Act. If your proposed transaction involves two or more entities with a business presence in Singapore, you should conduct an early analysis of the entities' market shares to determine if a notification should be made.

Employment

Singapore is generally an employer friendly jurisdiction, although the Employment Act does set out certain standards on working conditions and mandatory benefits for all non-executive workers. Notably, however, there is no statutory minimum wage nor are there any requirements for retrenchment or severance benefits to be made on the termination of employment.

Public company issues

The Singapore Code on Take-overs and Mergers provides the main framework regulating the conduct of takeover and merger transactions in Singapore.

The acquisition or consolidation of effective control of a listed company in Singapore will trigger a mandatory general offer obliging the acquirer to make an offer to acquire all remaining shares or units of the listed

company at a price which is the highest price paid by the acquirer and its concert parties within six months of the offer and during the offer period.

Acquiring effective control of a company refers to a situation where a person and its concert parties, who previously held in aggregate less than 30% of the company's voting rights, increase their aggregate holding of voting rights in the company to 30% or more. Consolidating effective control in a company refers to a situation where a person and its concert parties, who already owned between 30% and 50% of the company's voting rights, increase their aggregate holding of voting rights in the company by more than 1% within a six month period.

Where a takeover offer is made and acceptances are received in respect of 90% or more of the shares to which the offer relates (other than shares already held at the date of the takeover offer by the acquirer and certain of its related parties) within four months of the making of the offer, the acquirer may compulsorily acquire the shares of the non-accepting shareholders.

Once you have acquired a stake in a listed company, you should be aware of ongoing approval requirements before the listed company can enter into material transactions or transactions with related parties or affiliates.

You should note that while the Code is drafted with listed public companies in mind, where appropriate, it also applies to takeovers of unlisted public companies incorporated in Singapore with more than 50 shareholders and net tangible assets of at least SGD 5 million.

Enforcement

Singapore is not presently a party to any treaties for the reciprocal recognition and enforcement of foreign court judgments. However, subject to the satisfaction of certain legal requirements, judgments of a majority of foreign jurisdictions may be enforced through the common law regime. There are also statutory regimes in place for the enforcement of judgments from a limited number of foreign jurisdictions.

Separately, Singapore is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and so a foreign arbitral award from a jurisdiction which is also party to the New York Convention should in principle be recognised in Singapore. Accordingly, if you enter into a commercial arrangement where any dispute is to be resolved outside Singapore, it may be preferable to choose arbitration over court proceedings.

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The ASEAN Economic Community

The ASEAN Economic Blueprint was adopted in November 2007 as the master plan guiding the establishment of the ASEAN Economic Community (AEC) by December 2015. The intention is to transform the region into an EU-style economic area that will increase cross-border trade and investment as well as the flow of capital and the movement of skilled labour. In 2013, ASEAN attracted USD122 billion, accounting for 8% of the global Foreign Direct Investment (FDI). This includes increasing investments from ASEAN Members States, which at 17% of the total FDI inflows, is now the third largest source of FDI in the region. As we move closer to the December 2015 milestone, we expect business interest in the AEC to continue to rise, as more businesses benefit from such ASEAN integration efforts.

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