

MEMORANDUM ON REGISTRATION OF A BRANCH OFFICE OF A FOREIGN COMPANY IN SINGAPORE

This memorandum deals with the laws relating to the registration of a branch office of a foreign company in Singapore.

1. General

A record of political stability and sustained growth and a largely unregulated business environment has made Singapore an attractive and conducive place in which to establish a corporate presence or a commercial base. Singapore offers an attractive package of tax incentives and double tax relief concessions. As Singapore abolished exchange control in 1978, there can be remittance of dividends, profits and repatriation of capital. There are very few controls on imports and exports and the documentation required is relatively straightforward.

A foreign company can carry on business in Singapore either through a branch registered in Singapore of a corporation incorporated outside Singapore or through a subsidiary company incorporated in Singapore.

2. Tax

With effect from year of assessment 2010, income which is derived from Singapore or received in Singapore (though derived from outside Singapore) shall be taxed at a rate of 17%. The same rate applies to both a locally incorporated subsidiary and a branch registered here.

However, for the purposes of taxation, a branch (unlike a locally incorporated subsidiary) is not normally considered to be resident here and is therefore not entitled to the benefit of Singapore's tax treaties with other countries.

While the branch is not entitled to the benefit of Singapore's tax treaties, the losses incurred by it (if any) may be used to offset the profits of its head office for tax purposes if the tax laws of the head office permits.

Where an entity with a permanent establishment in Singapore bears in respect of any business carried on through that permanent establishment any royalties, technical fees, management fees or rental, such payments are deemed sourced in Singapore, and where payable to non-residents would be subject to withholding at the applicable rates. A branch is a permanent establishment for this purpose.

Interest income from deposits placed with approved banks in Singapore is exempt from Singapore income tax if the corporation receiving does not, inter alia, have any permanent establishment in Singapore. A branch is a permanent establishment for the purpose.

3. Exchange Control

No exchange control approvals are required for inward investment into Singapore and the remittance of profits by the branch office to its parent company.

4. Litigation

A branch does not have a distinct legal personality and its liabilities may therefore be enforced against all the assets of the foreign company, whether in Singapore or otherwise and whether attributable to the branch's operations in Singapore.

As the branch is regarded as an extension of its head office, the foreign company is "legally present" in Singapore for litigation. Potential claimants (whether in the country of incorporation, Singapore or elsewhere) would therefore have access to the courts in both jurisdictions in respect of the foreign company's business activities worldwide.

5. Employment

There are no statutory provisions governing the terms of employment of employees in managerial or executive positions. In such cases, the terms will depend on their contract of employment and the general principles of contract law.

With respect to other employees falling outside the categories stated above, the Employment Act of Singapore provides certain minimum requirements (pertaining to leave, termination, hours of work, etc). Apart from such minimum requirements, the employer and employee are free to negotiate the terms of employment, save that any term which imposes an obligation which is more onerous than the minimum requirements would be void.

Foreigners (except Singapore Permanent Residents) taking up employment in Singapore must secure work permits or employment passes. These can be issued for 1 to 5 years and may be renewed.

A pre-arranged employment is a pre-requisite to the application for work permit and the application must be accompanied by a letter from the employer agreeing to accept responsibility for the liabilities of the employee whilst in Singapore. The applicant must also have a local sponsor. The branch, when registered, can act as such sponsor. Its particulars must then be submitted to the Comptroller of Immigration. The process of an application for an employment pass or work permit takes about 4 weeks.

6. Appointment of Agents

The foreign company must appoint two or more natural persons resident in Singapore to act as its agents (the "Agents") in Singapore.

The Agents will be:-

- (a) answerable for the doing of all acts, matters and things as are required to be done by the foreign company under the Act; and
- (b) personally liable for all penalties imposed on the foreign company for any contravention of any of the provisions of the Act unless he can convince the Court that he should not be so liable.

7. Setting up Registered Office

The foreign company must set up a registered office in Singapore which is open and accessible to the public.

8. Registration

a. Approval Of Name

The first step for the registration of a branch office by a foreign company is to obtain the approval of the Accounting and Corporate Regulatory Authority ("ACRA") for its name. When submitting an application for approval and reservation of its name, the following information must be provided:

- (i) its name
- (ii) the country in which it was incorporated
- (iii) the date of incorporation
- (iv) its capital structure
- (v) its principal activities
- (vi) other countries in which it is also registered

b. Filing of Documents

After the name has been approved and while it is reserved, the documents listed in Appendix 1 must be submitted to ACRA for registration.

Upon registration of these documents, ACRA will issue a Certificate of Registration.

9. Singapore Branch Register

If the foreign company has members resident in Singapore and one of such members applies in writing for registration of his shares in a Singapore Branch Register, the foreign company must set up such a Register and maintain it, for the benefit of the Singapore members and in the same manner as Singapore companies maintain Registers of Members. A director or the secretary of the foreign company is required to give notice of the situation of the Branch Register to the ACRA by the prescribed form. The provisions in the Act relating to share transfer apply to transfers of shares on the Singapore Branch Register

APPENDIX 1

DOCUMENTS TO BE LODGED AT THE REGISTRY OF COMPANIES FOR REGISTRATION OF A BRANCH OFFICE OF A FOREIGN COMPANY IN SINGAPORE

1. A copy of the **Certificate or Articles of Incorporation** of the corporation, duly certified as a true copy by an official holding an office corresponding to that of the Registrar of Companies in the country of incorporation of the corporation, within a period of three months immediately preceding the day on which it is to be lodged with the Registrar of Companies.
2. A copy of the **Memorandum and Articles of Association or Bye-laws or any other constitutional instrument** of the corporation, duly certified as a true copy by an official holding an office corresponding to that of the Registrar of Companies in the country of Incorporation within a period of three months immediately preceding the day on which it is to be lodged with the Registrar of Companies.
3. A **Memorandum of Appointment** ("Memorandum") is to be executed by the corporation under the seal of the corporation or on its behalf in such manner as to be binding on the corporation, appointing two persons residing in Singapore to act as its agents for the purpose of accepting the service of process or any other notices.

Where the said Memorandum is executed by a person on behalf of the corporation, a copy of the deed or document by which that person is authorised to execute the said Memorandum is required to be lodged. This copy must be verified to be a true copy by a director, manager or secretary, or by the agent of the corporation by way of statutory declaration declaring, in the manner required by the law of the place where the same is done, that he has compared the copy with the original deed or document and that it is a true copy of the deed or document which it purports to be a copy.

4. An **Affidavit** verifying the execution of the said Memorandum. This Affidavit is to be executed before a Notary Public by one of the officers signing the said Memorandum on behalf of the corporation. The said Memorandum is to be an exhibit to this Affidavit.
5. **Form 79**, which is a list of all the directors of the corporation containing the particulars in respect of each director, is to be executed by the agent in Singapore and will be prepared in Singapore. The following particulars are required in order to prepare the list :-

- (a) Full Name
 - (b) Residential Address
 - (c) Occupation
 - (d) Passport or other identification number
 - (e) Nationality
 - (f) Date of appointment as director
6. **A Memorandum stating the Powers of the Local Directors**, duly executed by or on behalf of the foreign company where the local board includes directors who are resident in Singapore.
7. **Form 80**, which is a Statutory Declaration by the agents of the corporation, is to be executed by the agents in Singapore and will be prepared in Singapore. The following particulars are required in order to prepare the declaration:-
- (a) Full name, address, and passport or other identification numbers of agents
 - (b) Place where the corporation will be carrying on its business in Singapore
 - (c) Date of appointment of agents and date of the said Memorandum
 - (d) Address of the registered office of the corporation in its place of incorporation
 - (e) Present amount of authorised share capital of the corporation
8. **Form 44**, which gives Notice of Situation of the Singapore Registered Office, and (where the business hours are other than ordinary) the business hours of such office, is to be signed by a director, the secretary or one of the agents.

Upon registration, ACRA will issue a Certificate of Registration.