

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 Southeast 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 for ease of doing business in World Bank's "Doing Business" reports for 2014, 2015 and 2016.

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 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, typically, foreign investors 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 typically appoint corporate secretarial firms which provide incorporation services and assist with ongoing regulatory compliance.

Joint venture arrangements

Most decisions of a Singapore company require the approval of 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 (e.g. 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 prevented 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 (i.e. certain identified assets and

liabilities) of the Singapore company. In the case of a share acquisition, the investor does not require 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 that business in Singapore.

A share acquisition tends to be more straightforward than a business acquisition; 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 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 involuntary 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 the six months preceding 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 SGD5 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 potential 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 establishment of the ASEAN Economic Community (AEC) in 2015 was a major milestone in the regional economic integration. AEC offers opportunities in the form of a market of USD2.6 trillion and over 622 million people. In 2014, AEC was collectively the third largest economy in Asia and the seventh largest in the world. The AEC Blueprint 2025 was adopted in 2015 and is aimed at achieving the vision of having an AEC by 2025 that is highly competitive, innovative, dynamic and integrated with the global community.

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