



## Critical Evaluation of Investment Laws as a Tool of Progress within ASEAN

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Progress is an inherently normative term. What is regarded by some as a great leap forward, may be seen by others as regressive. In connection with a state or nation, progress usually refers to economic, social and political development. In this paper, the term is used in the restrictive sense of economic development only. Is investment good for the economic development of a state? Singapore has a very special experience in this regard. Due to its small size and lack of resources, the philosophy that investment not only facilitates but is a very important tool for economic development has been adopted and followed in Singapore since it gained internal independence in 1959 and most definitely since its full independence in 1965. There are no specifically designated investment laws or an Investment Act in Singapore. However, numerous statutes have been passed and policies adopted with a view to encouraging foreign investment and creating a framework that will attract foreign investors. This paper highlights some of the legislation that has been either specifically designed to attract foreign investment or has had an impact on foreign investment into and out of Singapore.

The world and the global market have changed rapidly and significantly in the more than 4 decades since Singapore's independence. If foreign investment is to be a tool of progress in the economic development of any nation, constant reinvention and adaptation to the vacillations of world markets and economies is necessary. As is outlined below, adaptation and change as regards both policies and laws have in fact been the Singapore story.

### **Few Restrictions**

With the exception of certain industries, there are virtually no restrictions or special obligations on foreign investors doing business in Singapore. In fact, there are few distinctions made in the law between foreigners and locals investing or doing business in Singapore. Industries which are restricted from foreign involvement pertain to arms and ammunitions, newspaper publishing and airlines and shipping, which the government has rationalized as being issues pertaining to national security. Certain other forms of businesses, such as banks, finance companies, insurance companies and stock broking



companies require special approvals and licences from the relevant authorities, which, primarily, would be the Monetary Authority of Singapore.

### **Forming a Presence in Singapore**

The most common business vehicle in Singapore is the private limited company, which is governed by the Companies Act, Cap. 50. Since the initial enactment of the Companies Act in 1967, there have been numerous amendments to the Companies Act to take into consideration, and to keep up with, the constant growth in the needs of the business world, the latest amendment being as recent as 1 May 2009<sup>1</sup>. In fact, a Steering Committee for the reform of the Companies Act, set up by the Ministry of Finance and headed by the Singapore Attorney-General Professor Walter Woon, is now in the midst of reviewing the same as part of the Singapore government's efforts to keep pace with changes in the business, economic and technological environment, and to keep abreast with regulatory developments in other major jurisdictions. It is hoped that the review and subsequent legislative changes will lead to a more robust corporate regulatory and governance framework that supports Singapore's growth as an international hub for business and investment.

Aside from the private limited company, investors can choose to use one of several other vehicles to set up a local presence in Singapore – sole proprietorship, partnership, limited partnership and limited liability partnership, each vehicle being governed by its own set of legislation and regulations<sup>2</sup>. Under the private limited company framework itself, the Companies Act allows for the establishment of an exempt private limited company, which is subject to fewer regulations compared to a private limited company. Naturally, the different vehicles are suitable for different types of businesses. Other considerations in choosing a suitable vehicle are also the costs of establishing the vehicle and any continuing obligations under the law and regulations. Foreign investors can also enter into joint venture arrangements with local entities to form JV companies in Singapore.

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<sup>1</sup> Under the International Interests in Aircraft Equipment Act 2009 (No. 5 of 2009), section 131(3) of the Companies Act has been amended to exclude charges created under the International Interests in Aircraft Equipment Act 2009 from 1 May 2009 onwards

<sup>2</sup> Business Registration Act, Cap. 32, Partnership Act, Cap. 391 (made applicable in Singapore by the Singapore Application of English Law Act, Cap. 7A), Limited Liability Partnerships Act, Cap. 163A and Limited Partnerships Act (Act 37 of 2008) respectively



An additional business structure available to investors was added to the stable in 2004 and that was the business trust structure. This new structure was introduced with the aim of developing Singapore's capital markets and its position as a financial centre.

There is no difference in the obligations of a foreign investor and a local person incorporating a company here or setting up any business or contractual commercial arrangement, provided all obligations under the various statutes and regulations, which are applicable across the board regardless of nationality of investor, are complied with. Until 2004, the requirement was for all private limited companies to have at least 2 directors. This was amended to the barest minimum of only 1 director being required, as long as the sole director is ordinarily resident in Singapore<sup>3</sup>. This amendment is in keeping with Singapore's drive for entrepreneurship and flexibility in the private sector and the development of a vibrant marketplace. A few of the more interesting business vehicles are examined below.

#### *Exempt Private Limited Company*

In order to qualify as an exempt private limited company, a company cannot have more than 20 individual shareholders and no beneficial interest is to be held directly or indirectly by any corporation<sup>4</sup>. The exempt private limited company can be entirely foreign-owned, as long as at least one of the company directors is ordinarily resident in Singapore<sup>5</sup>. An exempt private limited company need not have its accounts audited or filed with the Accounting & Corporate Regulatory Authority of Singapore (ACRA), as long as its annual revenue does not exceed the prescribed amount<sup>6</sup>, which is currently set at S\$5 million<sup>7</sup>. Non-exempt private limited companies are required to have their accounts audited yearly and filed with the ACRA. Failure to do so is an offence and may result in a warrant of arrest being issued against the directors.

#### *Business Trust*

The business trust structure, regulated by the Business Trust Act, Cap. 31A is aimed at businesses with a stable growth and stable operating cash flow. A business trust is a business enterprise of a hybrid structure with elements of both a company and a trust. A business trust operates a business enterprise like a company. However, unlike a company

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<sup>3</sup> Section 29 Companies (Amendment) Act 2004 (No. 5 of 2004)

<sup>4</sup> Section 4 Companies Act

<sup>5</sup> The definition of 'ordinarily resident in Singapore' is wide and includes not just Singapore citizens and permanent residents but also expatriates holding valid employment passes.

<sup>6</sup> Section 205C Companies Act

<sup>7</sup> Regulation 89A Companies Regulations



a business trust is not a separate legal entity. Instead it is created by a trust deed under which the assets of the business are held on trust and managed by a trustee-manager for the benefit of investors who, much like shareholders, hold units in the business trust. The trustee-manager of the business trust must be a Singapore incorporated company, but not an exempt private company, and its sole business must be the management and operation of the business trust as its trusteemanager. Investors will be pleased to note that they can be paid 'dividends', otherwise known as distributions, from the business trust out of its operating cash flow. There is no requirement that the dividends must be paid from accounting profits. Investors are also not taxed on the distribution sums which they receive from the business trust. This structure is not new in countries like Australia, Canada and the United States. Singapore has drawn from the experience of these countries and introduced the business trust thereby providing more options for investors. Since the introduction of the Business Trust Act, there have been several new initial public offerings and listings of business trusts on the Singapore Stock Exchange.

#### *Limited Partnership*

This is a very new form of business structure in Singapore, regulated by the Limited Partnerships Act 2008 (Act 37 of 2008). The bill introducing the Limited Partnerships Act 2008 was passed as recently as 18 November 2008. During the passage of the bill through Parliament, Singapore's Second Minister of State for Finance pointed out that the *'introduction of [limited partnerships] will enable Singapore to better meet the diverse business needs and offer entrepreneurs and investors an additional form of business structure to choose from'*. The Second Minister of State for Finance further highlighted that the introduction of this new structure *'is consistent with our overall policy to make Singapore a conducive place for business'*.

A limited partnership is formed with a minimum of 2 members (there is no maximum limit to the number of members) – one being a general partner and the other, a limited partner<sup>8</sup>. The difference between the two is that the general partner is subject to unlimited liability for all debts, obligations and liabilities incurred by the limited partnership, while the limited partner, as the name implies, is subject only to limited liability for the debts and liabilities of the limited partnership<sup>9</sup> up to the amount of his agreed contribution. This distinction can be made because the general partner is the partner actively involved in the management of the limited partnership, and the limited partner is not.

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<sup>8</sup> Section 3 (2) Limited Partnerships Act

<sup>9</sup> Section 3(3) & (4) Limited Partnerships Act



The limited partner's involvement is expressly limited by the Limited Partnerships Act<sup>10</sup>. The Limited Partnerships Act further states that if the limited partner should get involved in the management of the partnership in the manner of a general partner, he will be taken to have the same unlimited liability as a general partner with respect to any debts and obligations that the limited partnership may have<sup>11</sup>.

Another feature to note is that the partners, whether general or limited, can be individuals or corporations<sup>12</sup>. This feature is in place particularly to attract private equity and fund investment businesses. Passive investors who are not interested in the management of the business can invest a sum of money and be assured that its risk is only limited to its contribution sum. They can leave the complicated task of running the business to the experts who would take the role of a general partner. The role and responsibilities of a general partner can be structured through a separate fund management company providing services to the limited partnership. This arrangement is also tax efficient as the fee paid to the fund manager would be tax deductible as a management expense.

A limited partnership is also not subject to the usual regulations and reporting rules that companies under the Singapore Companies Act have to comply with, e.g. rules in relation to capital maintenance and reduction, directors' duties and responsibilities, and prohibited financial assistance. A limited partnership also does not have to submit its accounts for auditing or file its accounts with a regulator.

A limited partnership does not have a specific tax regime of its own. It is tax transparent, much like a traditional partnership. Partners who are individuals will be taxed on their share of income from the limited partnership based on their personal income tax rates. Corporate partners will be taxed on their share of income from the limited partnership at the corporate tax rate.

The required legal compliance, or lack thereof, of a limited partnership also means that the partners do not need to have annual meetings, appoint auditors or file annual returns, amongst other things.

The features of a limited partnership and the absence of onerous obligations on the members of a limited partnership under the Limited Partnership Act make this type of business structure ideal for private equity and fund investment businesses. This

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<sup>10</sup> Section 6(1) Limited Partnerships Act

<sup>11</sup> Section 6(2) Limited Partnerships Act

<sup>12</sup> Section 3(5) Limited Partnerships Act



development was prompted, inter alia, by the desire to attract equity and fund investment business and is a reflection of Singapore's drive to create a competitive financial industry.

#### *Foreign Company*

Foreign companies can choose to register a branch of the company in Singapore if the company has a place of business in Singapore or is carrying on business in Singapore. A foreign company is considered as having 'a place of business in Singapore' if it is functioning from a fixed place within Singapore, not necessarily a business premise, indicating some degree of fixity or permanence of a place from where business is conducted<sup>13</sup>. 'Carrying on business' in Singapore has been defined to include "administering, managing or otherwise dealing with property situated in Singapore as an agent, legal personal representative, or trustee, whether by employees or agents or otherwise"<sup>14</sup>.

A foreign company is required to have a registered office in Singapore 'to which all communications and notices may be addressed'<sup>15</sup> and must appoint at least 2 agents who are individuals resident in Singapore who can accept on the company's behalf any service of process and notices in Singapore<sup>16</sup>.

One drawback of registering a branch in Singapore, instead of incorporating a Singapore company as a subsidiary of the main company, is that the branch is not deemed to be a separate legal entity from its main company. The effect of this is that any action filed against the branch effectively exposes the main company to the liabilities incurred by the branch office. The reverse may also be true, which is that, subject to jurisdiction, the company's business in Singapore under its branch office is also exposed to suits against the main office commenced in either the parent country or a third country.

#### *Joint Ventures*

There is no specific legislation regulating the formation of joint ventures. Joint ventures in Singapore take the form of contractual agreements and it is advisable to have the structure of the joint venture set out in the pre-incorporation agreement, and then translated into the joint venture vehicle's Memorandum and Articles of Association. Parties interested in entering into joint ventures with Singapore entities should, however, pay heed to the

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<sup>13</sup> Walter Woon, "Walter Woon on Company Law, Revised Third Edition", 2009 at p25

<sup>14</sup> Section 366(2) Companies Act

<sup>15</sup> Section 370(1) Companies Act

<sup>16</sup> Section 368 (1)(e) Companies Act



Singapore Competition Act, which prohibits anti-competition behavior and abuses arising from a dominant position<sup>17</sup>.

### **Entering and Staying in Singapore**

In the light of recent terrorist-related incidents which have hit the headlines all over the world, strict border controls are an unfortunate necessity. A safe environment is essential to attracting investors but so is ease of movement in and out of a country, for any investor or potential investor. To this end, aside from the traditional employment passes and work permits to gain entry into and remain in Singapore, various other methods have been implemented, subject to certain condition precedents and eligibility criteria, of course, to permit foreigners to enter and re-enter and remain in Singapore with ease, or, at the very least, minimal hassle. Singapore's immigration framework also recognizes the value of family support and keeping families together.

#### *EntrePass*

The EntrePass is an employment pass for foreign individuals who are starting businesses of an entrepreneurial nature in Singapore. The EntrePass has an initial validity period of up to 2 years and allows the pass holder's immediate family to live in Singapore as well, under either a Dependant's Pass or a Long Term Visit Pass, during the time the business is being developed. It is renewable as long as the business remains viable.

#### *Global Investor Programme (GIP)*

An investor may apply for Singapore permanent residency under three possible options in the GIP. To qualify, the applicant must either have at least 3 years of entrepreneurial track record with a company with turnover of at least S\$10 million in the most recent year and at least S\$10 million per annum on average for the last 3 years, or have at least 10 years of corporate management experience and be in a senior management role in a company with a turnover of at least S\$100 million. The applicant must also be able to invest at least S\$1 million in a new business startup or expansion of an existing business operation<sup>18</sup>. The applicant's immediate family will also be eligible for Singapore permanent residency.

#### *Multiple Journey Visa (MJV)*

The MJV is ideal for business executives from countries that require a visa into Singapore. The MJV can be valid for 1, 2 or 5 years, and during that period, the MJV holder can enter and reenter Singapore as many times as necessary. The MJV holder may stay up to 30

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<sup>17</sup> Sections 34 & 47 Competition Act, Cap. 50B

<sup>18</sup> Option A of the Investment Options under the Global Investor Programme



days per visit with each entry. It is ideal for persons who are attending to businesses or their investments in Singapore, or exploring business opportunities in Singapore, and need to travel to Singapore frequently.

*Long-Term Visit Pass for Entrepreneurs (LTVP)*

The LTVP is for investors who wish to remain in Singapore for a few months in order to explore business opportunities or conduct feasibility studies or negotiations for setting up a business in Singapore. The LTVP for Entrepreneurs has a maximum validity of 6 months, during which time the holder can travel in and out of Singapore without needing to apply for a visa each time.

**Taxes**

One cannot run away from being taxed as, to paraphrase a popular but overused phrase, it is the one thing in life that is certain. It is not unusual for the tax aspect of a negotiation to make or break a commercial deal, or even for it to be the determining factor in whether to set up presence in a certain country. In Singapore, the tax regime includes features which are attractive to investments such as tax exemption and waiver schemes, including zero tax for capital gains and dividends.

*(a) Corporate*

Income in Singapore is taxed on a territorial basis; therefore Singapore income tax is payable only on income accruing in or derived from Singapore, or income received in Singapore from outside Singapore<sup>19</sup>. Even in the case of the latter, companies tax resident<sup>20</sup> in Singapore are exempt from income tax on foreign sourced dividends, branch profits and service income where certain prescribed conditions are met.

Singapore's corporate tax rate is one of the more competitive rates in the region. The corporate tax rate which stands at 18% for year of assessment 2009 has been revised downwards to 17% with effect from year of assessment 2010. This is a long way from the situation in year of assessment 2001 when the corporate tax rate was 25.5%. This steady reduction in its corporate tax rate is part of Singapore's deep-seated commitment to provide a tax regime conducive for investors and offer investors a favourable economic climate.

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<sup>19</sup> Section 10 of the Income Tax Act, Cap. 134

<sup>20</sup> Section 2 of the Income Tax Act defines "company" to mean "any company incorporated or registered under any law in force in Singapore or elsewhere. This would include exempt and non-exempt private limited companies, limited companies, foreign companies registered in Singapore and foreign companies incorporated or registered outside Singapore, but would not encompass sole-proprietorship or partnership business". A company is said to be tax resident in Singapore where the control and management of its business is exercised in Singapore.



Companies in Singapore also enjoy partial tax exemption on the first \$300,000 of their normal chargeable income. This is calculated at 75% of the first \$10,000 of normal chargeable income and 50% on the next \$290,000 of normal chargeable income.

Partnerships, limited liability partnerships and limited partnerships are subject to a slightly different tax treatment. Partners in a partnership are taxed individually based on their share of the income from the partnership (whether it is a partnership, limited liability partnership or limited partnership). Individual partners will be taxed at their personal income tax rates and corporate partners will be taxed at the corporate tax rate.

*Tax exemption scheme for new start-up companies*

A tax exemption scheme for qualifying newly incorporated Singapore companies was introduced in year of assessment 2005<sup>21</sup>. At its inception, the scheme extended tax exemption to the first \$100,000 of a qualifying company's normal chargeable income<sup>22</sup> for each of its first three consecutive years of assessment. With effect from year of assessment 2008, a further 50% exemption is given on the next \$200,000 of the said chargeable income for each of these consecutive years of assessment.

Start-up companies that qualify for this scheme are private limited companies<sup>23</sup> that are incorporated in Singapore with no more than 20 shareholders throughout the applicable year of assessment. All of the 20 shareholders must be individuals beneficially holding the shares in their own name or at least one shareholder is an individual beneficially holding at least 10% of the issued ordinary shares of the company. The new start-up company must also be tax resident in Singapore for the applicable year of assessment.

*Economic Expansion Incentives (Relief from Income Tax) Act*

The Economic Expansion Incentives (Relief from Income Tax) Act, Cap. 86 (EEIA) serves to provide income tax relief or exemption to certain industries which are of economic and public interest to Singapore. The EEIA has been integral to Singapore's economic expansion by the continuous attraction of foreign investment. Singapore was one of the pioneers of such tax incentives in the region (the EEIA dates from 1967). It continues to improve and update existing incentives in its efforts to encourage a constant flow of investment. Some of the tax incentive schemes that come within the EEIA are the pioneer

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<sup>21</sup> The exemption does not extend to Singapore franked dividends paid under the imputation system which has since been abolished

<sup>22</sup> Normal chargeable income is income that is taxed at the prevailing corporate tax rate

<sup>23</sup> From year of assessment 2010, this would include companies limited by guarantee

industry, pioneer service companies, development and expansion, and export service companies schemes.

A pioneer industry is defined as an industry ‘which is not being carried on in Singapore on a scale adequate to the economic needs of Singapore’ and for which there are favourable prospects for development<sup>24</sup>. The tax relief period, in the form of exemption from income tax, may extend to a maximum period of 15 years<sup>25</sup>. When the tax relief period was increased from 10 years to 15 years in 2004, one of the reasons cited during the passing of the amendment bill was that with increasing competition from developed and developing countries for investments from foreign investors, tax incentives offered to such investors had to be enhanced for Singapore to stay ahead of the competition by encouraging even larger investments.

A pioneer service company enjoys exemptions similar to those under the pioneer industries scheme. A pioneer service company is one that is engaged in any engineering or technical services including laboratory, consultancy, research and development activities, computerbased information and other computer related services industrial design development or production, and any other services or activities that may be prescribed<sup>26</sup>. Exemption from income tax for a pioneer service company is given for a minimum period of 5 years, extending to a maximum period of 15 years<sup>27</sup>.

Companies engaged in the activity of manufacturing or increased manufacturing of products that are economically beneficial to Singapore, or in activities as prescribed for pioneer service companies<sup>28</sup>, may apply to the Minister for Finance for approval as development and expansion companies. These companies benefit from a concessionary rate of not less than 5% for each year of assessment on the expansion income derived by the company<sup>29</sup>. The benefit is for an initial period not exceeding 10 years and may thereafter be extended for a subsequent period or periods, not exceeding 5 years for each period<sup>30</sup>.

Companies exporting qualifying services to overseas projects for persons who are not Singapore residents or permanent establishments in Singapore under the export service

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<sup>24</sup> Section 4(1) Economic Expansion Incentives (Relief from Income Tax) Act

<sup>25</sup> Section 6 Economic Expansion Incentives (Relief from Income Tax) Act

<sup>26</sup> Section 16 and 17(1) Economic Expansion Incentives (Relief from Income Tax) Act

<sup>27</sup> Section 18, read with section 13(1) and 17 Economic Expansion Incentives (Relief from Income Tax) Act

<sup>28</sup> Section 19J read with section 19I Economic Expansion Incentives (Relief from Income Tax) Act

<sup>29</sup> Section 19J(5) Economic Expansion Incentives (Relief from Income Tax) Act

<sup>30</sup> Section 19K Economic Expansion Incentives (Relief from Income Tax) Act



companies incentive<sup>31</sup> will also enjoy tax relief<sup>32</sup>. "Qualifying services" means any technical services including construction, distribution, design and engineering services, consultancy, management, supervisory or advisory services relating to any technical matter or to any trade or business, fabrication of machinery and equipment and procurement of materials, components and equipment, data processing, programming, computer software development, telecommunications and other computer services, professional services including accounting, legal, medical and architectural services, educational and training services, and any other services which may be prescribed. Under the export service companies incentive, 90% of the amount of the qualifying income from qualifying services is exempt from tax for an initial period not exceeding 10 years. The relief period may be extended for further periods not exceeding 5 years at any one time, although the total aggregate of the relief period may not exceed 20 years.

The Act also provides for various types of tax preferences where certain expenditures borne by the investor qualify for special tax deductions such as investment allowances and capital allowances, or where certain payments by the investor to non-resident recipients are exempt from tax or are taxed at a concessionary rate. Such payments include royalties, technical assistance fees, and contributions to research and development costs.

The examples cited above are but a small cross-section of the kinds of exemptions and incentives that are offered to business entities in Singapore.

*(b) Individuals*

An individual is tax resident in Singapore in a year of assessment if, in the preceding year, he was physically present or exercised an employment in Singapore (other than as a director of a company) for 183 days or more, or if he ordinarily resides in Singapore. A tax resident individual's income which accrues in or is derived from Singapore will be subject to personal income tax at graduated rates after personal reliefs. The top marginal rate is currently 20%. Individuals who are not tax resident will be taxed on their Singapore employment income at 15% or at the rates applicable to a tax resident, whichever yields the higher amount of tax. Non-resident individuals are subject to tax at a flat rate of 20% on non-employment income.

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<sup>31</sup> Section 44A Economic Expansion Incentives (Relief from Income Tax) Act

<sup>32</sup> Section 44C Economic Expansion Incentives (Relief from Income Tax) Act



Individual taxpayers are exempt from income tax on all foreign sourced income, except that for individual taxpayers resident in Singapore, this exemption does not apply where the foreign sourced income is received through a partnership in Singapore.

### **Industrial Relations Act**

The Industrial Relations Act, Cap. 136 (IRA) was enacted in 1960, after the years 1956, 1957 and 1958 saw a lot of industrial unrest, with strikes called by trade unions. Strikes called to better the situation of workers were causing loss to the organizations involved and the community as a whole, and threatening the country's stability. It was obvious in those turbulent times that economic expansion was essential for Singapore's very survival as an independent nation. But would this economic expansion have to be at the expense of the worker and his entitlement to a fair recompense for his labour? This was the dilemma faced at that time.

The introduction of the Act generated much debate and controversy, pitting the government and the trade unions against each other. The trade unions argued that the provisions in the Act were impractical and unsuited to local conditions. Inadequate representation on the part of the workers was one of the many concerns raised by objectors to the IRA. On the other hand, continued unrest was untenable.

The IRA was introduced for the express purpose of balancing the competing interests of labour management and the community at large. As was stated by the then Prime Minister, Mr. Lee Kuan Yew, during the parliamentary debate on the passing of the IRA: "... it is the balancing of competing interests – first, fair shares for the workers; and, second, industrial conditions which will encourage investment and expansion – which has resulted in the Bill ..." [which became the IRA].

The IRA was crucial in introducing into Singapore a system of collective bargaining, conciliation and arbitration, with the greater goal of industrial peace and justice, passed as part of a deliberate government policy to promote peaceful labour-management relations as a prerequisite to Singapore's industrialization programme.

The IRA lays down a mechanism pursuant to which registered trade unions may negotiate with an employer for the purpose of entering into a collective agreement containing terms of employment applicable to a class of employees who are members of that trade union. The IRA also provides for the arbitration of trade disputes through the Industrial Arbitration Court (IAC), which functions more like a tribunal rather than a juridical court. The IAC can try trade disputes pertaining to, inter alia, payment of annual wage supplements or other



variable payments and transfers of employment. The IAC does not, however, have the power to determine a dispute relating to the dismissal of an employee or to make any award calling for the reinstatement of an employee, unless the dispute relates to the dismissal of an employee by reason of his involvement in trade union activities. Additionally, individuals cannot bring a trade dispute before the IAC. That entitlement is only available to trade unions, employers, the Minister or the President of Singapore.

When deciding a trade dispute, the IAC is expressly empowered under Section 34 of the IRA to have regard not only to the interests of the persons immediately concerned but to the interests of the community as a whole, and in particular, the condition of the economy of Singapore. An award issued by the IAC will bind all members of the trade union involved. It should be noted that a trade union can only seek recognition in respect of those classes of employees it is permitted to admit as members. A trade union with a majority of members in non-managerial or non-executive positions cannot seek recognition in respect of employees in managerial or executive positions. With effect from 1 September 2002, the IRA was amended to provide limited protection to employees in managerial or executive positions. However, a recognized trade union can only represent an executive employee individually, and not as a class.

The IRA ushered in a period of industrial stability and economic growth for Singapore. It is an example of a legal regime put in place to create an environment conducive to foreign investment. The enactment of the IRA involved a compromise not only of competing interests but also of competing rights. The IRA restricts the rights of the worker, but provides them with protection within a strict legal framework.

### **Employing and Working in Singapore**

The employment law of Singapore comprises both the common law and various statutes such as the Employment Act, the Central Provident Fund Act, the Children Development Co-Savings Act, the Employment of Foreign Manpower Act, and the Retirement Age Act<sup>33</sup>, etc. The Employment Act is the main piece of legislation designed to protect the position of employees. The Employment Act sets out minimum employment terms and conditions for employees in Singapore. Any term of an employment agreement which provides a condition of service less favourable than that provided by the Act is illegal, null

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<sup>33</sup> Employment Act, Cap 91, the Central Provident Fund Act, Cap. 36, the Children Development Co-Savings Act, Cap. 38A, the Employment of Foreign Manpower Act, Cap. 91A, the Retirement Age Act, Cap. 274A.

and void<sup>34</sup>. However, the scope of the Employment Act is narrow. The Employment Act applies only to certain classes of employees and only covers certain employment matters, even in relation to those certain classes of employees<sup>35</sup>. For matters which are not legislated or regulated by the Employment Act and for employees who are not covered under the Employment Act, common law principles apply.

Previously, employees who were excluded from the protection of the Employment Act included seamen, domestic workers, employees in managerial and executive positions, confidential staff and any person belonging to a class of persons excluded by the Singapore Gazette. However, amendments were made in 2008 to expand on the scope of the Employment Act<sup>36</sup>, in view of changes in the constitution of the workforce and the general increase in wages. Therefore, in light of the need to reflect these changes, confidential staff are no longer excluded from the protection of the Employment Act. Employees in managerial and executive positions, in receipt of a salary not exceeding S\$2,500 a month, are now also protected under certain specified provisions of the Employment Act<sup>37</sup>.

The amendments made in 2008 to the Employment Act resulted in an increase in the number of employees enjoying the protection of the Employment Act. The updated Employment Act continues to accord employees with basic employment protection and benefits, while allowing employers a large measure of flexibility in managing their manpower resources.

### **Dispute Resolution and Arbitration**

An efficient and fair legal system is commonly regarded as having an impact on competitiveness. No matter how efficient and fair the legal system may be, however, legal proceedings and the legal process are never pleasant. Litigation, especially on commercial and corporate matters, can be lengthy, messy and costly. A well regarded legal system may offer encouragement to foreign investors. A well managed alternative dispute resolution framework also acts as an inducement.

#### *Arbitration*

The Singapore International Arbitration Centre (SIAC) was established in 1991 as an arbitration institution to administer arbitration in Singapore according to Singapore

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<sup>34</sup> Section 8 of the Employment Act

<sup>35</sup> See the definition of “employee” in Section 2 of the Act and Section 35

<sup>36</sup> Employment (Amendment) Act 2008 (Act 32 of 2008)

<sup>37</sup> Section 2(1) and 2(2) of the Employment Act



arbitration rules and international arbitration rules. In 2008, the SIAC administered 99 cases, inclusive of cases administered under SIAC rules and cases administered under other rules. Because Singapore is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“NY Convention”), Singapore arbitration awards are enforceable in all countries that are signatories to the NY Convention. To date, 144 countries are signatories to the NY Convention.

The Singapore arbitration regime is governed by two statutes – the Arbitration Act, Cap. 10 (which governs domestic arbitration) and the International Arbitration Act, Cap. 143A (which governs international arbitrations). The International Arbitration Act was passed for the express purpose of providing for the conduct of international arbitrations under the Model Law on international commercial arbitration which was drafted by the United Nations Commission on International Trade Law (UNCITRAL)<sup>38</sup>.

The Arbitration Act was amended in 2003 to extend the powers of the High Court to enforce arbitral awards, irrespective of whether the arbitration took place in Singapore or elsewhere<sup>39</sup>. This amendment is especially helpful in providing for the reciprocal enforcement of awards between Singapore and countries that are non-signatories to the NY Convention.

#### *Mediation*

Mediation is another form of alternative dispute resolution which is non-adversarial where parties, unlike in a litigation or arbitration setting, retain control over the outcome and, with the help of their lawyers, make their own decisions. There is the presence of a neutral person, the mediator, who acts as a facilitator to the negotiations between the parties, but he does not make any decisions as to the outcome. The outcome is decided by the parties and settlement is only reached if both parties agree to it. This form of dispute resolution is not only cost and time-efficient, it is also generally conducted on a private and confidential basis. This form of dispute resolution, more often than not, keeps the relationship between parties from souring, keeping the way ahead clear for a continuing commercial partnership.

The flagship mediation centre in Singapore is the Singapore Mediation Centre, a company limited by guarantee of the Singapore Academy of Law and established in 1997 to promote mediation and provide a full range of alternative dispute resolution services. Since

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<sup>38</sup> Part II of and the First Schedule to the International Arbitration Act

<sup>39</sup> Section 46(3) of the Arbitration Act



1997, the SMC has gained a reputation for being a reputable accreditation body for mediators, adjudicators and neutral evaluators. To date, at least 75% of the cases that have been referred to SMC were settled.

The SMC provides alternative dispute resolution training as well, in areas such as negotiations, mediation and conflict management.

*Med-Arb (Mediation-Arbitration)*

This is a hybrid dispute resolution process jointly provided by SMC and SIAC which aims to strike a balance between party autonomy and finality in dispute resolution. This form of dispute resolution draws on the mediation services offered by SMC and the arbitration services offered by SIAC.

Under this process, parties first use mediation to try to resolve the dispute. The mediation period is fixed and once that period is up, if the parties are unable to reach a mutual agreement, the matter will then proceed to arbitration. If the matter is resolved at the mediation stage of the med-arb dispute resolution process, parties can choose to record the settlement in the form of an arbitral award. As an arbitral award, it is potentially enforceable in countries that are signatories to the NY Convention.

*Primary Dispute Resolution Centre*

The Primary Dispute Resolution Centre (PDRC) at the Singapore Subordinate Courts provides court-based alternative dispute resolution services to litigants who wish to resolve their disputes in a less acrimonious manner, without the need to go to trial. To that end, there are 2 services available at the PDRC to litigants.

Court Dispute Resolution

The Court Dispute Resolution (CDR) is a voluntary settlement process in the Singapore Subordinate Courts where parties seek a satisfactory solution to their dispute with the aid of the Settlement Judge. However, this process is only available after court proceedings have been commenced. At the CDR, parties are to state their respective positions and requirements to the Settlement Judge either jointly or in a caucus, which is a private session with the Settlement Judge without the other party present. The CDR process at the Subordinate Courts is made available free of charge to litigants and the proceedings are confidential. There is substantial saving of time and costs if the CDR process is successful.

Court Dispute Resolution International



The Court Dispute Resolution International is a settlement conference co-conducted by a Singapore Subordinate Courts Judge and a Judge from another jurisdiction. The purpose of a second Judge, from another jurisdiction no less, is to provide additional judicial perspectives and views on the dispute. Disputes which are brought to the CDRI are of a more complex nature pertaining to civil matters, with substantial claims involved. Where issues of law are raised during the session, the Singapore Judge will decide on them. Like CDR, CDRI is provided free of charge to the parties.

#### *Maxwell Chambers*

In a bid to further enhance alternative dispute resolutions options in Singapore, Maxwell Chambers was established in mid-2009 as an integrated dispute resolution housing complex in Singapore which has the facilities to house ADR institutions. It is currently home to the SIAC, the Singapore Institute of Arbitrators and the Singapore office of the International Centre of Dispute Resolution, and will house the Singapore office of the World Intellectual Property Office Arbitration and Mediation Center in the future.

From the above, it can be seen that Singapore has a comprehensive framework for alternative dispute resolution. The framework was developed fairly recently as part of a deliberate policy to make Singapore a hub for alternative dispute resolution.

#### **Growing Financial Industry**

Up until 2001, Singapore did not have a consolidated piece of legislation governing the securities and futures industry. The industry, until then, was supported by provisions in the Security Industries Act, the Futures Trading Act, Exchanges Act and the Companies Act. This was insufficient to address Singapore's needs in this area, particularly as globalization and competition were making capital markets increasingly sophisticated. Corporations, investors and even savvy high networth individuals seeking a piece of the capital markets were no longer limited to the domestic market. Such a rapidly-evolving financial landscape called for a suitably dynamic framework to regulate and facilitate development. The Securities and Futures Act, Cap. 289 (SFA) was enacted in October 2001 to provide a single comprehensive legislative framework for regulatory commercial activities and financial institutions in the securities and futures industry. The SFA took into account that a responsive framework must not only be sound and transparent, but also able to balance prudence with innovativeness and flexibility. During the passing of the Securities and Futures Bill in Parliament, it was highlighted that the impetus for the SFA, inter alia, was to enhance competition and to provide a comprehensive rulebook on capital markets activities.



In early 2009, the SFA went through a round of amendments targeted at strengthening the legal and regulatory framework of Singapore's financial industry by enabling the Monetary Authority of Singapore ("MAS") to respond more rapidly to new market developments, by ensuring the consistency of MAS regulations and enhancing the supervisory and enforcement powers of MAS. This was done with the objective of creating a financial services industry which instills investors' confidence and promotes market innovation, in the face of the market uncertainties of the last 2 years.

One of the many notable features of SFA is Part XII on Market Conduct. This part of the SFA provides for the jurisdiction of Singapore courts over prohibited conduct relating to securities, futures contracts and leveraged foreign exchange trading, and insider trading acts which are perpetrated in Singapore in relation to securities or futures contracts listed and traded in Singapore or elsewhere, and perpetrated outside Singapore in relation to securities or futures contracts listed and traded in Singapore<sup>40</sup>. The purpose of these enactments is twofold: 1) to discourage perpetrators from using Singapore as some sort of haven for their misconduct; and 2) to allow Singapore courts extra-territorial jurisdiction over foreign acts that affect the integrity of Singapore's market. Such extra-territorial jurisdiction is possible through regulatory memoranda of understanding executed between the MAS and foreign regulatory bodies.

### **Competition Laws**

The Competition Act, Cap. 50B was enacted in 2004 with the aim of promoting the efficient functioning of markets and enhancing the competitiveness of Singapore's economy. The Competition Act prohibits various anti-competitive conducts such as anti-competitive agreements, abuse of dominant position and anti-competitive mergers and acquisitions. There is no statutory requirement to notify agreements, conduct, mergers or anticipated mergers to the Competition Commission of Singapore. To this extent, the competition regime is selfregulatory. However, parties who are concerned about the possible anti-competitive effects of their agreements or potential mergers have the option of notifying the Competition Commission of Singapore for guidance or a decision<sup>41</sup>.

When presenting the Competition Bill in Parliament, the Senior Minister of State for Trade and Industry, Mr Vivian Balakrishnan, stated clearly that '...[the] principal focus will be on those that have an appreciable adverse effect on competition in Singapore or that do not have an net economic benefit'. To determine whether an action is anti-competitive,

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<sup>40</sup> Sections 196, 205 and 213 Securities and Futures Act

<sup>41</sup> Competition Commission of Singapore Guidelines on the Major Provisions, para 7.1



consideration will be given to whether the behaviour ‘promotes innovation, productivity or longer-term economic efficiency’<sup>42</sup>, as it would be undesirable to inadvertently constrain innovative and enterprising endeavours.

### **Exchange Controls**

In line with Singapore’s aim of developing the country as an international financial and business centre, Singapore has no exchange control restrictions. There is an Exchange Control Act, Cap. 99, but it exists only in name. The Act was suspended on 1 June 1978 and there does not seem to be any likelihood of a change in the suspension at any point in the near future. Singapore residents and non-residents alike are free to move the Singapore dollar in and out of the country and to purchase and sell the Singapore dollar in the forex market. The only limitation in movement of the Singapore dollar would perhaps be the Monetary Authority of Singapore’s (MAS) policy of restricting lending of Singapore dollars to non-residents to avoid speculation of the currency in the currency market. This is generally known as MAS’ policy to ensure the non-internationalisation of the Singapore dollar.

### **Land Laws**

Singapore’s land laws, comparative to its other laws with an impact on investment, are relatively strict. This is not actually unexpected if one considers the land scarcity of a small island-state like Singapore. In that regard, with very few exceptions, foreign persons are not allowed to purchase residential land<sup>43</sup>. The definition of foreign persons<sup>44</sup> is quite wide and encompasses persons who are not Singapore citizens, Singapore companies, Singapore limited liability partnerships or Singapore societies. For the purposes of the Singapore Residential Property Act, ‘Singapore company’ means a company incorporated whose shareholders are all Singapore citizens, ‘Singapore limited liability partnership’ means a limited liability partnership that is registered in Singapore and whose partners are all Singapore citizens; and ‘Singapore society’ means a society constituted and registered in Singapore whose members and/or trustees are all Singapore citizens. It is quite clear, then, that Singapore’s land laws aim to keep the ownership of land in the hands of Singaporean entities. One exception to the rule is the ownership of flats that are not under

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<sup>42</sup> Competition Commission of Singapore Guidelines on the Major Provisions at para 4.9 and 6.9; Competition Act, Cap. 50B Schedule 3 Article 9

<sup>43</sup> Section 3 Residential Property Act, Cap. 274

<sup>44</sup> Section 2 Residential Property Act

the government-assisted housing scheme and flats which bear the title of 'condominium' in the approved plan<sup>45</sup>. These properties are available for purchase by foreigners.

### Collective Sales

The Land Titles (Strata) Act, Cap. 158 creates strata title for apartment buildings and condominiums and governs the rights of subsidiary proprietors. Singapore's land scarcity has in relatively recent times resulted in another special feature of its land laws, namely the law pertaining to collective sales. In 1999, the Land Titles (Strata) Act was amended to include new provisions which permit the individual rights of property owners in a strata development to be over-ridden by the wishes of the majority<sup>46</sup>. Under these provisions, proprietors of individual units in a strata development will be obliged to sell their units to a purchaser where this is agreed in writing by subsidiary proprietors with a specified majority of the share values and total area of all lots, provided the approval of the Strata Title Board is obtained. Where a development is more than 10 years old, the required majority is 80%, if the development is less than 10 years a majority of 90% is necessary<sup>47</sup>.

While the legislation provides an avenue for individual subsidiary proprietors to object to the sale, the grounds on which an individual proprietor can object are limited. For example, in the case of an old development along Nassim Road (a choice area near to Orchard Road one of Singapore's prime hotel and shopping streets) an elderly resident objected to the collective sale on the ground that if her apartment were to be sold the spirit of her deceased husband would not have a place to return to<sup>48</sup>. This, however, was found not to be a good ground of objection and the sale was approved. A valid ground of objection on which a subsidiary proprietor can rely is that he will incur a financial loss or that the proceeds of sale for his lot will be insufficient to redeem any mortgage or charge over the lot. If these objections are made, the Board may still approve the sale and with the consent of the collective sale committee, include an order that the proceeds to be received by the objector be increased, subject to the Board being satisfied that this is just and equitable<sup>49</sup>.

Whether or not an objection is raised, the Strata Title Board can only approve a collective sale if it is satisfied that the transaction is in good faith, after taking into account the sale price for the lots and the common property in the strata title plan, the method of distributing

<sup>45</sup> Section 4 Residential Property Act

<sup>46</sup> Land Titles (Strata) Act, Cap. 158, Part VA

<sup>47</sup> Land Titles (Strata) Act S84(A), S84A(1)(a)&(b)

<sup>48</sup> Tan Hui Peng & Ors v Chow Ai Hua & anor [2006] SGSTB 2

<sup>49</sup> Section 84A(7), S84A(7A) Land Titles (Strata) Act

the proceeds of sale, and the relationship of the purchaser to any of the subsidiary proprietors<sup>50</sup>.

The surge in collective sales in the years 2005 to 2008 led to a spate of litigation whereby dissenting subsidiary proprietors sought to set aside orders for collective sales made by the Strata Title Board on various grounds. Recently, the Singapore Court of Appeal clarified the requirement of 'good faith' imposed on a Sale Committee. The Court of Appeal observed that the law gave the majority the power to sell units of objecting subsidiary proprietors against their wishes and held that the conduct of the Sale Committee must meet high standards<sup>51</sup>.

The Land Titles (Strata) Act was amended in 2007 to more closely regulate collective sales<sup>52</sup>. For example, since these amendments, there is a requirement that a solicitor must witness the signature of each subsidiary proprietor on the Collective Sale Agreement and explain the provisions to that proprietor. The new regulations provide for the election of the sale committee at a general meeting of the management corporation, the regulation of general meetings pertaining to collective sale, as well as the composition, constitution and proceedings of the sale committee.

The current regime permitting collective sales in Singapore is an example of a compromise made in a land scarce society between individual proprietary rights and the need to facilitate urban renewal.

### **Economic Development Policies**

Numerous schemes have been put in place in Singapore to provide assistance to investors, both financial and non-financial. Set out below are a few examples of some of the schemes.

#### *Innovation Development Scheme*

The Innovation Development Scheme (IDS) provides co-funding to support innovation in products, processes and applications and is open to Singapore-registered companies. Funds from the IDS can be applied to expenditure on manpower, equipment, intellectual property and professional services.

#### *Research Incentive Scheme for Companies*

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<sup>50</sup> Section 84A (9) Land Titles (Strata) Act

<sup>51</sup> Ng Eng Ghee and ors v Mamata Kapildev Dave & ors (Horizon Partners Ltd, Intervener) and anor appeal [2009] 3 SLR 109

<sup>52</sup> Sections 84A(1A), (3) and (7C), and the 1st, 2nd & 3rd Schedules to the Land Titles (Strata) Act



Companies running projects with R&D capabilities, which can result in increased hiring and training of research scientists and engineers, are eligible for this scheme which provides grants to offset the costs from such projects. The costs which will be covered are costs of manpower training, equipment investment, intellectual property management and professional services.

#### *Initiatives in New Technology*

Technology R&D has always been an area of interest in Singapore. The development of technology is not confined by land and there are no limits to new discoveries. This scheme was created to grant offsets to the costs of developing and/or introducing such new capabilities. The initiative is open to all Singapore-based companies.

#### **Global Warming**

One of the downsides of economic development is the contribution it makes to global warming. In the light of this, the Building and Construction Authority of Singapore has set aside S\$5 million to encourage local developers to link up with foreign partners to develop building designs which can improve energy efficiency. The Singapore government has also recently announced the creation of a S\$100 million fund to assist existing building owners in Singapore to upgrade and improve the energy performance of their buildings<sup>53</sup>.

#### **International Investment**

As abovementioned, since independence, the policy of promoting foreign investment into Singapore has been adopted. Investments by Singapore companies and entities outside Singapore, including investments to other ASEAN countries have also been encouraged. Singapore has entered into various international agreements and treaties which promote investment both into Singapore and from Singapore into other countries.

#### *Avoidance of Double Taxation Agreements*

Singapore executed its first Avoidance of Double Taxation Agreement (DTA) in 1965. As of the writing of this paper, Singapore has 60 comprehensive DTAs and 7 limited DTAs in force. Comprehensive DTAs in general cover all types of income and limited DTAs only apply to income derived from international shipping and/or air services.

#### *Free Trade Agreements*

At the time of the writing of this paper, Singapore has entered into 16 Free Trade Agreements (FTA), either on its own or as part of ASEAN. Singapore is in negotiations

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<sup>53</sup> See Straits Times, 2 October 2009, 'Singapore to be 'living lab' for sustainable growth', page C21



with at least 6 other countries, including Canada, Mexico and Pakistan, to enter into additional FTAs. Thanks to the FTAs, Singapore-based investors can be assured of, inter alia, reduced import tariff rates, preferential access to services sectors, less stringent investment rules and more government procurement opportunities.

#### *Investment Guarantee Agreement (IGA)*

Investment guarantee agreements (IGA) between two countries aim to promote smoother investment communication between 2 countries. The IGA does this through a legal framework that clearly sets out the investment norms and protection when investing in the other country. Singapore has in force 35 IGAs, some of the other countries being China, Vietnam, Egypt, Pakistan, Laos and Belarus. These IGAs are essential in affording investors some level of assurance of certain processes and principles being in place such as the principle of fair and equitable treatment, the principle of non-discrimination (by virtue of being accorded national treatment or most favoured treatment), compensation in the event of expropriation, free transfer of funds and investor-state dispute settlement mechanisms.

#### **Conclusion**

In 2008, the Singapore government spent close to S\$5,000 million on economic development. To date, there are more than 7000 multinational corporations that have set up operations in Singapore. From 2003 to 2007, the amount of foreign direct investment into Singapore increased 86% and the foreign equity investment into Singapore increased 100%. From 2005 to 2008, the foreign investment commitments in manufacturing and services increased by more than 130%. The Institute of Management Development World Competitiveness Yearbook, an annual report on the competitiveness of countries ranked based on the environment created by the country to create and sustain competitiveness of enterprises, ranked Singapore third (out of 57 countries) in world competitiveness<sup>54</sup> in 2009.

For a country as small and as limited in natural resources as Singapore is, these figures show the importance to Singapore of investment and the impact of some of Singapore's investment related laws and policies. These laws and policies are constantly being reviewed and renewed so as to adapt to changing conditions in an increasingly competitive world.

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<sup>54</sup> The United States is ranked first and Hong Kong second



The Singapore experience has shown that legislation can play an important role as a catalyst for economic development. It must be recognized, however, that there are limits to the role that legislation can play. In a recent public speech Singapore's Minister of National Development highlighted these limits. Mr Mah Bow Tan said: "Sustainable development for Singapore in the decades ahead cannot depend on legislation or efforts by the state alone. More than ever we require collaborative innovations across the private, public and people's sectors to think of new solutions to help Singapore overcome our resource limitations and to reduce the environmental foot print of future growth". Mr Mah stressed that sustainable development is "an ongoing effort with no end point"<sup>55</sup>. In this connection, international co-operation can play an important role.

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<sup>55</sup> See Straits Times, 2 October 2009, 'Singapore to be 'living lab' for sustainable growth', page C21