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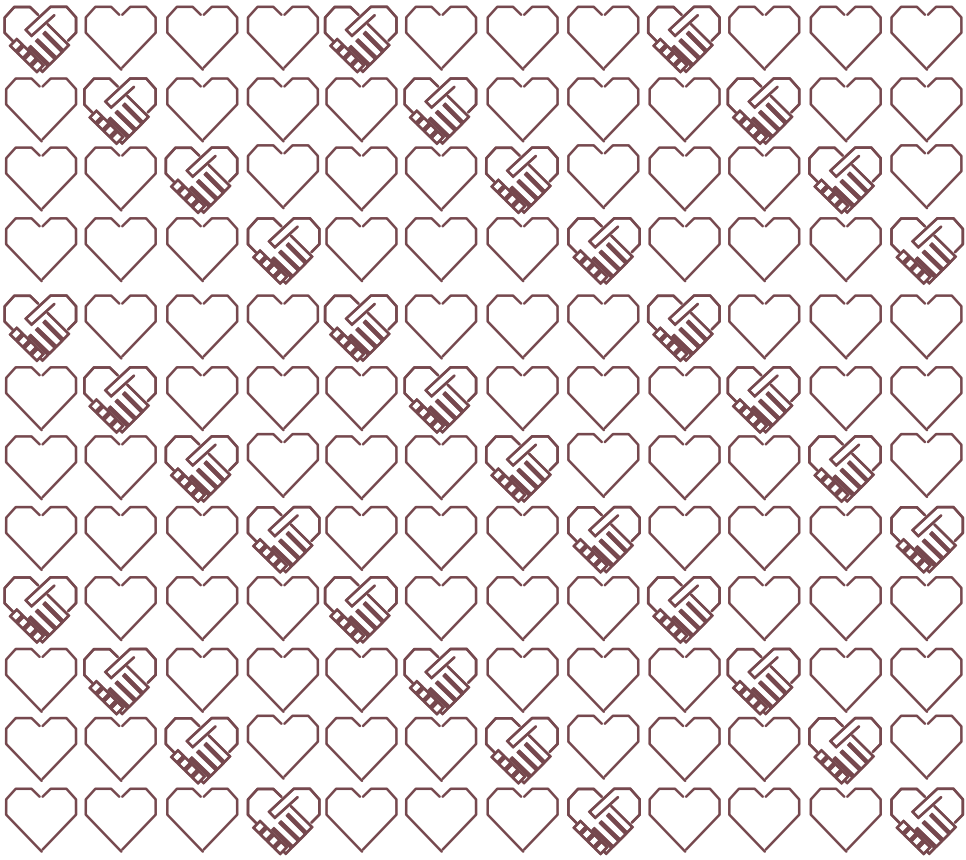
A LEGAL HANDBOOK FOR SOCIAL ENTERPRISES



A LAW SOCIETY OF SINGAPORE PUBLICATION

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A LEGAL HANDBOOK FOR SOCIAL ENTERPRISES

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Produced by the Law Society of Singapore ('Law Society').

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Statutory instruments of the laws of Singapore referred to in this booklet can be found at http://statutes.agc.gov.sg/

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FOREWORD BY PRESIDENT, THE LAW SOCIETY OF SINGAPORE

It has become increasingly common for business start-ups to place social causes at the forefront of their objectives. This combination of commerce and social awareness often results in innovative business ideas that transcend the conventional business goals of pure economic profit. Social enterprise has also become a way for business-minded young adults and individuals to contribute positively to the community in a sustainable manner.

The manifold benefits that social enterprises have to offer make them a cause worth supporting. It is for this reason that the Law Society of Singapore ("the Society") hopes to encourage more individuals to make a difference in the community by participating in social enterprise. Yet, it can be daunting for aspiring social entrepreneurs to navigate the potentially tricky legal landscape of running a business without proper assistance.

With this in mind, the Society has put together this legal toolkit to reach out to those who are interested in starting, or are already running their own social enterprises.

The areas of law covered in this publication have been categorised into 3 main sections that deal with the various stages of the development of a social enterprise. The first section opens with a discussion on the legal issues that a potential social entrepreneur should consider before setting up a social enterprise. Without forgetting the ever-increasing presence of the Internet in today's business-world, a section has also been included to provide the reader with more information on the legal aspects of e-commerce. The next section then addresses the legal concerns that more established social enterprises might face. As the business begins to grow, legal knowledge of issues pertaining to the protection of business assets, franchising, cross-border trade, insurance, product liability, funding, advertising and tax may be essential for the business to be sustainable. Finally, the handbook also touches on the legal obligations that the reader may face in the event that the social enterprise has to be terminated.

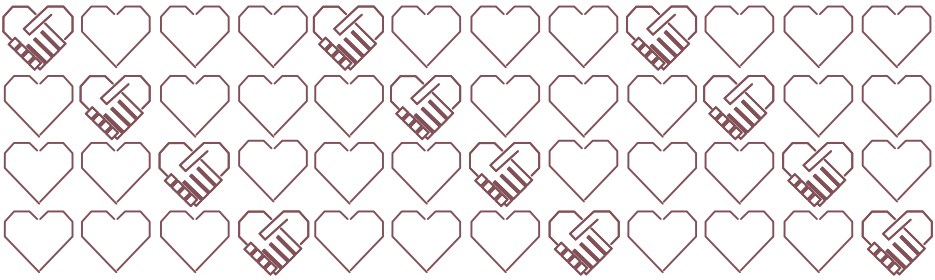
Through this toolkit, the Society hopes to provide some legal guidance to socially driven individuals, and help them to overcome the reservations that they may have about starting their own social enterprises.

Many thanks go to the lawyers who have graciously volunteered their time and effort to contribute to this publication. We are also grateful to the editorial team, and all other parties involved, for their tremendous determination in making the expertise of members of the Society readily accessible to the public through this publication.

LOK VI MING, SENIOR COUNSEL

1

WHAT IS A SOCIAL ENTERPRISE? DO YOU HAVE A SOCIAL ENTERPRISE? HISTORICAL AND CURRENT STANDARDS



WHAT IS A SOCIAL ENTERPRISE?

The term 'social enterprise' means a business which seeks to create social impact through its trading activities.[i] Social enterprises[ii] come in many forms: they can be co-operatives, restaurants, retailers, fair trade organisations, travel agencies, tailors, moving companies, and even career consultancies.

On top of attaining their social and/or environmental goals, social enterprises, like any other commercial entity, aim to make a financial profit. Hence, they have a conventional bottomline to measure financial performance, a second bottomline to determine social outcomes and impact (double bottomline) and sometimes even a third bottomline to assess environmental outcomes and impact (triple bottomline)! As organisations operating in the commercial sector, but having, at their core, interests which are associated with the non-profit sector, the work of social enterprises is both challenging and invigorating.[iii]

HISTORY OF SOCIAL ENTERPRISE

Social enterprises are not new. While the term has seen a resurgence in the last forty years or so, one of the first successful social enterprises, the Rochdale Society for Equitable Pioneers, was formed more than 160 years ago, in December 1844, in the United Kingdom.[iv] A co-operative society, the members of the Rochdale Pioneers worked together to help one another meet their financial needs and aspirations.

Using a set of seven guiding rules known as the 'Rochdale Principles', the society supplied good quality products such as butter, candles, soap, flour and blankets to its members cheaply, and then re-distributed the profits back to them.[v] The Rochdale Principles include open membership, democratic control and political neutrality, and are credited as the basis for the development and growth of the modern co-operative movement.[vi]

Around the same time, a different form of social enterprise was taking root across the channel in the United States. In 1889, Jane Addams and Ellen Starr started running a centre for higher civic and social life called Hull House in Chicago which instituted and maintained educational and philanthropic enterprises as part of its mandate.[vii] By its second year of operation, Hull House was host to two thousand people every week, and services such as a kindergarten and adult night school were partially supported through a public kitchen selling soups and stews, a coffee house and a coal co-operative.[viii]

Soon after, in 1902, a Methodist minister, Edgar J. Helms established Goodwill Industries in Boston to give poor city residents, many of whom were considered unemployable, a job in repairing and re-selling household goods and clothing donated by the wealthy.[ix] Employees received $4 a day for their work, and when money was scarce, $5 in clothing vouchers.[x]

One of the best known Asian social enterprises is the Grameen Bank, a microfinance institution started by Professor Muhammad Yunus in Bangladesh in 1983.[xi] The Bank makes small loans to the poor to enable them to build their businesses and pull themselves out of poverty. In just 20 years, the Grameen Bank has expanded its reach to over 2,500 branches across Bangladesh and collects an average of $1.5 million in weekly instalments.[xii] Its methods are also applied in projects in 58 countries, including the US, Canada, France, the Netherlands and Norway.[xiii] In 2006, Professor Yunus and the Bank were jointly awarded the Nobel Peace Prize.

SOCIAL ENTERPRISES IN SINGAPORE

Social enterprises have a long history in Singapore too. One of the first social enterprises to be established was The Singapore Government Servants' Co-operative Thrift and Loan Society Ltd, formed in October 1925 with 32 members.[xiv] At that time, there

were no banks or other financial institutions that workers could turn to when they needed financial assistance, so they banded together to form co-operatives as a form of mutual aid. Indeed, in the 15 years between 1925 and 1940, over 43 thrift and loan societies were formed to cater to the needs of civil servants, teachers, custom officers and those working in the private sector.[xv] Today, one in three working Singaporeans is a member of a co-operative, and the movement contributes an estimated $600 million to the Singapore economy (based on 2010 Gross Domestic Product).[xvi] The 85 active co-operatives not only provide access to loans and credit facilities, but also moderate prices at grocery stores and food courts, cater to early childhood education needs, and ensure the affordability of healthcare and medicine.[xvii]

While co-operatives are the more established form of social enterprise in Singapore, they are by no means the only form. The Social Enterprise Association, established in 2008, estimates there are at least 200 active social enterprises in Singapore.[xviii] Together, they address a wide range of social needs, from supporting youth-at-risk and environmental issues, to skills-training and employment for the disadvantaged and underprivileged. While social enterprises can be incorporated in different corporate forms, including private companies, companies limited by guarantee and limited liability partnerships, they tend to employ one or more of the following models:[xix]

- **Work integration**

Work Integration Social Enterprises (WISEs) provide training and employment opportunities to those who face difficulties in finding jobs on the open market (For example– ex-offenders or the disabled). This provides a means of reintegrating these individuals into society and encourages them to be self-reliant.

- **Profit plough-back**

Profits generated through the activities of these social enterprises are used to fund the social programmes of their affiliated or parent charities. Many charities and voluntary welfare organisations use this model to reduce their reliance on donations and enhance their financial sustainability.

- **Subsidised services**

These provide subsidised services to needy or disadvantaged clients but charge commercial rates to all other customers. This

ensures that those who cannot usually afford these services are not denied access.

- **Social needs**

These are designed to serve needs and issues evident in the community and/or society such as family bonding, community bonding and racial harmony.

WHAT IS THE FUTURE FOR SOCIAL ENTERPRISE?

As the world becomes more urbanised, integrated and interdependent, threats such as global warming, infectious diseases, global terrorism and economic crises may hit several countries at the same time. There are a few implications. Firstly, as some social and environmental concerns become borderless, the solutions may also need to transcend geographical borders. Secondly, the solution should be such that they can be easily enhanced or expanded to adapt to changing circumstances. Thirdly, the germination of the social enterprise requires deep compassion enabled by strong skills and resilience in the social entrepreneur. It begins with the entrepreneur believing that the whole is greater than the sum of its parts. Growing this conviction goes beyond all incentives that any government, agency or corporation can provide.

You are not alone. While there are no known estimates of the size of the global social enterprise space, there is evidence to suggest that more and more new organisations and movements are emerging to address issues ranging from education, healthcare, environmental protection, access to microcredit, landmine eradication, to even the creation of an international criminal court.[xx] In the UK alone, there are approximately 68,000 social enterprises, contributing at least 24 billion pounds to the economy and providing jobs to about 800,000 people.[xxi] Figures from the United States are still pending the completion of The Great Social Enterprise Census, but preliminary findings suggest that the small sample of respondents already represent over $300 million in annual revenues and about 14,000 employees across 28 states.[xxii] These are not trivial figures. It is clear that the role of social enterprises in communities around the world is increasing, and the time is ripe for you to consider starting one of your own!

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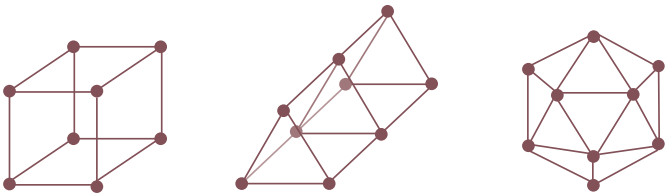
LEGAL STRUCTURES FOR NON-PROFIT ORGANISATIONS/ SOCIAL ENTERPRISES



WHY ADOPT A LEGAL STRUCTURE?

It is important for Non-Profit Organisations (NPOs) and Social Enterprises (SEs) to adopt a legal structure that would protect their volunteers, employees or officers from legal liabilities. Generally, this ensures that business owners, volunteers, employees and officers like yourself, can undertake activities for or on behalf of your NPO/SE without fearing personal responsibility for any debts or liabilities (unless arising out of your own fraud or negligence). Legal structures also ensure that your NPOs/SEs will continue to exist in perpetuity.

Your choice of a legal structure will also give rise to administrative compliance that encourages proper management and governance within your NPOs/SEs. For example– in Singapore, incorporated companies will have to comply with the requirements of the Companies Act, Chapter 50 of Singapore (CA) which prescribes the need for proper administration and management.

Thus, adopting a legal structure ensures the protection, sustainability and accountability of your NPOs/SEs. This is undoubtedly crucial to gaining recognition, public support and trust for the cause of your organisation. It is also worth noting that under the Societies Act, Chapter 311 of Singapore (SA), any association of 10 or more persons regardless of its nature or object, is required to adopt a legal structure. With this in mind, we will now discuss the various legal structures available for you to consider adopting.

THE DIFFERENT LEGAL STRUCTURES

Your choice of a legal structure will depend on a number of different factors. Here are some questions you might want to ask yourself (and a lawyer!) before deciding on the kind of structure to adopt:

(a) What kinds of potential legal liability might you face in the course of your business? (For example– If you run a restaurant that employs people from marginalised communities, could you be sued if your staff accidentally hurts a customer, or if the food served makes a customer ill?)

(b) Do you intend for the business to start out big? How many business partners, or investors would you have? Do they all expect to have a say in how the business is run? Do you want to have full control of the business?

(c) Are you prepared to spend time on compliance with the various rules and regulations that might be applicable to the legal form chosen by you, when you start your business?

(d) Do you intend to do any general fund-raising from the public, or will the social mission of your enterprise be funded purely from the profits generated by the business? Do you want to be able to have relatively quick access to additional funding?

(e) Will you be operating only in Singapore? If you intend to conduct part of your social enterprise overseas, would the legal structure you have picked out have any effect on cross-border issues? (For example– if you are transferring profits or funds overseas, would the legal entity receiving / paying the funds face any restrictions, or have to pay any additional taxes on those funds? Would the position be different if a different legal entity is chosen?)

The right legal structure will greatly help your NPO/SE to start off on the right foot. The discussion of the legal structures below is broadly categorised into "For-Profit Legal Structures" and "Non-Profit Legal Structures".

FOR-PROFIT LEGAL STRUCTURES

Sole-Proprietorships

A sole-proprietorship is the simplest and most flexible business structure. Owned by one person, there are no partners and the proprietor has absolute say in its management. This is suitable for small individually-owned causes that carry minimal risks.

+ Sole-proprietorships are non-complex and simple to set up due to their minimal administrative requirements. They are relatively easier to maintain and manage; and can be terminated swiftly with fewer legal formalities.

− Generally, a separate legal entity may sue and be sued in its own name; have perpetual succession; may own land; and the liability of its members may be limited. As sole-proprietorships are not distinct legal entities, they do not have similar legal protection. Therefore, the sole-proprietor's personal wealth and assets may not be protected from business risks. He will be held personally accountable for all the liabilities arising from his business. Thus, from a legal perspective little, if any, protection is afforded to sole-proprietors. This may bring severe consequences in the event of debt or liability. The availability of tax benefits or incentives for sole-proprietors could be limited and this may limit capital needed for expansion. Furthermore, without a separate legal personality, there will be issues of perpetual succession in the event of the demise or departure of the proprietor. Perpetual succession allows a separate legal entity to continue in existence and manage its affairs over time without having to transfer property on each change of ownership amongst its members.

General Partnerships

A partnership is a business firm formed by more than one individual. All general partnerships must be registered with the Accounting and Corporate Regulatory Authority (ACRA) and capped at 20 persons. Partnerships with more than 20 partners must be registered as a company under the CA as discussed below.

+ A partnership is relatively easy to set up and administer. Its partners are taxed on their respective shares of income from the partnership at their respective tax rates (i.e. an individual partner will be taxed at his personal rates of income tax). Depending on the level of income of the partners, paying tax purely in respect of personal income may be more advantageous than setting up a company and being liable for corporate tax which is currently fixed at a rate of 17%. As contrasted with a sole proprietorship, funding may also be easier to obtain as a wider assembly of partners may provide access to a bigger pool of funds or assets for the purpose of providing security if loans are to be obtained from banks. Another advantage of a general

partnership as compared to a sole proprietorship is that the business of the partnership could benefit from the expertise and experiences of the various partners, who would be incentivized to contribute to the business to increase its profitability.

- Partnerships are not distinct legal entities. As such, in any legal action, the partnership can be sued in the names of individual partners, which may be detrimental to each partner. As with sole-proprietorships, there is also no perpetual succession of partnerships. The partnership will thus dissolve with the departure or the death of any one of the partners. However, most partnership agreements provide for these types of events, with the share of the departed partner usually being purchased by the remaining partners in the partnership.

Limited Partnership (LP)

An LP offers both limited liability and tax transparency to investors who do not wish to participate in management. The liabilities of limited partners (in respect of the firm's debts and obligations) are limited to their individual contributions to the venture in accordance with what had been agreed at the outset. Such partners forgo their rights to be involved in the management of the business in return for their limited liability protection. They naturally have access to the partnership's books and may offer advice on the state of the business. If however, a limited partner participates in the management of the business, he forfeits his 'limited liability status' and will then be liable for the debts and obligations incurred by the limited partnership during his period of forfeiture. The First Schedule to the Limited Partnerships Act, Chapter 163B of Singapore (LPA) contains a list of 'safe harbour activities' which are activities a limited partner may undertake that will not be construed as 'participation in management'.

An LP requires one or more persons to be registered as a limited partner under the Business Registration Act, Chapter 32 of Singapore (BRA). In addition to having at least one limited partner in the LP, there must, at the point of registration, be at least one general partner with liability for all the debts and obligations incurred by the business. The general partners of an LP are, in all major aspects, in the same legal position as the partners of a conventional, general partnership. They have management control and are jointly and severally liable for the debts of the LP.

Like a general partnership, an LP is not required by law to have its accounts audited or filed with the regulators. It is only required to keep proper accounting records that will enable true and fair financial statements to be prepared if necessary. There is also no maximum number of partners in an LP. Partners can either be individuals and/or foreign or local corporations.

+ In practice, LPs can be easier to administer, with only basic account-keeping requirements and without the need to formally file annual returns unless requested by ACRA. The limited partners are not required to disclose the capital contributions made at the point of registration. As an LP is not considered a separate legal entity, it will be tax transparent and each partner will be taxed on an individual basis for the profits he gains from the LP.

− As an LP is not considered a separate legal entity, the general partner(s) would be personally liable for all the debts and obligations incurred by the business. As mentioned above, the liabilities of limited partners (in respect of the firm's debts and obligations) are limited to their individual contributions to the venture in accordance with what had been agreed at the outset.

Limited Liability Partnership (LLP)

An LLP combines the features of a partnership and a company. Governed by the Limited Liability Partnership Act Chapter 163A, of Singapore (LLPA), an LLP gives partners the flexibility of operating as a partnership while reaping the benefit of legal insulation accorded to private limited companies.

+ LLPs have separate legal identities, can own properties, enter into contracts and sue or be sued in their own names. Therefore, a partner of an LLP enjoys limited personal liability and thus will not be held personally responsible for the wrongful acts of another partner with the exception of such claims and losses that result from his/her own wrongful act or omission. Furthermore, an LLP benefits from perpetual succession. Thus, the resignation or death of any of the partners does not affect its existence, rights or liabilities.

− An LLP must be registered with ACRA and is required to keep accounting records that adequately explain the transactions and financial position of the LLP. In addition, the LLP shall submit to ACRA an annual declaration of solvency or insolvency (i.e.

being able or unable to pay its debts) which will also be made publicly available.

Registration as a Company

An incorporated company has the fundamental characteristic of having a separate legal personality. It can be limited by shares and the liability of its members is confined to each member's capital contribution into the company. Regardless of its private or public status, registered companies are taxed at the prevailing corporate tax rate. Note however, that private companies are limited to not more than 50 shareholders under the CA. Every company has a Memorandum and Articles of Association (MAA) that serves as a constitution governing the company and its members.

\+ A company's existence does not depend on the continued membership of any of its members. As a company is regarded as a separate legal entity, it may raise capital from investors or banks, sue and be sued in its own name without incurring further liability to its members and may also hold land in its own name. Certain government incentives may also be available only to companies.

− Public and private companies have to comply with a number of requirements under the CA, including those concerning the appointment of directors, the conduct of annual general meetings (AGM) and the appointment of company auditors and the company secretary.

NON-PROFIT LEGAL STRUCTURE

If you are setting up a social enterprise (i.e. a business with a social mission), the non-profit legal structures below may not always be wholly applicable to you. Remember, you will be running a business first and foremost, and so you will need to consider if the non-profit structures below will allow you to do that. (Refer to Chapter 1.) There are a number of different social enterprise models that you can consider. Some people may even choose to set up different arms of the same social enterprise, which accordingly adopt different legal structures. For example, under the 'plough-back profit' model of social enterprise, one may choose to set up a purely commercial business, whose profits are then channeled into a separate Institute of Public Character (IPC) or charity which has been set up by the same founders, to execute a particular social mission.

With non-profit legal structures, the relevant legal considerations are not so much the 'advantages' and 'disadvantages' of the different legal forms, but rather, whether such vehicles are a good fit with the substance of what is to be achieved.

Society

Governed by the Societies Act Chapter 311 of Singapore (SA), societies are usually NPOs whose core structure is not profit-driven. Societies are suitable for membership or volunteer-based groups, that are small but strongly linked to communities and which do not heavily depend on donations or external funding. A society would have to submit its proposed constitution to the Registry of Societies (ROS) for approval before the society may be formed. Members of societies may be required to contribute to the funds of the society by way of subscription or annual fees, though many societies generate funds through donations from the public and fund-raising activities. Examples of societies include the Singapore Children's Society which aims to protect and nurture children and youth of all races and religions, especially those who are abused, neglected, and/or from dysfunctional families.

Some of the practical benefits of establishing a society include the fact that they are easy and inexpensive to establish, as well as well as appealing to donors who prefer donating and funding entities which are formally and legally recognised.

Societies which are registered charities do not have to pay any income tax. Societies are required to have a place of business and a constitution which cannot be altered without approval from the Registrar of Societies. Furthermore, unlike a company, a society does not have a separate legal entity from its members. This means that if the society is sued, all of its members may be held personally liable.

Charitable Trusts

A charitable trust is a trust which is set up for a specific charitable purpose. These purposes can be classified under four main categories:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- other purposes beneficial to the community which include, amongst others:

- the advancement of health;
- the advancement of citizenship or community development;
- the advancement of arts, heritage or science;
- the advancement of environmental protection or improvement; and
- the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantages.

A charitable trust does not require a permanent place of business or AGMs to be conducted. Trustees of charitable trusts have the power to manage the trust fund to the effect of its specified charitable purpose, and must do so to the best of their knowledge and experience.

A charitable trust does not have a separate legal personality. All liabilities arising from the charitable trust would be borne by its trustees. This will not be ideal if the charitable trust is involved in many daily transactions that may expose its trustees to unlimited liabilities. Generally, there are strict accounting and auditing regulations that must be complied with by trustees as failure or negligence in doing so will incur a penalty.

Company Limited by Guarantee (CLG)

Unlike a company limited by shares, a CLG is primarily used for NPOs/SEs with a corporate status (i.e. trade associations, educational and religious bodies or professional societies). Similar to a company limited by shares, every CLG has an MAA that serves as a constitution governing the company and its members, with liabilities limited to the guarantee made by its members. It is also prohibited from paying dividends and profits to its members and in the event of a winding up, any residual property left behind shall not be distributed to its members but instead to institutions having similar objects as the CLG, or to a registered charity as determined by the Commissioner of Charities.

The amount guaranteed by each member of the CLG can be nominal. It may also sue or be sued in its own name, as it is considered to have a separate legal identity. The CLG may enjoy full tax exemption on its income if it has been awarded charity status.

Similar to private or public listed companies limited by shares, a CLG is required to meet stringent statutory obligations under the CA including those related to the annual audit of accounts, the holding of AGMs and the filing of annual returns with ACRA.

Co-operative

A co-operative is a business entity which is underpinned by a social mission. Co-operatives are often created for the purpose of uplifting the socio-economic well-being of their members. A cooperative identifies social problems and attempts to provide solutions to alleviate or address such issues. It balances serving the needs of its members with requisite importance being placed on ensuring that the financial bottom line of the co-operative is not diminished. Unlike most non-profit legal structures, co-operatives are mindful of their financial position and aim to remain economically viable. Members make equitable contributions to the capital required and accept a fair share of risks and benefits of the undertaking. Cooperatives work on the principles of self-help and mutual assistance to provide services for their members. An example would be the NTUC FairPrice Co-operative Limited (a chain of supermarkets run by the National Trades Union Congress, commonly known as NTUC Fairprice). From its inception, NTUC FairPrice aspired to be Singapore's leading world-class retailer with a heart. As a co-operative, NTUC FairPrice provides, amongst others, affordable food staples and other essentials to its more than 500,000 members through its chain of supermarkets.

A co-operative has to be registered with the Registry of Co-operative Societies. There are generally two prerequisites:

- Members of a co-operative get together to promote their economic interests; and
- They have to submit a business plan of the co-operative.

For more information on setting up a co-operative, please refer to Chapter 3.

REGISTRATION OF AN NPO/SE AS A CHARITY/ INSTITUTION OF A PUBLIC CHARACTER ("IPC")

Charity

If your NPO/SE is registered as a charity, it can enjoy certain tax benefits. The Commissioner of Charities has to be satisfied that the NPO's/SE's objectives meet a charitable objective before awarding it this status.

+ The key benefits of obtaining charity status include:
  - Tax exemptions; and
  - Greater credibility of NPOs/SEs so as to encourage donations and funding, especially where donors require recipients to be recognised charities.

IPC

IPC status is independent of charity status. If your NPO/SE registers itself as an IPC, it may issue "Tax-Deductible" receipts. In order to qualify as an IPC, your NPO/SE must first have a legal structure and be administered by a group of independent board members, half of which are required to be Singaporean citizens. It is worth noting that IPC status is granted to NPOs/SEs which serve the community as a whole and not just the sectional interests of specific groups of persons. Your NPO/SE must also comply with other requirements under the Charities Act Chapter 37, of Singapore (ChA).

The tax benefits associated with entities having IPC status are addressed further in Chapter 18. However, an entity having IPC status will require greater administrative upkeep. This includes, the need for transparency, making information public and available online, providing clear records of donations and renewing its auditors at least once every 5 years.

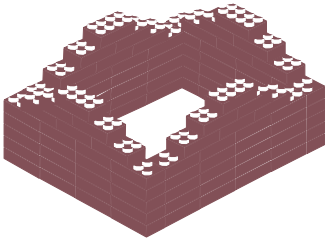
CONCLUSION

Whether an NPO/SE chooses to adopt a legal structure would in part depend on the objectives sought by it as well as the business model contemplated. Admittedly, there are advantages of not adopting a legal structure such as informality and flexibility. The absence of onerous administrative compliance can also translate to lower overall costs for a start-up business.

Nevertheless, it is equally apparent that adopting a legal structure affords numerous benefits ranging from legal insulation, continuity, tax benefits and better accountability to stakeholders, amongst others. Regardless of the objective of your NPO/SE, it is thus prudent to consider the use of formal structures, including the pros and cons of each structure in determining the framework that best meets the needs of your NPO/SE.

3

SETTING UP A LEGAL STRUCTURE FOR THE SOCIAL ENTERPRISE



SETTING UP A LEGAL STRUCTURE FOR THE SOCIAL ENTERPRISE

Chapter 2 dealt with the different kinds of vehicles which you may set up for your social enterprise and set out further details on each of them. This Chapter 3 will describe how you can go about setting up each of the different business vehicles. Please also refer to the table at pages 182-183. To recap, a social enterprise may be set up as a:

- *Company limited by shares;*
- *CLG;*
- *Sole Proprietorship;*
- *Partnership;*
- *Limited Liability Partnership;*
- *Limited Partnership;*
- *Society; or*
- *Co-operative Society.*

IMPORTANT THINGS TO DO AND NOTE BEFORE STARTING OPERATIONS

A company may be incorporated by submitting the MAA of the proposed company together with such information that the Registrar of Companies may prescribe and by paying the prescribed fee (see below).

As a starting point, for companies limited by shares, you may wish to consider adopting or referring to the sample MAA which is provided by ACRA.[xxiii]

If you intend to set up a **sole proprietorship or partnership** (maximum 20 partners in total), it should be noted that prior to carrying on business in Singapore, you must register the business unless you are exempted from such a requirement, failing which, this will constitute an offence.

You and your partners should draw up a partnership agreement which defines certain partnership matters such as the roles and responsibilities of the partners as well as how the profits are to be distributed amongst the partners.

Where the sole proprietor or all the partners of the partnership reside outside Singapore, the Registrar will require a local manager (who must either be a Singapore Citizen or Singapore Permanent Resident) to be appointed.

A **limited liability partnership (LLP)** may be registered if a statement by every person who is to be a partner of the LLP is lodged with the Registrar of Limited Liability Partnerships.

You and your partners should also draw up an LLP agreement to govern matters such as the mutual rights and duties of the partners as well as the mutual rights and duties of the LLP and its partners. In the absence of this agreement, please note that the provisions set out in the First Schedule of the LLPA will apply.

The LLP will also need to appoint a manager (who is ordinarily resident in Singapore and who is a natural person at least 18 years of age, and of capacity).

A **limited partnership (LP)** may be registered if a general partner of the LP lodges with the Registrar of Limited Partnerships a statement containing certain particulars.

The partners of the LP should draw up an LP agreement to govern the various matters related to the LP such as the contribution of the partners to the LP and the relationship between these partners.

Please note that the LP will be required to appoint a local manager if every general partner is ordinarily resident outside Singapore.

It should be noted that additional regulations will apply in relation to the setting up of the LP if the LP is set up primarily for investment funds.

Any partnership (or club, company or association) of 10 or more persons, whatever its nature or object should seek registration with ROS, unless you are any of the following:

(a) Any company registered under any written law relating to companies for the time being in force in Singapore;
(b) Any company or association constituted under any written law;
(c) Any trade union registered or required to be registered under any written law relating to trade unions for the time being in Singapore;
(d) Any co-operative society registered as such under any written law;
(e) Any mutual benefit organisations registered as such under any written law relating to mutual benefit organisations for the time being in force in Singapore;
(f) Any company, association or partnership, consisting of not more than 20 persons formed for the sole purpose of carrying on any lawful business that has for its object the acquisition of gain by the company, association or partnership, or the individual members thereof;
(g) Any class, society or association of foreign insurers carrying on insurance business in Singapore under any foreign insurer scheme established under Part IIA of the Insurance Act (Cap. 142).
(h) Any school or management committee of a school constituted under any law regulating schools for the time being in force in Singapore.

The SA prescribes that for certain 'specified' societies, the majority of the committee members of your society must be Singapore Citizens; and, the President, Secretary, Treasurer and their deputies must also be Singapore Citizens or Singapore Permanent Residents. Foreign diplomats cannot serve as committee members. The MHA (Ministry of Home Affairs) considers the following categories to be specified societies:

(a) Religious societies;
(b) Societies which identify themselves publicly as or whose membership is confined exclusively to members of a single race;
(c) Any society whose object, purpose or activity, whether primary or otherwise, is to represent; promote any cause or interest of; or discuss any issue relating to a class of persons defined by reference to their gender or sexual orientation;
(d) Any society whose object, purpose or activity, whether primary or otherwise, is to represent persons who advocate; promote; or discuss any issue relating to any civil or political right (including human rights, environmental rights and animal rights);

(e) Any society whose object, purpose or activity, whether primary or otherwise, is to promote or discuss the use or status of any language;

(f) Any arts groups except those promoting classical music/ works.

REGISTERING A BUSINESS

How to register a company, sole proprietorship, partnership, LLP or LP

You may register a company, sole proprietorship, partnership, LLP or LP through ACRA by submitting an application online via BizFile.[xxiv] Alternatively, you may wish to engage the services of a professional firm (e.g. a lawyer, chartered accountant etc.) or a service bureau to submit an online application but these options will cost more.

If you are submitting an online application, ACRA's website contains a useful step-by-step guide.[xxv]

You should first refer to information that is available on the ACRA's Bizfile website. The Bizfile service is generally available 24 hours a day, 7 days a week.

Contact ACRA Helpdesk for assistance.

If you require further assistance, you may contact the ACRA Helpdesk.[xxvi]

What can the business be called?

If you are intending to set up a company, sole proprietorship, partnership, LLP or LP, the name of your social enterprise will generally not be accepted if the relevant Registrar is of the opinion that the name:

- is undesirable;
- is identical to that of another business;
- or is a name of a kind that the Minister has directed the Register not to accept for registration (e.g. Temasek).

Further, the relevant Registrar has the discretion to direct a change of your social enterprise's name if your social enterprise's name so nearly resembles the name of another business as to be likely to be mistaken for it.

What sort of address may be used for the business?

Generally, a PO Box cannot be used as a business address. You may use a residential address as a business address if you satisfy certain terms and conditions under the Home Office Scheme.

The Home Office Scheme is generally available to the owners, tenants or authorised occupiers of Housing Development Board (HDB) flats or certain private property. Further, the business has to be one which is either registered with ACRA unless it is exempted from registration under the BRA (Business Registration Act). One of the conditions of the Home Office Scheme is that the business can only be a small-scale business with not more than two non-resident employees. The requirements, terms and conditions, and restrictions on the type of business that may be carried out on residential premises under the Home Office Scheme may vary depending on the type of property.

For private residential property, more information on the scheme[xxvii] is available at http://edanet.ura.gov.sg/. For HDB flats, more information on the scheme[xxviii] is available at http://www.hdb.gov.sg/. Registration for the scheme can be done through the Online Business Licensing Service (OBLS)[xxix] which is also a one-stop online licensing portal (covering most licences and permits) set up by the Singapore Government (see Chapter 8 on "Licences and Permits"). Please note that a non-refundable administration fee of S$20.00 is payable on registration for the Home Office Scheme.

It is also worth noting that HDB also operates a separate Home Based Small Scale Business Scheme,[xxx] under which, you may use a HDB flat to conduct certain business activities that meet the relevant guidelines. No prior approval from the HDB is required under this scheme.

How much will it cost to name and register your business?

The name reservation fee is $15.

Registration fees vary:

- Company limited by shares: $300
- CLG: $600
- Sole Proprietor/Partnership: $50
- Limited Liability Partnership: $150
- Limited Partnership: $50

How long will it take?

A company, sole proprietorship, LLP or LP can usually be incorporated or registered within 15 minutes after the registration fee is paid. However, it may take between 14 days and 2 months if the application needs to be referred to other

authorities for approval or review (for example– the setting up of a private school will need to be referred to the Ministry of Education (MOE)).[xxxi]

REGISTERING A SOCIETY

How to register a society

It is relatively cheaper to register your **society** online via the Integrated Registry of Societies Electronic System (iRoses).[xxxii]

As part of the application for registration, you will first need to submit a proposed constitution. A sample may be found at the ROS' website.[xxxiii] For societies affiliated to another entity, you will also need to submit:

- A copy of the affiliated body's constitution; and
- A letter from the affiliated body supporting the registration of the society.

If your society does not fall under any of the specified societies listed in the Schedule of the SA, you will be eligible for the 'automatic' registration process, in which case, your society will be able to start its activities upon registration.

Otherwise, you will need to go through the 'normal' process, in which case, you will be required to await the Registrar's in-principal approval first, before you can proceed to pay the registration fee and have your society registered. Your society will be able to start its activities once its registration is published in the Gazette.

More info available on ROS website.

You should first refer to information that is available on the website of the ROS.[xxxiv]

Naming a society

Your society's name should not be the same or similar to that of another entity that is already registered. To check, you may refer to the Unique Entity Number's website.[xxxvi]

Acronyms/abbreviations are not encouraged. Where an acronym/abbreviation is used, its meaning must be clearly explained. Specifically, the word "Singapore" or its abbreviation can generally be used only within brackets at the end of the society's name to indicate the society's place of registration.

The word "The" cannot be used as the first word in the name of the society.

WORDS IN NAMES THAT REQUIRE APPROVAL
Academy;
Asean;
College (with exception of an alumni);
Council;
Government;
Institute (with exception of an alumni);
Lion City;
Merlion;
Ministry;
National;
Raffles;
Republic;
Registry;
State;
Stamford Raffles;
Temasek.

The word "Foundation" cannot generally be used unless the society is an institution or association with a permanent fund dedicated to charitable, educational, religious, research or other benevolent purpose, and the society is financed by a donation endowment or legacy to aid the society's intended charitable purposes.

In addition, if you are using any of the following words as part of the name of the proposed society, you would require a letter of support from the relevant authorities: Academy; Asean; College (with exception of an alumni); Council; Government; Institute (with exception of an alumni); Lion City; Merlion; Ministry; National; Raffles; Republic; Registry; State; Stamford Raffles; or Temasek.

What is a 'place of business' for societies?

A "Place of Business" is defined in the SA as the place where the records and books of accounts of a society are kept. The following addresses are prohibited from use as the society's place of business: HDB flat; PO Box; Undeveloped sites; Mobile premises (For example– containers); Unofficial addresses (For example– rooftops or void decks); Public places (For example– hawker stalls or retail stores).

A letter of consent from the relevant authorities would be required if any of the following addresses are used as a place of business:

- Community Centre;
- Government agencies or statutory boards, schools and hospitals; or
- Embassy / High Commission.

(d) How much does it cost?

Approval fee for a **specified society**: $400 (for applications supplied online); $450 (for applications submitted over the counter or via post).

Approval fee for **society other than specified society**: $300 (for applications submitted online, over the counter or via post).

How long will it take?

A society can usually be registered immediately under the 'automatic' registration process or in approximately 2 months under the 'normal' registration process.

REGISTERING A CO-OPERATIVE

Naming a co-operative

Your co-operative society's name will not be accepted if the Registrar of Co-operative Societies is of the opinion that the name:

- is likely to mislead members of the public as to the true character or purpose of the society;
- is identical to or so nearly resembles the name of some other society as is likely to deceive or confuse members of the public or members of either society;
- so nearly resembles the name of any body corporate as is likely to be mistaken for it or for being related to it;
- or is undesirable or offensive.

Special information for co-operative societies

The following are general steps which are required to form a co-operative society:

(a) You will need to first set up a Pro-tem Committee with at least 3 members to undertake a feasibility study to determine the economic and financial viability of the proposed society.

(b) You will then need to submit, for the Registrar of Co-operative Societies' comments:

- a viability statement (containing a business plan and the cash flow projections for at least 3 years);
- particulars of each committee member, including name, NRIC number, date of birth, citizenship, occupation, address and contact numbers; and
- a draft By-laws which include matters spelt out in the Schedule of the Co-operative Societies Act Chapter 62, of Singapore (CSA).[xxxvii]
- adopt the By-laws (which have incorporated the Registry's comments); and

(c) After obtaining the Registrar's comments, you will need to convene a preliminary meeting of at least 10 persons qualified for membership to:

- adopt the By-laws (which have incorporated the Registry's comments; and
- pass the resolution to accept all the rights, duties and liabilities prescribed by the By-laws.

In this regard, it should be noted that in order to qualify for membership, an individual member must:

- be at least 16 years old;
- be a citizen or resident in Singapore;
- not be legally or mentally disabled;
- not be an undischarged bankrupt;
- meet residence, employment, profession requirements as prescribed in the By-laws;
- not have been convicted of an offence punishable with imprisonment;
- be able to meet such other requirements prescribed by the By-laws;
- and belong to a pre-existing common bond of association or community of interest.

An institutional member of a co-operative must be a registered co-operative society itself or trade union.

(d) You will then have to submit the following documents to the Registrar to apply for registration:

- the duly completed relevant application form;[xxxviii]
- details (name, NRIC or FIN number, nationality, occupation and address) and signatures of at least 10 members;
- By-laws;
- business plan (which should include the co-operative's business strategy, products and service, target customers, expected demand etc.) and 3-year financial projections (which should include the balance sheet, income and expenditure as well as cashflow statements of the co-operative); and
- minutes of the preliminary meeting, with the signatures of all who were present at the meeting.

The time taken by the Registrar to process and approve the registration will depend on the complexity of the application. No fees are payable for the registration of a co-operative society.

(e) Upon registration, the Pro-tem Committee shall continue to manage the affairs of the co-operative society until the first meeting of the members which must be held within 3 months after receiving the notice of registration and shall include the election of officers who shall serve until the first AGM.

You should first refer to information that is available on the website of the Registry of Co-operative Societies. If you require further assistance, you may contact the Registry of Co-operative Societies directly for general assistance or advice.[xxxix]

RELATED MATTERS AND OTHER CONSIDERATIONS

Licences and permits

Depending on the type of business that your social enterprise is engaged in, you may need to apply for certain licences or permits from the relevant authorities or agencies before you can commence business, failing which, you may commit an offence. Licensing issues are discussed further in Chapter 8, which covers regulatory frameworks.

There are basically three types of licences and permits:

- **Compulsory Licences** – These are licences which are required by law (such as a Child Care Centre licence) before you are allowed to commence a particular business. The failure to obtain such compulsory licences before the commencement of business would constitute an offence.
- **Professional Services Licences** – These are licences which are required if you are providing certain professional services (e.g. doctors, lawyers, architect and accountants). Application for these licences would usually be made directly with the respective professional organisations or bodies.
- **Business Activity-Specific Licences** – These are licences which are required for certain types of business activity such as the sale of liquor, or the import or export of goods for sale.

Business planning

Preparation in advance of the set-up of your social enterprise can minimise business risk. Careful and thorough market research, business planning and due diligence should be undertaken before you embark on your social enterprise. As a starting point, the EnterpriseOne website[xl] provides a useful guide and summary of the considerations which you may wish to take into account in planning the business that your social enterprise will undertake. In addition, the Spring Singapore (an agency under the Ministry of Trade and Industry (MTI) website[xli] contains various useful toolkits which you may refer to for guidance on various aspects of running a business (such as financial management, customer service, human resource, marketing and productivity).

More info on Spring Singapore website.

The EnterpriseOne and Spring Singapore websites also contain further information on grants, incentives, loans and other types of financial assistance that may be available to a social enterprise.

Laws and regulations

Depending on the type of entity used to set up your social enterprise, you will be required to comply with different laws and regulations in Singapore.

To better understand how these laws and regulations may affect your social enterprise, you may wish to consider attending seminars and courses organised by organisations such as the Singapore Business Federation and the Association of Small & Medium Enterprises. You should also consider engaging professional advisers such as auditors, consultants and/or lawyers who will be able to give you more detailed and specific advice.

A summary table on how to set up the different business vehicles mentioned in this Chapter can be found at the end of this guidebook.

4

CORPORATE GOVERANCE

CORPORATE GOVERANCE

Corporate governance refers to the procedures by which an organisation is operated and managed, including its obligations of financial disclosure and accountability to, amongst others, its owners, members, or shareholders. It involves the ways in which rights and responsibilities are distributed among different stakeholders, and also provides the structures and rules which govern decision-making within an organisation.

The corporate governance requirements for social enterprises vary depending on the business vehicle chosen because of different public interest needs. For instance, a company is a separate legal entity and may incur its own liabilities. As such, higher governance standards are required to, for example, prevent a director of a company from placing his own interests above the company's interest. On the other hand, the higher governance standard imposed on a company is not imposed on a business owner of a sole-proprietorship as a sole-proprietor is personally accountable for all liabilities incurred during the course of the business.

Once you have chosen a particular business vehicle for your social enterprise, you will need to ensure that your social enterprise complies with all the corporate governance requirements applicable to that business vehicle on a continuing basis. The corporate governance requirements for each business vehicle are generally governed by statute law. Each statute usually governs a specific category of business vehicle. These statutes include the CA, BRA, Partnership Act Chapter 391, of Singapore (PA), LPA, LLPA and CSA.

Failure to comply with the corporate governance requirements applicable to your chosen business vehicle for your social enterprise may lead to criminal sanctions and financial penalties imposed on you or your social enterprise.

This chapter sets out a brief summary of the corporate governance requirements for each business vehicle that you may choose for your social enterprise.

SOLE-PROPRIETORSHIP[xlii]

Sole-proprietorships, which do not enjoy separate legal entity status, generally have minimal compliance requirements to fulfil since they are the simplest and most flexible business vehicle which your social enterprise can adopt.

The management of a sole-proprietorship rests with the owner, who has exclusive control and management of the business, with full liberty to make all decisions concerning the business.

Sole-proprietorships are not required to audit their accounts annually or file annual returns with the ACRA. However, sole-proprietorships should still keep proper accounts and records of all business transactions which have been carried out.

PARTNERSHIP[xliii]

A partnership, like a sole-proprietorship, is not a separate legal entity.

The management of a partnership rests with all the partners of the partnership, who will have equal rights in the management and decision-making of the partnership unless there is a partnership agreement specifying otherwise.

A written partnership agreement is not a statutory requirement. However, having a written partnership agreement allows you and your partner(s) to formally structure your business relationship. A partnership agreement may address the following issues: responsibilities of each partner, management and control of the partnership, capital contributions and methods of funding the partnership, profit and loss allocation, salaries of partners and dissolution of the partnership. A written agreement, as opposed to an oral one, can spell out which partner is responsible for what activities and what authority is vested in that partner. Setting out the duties and responsibilities of a partner in a partnership agreement clearly will ensure that each partner knows his role in the partnership.

A partnership is not required to audit its accounts annually or submit its annual returns to ACRA. However, the partnership should still keep proper accounts and records of all business transactions which have been carried out.

LIMITED PARTNERSHIP (LP)[xliv]

Like a partnership, an LP, which must consist of a minimum of two partners (at least one general partner and one limited partner), is not a separate legal entity.
The management of an LP rests with the general partner, and not the limited partner. If a limited partner does participate in the management, he will be treated as a general partner and lose his limited liability status.

Like a partnership, a written partnership agreement for an LP is not a statutory requirement. However, having a written partnership agreement allows you and your LP partner(s) to define the scope of the rights and liabilities of a general partner as well as the extent of the liability of the limited partners for the debts and obligations of the LP.

An LP is not required to audit its accounts annually or submit its annual returns to the ACRA. However, the LP must keep accounting and other records which sufficiently explain its transactions and financial position for at least 5 years. Although these records need not be lodged with the ACRA, they may be required by the Registrar of LPs to be produced for inspection.

LIMITED LIABILITY PARTNERSHIP (LLP)[xlv]

An LLP operates as a partnership while having a separate legal identity like a private limited company. Every LLP must have at least 2 partners at all times. The partners can be individuals or companies.

Generally, all partners in the LLP may take part in the management of the LLP, unless otherwise agreed. In addition, every LLP must appoint at least 1 manager. A partner of the LLP can also be the LLP's manager. The manager is required to file annual declarations with the ACRA stating whether the LLP, as of the filing date, is able to pay its debts as they become due in the normal course of the LLP's business.

The mutual rights and liabilities of the partners and their rights and duties in relation to the LLP are governed by the LLP agreement or in the absence of any agreement as to any matter, by the relevant provision relating to that matter set out in the First Schedule of the LLPA.

An LLP is not required to audit its accounts annually or submit its annual returns to ACRA. However, an LLP is required to keep

accounting and other records which sufficiently explain its transactions and financial position, as well as prepare profit and loss accounts and balance-sheets. These documents need not be lodged with ACRA, but the LLP must keep the above-mentioned records for not less than 5 years and may be required to produce such records to the Registrar of LLPs for inspection. If the LLP does not comply with any of these requirements, the LLP and every partner of the LLP would be guilty of an offence. if a partner of the LLP commits such an offence, he would be liable on conviction to a fine or imprisonment, or both.

COMPANY[xlvi]

A company has its own legal personality that is distinct from its members and directors.

Every company must have an MAA. The MAA sets out the basic structure and objects of the company, while the articles of association prescribe the internal regulations of the company. The company must abide by the rules and regulations as set out in the MAA and articles of association.

The management of a company rests with the directors of the company. Every company must have at least 1 director. Directors have certain duties pursuant to the CA, any breach of which will result in very serious criminal sanctions against the director who is in breach. A director should familiarise himself with these director's duties. A selected and non-exhaustive list of directors duties and the corresponding penalties for their breach is set out in the table below.

EXAMPLE

Director's duty of reasonable dilligence and care

The Singapore High Court case of *Lim Weng Kee v PP* [2002] 4 SLR 327 provides a good example of the extent of skill and care required of a director. In this case, the managing director (MD) of three pawnshops, who had been in the business for 20 years, released the pawned jewellery items without waiting for the cheque that was used as payment for the goods to be cleared. The court held that a reasonable MD having 20 years' experience in operating three pawnshop businesses of similar scale would not have released the valuable jewellery items before the cheque had been cleared. The court held that the MD had failed to exercise reasonable diligence and had committed an offence under section 157(1) of the CA. It is important to note that if the MD had been totally lacking in experience or knowledge, this would not lower the standard of care expected of him. However, where, as in this case, the MD had been running the business for 20 years, the standard expected of him would be raised by virtue of his special experience.

EXAMPLE

The company secretary also plays an important role in the governance of a company. A company secretary should have the experience and requisite knowledge to discharge the functions and duties required of his role. Only public companies are required to appoint a suitably qualified person as a company secretary. A suitably qualified person includes, for example, a qualified person under the Legal Profession Act Chapter 161, of Singapore (LPA), a public accountant or a member of the Singapore Association of the Institute of Chartered Secretaries and Administrators (SAICSA). A private company, however, does not have to satisfy this requirement unless required by the Registrar of Companies. The position of company secretary cannot be left vacant at any time for more than 6 months.

Generally, every company is required to hold an AGM once in every calendar year within 15 months of the previous AGM. A company should hold its first AGM within 18 months of its incorporation. The AGM would usually deal with matters such as the approval of the audited accounts, the election of directors and the appointment of auditors for the new financial year.

Generally, a company's financial reports must be audited. However, a small start-up business which is an exempt private company, with low revenues in its early years is unlikely to be subject to audit requirements. Exempt private companies with annual revenue of not more than $5 million are not required to conduct an audit of their accounts, but they will still need to prepare unaudited accounts for the purposes of AGMs and for filing with ACRA.

All companies, including exempt private companies, are required to lodge an annual return with ACRA. In addition, every company is required to keep accounting and other records which sufficiently explain its transactions and financial position, as well as enable true and fair profit and loss accounts and balance-sheets and any documents required to be attached to them, to be prepared from time to time. Such records must be kept in such manner as to enable them to be conveniently and properly audited and for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed. If any of these requirements are not complied with, the company and every officer of the company who is in default would be guilty

of an offence and would be liable on conviction to a fine or imprisonment, or both.

CO-OPERATIVE SOCIETY[xlvii]

A co-operative society does not constitute a separate legal entity from its members. An example of a co-operative society in Singapore is the NTUC Fairprice, which was established with the social mission to moderate the cost of living in Singapore.

A co-operative society may make any By-laws that are necessary or desirable for the purposes for which the co-operative society is established, subject to the approval of the Registrar of Co-operative Societies. A co-operative society must make by-laws dealing with certain matters mentioned in The Schedule to the CSA. Examples of by-laws include the objects of the co-operative society and the purposes to which the co-operative society's funds may be applied.

The management of a co-operative society rests with the committee of management. A co-operative society is required to provide in its by-laws for an AGM to be convened by the committee of management and to be held as soon as practicable, but not later than 6 months after the end of the financial year, unless the Registrar of Co-operative Societies approval has, within that period of 6 months, been obtained to extend that period. The AGM is meant to consider issues such as the approval of the financial statements and the election or removal of members from the committee of management.

As soon as practicable but not later than 6 months after the close of each financial year, a co-operative society is required to submit to the Registrar of Co-operative Societies an annual report on its activities during the year together with a copy of its audited financial statements and its audit report for that year. Any co-operative society which fails to provide such financial statements in compliance with accounting standards as may be made or formulated by the Accounting Standards Council would be liable on conviction to a fine.

Every co-operative society is also required to keep proper accounts and records of its transactions and affairs and must do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in custody

of, the co-operative society, and over the expenditure incurred by the co-operative society. Every co-operative society, officer, agent, employee or member of a co-operative society or other person who fails to comply with this requirement would be liable on conviction to a fine.

OTHER USEFUL RESOURCES

Singapore Statutes Online

http://statutes.agc.gov.sg/

All the statues mentioned in this chapter can be found at this website.

MAS Code of Corporate Governance

http://www.mas.gov.sg/

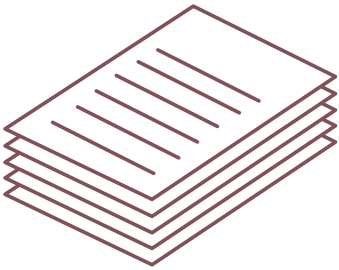
This Code is intended to be a guide for public companies whose shares are listed on a stock exchange, but provides a useful blueprint for social enterprise.

Corporate Secretarial Services

You may wish to refer to the information provided by the Institute of Certified Public Accountants of Singapore, the Singapore Association of the Institute of Chartered Secretaries and Administrators and the Law Society of Singapore for listings of professionals who are able to provide you with corporate secretarial services.

5

WRITTEN AGREEMENTS



FORMING CONTRACTS: THE BASICS

Social enterprises, like any other enterprise, will not be able to function on their own. You will have to, for example, hire employees or enter into agreements with other parties for the supply of goods and services. The aim of a contract is to set out the key terms of such arrangements which you and the contracting parties will adhere to. While verbal contracts can also be effective, it would reduce uncertainty significantly if parties are able to set out the terms of a contract in a written document.

WHAT TO CONSIDER WHEN PREPARING A CONTRACT

CONTRACTS MUST BE:
accurate
exact
complete

Contracts should be drafted in an **ACCURATE** manner. That means that the contract should correctly and clearly set out the arrangements in place between the parties. For example, when the contract is about goods or services, an accurate description of what has to be delivered, or is expected to be received, must be described in as much detail as possible. The standards and quality expected of the goods or services should also be included. Times and dates must also be included, such as when the goods or services are to be delivered, or when payment is to be made.

Contracts should also be **EXACT**. All possible details of the arrangement should be set down in the contract. Assume that you are reading the contract for the first time, without the benefit of discussions with the person whom you will be contracting with. Are you able to appreciate clearly, just from the contract, what it is you have to perform, or what you will receive under the contract?

Contracts should also be **COMPLETE.** The contract must provide for all possible scenarios that are likely to happen. Plan ahead. Think of the worst case scenario. Ask 'what if' questions–

- What if you were faced with a delay preventing you from fulfilling your part of the contract?
- What if there were some quality or other concerns with the goods or services you require, or are providing?
- What if the contract depended on some other event which did not materialise at all, or did not occur exactly as expected?
- What if the relationship between parties sours and one of the parties tries to back out of the contract? Would he then be able to do so? And if so, how?
- What if you are not paid on time? Or what if you are late with payments that you need to make?

Having prepared the contract, read it afresh. Assume you are the other party to the contract, and think to yourself – **"If I really wanted to wiggle out of the contract, or do less than promised, would I be able to do so while still falling within the wording of the contract?"** If the answer is yes, then the contract is not ready. Revise the contract to make sure there is no such 'wiggle room'.

INTEGRAL PARTS OF A CONTRACT

Most contracts would contain the provisions set out below. Typical contractual terms found in most agreements are often referred to as 'boilerplate clauses'.

Parties

A contract must show who the parties to the contract are, that is, those persons that accept being bound by the contract.

Interpretation

Most contracts have an interpretation clause to define important terms or terms that are used often in that contract. Such defined terms are usually capitalized.

Responsibilities

A contract must set out each party's responsibilities, that is, what each party has to do or what the other party expects to receive out of the contract.

Price

A contract must set out the price (or 'consideration'), including the relevant exchange rate if the payment is made in foreign currency, and how and when the price will be paid. The price need not always be in cash and can take the form of other goods and services (i.e. barter contracts), shares or loan notes, amongst others.

Duration

The term or duration of the contract has to be specified. If timing is critical, then you should make a statement in the contract that 'time is of the essence' or similar words.

Representations & Warranties

Consider if the contract should include representations and warranties. These are statements of fact you require the other party to make to you. Include the statements that have persuaded you into entering into the contract with the other party. For example, if you are entering into the contract because the other party has said he has a certain qualification or background, include such a statement in the contract. This is done by stating in the contract: "*Mr A (the other party) warrants / represents to Mr B (yourself) that …*" Representations and warranties are important because they provide you with a definite scope of information which persuaded you to enter into the contract, and when breached, they provide you with compensation in the form of damages. Nevertheless, do note that there are differences between representations and warranties. Representations are normally not a term in the contract, though they may be included in the contract as well. A claim in misrepresentation will arise when a false representation is made. Such a claim in misrepresentation will allow the receiving party to set aside the contract entirely, and damages awarded will put him back in the position he was in before the contract was made.

On the other hand, a warranty is a term of the contract, and a false warranty will result in a breach of contract. Such a breach will result in damages aimed to put the receiving party in a position that he would have been in, had the contract been performed correctly. If the breach is fundamental to the contract, this will even allow for the termination of the contract, with damages assessed at the time of termination.

Thus, do note that the way in which a statement of fact is presented in a contract (i.e. whether as a representation or as a warranty) can affect the types of damages that you may be awarded by a court, if the statements turn out to be false or inaccurate.

Conditions precedent

Consider if certain obligations or actions to be taken under

the contract depend on other events first occurring. These are known as 'conditions precedent'. These may include governmental approvals, third party consents, or certain documents being first provided to you or the other party. This is provided for by stating in the contract *"Mr A's obligation to perform (describe the obligation) under the contract is conditional upon (describe the event)".* This will help to protect you if you are in a situation where you cannot perform your obligations under the contract because of something beyond your control.

Termination provisions

"This contract may be terminated (describe the time period within which the contract may be terminated) by (describe which party can terminate the contract) if (describe the event) occurs."

List out the events that can allow either party to terminate the contract, and the termination process, for example, if termination is by written notice. This is done by stating in the contract *"This contract may be terminated (describe the time period within which the contract may be terminated) by (describe which party can terminate the contract) if (describe the event) occurs".*

Indemnities

Certain contracts may include indemnities. These are promises to compensate the other party for losses arising from certain prescribed situations, such as delays or a failure to perform. If the contract provides for a specific amount of compensation for such delays or failures, the amount must be reasonable and intended to compensate for loss and not to punish the other party or to act as a penalty. Like representations and warranties, indemnities are means of allocation of risks between the parties. Unlike a warranty, under an indemnity, the person making the claim for the loss suffered is entitled to recover the full compensatory amount as agreed between parties, and is not required to prove anything further.

Limitation of liability

Contracts may also include clauses limiting liability. These 'limitation of liability' clauses place a limit on the amount that can be claimed for a breach of contract, regardless of the actual loss suffered by the other party. This is especially relevant if you are concerned that the actual loss suffered by the other party due to any failure on your part may be higher than what you expect to receive under the contract. This is done by stating in the contract *"Mr A's liability under the contract will in no circumstances exceed (state the amount)".*

Governing law

For certainty, contracts usually contain a governing law clause to indicate which country's law the contract is governed by, and a jurisdiction clause to indicate the country in which court proceedings on disputes arising out of the contract should be initiated in.

Entire agreement

Such clauses stipulate that all the terms agreed between the parties are to be found in the contract, and any promises or assurances made in the course of negotiations will have no contractual force if they are not reduced to writing in the contract.

Tax

When the contract price will involve taxes (for example– in a supply of goods contract), such contracts will usually include a tax clause to determine which party should bear any taxes which may be due.

Notice

As there may be discrepancies as to when a notice is considered as 'received' by the other party, contracts generally have a notice clause to standardize when a party is deemed to have received a notice.

Variation

As contract law allows for parties to amend a contract both by oral or written agreement, it is common for parties to include a variation clause in the contract to ensure that only changes made in writing and signed by both parties will be effective.

Third party rights

The Contracts (Rights of Third Parties) Act of Singapore applies automatically to contracts, and gives third parties a right to enforce terms in the contract under certain circumstances. If you do not wish for third parties to have any right to enforce your contract, it is necessary to expressly exclude the application of this Act from your contract.

Invalidity

Most contracts will also include a severability clause to ensure that the remainder of the contract is enforceable even if one part of the contract is determined to be invalid.

Counterparts

This clause allows for contracts to be executed (or signed) in more than one copy, and each copy will be taken as the original. This clause is especially useful when parties are not in the same jurisdiction.

Exhibits

If exhibits or other documents are relevant and important to the contract, attach them to the contract. Refer to the exhibits in the contract. Exhibits provide specific examples or give more details as to the intention of parties.

BEWARE OF THE 'STANDARD FORM'!

Often, people or companies entering into negotiations with you will claim that the contracts they are showing you are 'standard form' contracts and may suggest to you that you should accept all terms because they cannot be modified. While it is correct that businesses operating in certain industries, such as banking or insurance, do have 'typical' clauses in their contracts, to reflect industry norms, it is certainly not the case that you should blindly accept all contractual terms presented to you, without first checking them. You should do the following:

- Read the contact in its entirety
- If you do not understand certain clauses, seek help (from a lawyer, ideally)
- Do not be afraid to ask the other side what they mean, if they include terms that you do not understand. If there is no need for a term to be included in a contract, and the other side cannot give you a good explanation for retaining it, do not be afraid to ask for it to be removed.
- Remember, contracts are agreements negotiated between parties. Save for clauses which are included for compliance with laws or government regulations, generally, most clauses may be negotiated between parties.

FORMALITIES: WHAT FORM SHOULD CONTRACTS BE IN?

A contract will only be formed when there is proper offer and acceptance, and both of these can be made expressly by words or by conduct. Consideration also forms a necessary part of a contract. As mentioned above, the consideration does not have to be in cash. Also, while the consideration has to be sufficient, it does not mean that the value of the consideration has to be commensurate with the value of the promise.

There is also a requirement of an intention to create legal relations in contract law, and such requirement is used to sift out cases that are not appropriate for court action, such as agreements made in the social and domestic contexts. Contracts entered into by a social enterprise, will usually be contracts made in a commercial context, and should raise a presumption that parties do intend to create legal relations through the contract.

While most people and companies can enter into contracts freely, you should be careful when entering into contracts with minors and persons with mental incapacity. **Minors** (persons under the age of 18) are generally not bound by contracts they enter into, except for contracts for necessaries, (which are the important and basic things that a person needs to live, such as food and clothing), or contracts for training or education. A contract entered into with a person with mental incapacity will also be invalid if it is established that the person did not understand what he was doing when entering into the contract, and you know or ought reasonably to have known of the disability. However, as with minors, persons with mental incapacities will be bound by contracts for necessaries.

As mentioned above, while contracts can be verbal, they should preferably be in writing. Written contracts provide certainty. While having written contracts may be more costly than oral agreements, this upfront cost will give you peace of mind knowing that all-important terms are in writing and can be proven, and can potentially save you from having to incur more losses when disputes over the agreement arise. Similarly, in core business relationships such as supply contracts or employment contracts, it is helpful to have everything written down to prevent disputes over agreed terms from ruining long-term business relationships. As you may face bargaining power constraints as a small start-up when negotiating with big players, a written contract is even more important to detail the promises these big players have made to you.

Written contracts are best signed in the presence of a witness, who can be any adult. The witness should also sign on the contract, while indicating that he is signing as a witness.

WHAT ELSE TO CONSIDER WHEN DRAFTING THE CONTRACT

Make full use of available resources. First of all, if you are able to, do engage a lawyer to assist with drafting the contracts required.

For your own knowledge and information, you may want to look at samples of contracts when preparing or reviewing your own contracts. These are available on the internet or in contract guides. Use these standard forms only as a guide, to understand terms that are usually included in contracts. Understand in particular the concerns and contingencies that these standard form contracts cover. Do not rely on a single standard form of contract and certainly do not copy indiscriminately. Standard forms may or may not be applicable to a particular situation, and they might have been drafted for the benefit of the other party. Wholesale copying of other people's work is also against the law.

While you may not want to incur significant costs in the early stages of running your start-up, you should be aware that the drafting of contracts requires technical skill and legal expertise, and if you do not engage a lawyer, your interests may not be adequately protected. Some examples of the more technical aspects of contract drafting are as follows:

(a) Penalty Clauses

The rule on penalty clauses is that contractual clauses requiring certain payments on breach of contract have to set the amount payable at a reasonable level, which is enough to fairly compensate the aggrieved party without punishing the defaulting party. If the clause is punitive (in other words, a 'penalty clause') then it will not be enforceable. For example, where a clause requires a payment of S$1 million for a delay in delivery of goods costing only $100, it is likely that a court will hold it to be a penalty clause and accordingly unenforceable.

(b) Non-competition clauses

In these clauses, one party usually agrees not to carry out certain activities for a period of time. Non-competition clauses are often used in the employment context, especially in the employment contracts of key employees. Such clauses will prevent employees from carrying out certain activities for a period of time after leaving the employment of the company, such as entering into an industry in competition with the company, or soliciting the clients and other employees of the company. These, if too excessive or unreasonable, cannot be enforced.

(c) Exclusion clauses or limitation of liability clauses

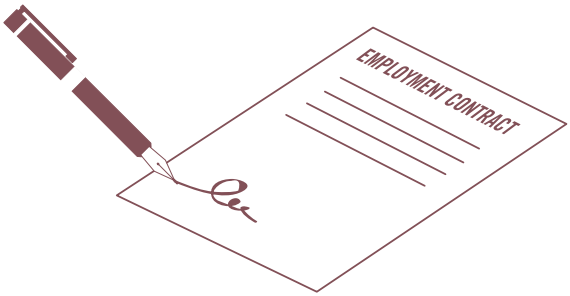
Contracts may include such clauses to totally exclude liability, provide a maximum cap to the liability that will be incurred, or to limit the circumstances in which liability can arise. However, such clauses will be subject to the Unfair Contract Terms Act Chapter 396, of Singapore (UCTA), and will only be upheld by courts if they are considered to be reasonable. Clauses intending to limit or exclude a party's liability for death or personal injury will also be unenforceable.

These are just three examples, but there are many other legal issues surrounding the proper drafting of a contract. Do be aware that if you do not consult a lawyer when drafting your contract, you run the risk of creating a contract that is not able to serve its intended function.

Above all, always keep the worst case scenario in mind, and provide rules in the contract that regulate how future disputes can be prevented and if they cannot be prevented, how they may be resolved.

6

EMPLOYMENT CONTRACTS



EMPLOYMENT CONTRACTS

This chapter aims to provide aspiring entrepreneurs of social enterprises with a basic understanding of employment laws in Singapore. It also serves as a reference point for social entrepreneurs when they take on the role of an employer and highlights some of the points that they need to consider when hiring employees (whether Singaporeans or foreigners, whether on a part-time or full-time basis).

WHERE DOES EMPLOYMENT LAW IN SINGAPORE COME FROM?

In Singapore, employment law comes mainly from the following sources:

- the 'common law' (i.e. case law and precedents); and
- legislation. These should be read in light of directives, rules and policy statements issued by government bodies (e.g. the Ministry of Manpower (MOM)), from time to time, on good practices and interpretation of employment laws.

WHAT ARE SOME OF THE EMPLOYMENT-RELATED LEGISLATION IN SINGAPORE?

Employment Act

This sets out the basic terms and conditions of employment that an employer must provide/comply with. It should be noted that this Act applies only to certain categories of employees.

Employment of Foreign Manpower Act

This sets out the requirements and conditions relating to the employment of foreign employees.

Work Injury Compensation Act

This regulates the payment of compensation to employees for injuries suffered in the course of their employment.

Retirement and Re-employment Act

This sets out the provisions relating to the minimum retirement age and matters relating to the re-employment of employees in Singapore.

Workplace Safety and Health Act

This sets out the provisions relating to the safety, health and welfare of persons at workplaces. It imposes obligations on employers to provide a safe workplace for employees.

Industrial Relations Act

This regulates the relationship of employers and employees in relation to trade disputes and sets out the provisions for the prevention and settlement of such disputes by collective bargaining.

OTHER LEGISLATION
Central Provident Fund Act
Child Development Co-Savings Act
Holidays Act
Income Tax Act
Personal Data Protection Act

Other legislation, such as the **Central Provident Fund Act** Chapter 36, of Singapore (CPF), the **Child Development Co-Savings Act** Chapter 38A, of Singapore (CDCA), the **Holidays Act** Chapter 126, of Singapore, the **Income Tax Act** Chapter 134, of Singapore (ITA) and the **Personal Data Protection Act** 2012, of Singapore (PDPA) also impose specific obligations and provides assistance to employers and employees.

WHO DOES THE EMPLOYMENT ACT APPLY TO?

The primary statute governing employment law in Singapore is the Employment Act Chapter 91, of Singapore (EA). The EA applies to all employees in Singapore except seamen, domestic workers, those with managerial or executive positions and persons employed by a statutory board or the government of Singapore. The MOM takes a broad view of what might be considered a managerial or executive position, indicating that managers and executives are employees with supervisory or executive functions. These functions include the authority to influence or make decisions regarding issues such as recruitment, discipline, termination of employment, assessment of performance and reward, involvement in the formulation of strategies and policies of the enterprise or the management and running of the business. According to the MOM, managers and executives also include professionals with tertiary education and specialized knowledge or skills, and whose employment terms are comparable to those of managers and executives. In other words, a person may be regarded as a 'manager' or 'executive' for the purposes of the EA, even if he has not been officially appointed as one.

Although the EA does not apply to persons in managerial or executive positions, employees in those positions who earn $4,500 or less per month are nonetheless entitled to certain protections under the EA (specifically relating to the payment of salary).

If an employee who falls within the scope of the EA is hired on a part-time basis, his employment will be recognised and regulated by the Employment (Part-Time Employees) Regulations. A 'part-time employee' is someone who works less than 35 hours a week.

WHAT HAPPENS IF THE EMPLOYMENT ACT APPLIES?

If an employee falls within the scope of the EA, as an employer, you must comply with the applicable obligations imposed on employers under the EA and provide terms which are no less favourable than those in the EA. Any clause in the employment contract that is less favourable than that in the EA will be null and void and the relevant provision in the EA will take precedence over the particular contractual term that is less favourable. For example, under the EA, an employee is entitled to paid public holidays in Singapore. Although, generally

most employers would provide public holiday leave benefit as a matter of customary practice to all employees (whether or not they fall under the EA), it will be an offence if the employer does not provide it to an employee who falls within the scope of the EA. Generally, an employer who does not comply with the requirements of the EA may be liable, on conviction, to a fine of up to $5,000 or to an imprisonment term of up to 6 months or both.

IF THE EMPLOYMENT ACT DOES NOT APPLY, CAN I CHOOSE TO PROVIDE ANY EMPLOYMENT TERM THAT I LIKE IN THE CONTRACT?

If an employee falls outside the scope of the EA, it will be generally up to you and the employee to come to mutual agreement on the terms of the employment. However, there are certain terms that you legally cannot contract out of (e.g. maternity benefits and CPF contributions). You must also bear in mind the common law duties of an employer. For instance, employers owe a basic duty of trust and confidence to the employee. This duty requires the employer not to, without reasonable and proper cause, conduct himself in a manner that may destroy or damage the relationship of confidence and trust between him and the employee. In addition, whether or not employees fall within the EA, employers are encouraged to adopt employment practices that are fair and equitable to all workers. These practices are set out in the Tripartite Guidelines for Fair Employment Practices.[xlviii] The government also encourages businesses to implement work-life strategies such as flexible work arrangements so that employees can enjoy better work-life harmony and benefit from having a more engaged and productive workforce.[xlix]

DO I NEED TO PREPARE A WRITTEN EMPLOYMENT CONTRACT FOR MY EMPLOYEES?

There is no legal requirement that you need to, however, it is customary and good practice to have employment contracts in writing so that disputes (if they do happen), can be more easily resolved (See Chapter 5 on the importance of written agreements). Written contracts can serve to protect both the employee and the employ

IS THERE ANYTHING ELSE I NEED TO BEAR IN MIND?

Yes. Apart from the above, other legislation may apply and you will need to be aware of your obligations as an employer and comply with the applicable requirements. An example is where

you employ female workers. Even if they do not fall within the EA, they will be entitled to certain statutory maternity leave benefits if they meet specified conditions (e.g. where the child is a Singapore citizen). Likewise, parents will also be entitled to certain leave entitlements e.g. childcare leave. These obligations are imposed pursuant to the CDCA .

CAN I EMPLOY FOREIGNERS?

Yes, however, you must ensure that you apply for and obtain an appropriate work pass for the foreign employee before he commences employment with your organisation. These requirements are imposed pursuant to Employment of Foreign Manpower Act Chapter 91A, of Singapore. There are various categories of work pass available, ranging from Employment Passes for professionals who earn a fixed monthly salary of at least $3,000, 'S' passes for mid-level skilled workers who earn a fixed monthly salary of at least $2,200 and work permits which are generally issued to foreign unskilled workers.

The MOM will take into account a wide range of factors when assessing each work pass application. More information on the qualifying criteria and application process is available on the MOM website.[li] You should also note that, on 23 September 2013, the MOM announced new rules pursuant to the Fair Consideration Framework (FCF) that require employers to consider Singaporeans fairly before hiring foreigners on Employment Passes. Employers must advertise job vacancies on a jobs bank and the advertisement must be open to Singaporeans for at least 14 calendar days. Firms with discriminatory hiring practices will be subject to scrutiny and may have their work pass privileges curtailed. These changes are in place to reinforce expectations for employers to consider Singaporeans fairly for job opportunities and to enhance job market transparency. The rules are expected to come into effect on 1 August 2014.

DO I HAVE TO MAKE ANY COMPULSORY CONTRIBUTIONS OR PAY LEVIES FOR EMPLOYEES?

You will need to make CPF contributions to employees who are Singapore citizens or Singapore Permanent Residents (SPR). For Singapore citizens, the employer's rates of contribution are dependent on the employee's age group, and for SPRs, generally on the length of period that the employee has been an SPR in Singapore. In addition, you must pay a 'Skills Development Levy' for all

employees (whether full-time, casual, part-time, Singaporean or foreigners) up to the first $4,500 of their monthly gross salary at a rate of 0.25%. If your employee is employed on a work permit or 'S' pass, a foreign worker levy will also be payable. The rates and fees payable are explained on the MOM website.

Besides employee-related CPF liabilities, you should be aware of your own CPF liabilities. As a social entrepreneur, you will likely be deemed a 'self-employed' person for the purposes of CPF contributions. While, as a self-employed person, you will be exempted from making mandatory CPF contributions, you may wish to build up your retirement savings by making voluntary CPF contributions, up to the approved limit. In addition, as a self-employed person, you must make mandatory contributions to your Medisave account if you earn a yearly net trade income of more than $6,000. This is to ensure that you have sufficient Medisave savings for your healthcare needs.

HOW ABOUT VOLUNTEERS?

As a social entrepreneur, you may seek volunteers to assist in your business activities (e.g. to provide administrative support or services). As volunteers do not get paid for the services that they perform, employment contracts are customarily not provided to them; and an employment relationship does not normally arise between a volunteer and the organisation with which he volunteers. However, depending on the business that your social enterprise is involved in, it may be prudent to set out the main responsibilities (e.g. conduct, behaviour, ethics) expected of your volunteers and, possibly, get them to sign a letter of understanding so that they are aware of their actions and resulting consequences. For example, if you operate a social enterprise in the 'Work Integration' or 'Subsidised Services' model (see Chapter 1), you may want to make clear that the ill-treatment or bullying of your beneficiaries from marginalised communities (e.g. people with disabilities) will not be tolerated. If your social enterprise handles confidential information, you can consider entering into a legally binding agreement with your volunteers to ensure that they keep any information that they come across during the course of volunteering, strictly private and confidential.

I HAVE HEARD ABOUT PEOPLE FROM MARGINALISED COMMUNITIES. WHO ARE THESE PEOPLE AND WHAT SHOULD I KNOW ABOUT EMPLOYING THEM?

People from marginalised communities include persons with disabilities, ex-offenders and ex-drug abusers, youth at-risk, persons recovering from psychiatric illness and individuals from low-income families who may face multiple problems. As a social entrepreneur, you may be keen to hire and help such people, in order to boast a workforce that reflects the diversity of society, while fulfilling your business' social mission. The hiring process is often similar to that of employing people from non-marginalised communities. However, there are some additional issues that you should take into consideration.

In respect of persons with disabilities, you can enter into an employment agreement with them if you advertise for a job and they apply for it, you are pleased with their credentials and they have the ability or capacity to enter into a contract. If you need help with hiring persons with disabilities, many voluntary welfare organisations (VWOs) help place persons with disabilities and these VWOs provide services throughout the recruitment process to both the employers and persons with disabilities.

To encourage employers to offer employment opportunities for persons with disabilities, the government operates an Open Door Fund (ODF) and an enhanced Special Employment Credit scheme (SEC). The ODF helps employers to defray the costs associated with the hiring of persons with disabilities, such as those incurred in job redesign, workplace modification and the provision of support programmes. Employers can also tap on the ODF to receive subsidies in providing apprenticeships for persons with disabilities . The enhanced SEC scheme is an incentive for companies which hire Singaporean workers with disabilities. Under this scheme, employers will get a credit of up to 16% of their disabled employee's wages.[liv]

If you are interested in hiring offenders or ex-offenders, you can register your enterprise with the Singapore Cooperation of Rehabilitative Enterprises (SCORE). SCORE is a statutory board established under the Ministry of Home Affairs and it plays an important role in the Singapore correctional system through the provision of rehabilitation and aftercare services to inmates

and ex-offenders. SCORE provides employment assistance to offenders under various work release schemes. It also operates a private sector participation scheme whereby social enterprises may set up factories within prisons and provide management, supervision, equipment and technical expertise and raw materials while SCORE and the Singapore Prisons Department manages the welfare and discipline of the offenders.

Whatever the case, when you employ persons from marginalised communities, you must, as an employer, be respectful of their feelings and vulnerabilities, and for persons with physical disabilities, you must be open to providing the appropriate physical facilities (e.g. building ramps for employees in wheelchairs). Each person (whether or not they are from marginalised communities), should be provided equal respect and access to career development, training and advancement opportunities.

IS THERE A LIST OF PRACTICAL CONSIDERATIONS THAT I CAN REFER TO WHEN HIRING PEOPLE FROM MARGINALISED COMMUNITIES?

Yes. This is a short and non-exhaustive list of things that you should consider before hiring anyone from marginalised communities:

- Is the prospective employee capable of entering into a contract? Does he understand the terms you are trying to propose?
- Is it acceptable for you, as a prospective employer, to talk to the employee's caregiver or should you approach the relevant VWO?
- Will you be prepared to deal with consequences of your employee's actions? For example, if your employee with a physical disability inadvertently spills a drink on a customer, are you prepared to take responsibility for his actions? How would you then deal with the employee (if at all)?
- Are you willing to design or build additional or special accommodation in your organisation for employees with disabilities?
- Are you willing to accommodate persons with special needs? For example, if you hire a single mother, are you willing to provide flexible working hours?
- Are you willing to train or teach such persons to acquire the skills needed to work in your social enterprise?
- Are you worried about what customers might say if you hire people from marginalised communities? Might this impact your business? If so, how would you then go about correcting these unfounded negative perceptions?

IF I AM NOT INTERESTED IN KEEPING AN EMPLOYEE, HOW DO I LET HIM GO?

For employees who are covered by the EA, the EA provides minimum notice periods, ranging from 24 hours to 4 weeks' notice depending on the length of employment. This does not prevent either party from waiving his right to receiving the notice. If there are grounds of the misconduct or wilful breach by the employee, it is possible to terminate the contract without notice (i.e. summary dismissal).

For employees who are covered by the EA, an employer is obliged to conduct due inquiry if he wishes to summarily dismiss an employee for misconduct. Essentially, due inquiry means that the employee must be afforded procedural fairness prior to dismissal. Although there is no prescribed procedure for the conduct of the inquiry, the MOM has issued guidelines on how an inquiry may be conducted. As a general guideline, the person hearing the inquiry should not be in a position which may suggest bias and the employee being investigated for misconduct should have the opportunity to present his case.

If the employee is not covered by the EA, the employer may terminate the contract by providing notice, as stated in the employment contract. If no notice period is fixed in the contract, 'reasonable notice' must be given. What is reasonable will depend on factors such as the nature of the employment and the employee's length of service. It is also possible for the employer to terminate the contract without notice on grounds of the employee's misconduct, or in the event of any wilful breach by the employee of a condition of the contract.

FURTHER READING

Open Door Fund
http://jobs-odf.com.sg

Employment Act
http://statutes.agc.gov.sg

Special Employment Credit
http://www.sec.gov.sg/

SCORE
http://www.score.gov.sg/employment_assistance.html

Employment of Foreign Manpower Act
http://statutes.agc.gov.sg
Assistance/
EmploymentAssistanceforPersonwithDisabilities.aspx

MOM
http://www.mom.gov.sg/profile-gateways/Pages/
employer.aspx

Central Provident Fund
http://mycpf.cpf.gov.sg/Employers/home.htm

Tripartite Alliance for Fair Employment Practices
http://www.tafep.sg/

Singapore National Employers Federation
http://www.sgemployers.com/

Hey Baby
http://www.heybaby.sg/worklife/enhanced_benefits_
leaves.html

Employment Assistance for Persons with Disabilities
http://app.msf.gov.sg/

E-citizen
http://www.ecitizen.gov.sg/Topics/Pages/Pro-Family-
Leave-Schemes available.aspx

7

E-COMMERCE

TAKING YOUR SOCIAL ENTERPRISE ONLINE

Have you ever purchased anything online? If you live in Singapore, chances are that you have. In the MasterCard Online Shopping Survey 2013,[lv] 65% of respondents indicated that they use the internet for online shopping. An astounding 91% said that they had made at least one online purchase in the past three months. This translates into a large market for businesses. The Asia Pacific Digital Marketing Yearbook 2012 reports that Singapore's business-to-consumer e-commerce market was valued at S$1.6 billion in 2011 and is projected to be worth S$4.4 billion by 2014.[lvi] While there is definitely gold in the online market, it is important to be aware of your legal position when doing business online.

This chapter will cover three main areas of doing business online:

- *The terms and conditions governing the use of a website;*
- *The privacy policy of a website; and*
- *Forming contracts online.*

When reading this chapter, do remember that the same principles that apply in the real world also apply in the virtual world. Do not fall into the trap of believing that because you are in the virtual world, you are somehow exempt from the rules that all businesses face and are subject to or that you cannot be traced or held accountable. The legal obligations that a business faces in the real world are the same as those that a business operating in the virtual world faces.

TERMS AND CONDITIONS

On most established websites, you will see a link at the bottom or top of the page labelled 'Terms and Conditions'. Clicking on the link will bring you to a page with many, many words. It is tempting to ignore these words but please do not do so!

'Terms and Conditions' are extremely important because they govern the relationship between you (the owner of the website) and the users of the website (consumers). This is sometimes known as an End-User Licence Agreement or EULA for short.

This is the area where you set out the conditions on which users may use your website and also limit liability to yourself for the misconduct of users. Thus, it is important to have a carefully drafted set of terms and conditions to govern the relationship between you/your social enterprise and your users/consumers.

Generally, the terms and conditions should set out clearly the legitimate purposes for which your website may be used and other processes such as the registration and maintenance of user accounts, the treatment of personal data, cookie policies, as well as explain how you intend content ownership and other intellectual properties on your website be treated. Similarly, you should also set out what you define to be illegal or prohibited activities. Finally, you need to protect yourself by expressly stating that you (as the owner of the website) will not be liable for the misconduct of users on your website or for any liability or losses incurred by users through the use of your website.

It is very dangerous to try to create your set of terms and conditions on your own. Unless you are legally trained, you may not know the precise legal effect of the terms and conditions you have drafted. You may also leave out things that become important when a dispute arises. Therefore, it is unwise to simply 'cut-and-paste' terms and conditions from the internet or other websites. This is because every website is unique and 'cookie-cutter' or 'standard' terms and conditions may not fit the precise requirements of your business. For instance, if you plan to offer/ sell goods to consumers who are located out of Singapore, you may want to specify some terms and conditions which apply to such cross-border transactions, such as the currency that the transaction will use or how the conversion rate of the foreign exchange will be calculated. In addition, you should always seek legal

advice prior to offering your goods and services to foreign jurisdictions as you may unintentionally incur legal liability otherwise. For example, the sale and purchase of certain types of items to some countries is prohibited (including Liberia, Iraq, Cote d'Ivoire and Sudan) under international law.

Also, it is important to select a governing law to govern the transactions carried out on your website. Depending on the jurisdiction you choose, a set of rules relating to consumer protection or sale of goods may automatically apply and may even override the terms and conditions you have set. For instance, if you choose that Singapore law is to apply to the transactions taking place on your website, the Consumer Protection (Fair Trading) Act Chapter 52A, of Singapore (CPFTA) will apply automatically. You have to be aware of what these rules are, in order to avoid unintentionally contravening these rules. The governing law also becomes important if disputes arise over the transaction. Different jurisdictions have different laws relating to consumer transactions. If you intend for a specific jurisdiction's rules to apply to the transactions taking place on your website, it is best to state this explicitly on your website. Do not assume that just because you have a Singapore domain name, Singapore laws will automatically apply!

PRIVACY POLICY

Most established websites also have a link entitled 'Privacy Policy"' This details the website's approach to privacy issues such as the collection of users' data, what the website owners will do with users' data and the cookies operating on the site. It is important to have a properly drafted privacy policy especially in light of the PDPA. The PDPA regulates the collection, use and disclosure of personal data.

'Personal data' as defined in the PDPA refers to data, whether true or not, about an individual who can be identified either from that data or from that data and other information to which the organisation has or is likely to have access. Names, personal email addresses and residential addresses may constitute personal data, provided such data are not used as business contact information. It is thus important to deal with these data carefully to avoid contravening the PDPA. If you contravene the PDPA, you may be liable for fines up to S$1 million under the PDPA!

Under the PDPA, you have to obtain the consent of an individual

before you may collect, use or disclose his personal data. Before an individual can give consent, he must first be informed of the purposes for the collection, use or disclosure of the personal data and the business contact information of an individual who is able to answer on behalf of the organisation the individual's questions about the collection, use or disclosure of the personal data.[lvii]

This means that before collecting any data about individuals using your website, you have to inform them of the above information and obtain their consent. For example, if your website uses cookies to automatically collect information about an individual's location, you need to obtain the consent of the user before collecting his/her information.

This is usually done through a 'pop-up' notice which appears automatically upon the individual entering the website. The notice must inform the individual of:

- what information the website will be collecting,
- the purpose of collecting such information, and
- the business contact information of an individual who can answer individuals' questions about the collection, use or disclosure of the personal data. The notice must also require the individual to give his/her express consent by clicking 'Accept' or 'Decline'.

Do note also that under certain circumstances, an individual can be deemed to have consented to the collection, use or disclosure of personal data, for a particular purpose. This is when:

- the individual voluntarily provides the personal data to you for that purpose, and
- it is reasonable that the individual would voluntarily provide the data. In addition, if an individual has given (or is deemed to have given) consent to the disclosure of personal data about the individual by one organisation to another organisation for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal data for that purpose by that other organisation. You may utilize these provisions if the requisite conditions stated are met.

The PDPA further provides for certain situations where consent by the individual is not required for the collection, use or disclosure of personal data if, amongst other things, the collection, use and disclosure of the personal data is necessary

for any purpose that is clearly in the interest of the individual, if consent for the collection, use or disclosure could not be obtained in a timely way or if the individual is not reasonably expected to withhold consent for the collection or use of the personal data. An example of this is where the personal data is provided by an individual to enable the organisation to provide a service for the personal or domestic purposes of another individual. This would include situations where a consumer orders a gift/service to be sent directly to a recipient (who is not the consumer) and so provides the recipient's name, address and/or contact details.

The PDPA imposes an obligation on the organisation collecting the personal data to only collect, use or disclose data for purposes that a "reasonable" person would consider appropriate in the circumstances. Therefore, you should avoid asking for information that would not be relevant to your purposes. You should also ensure that your privacy policy is published on your website, easily accessible to visitors to your website and that your company practices are in line with the published privacy policy.

To do this, you will have to keep updated on the law and also have regular audits of your company's practices to ensure that you uphold the privacy policy published on your website. If your company practice does not uphold the privacy policy, customers may not trust you with their personal data and, even worse, you may be in contravention of the PDPA. This is all detrimental to your online business.

Also, do not over-promise your users in your privacy policy as you may not be able to live up to their expectations. For example, do not promise never to disclose users' personal data to third parties without their consent. You may be forced to go back on your promise in certain circumstances such as where the disclosure is necessary for any investigation or proceedings or where the disclosure is necessary in the national interest.[lviii]

If you plan to have people outside Singapore use your website, do note that the privacy requirements differ from jurisdiction to jurisdiction. For instance, in the United States of America, the Children's Online Privacy Protection Act of 1998 (COPPA) governs websites directed at children under 13 years of age. The COPPA spells out what a website operator must include in

a privacy policy, when and how to seek verifiable consent from a parent and what responsibilities a website operator has to protect children's privacy and safety online.[lix]

In the European Union, Directive 95/46/EC (unofficially known as the Data Protection Directive) is the main piece of legislation governing privacy laws.[lx] In the face of so many different requirements, the best practice is to first seek legal advice to ensure that your privacy policy and practices are tailored to the jurisdiction where you intend to offer your goods and services.

FORMING CONTRACTS ONLINE

Now that you have your website properly set up, we turn to briefly examine the business aspect of your website – forming contracts. The basics of contract formation are covered in Chapter 5. Here, we shall look at how this applies to online contracts in particular.

The rules that govern the online formation of contracts are the same as those which governing the formation of contracts in real life. In an online transaction, the steps of the formation of a contract are as follows:

- **Invitation to treat**
  This may take the form of displaying products on your website.
- **Offer**
  This occurs when the buyer gives notice of his intention to buy the item by submitting an order.
- **Acceptance**
  This occurs when the seller (you) sends a confirmation of the order to the buyer's e-mail address.
- **Intention to create legal relation**
  The parties must intend for the offer and acceptance to be legally binding, and not 'mere puff'. ('mere puff' – someone without contract law background would not know what this refers to)
- **Consideration**
  Money or performance/non-performance of an act must be provided.

The contract is then formed. Please be aware that when forming contracts of sale online, it is important that the description of the goods on your website should match the goods in real life. This is because, under Singapore law, it is an implied condition of the contract of sale that the goods will correspond with the

description. If this implied condition is breached, the buyer may have the right to terminate the contract with you.

It is important to note that the terms and conditions of the website are not automatically incorporated into the eventual contract between the buyer and the seller. It is best if your website requires customers to click a box that indicates that they have read and accept the terms and conditions of the sale, which is hyper-linked to the box. This way, customers can click the terms and conditions of the sale to read them before clicking on the box to indicate their acceptance of the terms and conditions.

Also, do note that even if your website has an "auto-accept" programme such that your website automatically sends out confirmation e-mails without human verification, the contract may still be voided on other grounds such as mistake.

Please note that contracts formed online or through other forms of electronic communication will be binding so long as the elements of contract formation are present. This may take the form of an e-signature or by conduct. It is relatively common for an electronic 'signature' to serve as confirmation of authenticity. All that is required for a signature in the virtual world is:
(a) A method is used to identify that person and to indicate that person's intention, and

(b) The method used is either as reliable as appropriate for the purpose it was used for or is proven in fact to have fulfilled the requirements in (a). This is governed by the Electronic Transactions Act (Cap. 88) and is known as an electronic or digital signature.

Usually, a trusted third party known as a Certification Authority (CA) is needed to issue digital certificates that certify the electronic identities of users and organisations. Digital signatures based on digital certificates issued by the licensed CAs are automatically considered to be trustworthy and recognized by the law. Thus, do check that the person you are "signing" the contract with has a reliable digital signature before proceeding with the contract. Further reading on this can be found at the InfoComm Development Authority of Singapore's website.[lxi]

On the other hand, even if you do not "sign" on any document online using a digital signature, you may still be held liable for making promises to perform or for any agreements made through email, SMS, instant messaging or even on social net-working sites. It is very common for lawyers to produce agreements made or concluded between parties over instant chat messages or SMSes in Court as evidence to prove that parties had agreed to certain matters.

CONCLUSION

It is a common misconception that the internet is the 'Wild, Wild Web'. This is incorrect. Just like in the real world, the internet is highly regulated and the same rules that apply in real life to protect consumers also apply online. We hope this chapter has gone some way in highlighting the important areas for you to take note of. However, this chapter is but an introduction to the rules that apply. It is always prudent for you to seek legal advice before launching your online business to ensure that you minimize any potential legal liability. Good luck!

8

REGULATORY REQUIREMENTS

KNOW YOUR REGULATORY FRAMEWORK

Under Singapore law, social enterprises are recognised and regulated just like any other business. It is the underlying legal structure you choose for your business that will determine your legal rights and obligations.

The common legal structures which may be considered (and their respective corporate governance requirements) have been addressed in previous chapters. In this chapter, we seek to explain the wider regulatory framework within which social enterprises operate, and which you should take note of, regardless of your particular business vehicle.

CHARITY STATUS

If your social enterprise is:

- a CLG, a Society or a Trust;
- is set up for exclusively charitable purposes beneficial wholly or substantially to the community in Singapore; and
- carries on its activities, including business activities, to achieve these charitable purposes,

you may wish to consider applying to register your social enterprise as a charity with the Office of the Commissioner of Charities (Charities Unit, Ministry of Culture, Community and Youth (MCCY). Applications are made online through the Charity Portal.[lxii]

Registered charities automatically enjoy full income tax exemption. Further, upon application and review by the Comptroller of Property Tax at the Inland Revenue Authority of Singapore (IRAS), charities may also be exempted in full or partially from property tax for properties used exclusively for charitable purposes.

Contrary to popular belief, a charity may carry on business activities! It is just that there are limits on the scope of business that the charity may be engaged in that must be observed. A social enterprise registered as a charity is expected to focus its efforts in carrying out its primary purpose activities, which are the activities, including business activities, which contribute directly to the advancement of the charitable objects for which the charity was set up to promote, and as stated in its governing instrument. So for example, a theatre charity promoting the arts in Singapore may sell tickets for a theatre performance.

Other incidental activities which support the advancement of the charity's objects may also be carried out. Following on from our theatre charity example, the charity may sell drinks and snacks in a concert hall operated by it, to provide convenience for theatre-goers and to enhance the theatre-going experience. However, non-primary purpose business activities that do not directly advance or support the objects of the charity (usually involving the provision of goods and/or services solely in return for income) may only be carried out if they have no material impact on the financials of the charity, and do not expose the assets of the charity to significant risk. Do note that, if necessary, the Commissioner of Charities can direct a charity to cease funding or terminate its business activities in order to protect its charitable assets. Charity boards are responsible for the proper use of their charities' assets and resources, and are accountable for their investment decisions.

Charities must comply with the requirements and obligations set out in the ChA, and its regulations. We discuss the more important ones here:

BOARD MEMBERS

The charity's governing board must have at least 3 members, of whom at least 2 must be Singapore citizens or permanent residents. The board is responsible for the charity's performance, including ensuring that the charity is delivering the charitable outcomes for which it has been set up and also that it is solvent. The Code of Governance for Charities and Institutions of a Public Character, which sets out principles and best practices on key areas of management, should be followed by the charity board. There is also the Guidance for Charities Engaging in Business Activities, which is useful in guiding charity boards in managing both their business and social and/

More guides available on Charity Portal website.

or environmental objectives. These guides can be found on the Charity Portal website.[lxiii]

ANNUAL REPORTS AND STATEMENTS OF ACCOUNTS

The annual report and statement of accounts of the charity must be filed with the Commissioner of Charities. The annual report must set out certain required information, including a review of the policies, activities, and financials of the charity for that financial year. If your social enterprise is set up as a CLG, and/or has annual income/expenditure over $500,000, a summary of your social enterprise's financial information must also be posted online on the Charity Portal (for financial years ending on or after 1 January 2013).

LARGE CHARITIES

Large charities are charities with gross annual receipts of S$10 million or more in each of the last 2 financial years. There must be at least 10 governing board members for large charities. The charity's auditor must first be approved by the Commissioner of Charities and must also be changed every 5 years.

INSTITUTIONS OF A PUBLIC CHARACTER (IPC) STATUS

IPC status is conferred by the Office of the Commissioner of Charities (Charities Unit, MCCY) on non-profit organisations whose activities are beneficial to the community at large in Singapore. IPCs are authorised to issue tax deduction receipts for tax-deductible donations received i.e. donors to the IPC are allowed tax deduction for twice the amount of donations made to these organisations, in the Singapore government's bid to encourage greater charitable giving. By contrast donations made to a charity without IPC status are not tax-deductible. Because of this latter feature, IPCs are governed by stricter guidelines as compared to charities. More information on the requirements and application for IPC status and compliance requirements under the Charities (Institutions of a Public Character) Regulations can be found on the Charity Portal.[lxiv]

If your social enterprise is intended to be for-profit or if you envisage your social enterprise's business activities to expose its charitable assets and financials to significant risk, the IPC or charity may carry on its business activities through a separate business subsidiary, or any non-charitable entity owned by one or more IPCs or charities to carry on a trade/business on their behalf. The profits of the business subsidiary can then be ploughed back to the IPC or charity in the form of dividends to enable it to fulfill its charitable objectives.

While the subsidiary can be 100% owned by the IPC or charity, do note that there must be an arms-length relationship between the IPC or charity and the subsidiary, such that the IPC or charity's assets are protected from the risks of the business and creditors. Such an arrangement ensures that the social enterprise's businesses are independent of its charitable activities and that charitable resources are protected from significant risk exposure. Further, the governing board of the IPC or charity must always act in the best interests of the IPC or charity when making decisions relating to the business subsidiary,

LICENSING REQUIREMENTS

Depending on the nature of the business activities your social enterprise is carrying out and subject to exemptions granted under law, licences may have to be obtained from the relevant authorities before you may legally commence operations. Application for the necessary licences should be done at the time you register your social enterprise with ACRA.

You can get a general indication of the licence(s) you may need to run your social enterprise by searching the Online Business Licensing Service (OBLS).[lxv] Licence applications are also to be made on the OBLS, which is a one-stop portal for application of all the government registrations and licences you may be required to hold. While most trades do not require any licences to carry on business, please do ensure that you obtain the correct licences where these are necessary.

The following is a list of licenses and permits commonly applied for:

REGULATORY AUTHORITY	LICENCE / PERMIT
Building and Construction Authority	Outdoor advertisement licence
Urban Redevelopment Authority	Use of premises and zoning regulations
Composers and Authors Society of Singapore	Copyright licence and permit
Ministry of Social and Family Development	Licence to operate a child care centre Licence to operate an old folks' home
Ministry of Education	Certificate of registration of schools including early childhood centres
Central Provident Fund Board	Registration as an Employer (for the hiring of employees)
Ministry of Manpower	Employment and work permits Employment agency licence

EMPLOYMENT

Employment issues in Singapore are largely governed by the MOM. We highlight 3 main issues here that you may wish to take note of.

Terms of employment

While the terms of employment between your social enterprise and its employees are generally a matter of negotiation between the parties, the Employment Act, Chapter 91 of Singapore (EA), provides for certain minimum protection for the employee. Where the employment contract is in violation of these minimum standards, it may be invalid. It should be noted however, that such EA protection generally does not cover certain limited classes of persons including those persons in managerial or executive positions. Further detailed information on the EA can be found in Chapter 6 on Employment.

Age of Employment

You may wish to take note that the legal age to work in Singapore is 17 years old. You are permitted to employ children and young persons aged 13 years to 16 years old, subject to restrictions on the type of work that these young persons can perform. For instance, children 13 to 15 years of age can only engage in light work, and cannot work in any industrial undertaking or vessel unless in the personal charge of his/her parent.

At the other end of the spectrum, under the Retirement and Re employment Act, Chapter 274A of Singapore (RRA), which took effect on 1 January 2012, while there is a statutory minimum retirement age of 62, employers are required by the RRA to offer re-employment to eligible employees who turn 62, up to the age of 65. The criteria and conditions of re-employment as well as the penalties for non-compliant employers are set out in the RRA.

Foreign Employees

If your social enterprise intends to employ foreign employees, you need to obtain an employment pass or work permit for them before they can commence work in Singapore. You should take note of the different categories of passes and their requirements, generally categorised based on the qualifications of the foreign worker. Employment pass applications, as well as passes for dependents accompanying the employee, can be made online on the MOM website.[lxvi] Similarly, where your social enterprise carries out its operations overseas and hires the locals there, the

employment laws of the foreign country must be complied with.

All employers are required by law to make monthly contributions to the CPF accounts of any employee who is a Singapore citizen or permanent resident, as long as the employee earns more than $50 a month. This requirement applies equally to student-employees, family member-employees, and part-time casual employees. CPF contributions for employees who are foreigners on employment and work passes are not allowed.

CENTRAL PROVIDENT FUND (CPF)

If you are a sole proprietor, or a partner in a partnership or limited partnership, you are only required to contribute to your Medisave account at the prevailing mandatory rate. You may nonetheless wish to make voluntary contributions to your CPF accounts to build up your retirement savings. These contributions can also be used for your housing and healthcare needs. Further, voluntary contributions to your Medisave account only may entitle you to tax relief in the following year of assessment (YA).

Employers must be registered with the CPF Board to make the requisite contributions to their employees' accounts. CPF contributions are calculated based on the employee's total earnings for the month, including bonuses, commissions and allowances. The CPF Board has several online contribution calculators to assist you in calculating the amounts payable.[lxvii] Do also take a look at the Employers' Guide to CPF, which will provide you with a better understanding of your statutory obligations relating to CPF matters.[lxviii]

TAX ISSUES

The governmental authority responsible for taxation in Singapore is the IRAS. More information on Taxation may be found in Chapter 18.

All employers must report employee earnings to IRAS using the requisite forms i.e. Form IR8A and the relevant appendices, on or before 1 March every year. From YA 2014 onwards, employers with 14 or more employees are required by law to participate in the IRAS Auto-Inclusion Scheme for Employment Income, which allows employers to submit details of their employee's employment income to IRAS online.

More information on Taxation may be found in Chapter 18.

Under this Scheme, employers no longer need to distribute hardcopies of the IR8A Form and the relevant appendices to their employees, as the electronically submitted income and deduction information will be automatically included in the employees' income tax assessment, and they may view their annual remuneration via their payslips or online through the IRAS tax portal. If as an employer you have less than 14 employees, you may also volunteer to participate in the Auto-Inclusion Scheme for Employment Income.

If you hire foreign employees in your social enterprise, do note that, subject to certain exceptions, IRAS requires an employer to notify IRAS and seek tax clearance that a foreign employee (i.e. an employee who is not a Singapore citizen nor permanent resident) has paid all his taxes, when this foreign employee ceases employment with you in Singapore or plans to leave Singapore for more than 3 months. Tax clearance must be sought at least 1 month before the foreign employee ceases to work for you or leaves Singapore in the abovementioned scenario, otherwise there may be a fine of $1,000 imposed on the employer. Further, where your foreign employee has outstanding taxes, the employer is required by law to withhold monies due to him for onward payment to IRAS. Not withholding such monies when required, and not having a valid reason for the non-compliance, may result in you as employer being held liable for the tax that is owed by your foreign employee.

Finally, do note that IRAS requires all employers to keep in safe custody sufficient accounting records including that of your employees' remuneration for at least 7 years.

LIABILITY WHEN SELLING GOODS

If your Social Enterprise involves the selling of consumer goods and perishables, you should take note of the aptly named "lemon law", which is set out in the CPFTA, recently enacted to make it compulsory for a seller of a defective product (lemon) to repair, replace, refund or reduce the price of the defective product, within 6 months of purchase. The "lemon law" does not apply to real property i.e. land, and rental goods.

Should you as the seller refuse to make good on the defective product, the customer may bring the issue up to the Consumers Association of Singapore (CASE), a non-profit, non-governmental organisation which will investigate into the matter.

You can find out more about the lemon law in Chapter 15.

You can find out more about the lemon law in Chapter 15.

CESSATION OF BUSINESS

The process for the cessation of a business is relatively simpler for business structures which are not separate legal entities from their owners. Thus, for the sole proprietorship, the partnership, and the limited partnership, owners of the business can cancel the registration of the entity with ACRA when it is time for the business to end.

On the other hand, separate legal entities such as the limited liability partnership and the company have to go through the process of winding up, where the assets of the business are used to pay off any debts of the business before being returned to the owners (if possible), in accordance with a formal procedure.

The issues associated with winding-up are discussed further in Chapter 19.

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9

SINGAPORE'S PERSONAL DATA PROTECTION ACT

SINGAPORE'S PERSONAL DATA PROTECTION ACT

The PDPA was enacted on 2 January 2013, but the data protection rules and Do-Not-Call Registry (DNC Registry) rules will only come into effect on 2 July 2014 and 2 January 2014 respectively. By then you need to make sure that your business complies with all the requirements set up by these rules.

For personal data collected before 2 July 2014, you do not need consent from the relevant individuals, so long as you continue using such data for the same purposes for which you collected it. If you wish to use it for other purposes, however, then you need to seek consent.

This chapter should provide you with a rough overview of the data protection and DNC Registry rules so that you may ensure that your business does not violate these rules.

WHAT IS PERSONAL DATA?

PERSONAL DATA
Name
Gender
Occupation
Age
Marital status
Address
Contact no.
ID no.

Personal data' simply refers to information about an individual person who can be identified either from that data alone, or from that data in conjunction with any other information. For example, an NRIC or passport number, which are distinctive pieces of information unique to the holder, would constitute such 'personal data'. A series of data (for example, one's name, occupation, address), when considered in totality, could also be 'personal data' for the purposes of the PDPA, if that series of information operates to reveal the identity of a person.

WHY THE NEED FOR THE PDPA?

Briefly, in today's business environment, there is a real economic value attached to data and information, which can be used to analyse trends and provide key insights into consumer behaviour. The PDPA aims to enhance Singapore's competitive advantages as a secure hub for data hosting and management.

The data protection rules were instituted in recognition of the rights of individuals to protect their personal data, and to ensure that the use of such data by organisations is legitimate and reasonable. The DNC Registry complements this, by allowing individuals to register their telephone numbers for the purpose of 'opting-out' of telephone marketing initiatives.

Both the data protection rules and the DNC Registry will be explained in further detail below.

The PDPA is administered and enforced by the Personal Data Protection Commission (PDPC). The PDPC was established as a statutory body under the purview of the Ministry of Communications and Information (MCI).

Consequences of breaching the PDPA

Organisations can face up to S$1 million in financial penalties for breaching the PDPA. Non-compliance with certain provisions may also constitute an offence, for which a fine or a term of imprisonment (or both), may be imposed.

For example, obstructing a PDPC officer in the course of an investigation, or giving a false statement to the PDPC, could attract:

- In the case of an individual, a fine of up to S$10,000 or imprisonment for a term up to 12 months (or both); and
- In the case of an organisation, a fine of up to S$100,000.

TO WHOM DOES THE PDPA APPLY?

The PDPA applies to most organisations in Singapore, regardless of their size, and it is quite likely that your business will fall within the scope of the PDPA. An 'organisation' includes any individual, company, association or body of persons, whether or not formed, resident or having an office or place of business in Singapore.

Sole proprietorships, private exempt companies and partnerships are all "organisations" for the purposes of the PDPA.

EXCEPTIONS
1. Individuals acting in a personal/ domestic capacity.

2. Employees acting in the course of their employment.

3. Public agencies

However, the following groups do not fall within the scope of the PDPA:

- Individuals acting in a **personal/domestic** capacity (for example, a person's personal address book with information on his friends' addresses, birthdays and telephone numbers);
- Employees acting **in the course of their employment** (though the employer organisation may be held liable instead, if the employee was acting within the scope of the employer's instruction/authorisation, which then resulted in a breach of the PDPA); and
- **Public agencies,** or organisations acting on behalf of a public agency in relation to the collection, use or disclosure of personal data. These public agencies have been identified and set out in the Personal Data Protection (Statutory Bodies) Notification 2013.

If your social enterprise engages volunteers, you may wish to take note that the PDPA's definition of an 'employee' includes volunteers as well. Thus, individuals who undertake work without any expectation of payment, would also fall within the exception carved out for employees at (b) above. Similarly, if a volunteer breaches the PDPA while acting under the instructions or authorisation of the enterprise, the enterprise will be held liable for the breach.

If an organisation merely processes data on behalf of another organisation, then the former organisation will be considered as a 'data intermediary'. For example, a data intermediary could be a company that provides hosting or storage services of personal data, for an organisation. This relationship will typically be governed by a separate contract between the organisation and the data intermediary, and where these arrangements exist, the data intermediary will not be subject to the same obligations under the PDPA, as the organisation.

However, data intermediaries are still required to comply with the rules on care of personal data. For example:

- they must make a reasonable effort to ensure that such data is accurate and complete;
- they should make reasonable security arrangements to protect such data; and
- they should cease to retain data where there is no longer any legal or business purpose for keeping it.

GETTING CONSENT FROM INDIVIDUALS

Under the PDPA, organisations must obtain consent from an individual before collecting, using or disclosing his personal data, unless:

- the collection, use or disclosure is required/authorised by law (for example, in the course of an investigation conducted by a governmental agency); or
- an exception under the PDPA applies.

Relevant exceptions are:

- where the personal data is **publicly available**;
- where the collection, use or disclosure is necessary for any **investigation or proceedings**, if it is reasonable to expect that seeking the consent of the individual would **compromise the availability or the accuracy of the personal data**;
- where the collection, use or disclosure is for the purpose of **debt recovery**; and
- where the collection is by an employer and is reasonable for the purpose of **managing or terminating** an employment relationship.

Consent is not valid, if it is not reasonable for an organisation to require such consent as a condition of its providing a product or service to an individual. For example, if a spa refuses to provide any therapy services unless the customer consents to his personal data being sold to a third party marketer, this is likely to be considered as unreasonable.

There will be also no valid consent, if the organisation provides false or misleading information, or uses deceptive or misleading practices to obtain consent. Examples of such practices include using illegible font in a consent form, or not giving the individual an opportunity to read through the clauses in a contract before asking him to sign it.

Consent may be "deemed" (i.e. need not be express). This is where an individual voluntarily provides the data to the organisation for the purpose for which the organisation is collecting, using, disclosing it; and it is reasonable for the individual to do so. For example, a customer who uses a credit card to buy a movie ticket is deemed to have consented to the cinema and relevant banks using his personal data for processing the payment of his booking.

Individuals can withdraw their consent

Individuals can choose to withdraw any consent previously given to an organisation to collect, use or disclose their personal data. This is how it works:

- First, the individual needs to give **reasonable notice** to the organisation (it is not prescribed what "reasonable notice" means, and this will depend on the individual facts of each case);
- Thereafter, upon receipt of such notice, the organisation must inform the individual of the likely **consequences** of his withdrawal of consent;
- Note also, that the organisation should not prohibit the individual from withdrawing consent;
- Where the individual has withdrawn his consent, organisations must inform their data intermediaries to stop collecting, using or disclosing that individual's personal data.

DATA MUST BE ACCURATE

Organisations must **take reasonable steps** to ensure that personal data which they collect is accurate and complete, if it is used to make a decision that affects the individual, or is likely to be disclosed to another organisation.

While there is no specific guidance on what reasonable steps include (which will likely depend on the nature of the business, size of its operations, and extent of its data processing activities), you can refer to the illustrations and examples in the Advisory Guidelines on Key Concepts in the PDPA on 24 September 2013 for further guidance on this issue.

Data should not be retained for longer than necessary

Organisations may keep or retain personal data as long as they serve any legal or business purpose. Such legal or business purposes include:

- Where the personal data is required for an on-going legal action involving the organisation;
- Where the organisation needs to retain the data to comply with its obligations under other laws; or
- Where the organisation requires such data to carry out its business operations, such as to generate annual reports or performance forecasts.

Generally, if one or more of the purposes for which the data was originally collected are still valid, the organisation may continue to retain it.

SECURITY ARRANGEMENTS

However, personal data should not be kept 'just in case' it may be needed. As long as the organisation retains the data, it is responsible for complying with the rules under the PDPA.

Organisations must make **reasonable security arrangements** to prevent unauthorised access, use, copying, modification, disposal or similar risks caused to personal data in their control or possession.

Data intermediaries are also subject to the same requirement.

Security arrangements include the following:

- having reliable and well-trained personnel responsible for ensuring information security;
- putting in place robust policies and procedures for ensuring security for personal data of varying levels of sensitivity; and
- being prepared and able to respond to information security breaches promptly and effectively.

APPOINT A DATA PROTECTION OFFICER

Each organisation must designate one or more persons to be the organisation's data protection officer. This can either be a person whose scope of work solely relates to data protection or a person in the organisation who takes on this role as one of his multiple responsibilities.

The business contact information of at least one of these data protection officers has to be made known to the public, for e.g., published on the organisation's website.

The data protection officer is responsible for ensuring that the organisation complies with the PDPA. Hence, it is ideal for this individual to have oversight of the data processing activities within the organisation.

Personal liability does not attach to the data protection officer for an organisation's breach, unless the officer himself is guilty of an offence under the PDPA (eg. by obstructing an investigation by the PDPC, or misleading the PDPC). Hence, the appointment of a data protection officer does not relieve an organisation of its responsibilities under the PDPA.

TRANSFERRING DATA OUTSIDE OF SINGAPORE

Under the PDPA, organisations cannot transfer personal data out of Singapore, unless they have given a **comparable standard of protection** to the data that is transferred.

The receiving organisations outside of Singapore must reasonably ensure (amongst others), that the data is accurate and complete, security arrangements are in place to prevent unauthorised access and that the data is not retained for longer than required.

Transferring organisations in Singapore may choose different ways to achieve a "comparable standard of protection" as the PDPA. The PDPC had proposed the following options in its Proposed Regulations on Personal Data Protection in Singapore on 5 February 2013:

(a) Use legally binding contracts to provide appropriate safeguards for personal data transfer between non-related organisations; or

(b) Impose binding corporate rules (i.e. internal rules, such as a code of conduct) for related entities, which include:
The structure and contact details of the receiving and ransferring organisations' group and group members; (i) The categories of personal data transferred; (ii) the purposes for which such data is being transferred; (iii) the type of individuals affected; and (iv) Identification of each country or territory in question;
Their legally binding nature, both within the organisation's group and externally; and
The mechanisms within the organisation's group to ensure compliance with the binding corporate rules.

Organisations may also apply to the PDPC to be exempted from the cross-border requirements under the PDPA.[lxix]

INDIVIDUALS' RIGHTS IN RESPECT OF THEIR PERSONAL DATA

Individuals have a right to request access to their personal data, which is in the possession or control of organisations.

These organisations must provide them with information of how they have used or disclosed the individuals' personal data up to one year before the date of request.

Organisations are allowed to charge a reasonable fee for the direct costs related to the request, for their time and effort in responding to the request.

Nevertheless, organisations do not have to comply with an access request where:

- such a request:
  - potentially threatens the safety or physical/mental health of the requesting or other individual;
  - could reveal personal data about another individual;
  - could be contrary to national interest;
  - would unreasonably interfere with the organisation's operations because of its repetitious or systematic nature;
  - is trivial, frivolous or vexatious;

- the personal data:
  - is subject to legal privilege (i.e. confidential communications between a lawyer and his client);
  - would reveal confidential commercial information that could harm the organisation's competitive position;
  - does not exist or cannot be found

- the burden or expense of providing access is unreasonable to the organisation;

In addition, an organisation must not inform an individual if it has disclosed personal data to a prescribed law enforcement agency pursuant to the exception on legal investigations or proceedings (referred to above).

Correction of personal data

Individuals can also request organisations to correct any error or omission in their personal data that is in the possession or control of the organisation. However, there are exceptions to this requirement:

- Where the data is considered to be 'opinion data', that is kept solely for an evaluative purpose (eg, a post-interview assessment of a candidate seeking employment);
- Where the data is for an examination conducted by an educational institution, examination scripts and, examination results prior to their official release;
- Where the personal data relates to beneficiaries of a private trust kept solely for the purpose of administering the trust;

- Where the personal data is kept by an arbitral institution or a mediation centre solely for the purposes of arbitration or mediwation proceedings; or
- Where the data is a document related to an ongoing criminal prosecution.

DO-NOT-CALL REGISTRY

Under the PDPA, there are new rules imposed on organisations (including foreign organisations and individuals), which send telemarketing messages and/or make telemarketing calls to Singapore phone numbers.

Individuals can subscribe to the DNC Registry to have their phone numbers registered. If an individual's Singapore phone number is registered under the DNC Registry, organisations cannot send telemarketing messages to that number.

There will be 3 DNC registers set up, for:
- voice messages;
- text messages, including SMS and MMS; and
- fax messages.

This has the consequence that from 2 January 2014 onwards, organisations must check the relevant DNC registers before sending such messages.

They must do so at least once every **60 days** from **2 January to 2 July 2014**; and after **2 July 2014**, at least **once every 30 days** before sending such messages.

Furthermore from 2 January 2014 onwards, organisations that send any specified messages to Singapore phone numbers, must not conceal or withhold the calling line identity of the sender.

A message will be a telemarketing or 'specified message', if at least one of its purposes is to advertise, promote or offer to provide:
- goods or services;
- land or an interest in land; or
- a business opportunity or an investment opportunity; or
- to advertise or promote a provider of these items.

Organisations in Singapore that outsource telemarketing activities to overseas organisations will also generally be required to comply with these rules. However, organisations do not need to

follow this process if they have clear and unambiguous consent from the subscribers, which is supported by evidence.

The DNC Registry rules do not apply to post or email. However, please note that you must comply with the data protection rules in the PDPA, as well as the Spam Control Act (for example, inserting an ‹ADV› in the subject header, allowing recipients to unsubscribe from/opt-out of receiving such email, etc).

OTHER USEFUL RESOURCES

Singapore Statutes Online

http://statutes.agc.gov.sg

The PDPA can be found on this website.

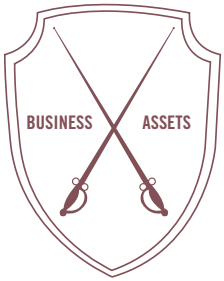
Personal Data Protection Commission

http://www.pdpc.gov.sg

A diverse website which provides inter alia comprehensive guidance for organisations facing the challenges of how to comply with the rules under the PDPA; the PDPA and Advisory Guidelines on Key Concepts in the PDPA and Selected Topics can be found here as well.

10

PROTECTING YOUR BUSINESS ASSETS



WHAT ARE INTELLECTUAL PROPERTIES (IPS)?

IPs are a form of personal property, unlike land or your Housing Development Board property, which are considered real property. IPs are intangible in nature. Even though they themselves are not physical things, they are in fact the fruits of intellectual effort and labour. IPs are everywhere and are involved in every aspect of our daily lives. For instance, in the smart phone that you just texted your friend on (patents); in the book you are now holding and reading (copyrights belonging to the Law Society of Singapore); in the chair you are now sitting on (design); and the branded fast food you just had for lunch (trade marks).

As with all forms of property, IPs can be exclusively owned, reproduced and commercially exploited. This would include being sold, licensed, franchised or even used as security for loans. With ownership or the proper authorization, it is also possible, too, to prevent others from owning, reproducing or commercially exploiting IPs.

For instance, let us consider a book that you might currently be reading. You have probably bought this book for consideration (see earlier chapter on the forming of contracts). However, the purchase of this book does not give you the authority to reproduce the same book and to sell the reproduced copies. While you may have purchased a copy of the book (the physical article), the right to commercially exploit the book other than by selling the physical copy owned by you, belongs to someone else (the writer, and/or the publisher).

The exclusive nature of rights relating to IPs (IP Rights) has made it possible for business owners to differentiate themselves from their competitors. Some business owners have in fact managed to raise millions, if not billions of dollars from their IPs. IP Rights are also very much assets of a business (in the same way that land, or buildings are), and can enhance the intrinsic value of a business.

IPs are also territorial in nature, meaning that the rights acquired in Singapore are enforceable only in Singapore and do not allow you the right to enjoy protection on a worldwide basis.

More information on IPs can be found at the website of the Intellectual Property Office of Singapore.[lxx]

TYPES OF IPS

The following IP Rights are recognized in Singapore:

- Registrable Rights
  Patents;
  Trade marks (TM);
  Industrial designs;
  Plant Varieties;
- Non-Registrable Rights
  Copyrights (C);
  Geographical indications;
  Layout-designs of integrated circuits; and
  Protection of Undisclosed Information (Trade Secrets).

Some basic (and non-exhaustive) information on the various IP Rights is set out below:

PATENTS

A patent grants to the owner of an invention the exclusive right to prevent others from the unauthorised making, using, importing or selling of the invention. A patentable invention can be a new product, a new process that is a new technical solution to an existing problem or simply an improvement of an existing product or process. In other words, patents are granted based on the originality of an idea.

Ordinarily, the right to the patent belongs to the inventor(s). However, the Patents Act Chapter 221, of Singapore (PA) provides that should the invention be developed in the course of work, then the right to the patent vests with the employer.

Patents do not arise automatically and an application must be filed in order for a patent to be granted. The PA provides that in order for an invention to be patentable, it must satisfy the following criteria:

Novelty

The invention should not be publicly known in any way, on a world-wide basis. Until an application is filed to patent the invention, the owner of the invention should treat the invention as a trade secret or as confidential information (which is explained further below). If the idea has already been disclosed, commercially exploited, advertised or demonstrated to would be investors or collaborators, then there is a chance that the novelty of the invention may have already been compromised. For the protection of the invention, a non-disclosure agreement (NDA) should be executed prior to disclosure.

Please note that it is a common misconception that having concluded an NDA with someone will protect your invention. This is not true. An NDA merely provides evidence that a specific piece of information has not been made public by handing it over to your contractual partner.

Inventive step

The invention's improvement over an existing product or process should not be obvious to a person with the relevant technical skills or knowledge in the invention's particular field. If an invention is new yet obvious to a person skilled in the art, the invention would not fulfil the inventive step requirement.

In practice, most inventions that are new are also seen as inventive, unless the invention is a combination of known features that are obvious. For example, adding one more known tool such as special type of pliers to a Swiss pocket knife is seen as obvious, while providing a new method of making Swiss pocket knives more economically is likely to be seen as inventive.

Laymen often wrongly deem a good invention as obvious because the invention appears to be too simple when seen with hindsight.

Capable of industrial application

The invention must have some form of practical application that allows it to be made or used in some form of industry. For example, an invention of a method of treatment of the human or animal body by surgery, therapy or diagnosis practised directly on the human or animal body, is deemed to be not capable of industrial application and therefore is not patentable, while surgical instruments and medical devices such as diagnostic apparatus are patentable because they are made using industrial processes.

Once it is granted, a patent grants the owner of the invention 20 years' exclusivity (explained further below) starting from the date of the filing of the invention, and subject to the payment of annual renewal fees.

Please note that although it is not mandatory to apply for patent protection in Singapore prior to seeking patent protection overseas, the PA requires any person residing in Singapore to first obtain National Security Clearance in the form of a written authorisation from the Registrar of Patents before seeking

protection overseas. Contravention of this requirement is a criminal offence and any person convicted of such an offence is liable to a fine not exceeding S$5,000 and/or to imprisonment for a term not exceeding 2 years.

For the sake of completeness, patents are territorial rights which means that they can only exist where a patent application has been filed. This can either be achieved by directly filing patent applications in the respective countries or by using an international or regional collective patent application, such as a Patent Co-operation Treaty patent application which is valid for about 150 international countries.

As the owner of a patent, you will be able to prevent the unauthorised making, disposal of, offering to dispose of, usage or importation or keeping of the product containing or utilising your patent.

However, please note that it is a criminal offence to make unauthorised claims about patent rights or patents applied for. This usually means that you cannot claim an invention to be 'patented' prior to the actual grant of the patent; or that the invention is 'patent pending' when there is no valid application for grant. Threatening someone with a cease and desist letter on the basis that you own a patent or that you have a pending patent when you do not, may result in the other party bringing civil proceedings against you for groundless threats.

The PA sets out a list of statutory defences to an action for patent infringement. These include, amongst other things, the 'private user' defence: where the infringing act was done privately and not for commercial purposes. For example, re-producing a patented mosquito trap for one's own home use is not considered to be a patent infringement, while selling the copied mosquito trap is a a patent infringement.

TRADE MARKS (TM)

TMs are signs used by a business owner to distinguish the goods or services offered by his business, from those of others. In this regard, it is a badge of origin or a guarantee of origin. Using a TM, one can 'educate' one's customers as to the goods and services offered, particularly in the aspect of building goodwill and reputation.

A registrable TM must be capable of being represented graphically. As a registered IP Right, the protection afforded to a registered trade mark can last indefinitely, subject to renewal every 10 years.

Some examples of famous trade marks include Tiffany's, Coca Cola, McDonalds, Microsoft, Mercedes-Benz, and Rolls-Royce.

A TM may be refused registration on the following grounds:

Absolute Grounds

Meaning your TM is deficient, usually that it is devoid of distinctive character or that it is descriptive of the goods or services claimed. For instance, it is impossible to register the word "toothpaste" for the good "toothpaste", because other producers need to be free to use this word for describing their goods. This applies also to other important languages so that it is also not possible to register the word "zahnpasta" - which is the German word for toothpaste - for the good "toothpaste".

On the other hand, a term with a meaning that has nothing to do with the respective goods for which protection is sought, is perfectly registerable as a trademark, e.g. the word 'apple' for computers.

Generally speaking, a descriptive or indistinct trademark is unable to serve as a badge of origin and cannot help the public differentiate between your goods and services from that of your competitors.

Relative

Meaning your TM is in conflict with an earlier registered TM and (generally) its registration would result in a likelihood of confusion. For example, if someone has already registered a trademark 'Pears' for cutlery, a later trademark application for 'Tears' would be prevented from being registered for the same goods, because the terms 'Pears' and 'Tears' are aurally too similar. The law recognises another legal regime governing TMs, in what is also known as the 'common action for passing off'. This is typically used to protect owners of unregistered TMs. It is complementary to the registration regime under the Trade Marks Act Chapter 332, of Singapore (TMA) and the registration of a trade mark does not extinguish the owner's entitlement to seek this legal recourse.

To succeed in an action for passing off, you must prove the following:

- There is sufficient goodwill associated with your business/ trade acquired through the TM or get-up used by you on your goods or services. Goodwill is a form of property constituting the market perception of the value and quality of a business and its products. Only this goodwill can be protected against interference or damage by passing off.
- There is a misrepresentation by the other party, leading to confusion or deception;
- You have suffered or are likely to suffer damage as a result of the other party's misrepresentation.

Like patents, TMs are territorial in nature. Overseas TM filings can be made either through national filings of trademark applications or by using a collective system, such as the Madrid Protocol (MP) system, again administered by WIPO. The MP facilitates the filing of TM applications in other Member States concurrently and produces the same effect as if a national TM application has been filed with the national TM office in each country designated by the applicant. The MP offers certain advantages to you, should you wish to seek TM protection in multiple countries. These include offering a 'one-stop' service where multiple applications can be filed together in Singapore rather than at each separate designated country.

Unlike patents, TMs can be used prior to any application made for their registration. In some cases, prior use is effective in proving that the TM has in fact gained distinctive character (through its use) and is therefore registrable.

Some TMs are so 'famous' that they are considered to be 'well-known marks'. These marks are offered greater scope of protection, even though they are not registered in Singapore. The owner of a well-known mark is entitled to take action against the use of a TM or business identifier if:

- use of the trade mark/business identifier would indicate a connection between those goods or services and the owner of the well-known mark, and is likely to damage the interests of the owner of the well-known mark.
- the TM is already well-known to the public at large in Singapore, where the use of the TM or business identifier would:

-cause 'dilution' in an unfair manner, of the distinctive character of the well-known mark; or
-take unfair advantage of the distinctive character of the well-known mark.

'Dilution' happens when there is a lessening of the capacity of the trade mark to identify and distinguish goods or services, (regardless of whether there is actually any competition between the owner of the TM and the other party), or where there is any likelihood of confusion on the part of the public.

A number of factors are considered in determining whether a mark is well-known in Singapore:

- the degree of knowledge/recognition by the relevant sector of the public in Singapore;
- the duration, extent and geographical area of the use or promotion of the TM;
- any registration/application for registration in any country;
- any successful enforcement of the TM in any country;
- any value associated with the TM.

Generally, if a TM is well-known to a relevant sector of the public in Singapore, it can be considered as well-known in Singapore. The 'relevant sector' includes suppliers, distributors, competitors, customers and other relevant stakeholders in the industry.

INDUSTRIAL DESIGNS

Registered industrial designs (or plainly registered designs) protect an article's features, which include shapes, configuration, pattern and ornament. A registered design gives its owner the statutory right to prevent the unauthorized use of the design for maximum of 15 years subject to the payment of renewal fees every 5 years.

In order for a design to be accepted for registration, it must be new. This means that the design must not have been registered or published anywhere in the world before the date of application of the first filing. In order to preserve the novelty in the design, the owner of a design must avoid disclosing the design, until a design application is filed. Generally, a design is not new if it has been published anywhere in the world, in respect of the same or any other article. Some countries or jurisdictions such as the EU or the US provide a grace period for one's own disclosure of up to one year.

An example of a registered design would be the packaging in which your products are displayed in or the shape of your product.

Under the Registered Designs Act, Chapter 266 of Singapore (RDA), essentially the following cannot be registered as a design:

- Designs that are contrary to the public order or morality;
- Computer programs or layout-designs of integrated circuits;
- Designs applied to certain articles which may be protected by other IP Rights
- Any method or principle of construction.
- Designs which are purely functional.
- Designs that are dependent upon the appearance of another article, of which it is intended by the designer to form an integral part; or enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function.

Generally, the RDA provides that the designer is usually the owner of the design. However, this position can be contractually amended. The RDA also recognizes that the party commissioning a design is the owner. Likewise, where a party has created a design in the course of his employment, then his or her employer shall be deemed to be the owner of the design.

PROTECTION OF PLANT VARIETIES

Under the Plant Varieties Protection Act (PVPA), a breeder may apply for and be granted protection for plant varieties cultivated by the breeder. In doing so, the breeder is able to prevent others from doing any of the following acts in respect of the propagating material and/or harvested material of the protected plant variety:

- production or reproduction;
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other forms of marketing;
- exporting;
- importing; and
- stocking for any of the purposes mentioned above.

The Plant Varieties Protection Act grants to the breeder protection over the plant variety for 25 years, subject to the payment of annual fees. However, it is also possible for the breeder to seek protection under the PA, insofar as the variety or biological processes can satisfy patenting requirements.

Otherwise, protection under the PVPA requires novelty, distinctness, uniformity and stability. IPOS is tasked with carrying out formalities examination while the Agri-Food and Veterinary Authority of Singapore (AVA) is tasked with carrying out the examination of substantive merits of each application under the PVPA.

Like all other registered IP Rights, registration grants to the owner exclusivity in the commercialization and exploitation of the registered plant variety.

COPYRIGHTS

Copyrights protect the expression of an idea, not the idea itself. It does not protect concepts, discoveries, procedures, methods or techniques, unrecorded speech or writing and information or works that are already in the public domain.

Singapore's Copyright Act Chapter 63, of Singapore, (CoA) grants protection to a range of works broadly categorized as 'Literary' (novels, poems), 'Dramatic' (plays, dances), 'Musical' (songs) and 'Artistic Works' (paintings, photographs) (collectively, literary, dramatic, musical or artistic, 'LDMA'), as well as neighbouring rights or entrepreneurial rights such as recordings, broadcasts and live performances. Copyright exists in all 'original' works, and are not limited to high-brow works of art, and can include works with purely functional writing or drawings (such as computer programs or diagrams). 'Originality' simply means that the work must have been created by the author independently, and not copied from another source, regardless of whether the work itself is simple or complex in nature.

However, copyrights are not registrable. Anyone claiming infringement must prove (i) ownership and (ii) unauthorized copying. Ownership can be proven in various ways, chief amongst which is to either post a copy of the work to yourself in the form of a postcard or make a declaration before a Commissioner of Oaths stating the facts of ownership and the date of creation.

Copyrights in LDMA works now enjoy a lengthy protection period equivalent to the life of the author (from the point of creation of the copyrights to death of the author) and a further 70 years from the author's death. On the other hand, the

duration for other types of copyright work varies from 25 years (layouts of published editions of LDMA works), 50 years (from the end of the year of making a broadcast or cable programme) and 70 years (from the end of the year of a performance or release of the recording or film).

Generally, the owner of the copyright is the author of the work. There are some exceptions to the rule:

- if the work is created further to terms of employment, then the employer owns the copyright in the work;
- if the work is commissioned, the commissioning party owns the copyright in the work.

Consent is usually required for the use of copyright work. However, certain uses of copyright work without consent (also known as 'fair dealing'), is permissible. In order for 'fair dealing' to be established, the following factors must be considered [in totality]:

- Purpose and character of the dealing: is it commercial or non-profit?
- Nature of the work being copied;
- Portion of the work being copied: is it substantial or material?
- Effect on the potential market or value of the work being copied.
- Would it have been possible to obtain the work at an ordinary commercial price within a reasonable time period?

Other 'safe harbour' or exceptions under the CoA include:

- Copying for the purposes of study or research.
- Fair dealing for the purposes of criticism, review or reporting current events where sufficient acknowledgement of the copied work is given.
- Copying for the purposes of judicial proceedings or seeking or rendering professional legal advice.
- Performance of LDMA of a religious nature, in the course of services at a place of worship or other religious assembly.
- Parallel importation of an article which is not an infringing copy.

So how would you know if your action amounts to 'fair dealing' or an exception permitted by the CoA? It is really a question of fact that can only be answered on a case-by-case basis. However, there are guidelines that may prove to be useful:

- Is the copy an infringing copy (made without permission or consent)?
- If it is an infringing copy, did you manufacture, sell (5 or more copies), possess, import or distribute the infringing copy?

- Did you fail to acknowledge the author or owner?

If the answer to any one question is 'Yes', then it is likely that you may have committed copyright infringement.

Infringement of copyrights may result in both criminal and civil liability.

GEOGRAPHICAL INDICATIONS

Geographical Indications (GI) are signs that can be used in identifying products originating from a particular location. Traditional and well-known examples of GIs include 'Bordeaux' (red wine), 'Champagne' (sparkling wine), 'Darjeeling' (tea) and 'Modena' (balsamic vinegar).

A GI is not the same creature as a TM. A GI informs the public that a particular product originated from a specific place or region and has special qualities due to that specific place or region. The GI is exclusive to all producers or traders whose products originate from that specific place or region and which share those special qualities. A TM, on the other hand, is a sign used by a business to distinguish its goods or services from those of its competitors. A TM gives its owners the right to prevent others from using the mark.

A GI need not be registered in order to have rights conferred under the Geographical Indications Act Chapter 117B, of Singapore (GIA). The GIA protects the GIs of WTO member countries or certain countries designated by the Singapore Government without limitation in time, so long as the GI in particular is protected in its country of origin. That said, a GI will not be protected if, amongst other things, it is:

- immoral or against public order;
- no longer in use or no longer protected in the country of origin;
- the common name in Singapore for the goods or services which it identifies;
- confusingly similar to a TM for which rights had been acquired, before the GI was protected in its country of origin; or
- the name of a person or a predecessor in a particular business.

LAYOUT-DESIGNS OF INTEGRATED CIRCUITS (ICs)

The Layout-designs of Integrated Circuits Act Chapter 159A, of Singapore (LDICA) protects essentially the three-dimensional character of the elements and interconnections of an integrated circuit.

As with the other IP Rights, the protection pivots on whether an original layout-design exists. An integrated circuit's layout design can be considered 'original' if it is based on the creator's ideas or studies AND if there is nothing like it made by others at the time of its creation.

Protection of the layout-design is automatic, provided that its owner qualifies for protection under Singapore law. This means that the owner must be either:

- a qualified person (i.e. a citizen or resident of Singapore or a member country of the WTO, or a country designated by Singapore as "qualifying"); or
- a person who is the owner of the lay-out design which was not commercially exploited anywhere else in the world before it was commercially exploited in Singapore, or in a qualifying country.

The qualified owner must be either the creator of the layout-design, the commissioning party or the employer of the party who created the layout-design.

Any IC created after 15 February 1999 (i.e. the date of enactment of the LDICA) will be protected for a period of 10 years if it is first used commercially within five years of creation. In any other case, it will be protected for 15 years from the date of its creation.

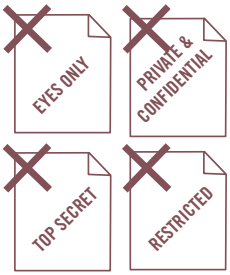
The owner can exercise his rights under the LDICA by taking legal action against the infringing party, including seeking relief in the form of an injunction to stop the infringing action, demanding for the profits gained by the infringing party at his expense and/or, seeking damages for the loss suffered.

PROTECTION OF UNDISCLOSED INFORMATION (TRADE SECRETS)

As its name suggests, trade secrets cover information that may be confidential and unknown to the public. It is usually taken to mean information that has commercial value and could include recipes, methods or techniques. Not all pieces of information are considered to be trade secrets. Three elements need to be satisfied in order for the court to find a breach of confidence; in particular the information must have:

- a quality of confidence (meaning that the information must not be freely available in the public domain);
- been imparted under circumstances importing an obligation of confidence; and

- been used in an unauthorized fashion generally (although this is not always necessary), to the detriment of the originating party.



Marking a document or a set of information as 'PRIVATE & CONFIDENTIAL', 'RESTRICTED', 'EYES ONLY' or 'TOP SECRET' does not necessarily make that document or information confidential or a trade secret. Such measures are not conclusive. They are at best, indicative of one's intention, and the circumstances must be assessed as a whole. A document or set of information may in fact be confidential even if parts of the sum are already information in the public domain.

By their very nature, trade secrets cannot be protected by registration. The only way to protect confidential information or trade secrets is to not disclose such information and ensure it is kept hidden away (if in physical form). Where disclosure is necessary for the advancement of your commercial objectives, then keep a clear record of to whom and when a particular piece of confidential information or trade secret was disclosed. It is critical that you bind the receiving party with non-disclosure obligations, e.g. by way of a formal contract.

If a license agreement is based on a trade secret, the respective confidential information must be provided in written form and it must be relevant for the license agreement, otherwise the license agreement may potentially be void under the prevailing anti-competition legal framework.

As trade secrets become free public knowledge upon publication, even if this is a result of a breach of contract, it is best to protect one's trade secrets by registering them as patents or industrial designs.

WHY DOCUMENT OR REGISTER YOUR IPS?

As discussed above, IP Rights accord your social enterprise with protection over your intellectual assets against infringement. Notwithstanding the fact that your business is a social enterprise serving a social need or charitable purpose, the registration of IPs can enhance the value of your goods/services to your customers. This helps ensure that your social enterprise maximizes its earnings and thus reaches its commercial and social goals in a more efficient manner.

Proper documentation and registration reduce the anxiety and

stresses that come with inadequate protection. It will be too late to start thinking of IP Rights once they are violated, or once you unwittingly violate those of others'. As the old adage goes, a stitch in time saves nine.

As the owner/holder of IP Rights, you are able to seek various remedies if there had been an infringement of your IP rights. For instance, you will be able to prevent the continued unauthorized usage, seek an account of profits from the infringer and/or request for compensation. It is also possible to request for the delivery up of the infringing articles.

Though great steps have been taken in the past years to simplify the registration processes for various IP Rights in Singapore, it is often the case that business owners may continue to find the registration and/or documentation processes to be daunting, time-consuming or simply a distraction from your pursuit of your passions, concerns and business. IPOS has on its website useful guidelines for use in figuring out the registration process. However, when in doubt, always seek help from your lawyer and where applicable, your patent agent.

DETERMINING THE TYPE OF IP PROTECTION IS NEEDED FOR YOUR SOCIAL ENTERPRISE

So how do you differentiate between the different IP Rights? Is it even necessary to know the difference? Knowing the difference is half the battle won in gaining control of and exploiting the IPs crucial to your social enterprise's growth and continued operations.

One useful, but non-exhaustive rule of thumb in deciding which IPs are crucial to your business is this: what is the originality that you are seeking to protect?

For instance, a social enterprise operating a food and beverage business will have to ensure that its recipes are protected as trade secrets. In the same breath, the same social enterprise may find that it has little or no use for patents in a 'mature' industry that thrives on branding or the 'personality' attached to the goods or services provided. Thus, patent protection may not be relevant.

A fashion business may find it profitable to register its more popular original T-shirt designs and prints as industrial designs, as this would help to ensure that competitors do not copy its designs and undercut it, in terms of pricing.

In contrast, a social enterprise attempting to create cheap and powerful computers or daily consumables from sustainable and biodegradable sources, will find that patents are more important to it than any other IP Rights.

All businesses at some point will find it useful to protect their TMs. Invariably, all businesses will need to create brand identity, awareness and loyalty so as to separate themselves or their goods and services from their competitors. Registering one's TMs is in most cases a vital and necessary step.

VOLUNTEERS AND IPS

Unlike IPs created by contractors who are commissioned or employees in the course of their employment, the line of ownership over IPs created by volunteers working with your social enterprise may be blurred due to the fact that most volunteers work for free.

This problem can often be resolved by ensuring that the volunteers sign a legally binding release form or at the very least, agree to your terms of engagement that states that they have agreed to assign all IPs to you. For instance, in contributing to this book, each volunteer lawyer was made fully aware of the term that the Law Society of Singapore will own the copyrights in the contributed literary works created by each volunteer lawyer.

PRODUCTIVITY AND INNOVATION CREDIT SCHEME (PIC)[lxxi]

From YA 2011 to 2015, tax benefits are available under the PIC for investment in the qualifying activities named by the IRAS. In particular, all expenses incurred in the filing, registration, licensing and acquisition of IP Rights are eligible for claims under the PIC.

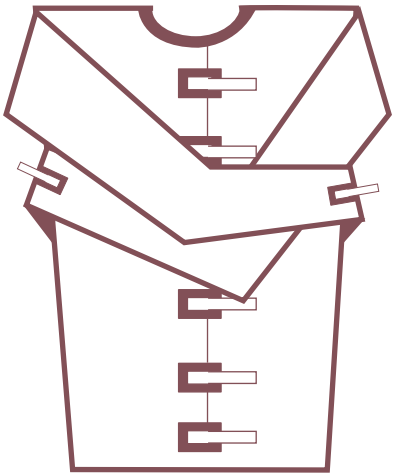
This means that your social enterprise may potentially benefit from:

- Cash back of up to 60% of expenditure capped at S$100,000; and
- Tax deductions of 400% of expenditure capped at S$400,000.

In addition, from YA 2013 to 2015, IRAS has also implemented a dollar for dollar matching cash bonus given over and above the cash back and tax deductions set out above. Also known as the PIC Bonus, qualification for this incentive requires a minimum spending of S$5,000 per annum and requires an active presence in Singapore and 3 local employees (Singapore Citizens and PRs) with CPF contributions), excluding directors of the company.

More information on Taxation in Singapore can also be found in Chapter 18.

11
RESTRAINT OF TRADE



RESTRAINT OF TRADE

Saying goodbye is part and parcel of running a business. For example, some of your employees may decide to leave your business and work somewhere else, while you yourself may decide to sell your business. This section briefly sets out some of the ways you can protect your company when your employee, or perhaps even you, decide to move on to work for another business. However, as explained below, clauses that restrict an employee's actions after he leaves your employment will be closely scrutinised by the Courts and will need to be very carefully drafted.

You should also note that the clauses described below typically arise in an employer-employee relationship. You may also request that people who volunteer with your business agree to such clauses to protect your business interests, trade secrets and confidential information. In practice, it may be difficult to persuade these volunteers to do so, and it may be helpful to explain to them why these issues are important for your business or to the cause that you are working for.

CAN I PREVENT AN EX-EMPLOYEE FROM BECOMING MY COMPETITOR?

It is common for a restraint of trade clause to be included in an employment contract. The essence of a restraint of trade clause is that an employee agrees with his employer to restrict the employee's liberty in the future to carry on trade with other persons. For example, the clause might stipulate that an employee cannot work for your business direct competitors for a certain period of time after leaving your employment. Alternatively, the clause may stipulate that the employee may not establish their own business in the same industry if that would bring them into direct competition with you, their previous employer.

While it may seem fair to you that an employee should be prohibited from competing against you when he leaves your business, the reality is that the Courts frown upon restraint of trade clauses because such clauses are generally contrary to public policy. Restraint of trade clauses discourage competition and in extreme cases, take away the livelihood of the person suffering the restraint. Consequently, the default position is that restraint of trade clauses are not enforceable, unless it can be shown that they are justified. Some important factors that the Courts will look at in considering whether the clause is justified include:

The geographical scope of the clause. For example, in a recent Singapore case, the Courts appeared to take the view that a clause prohibiting a dentist from practicing within a 3-kilometre radius from one of his employer's clinics could be valid.

The duration of the restriction in the clause. A clause unlimited in duration is very likely to be struck down as unenforceable by the Courts.

The scope of activities that the clause captures. The wider the scope of the clause is, the less chance there is of being upheld.

Ultimately, the Courts will consider the specific facts of each case in deciding whether a clause is justified. What may be reasonable and justified based on one set of facts may well be held to be unreasonable in a different context. This can be seen from the table below:

RESTRICTION IMPOSED BY CLAUSE	COURT'S DECISION
Clause restrained a performing artiste's ability to make a living (i.e. by writing or performing music)	Clause is in restraint of trade.
Clause allowed employer to forfeit employee's deferred bonus if employee were to quit and join competitor during the effective period of a non-compete clause	Clause not in restraint of trade as the clause did not prohibit employee from competing with ex-employer, but merely financially discouraged him from doing so.
Clause prohibited employee from working with businesses in Singapore and Malaysia in competition with employer for a period of two years.	Clause was valid because the employer operated in the marine winch industry, which is a relatively small and specialised industry with only a select group of potential customers.

Please also note that if the restraint of trade clause in an agreement is found to be unenforceable, there is a possibility that your entire contract may be found void if the restraint of trade clause cannot be 'severed' from the contract. Thus, while it is understandable that you may want to restrict your ex-employees from competing against you, you must be very careful to make sure that any restraint trade of clauses in any employment contract will pass muster before the Singapore Courts. When starting your business, you should thus:

- Consider if all of your employees need to sign a restraint of trade agreement or have a restraint of trade clause in their contract, or whether this can be limited to certain employees who hold key positions in your business.
- Obtain legal advice on how to word your restraint of trade clause or agreement so that the Courts are more likely to find this clause / agreement enforceable.

CAN I PREVENT AN EX-EMPLOYEE FROM SOLICITING MY EMPLOYEES?

Companies are also entitled to protect their interest of maintaining a stable, trained workforce via a non-solicitation clause. Such a clause may restrain the employee from soliciting the employment of other employees in the company.

A non-solicitation clause is valid if, in the Court's opinion, it is reasonable when considering the interests of the involved parties (the company and the employees) as well as the interests of the public. The Court must be satisfied that the clause offers adequate protection to the party, and at the same time does not injure the public interest.

In determining whether the clause is reasonable, the Court will consider the background in which the clause was made. The questions the Court will ask may include the following:

(a) What is the category of employees covered by the clause? Does it cover all employees, regardless of how senior they are? Does it cover employees even though their work involves minimal (or no) expertise? If the answer is yes, it will be more difficult to persuade the Court that the clause is reasonable.

(b) What is the duration of the non-solicitation clause? Is it for a few weeks, a few months or a few years?

(c) Was the non-solicitation clause agreed upon in good faith? Were all parties satisfied with the clause? Or was the employee forced into agreeing to the clause?

Before signing an employment contract containing a non-solicitation clause, both the company and the employee should review the wording of the clause carefully, seek legal advice and carefully consider whether the clause is acceptable to them.

At the end of the day, the best way to maintain a stable workforce is to ensure that the employees are satisfied with their jobs. Eliminating the push factors is probably the best way to guard against the pulls of your competitors!

EXAMPLE

In 2010, Albert and Bryan established Company X together. Company X's business involves selling customised chocolates for parties and weddings. Company X hires non-mainstream workers to wrap the chocolates. Their jobs only involve gluing the wrappers together. They are not involved in the design or the production of the wrappers, nor are they involved in marketing or publicity.

In 2011, Albert and Bryan have a fight, following which Bryan decides to leave Company X. Bryan sets up Company Y, which replicates Company X's business model. Bryan approaches Dawn and Evan, who were employed by Company X to wrap chocolate. Bryan asks Dawn and Evan to join Company Y, and he promises to pay them double what Company X had paid. Dawn and Evan agree.

Albert finds out about this and he is furious. It turns out Bryan's employment contract with Company X stated that Bryan was preventing from soliciting the employment of any of Company X's employees (including employees like Dawn and Evan) for a period of 20 years. If Albert sues Bryan for breach of the non-solicitation clause, it is likely that the Court will hold that the non-solicitation clause was unreasonable and invalid. The clause covers employees, such as Dawn and Evan, whose work involves minimal expertise. Moreover, the non-solicitation clause appears to be unreasonable. It lasts for 20 years, even though Bryan only worked in Company X for 1 year.

EXAMPLE

IF I BUY A BUSINESS, CAN I STOP THE SELLER FROM COMPETING WITH ME?

If you are thinking of buying or selling your business, or any part of it, you may wish to consider including restrictive covenants in the sale and purchase agreement. These provisions may restrict the seller from:

- Soliciting existing customers or suppliers of the business for a specified period;
- Soliciting and employing existing employees of the business for a specified period; and
- Competing generally with the business for a specified period within a specified area.

If you are buying a business, you may wish to ensure that the seller agrees to such restrictive covenants. If not, you run the risk that the seller may then set up a competing business, which may in turn entice the customers, suppliers and employees of your newly acquired business.

If you are selling your business, the buyer is likely to insist on such restrictive covenants, to ensure that the business he/she is buying retains its value. Restrictive covenants are often hotly negotiated because they may impact the value of the business that is being sold, and the purchase price.

The starting point is that all restrictive covenants are void and unenforceable, unless the buyer can show that:

- the clause is reasonable in the interests of the parties and the public; and
- there is a legitimate proprietary interest to be protected.

The restrictive covenant should go no further than necessary to protect the buyer's legitimate proprietary interests.

Therefore, it is essential for any buyer to identify the relevant field of business, geographical area and period for restrictions required for the protection of the target business and not to seek restrictions greater than those actually needed.

In general, the Singapore courts are more likely to uphold restrictive covenants in the context of sale or business, than in the situation where such a clause is in an employment contract. This is partly because they recognise that the buyer is also buying the goodwill (or custom) of the business, and restrictive covenants may be needed to protect this goodwill. Nevertheless, it is important to draft such covenants carefully and precisely and seek legal advice on this. Depending on the facts of your case, your lawyer may also be able to suggest ways to make the restrictive covenants more likely to be enforceable.

There is also another legal limitation on restrictive covenants in a sale of business. Section 34 of the Competition Act prohibits any agreement that has the object or effect of preventing– or restricting competition in any market in Singapore. Any person that infringes the Section 34 prohibition is liable to financial penalties. However, where agreements are directly related and necessary to the implementation of an acquisition or merger, these are exempted from the Section 34 prohibition. Therefore, it is important to ensure that any restrictive covenants that you agree to should be directly related and necessary to the implementation of the sale of your business.

EXAMPLE

In 2012, Anne and Melvin set up Company Y, which runs a successful café in New Town GRC selling food, drinks, and handicrafts made by underprivileged women. In 2013, Anne and Melvin decide to concentrate on the handicrafts business alone, and sell the food and drinks business to Company Z. Company Z insists that as part of the sale of business, Company Y may neither set up another café nor sell handicrafts in New Town GRC for the next six months. The restrictive covenant preventing Company Y from selling handicrafts in New Town GRC is likely to be unenforceable as it is wider than necessary to protect Company Z's legitimate proprietary interests in the food and drinks business that it is buying. Company Y may wish to ask for this portion to be removed from the agreement on the sale of business. This would allow Company Y to sell handicrafts in New Town GRC, without the risk that it may breach the agreement.

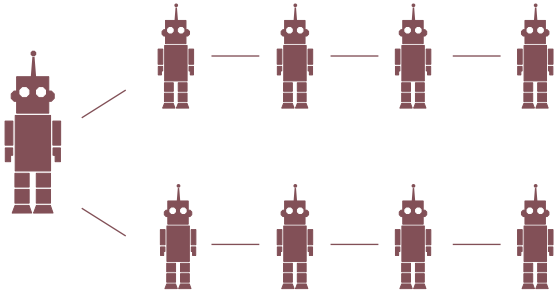
EXAMPLE

CAN I PROTECT MY TRADE SECRETS AND CONFIDENTIAL INFORMATION?

It is prudent to incorporate specific confidentiality clauses into your employment contracts to prevent the dissemination and use of your business's confidential information, including trade secrets. Such clauses seek to prevent your employees from divulging your business's confidential information during and after their employment, and are sometimes subsumed or incorporated into the restrictive clause of an employment contract.

When drafting such clauses, try as far as possible to define what you consider to be a trade secret or more generally, confidential information. You should seek to protect only information which is truly proprietary to your business, or you may compromise your position should the matter have to be decided in Court. If you claim confidentiality over all types of information, the Court is likely to conclude that you do not seriously have any trade secret to protect.

12
FRANCHISING



FRANCHISING YOUR SOCIAL ENTERPRISE

When we think of franchises, large-scale commercial examples such as Subway and McDonald's most readily come to mind. In basic terms, a franchise is a contractual relationship under which the owner of an existing business (the franchisor) grants rights to another party (the franchisee) to run a business using the business model, methods, intellectual property rights and proprietary information of the franchisor. In exchange for fees, the franchisor shares his business know-how and methods and grants a license to the franchisee to use the franchisor's business model, methods, intellectual property and proprietary information.

The franchise model allows the franchisor to retain control over various aspects of the business, usually operational procedures, supply procurement, sales, promotional and advertising programmes, intellectual property rights, goodwill and proprietary information. A larger number of franchisees and sub-franchisees (collectively the 'franchisees') results in greater economies of scale for the franchise participants. The obligations imposed on the franchisee and the degree of autonomy he enjoys may vary significantly from one franchise agreement to another, depending on the industry and market segment of the franchise and the parties involved.

Thus, franchising is a popular business model as business risks are apportioned and resources shared amongst the franchisor and franchisees. A franchisee may find a quicker route to business success through affiliating itself with a reputable brand and adopting a proven business format, rather than having to 'reinvent the wheel'. The franchisor, on its part, benefits from the franchisee's local knowledge and the franchisee's sharing of local investment risks. The franchisor is therefore able to scale up rapidly and expand into different territories, while risking less of his capital.

The principles of commercial franchising can be equally applied to a social enterprise. The model of franchising social enterprises is known as social franchising. A social entrepreneur desiring to maximise his impact with limited resources may look to the scalability promised by the franchise model, particularly if is social enterprise is dependent on donor money. A comparison of social franchising and its commercial counterpart is set out below.

KEY ELEMENTS OF SOCIAL FRANCHISE

The social franchise shares many key elements with its commercial franchise counterpart. Whether you are creating a franchise or evaluating the purchase of rights to operate a franchise, the key elements that you should consider are the following:

(a) Business model and franchise manuals

The business model should be clearly detailed and communicated in a way that allows the franchisee to replicate the processes and systems that the franchisor has used to achieve business success. The business model is usually codified in the franchise manuals that establish comprehensive guidelines for business operations. The franchise manuals usually cover various aspects of the franchised business such as:

- operations;
- advertising and promotional guidelines;
- pricing;
- standards of etiquette expected of service staff and;
- staff training

These are critical components which define the parameters and tone of the relationship between the franchisor and the franchisee, and the blueprint of the business. It is usually shared with the franchisee on a strictly confidential basis. While franchise manuals do not tend to be binding legal documents in themselves, a the franchise agreement may make certain aspects of the operations manual binding or establish obligations requiring compliance with the operating and other guidelines that are set out in the manual. Unlike the franchise agreement, franchise manuals may be frequently updated as the business model of the franchise evolves.

(b) The franchise agreement

The franchise agreement is the main legal contract between the franchisor and the franchisee that sets out the rights and obligations of each party as against the other. As the relationship between the franchisor and the franchisee involves on-going cooperation between the parties, it is important to ensure that key terms such as term, territorial scope, franchise fees and continuing obligations, are expressed clearly in the agreement. A discussion of key terms of a franchise agreement is set out further below. The extent to which the franchise agreement can be negotiated will depend significantly on the relative strengths of the franchisor and franchisees. Strong

franchisors with existing franchise networks may require potential franchisees to sign non-negotiable contracts with standard terms, while strong franchisees with local networks that the franchisor needs may be able to negotiate much more customised arrangements for themselves.

(c) The brand and intellectual property rights

The attractiveness of a franchise to potential franchisees depends largely on the strength of the brand and its market appeal. Strong brands with established customer markets facilitate the franchisee's ability to sell products or services under the brand. It is in the franchisor's interest to protect his intellectual property relating to his brand to the greatest extent possible. If any of the franchisor's intellectual property is used without authorisation or in a way not contemplated by the franchisor, the brand's image may be damaged. A discussion of intellectual property and how it may be protected may be found in Chapter 10.

(d) Standardised training and support system

Many franchisors operate training and support systems to train their franchisees or employees of their franchisees. These training and support systems range from periodic seminars and courses to mandatory training programmes and seminars (which may involve substantial training fees), but they all share the common goal of strengthening the franchise relationship and ensuring that the franchisee introduces and implements systems that are in line with the franchisor's requirements. The particulars of the training and support system are usually set out in the franchise agreement and the operations manual. A strong and well-implemented training programme facilitates knowledge sharing, which is essential to ensure that the business format of the franchise is replicable and that standards are consistent across the franchise. The extent to which such programmes can impinge on a franchisee's operating flexibility can however be a source of tension in the relationship between the franchisor and the franchisee. Understanding the extent to which the franchisor will require the franchisee to implement and comply with such programmes is a crucial part of the due diligence process that both the franchisor and the franchisee will need to undertake in working out the terms of their relationship.

(e) Quality assurance system

Strong franchise brands that have built up significant goodwill do so by providing a consistent brand experience and ensuring that their franchisees meet the standards of quality expected by the customers of such brands. Such franchisors have systems in place to inspect and evaluate the performance of their franchisees. Quality assurance support may involve costs such as personnel and travel costs for facilitating site visits by inspectors. The franchisor may pass on some of these costs to the franchisee through the franchise agreement. The franchise agreement or the training manual may set out some of the qualitative and quantitative measures that the franchisor may use to assess his franchisee, or provide for termination or censuring of franchisees who do not meet the franchisor's standards.

KEY DIFFERENCES BETWEEN COMMERCIAL FRANCHISING AND SOCIAL FRANCHISING

Key differences between commercial franchising and social franchising are as follows:

(a) Incentivisation/motivation of parties

In commercial franchises, both parties are usually motivated by profit, as commercial franchise fees payable to the franchiser tend to correlate with the franchisee's financial performance. Successful franchisees also improve the brand presence of the franchise and raise the value of the franchise.

The social franchise is established for the purpose of promoting one or several social ends. Although certain types of social franchises do also make money, this is rarely the main objective. With multiple incentives, it is more difficult for parties to align goals and priorities. Social impact is also more difficult to benchmark than financial performance – while a franchisee's financial performance can be generally ascertained through examining its revenue and profit, the way social impact is measured depends on the objective of the social franchise, and may be qualitative rather than quantitative.

(b) Selection of franchisees

Commercial franchisors tend to select franchisees on the basis of their commercial potential. Factors they may consider include the potential franchisee's industry experience and expertise, his financial strength and the commonality of his financial objectives with those of the franchisor.

Social franchisors have to assess a larger range of attributes of their potential franchisees beyond their financial and operational ability to run the franchise. "Softer" criteria such as culture and shared values may comprise key selection criteria.

(c) Funding

Banks and other mainstream investors are more comfortable with commercial franchises, as compared to social franchises, as commercial franchises are for-profit enterprises, with less repayment risk.

Investors in social franchises tend to be donors such as trusts and foundations, which have their own internal policies, objectives and investment criteria. The social franchise will need to manage the preferences of these non-profit investors in order to ensure their continued investment in the social franchise.

(d) Sharing of investment risks

Under commercial franchises, franchisees share and reduce the investment risks of their franchisors. The risk of their own financial loss helps to motivate franchisees towards ensuring the success of the franchise.

With the more limited range of funding options available to social franchisees, franchisors may have to provide significant capital support to the social franchisee and bear much of the associated investment risk. This often leads to the franchisor requiring more control over the operations of the franchisee, which may in turn result in fewer franchising opportunities.

(e) Fee structures

Social franchises, unlike commercial franchises, are not motivated mainly by profit. Social franchisors may have to contend with lower fees or request alternative forms of non-monetary consideration, such as requiring the franchisee to collect and share key data.

The franchise agreement is usually prepared by the franchisor's lawyers and the tendency is for the franchise agreement to favour the franchisor.

KEY ELEMENTS OF A FRANCHISE AGREEMENT

Key terms of the franchise agreement that parties should consider carefully and with independent legal advice are as follows:

(a) Exclusivity of rights granted

The franchisor may either grant an exclusive franchise to the franchisee within a specified territory or reserve its rights to grant multiple, non-exclusive franchises. Franchisors that grant exclusive franchises risk overdependence on a particular franchisee for the expansion and the performance of the franchise in the territory specified. Conversely, franchisees may benefit from exclusive franchises as these rights can limit competition from other franchisees within the territory, and give the franchisee greater leverage with the franchisor once the franchise agreement has been signed. Exclusive franchisees may, however, be subject to greater scrutiny by their franchisors given the dependence of their franchisors on their performance.

(b) Geographical territory

The territory specified for the grant of a franchise affects the value of the franchise, as the business potential of the franchise depends on the economic size and value of the potential customer base within the specified territory. Where an exclusive franchise is granted, the territory specified also determines the area in which the franchisee is able to operate without competition. Territory is generally specified along geographical lines, and both franchisors and franchisees should consider carefully how this may impact any cross-border business operations that they may have. For example, enterprises with business assets and customers in different countries will have to review the drafting of this clause to ensure that they are able to sell to their expected customers without violating the territorial limitations specified.

(c) Duration of the term

It is common for commercial franchises to be entered into for an initial term of up to five years or even ten years, with options for further and subsequent renewals of the term. The option to renew on existing terms is often built into the franchise agreement. Alternatively, the option to renew may be subject to renegotiation of terms on the basis of prevailing market conditions or the performance of the franchisee seeking the renewal at the time of renewal. Conditions may be imposed by the franchisor for the option to renew, such as payment of

renewal fees, achievement of pre-agreed performance benchmarks and the absence of material breaches by the franchisee.

(d) Fees

The fee structures of commercial franchises generally include a payment of initial fees as well as on-going fees tied to the financial performance of the franchisee's business. An example of a common fee structure comprises:

- a one-time initial set-up fee;
- a periodic royalty or management fee equivalent to a percentage of the gross monthly turnover of the franchisee;
- a periodic advertising fee equivalent to a percentage of the gross monthly turnover of the franchisee; and
- ad-hoc training fees for training courses and programmes provided by the franchisor.

Parties should look at the calculation mechanics and payment timing for such fees to ensure that the basis upon which these fees are calculated accords with the franchisee's internal accounting methods, and that the franchisee has the ability to pay on time.

Financial metrics such as gross monthly turnover may be adjusted after the auditing of the franchisee's financials, and the franchise agreement may specify an adjustment mechanism under which audited figures are provided to the parties after the relevant accounting period. The party holding on to the excess amount after reconciliation with the audited amount is then required to refund such amount to the other party.

The franchisor may also require franchisees to disclose their books and records if the franchisor disputes any amounts payable, or require periodic independent inspection and auditing of such books and records, to ensure that fees are properly calculated and paid.

As discussed above, social franchises may have different fee structures given the non-profit nature of the enterprise. Franchisors may also request other forms of consideration such as the provision of data under social franchise agreements. If such alternative forms of consideration are contemplated, the way the consideration is valued and furnished should be carefully negotiated and drafted to avoid ambiguity.

(e) Obligations of the franchisor

The franchisor's initial obligations primarily relate to assisting the franchisee in setting up his business. These include advice on the selection of premises and hiring and training of staff, the provision of the operations manual, assistance with setting up human resource and management functions, advertising and management support, and assisting with supply and procurement of equipment and products. The franchisor may also have on-going obligations to supply the franchisor with specified products or provide continued business development.

(f) Obligations of the franchisee

As compared to the franchisor, the franchisee tends to have fewer initial obligations, The franchisee's on-going obligations are more extensive. These may include obligations such as compliance with the operations manual and the standards required by the franchisor, requiring the proper use of the franchisor's intellectual property rights and requiring that the franchisee provides appropriate training and development to his employees. These requirements allow the franchisor to maintain legal recourse against the franchisee in the event that the franchisee's failure to comply with those requirements results in damage to the image of the brand. The on-going obligations of the franchisee tend to be broadly drafted, so as not to inadvertently restrict the franchisee's operations by being too narrowly prescriptive without regard to the constantly changing circumstances inherent to most businesses. Conversely, broadly drafted obligations and the flexibility of their interpretation also give the franchisor more latitude in invoking the franchisee's non-compliance with such obligations, as a means of intervening in the franchisee's business. The general obligation to comply with the franchise manuals (usually pertaining to operations, etiquette and training) also gives flexibility to the franchisor, as the franchisor typically reserves the right to update franchise manuals from time to time and to impose new requirements on the franchisee, without having to amend the executed franchise agreement.

The franchisee may also be subject to obligations to provide the franchisor with its financial statements and management accounts on a periodic basis, to facilitate the franchisor's monitoring and evaluation of the franchisee's financial performance.

(g) Advertising and marketing

Where the franchisor carries out centralised advertising and marketing activities in exchange for a monthly levy on the franchisee, there may be provisions prescribing the scope and type of advertising and marketing activities to be conducted by the franchisor. The franchisor tends to retain considerable discretion in determining what advertising and marketing activities to conduct, but may provide an undertaking not to use the levy for purposes other than advertising and marketing of the business.

The franchisor has an interest in presenting a consistent brand appearance and preventing damage to its brand reputation. Consequently, the franchisee is usually only permitted to carry out advertising and marketing activities with the prior authorisation of the franchisor and only if such activities are in accordance with the policies and instructions of the franchisor.

(h) Insurance

The franchisor may require the franchisee to take out insurance for third party liability, and insurance for employees, loss of profit and property damage. The franchisor may also require the franchisee to note the franchisor's interest on the policies and demand the provision of copies of insurance policies to the franchisor.

(i) Termination and suspension

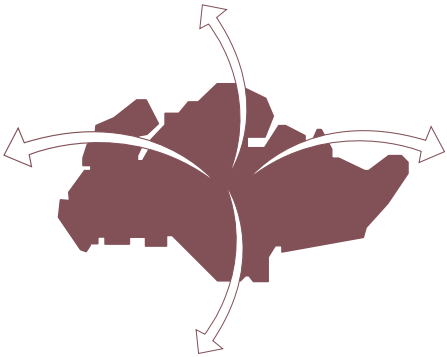
The termination provisions of a franchise agreement tend to be crafted to allow the franchisor to withdraw its rights and revoke or suspend the franchise rights granted to the franchisee if the franchisee commits a material breach of the terms of the franchise agreement. The list of breaches deemed material enough to trigger termination is usually set out in the same provision. Other grounds for termination that parties may consider may include a change of control of a party or the commencement of insolvency proceedings against a party.

(j) Dispute resolution

Other than standard court resolutions, franchise agreements usually include alternative dispute resolution provisions that may specify negotiation and 'cooling off' timelines, or provide for the appointment of third party mediators, or for the submission of disputes to arbitration. Means of alternative

13

CROSS-BORDER OPPORTUNITIES



CROSS-BORDER TRADE: WHAT TO LOOK OUT FOR

In helping your business grow, you may consider opportunities beyond Singapore's borders at some point in your social enterprise's lifetime.

For the purposes of this toolkit, we will broadly define any such international opportunity as a 'cross-border' opportunity. Cross-border opportunities may present a number of advantages for your business, whether through access to cheaper, higher quality or more varied supplies, or by opening new markets in which you can sell your goods or services.

Although there may be great potential for expanding your business outside of Singapore, you should satisfy yourself that you are fully informed of the potential and possible operational and legal risks related to your proposed venture and its industry. This chapter briefly outlines some of these business and legal considerations.

CROSS-BORDER OPPORTUNITIES KEY CONSIDERATIONS

BUSINESS	LEGAL
• Strategy formulation • Finding the right country • Finding the right partner • Foreign currency risk • Changes to applicable task and duty regimes	• Choosing legal representation • Choosing an appropriate operating structure • Conducting due dilligence • Drafting agreements • Local laws and regulations

(A) CHOOSING LEGAL REPRESENTATION

Local legal representation is crucial to the success of your venture. Local legal counsel are equipped and qualified to advise you on a myriad of issues pertinent to the local legal landscape. Examples include property-related issues (such as rent or purchase of business premises), tax-related issues (such as applicable value added tax, sales tax or corporate income tax) or employment-related issues (such as advising on employment contracts and working conditions for potential employees).

Although high legal fees are a concern for most business persons, most lawyers are happy to meet with potential clients prior to signing any engagement letter or demanding fees of any sort. Such preliminary meetings give potential clients the opportunity to conduct informal interviews and fact find, as a means of ascertaining if they are comfortable with the lawyer in question, and to gauge the quality of their legal advice. Furthermore you do not need to seek out the biggest or most sophisticated law firm available since a small firm may provide the same quality of service and be the most appropriate advisor for your starting business. Foreign law expertise is available locally through Singapore law practices (SLP) with foreign desks or offices, as well as through foreign qualified law practices (FQLP) licensed to practice in Singapore. For assistance, please contact the Law Society of Singapore (for SLPs) or the Singapore Academy of Law (for FQLPs).

You can also seek out references for legal counsel through word of mouth or through your potential business partners in the relevant foreign jurisdiction. Regardless of the manner by which you select your local counsel, a competent local legal advisor will be invaluable as you expand your business across borders.

(B) CHOOSING AN APPROPRIATE OPERATING STRUCTURE

The structure you choose for your business is dependent on your business plans, local labour and legal requirements, foreign exchange controls and taxation policies, to name a few. Each structure possesses its own distinct advantages and disadvantages and you should discuss this in greater detail with your appointed foreign lawyer.

For example, you may choose to establish a branch office or subsidiary in the country, which would usually mean hiring

local employees. Local employees can provide a loyal local presence that represents your enterprise and may provide you with valuable market information in a timely manner. However, establishing a branch office takes up valuable finite resources such as your time and money, may leave you more susceptible to taxes and lawsuits in the foreign country as you now have an established presence in the country, and may increase your compliance costs as you now have to comply with foreign employment laws and regulations as well as local income taxes, to the extent that they apply to your branch office's employees. Alternatively, relying mainly on your foreign business partners is certainly more cost effective but may leave you beholden and give them leverage over you.

(C) CONDUCTING YOUR DUE DILIGENCE

You must ensure that you conduct appropriate due diligence on your business plan and your potential foreign business partners. Due diligence is the process by which you verify or obtain information about material business concerns, such as your business partner and its operations, or identify material issues that may affect your cross-border operations.

Due diligence may also be conducted on your behalf by hired professionals, such as accountants, risk management and market consultants or lawyers; you should note that this can be an expensive process.

However you choose to conduct due diligence, it remains a necessary ingredient for successful expansion of your cross-border operations. The findings of your investigations can have a substantial, and even profound, effect on the commercial terms of your cross-border operations, because your investigations allow you to identify and, in turn, potentially quantify the pertinent commercial risks to your cross-border business plan. For example, as a result of your due diligence, you may decide that because a potential foreign supplier lacks the necessary machinery in his operations to consistently provide you with high quality supplies, the risk of receiving shoddy quality supplies from this particular supplier are so great that it is not worth engaging the supplier at all.

(D) CONTRACTS

Any contracts that you sign with foreign parties will constitute the legal framework of your operations abroad. Hence, you must give careful attention to the content and form of these agreements. It is very important that you clearly agree, with your counterparty, what the overall purpose of the contract will be.

The purpose of the contract has a direct impact on a contract's scope and terms, and the resulting contract's legal implications (summarised in table below).

Some of these legal issues take on particular importance in the context of cross-border transactions:

• Language

Both parties must agree to the language in which the contract will be drafted. In certain cases, both parties can agree that the contract be drafted in English and another foreign language. The purpose of this is to allow for greater understanding of the terms by both sides, as the terms should be identical across both languages. However, parties must still decide on which document will be the operative document in the case of inconsistencies between the English and foreign language versions.

SOME STANDARD TERMS FOUND IN ALL CONTRACTS

- Nature of the goods or services to be provided
- Consideration to be provided in exchange for such goods and services
- Each party's right to terminate the contract including exit strategies (or ways in which the contract can be ended and for you to acquire the shares of the other shareholders or to allow you to sell your shares to the other shareholders)

ADDITIONAL LEGAL ISSUES TO CONSIDER

- Language
- Payment
- Governing law and forum
- Arbitration as opposed to litigation
- Intellectual property

• Payment

From a commercial perspective, the point at which funds change hands between parties is a very important event that a contract has to clearly account for. The risks associated with payment can generally be divided into either:

- paying too soon and not receiving the good or service in return; or
- not receiving payment having already provided the good or service.

Contracts can help to mitigate these payment risks by specifying exactly when and how payment will be made. You can choose to build into your contract specific payment mechanisms, such as letters of credit or escrow accounts, that can help to ensure that the funds are transferred between parties at the appropriate time.

A letter of credit (commonly referred to as an 'LC') is a document issued by a bank to another bank that guarantees the payment by a specified person (or entity) upon specific conditions being met.

Escrow accounts are accounts into which funds can be deposited by one party and such funds will not be released to the counter party until the escrow agent, a neutral third party, has determined that certain previously specified conditions have been met.

Essentially, both letters of credit and escrow accounts serve as mechanisms for the parties to manage their risks while still guaranteeing payment so long as the goods or services are provided in a satisfactory manner. Additionally, in the case of international contracts, it is of particular importance that the contract should specify a mutually agreed currency in which payment should be made.

• Governing law and forum

The governing law of a contract is the law of a particular jurisdiction under which the terms of the contract will be interpreted. The governing law should be specified in the contract to prevent uncertainty should disputes arise. Both parties will typically want their own country's law to be the governing law of the contract. The governing law can often be the law of the jurisdiction in which performance of the contract

takes place. Alternatively, the governing law need not be the law of the jurisdiction of either party, and can be the law of a developed legal system.

For example, English law is often selected as the governing law for commercial contracts, even though neither party is an English corporation. This is because English law provides a more stable basis for interpreting any disputes under the contract. It is also a growing trend to subject the contract to Singapore law, due to Singapore's reputation as a highly regulated financial/business hub with a highly efficient legal system. Insisting on Singapore law is advantageous as it gives you 'home ground' advantage and greater familiarity. The forum clause of a contract specifies the exact dispute resolution process for any disputes under the contract and the physical location where such a process will take place.

Forum clauses may also state whether any disputes would be interpreted under the exclusive or non-exclusive jurisdiction of the courts of a certain legal system. Claiming 'non-exclusive jurisdiction' means that court proceedings may be brought in any other jurisdiction aside from the jurisdiction specified in the contract, whereas claiming "exclusive jurisdiction" means that any dispute would be heard by the courts of the legal system named in the contract. Exclusive jurisdiction can provide more certainty for you and your business as to where potential legal disputes may arise, while non-exclusive jurisdiction affords you the flexibility to change the forum, if appropriate. Whether you choose exclusive or non-exclusive jurisdiction would primarily depend on your comfort level with the legal system specified in the contract.

The dispute resolution process can either be undertaken through the court system or through arbitration. This choice is discussed in greater detail under, 'Arbitration, litigation and mediation', below. If, for example, a forum clause states that arbitration will be the method of dispute resolution, the forum clause may go on to specify that the arbitration must take place in Singapore. In turn, the governing law clause may specify the arbitration rules and procedures that would be used to govern that arbitration are the rules of the Singapore International Arbitration Centre.

Forum clauses can be very important as you will want to minimise traveling expenses for attending proceedings and the general inconvenience of attending proceedings in a remote location. When one party holds a negotiation advantage over another, the terms of the forum and governing law clauses may be dictated to the weaker party. Both forum and governing law are very important in maximising the likelihood of achieving a successful resolution to any dispute. Subjecting yourself to the jurisdiction of the courts or governing law of a country with an underdeveloped legal system can profoundly increase the overall risk associated with your cross-border activities in that country. On the other hand, it may allow you to enforce any judgment you might obtain against a foreign counterparty with greater ease. Consequently, the importance of the governing law and forum contractual terms should not be underestimated.

- **Arbitration, litigation and mediation**

Parties can choose to have either the courts or an arbitrator adjudicate on any disputes. Arbitration is seen as a customary and popular alternative to the court system as the arbitration process, while still not cost-free can avoid the delays and potential unpredictability of foreign courts. It is generally recommended that unless both parties are particularly comfortable with the courts of the relevant legal system, that arbitration should be the preferred method of dispute resolution. The arbitration clause in the contract must be clear about both the seat and rules of the arbitration (see 'Governing law and forum', above) as well as the intention of both parties to seek arbitration as the method of dispute resolution. Details such as how the arbitrator will be chosen, the number of arbitrators and the language of the arbitration proceedings should all be stated within the relevant terms in the contract.

A contract may also specify that parties should seek mediation prior to utilising the courts or an arbitrator. Mediation involves the use of a third-party to assist all parties to resolve their differences prior to commencing court or arbitration proceedings. Accordingly, mediation can be a helpful cost-saving tool in affording you the opportunity to avoid costly litigation or arbitration. The mediation process and its results are typically confidential.

• Intellectual property

Often, you may find yourself in a situation where you will be sharing your intellectual property with your cross-border business partners. Intellectual property may come in a variety of forms, but commonly includes trade secrets and trade marks (such as your logo), designs (products' look and feel) and patents (inventions). At the very least, your rights and the rights granted to the other party should be outlined and set out in a contract. Typically, such a contract should specify what is being licensed, the duration and purpose of such license and the remedy in case of any infringement of the licence. You should seek intellectual property protection in the jurisdictions in which you operate. Although it might provide greater security to seek protection in as many jurisdictions as possible, the cost of doing so may become prohibitively expensive. Typically the three largest jurisdictions for patent filing are the USA, the EU and Japan. For further details on intellectual property, please refer to chapter 10 of this toolkit.

• Local laws and regulations

Local laws and regulations may vary deeply across countries. As noted before, there is no substitute for advice from competent local counsel, and this is one of the many scenarios where tailored legal advice providing an overview of the legal and regulatory framework in which you are expected to operate would be particularly helpful. The following points are potential local wrinkles that may materially affect your cross-border operations:

• Tax

Singapore benefits from a relatively simple corporate tax system, but the same cannot be said of many countries in the region. Local tax advice will prove invaluable in determining whether you need to pay tax, and if you do, how much. The advice may even help you make decisions on other aspects of your expansion. For example, tax advice may directly impact the corporate structure you choose to adopt for your expanded operations.

• Foreign ownership

Many countries have strict and wide ranging rules governing foreign ownership of property, corporations or other types of assets. These rules may have an impact on your ability or interest in investing in a particular jurisdiction. For example,

rules may require joint ownership of property with a citizen of that jurisdiction and if you are unable to locate a desirable partner you may wish to invest elsewhere. Another point of consideration is the rights of foreign investors or foreign property owners in that jurisdiction, as a jurisdiction that restricts foreign ownership may also curtail the rights and benefits of foreign investors and property owners. Countries may also institute rules and regulations to prevent the use of 'dummy' organisations or trustees to circumvent such prohibitions. Therefore, you should always seek local legal advice when considering asset ownership abroad.

- **Foreign exchange controls**

Although Singapore has a freely convertible currency, many countries, particularly in Asia, have implemented relatively stringent foreign currency conversion controls. This means that your enterprise may encounter difficulty in converting certain foreign currencies into Singapore dollars. This may not be problematic if you intend to continue to utilise the profits generated in the foreign currency in the foreign jurisdiction (for example, to purchase additional supplies), but may be a significant issue should you intend to repatriate the funds back to Singapore, which may require permission from the local authorities. Foreign exchange controls are particularly relevant in a scenario where you are earning income in the foreign currency (For example, from sales of your goods or services in that country) and you wish to repatriate such currency back to Singapore to use as desired.

- **Industry specific regulations**

Depending on the industry in which you operate, you may have to deal with specific industry regulations in the foreign jurisdiction that may be entirely unlike what you are exposed to in Singapore. It is vital that you adequately research the applicable local laws and regulations that affect your cross-border operations so that you appreciate the issues raised. For example, your cross-border operations may require that you obtain various licenses to do business in the foreign jurisdiction of your choice. Alternatively, your business may be affected by rules and regulations governing the import and export of certain types of materials or equipment.

- **Employment**

Where your cross-border operations envisage the employment of persons in the foreign jurisdiction, you must take special care to ensure compliance with all applicable employment laws and regulations of that jurisdiction. Countries can have widely differing rules that govern any number of employment-related areas such as minimum wage, frequency of pay, working conditions, hours of work, vacation, termination, pensions and benefits. It is important that you or the appropriate person in charge of employment matters is well versed in these regulations to ensure that your enterprise does not fall foul of the law.

- **Intellectual property**

As noted above, you may find yourself in a scenario where you are sharing your intellectual property with your foreign business partners. Prior to sharing such information, it is important that you assess the effectiveness of the foreign jurisdiction's judicial system in protecting intellectual property. For example, the 2013 Office of the US Trade Representative Special 301 Report identified India and Indonesia, among others, as states that have judicial inefficiencies for enforcing intellectual property rights. Only after identifying such risks can you decide if the commercial terms of the transaction are acceptable.

Although this chapter focuses on legal considerations, there are a number of basic business considerations which you should consider when you determine the extent of cross-border operations of your enterprise. These considerations include, but are not limited to:

BUSINESS CONSIDERATIONS FOR CROSS-BORDER OPERATIONS

(A) FORMULATING A STRATEGY

Before looking abroad, you will want to ensure that you identify the benefits to your business of such an expansion. You should be sure that such benefits are worth the additional risk of doing business with partners outside of Singapore. For example, would you consider taking on a supplier based in another country, with no proven track record in Singapore, and no references, if doing so would only lead to a minimal increase in your profit margin?

(B) FINDING THE RIGHT FOREIGN MARKET

This goes hand-in-hand with formulating your strategy for

international expansion. In identifying a country into which to expand your business, you will want to take into account not just geographic proximity, but also its political and macroeconomic stability, the fairness and clarity of the legal system, any potential language barriers and its business culture. Not only would you concern yourself with 'macro' reasons such as the economy and stability of a country, you would also need to conduct research on the particulars of the market in that country for your goods or services. This includes investigating the extent of potential demand for your goods or services as well as the existence of competition or substitute goods and services in that jurisdiction. You may consider hiring a consultant that is particularly knowledgeable about your industry, the potential foreign market, or, preferably, both, to help you form an informed decision.

(C) FINDING THE RIGHT PARTNER

After you have identified a strategy and destination for your international operations, you need to undertake the necessary steps to identify your future business partners including business due diligence. Effective business due diligence allows you to confirm that potential business partners can uphold their end of the bargain and to identify any potential issues that may jeopardise your operations. You can conduct due diligence yourself by visiting your partners at their business sites. For example, if you are signing a supply agreement with a foreign supplier, you should strongly consider visiting the factory where they expect to produce the goods that you are buying. Site visits are an effective way to ensure that the quality of the production process and the raw materials meet your requirements. You can also conduct due diligence through interviews with your business partners in order to better understand their business and how they can help your operations. In your search for your future partners, you should consider factors such as cost, track record and cultural fit.

(D) FOREIGN CURRENCY RISK

Depending on the exact business objective of your cross-border operations, you will want to consider the risk of the relevant foreign currency appreciating or depreciating against the Singapore dollar. Generally speaking, any appreciation of the Singapore dollar against a foreign currency will make the purchase of goods and services from that foreign country cheaper, while the depreciation of the Singapore dollar against a foreign currency will make any goods and services you may sell in the foreign country

relatively cheaper, assuming that you used Singapore dollars in producing the goods. Banks and financial institutions may be able to provide you with hedging instruments that help to limit your foreign exchange risk, but such instruments can be extremely risky if not properly structured, and the accounting and tax treatment of such instruments can be complicated.

(E) APPLICABLE TAX AND DUTY REGIMES

You will need to consider if your business operations may incur tax liabilities in a jurisdiction outside of Singapore. If this should happen, this will likely complicate matters for you and it may require you to hire persons in the relevant foreign country to assist you in calculating and paying your liability. Duties for goods being imported into Singapore or for goods being exported to the foreign country of choice may also have a material impact on your bottom line as they can quickly add to your overall costs. You should also be aware that both taxes and duties are subject to changes beyond your control. Such changes can take place for entirely political reasons, and some of these changes may quickly reduce the financial viability of your cross-border operations.

CONCLUSION

The lists above are not intended to be exhaustive. You should conduct your own research through formal means (such as reaching out to the relevant government agencies in the foreign country of choice) and informal means (such as reaching out to business associates and colleagues with experience either in operating in your industry or in the relevant jurisdiction).

If you have the available funds, you may wish to consider hiring a consultant in Singapore that can advise you on cross-border expansion by providing you with solutions tailor made to your business strategy and product and/or service. Finally, it bears repeating that having competent local counsel advising you on such issues will be of great value and the identification and engagement of such counsel should be a high priority if you do intend to expand your operations abroad

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INSURANCE

PROTECTING YOUR BUSINESS AND YOURSELF

Insurance is a pervasive feature of modern life. Most of us have some combination of medical, life and vehicle insurance, but while most individuals will be adequately covered by these types of insurance, a business enterprise has different and greater needs, which require alternative forms of insurance.

In choosing from the many forms of insurance available to enterprises, you should be guided by industry practice, professional advice as well as your own business acumen. What may be considered sufficient and/or comprehensive insurance coverage can vary considerably between enterprises and industries.

A common misunderstanding is that your personal insurance policies cover your corporate assets. They do not, particularly if you choose a company, rather than a partnership or sole-proprietorship, as your business vehicle. This is because the assets you intend to protect with your personal insurance may belong to the company, not you. Even if the company is wholly-owned by you, you are not deemed to have an insurable interest in the asset.

EXAMPLE

Consider this example: ABC Pte Ltd (ABC) is a company which is wholly-owned by a single shareholder, June. June has a general insurance policy to cover property damage. ABC owns a warehouse, which is destroyed in a fire.

In this case, June's insurance policy will not cover this damage as the warehouse is owned by ABC not June. This is a natural consequence of ABC enjoying a separate legal identity, distinct from June. This was discussed in Chapter 2. On the other hand, partnerships and sole-proprietorships, existing only as extensions of their owners, cannot own property and do not face this issue.

EXAMPLE

The following is a list of the types of insurance you may want to consider:

a. Business interruption

To protect against temporary interruptions to your business such as SARS, haze-related work stoppages, etc.;

b. Livestock

Recommended for aquariums and farms;

c. Credit risk

To cover the credit risk posed by your customers or suppliers; and

d. Vehicle and property

To cover vehicles, inventory and capital assets such as warehouses.

Additionally, companies in certain industries are statutorily required to purchase professional indemnity, third party liability and other forms of insurance policies designed to protect the general public or customer against negligence. As a business owner, the onus is on you to arrange this, and you should verify with your advisors whether you are required to obtain insurance.

This list is not exhaustive, and may not be suitable for every enterprise. To determine whether you should insure against a particular type of risk, you should consider factors such as:

a. Effect on your business

Would the loss prove to be catastrophic;

b. Likelihood of damage occurring;

c. Cost of premiums

Is the insurance policy cost-effective; and

d. Extent of coverage

Does the insurance policy adequately compensate you for loss? You should examine the exclusions in the policy otherwise you may find that you have invalidated the policy by engaging in prohibited activities.

THE THREE MOST COMMON TYPES OF INSURANCE

The following types of insurance are relevant to all enterprises, and will be discussed in greater detail:

a. Keyman Insurance;

b. Directors and Officers Liability Insurance; and

c. Shareholder Protection Plans.

(a) Keyman Insurance

Although the loss of key personnel will affect all businesses to

varying degrees, small and medium sized enterprises invariably depend on one or two key personnel to drive growth and generate revenue. Losing these key personnel may affect the business in a significant way, which could lead to an inability to continue.

You may not be able to tap a large talent pool but you can institute continuity planning by taking out keyman insurance. This protects your business against the loss of profits caused by the death of key personnel. The payouts can then be used to hire a replacement and to allow your business the time to regroup.

Premiums for keyman insurance may be tax deductible if the following circumstances are met:

- the policy has no surrender value;
- the potential payout does not exceed annual profit of the company; and
- money is payable to the company, rather than the keyman or a third party.

(b) Directors and Officers Liability Insurance (D&O Insurance)

In Chapter 4, we discussed director's duties and liabilities. Directors and officers can be regulated by various government entities such as ACRA, the AVA, the Ministry of Health, the Competition Commission, the Charities Commissioner, etc. They may be liable to penalties such as fines or imprisonment for their actions or omissions.

In such situations, directors and officers will naturally want to engage legal counsel to defend themselves. D&O Insurance will cover these costs (subject to claim limits), thereby avoiding out of pocket expenditure.

Even if a claim is never made, D&O Insurance can help attract talent to your business, by assuring prospective candidates that their interests will be protected. It is not uncommon for candidates to insist on D&O Insurance coverage before joining a company.

(c) Shareholder Protection Plan

In many ways, small businesses are like families. The owners, even if they hold minority stakes, have significant sway in the administration of the business. The relationship between the owners, if not collegial, should at least be on a working basis; otherwise the business runs the risk of paralysis.

Business operations may also be hindered when one owner dies and his next-of-kin inherits his stake in the business. It would be quite natural for the next-of-kin to either want to assume the role the deceased played, or to extract his share of capital from the business.

The remaining owners may not want the next-of-kin as a business partner, but may not be financially capable of buying him out. In addition, most companies have articles which limit the ability of shareholders to transfer their shares, and the next-of-kin may feel aggrieved that he is unable to sell his shares to a third party. Whatever the case, requiring an unwilling owner to hold on to his shares is not a recipe for harmony in the business. The solution is for the company to purchase a life insurance policy for each owner with the proviso that upon receipt of the death benefit, the next-of-kin are legally obligated to transfer the shares belonging to the deceased to the remaining owners.

This arrangement is given effect by a shareholders' agreement with a put and call option. You should be careful to ensure that the shares are transferred to the other owners and not the company, as transfer to the latter will constitute a reduction in capital and require a court order.

Additionally, the shareholders' agreement should be prepared by a lawyer as it is a very technical and complicated document and its terms may vary widely according to the circumstances. This is not the time to skimp on legal advice!

The premiums for the life insurance policy may be tax-deductible as a business expense in providing an employee benefit.

Shareholder protection plans can help persuade prospective investors to take ownership stakes in a company. It demonstrates foresight on the part of the owners by allowing their share in the business to be monetised after their death.

On a related note, it would also be advisable for each owner to prepare a will as some life insurance policies do not permit the holders to nominate their beneficiaries. As such, the insurance money will be directed to the estate of the deceased and distributed according to the will or rules of intestacy (if there is no valid will). Distribution of assets pursuant to a will is much

faster and cheaper than in an intestate distribution. Thus a will puts money in your family's hands much more quickly. It is also prudent to consider donating your powers in a lasting power of attorney so that your donee is able to step into your shoes to run your business, should you become mentally incapacitated.

It is not uncommon for business owners to focus on revenue, rather than costs. Insurance is undeniably a cost, but the annual premiums are generally not prohibitively high, and when you view it against the annual turnover of the business, and the scope of protection against loss such costs may appear quite reasonable.

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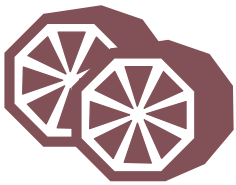
PRODUCT LIABILITY



WHAT IF SOMETHING IS WRONG WITH YOUR PRODUCT?

If there is something wrong with my product, will my social enterprise be exposed to any liability? Will customers be able to make claims against my social enterprise? What liabilities will my social enterprise be exposed to? These are some of the things that you may be concerned with if you are running a social enterprise.

WHICH LAWS APPLY?

- The Lemon Law, officially known as Part III of the CPFTA;
- Sale of Goods Act Chapter 393, of Singapore (SOGA); and
- The common law tort of negligence.

WHAT DEFECTS ALLOW A CUSTOMER TO MAKE A CLAIM?

Under the Lemon Law and the SOGA, a product is defective where:

(a) The product does not correspond with its description in the contract of sale between you and the customer.

EXAMPLE

For example, you advertise on your website a bottle of red wine but deliver a bottle of white wine.

EXAMPLE

(b) The product is not of satisfactory quality. Factors affecting quality include:

- fitness for all the purposes for which goods of that kind are commonly supplied;
- appearance and finish;
- freedom from minor defects;
- safety; and
- durability.

EXAMPLE

For example, a baby chair which has a tendency to topple over or a wooden chair with splinters sticking out of the seat.

EXAMPLE

(c) The product does not correspond to the sample you had shown to the customer on which he based his decision to buy your product.

EXAMPLE

For example, the customer orders a leather sofa based on the leather sample in the showroom but the leather sofa delivered differs from the sample in that it has many blemishes and is of a different colour.

EXAMPLE

TIMING OF THE CUSTOMER'S COMPLAINT

Under the Lemon Law, if a customer reports a defect in your product to you within 6 months of taking delivery, the law **presumes** that the defect existed at the time of delivery and that you have to rectify the defect. If you want to prove otherwise, the onus is on you to disprove the presumption.

If the customer reports the defect after 6 months of taking delivery, the customer will have to prove that the defect was there at the time of delivery.

WHAT YOU HAVE TO DO TO MAKE IT RIGHT – THE 4 'RS'

Under the Lemon Law, if you are obliged to rectify the defective product, the consumer can ask you to either:-

- **Repair** the product; or
- **Replace** the product.

If repair or replacement is possible, you have to do so. You have to repair or replace the product within a reasonable time, without causing significant inconvenience to the customer, and bear any necessary costs incurred in doing so.

However, if repair or replacement is impossible or disproportionate in cost to the remedies below, you can choose to either:-

- **Reduce** the price to be paid by an appropriate amount; or
- **Rescind** the contract of sale (i.e. you refund the consumer in exchange for the return of the product).

OTHER TYPES OF CLAIMS

Under the SOGA and contract law, a customer who has purchased a defective product, can depending on the circumstances, exercise one or more of the following remedies against you:

- Repudiate the contract of sale i.e. he can reject the defective goods and claim for damages.

- Claim the difference between the market value of the product and the actual value of the defective product.
- Claim the additional or wasted expenses arising out of your supply of the defective product if it was within the reasonable contemplation of, i.e. envisaged by, you and your customer at the time of entering the contract that such additional or wasted expense would be incurred by your customer should your product be defective.

EXAMPLE

For example, your buisness customer spent money advertising the launch of a new product you were supposed to supply to him. However the product was defective and was never launched. As a result, he was out of pocket for the advertising cost due to no fault of his. He may then claim or recover this advertising cost from you.

EXAMPLE

- Claim for any loss of profit caused by the defective product if it was envisaged by you and the customer at the time of entering the contract that your customer was intending to use the product to make a profit.

- Claim for damage caused to other property of your customer if it was envisaged by you and your customer at the time of entering the contract that the product if defective was not unlikely to cause loss of, or damage to, other property belonging to your customer.

EXAMPLE

For example, you supply gas tanks to coffee shops. The gas tanks are defective. One gas tank explodes and damages a coffee shop. The owner of the coffee shop may claim against you for damage to his property.

EXAMPLE

- Claim for injury caused to persons if it was envisaged by you and your customer that the product if defective was not unlikely to cause injury.

EXAMPLE

For example, you manufacture and sell tee-shirts. Your customer gets dermatitis and there is a report that proves that the disease was caused by the use of certain chemicals in the manufacture of your tee-shirts. You may be liable for the customer's medical bills.

EXAMPLE

- Claim for disruption to the buyer's business caused by the defective product.

EXAMPLE

For example, you supply batteries to a car manufacturer and these are installed in their cars. Your batteries are defective and cannot be used and their production line has to be stopped. The cost incurred in having to shut down the production line and to source for an alternative battery supplier may be claimed against you.

EXAMPLE

NEGLIGENCE

The Lemon Law and the SOGA allow a customer to claim against you for defective products under a contract of sale. However, even where there is no contract of sale between you and a claimant, the law allows this claimant to sue you under negligence for any injuries or loss suffered if these injuries or loss are caused by your defective product.

EXAMPLE

In the classic case involving ginger beer sold in bottles, the claimant's friend had bought a bottle of ginger beer for the claimant from a cafe, which the claimant drank, only to discover the remnants of a decomposed snail in the bottle. She suffered from shock and severe diarrhea. She sued the ginger beer manufacturer for failing to provide a system of working his business which would not allow snails to get into the ginger beer bottles and for failure to inspect the bottles before filling them up. The Court found that the ginger beer manufacturer was negligent and awarded damages to the claimant. This was in spite of the fact that there had been no direct contract between the manufacturer and the claimant.

EXAMPLE

This case has been followed and considered good law in Singapore. The Singapore Courts have also consistently found that manufacturers of goods are under a duty of care to ensure that their products are not defective.

Therefore, if your product is defective, you may be liable not only to the person who has purchased the product from you, but also to other persons who have not dealt with you directly but have suffered injuries or loss due to the defect in your product. And you may be liable to compensate them for these injuries or loss.

WARNING LABELS ON YOUR PRODUCT

If your product is inherently dangerous, you should place labels or warnings to caution users of the dangers, so as to discharge the duty of care placed on you under the law of negligence. For example, if you manufacture and sell small toys intended for toddlers, you should warn potential buyers that they may be choking hazards. Other examples are hair dye that may cause skin problems or hair spray that may be highly flammable in certain conditions or may cause allergic reactions.

EXCLUSION AND LIMITATION CLAUSES

In a commercial relationship, exclusion and limitation clauses can be effective if reasonable. However, these clauses do not apply in situations where you supply products to a consumer. Section 7(2) of the UCTA provides that *'As against a person dealing as consumer, liability in respect of the goods' correspondence with description or sample, or their quality or fitness for any particular purpose, cannot be excluded or restricted by reference to any such term.'* So for example, if you are supplying batteries to a car manufacturer you may be able to contract to exclude or limit your liabilities to the car manufacturer should your product be defective but if you are selling one battery to a car owner, the law does not allow you to exclude or limit your liability in relation to him. For more information on exclusions and limitation of liability clauses, please refer to Chapter 5.

INSURING YOURSELF AGAINST PRODUCT LIABILITY

It may be worthwhile to purchase product liability insurance because claims due to defective products can be fairly large. Such insurance typically provides coverage against claims for personal injury and property damage caused by defective products, and legal costs and expenses in defending against product liability claims. For more information on insurance, please refer to Chapter 14.

LIMITATION PERIOD

The law prevents claimants from making claims against your social enterprise after a certain period of time.

Generally speaking, the rule is that for claims founded on contract, these cannot be brought against your social enterprise after the expiration of 6 years from the date on which the cause of action accrued i.e. the date you delivered the defective product to your customer.

For negligence claims, once the damage has occurred, such claims must be brought within 6 years; or should the damage

only be discovered later, the claimant has 3 years from the date he knew of and had the right to bring an action, to commence his action, whichever is later.

Specifically for negligence claims where there are personal injuries caused by your defective product, such actions cannot be brought after

- 3 years from the date on which the cause of action accrued or
- 3 years from the date on which the claimant had the knowledge required for bringing the action, whichever is later.

In all cases, 15 years from the date the cause of action accrues is the long-stop date by which claimants can no longer bring an action.

EXAMPLE

Illustration: Your social enterprise sells a beauty cream that causes cancer. A customer buys and uses your cream; and is diagnosed with cancer 10 years after she bought and used the cream. According to the law relating to limitation periods for negligence which gives rise to personal injury, she has 3 years to bring her claim against your social enterprise. She has 3 years from the time she is diagnosed with cancer to sue your social enterprise. If she brings her claim after the 3-year period (e.g. 13 years and 1 day after she bought the cream), she will be prohibited from suing your social enterprise as she will be considered to be outside the limitation period.

EXAMPLE

'UNFAIR PRACTICES' IN RESPECT OF YOUR GOODS

You may wish to note that consumers can also sue you for 'unfair practices' if, for example, you make a false claim about your product (or services). What is 'unfair practice' is explained in sections 4, 5 and 6 of the CPFTA. Schedule 2 of the CPFTA sets out some examples:

- Representing that goods or services have sponsorship when they do not
- Representing that goods are new or unused when they are not
- Representing the availability of facilities for repair of goods or of spare parts for goods if that is not the case
- Representing in relation to a voucher that another supplier will provide goods or services at a discounted or reduced price when it is not true
- Using small print to conceal a material fact from the consumer or to mislead a consumer

If you are found guilty of an 'unfair practice', you can be ordered by a court to refund the money to the customer or to compensate the customer for any loss or damage suffered. The limitation period for a consumer to sue for 'unfair practice' differs, depending on what type of 'unfair practice' it is. This is set out in Section 12 of the CPFTA. Generally, it has to be commenced no later than 2 years from the date of the occurrence of the last main event on which the action is based or no later than 2 years from the earliest date the consumer had knowledge of the 'unfair practice'.

FURTHER READING

MTI on the Consumer Protection (Fair Trading) Act
www.mti.gov.sg/legislation

Consumers Association of Singapore
www.case.org.sg

Product Liability Law in Singapore, Erin Goh, Nanyang Business School, NTU:
http://www3.ntu.edu.sg/nbs/sabre/working_papers/04-99.pdf

Limitation Act Chapter 163, of Singapore
http://statutes.agc.gov.sg/aol/home.w3p.

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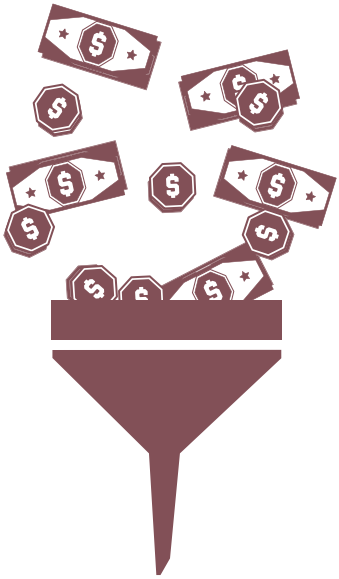
FUNDING



WHERE AND HOW TO FIND SOME EXTRA CASH

When you've got a great idea but lack the dollars to go with it, it's time to source for funding. There are many ways you can raise funds to further your social enterprise, but choosing what's best for you requires careful consideration.

Funding is a fundamental issue with all businesses, social enterprise or otherwise. Your social enterprise can only function if it has sufficient working capital, which is the amount of money readily available for day-to-day business activities and operations. It is the lifeblood of your social enterprise - you need it to buy your goods, pay your employees and to meet the short-term liabilities of your business.

Generally, there are four ways you can generate money for your social enterprise:

- *Apply for a grant;*
- *You can borrow money (loan);*
- *Sell part of your business (equity); or*
- *Seek crowd funding.*

What's right for you will depend on many factors, such as your legal business structure (see Chapter 2), the associated risks and your obligations to the person or entity giving you the money.

GRANTS

www.spring.gov.sg

Government

SPRING Singapore (http://www.spring.gov.sg) is a government agency under the MTI. It is responsible for promoting the growth of Singapore enterprises. This should be your first destination to find out what grant schemes are on offer and whether or not you are eligible to apply.

Currently, there are several government grant schemes available to startup companies and entrepreneurs, however these schemes are often renamed, augmented over time, superseded by new schemes or abolished altogether. Regardless, the grants usually fall into 2 main categories; fixed sum cash grant or a co-contribution scheme:

- A **fixed sum cash grant** simply a set amount of money given to a finite number of selected applicants. For example, the grant scheme may have an allotment of $10,000 with the goal to give out $1,000 to the first 10 eligible applicants.

- **Co-contribution schemes** are more common, whereby the grant scheme will give you $X for every $Y that you raise in capital, often limited up to a specified amount. Co-contribution schemes act as less of a one-off handout and more of an incentive to raise capital yourself. If eligible, you can expect the co-contribution to be contingent upon meeting certain conditions of the scheme, such as performance indicators, timelines and capital targets.

SPRING Singapore's schemes provide support for a wide range of businesses with differing needs, ranging from the development and upgrading of capabilities, the creation of new market opportunities to the nurturing of innovative start-ups throughout various industries and sectors. Depending on the grant scheme, the funds may be given to you as a loan, a monetary donation or in exchange for a share of your enterprise's ownership (shares) and profits (dividends).

Organisations

Some large multinational organisations also offer grant schemes relevant to their field of business to promote ingenuity in social welfare and not for profit organisations. A quick search on the internet might just be worthwhile.

There are also several organisations and foundations that offer

Visit Young Change Makers website for a list of grants & funding assistance.

grants and funding assistance in Singapore. A list of some of these can be found at the Young Change Makers website: http://ycm.nyc.sg/eResouce/ListOfFunding.htm.

You can also seek grant funding from the Community Foundation of Singapore (CFS), a charitable foundation which aims to direct philanthropists to charities and causes with an impact on the community. Do visit its website[lxxii] to see if your social enterprise qualifies for any of the grants being offered by the CFS.

LOANS

A loan is a contractual agreement between the lender and a borrower, whereby a borrower receives money from the lender and in return promises to repay the borrowed amount plus interest. Like any contractual agreement, a loan agreement is governed by terms agreed between the contracting parties to the agreement.

A standard loan agreement should contain the following types of terms:

(a) Quantum and any restrictions on use of the loan

It is important that the principal sum is clearly defined so that you are able to manage your repayment obligations. Some lenders may impose restrictions on the purposes for which the loan may be used. Some lenders may also choose to impose restrictions relating to the change of control in your business or change in your business activities.

b) Repayment term

When must the loan be repaid? Can the loan be repaid in stages or by instalments over a period of time? Or must the entire loan be repaid in one lump sum on a specific date?

(c) Interest rate

How much interest is this particular lender charging? Is the interest rate fixed or floating? Are the rates used subject to a base rate (SOR, SIBOR or LIBOR etc) which may be subject to market rates? Depending on your repayment strategies and business needs, certain modes of interest rates calculation (such as monthly rest or daily rest) may be more cost effective.

(d) Acceleration clause (upon event of default)

This clause provides for circumstances under which the

lender is entitled to immediately demand the repayment of all outstanding loans. Such a clause is typically paired with wordings providing that a borrower must repay all outstanding loans to the lender immediately upon the occurrence of certain events of default, such as when a borrower misses too many repayments.

(e) Security/Collateral

Banks and financial institutions usually require a borrower to provide security (also known as collateral) to protect itself in the event of the borrower's default (failure to meet repayments). Guarantor clause: Some lenders may require you to give a personal guarantee over the obligation of your social enterprise to repay the loan. This means that if your enterprise defaults on the loan, you could be called upon to repay the loan in your personal capacity. Therefore, you need to be wary of such a clause.

A few things to note about loans

Before entering into a loan agreement, it is important that you consider the terms carefully and decide whether your social enterprise can fulfil them. Once you sign on behalf of your social enterprise, your social enterprise will be bound by the terms of the loan.

So make sure you obtain the appropriate legal advice before your social enterprise enters into a loan agreement.

If your enterprise is incorporated as a private limited company, it will be an entity separate from yourself. In that case, any loan agreement should be made between the lender and the private limited company as the borrower. This, in most cases absolves you from personal liability if your enterprise fails to repay the loan. If on the other hand, you opt to form a partnership or run your enterprise as a sole proprietorship, you could become personally liable for any default on the loan (see Chapter 2 for the pros and cons of each type of entity).

Lastly, exercise caution before you agree to provide a personal guarantee for the loan. Should your social enterprise default on the loan, the lender may be entitled to rely on the guarantee to ask you to repay the loan. In that situation, you will become personally liable for the repayment of the loan even if it was your enterprise (private limited company), and not you, that entered into the loan agreement with the lender.

Financial institutions

Most financial institutions, such as banks and credit/finance companies, will be able to provide your social enterprise with a loan. Do shop around and look out for a loan

with the most attractive terms. Of course, you will also need to convince these lenders that your social enterprise will be able to repay the loan at the end of the loan period. Most financial institutions will typically require your social enterprise to have some sort of track record (e.g., conduct business for more than 2 years), ask to inspect the accounts of your social enterprise or inspect your personal credit record.

After discussions with a financial institution, the institution may make an offer to your social enterprise by way of a Letter of Offer or Term Sheet setting out the basic terms of the loan. Typically these are accompanied by the institution's Standard Terms and Conditions, which contain very detailed loan terms. As mentioned, once you sign, your social enterprise is obliged to repay the loan plus interest within certain deadlines. This obligation persists even if your business fails.

Family and Friends

Friendship loans are typically from family and friends who believe in your vision and abilities. Borrowing money from a family member or friend requires a great deal of trust on both sides of the arrangement. These loans are often informal, flexible and rarely require collateral. The terms of the loan are flexible and negotiable, such as the interest rate (if any), repayment deadlines and repayment period.

To avoid any misunderstandings or damaging the relationship, it is best to seek legal advice and expertise in setting out the terms of the agreement and have each party sign the document.

Be sure that the lender is aware that the funds are a loan and not in exchange for a share of the profit or business ownership. Depending on the size of the loan, the lender may expect that he/she shall be entitled to play an active role in the management or operation of your business so as to protect their investment. Be sure that both parties clearly understand what they are getting in exchange for the loan.

As the borrower, you should also be aware that should your business fail, your obligations under the agreement will continue to survive. This means that you'll have to continue with your repayments and repay the full borrowed amount by the agreed deadline.

Equity

There is always the risk that your social enterprise cannot repay the loan within the stipulated timeline.

An alternative to financing your social enterprise without the risk of the inability to repay the loan is by equity financing, which in its simplest form is the sale of a portion of your social enterprise to investors. This is applicable to social enterprises in the form

of a private limited company; the company offers its shares to investors in return for the price of the shares. (If your enterprise is in the form of a partnership, you as one of the partners could also sell a share of the partnership to a potential investor – do seek legal advice on this.)

One of the biggest advantages of such a method is that the risk of business failure is borne partially by the investors. There is no obligation to repay any money to these investors if your social enterprise does not do well. There are no additional costs in the form of interest payments in most cases.

The downside to this is that you lose some control over your social enterprise to the investor. When an investor injects cash into your company in return for shares, the investor gains control over your company in the proportion of his shareholding in the company. In this sense, the investor becomes a co-owner and shareholder of the company, together with you. You will need to share your profits with the investor. You will also need to consult with the investor before any major decision is made on behalf of the social enterprise.

Shares give voting rights to the shareholder in a general meeting, when major decisions are made. The higher the shareholding, the greater the voting "power'. These are all considerations before you decide how much of your social enterprise to be sold to investors in return for cash injections. Ideally, it is preferable to hold at least 51% of the shares so that you maintain voting majority.

You can also considering selling preference shares to an investor. A preference share is a form of hybrid equity that has both the properties of a loan and an ordinary share. A preference shareholder does not have voting rights; you therefore do not cede decision-making control of the company to this investor. You must however pay out the dividends of the company to the preference shareholder before the ordinary shareholder.

It is not common for startup companies to issue shares of different classes conferring different types of rights, but there is certainly flexibility under the current company law for companies to offer shares bestowing the investor with different types of management rights or varying degrees of entitlement to the companies' profits and capital. You should seek legal advice on this as well.

In the context of a social enterprise, it is very important that a potential investor shares your vision for the enterprise, because you are no longer the only person making the key decisions in the company. Your control over the social enterprise is limited by your shareholding and generally, you have absolutely no say over how your investor intends to vote in a general meeting. Therefore, it is important that you and your investors have a thorough discussion regarding how you would like to develop your social enterprise

before you sell away control over the enterprise. After that discussion you need to enter into a shareholders' agreement which should be again drafted by a lawyer.

Shareholders' agreement

A shareholders' agreement is a legally binding contract entered into by the shareholders of a company. It is usually entered into before the shares in the company are distributed amongst these shareholders but may also be entered into at any time in the company's life.

This agreement governs the different rights and obligations of each of the shareholders, as well as the relationship amongst these shareholders. These agreements vary substantially depending on the nature of the business, but for social enterprises, it is essential for the shareholders' agreement to clearly provide for certain rules relating to the management of the business that would not detract from the goals of the social enterprise. (If your startup is in the form of a partnership, the contract setting out the partners' rights vis-à-vis one another (or each other), typically called a partnership agreement, would be similar in purpose to a shareholders' agreement)

The shareholders' agreement should deal with the following issues:

- Who brings what to the table (stating clearly the contributions);
- What requires unanimous decisions? You may require some decisions, for example, expansion of business into a certain sector, to be agreed upon by all of the shareholders instead of by majority vote. These types of decisions ought to be spelt out at the start;
- The roles and responsibilities of each shareholder/director;
- Termination;
- Obligatory transfers;
- Exit strategies (e.g. Russian roulette, Mexican standoff); and
- Right of first refusal. This provides for a situation where before a shareholder wishes to sell some or all of his or her shares to a third party, this shareholder must first offer these shares to existing shareholders on the same terms as those offered to the third party, and also to reveal the identity of the third party. As a result, the existing shareholders are afforded an opportunity to buy these shares if they wish to block this person from becoming a co-owner and shareholder of the company.

You and your fellow shareholders need to consult with lawyers before drafting and entering into a shareholders' agreement. Such agreements are rather complex and need to be tailored specifically to the needs and nuances of the social enterprise envisaged by you and your fellow shareholders. If drafted well, you would have laid the groundwork for a smooth working relationship amongst the shareholders of the social enterprise.

Crowdfunding

Crowdfunding sources small contributions from many individuals in order to finance or project of venture and the process is often facilitated through websites. This is very viable for social enterprises that have a product or service to offer but require funds to put a prototype into production or raise the initial capital to render the proposed service.

Members of the online community pledge money towards a project because they share your vision, they like the idea of your product or want to see your idea succeed. Backers don't share any ownership in your enterprise or reap any of the profits. In return, backers are usually offered a reward such as access to your product or service before it is publicly available on the open market.

Usually, if your project hasn't received enough pledges to meet your goal, you won't get any of this money. It's only when you reach your goal that the pledged money is realised.

You should be conscious of your intellectual property before listing a project for crowdfunding. Be sure that you have first secured your intellectual property rights, such as patents, before listing your project. Alternatively, accept that your idea is out there and utilise the momentum before someone can copy or recreate your project. For more information on Intellectual Property, please see Chapter 10.

Refer to Chapter 10 for more info on Intellectual Property.

USEFUL LINKS

See for governmental grants:

- SPRING at www.spring.gov.sg
- ComCare Enterprise Fund at www.app.msf.gov.sg (for social enterprises only)
- New Initiative Grant at www.nvpc.org.sg (for social enterprises only)

See for grants provided by organisations:

- ACE Startup Grant at www.ace.sg

See for governmental loans:

- SPRING Micro Loan at www.spring.gov.sg (for businesses with less than 10 employees)

See for crowdfunding:

- Kickstarter at www.kickstarter.com
- Indiegogo at www.indiegogo.com

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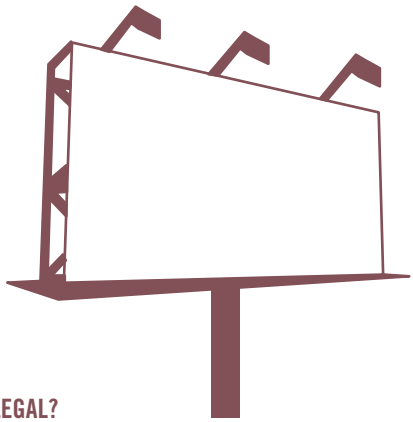
ADVERTISING



ADVERTISING AND PROMOTING YOUR BUSINESS: WHAT'S LEGAL?

That catchy jingle that you never can seem to get out of your head, that tear-jerking 30-second viral video advertisement that you shared on your Facebook page because it touched on the very heart of giving… we all know that a good advertisement does more than move products off a store shelf.

Knowing the impact of advertising, it was estimated that businesses in Singapore alone spent more than SGD S$1.5 billion in 2011 in creating and developing those catchy jingles and moving vignettes. The projected annual increase of spending in advertising and promotional activities averages 5%. Every day, millions and millions of ever present advertisements are targeted at and perceived every day by a wide variety of people across from different diverse backgrounds and with different values, ranging from young children to the elderly and across all ethnicities, social standings and professions.

Depending on the nature of your business, you may invest a lot of time and money in the creation and development of your advertising content. You might come up with very creative and original ways to attract people's attention to your business. However, before you start on your advertising campaign, you would do well to familiarise yourself with the laws regulating the advertisement industry.

In Singapore the Advertising Standards Authority of Singapore (ASAS) is an Advisory Council to CASE set up in 1976 to promote ethical advertising in Singapore and is the self-regulatory body of the advertisement industry. The ASAS comprises representatives from advertisers, advertising agencies, government agencies, media owners and other supporting organisations. Amongst other things, the ASAS:

- provides advice and guidance (though it is not the clearing house for approval of advertising);
- handles complaints on advertising practices;
- advises on advertisements when such help is required; and
- issues sanctions that are applied by media owners.

The governing ideals, which set the framework for the ASAS, are set out in the Singapore Code of Advertising Practice 2008 (SCAP). The SCAP was drafted to raise advertising standards and practice in Singapore and to harmonise the same with international standards. The ASAS mainly relies on voluntary compliance on the part of the companies involved, rather than punitive measures. However, non-compliance with the SCAP can, in some cases, result in a violation of statutes or breach of contractual terms, which may trigger legal proceedings.

Therefore, whenever you are not sure if an advertisement is suited for public consumption, you should take a closer look into the terms of the SCAP to ensure you are on firm ground to avoid trouble. Further, you will need to have regard to statutes like the CPFTA and industry-specific statutes that apply to your business.

SCAP

The SCAP applies to all advertisements appearing in Singapore, where 'advertisement' means any form of commercial communication for any goods or services, regardless of the medium used. So basically, every time you promote your business, regardless whether by way of flyers or posters, traditional placements in magazines or online, newspapers or TV or in any other way that modern technology has rendered possible, you will have to keep these regulations in mind.

The general principles of the SCAP which you should always take into consideration are:

- Legality;
- Decency;
- Honesty;
- Fear;
- Superstition;
- Violence;
- Truthfulness;
- Safety;
- Portrayal of Persons;
- Children and Young People;
- Social Values;
- Family Values;
- Non-denigration;
- Non-exploitation of Goodwill or Intellectual Property;
- Non-Imitation; and
- Use of National Symbols.

These principles were developed to protect the consumers and are your guide to ethical advertising in Singapore. The SCAP is based on these general principles.

• Legality

Your advertisements should not contain anything that is illegal or might incite anyone to break the law. The content of your advertisements should also not lead to acts of violence or anti-social behaviour. In addition, advertisements for many medicinal and medicine-related products, vitamins as well as advertisements containing health claims are subject to restrictions and no reference is to be made to certain diseases. If your business involves the promotion of products or services linked to health, please acquaint yourself with the relevant regulations, namely, the Guide on Advertisements and Sales Promotion of Medicinal Products, the Guidance on Raw Medicinal Herbs, and the Guidance on Disease Awareness Campaign.

It is also very important that the audience of your advertisements is made aware that you are promoting your business. Under the SCAP you should visibly identify yourself as the advertiser and, where it may be unclear, state that the piece is published for advertising purposes and not, for example, editorial matter. Under the CPFTA, it is considered an unfair practice for a retailer to make false or misleading claims, for example, presenting material in a form that looks like an objective critique when it is actually an advertisement. This also applies to misleading statements through trade descriptions, pursuant to the Consumer Protection (Trade Descriptions and Safety Requirements) Act, Chapter 53.

• Decency

When creating your advertisement you should pay special attention to the predominant social and family values in Singapore and ensure that no part of your message contradicts or undermines these values. Messages to children may be treated more stringently as children are more easily influenced by their surroundings and (depending on their age) may not have the capacity to properly evaluate the validity or propriety of your content. Special regulations in the SCAP apply to protect minors. Essentially, all advertisements should not contain anything that may offend the sense of decency of its potential audience.

• Honesty

Your advertisements should always be fair and honest and should not abuse the trust of the consumers or exploit their lack of experience, expertise or knowledge. Your advertisements should not mislead in any way by inaccuracy. This is especially the case when consumers do not get a clear picture of the price of your product. Therefore you should abstain from hidden costs or using the word "free" where actual costs (including GST) are hidden. For purposes of fair competition, you are also not allowed to unfairly attack or discredit other products or companies or make inaccurate comparisons in your advertisements.

• Fear, Superstition, Violence

Advertisements should not play on fear without a justifiable reason. While you may use fear to encourage prudent behaviour, your advertisements should not cause unwanted anxiety. Unless it can be proven, your advertisements may not: [lxxiii]

- Suggest that if the viewer does not respond to your offer, they may suffer from any disease or conditions of ill health; or
- Falsely suggest that any product is necessary for the maintenance of physical or mental capacities.

Advertisements, likewise, should not exploit superstitious beliefs and 'prey' on the superstitious.

Your advertisements should also not promote violence nor appear to condone the same.

• Truthfulness

When you use research data or testimonies, these have to be truthfully represented and should not be altered to fit a purpose. Your advertisements may not contain any information to mislead consumers into believing that any untrue matter is true. This applies generally in relation to any claim on the quality and objective features of your products, such as its quantity, size, source, and price. Statistics should not be so presented as to imply a greater validity than they really have. You should be prepared to furnish proof for the stated information, as ASAS can request for the same.

When you want to display outdoor advertisements you will also have to consider the Building Control (Outdoor Advertising)

Regulations, which mainly focus on ensuring that outdoor advertisements are properly displayed, well maintained and safe.

• Safety

Unless it serves an educational or social purpose, advertisements should not appear to disregard safety through visual presentations of dangerous practices. Drinking and driving should be discouraged and a higher standard of care should be observed in launching advertisements directed at young, impressionable minds.

• Portrayal of persons

Persons must be depicted in a dignified manner. Your advertisements must not disrespect them.

• Children and young people

Children's innocence, inexperience and naiveté should not be exploited.

• Social values

Your advertisement must promote the proper values like patriotism and nationalism, good behaviour, and ethnic or racial harmony. You must not use your advertisement to distort the perception of Singapore and its way of life. It must not distort citizens' perspectives on national issues. Neither must it question or in any way discredit Singapore's status as a democratic country.

• Family values

Your advertisement should, as much as possible, strengthen the family as the basic unit of society and must not denigrate the love between family members and the sense of comfort and security derived from such ties.

• Denigration

When you advertise, you must not put other products in a bad light or ascribe negative things to them, whether directly or indirectly.

• Non-exploitation of goodwill or intellectual property

In your advertisements, you must not misuse the trade marks, logos or exploit the goodwill built by others. For more information on the use of intellectual properties, please refer to Chapter 10.

(m) Non-imitation

You must strive for originality and creativity in your advertisements and not merely copy the work of others. Furthermore, the International Code Council Code discourages advertisers from using advertising campaigns already run by and associated with other international advertisers such that the international advertisers cannot extend their campaigns in the countries showing the copycat advertisement within a reasonable period of time.

(n) National Symbols

If you use Singapore's Coat of Arms, Flag and the National Anthem, you must ensure you get the details right. You may verify the details with the MCI.

CONCLUSION

Advertisements in Singapore can be subject to revision based on the general principles such as Legality, Decency, Honesty and Truthfulness. The Advertising Standards Authority Singapore (ASAS) is empowered to ask an advertiser or advertising agency to amend or withdraw its advertisement if ASAS is of the opinion that the advertisment is contrary to the SCAP. ASAS may also ask you to withhold any advertisement from publication until it is modified to conform to the SCAP. Furthermore ASAS might request its members to impose sanctions on their contracting parties through clauses in the relevant advertisement contracts if the SCAP is violated. Sanctions may consist of the withholding of advertising space or time from advertisers. To avoid a dent in your company's reputation you should consult SCAP and familiarise yourself with the applicable statutes before green lighting your advertising campaign. Apart from that, you will be able to freely develop your advertisements and use all your creative inspiration and ideas to create a campaign that might make your company the new rising star of Singapore.

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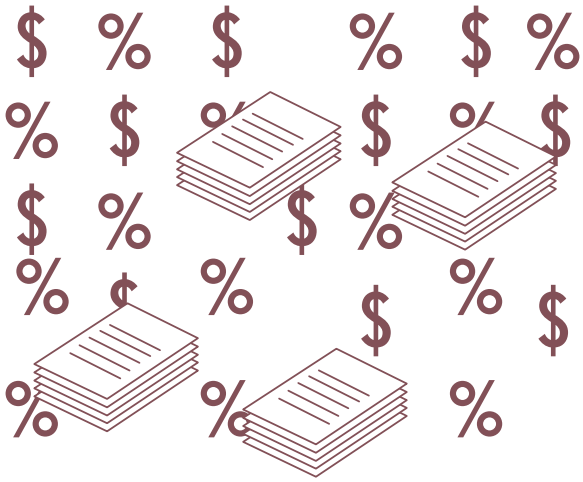
TAX



TAXATION IN SINGAPORE

Issues and concepts applicable to social enterprises

The IRAS is the government body responsible for administering tax laws enacted by Singapore's Parliament. Its website can be found at www.iras.gov.sg. The website sets out rates of taxation, and also contains useful information in the form of circulars (or 'e-tax guides') issued by IRAS which explain tax concepts in further detail, as well as the practical application of such concepts.

Singapore's tax policy aims to raise funds for government operations while promoting economic and social goals. Tax rates are generally kept competitive to encourage hard work, promote entrepreneurship and attract foreign investments. This chapter seeks to inform you generally, about the tax system in Singapore, and to highlight issues which might be particularly relevant to your social enterprise. If you are unsure about any aspect of taxation relating to your social enterprise, it is best to consult IRAS through its hotline, or to seek help from a lawyer or tax adviser. As an entrepreneur, it would be good for you to check the IRAS website from time to time, and to pay attention to the Minister for Finance's yearly Budget Speech, which typically introduces the main tax and financial legislative changes and incentives for the year.

"The art of taxation consists in so plucking the goose as to get the most feathers with the least hissing." - Jean-Baptiste Colbert (France's Minister of Finances, from 1665-1683, under King Louis XIV)

INCOME TAX

Taxability of income

Under the Income Tax Act, Chapter 134 of Singapore (ITA), various receipts are recognised as being taxable as 'income'; including:

- gains or profits from a trade, business, profession or vocation gains or profits in respect of employment (For example– wages, stock option gains, commissions, bonuses etc.);
- dividends;
- interest;
- rent;
- royalties and
- annuities, amongst others.

Income which is 'sourced' in Singapore will be subject to Singapore income tax. For businesses, foreign-sourced income will generally not be taxable in Singapore unless it is received (or deemed by law to be received) in Singapore.

Fundamentally, it is important to understand the concepts of income, source and when income is regarded as being received in Singapore:

'Income'

If a person's receipts are 'income' in nature, they may be subject to tax. By contrast, Singapore does not impose tax on 'capital gains'. Hence, capital gains from the sale of long-term investments or other capital assets will not be subject to tax in Singapore. How then does one tell the difference between a receipt that is income in nature, and one that is capital in nature? An analogy typically used is that of a tree and its fruit. Capital is like a tree that produces, or gives rise to the fruit, which is the income. For example, a house that is rented out to a tenant would be considered as the 'tree', while the rental income obtained from the tenant would be the 'fruit'. The rent received by the landlord would be taxable as income, but if the house were sold, any profits from that sale would not normally be taxable (unless the seller trades in properties).

'Source'

Income which 'accrues in or is derived' from Singapore, will be subject to income tax. A number of factors are considered when determining if a business' income is sourced in Singapore – for example:

(a) Is Singapore the place where the business profits arose from, or where the business' operations are?

(b) Were the key decisions in generating the income made in Singapore?

(c) Were relevant contracts made and executed in Singapore?

If your social enterprise takes the form of an online business, you may wish to take note that IRAS has also published guidelines on e-commerce, and on how the above principles may be applied in the case of a business that operates through a website. For example, if a manufacturing company has business operations in Singapore, but hosts its website with a hosting service provider in a foreign country, the company's income derived from its e-commerce business will still be considered as taxable in Singapore, provided that the company carries out its business obligations mainly through its Singapore operations.

'Received'

Income derived from outside Singapore will be deemed to be 'received' in Singapore if it is:

- remitted, transmitted or brought into Singapore;
- applied towards the satisfaction of any debt incurred in respect of a trade or business carried on in Singapore; or
- applied towards the purchase of movable property which is brought into Singapore.

A social enterprise can take many different forms. If your social enterprise is a registered charity (i.e. a charity registered with the Commissioner of Charities under the ChA, it will be exempt from income tax and does not need to file income tax returns. As a social enterprise, your business may attract "donations" from people who wish to generally support your social mission. However, if your social enterprise is not a registered charity, you should be aware that such monetary contributions may be subject to income tax in the hands of your business, depending on the circumstances under which the contribution is made.

TAX RESIDENCY

Tax residency is a very specific term and means different things to different kinds of entities

INDIVIDUALS	COMPANIES
Someone is resident in Singapore if he is: • Ordinarily resident in Singapore, but for some temporary and reasonable absence. • Physically present in Singapore or employed in Singapore (but not as a company director) for at least 183 days in a calendar year.	A company is considered tax resident in Singapore if its central management and control is in Singapore.

Why is it important to understand the concept of tax residency? Amongst others, tax residency determines:

(a) The rate at which tax is imposed, if you are an individual (for example, this is relevant if your business is run as a sole-proprietorship). Non –residents are charged at flat rates of tax, whereas residents are taxed at progressive tax rates;

(b) The ability to rely on Singapore's network of Treaties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (more commonly referred to as 'Avoidance of Double Taxation Agreements' (DTAs)) – Singapore non tax-residents will not be able to rely on Singapore's DTAs;

(c) The availability of certain tax exemptions and reliefs under the ITA (for example, the tax exemption for start-ups mentioned below, and exemptions on certain foreign-sourced income which may be received by companies in Singapore, from outside Singapore);

(d) Whether withholding tax in Singapore will be applicable to the various transactions carried out by an entity (explained further below); and

(e) If the entity is a company, whether tax-exempt dividends may be paid (only Singapore-resident companies may pay dividends which are exempt from tax in the hands of their shareholders).

The tax treatment of your social enterprise will depend on the kind of corporate structure that you adopt.

BASIS OF TAXATION

Sole proprietorship

The sole proprietor's business income will be treated as a part of his or her personal income, and will be taxed at the relevant personal income tax rates.

Partnership, Limited Liability Partnership, Limited Partnership

These are 'tax transparent' vehicles, and each partner will be taxed on their own share of the business' income, at their own applicable tax rates (For example– If the partner is an individual, individual rates of tax will apply. If the partner is a company, then the corporate tax rate will apply).

Companies

The current tax rate for companies is 17% with a partial tax exemption for the first $300,000 of profits. If the relevant conditions are met, new start-up companies (including companies limited by guarantee) may be granted enhanced tax exemptions for each of their first three consecutive YAs. For YAs 2013, 2014 and 2015, companies will also receive a 30% Corporate Income Tax (CIT) Rebate that is subject to a cap of $30,000 per YA. Details on the computation of the CIT Rebate and the partial and start-up tax exemptions can be found on the IRAS website (www.iras.gov.sg).

ASSESSMENT OF TAX AND COMPLIANCE

Tax is assessed and payable in Singapore, on a preceding year basis, in respect of a YA (defined above). What this means is that the tax payable in any YA generally relates to the income earned in the previous calendar year. If a company's accounting year happens to end on a date other than 31 December, then the preceding accounting year (and not the calendar year) will form the basis period for a YA. For each YA, taxpayers are required to file a tax return with IRAS in the prescribed form (which can be found on the IRAS website) along with supporting documentation, declaring their income.

In addition to filing the annual tax return, companies need to file an estimate of their chargeable income (ECI) for each financial year (unless they are exempted from this requirement). These basic procedures are the requirements set out in the ITA. Any failure to comply with these is an offence that may attract penalties and fines. IRAS will issue a Notice of Assessment (NOA) to the taxpayer after the annual tax return is filed. The

NOA contains details of the income tax payable, and the date by which the tax should be paid.

You have a duty to ensure that the information you provide to IRAS is correct. The penalty for submitting incorrect information negligently or without a reasonable excuse is imprisonment of up to three years (with fines and penalties). If you submit fraudulent information with the intention to evade tax or to assist another person to evade tax, you may face imprisonment of up to five years, along with fines and penalties.

DEDUCTIONS

If you are carrying on a trade or business, you may be able to make certain deductions from the income generated by your business (thereby reducing your final tax bill). Some of these basic deductions are as follows:

- Generally, expenses which are wholly and exclusively incurred in the production of income, and which are not prohibited under the ITA are deductible, such that only net income is included in the amount brought to tax (common examples of allowable deductions include: costs of staff, including employees' salaries, bonuses, allowances, irrecoverable (or 'bad') debts incurred in respect of your trade or business).

- Expenditure incurred in the acquisition of certain assets for the purposes of your trade, profession or business - for example, plant and machinery, intellectual property rights - (or 'capital expenditure') may be set off against the income derived from the use of those assets.

- Under the PIC Scheme available until YA 2015, businesses are entitled to deduct 400% of the amount of capital expenditure incurred by them per year (subject to a cap of $400,000), on each of 6 'qualifying activities'. These 'qualifying activities' are (i) the acquisition of intellectual property rights, (ii) training of employees, (iii) the registration of patents, trademarks, designs and plant varieties, (iv) research and development activities; (v) certain design projects and (vi) the acquisition or leasing of certain information technology and automation equipment.

(i) The annual expenditure cap of $400,000 per qualifying activity may also be combined as follows:[lxxiv]

YEAR OF ASSESMENT (YA)	EXPENDITURE CAP PER QUALIFYING ACTIVITY	TAX DEDUCTION PER QUALIFYING ACTIVITY
2013 TO 2015 (COMBINED)	$1,200,000	$4,800,000 (400% X $1,200,000)

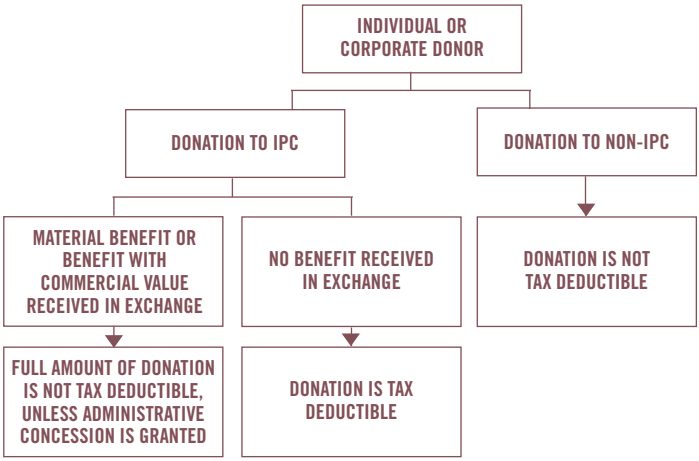
(ii) Businesses may also elect to convert part of their PIC allowances into a cash grant if conditions are met; and avail themselves of the 'PIC Bonus' (whereby the government will give a business a dollar for every dollar it spends on a qualifying PIC expense, capped at $15,000 for YAs 2013 to 2015). Further details on these additional incentives (as well how they are applied) can be found on the IRAS website

- Donations made to Institution of a Public Character IPCs will entitle the donors to a 250% deduction of the value of the donation made. Do take note of this if you wish to set up an IPC yourself, or if your social enterprise makes donations to IPCs.

  (i) Donations need not be in the form of cash to enjoy this tax treatment. Gifts of shares, computers, artefacts, art and land are also eligible. However, if a donation comes with a benefit to the donor (For example– if a souvenir having commercial value is given to the donor, the full amount of the tax deduction may not be claimed.)

  (ii) IRAS has come up with a list of donations bundled with benefits that in its view do not have any commercial value (For example– the purchase of a charity fundraiser ticket that entitles the donor to attend a charity show, complimentary tickets to the Singapore Zoo or golf tournaments where the donation includes a golf game for the donor.). Thus, if such donations are made, the full 250% tax deduction may be claimed notwithstanding any benefits to the donor.

  (iii) Note that not all registered charities are approved IPCs, and donations made to a charity (or any other entity) without approved IPC status are not tax-deductible from the donor's perspective. A summary of the tax treatment of donations from the donor's perspective is summarised below:



UNDERSTANDING WITHHOLDING TAX

When certain payments (For example– interest, royalties, director's fees, payments for the use of or the right to use scientific, technical, industrial or commercial knowledge, amongst others) are made to persons who are not tax-resident in Singapore, and these payments have (or are deemed to have) a Singapore 'source', withholding tax may be applicable.

What this means is that the payer needs to deduct the amount of tax payable to IRAS (at the relevant withholding tax rate) from the payment due, and pay only the remaining amount to the foreign recipient. Although the burden of the tax is in reality, borne by the non-resident recipient of the payment, the ITA states that if the local payer does not comply with its collection obligations, then the tax which should have been withheld will then be borne by the payer. Similarly, paying IRAS late will also attract a penalty.

The concept of withholding tax will be most relevant to your social enterprise if it makes payments to entities which are not tax-resident in Singapore (For example– a foreign business, or the Singapore branch of a foreign company). If so, you should ask yourself: (i) What is the type of payment that is being made? (ii) Is the payment subject to withholding tax under the ITA? (iii) If so, is there any waiver or exemption from the tax that has been granted by IRAS? Are there any DTAs which might reduce the rate of tax imposed? (iv) If withholding tax is applicable, does the recipient of the payment know this? Do you need to alter your commercial arrangements to accommodate the payment of this tax?

TAXATION OF COMPANIES LIMITED BY GUARANTEE (CLG)

A CLG (if it is not a registered charity) would be liable to pay tax on its income at the prevailing corporate tax rate.

A CLG that carries on as a trade or professional association may be treated for tax purposes as a 'mutual concern', provided that approval is granted by IRAS, and provided that it is able to meet certain conditions (For example– amongst others, it must not be set up for the purposes of profit or gain, any surpluses must be used to carry out its not-for-profit objectives and it must exist for the sole purpose of benefiting its members). However, this tax treatment will only be relevant to very specific situations where the CLG in question is carrying on a trade or professional association, with members who pay entrance fees and subscriptions. Broadly, if treated as such a 'mutual concern' the amount of the CLG's income brought to tax, will be dependent on the proportion of its receipts (i.e. entrance fees and subscriptions) from Singapore members.

OBJECTION PROCESS

If you disagree with a tax assessment that has been raised by IRAS in respect of your social enterprise, you may object to it by informing IRAS of your grounds for objection within 30 days of receiving the NOA. This is called a 'Notice of Objection' and may be sent to IRAS electronically or in writing. If the Notice of Objection is not sent to IRAS within this 30 day period, the tax assessment is treated as finalised. Do note that as of 1 January 2014, this timeframe will be extended to two months from the date of service of the NOA. If you are unable to come to an agreement with IRAS on the tax assessment, you may appeal further to a tribunal called the Income Tax Board of Review (ITBR), and subsequently to the High Court and Court of Appeal. Do note that the tax assessed by IRAS will be payable notwithstanding any such appeals (if you subsequently win your appeal, any tax owed by IRAS will be repaid).

GOODS AND SERVICES TAX (GST)

GST is a tax on domestic consumption. Generally, under the Goods and Services Tax Act Chapter 117A of Singapore, 7% GST is applicable on a supply of goods or services in Singapore by a GST-registered person (explained below) and on the import of goods into Singapore. 0% GST is applicable on exports of goods from Singapore and on the supply of certain international services. Certain supplies are also exempt from GST in Singapore, or may fall outside the scope of GST altogether. Before embarking on your social enterprise, you should consider

whether the goods or services that you intend to provide, will attract any GST, whether you need to register for GST, and if so, how this should be reflected (if at all) in the pricing of your goods or services.

WHEN TO REGISTER FOR GST?

Generally, any person making or intending to make taxable supplies in the course or furtherance of a business may register for GST. A person is required to register for GST if the value of taxable supplies made or expected to be made by him will exceed $1 million over a 12-month period. The GST-registered person making the supply will be responsible for collecting and paying the GST to IRAS. Accounting for GST payments and refunds is generally done on a quarterly basis, by the GST-registered person filing GST returns, and should be supported by proper tax invoices.

If your social enterprise takes the form of a charity, do note that charities are required to register for GST as well, if their annual taxable supplies exceed $1 million. Once a charity is registered for GST, the charity will be required to charge and account for GST on its taxable supplies (such as grants, donations and sponsorships) where benefits are provided in return to donor.

STAMP DUTY

Stamp duty is generally payable on instruments (i.e. documents) for the transfer of:

(a) Interests in immovable properties (For example– the sale of houses or apartments, or tenancy arrangements) in Singapore; and

(b) Unlisted shares registered in Singapore.

The duty is usually payable by the transferee of the property or shares, but it is open to parties to agree otherwise between themselves. In terms of more common instruments, stamp duty is also payable on mortgages, leases and certain trust documentation. The relevant rates of tax are available on the IRAS website (www.iras.gov.sg), and as a social entrepreneur you should consider whether stamp duty might be payable on any agreements you enter into, when such duty should be paid, and if duty is payable, which party should bear these costs. Stamp duty relief and remissions may also be available in certain circumstances, so do check if they apply to your situation. Do note that if you fail to stamp your document in accordance with the law, the document may not be admitted as evidence in the Singapore Courts if you are later involved in litigation that requires you to rely on such document.

Rates of tax are available on www.iras.gov.sg

PROPERTY TAX

Property tax is payable annually on the value of land and immovable property in Singapore by whoever has a legal or beneficial interest in the property (typically the owner of the property). The annual value of such land and immovable property is determined by the Chief Assessor, and this information can be found through the IRAS website. Generally, flat rates of tax are imposed on non-residential buildings and land, whereas progressive rates of tax will be imposed (with effect from 1 January 2014) on residential property. Owner-occupied properties also enjoy concessionary rates of tax.

The relevant rates of tax are available on the IRAS website (www.iras.gov.sg), and as a social entrepreneur you should be mindful of the effect property tax might have on your business – For example– If you intend to purchase your business premises, have you factored in property tax as an annual charge that you will need to pay? If you rent your business premises, has your landlord made you contractually liable for any annual property taxes?

19
WINDING DOWN

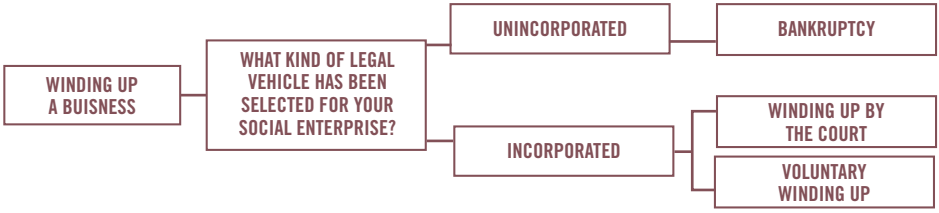
CLOSING? YOUR LEGAL OBLIGATIONS DO NOT END THERE

Previous chapters have focused primarily on the formation of your social enterprise and its operation. Winding down would most probably be the last thought to cross your mind. However, the risk of a business failing, resulting in the entity or its founders becoming insolvent is a real danger which must be addressed.

WHAT DOES 'INSOLVENT' MEAN?

Insolvency refers to a situation where a person or company is unable to pay its debts. It is not uncommon for business entities to face the problem of insolvency at some stage. Some may successfully trade themselves back to solvency (in other words, try to continue with the business with the aim of making the business profitable again), but if not, they may eventually be made 'bankrupt' (in the case of an individual) or be 'wound up' (in the case of a company). This chapter focuses on what can be done if you are unable to trade your social enterprise back into solvency.

As discussed in earlier chapters, there are different legal vehicles (incorporated entities and unincorporated entities) which can undertake business transactions. What can be done in the face of insolvency depends on which legal vehicle has been selected for your social enterprise.



UNINCORPORATED ENTITIES

For unincorporated entities, such as sole proprietorships or partnerships, when the business becomes insolvent, you, the sole proprietor or partner of the firm, will face insolvency. This can be dealt with either by attempting to trade back into solvency (a voluntary arrangement) or to wind down and apply for bankruptcy.

In essence, a voluntary arrangement is a court process where you try to get your creditors to agree to a compromise or arrangement to allow you more time to repay your debts.

Once the process is commenced, you appoint a nominee (an independent party who is typically an accountant) to help you put together a repayment proposal. In the meantime, you may get a reprieve from your creditors in the sense that they cannot commence legal action against you. As part of this process, you then try to convene a creditors' meeting to consider your proposal to repay your debts. If a sufficient majority of your creditors (75%) agree to such a proposal and once the court approves it, it will bind every creditor who had notice of the meeting and was entitled to vote at the creditors' meeting, including minority creditors who voted against the proposal or who did not vote.

BANKRUPTCY

To be bankrupt is to have your financial affairs administered and assets distributed to your creditors by a court appointed Official Assignee (OA).

Either you or your creditors can initiate bankruptcy proceedings by presenting the court with a bankruptcy application. For a bankruptcy application to be successful, you (the debtor) must:

- reside in Singapore;
- have property in Singapore; or
- reside in, or carry on business in Singapore, one year before the bankruptcy application.

Although it may be more common for a creditor to initiate bankruptcy proceedings, there are cases where the debtor himself does so. In practice, a debtor may choose to do so where he believes that he is unable to repay his creditors, and decides to apply to court to make himself bankrupt so as to, for example, avoid further pressure for repayment.

The applicant will also have to prove that the debtor is unable to pay his debts. One of the most common ways to do so is to show that the debtor is unable to pay a debt of at least S$10,000 within 21 days of receiving a demand in a prescribed form (called a 'statutory demand').

If the bankruptcy order is granted, you will be required to submit a statement detailing your financial position within 21 days to the OA. Failure to do so may result in imprisonment or a fine.

The OA will sell off your assets and the proceeds will be used to pay your creditors who have submitted proof of the debts that you owe them. These creditors will be paid in a fixed order of priority (which can be found in Section 90 of the Bankruptcy Act Chapter 20, of Singapore).

If your debts are not fully repaid due to insufficient proceeds, you will be required to submit your accounts to the OA every six months. Income will also have to be handed over to the OA in order to repay your debts. A reasonable amount, however, may be retained for maintenance of yourself and your family.

Typically, a bankrupt person will need to obtain the approval of the OA before he can travel out of Singapore. Bankrupts are generally not permitted to be appointed as a director of a company. This restriction against being a company director generally lasts so long as the person remains a bankrupt.

It should also be noted that, generally, only the assets or property, which belong to the bankrupt come under the control of the OA. Being a bankrupt usually does not affect the assets or property of his spouse or family members. The exception to this is where the debtor improperly transferred his assets or property to his spouse or family members to avoid claims by his creditors. In such cases, the OA may have a basis to claim for the return of such assets from the recipients.

Can I be discharged from bankruptcy?

If the debts have been repaid, you may apply for discharge of your bankruptcy status.

That is not the only way a bankruptcy may be discharged. If your debts have not been fully repaid, your bankruptcy status

can also be discharged, through the court after evaluating your conduct and financial position. Alternatively, it may be obtained from the OA via a certificate of discharge. This is provided that the bankruptcy commenced at least three years ago and the debts proved in bankruptcy did not exceed S$500,000. A bankruptcy can also be terminated by an annulment order issued by the court. The court has to either be satisfied that the order should not have been made or that you have paid or secured all debts.

INCORPORATED ENTITIES

When your company is wound down, the business is closed down, its assets are sold off, creditors are paid and the balance of the assets (if any) would be distributed to the members of the company (i.e. shareholders). At the end of the whole process, the company is dissolved and ceases to exist. This process is also known as liquidation.

WINDING UP BY THE COURT

Winding up can either be ordered by the court or occur voluntarily through the members of your company or its creditors.

Winding up of your company by the court begins with an application to the court by someone who has the right to make such an application. Who such a person is, can be found in section 253 (1) of the CA (or Schedule 5 Paragraph 2 of the LLPA). The most common applicants are the company itself, any creditor or contributory.

To be considered for a winding up order, one of the grounds for winding up needs to be established. Grounds for winding up which are acceptable to the court are found in Section 254 of the CA (or Schedule 5 Para 3 of the LLPA). One of the most common grounds relied upon is (as in the case of individuals facing bankruptcy) the company's inability to pay a debt of more than S$10,000 within 21 days of receiving a demand in a prescribed form (called a statutory demand).

If the court finds that there is nothing to support the ground on which the application is based, the application will be dismissed. If there are sufficient grounds, a winding up order may be made.

What happens when a winding up order is made?

There are many effects of a winding up order, the most significant being:

- directors no longer have power to manage the company - the liquidator takes over management of the company;
- all legal proceedings against the company are halted; and
- all contracts of employment may be terminated.

A social entrepreneur may have debts owed by his business partners, for example, suppliers or other contracting parties, who are subsequently wound up or made bankrupt. In such a situation, the social entrepreneur will not be able to sue, or continue to sue, the party which has been wound up or made a bankrupt to claim for the debt. He can only file a proof of debt with the liquidator (for a company) or the OA (for an individual), and share equally with the other unsecured creditors against any assets belonging to the party being wound up or made bankrupt.

VOLUNTARY WINDING UP

There are two types of voluntary winding up – members' voluntary winding up and creditors' voluntary winding up. A members' voluntary winding up must be decided by members of your company (or partners of your limited liability partnership) at a general meeting. For this to occur, however, the company must be solvent to begin with.

(a) Members' voluntary winding up

There are many reasons for a company to be wound down despite being solvent. For instance, the purpose for which the company had been incorporated may have been achieved or the company may be merging with another company.

For a members' voluntary winding up to occur, the directors (or majority of directors) of the company must make a declaration of solvency.

What is the Declaration of Solvency?

A declaration of solvency is essentially a declaration made by directors. It contains the directors' opinion that the company will be able to pay its debt in full within 12 months after the commencement of the winding up.

For the declaration of solvency to be effective, it must comply with all of the following requirements:

- it must be made at a directors' meeting;
- it must not be made earlier than five weeks before the passing of the resolution for the voluntary winding up of the company; and
- it must be lodged with the registrar before the date on which the notices of the meeting called to pass the resolution for winding up are sent out.

Following an accurate and effective declaration of solvency, the members will appoint one or more liquidators to wind down and deal with the assets and affairs of the company.

If this declaration is made, but is inaccurate, such that the creditors will not be paid within the stated period, the directors who made the statement without reasonable grounds may be guilty of an offence.

(b) Creditors' voluntary winding up

If a company is insolvent, it may be wound up by way of a creditors' voluntary winding up. The key differences from a members' voluntary winding up are that

- the company is insolvent and;
- instead of its members, it is the creditors who decide to place the company into winding up.

The main steps for commencing a creditors' voluntary liquidation are as follows:

- If a company cannot carry on its business by reason of its liabilities, the directors may make and lodge a statutory declaration with the Official Receiver and Registrar to that effect and must then appoint a provisional liquidator.
- A notice of the appointment of a provisional liquidator together with a copy of the declaration lodged with the Official Receiver is advertised within 14 days of the appointment of the provisional liquidator in local newspapers.
- Meetings of the company and of its creditors must be held within one month of the making of the declaration. At the meetings, the shareholders and creditors will vote separately to place the company under voluntary winding up and to appoint a liquidator.

The appointment of a provisional liquidator would cause all the powers of the directors to cease. The responsibility of administering the assets of the company would, accordingly, fall on the provisional liquidator, at least until a liquidator is appointed at the creditors meeting, at which point the liquidator takes over control of the company, its assets and affairs. Generally, the primary duty of the provisional liquidator is to preserve the status quo until the resolution to wind up the company is passed and the liquidator is appointed.

Before commencing any liquidation process, it would be advisable to engage a lawyer to advise on the key steps and implications.

WHO ARE LIQUIDATORS?

A liquidator is a person who brings the directors' powers to a halt, and becomes responsible for dealing with the assets and affairs of the company.

The liquidator's main task is to sell off the assets of the company so that creditors can be paid and any surplus amount is distributed to the members of the company. He will also investigate if there has been any wrongdoing by the directors of the company, or if there have been any wrongful transfers of the company's assets which may then be 'clawed back' or recovered under law. An example would be where the company improperly transfers assets to another party, without getting anything in return, or in exchange for something substantially less valuable (in legal language, a transaction at an undervalue). In such cases, the liquidator may have a basis to claim against the recipient of the assets for their return.

Once the liquidator has ascertained the debts of the company, the order in which these debts will be paid, will be in accordance with the prescribed priority of claims (found in the CA or the LLPA).

A simplified version of the order of priority is as follows.

Secured creditors (that is, creditors with a security interest such as a mortgage over the company's assets) are entitled to priority over the unsecured creditors.

Further, there are also certain preferential debts which are given priority over unsecured creditors and debts secured by floating charges (a form of security usually over assets which fluctuates in nature, such as stock-in-trade), namely:

- Costs and expenses of the winding up;
- Wages and salaries of employees up to S$7,500 per employee;
- Retrenchment benefits and ex-gratia payments of employees, up to S$7,500 per employee;
- Amounts due in respect of workmen's compensation;
- Amounts due in respect of contributions payable in a stipulated period to employees' superannuation or provident funds;
- Remuneration payable in respect of vacation leave for employees; and
- Tax assessed, including goods and services tax.

Upon the commencement of liquidation, the liquidator is also required to inform the IRAS of such liquidation, and to file relevant documentation pertaining to the company's tax matters, for the purpose of ensuring that the company's outstanding tax matters are resolved before completion of the liquidation process.

DISSOLUTION

In a winding up by court, upon the completion of the winding up, the liquidator must apply to the court for an order of dissolution. Once this order has been granted, your company will be dissolved.

In a voluntary winding up, the winding up process ends when the liquidator calls a final meeting of the members of the company, (together with the company's creditors in the case of a creditors' voluntary winding up).

The liquidator presents a final account showing how the winding up has been conducted and how the assets have been disposed. A return will be filed with the Registrar of Companies and the Official Receiver by the liquidator, and the company will be deemed to have been dissolved three months after.

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SEEKING LEGAL ASSISTANCE

ENGAGING A LAWYER

Lawyers are trained to give legal advice and to represent you in Court. Seeing your lawyer early can save you a lot of time, trouble and money. Lawyers can provide a range of important and useful services in setting up, running, or winding down your social enterprise, so if you believe you need legal advice or guidance, or feel you wish to seek help with any potential legal aspect arising from your social enterprise - such as those canvassed in this booklet - you should seek to speak with a lawyer without delay.

THE LAWYER-CLIENT RELATIONSHIP

You must be able to build a relationship of trust and confidence with your lawyer.

Solicitor-client privilege

Your lawyer has the responsibility to keep your information confidential. Ordinarily, even the Court cannot force a lawyer to reveal conversations you may have had with him, without your permission.

Your lawyer's firm

When you hire a lawyer, you are also hiring the law practice the lawyer works for. All members of the law practice and its staff have the same duties of confidentiality toward you and your matter as does your own lawyer.

Conflict of interest

Your lawyer is acting for you alone, and cannot represent or be involved personally with someone who may be against your interests in your matter without your permission.

Your instructions

Your lawyer will try to understand from you what you hope to achieve within the law and the lawyer's professional duties. Your lawyer cannot follow instructions from you that would break any law, or breach the lawyer's duties to the Court or to the legal profession.

CHOOSING A LAWYER

A directory of lawyers can be found at www.lawsociety.org.sg

The Law Society of Singapore has an online directory of the names, addresses and other useful information of all practising lawyers in Singapore, and may be accessed at: http://www.lawsociety.org.sg. You can also search the list of law practices that have advertised specialist practice areas, but note that the Law Society is not permitted to recommend lawyers to you.

The recommendations of friends, family and other people who have faced similar legal or potential problems may also be helpful in your selection.

Particularly, given that your resources are likely to be scarcer at the early stages of setting up your social enterprise, you should endeavour to agree to fees and have the lawyer give you a reasonable expectation of the disbursements to be incurred. In addition, you should be independently satisfied that your lawyer has the necessary expertise, knowledge and experience to assist you in your matter. You should also be satisfied that your lawyer is in a position to give you independent legal advice, for example a lawyer acting for an opposing party in a dispute cannot represent you except under particular circumstances with your permission. You may seek a second opinion from another lawyer without the knowledge of your current lawyer, but be aware that the second lawyer should not improperly influence you to discharge your current lawyer.

DUTIES YOUR LAWYER OWES YOU

Lawyers are required under their professional conduct rules to:

- exercise diligence and honesty in their dealings with you;
- inform you of matters relating to their legal fees;
- provide statements of accounts in a timely manner upon your request;
- undertake work in such a manner so as not to unnecessarily or improperly escalate their legal fees;
- complete any work on your behalf within a reasonable time;
- provide you competent representation;
- keep you reasonably informed of the progress of your matter;
- generally respond to your telephone calls, e-mails and messages promptly and keep appointments made with you;
- clearly explain proposals of settlements, other offers or positions taken by other parties which affect you;
- keep your information regarding your matter confidential, even after your lawyer stops representing you;
- act only in your best interests; and
- generally evaluate with you if the consequence of your matter justifies the expense or the risk involved.

MEETING YOUR LAWYER

Before you see your lawyer:

- think about all the information the lawyer will need and gather it in advance;
- list the events as they happened;
- collate all important papers and supporting documents;
- list the names, addresses, and telephone numbers of everyone involved in your matter; and
- list the questions or issues you wish to discuss with your lawyer during the meeting.

The more organised you are, the less time you will spend during your meeting thus reducing the time-costs chargeable to you by your lawyer.

To avoid future disputes, clarify the likely legal fees involved. Enter into a proper fee agreement (preferably in writing) that sets out these charges clearly. Inform your lawyer in advance of any budgetary constraint. Lawyers usually charge their clients based on the time that they spend working on their matters (i.e. by hourly rates). These rates will generally be fixed within the law firm, with more experienced lawyers charging higher rates than less experienced lawyers. Some lawyers may be willing to assist you on a fixed-fee basis (i.e. they agree to charge you a fixed sum, no matter how much time they actually spend on the work), but this would be subject to negotiation between you and your lawyer. Also note that if you and your business are based entirely in Singapore, a lawyer might charge you GST as well on his or her services rendered, which is a potential cost you should take into account.

When you meet your lawyer:

- tell the lawyer everything important;
- answer your lawyer's questions fully, even if you may not understand the purpose of the question at the time; and
- ask questions to clear all your doubts.

A full and thorough discussion of the issues will help the lawyer give you a realistic expectation of the prospects for success in what you are hoping to achieve, as well as a realistic estimate of the fees you can expect to pay should you proceed. Be mindful that your lawyer may not be able to give you advice at the first meeting. The law changes often, and your lawyer may need to first check on new laws or on decisions made by the Court.

WORKING WITH YOUR LAWYER AFTER THE FIRST MEETING

Arrange to correspond and have follow-up meetings with your lawyer at agreed times. Ask for copies of correspondence and documents filed in Court or regulatory bodies if relevant, and if you do not understand the documents, have your lawyer explain these.

(a) Be honest with your lawyer

It is difficult for your lawyer to give you the best advice if you do not fully disclose details of your matter and documents as early as possible and as soon as new issues arise.

(b) Manage your expectations

Your lawyer is not in a position to guarantee that you will succeed as many factors are beyond your lawyer's control and in litigation the final decision is with the Court. Always evaluate your case with your lawyer at regular intervals and keep an open mind. Remember, your lawyer is not a judge or government authority.

(c) Control your legal cost

Although you need to keep your lawyer fully informed of your matter, do remember that your lawyer may charge accordingly for his/her time spent on your matter. Focus your communication with your lawyer to the essential facts and information of your matter. Also, you may want to ask for regular fee updates, if the matter is expected to take some time to resolve (For example– ask your lawyer to update you on the costs incurred at the end of each week, or when a certain dollar amount has been exceeded).

LEGAL FEES

Your lawyer is entitled to charge fair and reasonable fees for legal work done on your behalf. As no two matters are completely alike and some matters require more time and expertise to resolve, fees may vary between clients and cases. Legal expenses will generally comprise fees and disbursements. Disbursements are out-of-pocket expenses, and can include costs for filing and serving documents, long-distance calls, meals, photocopying, subpoena fees (i.e. for summoning another person to Court), and medical or other reports.

It is important that you speak to your lawyer about your expectations on the scope of work you require your lawyer to perform, because lawyers have different ways of calculating fees, depending on the types of services required and the lawyer's billing practices. The usual methods are:

(a) Hourly rate

This is the usual way of billing, especially for a Court case. The amount of time you will require your lawyer's services will not be known at the outset.

(b) Fixed rate

This method may be used in matters such as transactions where it is reasonably straight forward and predictably measured. The fee is a fixed amount regardless of the amount of time actually spent by the lawyer working on the matter.

It is preferable to enter a written fee agreement at the outset. Note that lawyers are not permitted to enter into contingency/ conditional fee agreements for any matter. Contingency/ conditional fee agreements are agreements in which the lawyer's fees are, for example, payable only in the event of success in the case or are proportionate to the amount which may be recovered by you in the matter, or any profits received from a business transaction or sale of business assets which the lawyer assist in.

For contentious matters, your lawyer must also explain to you:

- that you are personally liable for payment of your own legal fees to your lawyer;
- if you lose, you may have to pay part of your opponent's legal fees as well as your own;
- if you win, your opponent may not be ordered to pay the full amount of your legal fees and may not be able to pay what has been ordered; and
- the circumstances under which a lawyer can be discharged.

Your lawyer may ask you to pay a 'retainer' (basically a deposit) before starting work on your matter. This money is meant to meet expected costs and disbursements. If the retainer is not completely used, the lawyer will refund you the remaining amount.

You should always ask for a receipt from the law practice for monies you have paid. This should indicate if the money is paid into the law practice's client account for your benefit (e.g. monies held on trust for you for the purchase of a shop lease) or is paid into the law practice's office account (e.g. the monies were paid to settle a bill from the law practice).

DISPUTES OVER FEES

The Law Society of Singapore offers a legal costs dispute resolution scheme to assist lawyers, their clients and third parties to resolve disputes on legal costs amicably and economically. The scheme provides for mediation as the first step to resolve such disputes. If mediation is unsuccessful, parties can move on to the simple and expedited arbitration process.[lxxv]

DISCHARGING YOUR LAWYER'S SERVICES

You may change your lawyer at any time. However, you should pay any outstanding costs to your current lawyer before engaging another lawyer unless there are exceptional reasons for not doing so. Where the outstanding fees of the current lawyer are not agreed or paid, that lawyer is entitled to request an undertaking that it retains the property of your case file (a 'lien').

Your lawyer can discharge himself/herself if:
(a) his/her discharge does not cause significant harm to your interest and you are fully informed of the consequences and voluntarily assent to it;
(b) your lawyer reasonably believes that continued engagement in the case or matter would likely have a serious adverse effect upon his/her health;
(c) you breach an agreement with your lawyer regarding fees or expenses to be paid or regarding your conduct;
(d) you make material misrepresentations about the facts of the case or matter to your lawyer;
(e) your lawyer has an interest in the case or matter which is adverse to your interest;
(f) such action is necessary to avoid contravention by your lawyer of the LePA or any subsidiary legislation or
(g) any other good cause exists.

If your lawyer discharges himself/herself, s/he has to take reasonable care to avoid foreseeable harm to you, including:
(a) Giving due notice to you;
(b) Allowing reasonable time for substitution of a new lawyer;
(c) Co-operating with your new lawyer; and
(d) Subject to the satisfaction of any lien your lawyer may have, paying to you any money and handing over all papers and property that you are entitled to.

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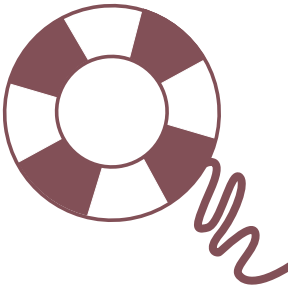
PRO BONO LEGAL AID FOR THE COMMUNITY



PRO BONO LEGAL AID FOR THE COMMUNITY

The legal landscape can be a tricky one to navigate, and while establishing and running a social enterprise is a noble cause, it can be emotionally charged and financially challenging. This can cause some stress, and though it is tempting to seek the advice of friends or family you must remember that every business was founded and exists under different circumstances, and it is therefore important to get accurate information from legally trained professionals.

You can consult a lawyer, but if you do not have the finances for this, help is at hand. A number of organisations, including the Law Society of Singapore's Pro Bono Services Office (PBSO), provide legal information and assistance to the community, some of which are listed below.

If yours is a community-serving organisation, help is available.

COMMUNITY ORGANISATION CLINIC

The PBSO runs Community Organisation Clinics (in association with the Institute of Singapore Chartered Accountants and the Singapore Human Resources Institute) to assist organisations in Singapore with an objective to meet community concerns, providing basic legal, accounting and/or human resources advice on operational issues. Applicants must be:

(a) a social enterprise or non-profit organisation (e.g. a charity or voluntary welfare organisation) based in Singapore;

(b) geared towards meeting community concerns or needs (i.e. beneficial to the community in Singapore as a whole, and not confined to sectional interests or group of persons based on race, creed, belief or religion);

(c) in need of basic legal, accounting or human resources (HR) advice and information on operational issues.

Each session usually lasts for about 30 minutes, and will involve legal, accounting or HR personnel, depending on the nature of

enquiry. Advice given is of a general and preliminary nature. The Clinics do not offer legal representation to the applicants, although PBSO may be able to assist with providing you information on how to engage a lawyer formally.

PROJECT LAW HELP

PBSO's Project Law Help programme matches eligible community-serving organisations with law firms that are willing to provide free non-litigation commercial legal services.

These legal services could include:

- **Corporate law**
  e.g. advice on contracts with suppliers, indemnity agreements for corporate sponsors, drafting pledges for donors;
- **Employment law**
  e.g. drafting or reviewing employment contracts;
- **Intellectual property law**
  e.g. advice on copyright, data protection, website use;
- **Property law**
  e.g. lease terms; and
- **Other legal matters not involving**
  Court litigation advice or representation.

Applicants must be:
(a) A local social enterprise or non-profit organisation (e.g. a charity or voluntary welfare organisation) based in Singapore;
(b) Geared towards meeting community concerns or needs (i.e. beneficial to the community in Singapore as a whole, and not confined to sectional interests or group of persons based on race, creed, belief or religion);
(c) In need of legal advice or representation for a corporate non-litigation matter, or transaction concerning the organisation;
(d) With limited or no financial resources to pay for such legal advice or representation.

Successful applicants work directly with the law firm assigned, with the assurance that all legal matters will be handled in professional confidence by the volunteer law practice. Do note that eligibility for Project Law Help involves the application by PBSO of a 'means test' to determine the financial status of applicants. To this end, you would need to forward certain financial information in respect of your social enterprise to PBSO, in order for this determination to be made. Do rest assured that all such information forwarded will be kept confidential.

JOINT INTERNATIONAL PRO BONO COMMITTEE (JIPBC)

The JIPC aims to match interested Singapore and international law practices with cross-border pro bono opportunities involving economic and social development in emerging markets.

The legal services offered, are broadly the similar to those available under Project Law Help (as listed above).

Applicants must be:
(a) A local or international social enterprise, or non-profit organisation (e.g. a charity or voluntary welfare organisation) based in Singapore;
(b) Geared towards meeting community concerns or needs (i.e. beneficial to the community in Singapore as a whole, and not confined to sectional interests or group of persons based on race, creed, belief or religion);
(c) In need of legal advice or representation for a corporate non-litigation matter/transaction concerning the organisation;
(d) With limited or no financial resources to pay for such legal advice or representation.

Successful applicants work directly with the law firm assigned, with assurance that all legal matters are handled in professional confidence by the volunteer law practice. The JIPBC would be especially relevant to you, if your social enterprise has cross-border legal needs (for example– if your suppliers are located outside Singapore, and you need foreign legal advice, such as the review of contracts which may have been executed in accordance with foreign laws, or advice on foreign licensing and regulatory regimes).

To register for any of the above schemes and for more information:
Telephone: 6536 0650
Email: ProBonoServices@lawsoc.org.sg
Website: http://probono.lawsociety.org.sg/

THE PRO BONO SERVICES OFFICE (PBSO)

The PBSO is an initiative by the Law Society of Singapore to help bring free legal assistance to those in need in our community. It is part of the Law Society's stated mission to ensure access to justice for all.

The PBSO's work is supported by volunteers who give generously and selflessly of their time and expertise for the needy in the community, and by financial contributions from individual lawyers, law practices, private donations, and key stakeholders such as the Ministry of Law, the Subordinate Courts, the Singapore Academy of Law and various community partners.

Programmes run by the PBSO aim to

- serve the community,
- support their volunteers, and
- assist or collaborate on pro bono initiatives with other agencies to deliver on the Law Society's mission to ensure access to justice.

The PBSO also runs on-going programmes aimed at delivering legal information to targeted members of the community including, relevantly, youth and social enterprise and comprise talks, information booklets, legal clinics and workshops and the like.

More information on these services and the PBSO's varied pro bono initiatives can be found online:[lxxvi]

[i] CAF Venturesome, (2008), The Three Models of Social Enterprises: Creating Social Impact Through Trading Activities: Part 1, United Kingdom: Charities Aid Foundation.

[ii] Social Enterprise Association. (2013). What is a social enterprise, really? See http://www.seassociation.sg.

[iii] Doeringer, M. F. (2010). Fostering Social Enterpise: A Historical and International Analysis. *Duke Journal of Comparative & International Law*, 20, 291-329.

[iv] CDS Co-Operatives. (2013). The Rochdale Pioneers, see http://www.cds.coop.

[v] CDS Co-Operatives. (2013).

[vi] BBC News. (2010). How Rochdale Pioneers changed commerce forever. *BBC News*. See http://news.bbc.co.uk.

[vii] Nobel Media AB. (2013). Jane Addams - Biographical See http://www.nobelprize.org.

[viii] Nobel Media AB. (2013).

[ix] Doeringer, M. F. (2010). Fostering Social Enterpise: A Historical and International Analysis. Duke Journal of Comparative &International Law, 20, 291-329.

[x] Goodwill Industries International Inc. . (2013). Goodwill Founder Edgar J. Helms: A Biography. See http://www.goodwill.org/wp-content/uploads/2012/03/Goodwill-Founder-Edgar-Helms-Bio.pdf.

[xi] Grameen Bank. (2013). Biography of Dr. Muhammad Yunus, see http://www.grameen-info.org.

[xii] Grameen Bank. (2013).

[xiii] Grameen Bank. (2013).

[xiv] Singapore National Co-operative Federation. (2013a, 12 May 2011). Making the Difference for more than 88 Years, see http://www.sncf.org.sg.

[xv] Singapore National Co-operative Federation. (2013a, 12 May 2011).

[xvi] Singapore National Co-operative Federation. (2013b, 13 May 2011). SNCF Profile, see http://www.sncf.org.sg.

[xvii] MCCY. (2013). Co-operative Societies, see http://app.mccy.gov.sg.

[xviii] Cheng, W. (2013, 16 February 2013). What makes a social enterprise, *The Straits Times Asia Report*. See http://www.stasiareport.com.

[xix] Social Enterprise Association. (2013).

[xx] Bornstein, D., & Davis, S. (2010). Social Entrepreneurship: What everyone needs to know (pp. 1-47). New York, New York: Oxford University Press.

[xxi] Social Enterprise UK. (2013). Some Frequently Asked Questions About Social Enterprise, see http://www.socialenterprise.org.uk.

[xxii] Thornley, B. (2012, 11 August 2012). The Facts on U.S. Social Enterprise, Blog Post, *Huffington Post Social Entrepreneurship*. See http://www.huffingtonpost.com.

[xxiii] www.acra.gov.sg.

[xxiv] http://www.bizfile.gov.sg/.

[xxv] http://www.acra.gov.sg/.

[xxvi] (Telephone: +65 6248 6028 or online form www.acra.gov.sg/enquiry). The ACRA is opened 8.00am to 7.00pm from Mondays to Fridays and 8.00am to 1.00pm on Saturdays (excluding public holidays).

[xxvii] https://www.ura.gov.sg/uol/home-office.aspx.

[xxviii] http://www.hdb.gov.sg/fi10/fi10326p.nsf/w/HomeBusinessHomeOfficeScheme.

[xxix] https://licences.business.gov.sg/.

[xxx] http://www.hdb.gov.sg/fi10/fi10326p.nsf/w/HomeBusinessGuidelinesSmallScaleHomeBased?OpenDocument.

[xxxi] www.moe.gov.sg

[xxxii] https://app.ros.gov.sg/ui/Index/Index.aspx.

[xxxiii] https://app.ros.gov.sg/ui/Index/Constitution template with guidelines.doc.

[xxxiv] https://app.ros.gov.sg/ui/Index/Index.aspx.

[xxxv] (Telephone: +65 6391 6325 or Email: mha_ros_feedback@mha.gov.sg). The ROS is open 8:00am to 5:00m from Mondays to Fridays (excluding public holidays).

[xxxvi] www.uen.gov.sg.

[xxxvii] A copy of which may be found in http://statutes.agc.gov.sg/.

[xxxviii] http:/app.mccy.gov.sg/Topics/CooperativeSocietiesHowtosetupacooperativesociety.aspx

[xxxix] (Telephone: +65 6337 6597 or Email: MCCY_regcoop@mccy.gov.sg/). The Registry of Co-operative Societies is open from 8:30am to 5:30m from Mondays to Fridays (excluding Public Holidays). In addition, you may also approach the Singapore National Co-operative Federation (Website: http://www.sncf.org.sg/ or Telephone: +65 6259 0077 or Email: sncf@sncf.org.sg).

[xl] http://www.enterpriseone.gov.sg/.

[xli] http://www.spring.gov.sg/.
[xliii] Please refer to www.acra.gov.sg for information regarding the registration of a sole-proprietorship.
[xliiii] Please refer to www.acra.gov.sg for information regarding the registration of a partnership.
[xliv] Please refer to www.acra.gov.sg for information regarding the registration of an LP.
[xlv] Please refer to www.acra.gov.sg for information regarding the registration of an LLP.
[xlvi] Please refer to www.acra.gov.sg for information regarding the registration of a company.
[xlvii] For general information on co-operative societies, please refer to http://app.mccy.gov.sg.
[xlviii] More information on this can be found in the following website: http://www.tafep.sg/.
[xlix] Information about these initiatives can be found on the MOM's website: http://www.mom.gov.sg.
[l] More information about the benefits and entitlements and claims procedures can be found on this website: http://www.heybaby.sg.
[li] http://www.mom.gov.sg.
[lii] http://www.mom.gov.sg.
[liii] More information can be found at this website: http://jobs-odf.com.sg.
[liv] More information can be found on http://www.sec.gov.sg/.
[lv] Channel News Asia, "More Singaporeans heading online to shop". ‹www.channelnewsasia.com/news/singapore› (accessed 5 August 2013). – this link is not working.
[lvi] Asia Pacific Digital Marketing Yearbook 2012 at p38.
[lvii] Section 20, PDPA.
[lviii] Fourth Schedule to PDPA.
[lix] How to comply with Children's Online Privacy Protection Act http://www.coppa.org/comply.htm
[lx] Can be accessed at http://eur-lex.europa.eu.
[lxi] Policies and Regulations section at www.ida.gov.sg.
[lxii] at https://www.charities.gov.sg.
[lxiii] at https://www.charities.gov.sg.
[lxiv] at https://www.charities.gov.sg.
[lxv] at https://licences.business.gov.sg.
[lxvi] at www.mom.gov.sg.
[lxvii] please see www.cpf.gov.sg/cpf_info/Online/Contri.asp.
[lxviii] This can be found at http://mycpf.cpf.gov.sg .
[lxix] (further details regarding such exemptions have yet to be published, but developments may be monitored at www.pdpc.gov.sg).
[lxx] http://www.ipos.gov.sg.
[lxxi] Please visit http://www.iras.gov.sg for more information on the PIC.
[lxxii] http://www.cf.org.sg/receive/.
[lxxiii] SCAP Appendix F, para 5.4.
[lxxiv] extracted from the IRAS website – www.iras.gov.sg.
[lxxv] Visit http://www.lawsociety.org/ to find out more about the scheme.
[lxxvi] http://probono.lawsociety.org.sg/.

TABLE OF ACRONYMS

ACRA	Accounting And Corporate Regulatory Authority
ASAS	Advertising Standards Authority Of Singapore
AVA	Agri-Food And Veterinary Authority Of Singapore
AGM	Annual General Meeting
BRA	Business Registration Act
CPF	Central Provident Fund Act
CEA	Certification Authority
CHA	Charities Act
CDCA	Child Development Co- Savings Act
COPPA	Children's Online Privacy Protection Act Of 1998
CSA	Co-Operative Societies Act
CA	Companies Act
CLG	Company Limited By Guarantee
CLG	Company Limited By Guarantee
CPFTA	Consumer Protection (Fair Trading) Act
CPFTA	Consumer Protection (Fair Trading) Act
CASE	Consumers Association Of Singapore
COA	Copyright Act
CIT	Corporate Income Tax
D & O	Directors And Officers Liability
(INSURANCE)	Insurance
DNC REGISTRY	Do-Not-Call Registry
EA	Employment Act
EULA	End-User Licence Agreement
FCF	Fair Consideration Framework
FQLP	Foreign Qualified Law Practices
GIS	Geographical Indications
GIA	Geographical Indications Act
HDB	Housing Development Board
ITA	Income Tax Act
ITBR	Income Tax Board Of Review
IRAS	Inland Revenue Authority Of Singapore
IPC	Institute Of Public Character
IROSES	Integrated Registry Of Societies Electronic System
IPS	Intellectual Properties
JIPBC	Joint International Pro Bono Committee
LDICA	Layout-Designs Of Integrated Circuits Act
LPA	Legal Profession Act
LC	Letter Of Credit
LLPA	Limited Liability Partnership Act
LP	Limited Partnership
LDMA	Literary, Dramatic, Musical Or Artistic
MP	Madrid Protocol
MAA	Memorandum And Articles Of Association
MCI	Ministry Of Communications And Information
MICA	Ministry Of Communications And Information
MCCY	Ministry Of Culture, Community And Youth
MOE	Ministry Of Education
MOM	Ministry Of Manpower
MTI	Ministry Of Trade And Industry
NDA	Non-Disclosure Agreement
NPOS	Non-Profit Organisations
NOA	Notice Of Objection
OA	Official Assignee
OBLS	Online Business Licensing Service
ODF	Open Door Fund
PDPA	Personal Data Protection Act
PDPC	Personal Data Protection Commission
PVPA	Plant Varieties Protection Act
PIC	Productivity And Innovation Credit Scheme
RDA	Registered Designs Act
ROS	Registry Of Societies
RRA	Retirement And Reemployment Act
SOGA	Sale Of Goods Act
SARS	Severe Acute Respiratory Syndrome
SAICSA	Singapore Association Of The Institute Of Chartered Secretaries And Administrators
SCAP	Singapore Code Of Advertising Practice 2008
SCORE	Singapore Cooperation Of Rehabilitative Enterprises
SLP	Singapore Law Practices
SES	Social Enterprises
SA	Societies Act
SEC	Special Employment Credit Scheme
PBSO	The Pro Bono Services Office
TM	Trade Mark
TMA	Trade Marks Act
UCTA	Unfair Contract Terms Act
WISES	Work Integration Social Enterprises
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation
YA	Year Of Assessment

TABLE SUMMARY ON HOW TO SET UP YOUR BUSINESS VEHICLE

	COMPANY LIMITED BY SHARES AND COMPANY LIMITED BY GUARANTEE	SOLE PROPRIETOR AND PARTNERSHIP	LIMITED LIABILITY PARTNERSHIP	LIMITED PARTNERSHIP
General	A company may be incorporated by submitting the memorandum and articles of association (M&AA) of the proposed company together with such information that the Registrar of Companies may prescribe and by paying the prescribed fee (see below).	If you intend to set up a sole proprietorship or partnership (maximum 20 partners in total), it should be noted that, prior to carrying on business in Singapore, you must register the business unless you are exempted from such a requirement, failing which, this will constitute an offence.	A limited liability partnership (LLP) may be registered if a statement by every person who is to be a partner of the LLP is lodged with the Registrar of Limited Liability Partnerships containing certain particulars.	A limited partnership (LP) may be registered if a general partner of the LP lodges with the Registrar of Limited Partnerships a statement containing certain particulars.
Procedure	You may register a company, sole proprietorship, partnership, LLP or LP through the Accounting and Corporate Regulatory Authority ("ACRA") by submitting an application online via BizFile at http://www.bizfile.gov.sg/. Alternatively, you may wish to engage the services of a professional firm (e.g. a lawyer, chartered accountant etc.) or a service bureau to submit an online application but these options will cost more. If you are submitting an online application, ACRA's website contains a useful step-by-step guide which may be found at http://www.acra.gov.sg/.			
Fee	• Name approval fee: S$15.00; and • Registration fee: S$300 (for company limited by shares) or S$600 (for company limited by guarantee).	• Name approval fee: S$15.00; and • Registration fee: S$50.00	• Name approval fee: S$15.00; and • Registration fee: S$150.00	• Name approval fee: S$15.00; and • Registration fee: S$50.00
Time Required	A company, sole proprietorship, LLP or LP can usually be incorporated or registered within 15 minutes after the registration fee is paid. However, it may take between 14 days to 2 months if the application needs to be referred to other authorities for approval or review (e.g. the setting up of a private school will need to be referred to the Ministry of Education). A good summary of the various referring authorities can be found at http://www.acra.gov.sg/.			
Other remarks	As a starting point, for companies limited by shares, you may wish to consider adopting or referring to the sample M&AA which is provided by the ACRA at www.acra.gov.sg.	Partnership You and your partners should draw up a partnership agreement which defines certain partnership matters such as the roles and responsibilities of the partners as well as how the profits are to be distributed amongst each partner. Sole- Proprietorship Where the sole proprietor or all the partners of the partnership reside outside Singapore, the Registrar will require a local manager (who must either be a Singapore citizen or Singapore permanent resident) to be appointed.	PARTNERSHIP You and your partners should also draw up an LLP agreement to govern matters such as the mutual rights and duties of the partners as well as the mutual rights and duties of the LLP and its partners. In the absence of this agreement, please note that the provisions set out in the First Schedule of the Limited Liability Partnership Act (a copy of which may be found in http://statutes.agc.gov.sg/) will apply. The LLP will also need to appoint a manager (who is ordinarily resident in Singapore, a natural person at least 18 years old and of capacity).	The partners of the LP should draw up an LP agreement to govern the various matters related to the LP such as the contribution of the partners to the LP and the relationship between these partners. Please note that the LP will be required to appoint a local manager if every general partner is ordinarily resident outside Singapore. It should be noted that additional regulations will apply in relation to the setting of the LP if the LP is set up primarily for investment funds.

CO-OPERATIVE SOCIETY

Detailed information on how to set up a co-operative society may be found at http://app.mccy.gov.sg/.

In general, the following are the steps which are required to form a co-operative society:

(a) You will need to first set up a Pro-tem Committee with at least 3 members to undertake a feasibility study to determine the economic and financial viability of the proposed society.

(b) You will then need to submit, for the Registrar of Co-operative Societies' comments:
- a viability statement (containing a business plan and the cash flow projections for at least 3 years);
- particulars of each committee member, including name, NRIC number, date of birth, citizenship, occupation, address and contact numbers; and
- a draft copy of By-laws which include matters spelt out in the Schedule of the Co-operative Societies Act (a copy of which may be found in http://statutes.agc.gov.sg/).

(c) After obtaining the Registrar's comments, you will need to convene a preliminary meeting of at least 10 persons qualified for membership to:
- adopt the By-laws (which have incorporated the Registry's comments); and
- pass the resolution to accept all the rights, duties and liabilities prescribed by the By-laws.

In this regard, it should be noted that in order to qualify for membership, an individual member must:
- be at least 16 years old;
- be a citizen or resident in Singapore;
- not be legally or mentally disabled;
- not be an undischarged bankrupt;
- meet residence, employment and profession requirements as prescribed in By-laws;
- not have been convicted of an offence punishable with imprisonment;
- be able to meet such other requirements prescribed by the By-laws; and
- belong to pre-existing common bond of association or community of interest.

An institutional member must be a registered co-operative society or trade union.

(d) You will then have to submit the following documents to the Registrar to apply for registration:
- the duly completed relevant application form (which may be downloaded at http://app.mccy.gov.sg/);
- details (name, NRIC or FIN number, nationality, occupation and address) and signatures of at least 10 members;
- By-laws;
- business plan (which should include business strategy, products and service, target customers, expected demand etc.) and 3-year financial projections (which should include the balance sheet, income and expenditure as well as cashflow statements); and
- minutes of the preliminary meeting, with the signatures of all who were present at the meeting.

The time taken by the Registrar to process and approve the registration will depend on the complexity of the application. No fees are payable for the registration of the co-operative society.

(e) Upon registration, the Pro-tem Committee shall continue to manage the affairs of the co-operative society until the first meeting of the members which must be held within 3 months after receiving the notice of registration and shall include the election of officers who shall serve until the first annual general meeting.