

The Ultimate Guide to Starting and Running a Business in Singapore

*All the legal, tax, operational, and
strategic considerations from founding
to growth stage*

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Foreword and Overview

This article explains everything a founder, CEO, Board Director, manager, or executive would typically encounter in starting and running a business.

Beyond mere information, we share practical guidance and insights from experience.

On our experience, our team has helped clients from start-up founders to CEOs and Board Directors of listed companies navigate complex legal terrain, deals, and disputes. We've worked with businesses from a myriad sectors, including fintech, media and entertainment, manufacturing, oil & gas, financial services, food & beverage (F&B).

We will cover also general legal issues and legal documents, contracts, and agreements which a business can expect to encounter through its lifecycle from founding to growth stages.

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A. BUSINESS STAGES

Generally, a business will have 6 core functional areas:

- strategy,
- finance,
- human resources,
- operations,
- marketing,
- and assets (e.g., technology, equipment, real estate).

Each area may give rise to various issues and pain points. As the business grows from stage to stage, different considerations arise. The main stages are as follows:

Founding:

- At this stage, a business will be registered.
- The appropriate legal structure needs to be adopted (e.g., private company limited by shares, limited liability partnership, partnership, sole proprietorship).
- The legal form will mainly affect personal liability of shareholders/partners, tax liability & financing/fundraising options.
- The founders, shareholders or partners should have certain constitutional documents drawn up to govern their internal relationships, set expectations, incentivize long-term growth & development, and set boundaries to prevent a bitter divorce.

Seed:

- As the start-up begins business and grows, it will deal with various third parties e.g., customers, suppliers, landlord, consultants, independent contractors/freelancers, and employees.

- It may need external financing beyond founders' bootstrapping. Seed investors may come in as lenders or shareholders.

Maturity:

- As the business matures, the business will need more financing to expand its operations and market.
- Profits may be distributed to shareholders.
- At this stage, the business may also begin to acquire other businesses for strategic and commercial purposes.

Realisation/Liquidation:

- The business may eventually become a listed public company through an IPO or be sold to a larger business.
- Or if a business fails and becomes insolvent or the shareholders are unable to continue to operate the business together, the business may eventually be liquidated through voluntary or involuntary winding up.

B. CHOOSE THE RIGHT LEGAL STRUCTURE

The choice of legal structure affects tax, liability, governance, options for raising capital, and exits.



	Sole Proprietor / Partnership	Company (Pte Ltd)	Limited Liability Partnership (LLP)
Legal Status	<ul style="list-style-type: none"> Sole proprietor is a single owner. Partnership is where 2 or more owners partner in owning and running the business. Not a separate legal entity from the owner(s). Owner(s) exposed to unlimited liability of the business. Owner(s) personally liable, exposed to bankruptcy. Can sue or be sued in owner's name or firm's. Sole proprietor can own property if the owner has legal capacity. Partnership cannot own property in the firm's name. 	<ul style="list-style-type: none"> A separate legal entity from its members / shareholders and officers e.g. directors. Members, shareholders, officers not personally liable for company's debts. Only the company exposed to insolvency. Can sue or be sued in company's name. Can own property in company's name. Exempt private company: 20 members or less; no corporation holds beneficial interest in the company's shares. Private company: 50 members or less. Public company: more than 50 members. 	<ul style="list-style-type: none"> There must be at least 2 partners. No maximum number of partners. Partners can be individuals or corporate bodies. Separate legal entity from its partners. Partners not personally liable for LLP's debts. Partners exposed to limited liability. Only the LLP exposed to insolvency. Individual partners personally liable for their own acts or debts, not for other partners' acts or debts. Can sue or be sued in LLP's name. Can own property in LLP's name.

Registration Requirements	<ul style="list-style-type: none"> ▪ Age 18 years or above. ▪ Singapore citizen/Singapore permanent resident / EntrePass holder. ▪ If the owner is a foreigner or not resident in Singapore, he must appoint an <u>authorised representative</u> resident in Singapore. ▪ Self-employed persons must top up their Medisave account with the CPF Board before they register a new business, become the owner of an existing business name or renew their business registration. Must continue making Medisave contributions. ▪ No registration needed if owner trades in their own name. If trading under another name, <u>business name registration required</u>. ▪ May require approval of referral authorities if it's a regulated business. 	<ul style="list-style-type: none"> ▪ At least 1 shareholder. ▪ At least 1 director ordinarily resident in Singapore. The rest of directors may be non-local resident. ▪ Foreigners can be shareholders up to 100% ownership. ▪ If a foreigner wishes to act as a local director of the company, they can apply for an EntrePass from the Ministry of Manpower or letter of approval if they're presently an Employment Pass holder in Singapore. ▪ May require approval of referral authorities if it's a regulated business. 	<ul style="list-style-type: none"> ▪ At least 2 partners, who can be individuals who are at least 18 years old or body corporate (company or other LLP). ▪ At least 1 manager who is an individual ordinarily resident in Singapore who is at least 18 years old and not disqualified under the Companies Act. ▪ May require approval of referral authorities if it's a regulated business.
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Address Requirements	<ul style="list-style-type: none"> ▪ Need a business address. ▪ May use residential address subject to prior approval from HDB or URA. ▪ Owners and company officers must provide their residential address to ACRA at the point of registration. These will be made publicly available when the public purchases information about the business entity. Alternatively, opt for Alternate Address for a fee if you prefer not to disclose your residential addresses publicly. 	<ul style="list-style-type: none"> ▪ Need a registered office address. ▪ All notices to the company will be addressed to it. ▪ Company's registers and records must be kept there. ▪ Corporate service providers with corporate secretary services may offer use of their address as registered address. ▪ Registered office must be operational and accessible to the public during normal office hours, but need not be where the business conducts its activities. ▪ Owners and company officers must provide their residential address to ACRA at the point of registration. These will be made publicly available when the public purchases information about the business entity. Alternatively, opt for Alternate Address for a fee if you prefer not to disclose your residential addresses publicly. 	<p>Same as for companies.</p>
Formalities & Expenses	<ul style="list-style-type: none"> ▪ Quick and easy to set up. ▪ Easy to administer and manage. ▪ Registration cost low. ▪ Less administrative duties. ▪ Must renew registration before the expiry date. 	<ul style="list-style-type: none"> ▪ Slightly higher cost to set up and maintain. ▪ More formalities and procedures to comply with. ▪ Must appoint a company secretary within 6 months of incorporation. 	<ul style="list-style-type: none"> ▪ Quick and easy to set up. ▪ Fewer formalities and procedures to comply with as compared to a company. ▪ Registration cost is low and fewer regulatory duties to

		<ul style="list-style-type: none"> ▪ Must appoint an auditor within 3 months after incorporation unless the company is exempt from audit requirements (exempt private company). ▪ Annual Returns must be filed. ▪ Statutory requirements for general meetings, duties of director/company secretary, share allotments, etc. 	<p>adhere to than a company.</p> <ul style="list-style-type: none"> ▪ No statutory requirement for general meetings, share allotments, etc. ▪ Only an annual declaration of solvency must be lodged by the manager stating whether the LLP is able or not able to pay its debts during the normal course of business. ▪ One time registration.
Registration Fee (payable to ACRA)	<ul style="list-style-type: none"> ▪ \$15 name application fee. ▪ \$100 registration fee. ▪ \$30 Renewal fee. ▪ Processing <u>times</u>. 	\$315 (\$15 name application fee and \$300 incorporation fee).	\$115 (\$15 name application fee and \$100 registration fee).
Applicable Tax Rate	<ul style="list-style-type: none"> ▪ Profits taxed at individual owner's <u>personal income tax rates</u>. 	<ul style="list-style-type: none"> ▪ Company's profits taxed at <u>corporate tax rate 17%</u>. 	<ul style="list-style-type: none"> ▪ Profits attributed to individual partner taxed at partners' personal income tax rates (if individual)/ corporate tax rate (if corporation).
Continuity	<ul style="list-style-type: none"> ▪ Exists as long as the owner is alive and continues business. 	<ul style="list-style-type: none"> ▪ The company, as a separate legal entity, does not cease to exist if one or more of its shareholders die. ▪ Its corporate existence lasts as long as its shareholders decide it should. A company's life is usually perpetual. ▪ Ownership of a company can be transferred and additional shareholders can be appointed. 	<ul style="list-style-type: none"> ▪ The LLP has a legal personality separate from its partners. ▪ The LLP has perpetual succession.

Closing The Business	<ul style="list-style-type: none"> ▪ By owner or authorised representative by filing a Notice of Cessation of Business Registration. ▪ By Registrar – if the registration has expired and has not been renewed. 	<ul style="list-style-type: none"> ▪ Winding Up – voluntarily by members or creditors; compulsorily by the High Court upon the application of members, creditors, liquidators, etc. ▪ Striking Off the company from the Register. 	<ul style="list-style-type: none"> ▪ Winding Up – voluntarily by partners; compulsorily by the High Court upon application of partner, creditors, liquidators, etc.. ▪ Striking Off from the Register.
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We will not consider here Limited Partnerships (LPs) and Variable Capital Companies (VCCs), which are generally used for investment funds. We also advise on the setting up of investment funds and fund managers, family offices, and laws, regulations and compliance issues regarding financial services.

In terms of raising capital, the company structure is preferred as it offers flexibility and options to attract investors to provide capital for various rights and incentives.

For decentralised / digital autonomous organisations, check out [this article](#) of mine which sets out various possible legal structures and considerations.

For non-profit entities, check out [this article](#) of mine discussing societies and companies limited by guarantee (CLG).

Regarding audits:

- CLGs must submit audited accounts or financial statements annually.
- LLPs need not file accounts or have audited accounts. However, the manager of an LLP must submit an annual declaration of solvency or insolvency.
- Pte Ltd companies must submit audited accounts annually unless they qualify under the small business exemption or deemed an exempt private company. A company is deemed a small business if it is a private business in the current financial year (FY) and meets at least 2 of 3 requirements in the immediate past 2 FYs:
 - total annual revenue less than S\$10 million;
 - total assets worth less than S\$10 million;
 - less than 50 employees. If the company is part of a group the whole group has to be a small group (the foregoing criteria applies on a consolidated basis for the whole group).
- While a company may not be required to have audited accounts, it should still prepare unaudited accounts for various reasons including providing shareholders at AGMs and for tax purposes.

C. HOW TO REGISTER YOUR BUSINESS



Assuming you decide to register your business as a private limited company, here's how you can register it.

- Apply for the company name with Accounting and Corporate Regulatory Authority (ACRA) through [Bizfile+](#). You can get the name approval within the same day. But if the name has [potential issues](#), it will take longer. Some words or names are objectionable. Some will require approval from government authorities. An approved name will be reserved for 120 days from application.
- After the name has been approved, apply to incorporate or register the company (or other entity). This can be completed in a few hours provided all the necessary paperwork and information have already been properly compiled.
 - Approved company name and transaction number
 - Singapore Standard Industrial Classification (SIC) code describing your company's business activities.
 - Financial Year End (FYE): this affects when your corporate filings, Annual General Meetings (AGMs), and taxes are due annually. Private companies must hold AGM within 6 months after FYE and file annual returns (AR) within 7 months after FYE.

- Company Constitution. You can opt for the [Model Constitution](#) or draft your own bespoke one, which you can engage a lawyer like me to do.
 - Identification documents of all shareholders, directors, and company secretaries, and their details, including NRIC, full name, nationality, telephone number, email address, and residential address. If the shareholder is a company, a business profile including the shareholding and the authorised representative's name and ID.
 - Consent to Act as a Company Director (Form 45), signed by all company directors.
 - Consent to Act as Company Secretary (Form 45B), signed by the company secretary.
- You may thereafter require the following:
 - Share certificates issued for each shareholder
 - Share register indicating shareholding
 - Company seal and/or rubber stamp
 - The company will then need to maintain, unless exempted, a Register of Registrable Controllers at the registered office address or office of the company's authorised corporate service provider. Such controllers include beneficial owners of the company (and not just the shareholders listed in the Register of Members).

Foreign individuals must appoint a registered filing agent to handle the registration process.

D. ACCOUNTS, BANK ACCOUNTS AND PAYMENT SERVICES

After the business has been successfully registered, a CorpPass account should be set up at this [website](#). In Singapore, an entity will require CorpPass to access various government services. The CorpPass admin may grant access to authorised personnel of the organisation to login to the various government services on behalf of the organisation.

The business controllers may also wish to open one or more bank accounts at any bank in Singapore. After all, share capital should be actually injected into the company. Each bank will have their own policies. Bank accounts may be single or multi-currency. Typically, most banks will require the following:

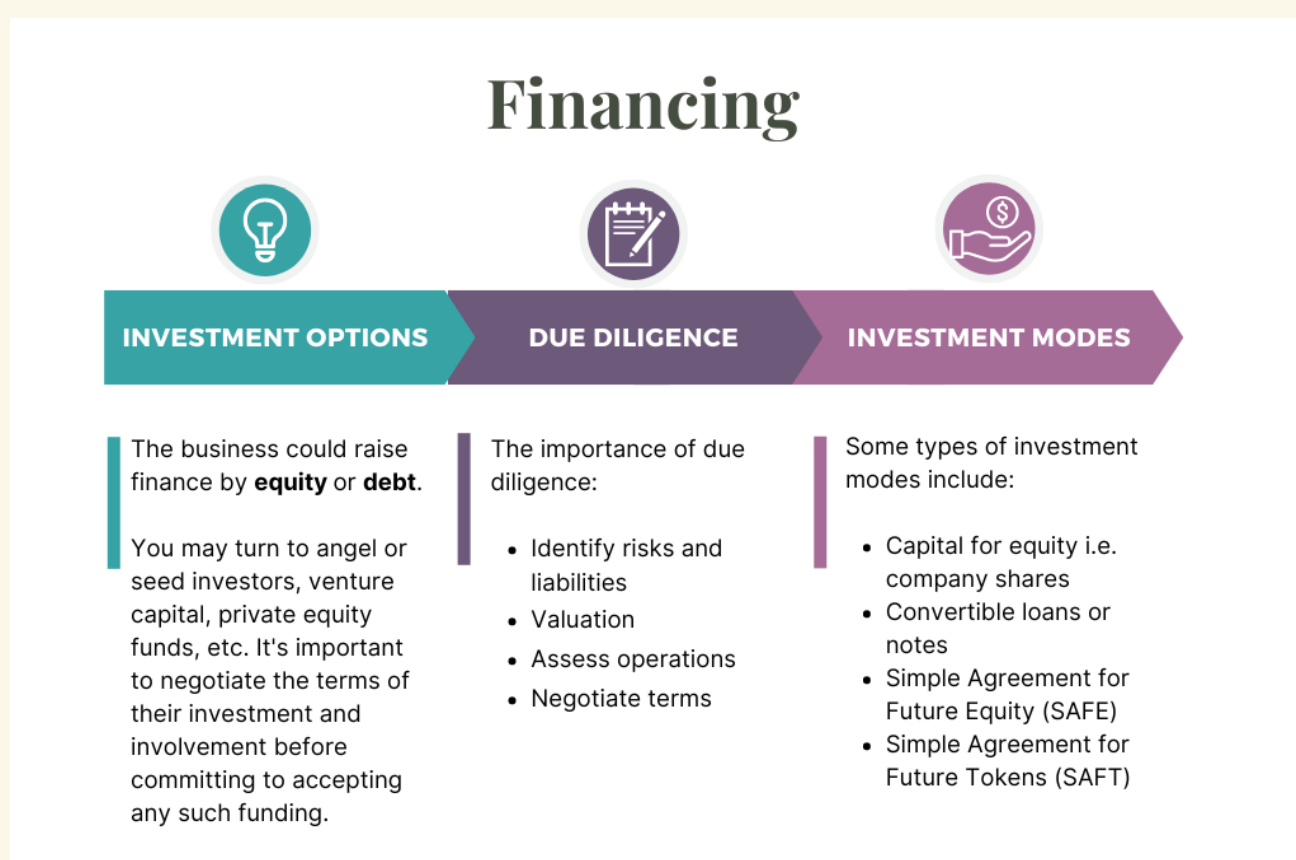
- Account application forms completed.
- Directors' resolution on opening of bank account and authorised signatures. Certified true copy of the same. The various banks will usually have their own template resolution for this purpose.
- Certified true copy of certificate of incorporation (certified by company secretary or directors).
- Certified true copies of NRIC/passports of all directors and authorised signatories, and proof of residential address.
- Certified true copy of the company constitution.
- Certified true copy of ACRA business profile of the entity.

Most banks will require the directors and signatories to be physically present at the account opening. Although in some exceptional cases, the bank may permit alternative options such as visiting the overseas branch for physical identification verification and due diligence teleconference.

Increasingly, many startups are opting for, or using in addition to bank accounts, digital payment services and payment accounts. Such payment service providers (PSPs) offer multi-currency accounts, cross-border money transfers, expense management, virtual customer accounts etc.

E. CAPITAL AND INVESTMENT OR SHAREHOLDER TERMS

At the point of registration, a company can have as little as S\$1 in share capital. However, you will need sufficient capital to actually get your business going.



Investment Options

As your business grows, you will at some point require more capital and thus may have to turn to external sources of funds to finance your business. Broadly, this could be raising finance by **equity** or **debt**. Different issues arise in the different forms of financing.

You may turn to angel or seed investors, venture capital, private equity funds, etc. It's important to negotiate the terms of their investment and involvement before committing to accepting any such funding.

For equity financing, some investors may demand taking a significant interest in the business. For some investors, they are able to bring their expertise, mentorship, networks and other value to the business other than financing.

For non-company entities, equity financing may mean giving the investor not only an interest in the profits of the business, but also a management role. For instance, an investor may want to be joined as a partner (converting a sole proprietorship into a partnership) in a partnership.

Some potential investors may wish to conduct **due diligence** on your business, the founders, and the key executives before proceeding with the investment.

- Typically, the startup founders would at least have negotiated the key terms of the potential investment and entered into a non-binding term sheet before proceeding with due diligence. This is because the due diligence process can be very time-consuming and labour intensive.
- A non-disclosure agreement (NDA) would be necessary to ensure confidentiality of the information and documents you will provide to the investor in the due diligence process.
- The investors will review your company's financial statements, management accounts, annual budgets, product, proof of concept, constitutional documents, shareholders' agreement, cap table, corporate documents (relevant shareholders and Board resolutions), employment contracts, vendor contracts, key client lists and contracts, financing contracts, material contracts, IP registrations, and other records to identify any legal, financial, compliance, operational, or other risks.
- Depending on the nature of your business, they may also inspect your assets, whether it be physical or digital. They may also request an audit of e.g. your software source code.
- They will conduct background checks, and litigation and insolvency/bankruptcy searches on your company and the founders, key executives, and existing shareholders.
- They may also interview your key employees and client representatives.
- Having worked with various investors, we note that the key things investors look out for beyond the baseline would be the competence, character, and track record of the founders and key executives.
- The foregoing is a good reason why startups should maintain proper legal documentation, compliance, and record-keeping from the outset.

From an investor's or buyer's perspective:

- A buyer/investor would want to conduct due diligence (DD) to understand the target company's financial, legal, and operational status.
- The information from DD will enable the buyer to decide whether to proceed with the purchase, and if so, to negotiate the terms, including price and address key risks by stipulating express terms on representations and warranties.

The Importance of Due Diligence:

1. **Identify Risks and Liabilities:** DD uncovers potential risks and obligations of the target, including tax liabilities, debts, legal disputes, and regulatory issues. Also, any potential risks regarding the shares, the seller, and any corporate legal issues.

2. **Valuation:** It verifies the company's valuation by reviewing financial statements, cash flow, and assets and liabilities. This is particularly important if real estate forms a significant part of the business's assets. It enables the buyer/investor to negotiate down the price to a fair one taking into account the true state of the target.
 3. **Assess Operations:** It evaluates the company's current operations and performance. This can help ascertain how much the target's operations can be optimised further for profitability and effectiveness, and thus its long-term viability and the buyer's potential investment upside.
 4. **Negotiate Terms:** If DD reveals risks or liabilities, this information can be used to renegotiate the price or other terms like reps and warranties.
- The scope and extent of DD is up to the buyer/investor and its advisors. If budget for DD may be a concern, they may wish to focus on certain material aspects and risks only.

Some types of investment modes include:

- Capital for **equity** i.e. **shares** in the company. We elaborate on shareholder terms below.
- **Convertible loans or notes:** a loan repayable with interest upon maturity or which can be converted into equity (i) at the option of the investor, or (ii) at a liquidation event like acquisition or liquidation, or (iii) at a priced equity financing round.
- Simple Agreement for Future Equity (**SAFE**): investment in exchange for an agreement to issue the investor shares at a future time, usually at the next equity financing round.
 - Unlike convertible loans, SAFEs are not debts and have no maturity or interest.
 - SAFEs typically would have a valuation cap or discount rate or both (at the option of the SAFE holder or whichever gives more shares to the SAFE holder at conversion).
 - The valuation cap is the maximum valuation of the company in the equity financing round which a SAFE converts at. So, it sets the maximum price of the shares which a SAFE holder will subscribe for with the SAFE investment amount. The lower the cap, the more shares the investor will receive for the same investment amount.
 - The discount rate is the discount to the valuation in the equity financing round that SAFE holders will get at conversion. The higher the discount, the more shares a SAFE holder will get at conversion.
 - Some SAFEs may have a 'most favoured nation' (MFN) clause. This means the SAFE holder will get the most favourable terms offered to investors in the next equity round.
 - If a liquidation event like an acquisition happens before an equity round, a SAFE may have a term which grants the SAFE holder the right to be repaid the original SAFE investment amount or convert the SAFE into shares based on the valuation cap and sell the shares for money as part of the acquisition transaction.
 - SAFEs are attractive investments for founders because they are easier and quicker to negotiate, usually involve less conditions such as investor control and rights, and do not have a maturity date plus interest which could be a pressure on the founders.
 - For investors, it is also easier to manage, offers quicker access to early-stage investments, and typically offers better investment conversion terms than later stage investors.

- On the flip side, for founders, equity could be diluted significantly as a result of substantial amount of SAFEs, and low valuation caps could impact subsequent valuations.
- For investors, the disadvantages are that there may be a long wait for conversion to equity with no way of obtaining repayment of the investment, and no interest accrues.
- Some investors, especially lead investors in a SAFE round, may negotiate to have a side letter with certain special rights over the other SAFE holders in the round. Typically, these would include pre-emption rights to future financing rounds, information rights, major shareholder/investor rights e.g. veto rights on reserved matters.
- Simple Agreement for Future Tokens (**SAFT**). Similar to SAFE albeit with digital tokens to be issued by the company.

Share Subscription and Shareholders Agreement

Typically, when raising capital for equity, the company allots new shares to the investor. The investor's funds are injected into the company as capital.

A **Share Subscription Agreement** and a **Shareholders' Agreement** should be drawn up to govern the rights and obligations as between the founders, existing shareholders and investors.

The **Subscription Agreement** may include representations and warranties (in favour of the investor, even after due diligence) on matters such as:

- a) the financial position of company, e.g. its balance sheet and profit margin;
- b) whether the company has complied with regulatory requirements;
- c) title to, and condition of, the company's key assets (e.g. intellectual property);
- d) trading and contractual matters, e.g. the validity of key contracts;
- e) employment matters, e.g. whether there are any employment disputes or the commitment of key employees or personnel of the company;
- f) tax compliance.

The **Shareholders' Agreement** may specify the following terms:

- regular provision of company information to shareholders;
- right to appoint Board members;
- dividend policy e.g. a minimum % profit to be distributed as dividends;
- non-competition and non-solicitation restrictive covenants on founders, certain shareholders and directors;
- pre-emption rights or rights of first refusal (ROFR) on the transfer of shares or issuance of new shares for capital: right to first have the option to buy or subscribe for the shares;
- anti-dilution rights: we elaborate on this below under preference share terms;
- tag-along rights: favouring minority shareholders, the right for minority to sell their shares to a third party in the same transaction as the majority shareholders on the same terms;
- drag-along rights: favouring majority shareholders, the right for majority to force the minority shareholders to sell their shares to a third party in the same transaction on the same terms such that all or a substantial amount of shareholding will be sold to the third party;
- reserved matters on key decisions which require the approval of shareholders or nominee directors of a specified minimum shareholding threshold;

- deadlock in decision-making by Board members or shareholders.
 - These would typically be addressed by way of mediation, failing which:
 - Call and/or put options (right to buy out other shareholders' shares vs right to force other shareholder to buy your shares) – price can be stipulated beforehand by way of a figure, a formula or a valuation process. Put options favour minority shareholders and financially weaker parties. Call options favour majority shareholders and financially stronger parties;
 - Sealed auction or bid mechanisms such as the 'Texas shoot-out' (shareholder with highest sealed bid shall buy other shareholders' shares);
 - Russian roulette: any shareholder may issue notice to either offer to buy out other shareholders at a specified price or require the other shareholders to buy it out at the same price (favours shareholders with more financial resources); or
 - As a last resort, liquidation.

Further, the company's Constitution or Memorandum and Articles of Association may be amended to incorporate some terms.

Preference Shares

If shares other than ordinary shares are issued, e.g. preference shares, the company's Constitution will need to be amended, and the Shareholders' Agreement would typically specify, the terms relating to that class of shares.

Preference shares could be:

- **Convertible preference shares:** convertible to ordinary shares on certain conditions (more below); or
- **Redeemable preference shares (RPS):** redeemable by the company for the investment capital amount plus interest. Note however that depending on the terms of the preference shares (which should be specifically negotiated and drafted), RPS could be classified in the company's accounts as debt rather than equity. This could affect the company's financial position, valuation, and tax liabilities.

Typically, some preference share terms would include:

- Dividend priority over ordinary shareholders
- Conversion to ordinary shares under certain conditions
- Liquidation preference rights in priority to ordinary shareholders. Liquidation events include acquisition or winding up of the company. Typically, preference shareholders will get a multiple of the original capital invested, and sometimes, additionally, pro rata of the remainder of the proceeds (this is known as participating).
- Voting rights (same rights as, or increased voting rights over, ordinary shares) or no voting rights
- Anti-dilution rights in the event of a down-round.
 - A down-round is where the company's pre-money valuation is less than the post-money valuation in the preceding fundraising round.

- The typical anti-dilution clause allows for (i) lowering the price for, or increasing the ratio of, conversion of preference shares to ordinary shares, or (ii) issuing more shares to the preference shareholder.
- Generally, there are 3 types of anti-dilution mechanisms: (i) broad-based weighted average; (ii) narrow-based weighted average; (iii) full ratchet.
- The broad-based clause results in the smallest adjustment. It accounts for all equity.
- The narrow-based clause results in higher adjustment than the broad-based. It accounts only for convertible shares and exclude options and ESOP option pools.
- The full ratchet results in the greatest adjustment. It allows investors to retain the same percentage of shareholding as before the down-round. The conversion price or ratio would be adjusted accordingly. Full ratchet is not common as it only favours the early investors and makes it hard to attract subsequent investments.

Regulations on Offer of Investments and Raising Funds

You should note that unless you can come within certain safe harbour exemptions under the Securities and Futures Act (SFA), raising capital from people through offers of investments without complying with the relevant SFA regulations could be a criminal offence.

See e.g. [this case](#) where a company director and shareholder was sentenced to 15 months' imprisonment for raising about S\$8 million from the public through offers of convertible loan agreements with his company without a prospectus.

Generally, under the SFA, if a person wishes to make an offer of **capital market products (CMP)**, a prospectus and product highlights sheet (PHS) would be required to be registered and issued, unless certain safe harbour exemptions are applicable.

CMPs include:

- securities such as shares or debentures (including loan agreements, debt notes, bonds, etc.),
- certain securities-based derivatives, and
- units in collective investment schemes (CIS) whether or not the schemes have previously been issued). These are, to paraphrase, arrangements where participants have no day-to-day control of assets, assets are managed on a centralised basis or contributions are pooled, and the purpose or effect is to receive returns from the arrangement. CIS must be authorised (if established in Singapore) or recognised (if established outside Singapore). CIS must be managed by a holder of a CMP services licence, with an approved trustee or custodian. Various types of investment funds are at law deemed CIS. These include mutual funds, hedge funds, private equity funds, venture capital funds, REITs, and ETFs.

Some safe harbour exemptions are:

- **Small offer exemption** applies to offers of CMP made by any person where **the total amount** raised by the person from the offers **does not exceed S\$5 million** (or its equivalent in any foreign currency) **in any 12-month period**.
- **Private placement exemption**. Section 272B(1) of the SFA provides a safe harbour for private placements of securities or securities-based derivatives contracts of an entity or business trust **offered to not more than 50 investors** (or such other number as may be prescribed by

MAS) **during a 12-month period**. Section 302B of the SFA is the corresponding exemption provision for units in CIS. The applicable limit is placed on the number of offerees (calculated in accordance with section 272B(5) of the SFA) and not on the persons accepting the offer.

- Note that there are certain MAS guidelines on calculating the aggregation of offers for small offers and private placement exemptions.
- **Institutional investor exemption** (sections 274 and 304 of the SFA): exemption from prospectus requirements in respect of an offer of securities, securities-based derivatives or units in CIS that is made only to institutional investors (as defined under the SFA).
- **Accredited investor and relevant persons exemption** (sections 275 and 305 of the SFA): applies to offers made to the following persons: a “relevant person” (which includes accredited investors, as defined under the SFA); or a person who acquires the investment as principal if they can only be acquired at a consideration of not less than S\$ 200,000 (or its equivalent in a foreign currency) for each transaction.
- **CIS Restricted Scheme**: An offer of units in CIS in reliance on the section 305 exemption (offers to accredited investors only) may require notification to MAS beforehand for the CIS to be placed into a List of Restricted Schemes.
- To rely on the Section 305 exemption, the documents that must be filed with the MAS include the information memorandum (containing the prescribed information), as well as any other material or information that is intended to be distributed to prospective investors in Singapore.
- The information memorandum may need to contain certain prescribed statements and disclosures. Relevant disclosures on the investment objectives and focus of the restricted scheme must be disclosed to investors in the information memorandum.
- The foregoing exemptions come with various other rules regarding e.g. advertising and specific investor disclosures.

F. LICENCES AND REGULATIONS

You should have considered at the outset whether your business model requires the grant of certain licences from relevant governmental authorities. Even if not, your business may be subject to regulations.

This would be especially for certain sectors such as financial services, payment services, digital assets/tokens, F&B, healthcare, medical devices, building and construction, cybersecurity, logistics, maritime, real estate, security, social services, telecommunications, transportation, employment and recruitment, energy, professional services, and media. More information on various governmental licences can be found [here](#).

We have advised clients in various sectors on whether their business models, or offer of certain goods or service, or even the availing of certain functions on their websites, platforms or applications, could attract regulations.

In some instances, clients inadvertently provide certain services or functions without realising that it could amount to a regulated licensable activity, which would render them liable to an offence for failing to have the requisite licence.

Further, the law is constantly evolving. For example, the Payment Services Act 2019 was subsequently amended to include a broader range of regulated activities. After the amendments,

e.g. a company that offers a function on its platform or application a service which allows a user to swap digital tokens for fiat money with another licensed service provider may itself be deemed to be providing a regulated service, for which a licence is required.

It is therefore prudent to always research on the applicable regulations and licence requirements from time to time when there is any change or introduction of any business model or unit, goods or services, or even functions.

G. PREMISES – COMMERCIAL LEASES

Your business may be entirely virtual, such that you do not require physical premises. However, most businesses would require physical premises to operate from. You may rent a commercial property or coworking space.

Here are some considerations before you sign on the commercial lease or tenancy agreement.

- Inspect the property. We have dealt with cases where the tenant only realised after signing the lease that the property is not fit for their purposes.
- Review the terms. Including the security deposit, fitting-out period (and whether it is rent-free) and requirements, charges other than rent (utility, maintenance, service charges, etc.), insurance requirements, reinstatement requirements, sub-lease or licensing restrictions, and right of renewal terms.
- Consider also termination and pre-termination terms whether in favour of the landlord or the tenant.
- Clarify the use permissions and any requirements specific to your business. E.g. in a case we encountered, a tenant discovered that the premises could not bear sufficient load for their activities.
- If you are in retail, there is a [Code of Conduct for Leasing of Retail Premises in Singapore](#) which set out certain applicable principles and terms regarding retail leases.

H. TAX

Corporate Income Tax

Generally, a company would pay corporate income tax of 17% on taxable income annually.

The tax is assessed based on the preceding financial year.

Taxable or chargeable income is income less tax-allowable expenses.

Generally, deductible business expenses are those wholly and exclusively incurred in the production of income. Non-deductible expenses include e.g. entertainment and capital expenses.

Your company would have to file 2 Corporate Income Tax Returns with IRAS every year:

- Estimated Chargeable Income (ECI): within 3 months from end of financial year (unless qualify for waiver); and
- Form C-S / Form C-S (Lite) / Form C: by 30 November each year.

A business is required to keep proper records of its financial transactions and retain source documents, accounting records, bank statements, and other records of transactions for at least 5 years from the year of assessment.

Hence, it is important for a business to have a proper accounting system and a bookkeeper to maintain proper accounts frequently.

Taxable and Non-Taxable Income

Generally, any income accrued in or derived from Singapore or received from outside Singapore is taxable. This includes:

- Gains or profits from any business or trade.
- Income from investments such as interest and rental.
- Royalties from intellectual property.
- Income from outside Singapore which is remitted into Singapore.
- Income from outside Singapore paid in respect of a business carried on in Singapore.

Non-taxable income includes:

- Capital gains: e.g. gains on sale of fixed assets or foreign exchange on capital transactions.
- Gains from disposal of equity investments.

In the interplay between capital gains and gains from trade, there may be grey areas. An asset may appear at first glance to be a capital asset may actually be deemed by the tax authority as a trading asset. If it is a trading asset, then gains from sale of that asset are likely taxable. In this regard, the law will consider various 'badges of trade':

- Nature of subject matter
- Duration of ownership,

- Frequency of transaction,
- Purpose of transaction,
- Extent of enhancement work to the asset,
- Circumstances of the sale or disposal of asset,
- Mode of financing,
- Reason for sale.

Such ambiguity between taxable income and non-taxable capital gains may arise in cases where investment activities are central to the enterprise. The touchstone test is “whether the gain in question is a mere enhancement of value by realising a security or whether it was made in an operation of business in carrying out a scheme for profit-making”.

Tax and Cryptocurrency & Digital Tokens

It should also be noted that just because cryptocurrency or digital tokens are used to make payment does not change the fundamental principles. See [this article](#) of mine. Income tax could still apply to e.g. income from business received by way of digital payment tokens.

A business can thus accept DPTs as payment for goods and services.

The business will be charged income tax on that payment based on the value of the goods or services.

The taxable amount depends on the contract terms. If the price was stated in terms of fiat currency e.g. S\$100 then the taxable amount is that sum. If it is stated in terms of e.g. 1 Bitcoin (BTC), then the taxable amount is 1 BTC.

Businesses that trade digital tokens as part of their ordinary course of business, and not merely receive them as payment for goods or services, will be taxed on the profit from the trades.

However, if a business buys digital tokens for long-term investment purposes and then disposes them for profit, then it could be considered capital gains, which are not taxable. The general rule of thumb is at least 2 years.

Goods and Services Tax (GST)

If your business' taxable turnover at the end of any calendar year is more than S\$1 million, you may need to register with IRAS (Inland Revenue Authority of Singapore) to charge Goods and Services Tax (GST).

GST is a tax on the consumption of goods and services; the tax is paid when money is spent on goods or services, including imports. If your business has an annual revenue of less than SGD 1 million, you may voluntarily, but would not be required to, register for GST.

When you file with IRAS for your business' GST return, the GST that you charge your customers is deducted from the GST that your business had to pay for its supplies of goods or services. The difference in those two amounts would be the amount of GST that your business will have to pay IRAS, or would be the amount that IRAS refunds to you.

Read more about GST on [IRAS' website](#).

Tax Allowances, Deductions and Schemes

There are certain general tax allowances, deductions and schemes which a business can rely on to lower tax.

For instance, your company may claim double tax deduction on qualifying expenses for certain overseas markets business development and marketing activities as well as e-commerce campaign.

There are also tax deductions for [research & development \(R&D\)](#) conducted in Singapore (regardless of whether it is related to trade) or overseas related to trade.

There is also a 250% tax deduction for businesses who send employees to [volunteer](#) and provide services, including secondments, to charities who are Institutions of Public Characters (IPCs).

A company can also claim tax allowance from e.g. [mergers & acquisitions \(M&A\)](#) – up to 25% of the value of the acquisition.

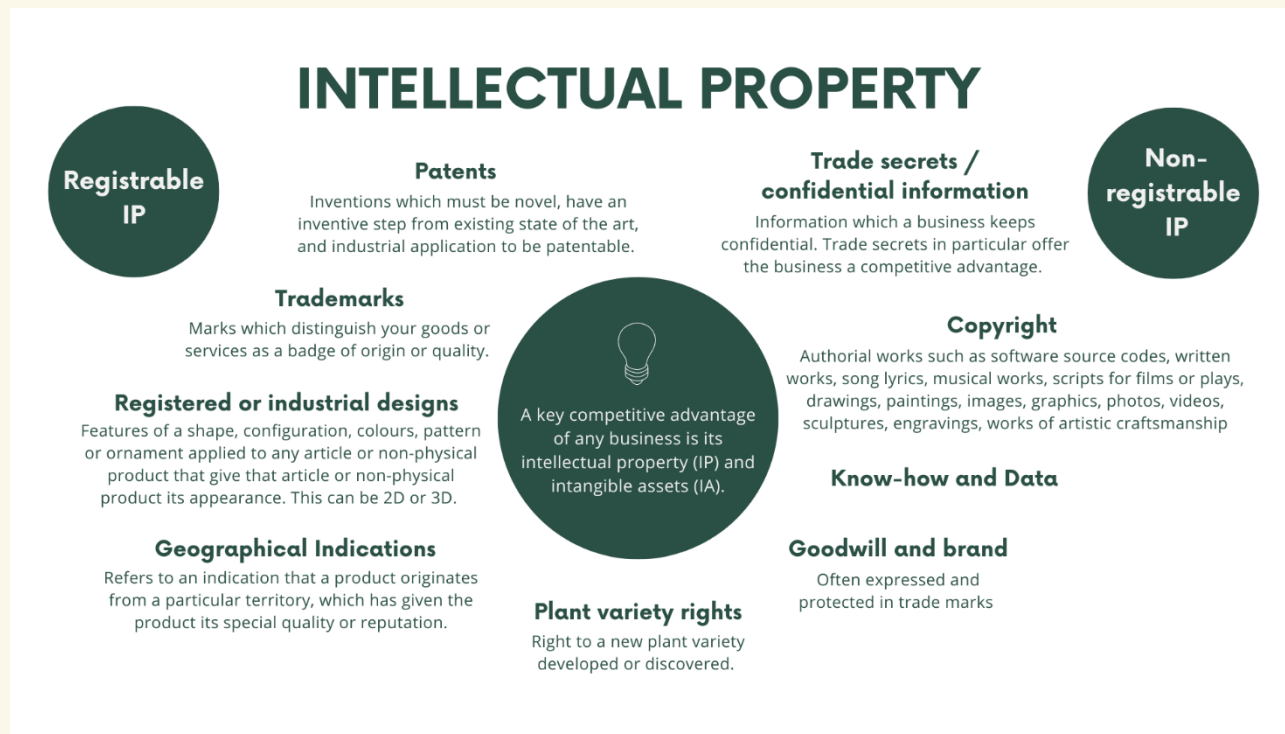
A company may also claim writing-down allowance on capital expenditure incurred to acquire [intellectual property rights \(IPRs\)](#) for use in their trade or business.

- IPRs include patents, copyrights, trademarks, registered designs, etc.
- Expenses include legal fees, registration fees, and stamp duty relating to the acquisition.
- The writing-down allowance will be granted on a straight-line basis over 5 years (or at the company's option, over 10-year or 15-year).

I. HAVE A STRATEGY TO PROTECT & COMMERCIALISE INTELLECTUAL PROPERTY

What IP do you have?

A key competitive advantage of any business is its intellectual property (IP) and intangible assets (IA).



These include the following which your business may have:

- **Registrable IP:**
 - **Patents:**
 - Inventions which must be novel, have an inventive step from existing state of the art, and industrial application to be patentable.
 - **Trademarks:**
 - Marks which distinguish your goods or services as a badge of origin or quality.
 - Marks include words, names, letters, signatures, figurative elements, images, graphics, composite of words and images brands, shapes, colours, sounds, moving images.
 - **Registered or industrial designs:**
 - Refers to features of a shape, configuration, colours, pattern or ornament applied to any article or non-physical product that give that article or non-physical product its appearance. This can be 2D or 3D.

- **Geographical indications:**
 - Refers to an indication that a product originates from a particular territory, which has given the product its special quality or reputation. E.g. champagne.
- **Plant variety rights:**
 - Right to a new plant variety developed or discovered.
- **Non-registrable IP & IA:**
 - **Trade secrets / confidential information:**
 - Refers to information which a business keeps confidential. Trade secrets in particular offer the business a competitive advantage. E.g. a recipe or formula, or method of processing or manufacturing products.
 - **Copyright:**
 - Refers to authorial works such as software source codes, written works, song lyrics, musical works, scripts for films or plays, drawings, paintings, images, graphics, photos, videos, sculptures, engravings, works of artistic craftsmanship.
 - Know-how
 - Data
 - Goodwill and brand, often expressed and protected in trade marks

Strategic considerations for registering IP

Registering IP affords exclusive right to use the IP and thus enforce your IP rights against others.

For instance, if you have been using a particular brand name for your business but have failed to register it as a trade mark, there may be difficulties taking action against a competitor who uses a variation of your brand name for its own gain.

Or if you have a patentable invention which you did not register, and somehow a competitor has obtained information on the process or means of making the product, you will not be able to easily take action against them to stop them from using the process or selling the product.

In some situations, the **failure to register IP** may result in your business **permanently losing the exclusive IP right** or right of enforcement.

For instance, if you have already publicly disclosed a patentable invention or registrable (but not registered) design, you may not be able to later register the patent or design (subject to some exceptions).

Further, if your business has proceeded to publicly use or sell products using a design which is registrable but not registered, or if you fail to renew your registration, you also lose the right to enforce the copyright over the drawing which constitutes the design.

On the other hand, a business may intentionally choose not to register a patent for an invention. This is because a patent effectively discloses specifications of the invention to the world and

confers exclusive (monopoly rights) in that jurisdiction for a limited period of time. Once that time has expired, the business loses those exclusive rights permanently. In contrast, if the business decides not to register a patent but keeps the process or method of making the product a trade secret, the business can possibly retain the effective exclusive IP rights indefinitely.

For patents and registrable designs, if you do decide to register the IP (which you should do before public use or display), you will need to think about which jurisdictions / country markets you wish to register in. This is because once you register the IP in one country and then decide to register the IP in another country more than a year later, you might not be allowed to do so.

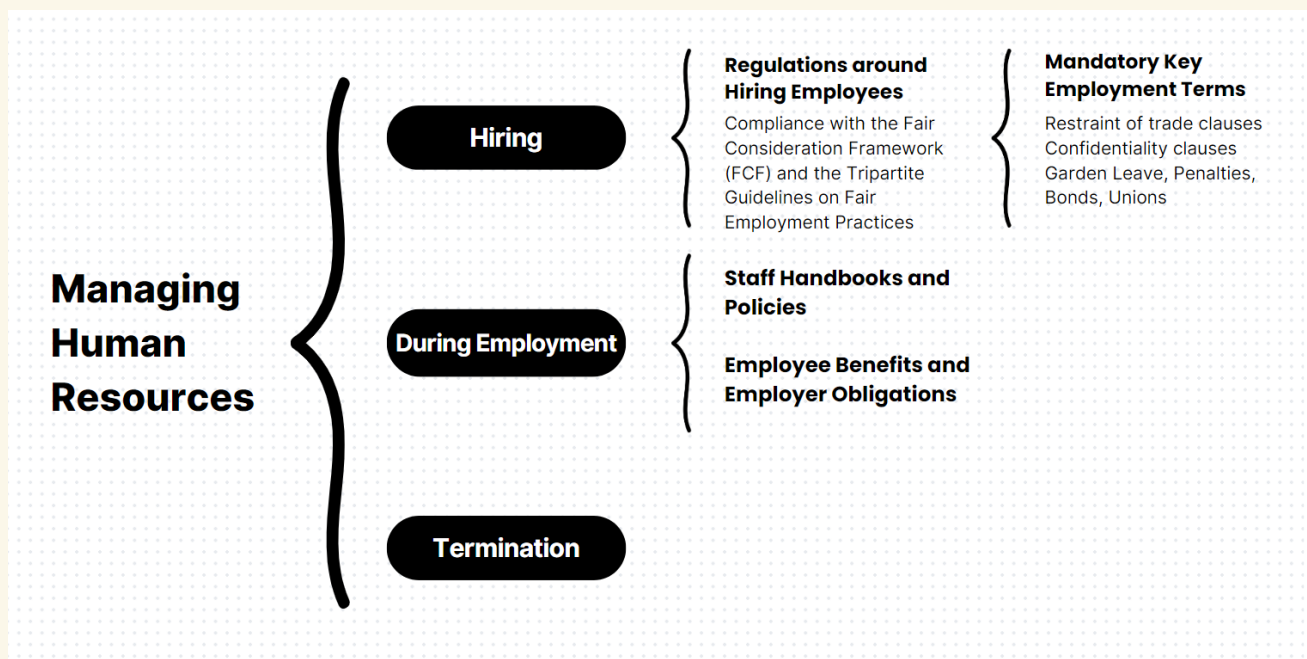
This may be difficult for a business since financial resources may be limited and the registration costs in many countries at an early stage of the business's growth may be prohibitive.

One way that this can be ameliorated is to file an application under an international treaty system from the outset.

E.g. if you file a patent application under the [Patent Cooperation Treaty \(PCT\)](#), you will have 12 months thereafter to file a PCT international application, and yet more time thereafter (around 30 months) to pursue the patent grant directly before the national patent offices.

This approach is not available for registrable designs for registrations which are first made in Singapore.

J. MANAGE HUMAN RESOURCES



Regulations around Hiring Employees

A business undertaking the process of hiring employees must comply with the Fair Consideration Framework (FCF) and the Tripartite Guidelines on Fair Employment Practices, which sets requirements on fair hiring and non-discriminatory employment practices.

In particular, before a business may hire a foreign employee, they must not pre-select foreign candidates but make reasonable attempts to hire Singaporean candidates by first advertising the

position on the [MyCareersFuture](#) website and consider all applicants fairly. There are certain requirements for the advertisement of the job listing. This is subject to certain exemptions.

The employer will need to apply for the appropriate work pass for foreign employees as well: (i) work permit, (ii) S Pass, (iii) Employment Pass. Different criteria and conditions apply for each type. Certain sectors may also have specific requirements.

Hiring Employees or Independent Contractors

If your business is going to hire staff, you may hire them as employees or independent contractors.

Many people assume that the employment contract contains all the relevant rules or terms regarding the employment relationship. That is not true.

Apart from the general contract law rules which may intervene to make certain contract terms invalid or unenforceable, there is also written statutory law (passed by the Singapore Parliament) such as:

1. Employment Act
2. Employment of Foreign Manpower Act
3. Child Development Co-Savings Act
4. Central Provident Fund Act.

Employee or Freelancer / Independent Contractor?

In the first place, it is important to be clear whether the person you are hiring is or should be considered an employee or a freelancer.

You should note that you may use labels or terminology like “freelancer” in the contract, but the law may objectively regard the relationship as employment.

The law distinguishes between an employee (under a contract *of* service) and a freelancer or independent contractor (under a contract *for* service).

There are legal consequences that follow from the distinction. E.g. employers and employees must contribute to the employees’ Central Provident Fund (CPF) account. You may read more about [CPF contributions](#) and opening a CPF account [here](#).

Employers who fail to do so can be charged and convicted, as was in the case of *Public Prosecutor v Jurong Country Club and another appeal* [2019] SGHC 150.

Employees will also be given certain legal rights under the Employment Act. Independent contractors will not.

There is no definitive test or rule to distinguish between the two categories. The courts have considered multiple factors on the facts of each case, including:

1. Extent of control by the organisation over the personnel;
2. Personal service – whether the personnel is allowed to delegate or subcontract responsibilities to another person;
3. Mutuality of obligations – specific obligation for fee;

4. Financial risk, earnings, and ownership of assets;
5. Renegotiation and renewal of the contracts – frequency and duration;
6. Remuneration structure and commission;
7. Working arrangements and benefits relative to other personnel/employees.

A detailed summary of the factors considered in the *Jurong Country Club* case is found in [my case summary here](#).

It should also be noted that both part-time and full-time employees are considered employees under certain laws like the Employment Act.

Mandatory Key Employment Terms

Under the law, employers must issue key employment terms (KETs) to employees, which are the essential terms of employment contained in a contract of service between the employer and the employee.

Under the law, employers must issue KETs in writing to all employees who:

1. Enter into a contract of service on or after 1 April 2016.
2. Are covered by the Employment Act.
3. Are employed for 14 days or more. This refers to the length of contract, not the number of days of work.

The KETs may be in any medium, whether digital or hard copy and must be provided to the employee within 14 days from the start of employment.

The list of KETs can be found on the [MOM webpage here](#). MOM templates are found [here](#).

Legal Principles and Rules Which May Make Some Clauses Unenforceable

If the Employment Act (“EA”) applies to an employee, there may be certain EA provisions which would override express clauses in the employment contract, rendering those clauses illegal, null and void to the extent they are less favourable than the EA provisions (section 8 of the EA).

For example, if an employee is entitled to overtime or rest day pay under the EA, an express clause that disentitles the employee may be illegal null and void. Overtime salary may be payable if an employee is made to work and falls within the specified category of employees. There are also restrictions on the maximum amount of working hours. The EA also provides for minimum amount of certain types of leave like sick leave and hospitalisation leave.

Deductions from an employee’s salary are generally not permitted unless authorised under the EA.

Non-Compete and Non-Solicit Restrictive Covenants

Another common clause which may be unenforceable is the **non-compete and non-solicitation clause or restrictive covenant**. These are known as restraints of trade.

- Generally, such non-compete clauses which apply after the termination of the employment contract are not enforceable under common law as a matter of public policy unless it can be satisfied to the court that the non-compete clause protects a legitimate proprietary interest of the employer, and the clause is reasonable.
- These have to be considered on the facts. Factors to be considered include:
 - the employee's seniority,
 - employee's work scope (including whether it is client-facing or influence over client),
 - employee's access to the employer's sensitive confidential information or trade secrets,
 - prohibited scope of activity,
 - geographical scope of restriction,
 - duration of restriction,
 - industry, etc.
- There are various judicial cases which have applied these principles in different circumstances to either uphold or strike down such clauses. Further, sometimes the court may sever a clause which is too wide if the part so enforceable is clearly severable.

Confidentiality Clause

Yet another clause often found in employment contracts which have to be properly thought through is the **confidentiality clause**.

- The type of information to be deemed confidential should be properly and specifically particularised.
- It is plausible that such clauses which apply post-termination insofar as they apply to confidential information but not trade secrets must be deemed reasonable to be enforceable, especially if the confidential information in question is the employee's skill and knowledge, depending on the nature of the information and how it is used (Clearlab SG Pte Ltd v Ting Chong Chai and others [2015] 1 SLR 0163 (HC) at [68]-[78]).

Garden Leave, Penalties, Bonds, Unions

Similarly, restraint of trade principles also apply to **garden leave clauses** in employment contracts.

Some employers include clauses to **penalise employees** for terminating their employment before a certain duration. It is plausible that some of these clauses are unenforceable as penalty clauses rather than liquidated damages. A more extensive discussion can be found here.

If a class of employees are **union members**, then certain other laws and rules also apply. The union will negotiate with the employer for a collective agreement which will set out the employment terms of the protected class of employees.

Staff Handbooks and Policies

It is common for employers to have **staff or employment handbooks or company policies** which purport to bind the employee as well. However, it should be noted that if there is no clear express clause to incorporate the terms of such documents into the employment contract, it is possible that they are not binding on the employee. Care should thus be taken to expressly incorporate by reference and require the employee to actually acknowledge receipt of the document.

Another common issue is the variation or amendment of terms in the employment contract. Some employers include a clause which purport to give them the right to vary or amend the terms in their discretion. This may not necessarily be legally effective or enforceable. Generally, variation of contracts require all the fundamental elements of a (new) valid binding contract to be fulfilled, including in particular new consideration and not past consideration. See also my article on [contract principles](#) for an elaboration on this.

Do note that apart from express clauses in an employment contract, the law also **implies certain obligations** in employment contracts, including e.g. a [duty of good faith and fidelity](#), [duty of confidentiality](#), and [duty of mutual trust and confidence](#) (see also [this](#)).

Employee Benefits and Employer Obligations

Singapore employment law stipulates certain basic rights and obligations. We will not address them in detail here. However, some broad points to note are as follows.

- Medical certificates (MCs) and hospitalisation leave. Employees have certain minimum MC and hospitalisation leave. Employers are also required to reimburse medical consultation fees of government doctors or company-approved doctors if MCs are granted.
- Annual leave and public holidays. Employees are entitled to certain minimum days of annual leave and public holidays. Or be paid in lieu or granted off in lieu.
- Rest days and working on public holidays. Certain classes of employees must be paid extra pay for working on rest days or public holidays.

Termination of Employment

Employers should be cautious in complying with the law when terminating employees. You should generally terminate an employee in accordance with the express terms of the employment contract. Generally, this would be termination by notice or paying salary in lieu of the notice period.

If an employer wishes to terminate without notice or summarily dismiss an employee, e.g. for misconduct, due inquiry should be conducted. There should be a proper process for this to avoid a wrongful dismissal claim.

Document everything as it would be useful for potential proceedings later in the Tripartite Alliance for Dispute Management (TADM), Employment Claims Tribunal (ECT) or Court if the employee sues your organisation. Record and retain all evidence including emails and text messages. All meetings and discussions should be recorded in writing. Preferably minutes of meetings should be signed by employer & employee.

Employee Share Option Plans (ESOP)

Some companies consider implementing an Employee Share Option Plan (ESOP) or similar scheme from the outset.

Employee Share Award Plans (ESAPs) are where the company simply issues shares or share options to key founding employees directly. This is usually to attract key employees at an early stage of the company's growth where, due to financial constraints, their remuneration may not be mainly in cash. Sometimes, the award is subject to fulfilment of key performance indicators (KPIs). Failure to meet the KPIs may result in the company buying back the shares at exercise or nominal price.

ESOPs are usually issued to subsequent high-level employees to incentivise them towards medium- to long-term commitment to the company.

A company that intends to implement an ESOP should consider the size of the **option pool**, typically a percentage of the total shareholding. This is because the shareholders' equity will be diluted by the option pool. Thus, it is often that in the cap tables, the option pool is taken into account.

The company should also consider the **eligibility criteria** for awarding options to worthy employees.

Under an ESOP, the company's management may issue to selected employees an option to purchase shares in the company at a specific **pre-determined price** (which could be a **nominal price** like S\$0.01 per option or based on **fair value** i.e. some objective valuation of the company), within a certain set time-frame.

Typically, ESOP options are stipulated to vest i.e. the option becomes exercisable, over a timeframe (known as the **vesting period**), e.g. over 3 years. So e.g., if an employee is granted 600 ESOP options to be vested over 3 years, the employee will be able to exercise 200 options at the end of each year until all have been vested, provided they remain employed the entire period.

In some cases, there may be a **cliff period**, meaning that the vesting period only starts after the cliff period. So e.g. it could be a grant of 120 options with a 1-year cliff period, followed by vesting each month over 2 years. Which means that after 1 year, the employee may then start to exercise 5 options each month over 24 months thereafter.

Another consideration is whether the shares converted from the options will be **ordinary voting shares** or some other kind of shares, including **non-voting shares**.

The ESOP terms would typically also specify certain restrictions regarding the options and awarded shares. E.g. employee shareholders may be restricted from selling the shares for a moratorium period or indefinitely. Alternatively, the employee shareholders may be required to not exercise any voting rights or must grant a proxy to the founders to exercise their vote.

It is possible to stipulate in the ESOP terms that employees may opt to settle the exercise of the share options by way of either issuance of the shares itself or the value of the shares in cash or a mix of both.

The ESOP terms should also specify the conditions in which unvested options may be forfeited or awarded shares may be 'clawed back' i.e. bought back. Typically, this would be considered under 'bad leaver' scenarios, e.g. dismissed for misconduct or breach of employment contract. It should be noted that if the company were to buy back any shares, certain Companies Act provisions specify limits and conditions on such share buyback.

In contrast, 'good leaver' scenarios may allow the employee to retain vested options or awarded shares.

When an employee exercises an option under the ESOP, the company will then issue new shares to that employee according to the terms of the ESOP, the option, the company's constitution, and the shareholders' agreement, etc.

Typically, the ESOP terms, option award letter, and option exercise letter will need to be prepared. These would include various terms regarding when and how the options will vest and can be exercised. To implement the ESOP, requisite shareholders' and board resolutions should be obtained.

It should be noted that there are tax implications when ESOP options are exercised. Gains from a share option are subject to **income tax payable by the employee** in the year when the employee exercises the option. But if there is a selling restriction, then the gains are taxable in the year when the selling restriction lifts. The income tax payable is calculated based on market price of the shares (or if there is no open market price, then the net asset value of the shares) minus exercise price.

Employees may defer tax payment on gains on share options for up to 5 years with interest. There are certain conditions which must be met.

CPF contributions do not have to be paid on the share options or the exercise of the options, provided that the employee received shares and not cash in lieu of the shares.

Another consideration is that if there will likely be many ESOP option holders who will become shareholders of the company, the company may wish to consider creating a special purpose vehicle (SPV) to hold the ESOP shares for the ESOP holders, with the ESOP holders then being shareholders in the SPV and subject to a shareholders' agreement as between them and the SPV. Alternatively, a trustee may hold the shares for the ESOP holders. This is to achieve a few objectives. One is to prevent the company from having more than 50 shareholders or otherwise it would become a public company and then be subject to certain compliance requirements. Two is for ease of administration of the company itself, especially when there's a need to obtain shareholders' approval.

One variation of an ESOP is a Phantom Share Option Plan (PSOP). Phantom Share Option Plans award employees phantom share units instead of share options. These units do not offer any right to shares. Instead, they represent the value of the equivalent shares. So, the employee who exercises the right to encash the units after they have vested will receive the value of those 'phantom shares' in cash. This may be advantageous to founders and existing shareholders who do not wish to have their equity diluted. It may also be administratively easier to implement as it does not require shareholder resolutions, and does not involve the administrative steps required to actually issue shares. However, these phantom share units represent debts or liabilities in the company's accounts.

Personal Data Protection

Any organisation in Singapore must comply with the Personal Data Protection Act (PDPA). Invariably, any business will deal with personal data.

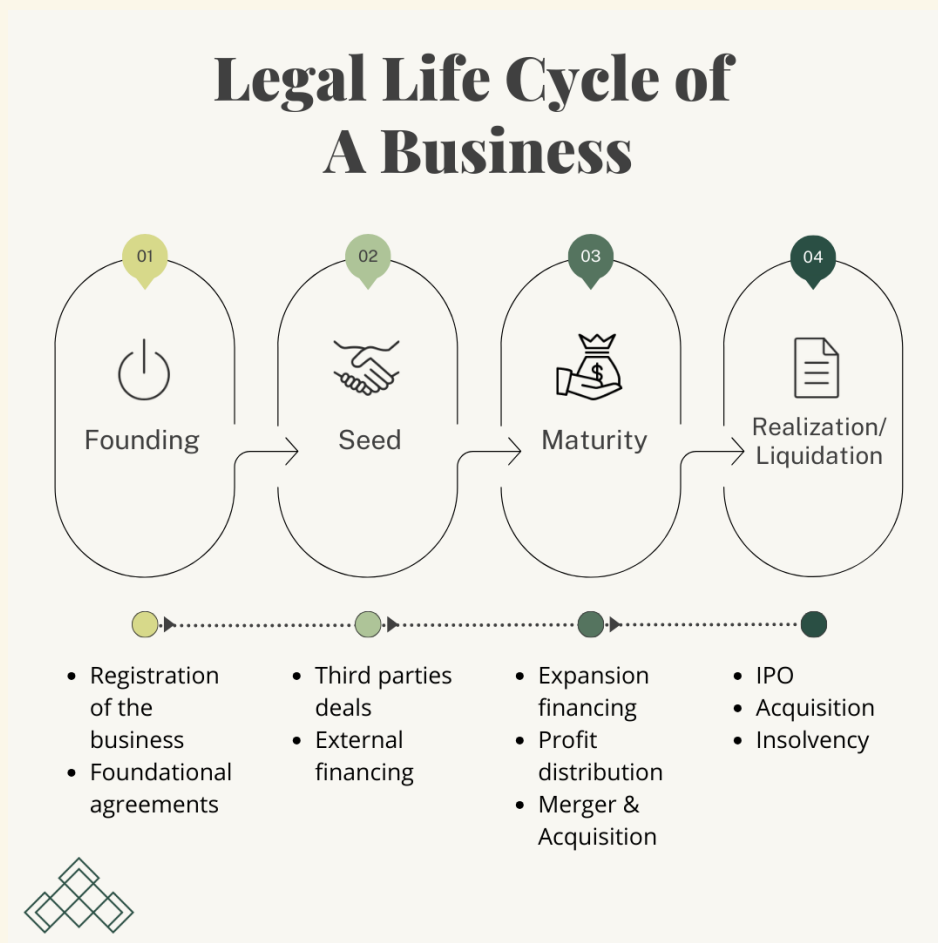
And if your business deals with personal data of residents of the European Union (EU), you would also have to comply with the EU General Data Protection Regulation (GDPR).

We will not go into detail here in setting out the obligations and compliance requirements under the PDPA. Practically, what it would generally entail includes:

- Appoint a Personal Data Protection Officer.
- Train your personnel on PDPA compliance.
- Have an external privacy policy to notify individuals whose personal data you may deal with on certain aspects such as purpose of collection, use and disclosure of personal data, access and correction rights and procedures, etc.
- Have internal personal data policies and procedures dealing with personal data of individuals such as employees and customers to ensure that your practices and operations are compliant with the PDPA.
- Secure and protect personal data in your control. This includes digital and physical security mechanisms.
- Ensure the accuracy of personal data in your control.
- Allow individuals to access or correct their personal data in your control.
- Properly dispose of personal data that is no longer needed or have been held up to applicable retention periods.
- Ensure that any personal data will be properly protected to the same standards as under the PDPA before you transfer it overseas, including digitally or uploading on cloud servers.
- Properly managing, and having the appropriate contractual terms in contracts with, service providers who process or store personal data in your control.
- Take the appropriate steps in event of a potential or actual data breach, including to notify affected individuals and the Personal Data Protection Commission (PDPC) in event of certain kinds of data breaches.
- Check the Do Not Call Registry before sending marketing messages or making such calls.

K. Legal Documents and Regulations at Different Stages in Business Lifecycle

The table below sets out various commonly encountered legal documents, regulations, issues, requirements, and considerations, at various stages in the lifecycle of a business.



	Founding	Seed	Maturity	Realisation / Liquidation
Corporate	<ul style="list-style-type: none"> ▪ Constitution (Memorandum and Articles of Association). ▪ Shareholders / Founders Agreement (with share vesting, share transfer restrictions, exit mechanism, management rights, decision making, voting and reserved matters?). 	<p>In addition to those under Founding:</p> <ul style="list-style-type: none"> ▪ Statutory filings; annual returns (c.f. Companies Act). ▪ Corporate resolutions & minutes of meetings of shareholders/members and Board of Directors (including dividend declarations, share allotments, change of directors/shareholders, significant transactions). ▪ General Meetings: Annual General Meetings / Extraordinary General Meetings. ▪ Authorisation letters / powers of attorney. ▪ Corporate governance: directors' / fiduciary duties (c.f. Singapore Code of Corporate Governance). ▪ Tax: c.f. Income Tax Act, Goods and Services Tax Act. 		<ul style="list-style-type: none"> ▪ Liquidation: voluntary/involuntary members/creditors liquidation/winding-up (c.f. Companies Act, Insolvency, Restructuring and Dissolution Act 2018). ▪ Alternatives to liquidation in insolvency: debt restructuring / scheme of arrangement / judicial management. ▪ Consider in insolvency settings: directors' conduct (breach of fiduciary/directors' duties; wrongful trading; fraudulent trading), setting aside transactions (undervalue, unfair preference, post-application disposition).
Financing / Fundraising	<ul style="list-style-type: none"> ▪ Capital for equity (founders, angel investors, venture capital). ▪ Convertible loans/notes. ▪ Simple Agreement for Future Equity (SAFE). ▪ Simple Agreement for Future Tokens (SAFT). ▪ Incubator/accelerator. ▪ Grants. ▪ Crowdfunding. 	<ul style="list-style-type: none"> ▪ Equity (Seed to Series A, B, C, etc.): investment / share subscription agreement + shareholders agreement (ordinary or preference shares for investors). Query valuation and shareholder/investment terms. ▪ Loan / convertible loan agreement. ▪ Due diligence for investments: non-disclosure agreement (NDA), disclosure letter (disclosed exceptions to warranties and representations), investment term sheet. ▪ Listed bonds, debentures. ▪ Credit facility with/without security (fixed/floating charges, mortgages, assignment of receivables, pledges, liens, guarantees) from banks/financial institutions; facility agreement, security agreement/deed, corporate legal opinion. ▪ Digital token sale agreement / tokenised securities. 		<ul style="list-style-type: none"> ▪ Listing: Initial Public Offering (IPO) / public listing on stock exchange: prospectus (c.f. SFA, SGX Listing Rules). ▪ Merger / acquisition: share or asset sale agreement (Singapore Code on Takeovers and Mergers, Competition Act 2004).

		<ul style="list-style-type: none"> Consider regulations on offer of investments under Securities and Futures Act (SFA): 'safe harbour' prospectus exemptions vs prospectus requirements. 	
Commercial	<ul style="list-style-type: none"> Service / supply of service agreement with customers. Sale / supply of goods agreement with customers (c.f. Sale of Goods Act). Non-Disclosure Agreement (NDA). Supplier / vendor terms and conditions; purchase order terms. Subcontractor agreement. Terms and conditions of use (website/platform/application). Dealing with consumers: Consumer Protection (Fair Trading) Act, Unfair Contract Terms Act. Lease/tenancy agreement (for property/office leases). Property sale and purchase agreement (c.f. Conveyancing and Law of Property Act). Equipment lease/purchase agreement. Intellectual Property (IP) protection/registrations: copyright, trademarks, patents, registered designs, geographical indications. IP assignment or licence agreement. Software development / software licence / software as a service / end user licence agreement. Distributorship / agency / franchise / licence agreement. Joint ventures: joint venture agreements; forming subsidiaries. Acquisitions: share or asset purchase agreement. Marketing / business referral agreement. Commercial disputes: unpaid debts / breach of contract or duty / IP infringement (including protection of goodwill / business reputation—defamation, passing off): letters of demand, litigation, arbitration, mediation, settlements/compromise. 		
Human Resources		<ul style="list-style-type: none"> Employment contract and employment handbook/policies (consider restrictive covenants/non-compete/non-solicit obligations, confidentiality obligations.) Legislation: Employment Act, Employment of Foreign Manpower Act, Workplace Safety and Health Act, Work Injury Compensation Act, Immigration Act, Foreign Employee Dormitories Act, Employment Claims Act, Industrial Relations Act, Retirement and Re-employment Act, Trade Disputes Act, Trade Unions Act, Child Development Co-Savings Act; Central Provident Fund Act, Income Tax Act (IR8A filings). Independent contractor / contract for service / consultant or advisor agreement (consider intellectual property ownership rights / assignment). Director agreement. Employee Share Option Plans (ESOP) / Phantom Share Option Plan: ESOP/ESOW plan terms, share option award letter, option exercise letter. Termination letters/agreements. 	
Regulatory	<ul style="list-style-type: none"> Licences and regulations for operation of regulated business. 	<ul style="list-style-type: none"> Personal data (c.f. Personal Data Protection Act 2012 (PDPA); EU General Data Protection Regulation (GDPR)) – applies to all personal data including customers and employees: internal & external privacy policy and procedures; PDPA compliance training; 	

		<p>appointment of Data Protection Officer.</p> <ul style="list-style-type: none"> ▪ Business conduct regulations/licensing conditions/compliance requirements. ▪ Anti-trust/competition: Competition Act. ▪ Environmental Protection and Management Act. 	
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In conclusion, the starting and running of a business involves many key considerations, and the above are not exhaustive. If you wish to seek advice on any of the above matters, feel free to contact me at ronald.wong@covenantchambers.com.

Disclaimer: The information and materials provided does not constitute legal advice and does not purport to give rise to a lawyer-client relationship. You are fully responsible for seeking specific legal advice from a lawyer before taking any legal action.



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