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SINGAPORE

**Editorial board**

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1. INTRODUCTION

a. History and background

Modern Singapore was founded in 1819 when the East India Company established Singapore as a trading post. Singapore became part of the Straits Settlements together with Malacca and Penang in 1826. The Straits Settlements were controlled by British India until 1867. In 1867, the Straits Settlements became a Crown Colony and came under the control of the Colonial Office in London. The Straits Settlements were dissolved after the Second World War. With this, Singapore became a separate Crown Colony. In 1958, under a Constitutional Agreement reached between Britain and Singapore, Singapore was given full internal self-government. In 1963, Singapore merged with Malaya and the British territories of Borneo, Sabah and Sarawak, to form the Federation of Malaysia. In 1965, Singapore separated from Malaysia.

Singapore became an independent nation on 9 August 1965. Singapore is a republic with a parliamentary system of government based on the Westminster model. The organs of the State comprise the executive, legislature (parliament) and judiciary.

Singapore is a multi-cultural and multi-religious society. Singapore has a population of about 4.6 million, made up of ethnic Chinese (76.7 per cent), Malays (14 per cent), Indians (eight per cent), and Eurasians (people of European extract or origins) (two per cent).

Singapore's development as an international financial centre began in the late 1960s. Today, about 700 financial institutions, local and foreign, are located in Singapore, offering a wide range of financial products and services. Singapore is the world's busiest port in terms of shipping tonnage.

English is the language of administration, business, and technology. The official languages are English, Chinese, Malay and Tamil.

The currency in Singapore is the Singapore dollar (SGD).

b. Legal system

The judicial system is made up of two tiers of courts: the Supreme Court (comprising the High Court and the Court of Appeal, which is the highest court) and the Subordinate Courts (comprising, among others, the District Courts and Magistrates Courts). The Sharia Court handles the administration of religious, matrimonial and succession matters applicable to Muslims. Singapore's legal system is based on the English Common Law. The Supreme Court is unitary. Equitable jurisdiction is exercised by the High Court. The District Court has all the jurisdiction of the High Court to hear and try proceedings relating to, among others, administration of the estate of a deceased person, execution of any trust or for a declaration that a trust subsists, or for specific performance of any agreement where the amount or value of the estate or property subject does not exceed the District Court limit (currently SGD3million).

2. SOURCES OF LAW

a. General

The main sources of written law are legislation and subsidiary legislation. Singapore law also comprises some common law and English statutes.

English law was formally received by Singapore in 1826 by virtue of the *Second Charter of Justice*. The common law of England (including the principles and rule of equity), so far as it was part of the law of Singapore immediately before 12 November 1993 (the date of commencement of the *Application of English Law Act 1993*), forms part of the law of Singapore. English common law continues to be in force so far as it is applicable to the circumstances of Singapore, and its people and subject to such modifications as the circumstances may require.

Although the Singapore legal system is primarily common law based, Muslim law is also recognised by the State. Generally, the *Administration of Muslim Law Act* provides that in religious, matrimonial and succession matters, Muslim law is to be applied for Muslims who are domiciled in Singapore. Generally, the school of Muslim law applied is the *Shafi'i* school of thought.

b. Trusts

Singapore trust law is based substantially upon English trust principles. The trust principles and equitable remedies as developed by the courts of equity are applied under Singapore law.

The principal statutes governing trusts include the *Trustees Act*, *Trust Companies Act*, *Public Trustee Act*, *Settled Estates Act*, *Charities Act*, *Civil Law Act* and *Business Trusts Act*.

A company licensed for trust business under the *Trust Companies Act* may be appointed as the professional trustee of a trust. A company incorporated in Singapore or registered as a foreign company under the *Companies Act* may be licensed as a trust company if it fulfils the requirements laid down in the *Trust Companies Act*.

c. Property, estate and probate

Common law concepts relating to the ownership of property apply. The distinction between legal ownership and beneficial ownership of property is recognised. Generally, legal rights in property can be enforced against anyone, whereas equitable rights can be enforced against anyone except a bona fide purchaser of the legal estate for value without notice. The doctrine of notice is affected by legislation for certain types of property such as land where there is in place a national system of registration for certain interests created in the property.

The *Intestate Succession Act* governs the distribution of the estate of a non-Muslim intestate decedent. The *Inheritance (Family Provision) Act* sets out the circumstances under which the spouse or children of a non-Muslim deceased (whether dying intestate or testate) may apply to the court for an order that the estate make provision for the maintenance of the spouse and children.

The process of and procedure for obtaining a Grant of Probate or Letters of Administration are set out in the *Probate and Administration Act* and in the *Rules of Court*.

d. Taxation

The principal legislation governing taxation is the *Income Tax Act*. The taxation of estates is governed by the *Estate Duty Act*.

3. TRUSTS

a. Most frequently used trusts

The types of trusts most frequently used in Singapore may be broadly grouped as:

- private family trusts (both testamentary and *inter vivos* trusts);
- statutory trusts (the most common being the irrevocable trust created pursuant to the *Conveyancing and Law of Property Act* when a policyholder nominates spouse and/or children as the beneficiaries of the life policy);
- charitable trusts; and
- collective investment trusts such as unit trusts and Real Estate Investment Trusts.

Trusts formed in offshore jurisdictions are also frequently used in structures set up for Singapore residents or companies or by Singapore trust service providers.

b. Governing law

Singapore is not a party to nor has it ratified nor acceded to the *Hague Convention on the Law Applicable to Trusts and on their Recognition*, 1 July 1985.

Generally, *situs* and *domicile* are the two connecting factors most frequently used by the Singapore court in determining trust issues such as whether the court has jurisdiction over the issue, whether the court should determine the substantive rights and obligations according to some system of law other than Singapore law, and whether the court should enforce or recognise the judgment of another court which has determined an issue between parties.

Questions of choice of law as it affects trusts are determined in accordance with conflict of laws principles established in the common law jurisdictions.

If the parties have not specified the law which is intended to govern the trust, the courts will apply the law with which the trust has its closest and most significant connection. This is usually the law of the

place of the intended administration of the trust. However, the law of the settlor's domicile may be applied if other factors are present, for example, where the law of the settlor's domicile is also the law of the place of residence of the trustees, the law of the place of residence of the beneficiaries, and (in the case of testamentary trusts) where the settlor has used language and terminology unique to the law of the settlor's domicile.

The courts in Singapore may intervene to enforce a trust with foreign elements. The courts have jurisdiction if any head of jurisdiction under Order 11 of the *Rules of Court* exists on a good arguable basis. Order 11 states that the courts have jurisdiction if, among others, the cause of action arose in Singapore, or if the trustee, though absent, is domiciled or resident in Singapore, or if the claim is for an account or other relief against the defendant as trustee and the defendant's liability (as alleged) arises out of any act done in Singapore.

The *Trustees Act* was amended in 2004 to expressly provide that a settlor is deemed to have capacity to create a trust or settle movable property on an existing trust during their lifetime if they have capacity under the laws of Singapore, their domicile, their nationality or the proper law of the transfer.

The courts may decline to exercise their jurisdiction on the principles of *forum non conveniens*.

c. Creation of a trust

i. Valid constitution

No technical expressions are needed to create an express trust. A trust may be created by will, by deed or by declaration.

A testamentary trust must be created by will in conformity with the prescribed formalities of a will under the *Wills Act*. (See Section 4.)

A declaration of trust respecting certain types of property must comply with the *Civil Law Act* if it is to be valid. As is also set out in the *Statute of Frauds 1677*, a declaration of trust respecting any immovable property or an interest in such property must be manifested and proved by some writing signed by some person who is able to declare such trust, or by will. A disposition of an equitable interest or trust subsisting at the time of the disposition must similarly be in writing signed by the person disposing of the same or by will. This provision does not apply to implied, resulting or constructive trusts.

To be valid and enforceable, a trust must be properly constituted and possess three certainties: certainty of intention, certainty of subject matter and certainty of objects. The trust must not infringe the various rules relating to perpetuities and inalienability.

The rule against perpetuity is now a fixed period of 100 years with effect from 15 December 2004 and a 'wait and see' principle applies for all trusts taking effect on or after this date. Trust income may be accumulated for the life of the trust.

Generally, charitable trusts are exempt from complying with the strict rules as to certainty of object and perpetuity. It is accepted that trusts established for any one of the following purposes are valid: relief of poverty, advancement of education, advancement of religion, or some other purpose beneficial to the community.

Trusts for purposes are generally invalid if they offend the certainty of objects requirement. There are three exceptions to the rule against purpose trusts. Anomalous purpose trusts, trusts of legacies to erect tombs, or to maintain the testator's animals or to observe Sinchew ceremonies (a type of Chinese ancestral worship), are recognised as valid non-charitable purpose trusts.

There is no restriction on the type of property which may be impressed with a trust so long as the property is in existence, its nature is ascertainable and it is not intrinsically inalienable.

The *Trustees Act* provides that a trust shall not be invalid only by reason of the settlor reserving all or any powers of investment or asset management functions under the trust.

ii. Duration and termination

The duration of a trust is determined by the terms of the trust subject to the statutory perpetuity period referred to above. Where the trust is one for the distribution of capital and the trust instrument contains no provision as to the duration of the trust, the trustees must distribute the trust property as soon as practicable. If the trust is one involving the vesting of contingent capital or income at some future time, the property must vest, if at all, within the perpetuity period, or the entire gift is void.

A trust terminates when the instrument of trust so stipulates or when all the beneficiaries of the trust who are sui juris consent to the termination or when there ceases to be any settled trust assets.

iii. Beneficiaries

The basic right of a beneficiary is to have the trust duly administered in accordance with the provisions of the trust instrument, if any, and the general law. The failure by the trustee to administer the trust in accordance with the provisions of the trust instrument or in accordance with law constitutes a breach of trust for which the trustee will be liable. The trustee's liability in such circumstances extends to all loss directly or indirectly caused by the trustee and, even where no loss can be shown, to any profit which has accrued to the trustee. In determining whether any loss is the result of a trustee's default, it appears that a trustee is liable even if the default was merely one among several causative

factors, and even if the principal causative factor was default of a third person. It also appears that there will be recovery for a loss which was merely foreseeable, even if it was not reasonably foreseeable since a trustee is expected to act prudently when managing the affairs of another for whom there is a sense of responsibility.

Generally speaking, a beneficiary is entitled to inspect the accounts of the trust. A trustee must, on demand, give the beneficiary information and explanations as to the nature and value of the trust property, the trust income, and how the trustees have been investing and distributing it. A beneficiary is *prima facie*, in the absence of special circumstances, entitled to production and inspection of all trust documents in the possession of the trustees. These documents would include title deeds and other documents relating to the title to the trust property and the nature and content of the beneficial interest. The beneficiary is also entitled to be given any necessary authority to verify the information given.

The beneficiary is also entitled to the distribution of income and capital without the need to make demand on the trustees to do the same.

The rights of a potential beneficiary under a discretionary trust are similar to those of the objects of a mere power given to trustees in their fiduciary capacity. In such circumstances, the beneficiary has merely a hope but not entitlement that the power will be exercised in the beneficiary's favour.

A trustee may retain so much of a beneficiary's entitlement as payment for money owed to the trustee by the beneficiary and similarly, as against persons claiming through the beneficiary. The beneficiary's entitlement, whether of a capital or income nature, may be retained.

A beneficiary of a trust may now rely on the *Contracts (Rights of Third Parties) Act* to compel a trustee to sue on behalf of the beneficiary if the trustee, as a party to a covenant, refuses to do so. This Act provides that a person who is not a party to a contract may enforce a term of the contract in their own right where the term purports to confer a benefit on them. The third party must be expressly identified in the contract by name, as a member of a class, or as answering to a particular description, but need not be in existence when the contract is entered into. These provisions do not apply if, on a proper construction of the contract, the parties did not intend the term to be enforceable by the third party.

A trust that is expressly governed by Singapore law and whose trustees are resident in Singapore, but were not citizens or nationals of Singapore at the time of creating the trust or transferring the property, may exclude the operation of forced heirship rules if the persons creating the trust or transferring property to be held on trust had the capacity to do so under the law of Singapore, their domicile, their nationality or the proper law of the transfer.

iv. Trustees

A named trustee who is unwilling or unprepared to accept the trust is free to disclaim it and become divested of the trust property *ab initio*. A disclaimer may be made in writing or orally, or implied in conduct which is inconsistent with the acceptance of the trust. The disclaimer is irreversible and cannot be withdrawn. By the same token, once a trust is accepted, the named trustee cannot afterwards withdraw acceptance.

The power to retire is exercisable in accordance with the retirement provisions or replacement provisions set out in the trust instrument. The *Trustees Act* also provides for the retirement of trustees. It sets out the circumstances under which a trustee who is desirous of being discharged from the trust may retire from the trust. Under this provision, a trustee desirous of being discharged may retire with the consent of the co-trustees, provided that after discharge, there will be either a trust corporation or at least two individuals remaining or continuing as trustees.

The *Trustees Act* provides for the power of appointment of new trustees. Under this Act, new trustees may be appointed so as to replace, among others, a trustee or trustees who have died, who is or are absent from Singapore for more than 12 months, who is or are desirous of being discharged from all or any of the trustee duties, or who is or are unfit to act. This statutory power of appointment is conferred on, among others, the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust.

A trustee that is a trust corporation or is acting in a professional capacity is entitled reimbursement for all reasonable expenses properly incurred in the discharge of duties under the trust. This right of reimbursement is a right under general law and is also accorded under the *Trustees Act*.

If the trust instrument does not give the trustee the benefit of an indemnity against liabilities or costs incurred in and arising out of the proper discharge of trust duties, case law suggests that such a trustee is entitled to such an indemnity on the basis that there is an implied contract between the settlor and the trustee that gives the trustee such a right of indemnity, or on the basis that the right is part of the office of trustee.

Generally speaking, a trustee which is a trust corporation is entitled to remuneration for the performance of the duties of office unless the trust instrument provides, either expressly or impliedly, prohibits such payment. Where the trust deed is silent on trustee's remuneration, a trustee which is a trust corporation is entitled to receive reasonable remuneration out of the trust funds for any services provided to or on behalf of the trust and a trustee acting in a professional capacity but which is not a trust corporation is entitled to reasonable remuneration for services provided to or on behalf of the trust if the other trustee has agreed in writing to the remuneration.

Generally, trustees have duties accorded to them by equity, by the trust instrument and by the *Trustees Act*.

A trustee's first duty on accepting a trust is to become familiar with the terms of the trust and determine what the trust property comprises and the state of the trust property. Another first duty is to bring trust property under the trustee's control or personal custody if the property has vested but possession has yet to be transferred. Once called in, the trustee must keep trust property in safe custody. Where authorised by the trust instrument, a custodian trustee may be appointed by the trustee to hold title to the trust assets and keep them safe. The appointment of the custodian must be made with due care.

When performing the trust, a trustee must comply strictly with the terms of the trust. It is a paramount duty of trustees to exercise their powers in the best interests of the present and future beneficiaries of the trust.

As between beneficiaries with conflicting interests, a trustee must act impartially.

Trustees must exercise such care and skill as is reasonable in the circumstances having regard to any special knowledge or experience that they have or hold themselves out as having and, if they are professional trustees, to any special knowledge or experience that may reasonably be expected of them.

v. Protectors

If the settlor wishes to reserve some control over the trustees, it is common practice to appoint a 'protector' for the trust. The protector may be called by some other name such as adviser or management committee, and may be given a wide variety of powers, including the power to remove and appoint trustees and settle their remuneration or add to a class of discretionary beneficiaries, or to terminate a trust by triggering a final vesting provision.

Although there is no specific mention of the role of a protector in the *Trustees Act*, the provision in the Act setting out the statutory power of appointment of new or additional trustees does contemplate a situation where the power of appointing new trustees may be conferred to a party other than the trustees. The Singapore courts have not had the opportunity to consider nor discuss the protector's role in relation to Singapore trusts.

The conferment of powers in connection with the trust to the protector under the trust instrument should, as a matter of trust law, be accepted as valid.

vi. Role of Public Trustee

The Public Trustee is a statutory office created by the *Public Trustee Act*. The Public Trustee is appointed by the Minister of Law and holds office on such terms and remuneration as the Minister determines.

The Public Trustee is empowered to act in the administration of estates of small value and to act as an ordinary trustee. The Public Trustee must not accept trusts which involve the management or carrying on of business without the Minister's consent to do so. The Public Trustee must also not accept trusts which are formed for the benefit of creditors or where the estate is known or believed to be insolvent.

d. Trust administration

i. General management

A trustee has a general duty to invest trust assets. Under the *Trustees Act*, trustees may make any kind of investment that they could make if they were absolutely entitled to the assets of the trust, having regard to standard investment criteria.

ii. Distributions from trust

The trustee must distribute trust property to the person beneficially and indefeasibly entitled to it at the time of distribution specified by the trust instrument or when the beneficiary's share is immediately payable.

iii. Variation of a trust

The general rule is that where a trust is completely constituted, the settlor will not be able to vary the terms of the trust. The trust instrument may give specified persons, including the trustees for the time being of the trust, the power to vary the terms of the trust, for example, an express power to appoint trust property upon new trusts. An application may be made to court to vary the terms of a trust. However, the inherent discretionary power of the court to vary a trust is exercised only under very limited circumstances.

4. PROPERTY, ESTATE AND PROBATE

a. Wills

i. Requirements for valid will

A person who is domiciled in Singapore is free to dispose of property in their estate by will. This rule, however, does not apply if the testator is a Muslim. A Muslim can only make a will in respect of not more than one-third of net estate and only in favour of persons who are not otherwise entitled to share in the net estate in accordance with *Faraid* (Muslim inheritance law).

The *Wills Act* sets out the requirements of a valid will.

The testator, or some other person in the testator's presence and by the testator's direction, must sign at the end of the will. The signature must be made and acknowledged by the testator as the signature to the will or codicil in the presence of two or more witnesses present at the same time. These witnesses shall subscribe the will in the presence of the testator, but no form of attestation is necessary.

A gift or bequest made under a will to any person who attests to the execution of that will or to that person's spouse is null and void.

The testator must be 21 years or older and of sound mind and capacity when executing the will. If the testator is adjudicated a bankrupt at the time of execution of the will, the will is rendered null and void.

A will need not be published to be valid.

ii. Forms/types of wills

The common types of wills used in Singapore are simple wills, joint wills and mutual wills.

iii. Revocation and alteration of wills

The Wills Act provides that a will is revoked:

- by the marriage of the testator
- by another will or codicil executed in the manner as required by the Wills Act
- by some writing declaring an intention to revoke it, and executed in the manner in which a will is by this Act required to be executed, or
- by burning, tearing, or otherwise destroying the will by the testator, or by some person in the testator's presence and by the testator's direction, with the intention of revoking it.

A will, once executed, can only be altered by codicil. The formalities that apply to the making of a valid will apply to codicils.

iv. Dependants' relief

Generally speaking, the *Inheritance (Family Provision) Act* provides that, where a non-Muslim person dies domiciled in Singapore leaving dependants, and the court is of the opinion that the disposition of the deceased's estate effected by the deceased's will and/or the law relating to intestacy is not such as to make reasonable provision for the maintenance of the dependants, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's net estate for the maintenance of those dependants.

Dependants of the deceased who are entitled to make an application under this Act include the deceased's spouse; a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself; an infant son; or a son who is, by reason of some mental or physical disability, incapable of maintaining himself.

In determining the application made under this Act, the court is to have regard to, among others, the deceased's reasons for not making any provision for a dependant.

b. Intestacy rules

The *Intestate Succession Act* governs the distribution of property of an intestate deceased who is not a Muslim. This Act provides that if a person dies intestate and was, at the time of death, domiciled in Singapore and possessed beneficially of property (whether movable or immovable) situated in Singapore or was, at the time of death, domiciled outside Singapore and possessed beneficially of immovable property situated in Singapore, then the property or proceeds of sale of the property, after payment of the expenses of due administration as prescribed by the *Probate and Administration Act*, is to be distributed in accordance with the *Intestate Succession Act*.

Under this Act, the estate of the intestate deceased is to be distributed to the deceased's family members who are ranked in this order:

- deceased's spouse and issue
- deceased's parents
- deceased's brothers and sisters or, if the brothers and sisters are deceased, their children
- deceased's grandparents, and
- deceased's uncle and aunts.

The rules under this Act set out the circumstances under which each family member may share in the distribution of the estate and the family member's corresponding share. If the deceased dies leaving no kin or relation who is entitled to benefit, the estate will be distributed to the Singapore government.

For a Muslim who was domiciled in Singapore at the time of death, *Faraid* stipulates how the estate is to be dealt with and distributed after death. Generally, *Faraid*, as applied by the *Shafi'i* school of thought, stipulates that the net estate of the Muslim deceased is to be distributed to 'Specified Heirs' who include the surviving wife or husband of the deceased, the deceased's children, and the parents and paternal great grandfathers. These heirs are entitled to certain prescribed shares which are intended to effect an equitable distribution of the estate.

c. Powers of attorney

There is no specific legislation governing the appointment of an attorney under a power of attorney.

In relation to trustees, the *Trustees Act* provides that notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate the execution or exercise of all or any trusts, powers and discretions vested in the trustee either alone or jointly with any other person or persons for up to 18 months.

In addition to conferring authority by powers of attorney, trustees may under express powers in the *Trustees Act* authorise any person to exercise any or all of designated delegable functions as their agent. Special restrictions apply to delegation of asset management functions, which must be done in writing, and be accompanied by a written policy statement giving guidance on how the functions should be exercised.

Qualified nominees and custodians may be appointed under powers in the *Trustees Act*, subject to the terms of the Act which include a requirement that the trustees keep the arrangements under review.

Certain provisions relating to powers of attorney contained in the *Conveyancing and Law of Property Act* apply to a power of attorney made under the *Trustees Act*.

d. Probate matters

The *Probate and Administration Act* sets out the basis upon which a petition for a Grant of Probate and Letters of Administration may be brought. Orders 72 and 73 of the *Rules of Court* set out the procedures governing such petitions.

If a deceased dies intestate or if no executor is appointed by will or no executor is able to act, the court may grant Letters of Administration. Generally, the court, in granting the Letters of Administration, shall have regard to the rights of all persons interested in the estate of the deceased or to the proceeds of sale of the estate. Letters of Administration may be granted to the spouse of the deceased or the deceased's next of kin, or, where no such person applies, the creditor of the deceased. If the deceased had settled land prior to death, Letters of Administration may be granted to the trustees of the settlement.

Letters of Administration shall not be granted to more than four persons in respect of the same property. Letters of Administration will not be granted to a person while an infant or of unsound mind.

Security in the form of a bond in the amount equal to the gross value of the deceased's estate is to be provided by the person applying for a grant of Letters of Administration and by two sureties unless the court orders otherwise.

If a deceased has died leaving a valid will, the court may grant probate for the deceased's estate. Probate shall not be granted to more than four persons in respect of the same property. Probate may be granted to any executor appointed by a will. Where a will has been proved and deposited in a court of competent jurisdiction situated outside of Singapore, and a properly authenticated copy of the will is produced, probate may be granted of such copy.

Any person claiming an interest in the deceased's estate may, at any time after the death of the deceased but before probate or Letters of Administration are granted, enter a general caveat against probate or Letters of Administration being granted without notice to the caveator.

The Subordinate Courts have the jurisdiction to grant probate or Letters of Administration where the assets and effects of the deceased have a value of SGD3million or less. If the value of the deceased's assets and effects exceeds SGD3million, the application is to be filed in the High Court.

The High Court has the jurisdiction to re-seal probates and Letters of Administration granted out of Singapore.

The estate duty liabilities of the estate must be settled before a Grant of Probate or Letters of Administration can be extracted.

If the deceased was a Muslim, a Certificate of Inheritance (*Sijil Warisan*) is to be obtained from the Sharia Court before an application for Letters of Administration is filed with the Subordinate Courts or the High Court, depending on the value of the estate. The Certificate of Inheritance specifies the precise share(s) of the beneficiaries to the estate.

e. Assets not requiring probate

The Central Provident Fund (CPF) is a comprehensive social security savings plan administered by the Singapore government. Singapore citizens and non-citizens accorded Singapore permanent residency status are required to contribute to CPF if, among others, they are salaried employees. Under the *Central Provident Fund Act*, if a CPF member makes a nomination under this Act, the CPF contributions made and death benefits payable under the insurance scheme administered by the CPF Board will be distributed to the nominees specified under the nomination without the need for a Grant of Probate to be extracted for the member's estate.

5. TAXATION

a. Introduction

Tax policy is an integral part of Singapore's fiscal policy. Tax revenue is a substantial source of funding

for government operations. The fundamental tenet of Singapore's tax policy is to keep tax rates low for corporations and individuals and to keep the tax base broad.

The Inland Revenue Authority Singapore (IRAS) is responsible for the collection of these taxes.

b. Tax system

i. General concepts of tax liability

Singapore taxes on territorial and remittance basis. Only income accrued in or derived from Singapore, or income derived overseas but received in Singapore, is subject to tax.

An individual is resident in Singapore for tax purposes if that person has, in the year preceding, resided in Singapore for 183 days or more (presence of a lesser period may still be regarded as residence on a qualitative basis if the individual's intention is to establish residence in Singapore).

A company (including a corporate trustee) is resident in Singapore for tax purpose if the control and management of its business is exercised in Singapore. The place of incorporation of the company is not relevant.

ii. Rates and tax incentives

A resident individual taxpayer is taxed on chargeable income at a graduated rate (0 per cent to 20 per cent).

The prevailing corporate tax rate is 20 per cent. Under Partial Tax Exemption Scheme, 75 per cent of the first SGD10,000 of chargeable income (excluding Singapore dividend income) and 50 per cent of the next SGD90,000 of chargeable income (excluding Singapore dividend income) is exempt from corporate tax. Qualifying new companies may also be granted full tax exemption on the first SGD100,000 of their chargeable income under a Full Tax Exemption Scheme applicable from Years of Assessment 2005 to 2009.

Tax incentives have long been an important instrument for Singapore's economic development strategy. Singapore offers a wide range of tax incentives. Tax incentive schemes for corporations are offered to the financial, technology and trade sectors. For example, the financial tax incentives provide a concessionary tax rate of ten per cent on income earned from offshore banking activities undertaken by banks and merchant banks and exemption from tax on income derived from such activities as the writing of offshore insurance business. In addition, a concessionary tax rate of ten per cent is also granted to insurance companies on income derived from writing offshore insurance business, and tax exemptions are granted for income derived from underwriting profits of offshore marine hull and liability business. There is also a Tax Incentive Scheme for Asset Management aimed at encouraging the development of the fund management industry.

iii. Tax evasion and avoidance

The *Income Tax Act* gives the Comptroller of Income Tax the right to, among others, vary any arrangement and recompute profits so as to counteract any tax advantage obtained or obtainable under the arrangement. Specifically, any arrangement which alters the incidence of tax payable, relieves any person from any liability to pay tax or make a return and any arrangement which reduces or avoids any liability imposed or that would be imposed, will come within the ambit of this provision. This provision does not apply to arrangements which are carried out for bona fide commercial purposes and which had not, as one of its main purposes, the avoidance or reduction of Singapore income tax.

This Act further provides that any person who wilfully with intent to evade or assist any other person to evade tax shall be liable to penalties, fines and / or imprisonment.

iv. Taxable periods and filing requirements

The tax year runs from 1 January to 31 December. Tax is imposed on a preceding year basis, that is, profits for the financial year ended 2005 are taxed in the Year of Assessment 2006.

c. International

i. Residents with foreign source income

The general rule is that foreign source income is taxable in Singapore if it is remitted or deemed remitted into Singapore. With effective from 1 June 2003, certain foreign income in the form of dividends, branch profits and service income remitted into Singapore may be exempt from tax.

ii. Expatriates

The amount of tax an expatriate pays depends on whether the expatriate is a tax resident or non-resident in Singapore or whether the individual has been accorded Not Ordinarily Resident (NOR) status and the amount of income earned.

An expatriate who is employed for a period of 60 days or less in a calendar year will be exempted from paying income tax unless the expatriate is employed as a director, public entertainer or is exercising a profession in Singapore. An expatriate whose employment period is more than 60 days but less than 183 days is taxed on their employment income at 15 per cent or the applicable resident rates, whichever is higher.

An expatriate whose employment period in Singapore exceeds 183 days is regarded as resident in Singapore. For such expatriates, income earned in Singapore, less personal relief allowed, is taxed at graduated rates from 0 per cent to 20 per cent.

Individuals with NOR status can enjoy certain tax benefits for a period of five years.

iii. Non-residents

A non-resident individual is liable to Singapore tax only in respect of income sourced in Singapore. A non-resident company which carries on a trade or business in Singapore through a branch or agency is subject to tax in respect of income sourced in Singapore. It may also be subject to tax on income sourced outside of Singapore to the extent that such offshore income is directly attributable to the company's Singapore operations.

Generally, a withholding tax of 15 per cent is imposed on interest paid to non-residents. With effect from 1 January 2005, withholding tax on royalty payments will be reduced from 15 per cent to ten per cent.

These withholding tax rates imposed on interest and royalties may be reduced under the terms of a double taxation agreement (DTA) concluded by Singapore with its treaty partners.

Singapore does not levy a separate withholding tax on dividends.

iv. Tax treaties

A DTA between Singapore and another country serves to prevent double taxation of income earned in one country by a resident of the other country. It also makes clear the taxing rights between Singapore and its treaty partner on different types of income arising from cross-border economic activities between the two countries. The agreements also provide for reduction or exemption of tax on certain types of income.

Some 52 comprehensive DTAs covering all types of income and seven limited DTAs covering only income from shipping and/or air transport are in force.

A resident company is entitled to the benefits conferred under the DTAs Singapore has concluded with treaty countries.

d. Taxation of trusts

i. Types of trusts and tax liability

The income of a trust is taxed once only. Generally, the trustee is assessed on the income of the trust at the prevailing corporate rate of 20 per cent, but where the entitlement to the trust income passes, the beneficiary is assessed on this share of the income on the statutory rate applicable to the beneficiary, with credit given for any tax suffered by the trustee. A beneficiary who becomes beneficially and absolutely entitled to income is taxable on the income as soon as it is received by the trustees and not when received by the beneficiary.

A settlement which gives powers of revocation so that any income or capital included in the settlement can revert to the settlor or to the husband or to the wife of the settlor (other than by reason of the demise of the beneficiary) is disregarded for tax purposes. In such circumstances, the income arising from the settlement is deemed to be income of the settlor. If the settlor, a relative of the settlor or a person under the direct or indirect control of the settlor or the settlor's relative makes use of income of the settlement to which there is no such entitlement, such income is deemed to be that of the settlor.

ii. Transfers to a trust

Stamp duty may be payable on documents relating to the transfer of immovable property, stocks and shares to a trust. Stamp duty is discussed (in Section 5. f.) below.

iii. Taxation of income earned in the trust

The general rule is that all Singapore source trust income is taxable in Singapore. Specified Singapore source investment income derived on or after 17 February 2006, and foreign source income received on or after 17 February 2006 by qualifying domestic trusts (QDTs) and their underlying holding companies, would qualify for tax exemption. Distributions made by QDTs to their beneficiaries out of such income will also be tax exempt in the hands of the beneficiaries.

iv. Non-resident trusts and foreign investment entities

Prior to the announcement of the 2006 National Budget, specified income derived from designated investments by qualifying foreign trusts administered by an Approved Trustee Company (ATC) qualified for tax exemption and the ATC administering qualifying foreign trusts (QFTs) were taxed at a concessionary tax rate of ten per cent.

A 'foreign trust' is defined to include a trust by deed where every settlor and beneficiary of the trust, in the case of an individual, is neither a citizen of Singapore nor resident in Singapore. In the case of a company, the company must not be incorporated or resident in Singapore, and if it has not more than 50 shareholders, the whole of its issued shares must not be beneficially owned, directly or indirectly, by persons who are citizens or residents of Singapore. If it has more than 50 shareholders, at least 95 per cent of its issued shares are to be beneficially owned, directly or indirectly, by persons who are neither citizens nor residents of Singapore.

Enhancements announced in the 2006 National Budget cover three aspects. The first expands the scope of qualification criteria to include a wider range of qualifying settlors and beneficiaries, thus allowing foreign individuals using non-traditional vehicles of investments to qualify for tax exemption. The second extends the tax exemption scheme for QFTs to situations where qualifying foreign trusts

are administered by companies which are exempt from the requirement to hold a trust business licence. The third extends the ATC tax incentive scheme to companies which are exempt from the requirement to hold a trust business licence and which are administering QFTs in Singapore. Specified income derived on or after 17 February 2006 by such companies will be taxed at the concessionary tax rate of ten per cent.

v. Taxation of income earned in the trust

A trustee has to file an annual tax return relating to trust income accruing in, derived from or received in Singapore. If a trustee is claiming tax exemption on income derived by a foreign trust pursuant to the Regulations (see Section 5. d. iv. above.), no return need be filed in respect of such income, but the trustee must file a declaration with the IRAS in the form as prescribed by the Regulations. The trustee has to keep clear and accurate accounts of the trust property. A trustee is to furnish a beneficiary with full and accurate information as to the amount and state of the trust property if a beneficiary so requests.

e. Taxation of estates

i. Estate duty

The *Estate Duty Act* provides that estate duty shall be paid on the principal value of all property that passes on the death of any person.

Where the deceased person was domiciled in Singapore at the time of death, estate duty is payable on movable property (wherever situated) and immovable property situated in Singapore, which pass on the death of the deceased.

Where the deceased person was not domiciled in Singapore at the time of death and the deceased died on or after 1 January 2002, estate duty is payable only on immovable property situated in Singapore that passes on the death of the deceased.

The rates of estate duty payable in the case of persons dying on or after 28 February 1996 are as follows:

Principal value of the estate	Rate of duty
For every dollar of the first SGD12million	5%
For every dollar exceeding SGD12million	10%

The rate of duty is applied to that part of the principal value of the estate that is not exempt from estate duty. For a person whose death occurred after 28 February 1996, relief from estate duty is provided as follows:

- on the first SGD9million of the total principal value of the deceased's interest in a dwelling house or dwelling houses, whether occupied by the deceased or not, provided that such dwelling house has been used wholly for residential purposes
- on the first SGD600,000 of the total principal value of all other property (inclusive of CPF if the CPF monies are less than SGD600,000)
- on all CPF monies where the CPF monies exceed SGD600,000, but in such case relief shall not be claimed for any other movable property, and
- on gifts to the Singapore government or institutions of public character within the meaning of the *Income Tax Act*.

ii. Taxation on death

There is no inheritance tax in Singapore.

f. Other taxes

Goods and Services Tax (GST) of five per cent is levied on all imports and supplies of goods and services in Singapore. All supplies of goods and services, other than financial services and residential property transactions, are subject to GST if made by GST-registered businesses. Goods which are exported, international services, and administration services provided by a Singapore trust company to a foreign trust of which it is not a trustee, are zero-rated.

Property tax is imposed on immovable properties at ten per cent of the annual value of the property for industrial, commercial and let-out residential properties, and at four per cent for owner-occupied residential properties.

Stamp duty is payable only on documents relating to immovable property and stocks and shares. Duties are payable on the transfer of immovable property made by way of purchase or gift at one per cent to three per cent on the purchase price or the value of the property conveyed, whichever is higher, and on transfer or gift of shares at 0.2 per cent on purchase price or net asset value, whichever is higher.

There is no capital gains tax in Singapore.

6. OTHER RELEVANT MATTERS

a. Anti-money laundering rules

Singapore has a track record and reputation as a clean and well-regulated financial centre. Singapore bench-marks itself against international best practices including, in particular, the Recommendations

set by the Financial Action Task Force (FATF). Singapore is also one of the founding members of the Asia-Pacific Group on Money Laundering, one of FATF's regional groups.

Singapore's anti-money laundering laws are centred in the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act*. This Act criminalises money laundering of benefits derived from 182 predicate offences, and provides for the confiscation of these benefits.

The MAS has also issued detailed guidelines to financial institutions setting out their obligations with respect to Know Your Client Rules, disclosure of suspicious transaction reports and internal control policies and procedures.

b. Regulation of Trust Companies

The *Trust Companies Act 2005*, which came into force on 1 February 2006, regulates trust service providers in Singapore. No person may carry on any trust business or hold themselves out as carrying on any trust business in or from Singapore unless that person is a trust company licensed by the Monetary Authority of Singapore (MAS). Requirements and qualifications for holding a licence are set out in the Act and in regulations, guidelines and directions made under it. Certain persons, including banks, lawyers and accountants, are exempt in relation to certain matters. Licensed trust companies must have at least two resident managers who have various statutory responsibilities. They must ensure compliance with written policies which must be drawn up on all operational areas of the company. A trust company outside Singapore engaging in trust business in Singapore is also subject to the new regime, apart from a narrowly defined set of circumstances.

7. LIST OF RESOURCES

Most public services in Singapore are provided online.

Gateway to business-related government services

www.business.gov.sg

Incorporation and registration of businesses

www.bizfile.gov.sg

Inland Revenue Authority Singapore (IRAS)

www.iras.gov.sg

Monetary Authority of Singapore (MAS)

www.mas.gov.sg

Statutes of Singapore

statutes.agc.gov.sg

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