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Singapore: Law & Practice

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SINGAPORE

Law and Practice

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1. Tax

1.1 Tax Regimes

Singapore has a relatively straightforward tax regime. Income tax is chargeable on income accrued in or derived from Singapore, or received in Singapore from outside Singapore. Foreign-sourced income received by individuals in Singapore is exempt from Singapore income tax. Income derived from investments, such as interest from debt securities and qualifying distributions from REITs by individuals, is also exempt from Singapore income tax.

Singapore has a preceding year basis of taxation; that is, income earned in 2023 is taxed in the year of assessment 2024. A resident individual taxpayer is taxed at a graduated margin tax rate depending on the quantum of chargeable income.

The highest tax bracket of 22% applies to chargeable income in excess of SGD320,000. Two additional tax brackets with higher rates of tax have been introduced to take effect for the year of assessment 2024. The amount of chargeable income in excess of SGD500,000 and up to SGD1 million will be subject to tax at a rate of 23%. The amount of chargeable income in excess of SGD1 million will be subject to tax at a rate of 24%.

There are various income tax incentive schemes that can be utilised to effectively reduce the income tax payable. These include the schemes under Section 13F of the Income Tax Act 1947 (ITA) for foreign trusts, Section 13N of the ITA for locally administered trusts, and Sections 13O and 13U for funds. These tax incentives are often utilised in the wealth and succession planning for high net worth individuals.

Singapore is party to 97 comprehensive tax treaties covering all types of income tax that serve to relieve double taxation of income. There are also eight limited tax treaties covering shipping and/or air transport for countries such as the USA, Brazil and Hong Kong.

A corporation, whether tax resident or not, is subject to income tax in Singapore for any income that is accrued in or derived from Singapore or is received in Singapore from outside Singapore. The income tax for companies is currently a flat rate of 17%. There are various tax exemptions available, including for new start-up companies incorporated in Singapore, and corporate tax incentives to encourage businesses to upgrade their capabilities and expand the scope of their operations in Singapore.

In the Singapore Budget 2023, the government announced that it plans to implement the Global Anti-Base Erosion (GloBE) Rules and Domestic Top-up Tax (DTT) from 1 January 2025. This is pursuant to the Organisation for Economic Co-operation and Development (OECD) Pillar Two Anti-Base Erosion Rules of the Base Erosion and Profit Shifting Project (the BEPS 2.0 Project) and Singapore's recognition of the need to update its corporate tax system to account for these global tax developments.

Upon implementation, these initiatives will "top up" a multinational enterprise (MNE) group's effective tax rate in Singapore to 15%. The government has indicated that it will continue to monitor international developments and adjust the implementation timeline as needed.

Capital Gains Tax

There is no capital gains tax in Singapore. Whether a gain on the disposal of an asset is capital in nature (and hence not taxable) or income in nature (which is taxable) depends on the circumstances of each case. Factors taken into account in the determination include the intention at the time of acquisition, the length of time of ownership of the asset, frequency of similar transactions, nature of the assets, any improvements made to the asset, means of financing the acquisition and the circumstances of the disposal.

On 6 June 2023, a new Section 10L to the ITA was proposed. The new provision taxes gains received in Singapore from the sale or disposal of foreign assets (movable or immovable property situated outside of Singapore) by businesses without economic substance in Singapore from 1 January 2024.

Withholding Tax

Generally, withholding tax rates of 15% and 10% are imposed on interest and royalties respectively that are paid to non-residents. For certain payments such as technical and management fees, the withholding tax rate is the prevailing corporate rate of 17%, unless the services are performed outside Singapore. Singapore does not levy tax on dividends in the hands of shareholders as it has a single-tier corporate tax system. Accordingly, Singapore does not levy a separate withholding tax on dividends.

Other Taxes and Stamp Duties

There is no gift tax, estate tax or inheritance tax in Singapore.

Stamp duties are chargeable on the execution of documents transferring interests in Singapore immovable property, shares of Singapore-incorporated companies, as well as shares of foreign-incorporated companies that are registered in a Singapore branch register. However, no stamp duty is payable on the transmission of Singapore immovable property or shares if such transmission is in accordance with a distribution under a will or the laws of intestacy, or is transferred to a spouse pursuant to an order of court made in divorce proceedings.

1.2 Exemptions

There is no applicable information in this jurisdiction.

1.3 Income Tax Planning

There is no applicable information in this jurisdiction.

1.4 Taxation of Real Estate Owned by Non-residents

There is no applicable information in this jurisdiction.

1.5 Stability of the Estate and Transfer Tax Laws

Save in the area relating to stamp duties for transfer of residential real properties in Singapore, the estate and transfer tax laws have not seen any substantial variation or changes in the past ten years. These have remained stable, transparent and consistent. Most tax incentives have a sunset date and are generally reviewed every five years. Generally, any change in laws would not have a retroactive effect. This stability and transparency are an attraction for high net worth individuals to base their wealth and succession planning structures in Singapore.

Stamp duties for transfer of residential real properties in Singapore have been revised on a few occasions in the last ten years as a cooling measure to deal with the increasing prices of residential properties in Singapore. With the last revision in February 2023, additional tiers of buyer stamp duties for residential properties have been added (5% for purchase price or market value between SGD1 million and SGD1.5 million, and 6% per cent for any remaining amount above SGD1.5 million).

Singapore imposes additional stamp duties (for the buyer and seller) on the transfer of residential properties, which are differentiated based on whether the buyer is a Singaporean, a foreigner or an entity, whether the buyer is acquiring their first property, and the time period the seller has owned the property.

In the latest revision on 27 April 2023, additional buyer stamp duty (ABSD) was raised by 3% to 5% for Singapore citizens and permanent residents who purchase their second and subsequent residential properties. For purchases by foreigner individuals and entities, there was a significant upward revision of ABSD from 30% to 60% and 35% to 65% respectively. ABSD of 65% has also been imposed on any transfer of residential property into a living trust, where the transfer occurs on or after 9 May 2022. ABSD is refundable under certain conditions.

There are free trade agreements between Singapore and countries such as the United States of America, Liechtenstein, Iceland, Norway and Switzerland, which allow nationals of these countries (and also permanent residents of Liechtenstein, Iceland, Norway and Switzerland) to be accorded the same stamp duty treatment as Singapore citizens.

1.6 Transparency and Increased Global Reporting

Whilst it is possible to maintain the confidentiality of wealth and succession planning structures from prying eyes, Singapore supports the movement towards transparency to combat money laundering, terrorist financing and tax evasion. Singapore has amended its tax laws and implemented the Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) reporting regimes. Singapore financial institutions are currently required to provide information pertaining to account holders from 80 jurisdictions under the CRS.

In addition, consistent with the practices of the OECD jurisdictions, the Inland Revenue Authority of Singapore (IRAS) also scrutinises related-party transactions with values not representative of the value of transactions that would otherwise have been entered into between unrelated parties. The IRAS has also introduced rules that require the submission of transfer pricing documentation to support the basis for the value of transactions between related parties. Various tax offences under the Income Tax Act 1947 and Goods and Services Tax Act 1993 have also been designated as money laundering predicates for direct and indirect tax offences respectively.

2. Succession

2.1 Cultural Considerations in Succession Planning

Singapore, despite the extensive commercialisation and globalisation of its businesses, is culturally still very Asian. This encompasses various values such as filial piety, respect (or subservience to the seniors) and civility. There is also a tendency to avoid direct conflict.

Thus, it is not unusual for the patriarch to take the lead or to be the decision-maker in various aspects of succession planning, even when it requires the co-operation or involvement of other family members. On the occasions when the subsequent generations are consulted, they tend to be respectful of and align themselves with the direction of the earlier generations, in particular in their presence. Whilst there is much concern and planning to protect family wealth, in particular in the event of the failure of businesses or marriages, the reasons for such concerns would rarely be discussed.

Culturally, Asians tend to favour keeping families together and keeping assets within the family. On occasion, this presents a divide between the first generational wealth creators and the subsequent generations who may have less interest in pursuing the family business.

2.2 International Planning

With the increasing international nature of businesses and the globalisation of Asian families, wealth and succession planning will inevitably involve planning across jurisdictions and different tax and legal considerations. This has become more challenging in recent years with the implementation of aggressive tax and disclosure regimes by an increasing number of countries. The simplification and rationalisation of the family's asset holding across various jurisdictions have thus become a sensible (and, sometimes, essential) first step to effective and efficient succession planning.

Tax laws in Singapore are, however, stable, transparent and easy to apply. The authorities are also proactive and responsive to the needs of companies and individuals keen to relocate to Singapore and, over the years, have put in place various schemes to attract such relocation. These include the Global Investor Programme (the GIP, or the "Programme"), which enables the applicant to invest in Singapore and for them and their family to be granted residency status in Singapore upon satisfaction of the Programme's criteria. In 2020, the Programme was further made more attractive by including next generation business owners and founders of fast growing companies as applicants in addition to established business owners and family office principals. In 2023, further changes to the Programme were announced, streamlining the requirements whilst tightening the conditions at the same time.

Attracting Funds

Singapore has also been proactively attracting funds to its shores. The various tax incentive schemes together with the introduction of the Variable Capital Company (VCC) furthers this attraction. The VCC is a corporate structure that is able to issue and redeem shares without shareholders' approval, and pay dividends using capital and not just profits. It can be a standalone structure or an umbrella structure with multiple sub-funds (suitably ring-fenced) with different investment objectives, investors, assets and liabilities.

These factors and tools available for wealth and succession planning make Singapore a favoured jurisdiction for the location of wealth and succession structures.

2.3 Forced Heirship Laws

Singapore does not have forced heirship laws, except for Muslims domiciled in Singapore. Thus, there are no restrictions on the manner by which non-Muslims in Singapore may choose to provide for their succession.

This general rule as to testamentary freedom for non-Muslims is subject to the provisions of the Inheritance (Family Provision) Act 1966, which allows the court to provide reasonable maintenance to the deceased's dependants out of the deceased's net estate. "Dependant" is defined as a spouse, a child (of any gender or age) who is by reason of physical or mental incapacity incapable of maintaining themselves, an infant son or an unmarried daughter.

Funds held through a deceased's Central Provident Fund account (applicable to Singapore citizens and permanent residents) cannot be disposed of via a will, but only through the appropriate instrument of nomination.

Forced Heirship

Forced heirship rules apply to Muslim persons who are domiciled in Singapore at the time of their death. In accordance with Section 111 of the Administration of Muslim Law Act 1966, the estate for such persons must be distributed in accordance with Islamic inheritance laws, or faraid laws, which generally set out fixed rules, based on the relations who survive the deceased Muslim, the relatives who should inherit and the proportion of their inheritance.

Generally, a Muslim domiciled in Singapore can only give away up to one third of their estate by their will, and only to persons who are not related to them by blood (such as their parents, spouses, siblings and children) and who are Muslims. The Singapore High Court's decision in Mohamed Ismail bin Ibrahim and anor v Mohammad Taha bin Ibrahim [2004] SGHC 210 held that a Muslim may only bequeath up to one third of their estate to their relatives who have renounced the Islamic faith.

Succession Planning

From a succession planning perspective, it is useful to know that the Singapore Court of Appeal in Shafeeg bin Salim Talib v Fatimah bte Abud bin Talib [2010] 2 SLR 1123 has held that survivorship applies to assets that are held by a deceased Muslim in joint names with another party. Upon the death of the Muslim, the surviving joint owner would take legal and beneficial ownership of the whole of the jointly held property and the jointly held property will not be distributed as part of the deceased Muslim's estate. The Court of Appeal further opined that if the settlement of a Muslim's assets into a trust were completed during the deceased's lifetime, such assets will be treated as trust assets and not part of the estate and effects of the Muslim that would be subject to Islamic inheritance laws.

Firewall Provisions

Singapore's trust law also has firewall provisions in relation to trusts set up in Singapore. Section 90(2) of the Trustees Act 1967 provides that no rule relating to inheritance or succession affects the validity of a trust or the transfer of any property to be held in trust if the person creating the trust or transferring the property had the capacity to do so under the law applicable in Singapore, the law of their domicile or nationality, or the proper law of the transfer.

2.4 Marital Property

In Singapore, the courts have repeatedly accepted "deferred community of property" as the underlying philosophy of the law on the division of matrimonial assets (see Section 112 of the Women's Charter 1961 and BPC v BPB [2019] 1 SLR 608). That is, during the marriage, a person may deal freely with assets under their own name without the consent of the spouse. It is only upon a breakdown of marriage that the courts would determine each party's entitlement to the pool of matrimonial assets.

The Women's Charter

Under the Women's Charter 1961, only "matrimonial assets" will be subject to division in the event of a breakdown of the marriage. Matrimonial assets are defined by Section 112(10) of the Women's Charter 1961 to be any asset of any nature acquired during marriage by one or both parties and any asset acquired by a party before marriage that was ordinarily used or enjoyed by the family during the marriage or has been substantially improved during the marriage by one or both parties. Gifts and inheritances, whether received before or during the marriage, are not subject to division unless they were substantially improved during the marriage by one or both parties to the marriage. Gifts and inheritances can also lose their character as such due to the intention or treatment of the recipient.

In the recent case of CLC v CLB [2023] SGCA 10, the husband received various gifts and inheritances including monies and investments in bank accounts and investment portfolios in his sole name. During the course of the marriage, the husband co-mingled the monies with those of his spouse and used them for the benefit of the family. He also indicated an intention to treat such gifts and inheritances as part of the family's assets in his emails and WhatsApp messages. The Court of Appeal held that the husband had demonstrated a clear and unambiguous intention that these monies constituted part of the family estate; the monies had lost their character as a gift or inheritance and should be therefore regarded as matrimonial assets which are subject to division.

The case of VOD v VOC [2022] SGHC(A) 6 also illustrates that the context of how gifts are made in a matrimonial context will affect whether they form part of the matrimonial assets. In that case, at a customary tea ceremony during the wedding, the groom's father handed a *hongpao* (an auspicious gift of money packed into a red envelope), containing a cheque for SGD1 million in the groom's name, to the groom in the bride's presence. In divorce proceedings some three years later, the couple disagreed whether the SGD1 million gift formed part of the matrimonial assets. The High Court held that this *hongpao* was intended by the groom's father to benefit the couple, and not the groom alone. Amongst other things, the court found that the overt act of presenting the *hongpao* during a customary ceremony should be viewed objectively as a gift to the couple in the absence of evidence to the contrary and unless the nature of the gift suggested otherwise (there was none in this case).

The matrimonial assets are divided between the parties based on parties' direct and indirect (including non-financial) contributions to the acquisition of the matrimonial assets.

In the event of a divorce, under Section 132 of the Women's Charter 1961, the court has the power to set aside any disposition of assets within the three years preceding the divorce application, if it is satisfied that the disposition of the asset was made with the object to reduce the ability to pay maintenance or to deprive a spouse of any rights in relation to that property.

Prenuptial and Postnuptial Agreements

Prenuptial and postnuptial agreements can be and have been upheld by the Singapore courts. These agreements must first satisfy the basic requirements of a contract and the courts would look into the presence of any vitiating factors such as fraud, duress, unconscionability, misrepresentation or undue influence that may undermine the existence of an agreement. The courts will scrutinise the subject matter and terms of a prenuptial agreement, in accordance with the principles of justice and equity to both parties, before deciding how much weight to accord to such agreement.

In CLB v CLC [2021] SGHCF 17, the court observed that during the course of the 16-year marriage, the husband and wife had operated on a common understanding and practically managed their financial affairs in a way that was not fully consistent with the pre-nuptial agreement. As such, the court found that it would not be just and equitable to give full weight to the pre-nuptial agreement. The court kept in mind that whether each asset was to be included in the pool of matrimonial assets would depend on the circumstances and the relevant facts surrounding each asset. The matter was appealed twice, and in CLC v CLB [2023] SGCA 10, the Court of Appeal agreed that the assets in question were part of the family estate and were to be included in the pool of matrimonial assets available for division, notwithstanding the terms of the pre-nuptial agreement.

A pre-nuptial agreement may be accorded much significance when it was entered into by foreign nationals who married under a community of property regime. In TQ v TR [2009] 2 SLR(R) 961, a Dutch citizen and Swedish citizen executed a pre-nuptial agreement which stated that there was to be no community of property, and married under Dutch law. The couple moved to Singapore and the marriage subsequently broke down. The Court of Appeal held that the pre-nuptial agreement was wholly foreign in nature, dealt with the parties' respective matrimonial assets only and was valid under Dutch law. Further, there was sufficient evidence which showed that the couple did not regard their marriage as being one that related to the concept of a community of property. In those circumstances, the Court of Appeal gave the pre-nuptial agreement the highest significance and made no orders as to the division of matrimonial assets.

In the determination of ancillary issues to a divorce (ie, division of matrimonial assets, the determination as to custody care and control of children, the maintenance to be paid to the wife and the children), pre-nuptial and post-nuptial agreements are one of various other factors to be considered by the courts. In its scrutiny of an agreement, the court may also consider whether the parties acted with legal advice and were provided with full disclosure of information relating to the matrimonial assets or other relevant information prior to entering into the agreement. On the division of matrimonial assets, the court is ruled by the principle as to whether the division is fair and equitable.

There is a presumption that any provisions relating to children, whether relating to their custody or maintenance, are not enforceable unless they are in the best interest of the children (see AUA v ATZ [2016] 4 SLR 674). On the issues relating to the maintenance of the wife and to the division of the assets, the court considers the provisions in the prenuptial agreement to be an aid to the courts. The courts will uphold the provisions in the prenuptial agreement if they are fair and just.

The court will scrutinise postnuptial agreements against the provisions of the Women's Charter 1961 and will uphold the postnuptial agreement if the provisions are consistent with the principles in the Women's Charter 1961.

Trusts

Likewise, the Singapore courts have had occasion to consider the position of the assets held in trusts set up by a party, whether before or after marriage. The case precedents are clear that where a trust was properly set up before the marriage, the trust is likely to be upheld and the trust assets are not likely to be treated as matrimonial assets for division (see BG v BF [2007] 3 SLR(R) 233).

Where a trust is set up during the marriage, the court will take into account several factors in deciding whether to uphold the trust. One of the main touchstones is the degree of the party's retention of beneficial ownership and/or control over the settled assets. In Gaye Williams Nee Marks v Cary Donald Williams [1993] SGHC 190, while a trust was established by the husband for the benefit of his three sons, the husband had the power to direct the trustees to remove any beneficiary, as well as to add any beneficiary and the power to remove the trustees. The Singapore court was of the view that having regard to the extensive powers that the husband has, the trust should be disregarded and the husband was treated as the owner of the trust assets for the purpose of determining his financial ability to provide for his wife and children.

Where the court finds that the intention of the settlor spouse is to deprive the other spouse of the assets or a right to maintenance, or that the settlor spouse retained control and/or beneficial ownership of the trust assets, the trust is less likely to be upheld, or if upheld, the court nevertheless retains the right to notionally place the value of the trust assets back into the pool of matrimonial assets (see TQ v TR [2009] 2 SLR(R) 961 and UKA v UKB [2018] 4 SLR 779). Where the beneficiaries of the trust are the children of the marriage, the Singapore courts, proceeding on the premise that both parents are under a legal obligation to provide for and maintain the children of the marriage, will be more likely to uphold the trust (see AQT v AQU [2011] SGHC 138).

2.5 Transfer of Property

Generally, save as to stamp duties that apply only to the transfer of Singapore immovable properties or shares of Singapore-incorporated companies and shares of foreign-incorporated companies that are registered in a Singapore branch register, the transfer of property in Singapore does not result in any tax implications on the transferor or the transferee. Singapore does not have capital gains tax. If, however, the transferor is perceived by the Singapore tax authorities to be a trader of the property that is being transferred, income tax may be levied on the profit made by the transferor in such a transfer.

Stamp duties are payable for the transfer of Singapore immovable properties, shares of Singapore-incorporated companies and shares of foreign-incorporated companies that are registered in a Singapore branch register, unless such property is transferred pursuant to a distribution under a will or the laws of intestacy, or is transferred to a spouse pursuant to an order of court made in divorce proceedings.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

For wealth and succession planning, assets may be transferred by way of gifts or inter vivos trusts during the person's lifetime or through the person's will upon their death.

It is also common for transferors to rely on the presumption of survivorship in relation to jointly held assets. By placing assets in the joint names of the transferor and the transferee, a transferor may assert control and ownership of the asset in his lifetime, yet allow for such jointly held asset to be transferred to the survivor upon the transferor's death. While simple, jointly held assets have given rise to substantial litigation in Singapore, as the operation of the presumption of survivorship is very much dependent on the intention of the parties (for example, see Lim Chen Yeow Kelvin v Goh Chin Peng [2008] SGHC 119, and Estate of Yang Chun (Mrs) née Sun Hui Min, deceased v Yang Chia-Yin [2019] SGHC 152).

2.7 Transfer of Assets: Digital Assets

In a series of recent cases, the Singapore courts have confirmed that digital assets, such as cryptocurrencies and non-fungible tokens (NFTs), constitute property. In CLM v CLN and others [2022] SGHC 46, the High Court granted an interim proprietary injunction over Bitcoin and Ethereum. In Janesh s/o Rajkumar v Unknown Person ("CHEFPIERRE") [2022] SGHC 264, the High Court granted an interim proprietary injunction over an NFT.

In Bybit Fintch Ltd v Ho Kai Xin [2023] SGHC 199 at [29], the High Court confirmed that it is possible for crypt- assets to be held on trust. In the Singapore Rules of Court 2021, cryptocurrency or other digital currency has been expressly recognised as a form of property capable of being the subject matter of an enforcement order (see Order 22 Rule 1).

The High Court in Rio Christofle v Malcolm Tan Chun Chuen [2023] SGHC 66 concluded that the bona fide buying and selling of cryptocurrency where there is no carrying on a business of providing any type of payment service is not a contravention of licensing provisions under the Payment Services Act 2019.

While further guidance from the Singapore courts in relation to digital assets will still be needed, the general approach taken in relation to digital assets in Singapore is that they are dealt with depending on whether they are IP rights, contractual rights or property rights. As such types of properties, digital assets can form the subject matter for wealth and succession planning and be dealt with accordingly. The transfer of digital assets does not usually attract stamp duties or transfer costs.

In the context of succession planning, with the growing prevalence and significance of digital assets, such as cryptocurrencies, NFTs or other tokenised assets, there is an increasing need to include these in wills and other succession structures.

3. Trusts, Foundations and Similar Entities

3.1 Types of Trusts, Foundations or Similar Entities

The prevalent structure in tax, wealth or succession planning in Singapore is the trust. This can be revocable or irrevocable, discretionary or fixed interest, depending on the objectives to be achieved. Other structures are available in Singapore, including a company limited by guarantee (CLG), limited liability partnership and fund structures.

CLGs have members (instead of shareholders) whose liability is limited to a fixed sum of money in the event the company is wound up; this structure tends to be used for charitable objects. Limited liability partnerships have a separate legal personality from their partners, whose liability is limited to their contributions; this structure is an option where the intention is to separate the legal ownership and economic ownership of investments or businesses.

Singapore does not have foundations in the civil law sense; that is, a legal structure (distinct from companies or trusts) that is created for specific purposes. The foundations that are set up in Singapore tend to be charitable structures (either a society or a company limited by guarantee). In accordance with guidelines from the Commissioner of Charities, only organisations that are self-funded by an individual, family or for-profit company to aid the organisation's intended charitable purposes or that are financed by an endowment for said organisation can have the word "foundation" in their names.

3.2 Recognition of Trusts

Singapore's legal system is based on common law and recognises trusts. A valid trust requires certainty of intention to create the trust, certainty of objects and certainty of subjects. Singapore trusts have a perpetuity period of 100 years.

Validity and Operation

The validity and operation of the trust in Singapore is not affected by succession or forced heirship rules. Section 90(2) of the Trustees Act 1967 provides that no rule relating to inheritance or succession affects the validity of a trust or the transfer of any property to be held on trust if the person creating the trust or transferring the property had the capacity to do so under the law applicable in Singapore or the law of their domicile or nationality or the proper law of the transfer. In Shafeeg bin Salim Talib v Fatimah bte Abud bin Talib [2010] 2 SLR 1123, the Singapore Court of Appeal opined that if the settlement of a Muslim's assets into a trust was completed during the deceased's lifetime, such assets would be treated as trust assets and not part of the estate and effects of the Muslim that would be subject to Islamic inheritance laws. The Singapore trust thus presents a considerable advantage in the planning for individuals subject to forced heirship rules.

Trusts and Marriage

The Singapore trust is equally robust against a challenge in instances of breakdown of marriages. See the information on trusts in section **2.4 Marital Property**.

The Women's Charter

Under Section 132 of the Women's Charter, the Singapore court has the power to set aside any disposition of assets made within three years preceding the application of the divorce, if the object of such disposition is to either reduce that party's means to pay maintenance or deprive the spouse of any rights in relation to the property. Such disposition would include any settlement into a trust.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

Singapore does not have capital gains or gift taxes and levies income tax on income accrued in or derived from Singapore, or received in Singapore from outside Singapore. There are no specific tax implications that arise solely from a Singapore citizen being a fiduciary or a beneficiary, whether of a Singapore trust or a foreign trust. A fiduciary, if they receive income from such capacity, will be subject to income tax, no different from other forms of income. This applies even if the settlor or donor of the trust, or beneficiary, is also the fiduciary.

A trust can be granted tax transparency, depending on the type of income received by the trust and the tax residency of the beneficiaries. If income tax has been imposed on the trust, distributions by the trustee will be regarded as capital and not subject to further Singapore income tax in the hands of the beneficiaries. If, however, a trust has been granted tax transparency, the distributions received by the beneficiaries from the trust may be subject to Singapore income tax, unless this is specifically exempted.

3.4 Exercising Control Over Irrevocable Planning Vehicles

Section 90(5) of the Trustees Act 1967 specifically provides that a trust or settlement is not invalid "by reason only of the person creating the trust or making the settlement reserving to himself any or all powers of investment or asset management functions under the trust or settlement". There is thus no objection to the settlor exercising control over the investment or management of the trust assets.

However, issues arise where the control of the settlor extends beyond the investment or management of the trust assets, and into, for instance, the removal and appointment of trustees and/or the addition and removal of beneficiaries. In Gaye Williams Nee Marks v Cary Donald Williams [1993] SGHC 190, the Singapore High Court, in divorce proceedings, decided that the husband (who was the settlor) be treated as the owner of the trust property for the purposes of determining his financial ability to provide for his wife and children because of extensive powers he had under the trust, including to dispose of the trust property as he saw fit, to instruct the trustees, to replace the trustees as he saw fit, and to add beneficiaries at his discretion. In Chng Bee Kheng and another v Chng Eng Chye [2013] 2 SLR 715, the Singapore High Court was of the view that where the settlor and the trustee had the common intention to mislead, the trust may be a sham trust. In Lau Sheng Jan Alistair v Lau Cheok Joo Richard [2023] SGHC 196, the Singapore High Court held that a trust might not be enforceable if it was illegal or created for an illegal purpose.

4. Family Business Planning

4.1 Asset Protection

Previously, a common manner of asset protection was the incorporation of SPVs (such as limited liability companies) to hold assets that the family intends to protect. With the various shareholder litigations involving such family companies, it is clear that this is not ideal. The shareholding in these companies tends to be fragmented with each generation of succession, and the supremacy of the rights of shareholders exposes the structure to court litigation either for shareholder oppression or liquidation of the company. The structure also lacks the confidentiality that families crave.

The awareness of these shortcomings of using the corporate structure for asset protection has led to the acceptance and the popularity of the trust structure as a method for asset protection; in particular, the discretionary trust. The trust structure can be used to allow for consolidation of wealth, business continuity and yet allow for the distribution of economic benefits. In Singapore, it is effective planning for succession and can overcome the application of forced heirship rules. It is also robust against challenges in divorce proceedings and creditor claims.

4.2 Succession Planning

The prevalent objectives for succession planning in Singapore include asset protection, the seamless transmission of wealth over generations, the continuity of the family business and minimising family conflicts. The structure that is used for succession planning would naturally depend on the objectives and circumstances of the patriarch and/or the family. The discretionary trust is a commonly used structure in this regard.

The Trust Structure

The trust structure allows for the consolidation of wealth as well as the distribution of economic benefits. This provides a balance that is much sought after in Singapore and in the Asian region. For high net worth families in Asia who built their wealth in the current generation, a priority is the continuity of the family business. The trust allows the family business and wealth to be consolidated to generate income for current and future generations, and for management to remain with the professional managers or capable members of the family.

The trust structure is also modular and can be integrated with other structures that may be required by the family or to achieve tax efficiency. Frequently, the trust structure is used with the family's own private trust company, a family office, an investment entity or a philanthropic arm. The structure can also be made tax efficient by utilising the tax incentives such as those under Sections 13N, 13O or 13U of the ITA.

Family Offices

Singapore provides various incentives for the establishment of family offices in Singapore.

These include tax incentives under the ITA. Section 13O, also known as the Singapore Resident Fund Scheme, provides for an exemption of income of a company incorporated and resident in Singapore arising from funds managed by a fund manager in Singapore. Section 13U, also known as the Enhanced-Tier Fund Tax Exemption Scheme, provides for an exemption of income arising from funds managed by a fund manager in Singapore.

Additionally, the Monetary Authority of Singapore (MAS) has adopted a "light touch" regime with family offices. Single family offices may generally avail themselves of an exemption from holding a capital market services (CMS) licence. Other entities that engage in the regulated activity of fund management would otherwise have to apply for a CMS licence with the MAS.

Some 1,100 family offices had been awarded tax incentives by the MAS as at end 2022, up from 700 at end 2021.

Individuals who establish a Singapore-based family office with assets under management of at least SGD200 million, of which at least SGD50 million must be invested in certain investment categories within 12 months, are also eligible for permanent residency through the GIP.

A Family Charter

Increasingly, there is also interest in a family charter or family constitution that sets out the values of the family, the thinking and wishes of the patriarch and/or the family in the succession structure. Such charter or constitution is usually not a legally binding document, the intention being only to inform and persuade the future generations as to the rationale of the succession structure. To the extent, however, that such document provides for dispute resolution mechanisms, these should be made legally binding to achieve the intended effect.

4.3 Transfer of Partial Interest

Where there is a transfer of interest, the fair market value is used to ascertain what the value of that interest is for the purposes of determining the applicable tax. There is no market practice as to whether and what, if any, is the discount that would be made against the fair market value where the transfer is only of a partial interest in the asset (eg, a minority stake in a company or a half interest in a real property). For valuation purposes, the fact that the transfer is of a partial interest can be noted without any adjustments to the fair market value. In most instances, the adjustment would be a matter of negotiation between the parties.

5. Wealth Disputes

5.1 Trends Driving Disputes

Whilst wealth disputes invariably arise between family members, the form that they take in court is highly varied.

Family Set-Up Trusts

A number of cases in Singapore have arisen from the context in which the trusts were set up. For instance, in the case of Re BKR [2015] 4 SLR 81, the dispute was between the children of the settlor, as to whether the settlor had the mental capacity to set up the trust.

In the case of Chee Mu Lin Muriel v Chee Ka Lin Caroline [2014] 4 SLR 373, the dispute was between the children of the testatrix, as to whether she had the requisite mental capacity when she executed her will.

In the case of Kuntjoro Wibawa v Harianty Wibawa and others [2016] SGHC 109, the dispute was between the settlor and her son as to whether the assets that the settlor settled into the trust belonged to her.

In Ernest Ferdinand Perez De La Sala v Compañia De Navegación Palomar, SA [2018] 1 SLR 894, the dispute concerned a trust arrangement for the De La Sala family's business interests and assets, with a key issue being whether a sole beneficiary had any beneficial rights that could be directly enforceable against the trust property whilst the trust remained in being.

Other family disputes involving trust law issues arise from estate administration (eg, Chng Bee Kheng and another v Chng Eng Chye [2013] 2 SLR 715, which concerned estate property allegedly held in a sham trust) or testamentary trusts (eg, Lakshmi Pratapai Bhojwani v Moti Harkishindas Bhojwani [2019] 3 SLR 356, which concerned an executor and trustee's duty to the beneficiaries under discretionary trusts).

Professionally Set-Up/Administered Trusts

There has also been litigation in respect of trusts that were professionally set up and administered.

In the case of Ivanishvili, Bidzina and others v Credit Suisse Trust Limited [2023] SGHC(I) 9, the Singapore International Commercial Court found that Credit Suisse Trust Limited, a professional trustee, was liable for losses caused by the breach of its duty to safeguard the trust assets.

In Zhang Lan v La Dolce Vita Fine Dining Co Ltd [2023] SGHC(A) 22, the Appellate Division of the High Court permitted a creditor of the settlor to enforce against assets that were purportedly held under a trust established by the settlor and administered by a professional trustee.

5.2 Mechanism for Compensation

The remedies available to the aggrieved party in wealth disputes are dependent on the cause of action that the aggrieved party relies on for their claim. In addition to the contractual or tortious claims that sound mainly in damages to compensate the aggrieved party for their loss, claims in equity may provide other remedies to the aggrieved party, such as the ability to require a fiduciary to account for profits and tracing of trust assets to their current forms.

In the case of Lavrentios Lavrentiadis v Dextra Partners Pte Ltd and Bernhard Wilhelm Rudolf Weber [2020] SGHC 146, the plaintiff succeeded in his claim against the defendants for breach of fiduciary duties and the Singapore High Court accordingly ordered that the defendants account for various unauthorised payments made by them.

In the case of Ivanishvili, Bidzina and others v Credit Suisse Trust Limited [2023] SGHC(I) 9, the Court held that the defence of contributory negligence on the part of the settlor is not applicable in a claim for breach of a trustee's duty and that the trustee was liable to the settlor for the difference between what would have been achieved if the whole portfolio had been removed and managed by a competent, professional trustee and the trust assets were not affected by fraud, and what was actually achieved.

6. Roles and Responsibilities of Fiduciaries

6.1 Prevalence of Corporate Fiduciaries

There are presently 65 corporate fiduciaries (ie, professional trustees) that are licensed in Singapore. While they are subject to the same standard of conduct as individual trustees, the use of corporate fiduciaries is becoming increasingly popular in the succession and wealth planning arena. High net worth individuals take comfort in the fact that corporate fiduciaries are licensed by the MAS and are subject to the supervision and audit of the MAS. There is also an increasing trend for high net worth families to set up their own private trust companies to act as trustees for the family trusts.

6.2 Fiduciary Liabilities

As is the case generally with corporations, it is not possible to pierce the veil of a trust to hold the fiduciary personally liable for the liability of the trust, unless the trust is merely a device, façade or sham intended to give third parties or the court an appearance of creating legal rights and obligations between the parties that are different from the actual rights and obligations that the parties intended to create; see, for example, Gaye Williams Nee Marks v Cary Donald Williams [1993] SGHC 190.

In Siraj Ansari bin Mohamed Shariff v Juliana bte Bahadin and another [2022] SGHC 186, one of the trustees of a trust holding a condominium property on behalf of the beneficiary (who was also the trustee's son) sought to have the trust set aside on the basis that it was a sham executed for the purposes of evading ABSD. Applying the principles from Chng Bee Kheng (ie, whether there was a subjective "common intention to mislead" on the part of both the settlor and the trustee), the Singapore High Court found that the conduct of the parties and the contemporaneous evidence pointed to the trust not being a sham.

The case of Lau Sheng Jan Alistair v Lau Cheok Joo Richard [2023] SGHC 196 considered the related issue of when a trust should be unenforceable for illegality. The beneficiary in that case sought a declaration for the trust be terminated and the trust property be transferred to him pursuant to the rule in Saunders v Vautier. The High Court held that, in deciding whether a trust is unenforceable for illegality, it will consider whether the trust in question is illegal in itself, whether the trust was created for an illegal purpose, and even if the trust is not enforceable, whether the party seeking to enforce the trust can nonetheless establish an alternative basis for enforcing a proprietary interest by the operation of trusts law.

The Trustees Act 1967

The Trustees Act 1967 also contains several protections and indemnities for trustees, including protection against liability and an implied indemnity that a trustee is only chargeable for money and securities actually received by them and accountable only for their own acts, receipts, neglects or defaults.

The Court of Appeal in Rajabali Jumabhoy and others v Ameerali R Jumabhoy and others [1998] 2 SLR(R) 434 held that an exculpatory clause in the settlement operated to relieve a trustee of liability for loss where no dishonesty was involved, although it noted that the extent of an exemption clause would "depend very much on the precise wording and ambit of the exemption clause itself". The Court of Appeal also noted that even if the exculpatory clause did not apply, the court retained a residuary discretion under Section 63 of the Trustees Act 1967 to relieve a trustee from liability where they have acted "honestly and reasonably, and ought fairly to be excused for the breach of trust".

Under Section 27 of the Trustees Act 1967, a trustee may delegate some or all of their powers and discretions by way of a power of attorney. However, Section 27(6) of the Trustees Act 1967 provides that despite such delegation, the trustee shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the trustee.

Anti-Bartlett Clauses

"Anti-Bartlett" clauses, which are common in commercial trust deeds, in essence negate any duty on the part of the trustee to enquire into or interfere in the conduct or management of the company owned or held by the trust unless the trustees are aware of circumstances that call for enquiry. These clauses are typically inserted into trust instruments to provide trustees with a degree of comfort when the trust assets included shares in operating businesses or trading companies or when the assets are not managed and/or controlled by the trustee.

In Zhang Hong Li v DBS Bank (Hong Kong) Limited [2019] HKCFA 43, the Hong Kong Court of Final Appeal overturned the findings of the courts below, and held that the anti-Bartlett clauses in a trust deed would exclude any residual high-level supervisory role or obligation on the trustee in respect of investment decisions made by an investment adviser appointed by the underlying company. Such a duty would be "plainly inconsistent with the anti-Bartlett provisions".

The Singapore International Commercial Court had an opportunity to consider anti-Bartlett clauses in the case of Ivanishvili, Bidzina and others v Credit Suisse Trust Limited [2023] SGHC(I) 9, where the settlor of the trust brought a claim against the trustees for breach of trust.

The trustees relied on the anti-Bartlett clause in the trust deed in an attempt to exclude liability for the losses claimed. Distinguishing the case of Zhang Hong Li & Ors v DBS Bank (Hong Kong) Limited & Ors [2019] HKCFA 45, the Singapore court held that the trustee's irreducible core of obligations included the duty to safeguard the trust assets and the anti-Bartlett clause was not effective to exclude the trustee's liability on the facts of the case. This is consistent with the Singapore court's finding in Lalwani Ashok Bherumal v Lalwani Shalini Gobind and another [2019] 4 SLR 1304 at [38] that there exists an irreducible core of obligations owed to beneficiaries.

6.3 Fiduciary Regulation

Section 3A of the Trustees Act 1967 prescribes a statutory duty of care for trustees when exercising their powers. Generally, a trustee must exercise such care and skill as is reasonable in the circumstances, taking into account any special knowledge or experience that they have or hold themselves out as having, and, if they act as trustee in the course of a business or profession, any special knowledge or experience that may reasonably be expected of a person acting in the course of that kind of business or profession.

Additionally, the trustees are subject to the usual common law duty to act in good faith, not to act in conflict with the trust's interest and to exercise their rights and powers in good faith for the benefit of the beneficiaries of the trust.

6.4 Fiduciary Investment

Under the Trustees Act 1697, the trustee is required to have regard to the "standard investment criteria", which requires the trustee to take into account the suitability of the investment or other investments for the trust and the need for diversification as is appropriate to the circumstances for the trust.

The trustee is also required to obtain and consider proper advice before making the investment or when reviewing the trust investments. The trustee should obtain and consider proper advice from a person whom the trustee believes to be reasonably qualified to provide such advice by their ability or experience of financial or other matters relating to the trust, unless the trustee reasonably concludes that it is not necessary or appropriate.

These criteria also apply to trust investments that do not yield any income.

Trusts in Singapore may hold, run and manage active businesses (and indeed this is commonly a need of high net worth families with their own family businesses). Corporate fiduciaries are generally reluctant to accept active businesses as part of the trust assets. Their consideration lies in their ability to run, manage or even understand such active businesses, and the reputational risks related to the management of these active businesses.

7. Citizenship and Residency

7.1 Requirements for Domicile, Residency and Citizenship

The concept of domicile under Singapore law is based on the traditional concept of domicile under English law (see Peters Roger May v Pinder Lillian Gek Lian [2009] 3 SLR(R) 765). The Singapore court recognises the domicile of origin (the country of that person's birth) and the domicile of choice (the country that that person determines to be his permanent home and/or home for an indefinite period).

Citizenship

The basic eligibility criterion to obtain a Singapore citizenship is for the applicant to have been a permanent resident for a minimum amount of time, namely two years for an adult and three years for a student. The award of the Singapore citizenship is entirely discretionary and factors that would be considered include the amount of time that the applicant spent in Singapore as a permanent resident, the applicant's good character and law-abiding nature, the applicant's social and financial "investment" in Singapore that evidences their intention to stay in Singapore for the long term, and the applicant's ability to be an asset to Singapore.

Dual citizenship is not allowed in Singapore and successful applicants are required to renounce their foreign citizenship before attaining Singapore citizenship.

Permanent Residency

Generally, the spouse or unmarried minor-child of a Singapore citizen or permanent resident, or an aged parent of a Singapore citizen, may apply to become a permanent resident.

There are also schemes that allow the holders of certain employment and work passes in Singapore and students in Singapore to apply to be permanent residents.

Additionally, applicants may also apply to be permanent residents under the following schemes.

The GIP

Administered by the Economic Development Board (EDB), the requirements under this Programme were recently updated in 2023. With effect from 15 March 2023, the applicant may:

- invest at least SGD10 million in a business in Singapore in certain industries identified in the Programme;
- invest and maintain at least SGD25 million in a GIP-approved fund; or
- establish a Singapore-based family office with assets under management of at least SGD200 million, of which at least SGD50 million must be invested in certain investment categories within 12 months.

Upon compliance with the requirements of the Programme, permanent residence status will be granted to the applicant, their spouse, and children who are minors.

The Foreign Artistic Talent Scheme

Administered by the National Arts Council, this scheme allows recognised international arts professionals who have made significant contributions to Singapore's arts and cultural scene to apply and be granted permanent residence in Singapore.

The Overseas Networks and Expertise Pass

Another scheme recently introduced by Singapore is the Overseas Networks and Expertise Pass (the "ONE Pass"), which has a duration of five years for first time successful candidates and allows for subsequent renewals of five years. There are various eligibility criteria, including a minimum salary requirement or outstanding achievements in the arts and culture, sports, or academia and research.

7.2 Expeditious Citizenship

There are no specific expeditious means of obtaining citizenship in Singapore.

8. Planning for Minors, Adults With Disabilities and Elders

8.1 Special Planning Mechanisms

The Mental Capacity Act 2008 (MCA) allows a person who has mental capacity to execute a lasting power of attorney to appoint donees who would be authorised to make decisions for them in respect of their personal welfare and/or their property and affairs, in the event that they should lose their mental capacity. This allows a person to plan for what they wish to be done, and by whom, in the event that they should lose their mental capacity.

For those who are mentally incapable, the MCA allows relatives or persons with interest to apply to court to be appointed as deputies to act on their behalf. On 1 September 2018, to address the concerns of elderly singles or childless elderly couples, who might not have family members or close friends to act as proxy decision makers, the categories of persons who can be donees and deputies was extended to professional deputies and donees (who can be lawyers, doctors, accountants, allied health professionals, nurses and social workers).

Such vulnerable persons are also typically provided for through trusts set up for their benefit by their loved ones. The Special Needs Trust Company (SNTC) is a non-profit trust company that provides heavily subsidised trust services for persons with special needs.

8.2 Appointment of a Guardian

A child's parents are the natural guardians of the child and have rights to make decisions relating to the child so long as the child is a minor. No application to court is necessary even if the child has disabilities, whether mental or physical.

Under Section 7 of the Guardianship of Infants Act 1934 (GIA), the father or mother of a minor may by deed or will appoint any person to be the guardian of the minor after their death. This appointment does not require a court application. In other instances, a person may apply to the court under the GIA to be appointed as the guardian of a minor. The court may also exercise its powers to remove any existing guardian and to appoint another guardian in their place. While guardianship does not normally require ongoing court supervision, all guardians must generally act in the best interests of the minor.

Once, however, a child reaches the age of majority (above the age of 21 years), the parent no longer has decision-making rights for the child. In such circumstances and where the child is mentally incapable, the parent will need to apply to court to be appointed as deputy for their adult-child in order that they can continue to make decisions for that child.

8.3 Elder Law

With the implementation of the MCA in 2008, there was increasing awareness as to the vulnerability of aged persons to mistreatment and manipulation. The Vulnerable Adults Act 2018 came into force on 19 December 2018 and is intended to safeguard adults who, because of mental or physical infirmity, disability or incapacity, are incapable of protecting themselves from abuse, neglect and self-neglect. The Act provides for enhanced powers of intervention where it comes to vulnerable adults, including powers to enter their homes and investigate suspected abuse, neglect or self-neglect, powers to make alternative care arrangements for vulnerable adults in order to protect them from potential abusers and powers to impose enhanced penalties for offences against vulnerable adults.

The awareness surrounding mental capacity has also prompted high net worth individuals in their wealth planning not only to consider the succession of their wealth in the event of their death, but also to make provision for their own care in the event of their infirmity or incapacity. In this respect, the lasting power of attorney and the setting up of a reserve trust to provide for themselves are common solutions.

9. Planning for Non-traditional Families

9.1 Children

Children Born Out of Wedlock

Children born out of wedlock are considered illegitimate, although they are legitimated by the subsequent marriage of their natural parents. Until they are so legitimated, they would have no right to inherit from their father in the event that he should die intestate. They would only be entitled to inherit from their biological mother if the biological mother has no surviving legitimate children.

Adopted Children

Adopted children are deemed under the Adoption of Children Act 1939 to be legitimate children of their legal (adoptive) parents, and in the case of intestacy, will be entitled to their estate as if they were born to their adoptive parents in lawful wedlock. As the adoption legally severs all ties between the adopted children and their natural parents, they will have no right to inherit from their natural parents in the event that the natural parents should die intestate.

Surrogacy

In Singapore, whilst surrogacy is not unlawful per se, commercial surrogacy is not allowed under the guidelines issued by the Ministry of Health that prohibit assisted-reproduction clinics from providing surrogacy services. In the recent landmark case of UKM v Attorney-General [2019] 3 SLR 874, the High Court allowed a gay man's appeal in relation to an adoption application for his son who was conceived via gestational surrogacy overseas on the basis that the adoption order would be in the child's welfare as it improves the child's chances of acquiring Singapore citizenship or long-term residence in Singapore, and thereby enhances his prospects of remaining here with his current caregivers.

Subsequent to the case of UKM, the Ministry of Social and Family Development stated that it would review adoption laws and look into the issue of surrogacy. Parents who intend to adopt children conceived through surrogacy overseas will have their applications assessed on a case-by-case basis. Prior to UKM, the courts had granted the adoption of children to ten married couples (out of 14 applicants) who used surrogacy because of infertility issues.

In the subsequent decision of VET v VEU [2020] 4 SLR 1120, the same plaintiff from UKM applied for his same-sex partner to be appointed as a guardian of his two children (including the son whose adoption was granted in UKM). The Singapore High Court dismissed the plaintiff's application as, amongst other reasons, it did not consider the appointment of the man's same-sex partner as a guardian to be necessary or in the children's welfare.

9.2 Same-Sex Marriage

Same-sex marriages are neither permitted nor recognised in Singapore and Section 12(1) of the Women's Charter 1961 expressly provides that a marriage whether solemnised in Singapore or elsewhere between persons who at the date of the marriage are not respectively male and female is void. Parties to such a marriage thus do not have rights as spouses in the event of a breakdown of the relationship and in the event of the demise of the other party.

A marriage between a person who has undergone a sex reassignment procedure and a member of the opposite sex is valid.

There are no laws recognising domestic partnerships in Singapore.

10. Charitable Planning

10.1 Charitable Giving

There are several tax incentives that have been put in place in Singapore to encourage charitable giving. Until 31 December 2026, donors to charities that are designated as institutions of public character or qualifying grant-making philanthropic organisations are entitled to a 250% tax deduction of the amount of their donation. Where the tax deduction exceeds the income for the year, the donor is entitled to utilise the remaining tax deductions in the next five years.

Donations of immovable properties and shares to approved institutions of public character are also exempted from stamp duties.

All charities registered in Singapore and charities exempt from registration enjoy automatic tax exemption. For properties that are used exclusively for charitable purposes, property tax may also be exempt in full or in part.

Singapore has also expressed hopes to become a regional centre for philanthropy, and is encouraging family offices, businesses and individuals based in Singapore to contribute to impactful solutions to problems.

In furtherance of this goal, the Wealth Management Institute, the MAS, and the Private Banking Industry Group are working to establish the Impact Philanthropy Partnership, which will bring together wealth owners and family offices to tackle society's most pressing challenges and issues.

The Singapore government has announced changes to tax incentive schemes to encourage family offices to give more, and support local charities and non-profit entries. Under the Philanthropy Tax Incentive Scheme, which takes effect in 2024, qualifying donors in Singapore can claim a 100% tax deduction, capped at 40% of the donor's statutory income, for overseas donations made through qualifying local intermediaries.

10.2 Common Charitable Structures

The three most common legal structures for non-profit organisations in Singapore are that of:

- a CLG;
- a society; or
- a charitable trust.

CLGs

Of the three, only CLGs benefit from limited liability (limited to such an amount that the members had guaranteed to contribute to the assets of the company in the event that it is wound up). CLGs may also be registered as charities, allowing them to benefit from income tax exemptions. However, CLGs also suffer from a greater number of administrative requirements in their setting up, including the need for a registered office, requirements as to directors and more complex annual reporting requirements.

Societies

Like CLGs, societies may be registered as charities and benefit from the associated tax exemptions. An advantage that societies have over charities is their fewer administrative requirements (eg, their officers are not subject to statutory qualifications). However, societies do not have a separate legal identity from their members and members may be personally liable for any liability incurred.

Charitable Trusts

Finally, charitable trusts are a useful structure for the investment and disbursements of assets for the purpose of charity. They also benefit from limited public disclosure and tighter control; generally, there need not be an auditor or audited financial statements unless required by the trust deed, and control resides entirely with the trustees. Like societies, however, charitable trusts have no independent legal personality and trustees must bear all legal liabilities.

Oftentimes, it is not just a question of selecting a structure for the charitable intents of the client. Charities and the manner of giving have developed over the years and many clients' philanthropic objects have devolved beyond the traditional concept of giving.

Most charities presently include the concept of empowerment: giving in a manner such that the project would generate profit to be self-sustaining, or running a social enterprise that will benefit the underprivileged without sacrificing profits entirely. A structure would thus have to be created to allow such entrepreneurial intents whilst capitalising on the incentive schemes and benefits that a charity is entitled to.

The Code of Governance

The Charity Council developed the Code of Governance to set out principles and best practices in key areas of governance and management that charities are encouraged to adopt. The Code was first developed in 2007, with the most recent revised Code issued on 4 April 2023. Key changes include the introduction of environmental, social and governance concepts.

The Code is meant for all registered charities and Institutions of a Public Character (IPCs) in Singapore. While compliance is not mandatory, charities are encouraged to review or consider amending their government instrument, by-laws and policies as necessary to adopt the Code for the best interest of the charities. All charities and IPCs to which the Code applies are required to submit a governance evaluation checklist.

CHAMBERS GLOBAL PRACTICE GUIDES