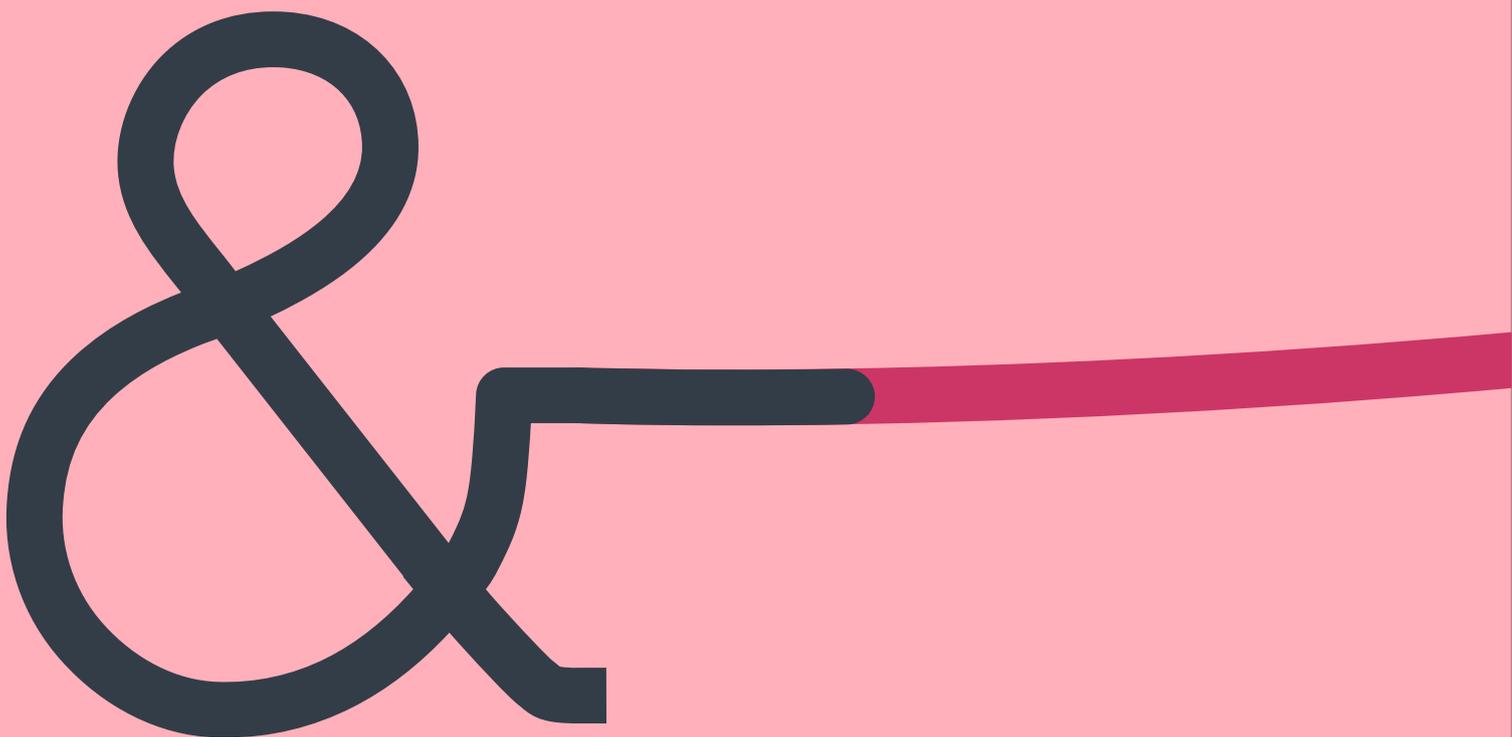


Bird & Bird ATMD

Setting up a business in Singapore

2022





“Their approach demonstrates a clear understanding of commercial considerations and client interests.”

Chambers Asia-Pacific, 2022

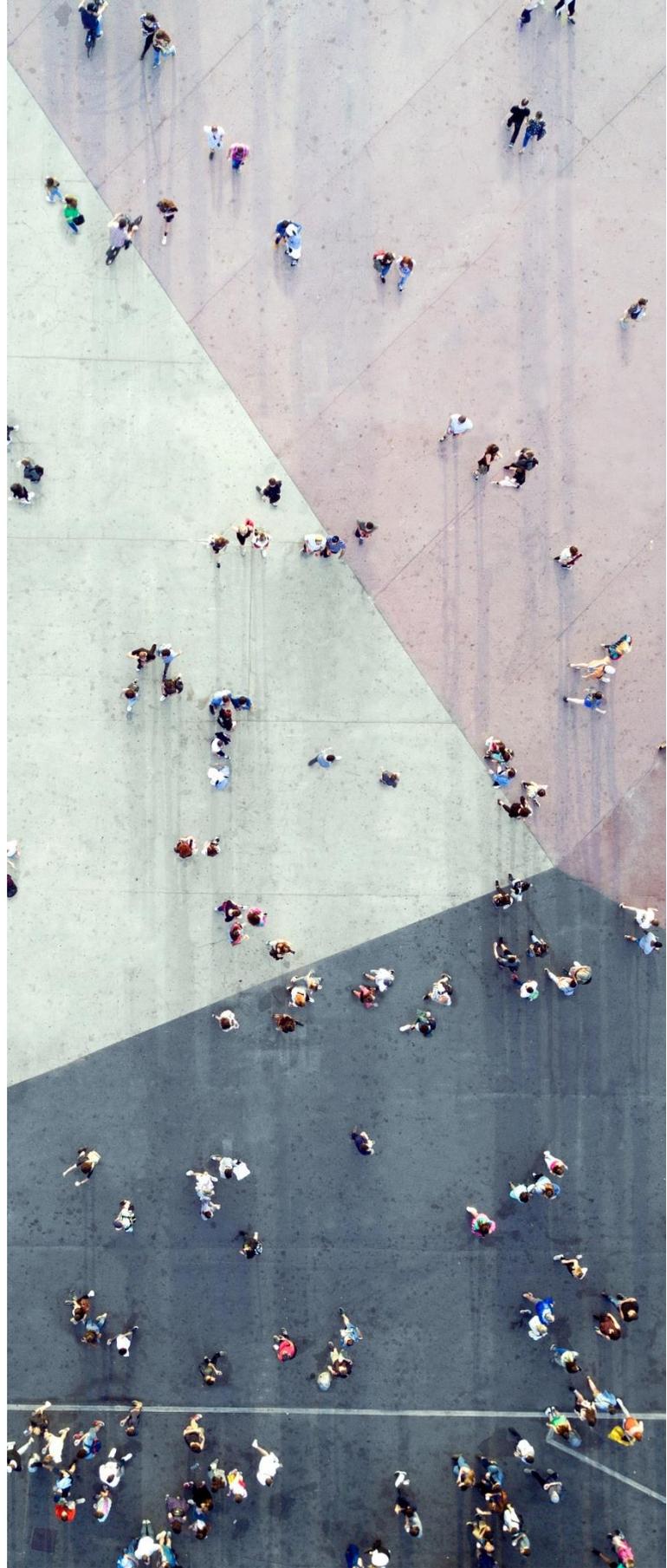


Why set up a business in Singapore

The Republic of Singapore is an ideal location for doing business. With a record of political stability, low corruption and transparency, Singapore's business environment is conducive to foreign investments and as a base for foreign multinationals to locate their regional headquarters to.

Singapore has been ranked first for being the most competitive economy in the world (IMD World Competitiveness Rankings 2020), and for its political and operational stability (WIPO Global Innovation Index 2019). Singapore is also the fourth largest recipient of foreign direct investments in the world (UN World Investment Report 2019).

By setting up a presence here, companies also benefit from Singapore's network of free trade agreements with the world's largest economies and double taxation avoidance schemes.





Bird & Bird “is made up of highly competent lawyers who are well trained and knowledgeable in different areas of law”.

Chambers Asia-Pacific, 2022

Choice of legal entity

The Economic Development Board (“EDB”) is the Singapore government’s most powerful enterprise arm. EDB provides invaluable support for any incoming multinational wishing to set up its global or regional headquarters in Singapore to gain a foothold into the region. We routinely work with EDB on inbound foreign direct investments and we will be glad to connect corporations to EDB as required for an initial consultation to explore possible incentives and opportunities. If you require assistance, do let us know.

A foreign company (“Company”) can carry on business in Singapore through a Subsidiary or Branch office. The registrar of companies and regulator tasked with maintaining the integrity of Singapore’s corporations is the Accounting and Corporate Regulatory Authority of Singapore (“ACRA”).

Alternatively, promotional and liaison activities may also be conducted through a Representative Office for market assessment purposes before making a long-term commitment. This is not a corporate entity, and it is a temporary facility with an expiration date of 3 years. Most foreign companies would apply to Enterprise Singapore (the government agency tasked with driving Singapore’s external economy) when seeking to open a Representative Office; unless it is a bank or insurance company which would then have to make an application with the Monetary Authority of Singapore. ACRA is not involved in setting up such offices.

	Subsidiary	Branch Office	Representative Office
Separate Legal Personality	A subsidiary is a separate legal entity, entitled to contract in its own name and on its own behalf.	A branch office has no separate legal personality, remains part of the Company and contracts as a Singapore branch office on behalf of the Company. The branch office can only engage in activities authorised under the by-laws of the Company.	<p>A representative office (“RO”) is intended to be a temporary facility for foreign companies to conduct research and explore the feasibility of business opportunities in Singapore prior to making any long-term commitments. The RO has to be renewed annually and for up to 3 years only.</p> <p>To register for an RO in Singapore, the Company must fulfil the following criteria:</p> <ol style="list-style-type: none"> 1 Sales Turnover of the Company must be > US\$250,000. 2 No. of years of establishment of the Company must be >= 3 years. 3 Proposed No. of staff for RO to be employed in Singapore should be < 5 people. <p>It has no separate legal personality from the Company.</p> <p>For long-term business prospects, the Company will have to be registered as a corporate legal entity with ACRA to maintain its operations in Singapore.</p>
Liability	Operates under limited liability.	Company is liable for the branch office’s debts, losses, and liabilities.	Company is liable for the RO’s debts, losses, and liabilities.

	Subsidiary	Branch Office	Representative Office
Incorporation	<p>There is no minimum share capital requirement. In practice, a subsidiary may be incorporated with one share with an issue price of S\$1.00.</p> <p>The name of the subsidiary must be reserved before proceeding with the incorporation.</p> <p>The name reservation may be rejected by ACRA if there are already other entities registered in Singapore bearing the same name, or if the name is offensive / confusing.</p> <p>It generally takes about 2 working days to reserve a name for the subsidiary and submit incorporation documents.</p> <p>It generally takes us about 1 week to work with you to prepare all required documents for the filing.</p> <p>ACRA's processing time for name approval and e-filing of registration documents usually takes a further 2-4 days if all documents are in order.</p>	<p>Branches may be registered with or without share capital.</p> <p>The name of the branch must be reserved by the applicant before proceeding with the application.</p> <p>The name reservation may be rejected by ACRA if there are already other entities registered in Singapore bearing the same name, or if the name is offensive / confusing.</p> <p>Name approval and e-filing of registration documents usually takes 1-2 days if all documents are in order.</p> <p>The Company would generally be unable to make a branch filing directly with ACRA and would need to appoint a professional firm such as Bird & Bird ATMD to assist with the filing.</p> <p>It generally takes us about 1-2 weeks to work with you to prepare all required documents for the filing.</p> <p>ACRA's processing time for name approval and e-filing of registration documents usually takes a further 2-4 days if all documents are in order.</p>	<p>Prior to an application of the RO with Enterprise Singapore ("ESG"), documents relating to the Company (certificate of incorporation, annual report, audited accounts for the past one year and brochures describing the Company's activities/ products) must be signed by the Chief Executive Officer or an authorised signatory of the Company and sealed with the Company's official stamp. Approval is at ESG's discretion.</p> <p>If the latest audited accounts cannot be provided, the applicant can write in to ESG to seek a waiver and provide company brochures describing the Company's activities and self- declare the required information.</p> <p>Once the application form is filed and all supporting documents and information requested by ESG are provided, it will take about 3-4 weeks to process the application.</p>
Cost of registration (S\$)	<p>Bird & Bird ATMD's estimated fees for incorporating a subsidiary is S\$5,365 (excluding disbursements and GST).</p>	<p>Bird & Bird ATMD's estimated fees for incorporating a branch office is S\$6,515 (excluding disbursements and GST).</p>	<p>ESG's processing fee for registrations of a RO is S\$200, which allows the RO to be registered for one year. Each subsequent annual renewal will cost an additional S\$200.</p> <p>Legal fees for registering a RO are estimated at S\$4,000 (excluding disbursements and GST).</p>
Residence in Singapore	<p>At least one director on the subsidiary's board of directors must be ordinarily resident in Singapore.</p> <p>The company secretary must also be a Singapore resident.</p> <p>There is no requirement for a minimum number of Singapore resident shareholders.</p> <p>The subsidiary's registered office must also be a Singapore address.</p>	<p>A branch office must have a registered office in Singapore to which all communications are addressed. It must maintain at least one authorised representative ordinarily resident in Singapore who is authorised to accept service on behalf of the branch and who are answerable for all things required of the branch office under the Singapore Companies Act.</p>	<p>No legal requirement for any shareholders or directors of the Company to be ordinarily resident in Singapore.</p> <p>However, the RO must have at least one appointed representative from the Company to be resident in Singapore to receive official documents or service of court documents should the need arise.</p>

	Subsidiary	Branch Office	Representative Office
Meetings	For tax purposes, meetings of the board held in Singapore (physical meetings, conference calls originating from Singapore, written resolutions initiated in Singapore) are useful indicators of subsidiary tax residence in Singapore for treaty relief.	No legal requirements for meetings of the branch office to be held in Singapore.	No legal requirements for meetings to be held in Singapore.
Accounting	Generally, subsidiaries need to have their accounts audited and filed with ACRA on an annual basis. Typically, a Singapore company is exempt from such audit requirements only if they meet the "Small Company" criteria.	Financial statements must be filed with ACRA for both the Company and the branch on an annual basis.	No accounts need to be filed for a RO.
Filing	Annual filing and accounting costs are higher than for a branch office, but generally cost effective.	Typically filing costs are lower than a subsidiary but the difference is slight.	Typically no annual filing costs except on renewal of registration.
Income tax	Corporate income tax is currently 17% of chargeable income. Subsidiaries will be treated as Singapore resident companies and will be eligible for tax exemptions and incentives available to local companies.	A branch is not considered a tax resident in Singapore. Please note that 17% withholding tax is levied on Singapore income derived from technical, service or management fees – the same as the corporate income tax rate. There are alternative withholding tax rates for other income streams. Kindly check with a tax advisor.	RO must not have any income and is therefore not subject to Singapore income tax. An RO set up for the purposes of "promotion and liaison" activities must not engage in trading or business activities, enter into business contracts, issue invoices or receive letters of credit or enter into contracts on behalf of the company. If it does, the RO risks becoming a permanent establishment of the Company in Singapore, rendering the Company chargeable to income tax on income attributed to operations in Singapore.
Trading	Trading losses can be carried forward and back across accounting periods under certain circumstances, having first been utilized to off-set profits in the same accounting period.	Trading losses of the branch can be carried forward and back across accounting periods under certain circumstances, having first been utilised to off-set profits in the same accounting period.	No trading is carried out.

Interacting with Singapore Government Agencies using a CorpPass

After the legal entity has been registered/ incorporated, it may need to register for a CorpPass, which is a corporate digital identity for businesses and other entities (including companies) that enables entities to easily transact with multiple Government agencies using a single log-in. Individuals (such as employees of the company) may also be assigned a CorpPass User account to transact with government agencies on behalf of the entity. If you require assistance, do let us know.



Bird & Bird LLP provides “very good advice, in particular with regard to understanding the nuances and political climate among the stakeholders to get transactions through.”

Chambers Global, 2022

Employment

The relationship between the employer and employee is largely regulated under the Employment Act 1968 (the “EA”) as well as several other regulations. Parties are also free to contract on the relationship between the employer and employee, subject to certain statutory requirements found mainly in the EA, related regulations and common law principles.

The EA applies to every employee (regardless of nationality) under a contract of service with an employer (“EA Employees”) other than seamen, domestic workers, civil servants or any other person who may be declared by the Ministry of Manpower to not be employees for the purposes of the EA from time to time (“Non-EA Employees”).

Part IV of the EA prescribes statutory minimum requirements regarding rest days, hours of work and other conditions of service. Part IV does not cover managers or executives and applies only to more vulnerable employees, namely:

- 1 Workmen (generally persons employed for manual labour) with a basic monthly salary of not more than S\$4,500; and
- 2 EA Employees who are not workmen or a person employed in a managerial or an executive position but earn a basic monthly salary of up to S\$2,600.

Apart from the EA, there are other employment-related statutes which require employers to take reasonably practicable measures to ensure workplace safety and health and which award employees the right to compensation for injuries incurred in the course of employment.

There are no compulsory contributions to any pension scheme or social security insurance scheme in Singapore. However, contributions must be made to each Singapore citizen’s or permanent resident’s compulsory national social security savings account: the Central Provident Fund. For current rates of contribution please see:

<https://www.cpf.gov.sg/employer/employer-obligations/how-much-cpf-contributions-to-pay>

Termination of employment in Singapore is usually effected by giving written notice, or salary in lieu of notice. The notice period to be given will be as agreed upon in the employee’s contract. In the absence of any agreement, the EA provides certain default notice periods, that vary depending on the employee’s length of service.

If an employee is guilty of misconduct, the employer is entitled to summarily dismiss the employee without notice. However, an EA Employee who feels that they have been unjustly dismissed is entitled to register their claims at the Tripartite Alliance for Dispute Management (“TADM”) for mediation. Mediation at TADM is compulsory and only unresolved disputes may be referred to the Employment Claims Tribunals (“ECT”) to resolve salary-related disputes and wrongful dismissal disputes.

The retirement age in Singapore is currently 62 but employers are required under the Retirement and Re-employment Act 1993 to offer re-employment to eligible employees who turn 62, up to the age of 67. The retirement and re-employment ages will be raised to 63 and 68 respectively from 1 July 2022 and is further targeted to be raised to 65 and 70 respectively by 2030.

Maternity protection and benefits are statutorily provided for eligible female employees (i.e., employees who are either parents of children who are Singapore Citizens (inclusive of children who become Singapore Citizens within 12 months from the date of birth) or employees who are not parents of Singapore citizens but who are EA Employees and meet certain eligibility criteria) and range from 12 to 16 weeks paid leave. Eligible male employees are also entitled to 2 weeks of paid paternity leave to be taken within the first 16 weeks of the birth of the child by default if no mutual agreement with the company is made. Dismissal of an employee who is on maternity leave is prohibited and constitutes a criminal offence. In the case of a pregnant employee who is not already on maternity leave, if a notice of termination is given without sufficient cause or on ground of redundancy at any time of her pregnancy, the employee is entitled to her full maternity leave benefits.

Work Passes

Foreigners will have to apply for work passes and permits in order to live and work in Singapore. There are two categories of passes, one for professionals and the other for skilled/semi-skilled workers. Here is a summary of the three types of passes available for professionals, managers and executives:

a. Employment Pass

The Employment Pass (EP) is granted to foreign professionals, managers and executives with suitable qualifications, specialist skills and earn at least S\$4,500 per month (and at least \$5,000 per month for candidates in the Financial Services sector). The qualifying salary will be revised to S\$5,000 per month for all candidates (except in the Financial Services sector, and S\$5,500 for candidates in the Financial Services sector from 1 September 2022. Older candidates will require higher minimum qualifying salaries to qualify for an EP. An employer is first required to advertise for the job position on the [MyCareersFuture.gov portal](https://mycareersfuture.gov.sg) for a period of 28 days (unless an exception applies), before they can apply for an EP for that position.

b. Personalised Employment Pass

The Personalised Employment Pass (“**PEP**”) is granted to individuals in the high-earning category. The PEP offers greater flexibility than an EP. The PEP is generally granted to individuals who are already EP holders (drawing at least S\$12,000 per month) or highly specialised overseas based professionals looking to move to Singapore.

c. EntrePass

The EntrePass is an employment pass granted to foreigner entrepreneurs who wish to start and operate a new business in Singapore. Application can be made together with a submission of proposed business ideas, objectives, and hiring prospects.

Real Estate

Most companies setting up in Singapore will either lease commercial space which they can fit out for their office use or lease ready-to-use serviced offices including administrative and IT support services.

Leases for commercial space are usually fixed lease terms of 2-3 years with a typical renewal option of 1-3 years. An extension of 4-6 years is also possible for firms who envision long-term business plans and do not wish to relocate. Leased premises will be fitted out and repaired at the tenant's cost, and the tenant will be responsible for reinstating the premises at the end of the lease.

The tenant will also have to furnish a security deposit of 2-3 months' rent in cash or via bankers' guarantee as security for the performance of the lease terms.

Leases for serviced offices are usually for flexible lease terms and can accommodate different budgets, sizes or needs. No capital outlay is required save for a security and renovation deposit that will be refundable without interest.

Data Protection/Privacy

The Personal Data Protection Act 2012 governs the collection, use and disclosure of personal data as well as the standard of care required of entities handling personal data. Individuals have a right to protect their personal data, and have rights to access and correct such information. Similarly, organisations are empowered to deal with personal data for legitimate and reasonable purposes.

The PDPA will in general require organizations to obtain the consent of individuals for the collection, use and disclosure of their personal data, unless certain exceptions apply. There will also be requirements for notification, accuracy, protection, access to and correction of, retention and transfer of personal data, unless certain exceptions apply.

The main regulator is the Personal Data Protection Commission and has the power to make orders as well as impose financial penalties not exceeding S\$1 million. Individuals may make complaints to the commission or seek legal recourse through many platforms including actions in defamation, nuisance, negligence, and breach of confidence. Specific provisions in the Statistics Act 1973, Telecommunications Act 1999, and Banking Act 1970 that govern the processing of personal information can apply to certain industries and transactions.

Intellectual Property

Singapore's IP regime has consistently been ranked amongst the best in the world by the World Economic Forum and the International Institute for Management Development. Singapore has also been consistently ranked as amongst the world's most innovative economies. In 2020, Singapore was ranked as the No.1 innovation economy in Southeast Asia, East Asia and Oceania by the Global Innovation Index published by INSEAD and the World Intellectual Property Organisation. It has held this position since 2014.

Singapore continues to position itself as a regional and global IP hub with a masterplan framework guiding Singapore's development on various fronts:

IP legislation and protection framework

Singapore's IP protection regime includes a combination of common law and statute, covering the full spectrum of IP rights including trademarks, copyright, patents, industrial designs, layout of integrated circuits, plant varieties, geographical indications, confidential information, trade secrets, and passing off. Singapore's IP legislative framework is robust and aligned with the international stage. We have long-since been a signatory to major IP conventions such as the Berne Convention (copyright protection), the Paris Convention, the Madrid Protocol (trade mark protection), the Patent Cooperation Treaty (patent protection), the Hague Convention (design protection), WIPO Convention, and the TRIPS Agreement, amongst others, all of which serve to enhance and facilitate protection of IP locally and internationally. Singapore also readily accords and implements IP protection pursuant to the many free trade agreements with various countries. For example, pursuant to the EU-Singapore free trade agreement in 2019, Singapore enhanced its protection of geographical indications by establishing a registration system for GIs.

Quality filings and examination

Singapore has quality IP service providers and efficient infrastructure which allows Singapore to be a gateway to secure IP protection not merely in Singapore but in key markets regionally and internationally. Singapore also has robust examination processes for trademarks, patents and designs, which all serve to enhance the value and recognition of the rights which are granted.

Enforcement and dispute resolution

Singapore is a venue of choice for IP dispute resolution given its stable political, economic and social environment, coupled with an efficient, transparent and cost-effective judicial system, as well as well-supported alternative dispute resolution methods. We see quality IP decisions emanating from the courts through, among other initiatives, the establishment of specialised IP courts and designation of IP judges to hear complex IP matters. Singapore has also established a collaboration framework with WIPO's Arbitration and Mediation Centre in Singapore to enhance Singapore's IP arbitration capabilities.

Commercialisation

Singapore has positioned itself as a centre of excellence for IP commercialisation and innovation. An initiative in 2018 saw a partnership between the Intellectual Property Office of Singapore and insurance firm Lloyd's Asia to introduce IP insurance products and underwriting expertise. This is aimed at helping enterprises attract capital, manage business risk, and strengthen negotiating positions when they use IP in the course of their business.

Tax incentives and grant schemes

Singapore also positions itself as a tax-efficient country with incentives for innovation and investment in IP. There are various incentive schemes administered by the Inland Revenue Authority of Singapore, as well as Enterprise Singapore, a statutory board under the Ministry of Trade and Industry. These schemes serve to incentivise businesses and MNCs to hold and/or develop their IP assets in Singapore based companies.

Contact us

If you would like further information on setting up business in Singapore, please e-mail our Set up Desk at new.company@twobirds.com and we will contact you as soon as possible.

This summary gives general information only as of May 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.



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