



INSIGHTS

by

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Companies - Corporate Personality

Incorporation and its Effects

Section 17(3) of the Companies Act (Cap 50) ("the Act") makes it clear that an unincorporated association "formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company" may not consist of more than 20 persons.

Simply, any business organization with more than 20 members must be incorporated as a company (i.e. "pte ltd").

Incorporating a Company

To set up a company in Singapore, one must first submit an application vide the Accounting and Corporate Regulatory Authority's BizFile online platform. This online application consists of a twostage process; (1) Application for approval and reservation of a company name, (2) submission of incorporation application and documents. A total of \$315 in registration fees would have to be paid (i.e. \$15 – Name Approval Fee, \$300 - Registration Fee).

When it comes to the reservation of a company name, one should note that ACRA will not accept names which are deemed undesirable, gazetted or identical to that of any other company.

During or prior to the incorporation process, it is also beneficial to invest in carefully considered and drafted foundational agreements such as the following; (1) the company's constitution, (2) shareholder's agreement, (3) joint venture agreement (if any), etc.

It should also be noted that a company must have a minimum of one director. Further, at least one director must be ordinarily resident in Singapore. Every company must also appoint a secretary within 6 months of incorporation.

Effects of Incorporation

In a snapshot, Section 19(5) of the Act summarizes the consequences of incorporating a company as such; "On and from the date of incorporation ... the company shall be a body corporate ... capable immediately of exercising all the functions of an incorporated company and of suing and being sued and having perpetual succession with power to hold land but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by this Act."

Simply, incorporation has the following effects (including but not limited to):-

a) **Separate legal personality;** the incorporation of the company creates a separate "person".

Save for exceptional circumstances where one is allowed to "lift the corporate veil", the shareholders are not personally liable for the company's obligations.

b) **Ability to own property;** a company can own property in its own name. Such property does not belong to the shareholders.

c) **Liability of shareholders for debts of company;** a company's liabilities are its own, not those of its shareholders. If a company cannot pay its debts, it will be liquidated. The biggest advantage of incorporating a company is this concept of "limited liability".

d) **Ability to sue and be sued;** a company may sue and be sued in its own name. The company's Board of Directors will decide whether or not to commence actions on behalf of the company.

e) **Perpetual succession;** a company lasts forever, at least until it is wound up or struck off the register.

The Company's Memorandum and Articles of Association / Constitution

A constitution sets out the company's structure and aims. Such terms therein are the "rules" by which the company is governed.

The company's constitution encompasses three sets of relationships:-

a) **Contractual effect among shareholders;** every shareholder must observe the provisions of the constitution. As such, every shareholder has a personal right to have the terms of the constitution observed and may enforce his/her right by injunction, mandatory or prohibitive.

b) **Relationship between the company and outsiders;** Outsiders are not privy to the constitution and cannot enforce its terms.

c) **Contractual effect between the company and its shareholders;** the constitution is also a contract between the company and its shareholders. A shareholder may enforce his / her right to prevent the company and its directors from breaching the constitution.

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