

Law @ Nanyang **DECEMBER 2008**



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**Setting up A Subsidiary
of A Foreign Company,
Branch Office and
Representative Office In
Singapore – Legal
Perspective**

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ABOUT NANYANG LAW LLC

We are a dynamic, innovative and vibrant boutique Singapore law firm. We are fully committed to providing the highest quality legal services to our clients and ensuring our clients have easy access to our professional staff.

We specialize in a variety of work such as corporate, intellectual property, chancery, litigation and corporate secretarial services.

As a result, our clients range from public listed companies to venture capital firms to individuals with specific needs.

We will be happy to meet you to discuss your needs and see how best your interests can be protected. We take this opportunity to reiterate our vision statement which is to provide quality and timely legal services, which adhere to the highest standards of integrity and excellence, delivered in a professional, responsible and client-oriented manner.

We look forward to being of assistance to you.

FOREWORD

Dear friends, partners and clients,

Our corporation has received many queries from foreign companies that are keen to set up a business in Singapore. Singapore having a pro-business environment and political stability attracts many foreign investors. Hence, this issue serves to give a brief introduction of setting up a subsidiary company, a branch office and a representative office in Singapore.

We hope you enjoy reading this edition and as usual, we will be happy to assist you in any specific queries that you may have.

Happy reading!

Ng Kim Tean
Chairman

1. Introduction

There are many foreign companies keen to set up a subsidiary, branch office or representative office to expand its business in Singapore and subsequently to penetrate into countries in the Asia Pacific region.

2. Singapore Subsidiary

A subsidiary of a foreign company is a separate legal entity from its parent company. It is a locally incorporated company with the shareholders being the foreign company.

A subsidiary of a foreign company is governed by the Accounting and Corporate Regulatory Authority (“ACRA”) of Singapore. The name of the subsidiary must be approved by ACRA.

The nature and extent of a subsidiary of a foreign company’s activities are governed by its Memorandum and Articles of Association. The subsidiary of a foreign company is required under the law to:

- i) file its audited accounts with ACRA annually unless it is an exempt private company;



- ii) hold an Annual General Meeting (“AGM”) at least once in every calendar year at intervals of not more than fifteen (15) months for the purpose of tabling its accounts which shall be made up to a date not more than 6 months before the date of the AGM. Nevertheless, the first AGM can be hold within eighteen (18) months from the date of its registration with ACRA;
- iii) have at least one (1) director who must be ordinary resident in Singapore;
- iv) incorporate at least one (1) shareholder and the shareholder can be the foreign company itself;
- v) keep certain statutory registers and minute books under the Companies Act, Cap 50;
- vi) have a registered office located in Singapore.

One of the benefits that attract foreign companies to set up a subsidiary is the corporate tax rates which are relatively lower than many other developed countries.

3. Singapore Branch Office

A branch office in Singapore is the same entity as the Parent company (“Parent company”) which is incorporated outside Singapore. A branch office is an extension of the Parent company. Hence, any legal actions taken by the branch office is equivalent to an action taken by the Parent company.

The name of the branch office must be the name of the Parent company itself and it must be approved by ACRA. A branch office is required to appoint at least two (2) persons ordinarily resident in Singapore to act as agents. The agents would be empowered with authority to accept service of process and notices required to be served whether legal or otherwise on the branch office or Parent company in Singapore.

Since a branch office is an extension of the Parent company, the activities of the branch office are the same as the activities of the Parent company according to the Memorandum and Articles of Association and/or By-laws of the Parent company.

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The number of shareholders and directors, and also requirement to hold AGM would depend on law of the country of incorporation of the Parent company.

In terms of accounts, the branch office must file with ACRA annually its Parent company accounts as well as its own audited accounts relating to the branch office operations in Singapore. A branch office must have a registered office located in Singapore.

4. Representative Office

Foreign companies that are keen on exploring business opportunities in Singapore may consider setting up a representative office. A representative office in Singapore has no legal status. Generally, the objective of setting up a representative office is for marketing, trade promotion agency, market research or liaison in marketing activities.

The representative office must obtain approval from International Enterprise Singapore. A representative office may apply for employment pass for their overseas employees whether professional, managerial, executive or clerical staff who will be seconded or relocated to Singapore.

However, it is to be noted that a representative office is not allowed to perform or carry out the following activities:-

- a) to enter into any business transactions, issue invoice or receipt, open or receive letters of credit and contracts either in its own capacity or on behalf of the parent company;
- b) lease its warehousing facilities (if applicable);
- c) lease its office to other establishments for a fee; and
- d) to enter into any trading whether import or export or business activities in its own capacity or on behalf of the parent company.

In terms of regulatory requirement, a representative office is not required to maintain accounts or file tax returns in Singapore. Nevertheless, if the foreign companies intend to maintain long term operations, i.e. more than 3 years in Singapore, it will then be required to incorporate as legal entities.

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