The private company limited by shares

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Formation and officers

A Pte. Ltd. can be formed with one shareholder, one director and a paid-up capital of S$ 1. The two mandatory officers are at least one director who is ordinarily resident in Singapore and a company secretary who is also resident, appointed within six months of incorporation.[1] "Ordinarily resident" means a Singapore citizen, permanent resident or holder of an Employment Pass, EntrePass or ONE Pass with a local residential address. A foreigner on a short-term visit pass does not qualify.[2] The register of directors, shareholders and the registrable controllers is maintained with ACRA. Directors and shareholders appear on the public business profile, while the register of controllers (beneficial owners of 25 per cent or more, or persons with significant control) is kept by the company and filed centrally with ACRA but is accessible only to public agencies.[3]

The resident-director requirement is the first structural decision for a Swiss founder who does not intend to move. Three answers exist. The founder relocates and takes an Employment Pass sponsored by the company, which requires the salary thresholds of Chapter I to be met from day one. A trusted Singapore-resident

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employee or co-founder is appointed. Or a professional nominee director is engaged from a corporate services firm, which is lawful but has consequences. Since 2017 a nominee director must disclose the nominee status and the identity of the nominator to the company, which records it in a register of nominee directors available to ACRA and law enforcement.[4] The nominee remains a director in law, with the full duties of s. 157 and the criminal exposure of a director whose company commits an offence, so reputable providers charge accordingly and will resign at the first sign of trouble. A nominee director who has no knowledge of the business also damages the company's claim to Singapore tax residence, as the next section explains.

Tax residence and substance

A company is resident in Singapore for income tax purposes if the control and management of its business is exercised in Singapore, which IRAS reads as the place where the board meets and takes strategic decisions.[5] Residence matters for three reasons. The treaty network, including the Switzerland–Singapore treaty, is open only to residents. The foreign-sourced income exemption of s. 13(8) requires residence. The fund and family-office incentives of Part M require the manager to be resident.[6] IRAS issues a certificate of residence only if it is satisfied that control and management are in Singapore. It asks for board minutes, the directors' residence and the location of the decision-makers. A company whose only Singapore director is a nominee and whose founders decide everything from Zug will not get the certificate.

The substance question is sharper still under s. 10L of the Income Tax Act, in force from 1 January 2024. That section taxes foreign-sourced disposal gains received in Singapore by an entity of a multinational group unless the entity has adequate economic substance in Singapore.[7] Digital assets held by a Singapore company and sold on an exchange abroad may be foreign assets for this purpose if the asset is situated outside Singapore, a question that Part J, Chapter VIII, shows to be unresolved for tokens. The practical response is to ensure that the Singapore company has employees, premises and expenditure in Singapore commensurate with its activity, so that the question whether s. 10L bites never has to be answered.

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Singapore perspective

A Swiss group that forms a Singapore subsidiary to serve Asian clients should give it a real board. The minimum that in my experience satisfies IRAS, the banks and MAS alike has four elements. Two directors resident in Singapore who are employees of the group with decision-making roles. Board meetings held physically in Singapore at least quarterly, with minutes that record decisions. A leased office. A payroll of at least the people who do the Asian work. A company that has those things obtains its certificate of residence, its bank account and, when the time comes, a hearing at MAS. A company that has a nominee director and a virtual office obtains none of them.

Capital contributions in crypto assets

Singapore company law permits shares to be issued for non-cash consideration and requires no independent valuation, so a founder can contribute tokens for shares by a written agreement and a directors' resolution fixing the value.[8] The absence of a statutory valuation procedure is a freedom with a cost. The directors are personally exposed if the value is overstated. The auditors will require evidence of the market price and of control of the receiving wallet, while the stamp duty and income tax consequences follow the agreed value. The Swiss procedure of Chapter II, with its founders' report and auditor's confirmation, is more cumbersome and more protective. Groups that contribute tokens to both a Swiss and a Singapore entity should use the same valuation methodology and the same reference exchanges on both sides.

Notes

1. Companies Act 1967, s. 145(1) (every company must have at least one director who is ordinarily resident in Singapore; a sole director may be the sole member) and s. 145(5) (a resignation that leaves no resident director is invalid); s. 171 (company secretary). ↩

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2. ACRA, "Appointing directors, company secretary and other key personnel", guidance on the meaning of "ordinarily resident" (citizen, permanent resident, EntrePass, Employment Pass or Dependant's Pass holder with a local address). ↩
3. Companies Act 1967, Part 11A (ss. 386AA to 386AL) and the Companies (Register of Controllers and Nominee Directors) Regulations 2017; central register maintained by ACRA since 30 July 2020. ↩
4. Companies Act 1967, s. 386AL (register of nominee directors and nominee shareholders) as inserted by the Companies (Amendment) Act 2017 and extended by the Corporate Registers (Miscellaneous Amendments) Act 2022. ↩
5. Income Tax Act 1947 (2020 Rev. Ed.), s. 2(1) (definition of "resident in Singapore" for a company); IRAS, "Tax Residency of a Company", guidance on control and management (board meetings held in Singapore; strategic decisions taken in Singapore). ↩
6. Income Tax Act 1947, s. 13(8) (exemption of foreign-sourced dividends, branch profits and service income received by a resident company subject to the "subject to tax" and 15 per cent headline rate conditions); Agreement between the Swiss Confederation and the Republic of Singapore for the avoidance of double taxation with respect to taxes on income of 24 February 2011, SR 0.672.968.91, Art. 4. ↩
7. Income Tax Act 1947, s. 10L, inserted by the Income Tax (Amendment) Act 2023 with effect for disposals on or after 1 January 2024; IRAS e-Tax Guide, "Tax Treatment of Gains or Losses from the Sale of Foreign Assets", first published 8 December 2023. Part M, Chapter II, examines the rule. ↩
8. Companies Act 1967, s. 63 (return of allotment must state the consideration where shares are allotted otherwise than for cash) and s. 67 (no requirement of a valuation report for non-cash consideration in a private company). ↩

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