



Pro-Business
Environment



Business Law Guide for SMEs



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Introduction

Local small and medium enterprises (SMEs) in Singapore are recognised for their importance to the economy, forming 90% of all enterprises and contributing to a quarter of the national GDP.

In a survey conducted by SPRING to determine enterprise support services (ESS) needs, legal services has been identified as one of the key needs for SMEs. SMEs are intimidated by the law and the courts simply because they do not know much about them. Consequently, precious time and resources are wasted when they encounter legal matters.

To address this gap, SPRING Singapore has worked closely with The Law Society of Singapore to develop this guide to provide SMEs with some knowledge about the law, which will help you understand your rights, legal news, the system of governance etc. It will also help you know where to begin when you are faced with a legal problem.

As it is not possible to cover all legislations affecting businesses, we have selected a few topics that are more commonly faced by businesses here. Some of the chapters cover their topics in greater depth than others. Nevertheless, we hope that each chapter will at least provide a useful introduction to its topic, and help you understand some of the common rules and regulations pertinent to the business community.

Here's your guide to certain basic legal concepts and issues. If you don't find what you are looking for, do not hesitate to ask us.

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Employment Law

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1) Introduction

This chapter covers the main legislations on the employment of workers in Singapore. It is useful for you, as an employer, to be familiar with these laws as they specify the obligations that an employer must fulfill when hiring workers; your rights as an employer; as well as the rights of workers with regards to their terms of employment.

2) Employment Law in Singapore

Employment Law in Singapore is governed by either statutory provisions or by the contracts of employment between the employer and employee. Examples of laws passed that govern employment are:

a) The Employment Act (EA)

Note that this Act does not cover those in managerial, executive or confidential positions, seamen and domestic workers. Their employment terms will be dependent on the contract of employment and where applicable, the principles of contract law.

b) The Employment of Foreign Manpower Act (EFMA)

Note that this Act was formerly named the Employment of Foreign Workers Act. It covers all non-Singaporean citizens seeking or who are offered employment in Singapore, including self-employed foreigners.

3) Hiring of Foreigners

A foreigner needs to have a work pass to work in Singapore. There are a number of passes that are targeted at various levels of foreigners seeking employment in Singapore:

a) Employment Pass (EP)

An EP is issued to a foreigner who holds professional qualifications, recognised degrees or specialised skills and is paid a monthly basic salary above S\$2,500.

With effect from 1 January 2007, a foreigner may apply for a Personalised Employment Pass (PEP) based on the strength of his individual merits and which is not tied to a specific employer.

A PEP holder may remain in Singapore for up to six months in between jobs to evaluate new employment opportunities. This is part of the Singapore policy to attract and retain global talent.

The PEP is valid for 5 years and is non-renewable. A PEP holder will retain the dependant privileges of his original EP type.

In order to qualify for a PEP, the foreigner must have drawn a minimum annual basic salary requirement of \$30,000 the previous year and fulfilled the minimum work period as follows:

- i) At least 2 years' working experience on a P Pass;
- ii) At least 5 years' working experience on a Q1 pass;
- iii) Foreign graduates from institutions of higher learning in Singapore with at least 2 years' working experience on a P or Q1 Pass.

b) S Pass

The S Pass is issued to a foreigner who possess mid-level skills and is paid a monthly salary of at least S\$1,800. An S Pass applicant is assessed based on his qualifications, skills, salary, work experience and occupation, all of which add up to a points system to help him qualify for the S Pass.

Employers would have to pay a foreign worker levy of S\$50 for each S Pass holder and there is a 15% quota for S Pass holders in each company.

c) Work Permit (WP)

WPs are issued for unskilled or semi-skilled foreign workers who do not qualify for S Pass.

It is important to note that the employment of WP workers is subject to various requirements such as source country restrictions, sectoral controls, payment of foreign worker levy, posting of security bonds (except for Malaysian workers) etc.

With the upward trend of foreigners working in Singapore, it has become necessary to tighten the legislative controls to manage the employment of foreign workers. With the renaming of the EFMA in 2007, penalties for various offences such as illegal employment, providing false information, forgery or possession of forged work passes, illegal trade have been enhanced. It is also now an offence for an employer or foreign employee not to notify Ministry of Manpower of the commission of a false declaration, regardless of whether such declaration was made by them or a third party agent.

4) Rights and Obligations of the Employer

a) Basic conditions of service

The EA specifies certain minimum criterion in the employment of an employee covered by the EA. Other than these statutory minimum requirements, you and the employee can negotiate other terms of employment. Terms that are less favourable than what is prescribed under the EA will be illegal and void.

Listed in the table below is a non-exhaustive list of basic conditions of service. Note some of the key minimum requirements as indicated:

Conditions of Service	Statutory Minimum Requirements	Applicable to Employees
Working Hours	1 full day of rest per week on Sunday or such other day as employer decides	Employees earning not more than S\$1,600 pm
	Not work more than 6 consecutive hours without break	As above
	Not work more than 8 hours in 1 day	As above
	Not work more than 44 hours in 1 week	As above
	No overtime for more than 72 hours per month	As above
Annual Leave	7 days of paid annual leave 1 day for each additional year of service up to maximum of 14 days	Employees who have worked for at least 3 months
Maternity Leave	12 weeks of maternity leave	Female employees
Childcare leave	2 days of paid leave per year (regardless of number of children)	Parents with children under age of 7 and have worked for more than 3 months
Sick Leave	14 days per year if no hospitalisation 60 days per year if hospitalisation is necessary	Employees who have worked for at least 6 months
Termination of Contract	1 day's notice	Employee for less than 26 weeks
	1 week's notice	Employee for 26 weeks or more but less than 2 years
	2 weeks' notice	Employee for 2 years or more but less than 5 years
	4 weeks' notice	Employee for more than 5 years

b) Termination of contract without cause

The EA states that a contract of service may be terminated by either party giving notice to the other party. The party terminating the contract may choose to pay the other party the gross monthly salary without waiting for the expiry of the notice period.

The length of notice to be given is essentially a matter of contract, subject to any statutory minimum periods. Where this is not stated in the contract, the notice provisions of the EA are based on the length of time the employee was employed.

For employees not covered by the EA, the notice period is as provided for in the employment contract or if not stated, implied to be what would have been a reasonable notice period based on factors such as the job nature, seniority in employment, availability of similar alternative employment, the industry practice for such jobs and the company practices.

Note that where the EA does not apply, payment in lieu of notice is not a contractual right unless it is specifically provided for in the contract. If this is not stated in the contract, it is only an offer that needs to be accepted by the other party.

c) Termination of contract with cause

As an employer, you have a common law right to dismiss an employee without notice on grounds of willful breach or misconduct. This right is sometimes referred to as summary dismissal of an employee with cause. However, care must be taken that the exercise of this right is not considered “wrongful dismissal”.

5) Misconduct of Employee

There is no legal definition of ‘misconduct’. What can be interpreted as ‘misconduct’ depends on the circumstances of the case, the nature of the employment, the terms of the employment contract and also previous case antecedents, which established the benchmarks of the types of behaviour that amount to misconduct.

Besides dismissing an employee covered under the EA for misconduct, you may choose to either downgrade (or demote) the employee or suspend him from work without payment of salary for not more than a week.

6) Wrongful Dismissal

A dismissal (i.e. sacking) that breaches contractual terms or relevant statutory provisions is wrongful, and entitles the dismissed employee to damages.

An employee covered under the EA may make representations to the Minister of Manpower within a month of the dismissal, to be reinstated to his former position. He can also sue for damages for wrongful dismissal.

If you have wrongfully dismissed an employee, your breach of the employment contract may release the employee from his employment contract obligations, such as non-compete or restraint of trade clauses.¹

As the employer, you can justify dismissal on grounds discovered subsequently, other than those alleged at the time of dismissal. However, if you continue to employ an employee despite having full knowledge of the employee’s misconduct, it is taken to mean that you have condoned the misconduct and cannot subsequently dismiss this employee for that offence.

An employee who has been wrongfully dismissed, is generally only entitled to damages representing the salary which would have been payable during the notice period.

1. These are terms that restrict a person from carrying on his trade or profession in competition with his previous employer for a period of time with effect from his date of termination.

7) Constructive Dismissal

It is possible that an employee who resigns may assert that he has been 'constructively dismissed' by the employer by reason of the employer's breaches of the terms of the employment contract. There may be no formal dismissal given by the employer, but his conduct makes the employee consider that he has been dismissed or that he has to leave his employment.

The remedies of the employee would be the same as that of wrongful dismissal.

8) Retrenchment Benefits

There is no statutory provision for an employer to pay retrenchment benefits. Section 45 of the EA disentitles an employee with less than three years of continuous service from claiming retrenchment benefits. However, the Court of Appeal in a local case *Bethlehem Singapore Pte Ltd v Ler Hock Seng & Ors*, has made it clear that Section 45 does not therefore mean that there is legal compulsion to pay such benefits in the case of employees with more than three years of continuous service.

Where the EA does not apply, there is also no legal entitlement of retrenchment benefits unless expressly provided for in the contract of employment or in a collective agreement covering such employees. In all other cases, you have the discretion to pay retrenchment benefits or not, and this cannot be implied into the contract by virtue of past practice or policy of the company.

9) Restrictive Covenants²

When a key personnel leaves, you are naturally concerned about protecting your proprietary assets. It has long been recognised by the courts in Singapore that trade secrets, trade connections and confidential information of a proprietary nature are legitimate proprietary interests which you, as an employer, are entitled to protect. You may do this by imposing:

a) Post-employment restrictive covenants against former employees. These covenants include:

- | | |
|------|---|
| i) | Restraint on use of the organisation's confidential information |
| ii) | Restraint on solicitation of the organisation's customers |
| iii) | Restraint on accepting assignments from the organisation's customers |
| iv) | Restraint on solicitation of the organisation's employees |
| v) | Restraint on joining another organisation or setting up one's own business which is in direct competition with the organisation |

In order for a restrictive covenant to be enforceable against an ex-employee, you must show the Court that the restrictive covenant is reasonable i.e. whether it is reasonable in the interest of the parties, and in particular, whether it is designed for the protection of some proprietary interest owned by you.

b) Factors in deciding reasonableness of a restrictive covenant

- | | |
|------|---|
| i) | Necessary to protect employer's legitimate business interest |
| ii) | Not used to prohibit competition |
| iii) | Not used to prevent employee from using skills to earn a living |
| iv) | Reasonable length of prohibition |
| v) | Reasonable scope of prohibition |
| vi) | Reasonable geographical limit of prohibition |

² Restrictive Covenants are terms and conditions in an employment contract which restricts an employee from certain acts whether during the term of his employment or for a period of time after his termination.

Where the covenant offends the limits of reasonableness, the clause may either be struck down or interpreted restrictively in its application.

10) Safety of Employees

At common law, you owe a duty to your employees to take reasonable care of their safety in all circumstances so as not to expose them to unnecessary risk. This duty includes the duty to provide a safe workplace, safe equipment, safe system of work and also safe fellow-employees.

With the enactment of the Workplace Safety and Health Act 2006 (WSHA) which came into effect on 1 March 2006, this common law duty has become recognised as a statutory duty.

The WSHA 2006 provides, amongst others, that you owe a statutory duty to not just your employees but persons who may be affected by the work at the workplace, to ensure:

- a) a safe work environment, facilities & arrangements;
- b) adequate safety measures taken concerning machinery, equipment, plant, article, work process;
- c) non-exposure to hazards;
- d) development and implementation of emergency procedures;
- e) adequate instruction, information, training, supervision; and
- f) conduct of assessments of risks in the workplace, system and environment.

11) Tri-Partite Code of Responsible Employment Practices

The Code of Responsible Employment Practices is a joint effort of the Singapore National Employers Federation, Singapore Business Federation and National Trades Union Congress.

The Code encourages employers to promote and observe responsible employment practices in workplaces to avoid discrimination based on race, religion, age, gender, marital status, disability, culture and other factors which should not feature in the recruitment of employees for a particular job.

Essentially, the Code espouses the principles that:

- a) candidates should be chosen based on merit, experience, capability and other job requirements;
- b) there may be situations where race, language, religion and culture are necessary considerations for the job, both the recruiter and candidate must recognise that selection is based on the special attributes of candidates who meet the requirements;
- c) employers should adopt good consistent human resource practices including non-discriminatory employment practices to attract the best person for the job and for their organisations.

12) Conclusion

The duties and obligations of an employer are fairly extensive. While there are legislations imposing various statutory duties on an employer, the rest of the domain is still largely governed by the terms of the contract of employment agreed between the employer and the employee.

Careful and proper drafting of employment contracts and the design and implementation of sound human resource practices should therefore be of priority to any employer.



Legal Implications of Warranties Given by Manufacturers and Sellers

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(Cap. 52A) “Fair Trading Act”
 - b) Consumer Protection (Trade Descriptions and Safety Requirements Act) (Cap. 53) “the Trade Description Act”
6. Frequently Asked Questions (“FAQs”)

1) Introduction

This chapter summarises the legal implications of warranties that may be enforceable by consumers against manufacturers/sellers of goods. It also outlines other relevant legislation and the position at general law that may have an impact on manufacturers/sellers in relation to the sale of goods to consumers.

“Consumers” as used in this chapter refers to buyers who purchase goods for personal consumption and not in the course of trade or business.

We begin by explaining some legal terms.

a) What is a warranty?

Generally speaking, in the context of a sale of goods by a manufacturer or seller, a “warranty” is a statement or representation which is legally enforceable by the person to whom it is made or given (usually the consumer).



A typical contract of sale

A warranty is legally enforceable when it is incorporated into the contract of sale between the manufacturer/seller, and the consumer.

b) How are warranties incorporated into a contract of sale?

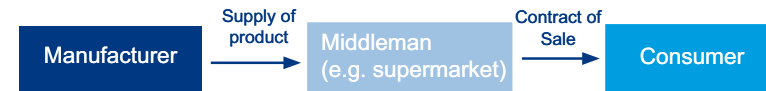
Warranties may be incorporated into a contract of sale: i) when they are made expressly to consumers, or ii) when they are implied in favour of consumers by statute or law.

Examples of express warranties include express statements (written or oral) about a product’s quality or durability.

Examples of implied warranties are the statutory warranties of satisfactory quality and fitness for purpose implied into a contract for the sale of goods by the Sale of Goods Act (Cap. 393).

c) What if there is no direct contract of sale between the manufacturer and the consumer?

Where there is no direct contract of sale between a manufacturer and the end consumer, the end consumer cannot enforce contractual warranties against the manufacturer because there is no “privity of contract” between the two parties.



No “privity of contract” between manufacturer and end consumer

The consumer may still have rights against the manufacturer at general law if the consumer suffers loss or damage as the result of the using a defective product. Such general law rights may include the right of legal action based on the law of negligence.

Negligence

Manufacturers may owe legally enforceable duties of care at general law to the consumers of their goods, irrespective of whether there is any direct contractual relationship between the manufacturer and the consumers.

For example, the manufacturer of a canned drink would owe a duty of care to produce canned drinks that are safe to consume. If a manufacturer negligently produces a canned drink that is not safe to consume, and a member of the public is harmed after drinking it, he can, at general law, seek legal recourse against the manufacturer.

d) What is the difference between a “warranty period” or “guarantee period” and a contractual “warranty”?

The term “warranty” used in the context of this chapter should not be confused with the phrases “warranty period” or “guarantee period” which are commonly used in the sale of goods.

Such “warranty periods” or “guarantee periods” generally refer to an express promise by the manufacturer/seller to repair or service an item bought from them at a minimum (or preferred) charge or at no charge for a stated period of time (e.g. a 12-month “warranty period” for a television set).

Where a manufacturer/seller refuses, without legal justification, to honour the “warranty period” or “guarantee period”, such conduct may amount to a breach of the terms of the contract of sale with the consumer, for which the aggrieved consumer may be entitled to legal recourse under general legal principles.

2) Express Warranties

Where a manufacturer or seller makes an express statement or representation to a consumer about a product, such a statement or representation may be considered an express warranty to the consumer about the product. Express warranties can be made in writing or orally (generally at the point of sale).

3) Implied Warranties – The Sale of Goods Act (Cap. 393)(“the Sale of Goods Act”)

Certain contractual warranties are implied into every contract of sale between a seller and a consumer by the Sale of Goods Act. The main implied warranties include the following:

a) Implied term as to title

It will usually be an implied term that the seller is able to give to the consumer good title to goods being sold.

b) Implied term in a sale by description

Where goods are being sold by description, there will be an implied term that the goods being sold will correspond to the description provided by the seller to the buyer.

c) Implied term of satisfactory quality

There is generally an implied term that the goods sold will be of satisfactory quality.

Generally, the goods will be of satisfactory quality if a reasonable person will regard the goods as satisfactory, after taking into account the description of the goods, the price and all relevant circumstances.

“Quality” of goods generally refers to their state and condition. Aspects of the quality of goods may include:

- i) the fitness for all purposes for which goods of the kind in question are commonly supplied;
- ii) appearance and finish;
- iii) freedom from minor defects;
- iv) safety; and
- v) durability.

However, the consumer would not be able to claim that the purchased goods are of unsatisfactory quality if:

- i) the defects complained of were specifically drawn to his attention by the seller before the sale; or
- ii) the consumer has examined the goods in question before the sale, and that examination would have revealed the defect; or
- iii) in a contract for sale by sample, the defect would have been apparent on a reasonable examination of the sample.

d) Implied term about fitness for purpose

When a consumer makes known to the seller any particular purpose for which the goods are being bought, there will be an implied term that the goods supplied by the seller will be reasonably fit for that particular purpose.

However, such a term will not be implied where the circumstances show that the consumer did not rely on, or it would be unreasonable for the consumer to rely on, the seller’s skill or judgment in supplying the goods in question.

e) Implied term in a sale by sample

When there is a contract for sale by sample, there is an implied term that the bulk of the goods sold will correspond to the sample in quality, and that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.

4) Consumer Rights

a) Breach of contract

Where there is a breach of contract by a manufacturer or seller, the aggrieved consumer may, depending on the facts of any particular case, and depending on the term breached, be entitled to the following remedies:

- i) right to reject the goods in question;
- ii) right to request for a refund of the purchase price;
- iii) right to have the price reduced;
- iv) right to request for repair or replacement;
- v) right to request for specific performance;
- vi) right to sue for damages.

b) Action in misrepresentation

Where a consumer has entered into a contract of sale because he was induced to do so by a misrepresentation made to him by a manufacturer or seller, the aggrieved consumer may be entitled to ask a court to set aside the contract. He may also be entitled to seek damages.

c) Statutory limitation

The aggrieved consumer will generally have up to six years from the time his cause of action arose to commence legal action. However, if the breach of warranty results in personal injury to the consumer, he would generally have only up to 3 years from the time his cause of action arose to commence legal action.

5) Other Relevant Statutes

Other than the Sale of Goods Act, manufacturers and sellers should also be aware that there are other statutes that may be relevant to them in the course of their business. These include the following:

a) Consumer Protection (Fair Trading) Act (Cap. 52A) ("Fair Trading Act")

The Fair Trading Act was enacted to help protect consumers from unfair practices.

Under this Act, it would generally be an unfair practice for a supplier, in relation to a consumer transaction:

- i) to do or say anything to deceive or mislead a consumer;
- ii) to make a false claim;
- iii) to take advantage of a consumer if the supplier is aware that the consumer is not in a position to protect his own interests or is not reasonably able to understand the character, nature, language or effect of the transaction.

An aggrieved consumer is entitled to bring a claim under the Fair Trading Act (where the claim is below S\$20,000).

Generally, there is a one-year limitation period from the date the consumer had knowledge of the unfair practice to commence legal action under the Fair Trading Act.

b) Consumer Protection (Trade Descriptions and Safety Requirements) Act (Cap. 53) ("the Trade Descriptions Act")

Under the Trade Descriptions Act, it would be a criminal offence to apply false trade descriptions to goods.

Generally speaking, a false trade description means a description, which by reason of anything contained in the description or omitted from the description, is false or likely to mislead in a material respect as regards to the goods.

A person who is convicted of applying a false trade description to any goods or supplying goods with a false trade description may be liable to pay a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding two years, or both.

6) Frequently Asked Questions (“FAQs”)

Q1. Must a manufacturer or seller give any express warranties to consumers in the contract of sale?

No. It is up to the manufacturer or seller to decide if he wants to give any express warranties in the contract of sale. However, the fact that no express warranties are given in the contract of sale does not mean that the various statutory warranties under the Sale of Goods Act will not be implied into the contract of sale.

Q2. What are the main implied warranties under the Sale of Goods Act?

The main implied warranties are that:-

- a) the seller can give good title to the goods to the consumer;
- b) the goods sold are of satisfactory quality;
- c) the goods sold are fit for their intended purpose; and
- d) the goods sold fit their description.

Q3. Is there any difference if there is no formal written contract of sale?

No. A contract of sale can be made in writing, or made orally, or made partly in writing and partly orally.

Q4. What is an inherent defect in a product?

An inherent defect is a defect present at the time of sale. An example would include a product which has a design fault or manufacturing fault which is not obvious. The inherent defect or fault may not be apparent to the consumer at the time of sale.

Q5. If I am the seller of a defective product, can I avoid liability to the consumer by referring him to the manufacturer of the product?

Generally no. The consumer bought the goods from the seller, not the manufacturer, and the seller is generally liable for breach of any express or implied warranty in the contract of sale.

Q6. If I am the manufacturer of a defective product that causes loss or damage to a consumer, can I avoid liability to the consumer on the basis that there is no contract of sale between the consumer and me?

Generally no. Even though there may be no direct contract of sale between the consumer and the manufacturer, the manufacturer may still owe a duty of care to the consumer at general law. Such a duty of care would be legally enforceable.

Q7. In what circumstances would a consumer not be entitled to claim for a refund of the purchase price?

Generally, a consumer would be entitled to claim for a refund of the purchase price of a defective product if he is legally entitled to reject and does reject the defective product. However, a consumer would generally be unable to reject a product if:

- a) the product is not defective and he is seeking to reject the product because he has changed his mind about purchasing the product;
- b) the defect in the product was pointed out to him before he purchased the product or a reasonable examination of the product would have revealed that it was defective;
- c) he continued to use the product for more than a reasonable length of time after he became aware of the defect;
- d) the product was damaged by the consumer;
- e) the consumer has agreed to accept a replacement product or for the original product to be repaired.

Q8. If a consumer is not entitled to reject a product and ask for a refund of the purchase price, what other rights would the consumer have?

A refund is only one of the possible remedies that may be available to an aggrieved consumer. In the event the consumer is not entitled to a refund, he may still be entitled to seek damages against the manufacturer or seller.

Q9. Can a manufacturer or seller still be liable if a product with an inherent defect only reveals its defect after the contractual “warranty period” or “guarantee period”?

If the defect in the product was an inherent defect that only surfaced after the contractual “warranty period” or “guarantee period”, a manufacturer or seller cannot avoid liability merely because the contractual “warranty period” or “guarantee period” has expired.



Intellectual Property (IP) Rights,
the Law and You

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1) Introduction

Much media attention these days is being paid to intellectual property (IP). What is IP, and why should I care about it? Simply put, IP rights are the intangible rights arising out of intellectual activity or creative thought or both.

Just because you are a proprietor of a small or medium-sized business, it does not mean that IP has no relevance to you. On the contrary, there are three main reasons why it is important for you to have a working knowledge of IP.

- a) Avoid potential or actual liability – because infringing on others' IP rights could mean expense, legal problems and wasted management time;
- b) Add to your bottom line – because you can use your IP rights to license them to third parties on commercial terms such as royalties, or sell the rights absolutely for money; and
- c) Attain competitive advantage, or even absolute monopoly against business rivals – because your IP rights can be used to prevent others from acting in certain ways.

2) About IP Rights

There are several different IP rights, the main ones being:

- a) copyright;
- b) designs;
- c) trade marks;
- d) patents; and
- e) trade secrets

For more information about other types of IP rights, you can visit the website of the Government's Intellectual Property Office of Singapore's at www.ipos.gov.sg.

Two things must be highlighted about IP rights:

First, the various IP rights can be enjoyed concurrently. In other words, you can own and enjoy several IP rights at the same time, even in the same product. You can also enforce these rights separately or all at once.

For example, you can own the copyright to, say a logo used on a DVD player or in a software program contained in the player. You can register that logo as a trade mark used in relation to DVD players made by you. You could have copyright in the software. You might even have a patent in relation to a new process relating to the player operation and even protect the shape of the player under design law. Should someone make a similar player, you could use any one or all of these IP rights to take action.

The second thing is that IP rights are, with certain exceptions such as trade secrets or copyright, generally territorial. This means that you have to obtain a separate registration of your patent or trade mark in each and every country in which you seek protection. In other words, there is no such thing as a single “worldwide” patent or trade mark.

However, governments have co-operated to allow the “international application”, where an applicant seeking registration in several countries needs only lodge a single application in one country, say Singapore, so as to simultaneously start the registration process in the other countries. One example is the Patent Co-Operation Treaty for patents and the Community Trade Mark, which gives trade mark protection in one registration over the whole of the European Union.

As the registration in each additional country generally involves further cost, it is therefore important to have a strategy for applying for protection in the most cost-effective manner so as to maximise the returns on your expenses.

3) Types of IP Rights

a) Copyright

Copyright protects the original expression of ideas (as opposed to expression of those ideas). So, you cannot protect the idea of a television show featuring a character wearing yellow boots, but you can have copyright in a particular “Phua Chu Kang” logo or in the dialogue in an episode of the show itself, being the ways in which an idea is expressed.

There is no registration procedure for copyright in Singapore and copyright comes into existence automatically under the Copyright Act, provided certain conditions are met. In most cases, copyright protection extends for 70 years beyond the life of the author of the work. Various types of works in which copyright can exist are artistic, literary, musical and dramatic works.

Generally, for copyright to subsist in such works in Singapore, the work must be:

- i) Original (in that no one has expressed it before but if it substantially similar to another’s work by sheer coincidence, it will still be protectable);
- ii) Expressed in a permanent form; and
- iii) Created by a Singapore citizen or permanent resident or be first published in Singapore.

By international treaty, works published in Singapore will be protected overseas in certain countries such as the US, the UK, Japan and other World Trade Organisation countries. The same protection is also given in Singapore on a reciprocal basis to copyright works published in these countries.

It is an infringement of copyright to, among other things, copy, adapt, distribute or publish copyrighted works without the author’s permission. So, for example, using another party’s logo without permission could constitute infringement. This can apply even when you only want to use the copyrighted work to compare two products or educate the public, such as in an advertisement. In fact, if such a logo is used as a trademark by an unrelated party on completely unrelated goods, it is still an infringement of the copyright in the logo.

As copyright infringement can be a serious legal matter that is both a civil wrong and a criminal offence, it is very important to ensure that you do not willfully infringe the copyrights of others, for example, by using unlicensed business software programs, music/video or other materials. In certain circumstances, the directors or managers of a company or business, not just the company, can be personally liable for copyright infringement committed by the company/business and consequently face jail or fines, the maximum of which can be up to five years and S\$100,000 respectively.

b) Designs

Designs are novel and industrially applied features of shape, configuration, pattern or ornament applied to articles by industrial processes. Articles can be products (such as the appearance of the DVD player example given above) as well as patterns such as those used on textiles. Some local companies that file design applications include LEE HWA (for jewellery), OSIM (for massage chairs) and CREATIVE TECHNOLOGY (for audio players).

Registered designs are given up to 15 years' protection under the Registered Designs Act. If something qualifies as a registrable design, it is mandatory for it to be registered. If it is not registered, but could have been registered under the Act, protection is completely lost. One cannot rely on protection under copyright law if the design in question is registrable. In other words, there is no dual protection under design and copyright law. This reinforces the importance of securing registration under design law. Further, designs must be novel to obtain registration. In other words, you must apply to register before commercialising the product. Hence, it is extremely important to know what must be registered, and when it must be registered.

c) Trade marks

A trade mark is something used by a person or business to distinguish its goods or services from those of other traders. Trade marks can also be used to assist a company's marketing and branding efforts. This can certainly be seen from the annual Singapore Promising Brand Award and other such recognition of the power of a brand, including by government bodies such as IE Singapore. The trade mark is the main basis for the legal protection of a brand.

Trade marks are used in relation to business and, for registered trade marks, registered in relation to specific goods and services. It is therefore possible for two different companies to legally use the same mark in relation to different goods.

Trade marks must be capable of distinguishing the proprietor's goods or services from those of other traders. Some examples of distinctive trade marks are KODAK, XEROX and BANYAN TREE, while some less distinctive trade marks may be DIGITAL, COFFEEMIX and "3-in-1". At the other extreme, a trade mark like WHITE could not be registered for rice or flour as it would not be able to distinguish the products.

Trade marks must also be capable of being represented graphically before they can be registered. As long as that is done, you can register as a trade mark a letter, word, name, signature, numeral, device, brand, heading, label, ticket, shape (three dimensional), colour, aspect of packaging or even a combination of them. An example of a three dimensional mark that enjoys protection in Singapore is the triangular shape of "TOBLERONE" chocolate.

It is not compulsory to register a trade mark, but it is highly recommended, as registration offers the advantage of stronger legal protection in controlling how a mark is used. For instance, criminal action, not readily available to owners of unregistered trade marks, is available to owners of registered trade marks to enforce their trade mark rights against those who copy.

Also, as the trade mark registration system generally favours the first person to formally register a mark, it is advisable to consider registration as early in a business' life as practicable so as to prevent rival traders registering your mark first. A trade mark can be renewed indefinitely as long as it continues to be used and the appropriate renewal fees are paid. TIGER BALM, for example, initially registered a Singapore trade mark in 1940, continues to be valid today!

Before using a trade mark or launching a new brand, it is highly advisable to perform appropriate trade mark and other searches so as to help prevent infringing someone else's trade mark rights. In that connection, it is worth noting that the ® and "TM" symbols are used to give public notice of trade mark rights for registered and unregistered trade mark rights respectively.

d) Patents

Patents are IP rights granted in relation to inventions which can be products or processes; the invention must offer a new technical solution to a problem. Some examples of patents include a new way of doing business, a new way of making something work, or a new chemical compound or drug. Some notable local inventions that have been granted patents which have been upheld in the courts are the TREK USB "Thumb Drive", the DURO HDB door lock and FLEXON'S lockable mail box.

To be patentable, an invention must generally fulfill three criteria.

- i) The invention must be new – i.e. it must not have been made public anywhere in the world and especially not commercially exploited.
- ii) The invention must have what is called an inventive step; it must represent a better product or way of doing something than what already exists. This improvement must be something that would not be obvious to a person skilled in the relevant art.
- iii) The invention must be useful and have a practical angle to it in that it can be put to use.

Patents are obtained by application to the Government. Generally, a separate application is required in each territory although the international Patent Cooperation Treaty allows applicants to file national applications in several countries at once. The application process can be fairly lengthy, taking several years to complete. But once obtained, a patent grants an exclusive monopoly to the owner to prevent others from using, copying or making the invention without his permission. A patent can last for up to 20 years. In relation to pharmaceutical patents, the protection can be extended by another five years provided certain conditions are met.

If you have come up with something new and want to explore applying for a Patent for the invention, seek advice on doing so before disclosing or commercialising it or you risk losing all chance of protection.

e) Trade secrets

Trade secrets, also known as confidential information, cover information that is not to be known by the general public. It includes information that is sensitive or has commercial value, such as customer lists, chemical formulae and pricing strategy. It can also include research findings and

other discoveries, especially before they are made the subject of a patent. Your company's trade secrets can be protected by law.

There is no legal requirement for registration and no formalities are required before such information can be protected as a trade secret. Essentially, a court would need to see whether something is in fact secret or whether it is in the public domain. On that note, trade secrets are not limited in territory or time. A trade secret, properly protected, can last indefinitely; the most common example is the formula for COCA-COLA, which has been kept secret worldwide for over a century.

Note that the filing of a patent will lead to the eventual disclosure of the invention to the public; as such, there can no longer be any claim that it is a trade secret.

You can protect your trade secrets by not divulging them unnecessarily both within and outside the company, using the right contractual agreements (such as with your manufacturer) to secure disclosures and taking action to litigate where wrongful disclosures are made.

4) Enforcing IP Rights

IP rights can be enforced in the courts through litigation. Rights owners going to court to stop infringement of their rights can seek court orders against further infringement, as well as orders for monetary compensation of varying kinds. Owners of copyright and registered trade marks can also rely on the fact that certain infringement is also a criminal offence, for which search warrants can be obtained and infringers prosecuted and sentenced to jail and/or fined.

5) Conclusion

At the end of the day, IP can be invaluable in allowing you to reap significant competitive advantages. You just need to know what you can protect, and how to best go about doing that, while being careful not to run foul of anyone else's rights.



Commercial Tenancies in Singapore

Chapter Contents

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1) Introduction

In today's electronic age, it is easy for anyone to start and engage in a business. At the barest level, all that you need is a telephone and a computer. It might also be run from just about anywhere that has an address – even one that's located in cyberspace!

Normally though, businesses in Singapore are typically run from premises in buildings; these would be situated in areas zoned by the authorities for "commercial" or "industrial" purposes.

While some business owners may decide to purchase their own premises, the majority of businesses are set up in buildings owned by others. In such a relationship between a business owner (known as the "tenant" or "lessee") and a building owner (known in this context as the "landlord" or "lessor"), the terms for the business use of those premises will normally be governed by a Tenancy or Lease Agreement.

For there to be a concluded contract for a lease, the essential terms of such an agreement are that:

- a) the premises to be leased and the landlord and tenant must be identified;
- b) the commencement and duration of the Term must also be fixed; and
- c) the rent and other consideration to be paid must be agreed.

2) The Landlord

As the owner of the premises, the landlord will be entitled to the reversion of title upon expiry of the term of the tenancy. This "reversion" means that the owner may dispose of this right during the Term, i.e. sell or charge the premises during the Term, so long as that disposition is subject to the tenant's rights.

A landlord, therefore, has a strong interest to ensure that the premises are properly maintained by the tenant, and will reserve some rights to entry and inspection during the Term.

3) The Tenant

During the Term, the tenant is considered to have an interest in land, and its right to quiet possession has long been established at common law.

It is expected that long term leases will be registered, so the tenant's interest becomes a matter of public notice. However, the usual commercial tenancies, which are commonly for terms varying from 1 to 5 years, will not be registered because it is standard practice nowadays for owners to prohibit their tenants from lodging even a Caveat at the Registry of Titles.

At law the tenant may assign its lease, or create a sublease (a secondary lease of a slightly shorter duration than the main lease). In practice, the landlord prefers to prohibit any assignment or subletting, but because of the position under the general law, has to do so expressly – this is why the majority of leases contain the prohibition. Therefore, we may say a tenancy is a "hybrid" – where the tenant has an interest in land, but this will be governed by whatever is in the written contract between the parties.

4) The Agreement

We are considering tenancies which are set down in writing. Under common law, for there to be a valid disposition of an interest in land, there must be a memorandum (or note) of the contract in writing, signed by the party to be charged. Whoever seeks to hold another to a tenancy, i.e. to sue on the contract, must be able to show something in writing that contains the essential terms of the tenancy and signed by that other.

It is good business sense to conclude a formal written agreement setting out clearly what the parties have agreed. Written agreements are, therefore, the norm for commercial tenancies in Singapore.

a) The Note or Memorandum in writing

- i) **Letter of Offer:** Many tenancies start off with a letter from the landlord setting out the terms of an “Offer to Lease”, with a part headed “Acceptance” to be signed by the prospective tenant. The landlord’s letter could be a mere “Letter of Intent”, i.e., not intended to be immediately binding on the parties. Or that Letter of Offer, together with the signed Acceptance may indeed itself be the Agreement for Lease, if it contains all the “essential terms” of a tenancy, even when the parties have indicated their intention to follow up with signing of a formal document.

The prospective tenant must, be alert not to do this if there are still conditions to be/being negotiated.

- ii) **Specimen Attached:** Sometimes the landlord will attach a “Specimen Lease” to the Letter of Offer. The specimen may be incorporated into the contract formed by the Letter of Offer and Acceptance, and becomes binding immediately after the Acceptance is signed.

If there are provisions in the Specimen Lease which the tenant still wishes to negotiate, this must happen before the Acceptance is signed.

- iii) **Stamping:** Once a binding contract has been concluded, the document must be stamped. By law, it is the tenant who must pay the ad valorem stamp duty imposed. Stamping must also be done within 14 days from the date of signing. The ad valorem stamp duty is calculated according to the aggregate of all the regular payments made under the Lease, i.e. for the whole duration of the Term. This includes all rent and service charge to be paid, and also all ‘contributions’ the tenant must make – e.g. to promotions and advertising, and sinking fund.
- iv) **Formal Lease:** This is the detailed document setting out the respective rights and liabilities of the parties for the duration of the Term, containing the covenants made by each party for the benefit of the other. It is then up to the parties to “bargain”, before signing the final, engrossed copy.

b) The Premises

This refers to the physical property which is the subject of the transaction. It is normal to include the address, area, and plans setting out the location and configuration of the premises in relation to the building.

Very often, the premises are “subject to survey”, or “estimated” to be a certain size. It is important to know what is intended by these words, especially in cases where rent is to be adjusted depending on the actual area. If survey is required, parties should negotiate who is to bear these costs, they should not in all cases be assumed that they are paid by the tenant.

c) The Term

The duration of the tenancy must be set out in the grant of interest: the formal words are that “the landlord will let and the tenant will take (the premises) for (the Term)”.

The tenancy will expire in due course at the end of the Term. Thus once granted, the tenancy will continue, and during the Term, may only be terminated as a response to the breach of either party, or by mutual agreement. Before expiry, if mutually agreed, a tenancy must be formally “surrendered” to the landlord, emphasising its character as an interest in land, and not only a contract.

d) The Consideration

- i) **Rent:** This is the hiring fee, usually payable monthly or quarterly, and “in advance”, i.e. at the start of each hire period. Rent is fixed for the duration of the Term, but it could be a flat rate of rent or a “percentage rent”.

Rent for an office will be a fixed sum, whether it be stated as a rate per square metre of floor area or a flat rate of rent. But tenants running ongoing businesses on the premises, like shops or restaurants, may be asked to pay a “Turnover rent” (usually a percentage of gross sales at the premises), and this could be in addition to the rent stated (sometimes called a “base rent”), or in place of the flat rate of rent where a certain amount of gross sales is exceeded.

- ii) **Service Charge:** This is payable for services which the landlord will supply – e.g. lift services, and cleaning and lighting of common areas. Where the landlord does not own the whole building, then service charge will be payable to the Management Corporation (which has the responsibility to provide the common services).

Service charges may be increased during the Term if costs increase, and the increase is normally apportioned according to the percentage of area which the premises bear to the whole “lettable area” of the building.

e) Other Payments

- i) **Security Deposit:** The landlord will “hold” a sum as a deposit against the tenant’s performance of all the terms of the lease. This is usually the equivalent rent and service charge in respect of a month for every year of the Term, which is payable in cash or by banker’s Guarantee, and refundable at the end of the Term.
- ii) **Property Tax:** The landlord will covenant to pay property tax payable at the start of the Term, and will require the tenant to pay any increases imposed thereafter which result from increase in the “annual value” of the premises.

However, it is also common to require the tenant to pay that portion of annual property tax which is in excess of the annual rental for the premises.

- iii) **Goods and Services Tax:** The landlord usually passes the obligation to pay GST to the tenant.

f) Usual Tenant’s Covenants

Positive covenants require action by the tenant, while negative covenants have the effect of placing prohibitions on it. The obligation to obtain the landlord’s prior approval for departing from any of these is a common thread running through these promises. It seems the tenant’s best response is to try and ensure that the landlord’s approval is to be given “reasonably” and without too long a delay.

- i) **Repair and Maintain:** The tenant will be required to return the premises in “original state and condition”, or “good and clean state and condition”, and will normally ensure the limiting words “fair wear and tear excepted” are included.

This requires the tenant to maintain the premises in clean condition and carry out minor repairs; but if those words are not included, then a higher than usual standard of maintenance is being demanded.

- ii) **Alterations and Additions/Reinstatement:** The tenant has to seek the landlord’s approval for any changes to be made to the physical state of the premises. But the tenant must also be aware of what sort of reinstatement is required at the end of the Term.

Cleaning and painting; but also restoring to “bare” or “original condition” – these could add to the costs of depreciation which the tenant might wish to take into account from the start of the Term, or when effecting costly improvements to the premises.

Note that whatever is affixed to the premises becomes part of the land, and therefore belongs to the landlord at the end of the Term. The landlord, if it is provided in the lease, could require removal of any alterations and additions, or claim ownership of them.

- iii) **Insure:** The Tenant would be required to insure everything within the premises (e.g. partitions, machines, its goods) for loss or damage by fire, flood, or other risk; and to obtain cover against public liability. The insurance amount may be specified, or whatever may be adequate. Adequate coverage is additionally significant in view of the standard covenant for indemnity.
- iv) **Indemnify:** The tenant will generally be required to indemnify the landlord against all claims in respect of loss of life, personal injury and/or damage to property arising from incidents at the premises; and against all loss and damage to the premises, the building and all property therein caused by the tenant, its employees, agents, visitors, etc.

Landlords in Singapore usually seek to except all liability for injury or damage occurring on the premises or in the building, to the full extent allowed by law (see para (h) (iv) on page 44). By requiring this full indemnity, the landlord is in effect seeking to absolve itself from all liability, by way of an all-encompassing protective shield.

A tenant will wish to limit this, so that acts of gross negligence or willful default (at the very least) on the part of the landlord (or the persons for whom it is liable – employees, agents, etc.) do not fall within the scope of the indemnity given.

v) **Negative Covenants:** Generally these set out a variety of actions which are prohibited use of the premises. The main ones a tenant may wish to look out for include:

- 1) any prohibition against assignment of the lease, subletting, licensing or sharing of possession of the premises;
- 2) any acts which would render the landlord's insurance on the building void or voidable, or cause its premiums to be increased; and
- 3) generally, the premises may not be used for residential purposes; the storage of dangerous goods; for any auction sale; or for any unlawful purpose, or purposes which will be a nuisance or cause annoyance to, or give cause for reasonable complaint by other occupiers.

g) Landlord's Covenants

i) **Quiet Possession:** The tenant's rights derive from the landlord's covenant that neither landlord nor any party claiming rights under it shall disturb the tenant's possession of the premises. Of course, this covenant is tempered by the landlord's reservation of rights to enter and inspect the premises (at reasonable hours), with or without workmen, and execute repairs and/or renovations. Landlords also reserve rights to exhibit notices on the exterior of the premises (usually before expiry, for re-letting), and sometimes for their cleaners to enter the premises to access the exterior (windows, roof gardens, etc.).

ii) **Services:** The landlord will covenant to provide common services – air-conditioning, cleaning and lighting of common areas, security, so long as these are not taken over by a Management Corporation (MC) of the building.

The range of services will usually be described in the list pertaining to the landlord's "outgoings". Landlords do include depreciation and replacement, and payment of property tax on the building.

When the MC takes over, the service charge paid to the landlord will cover contributions attributed in respect of the premises, but in such cases the landlord will make payment to the MC. (Tenants must be aware of MC's rules and regulations governing the use of common property and security of the building, and will be entitled to notice of any changes to these rules and regulations, as these will be binding on them.)

iii) **Repair and Insure:** The landlord's responsibilities will include keeping the structure of the building and its amenities in good and proper repair. Apart from this, the landlord will also covenant to insure the building, usually from and against loss or damage caused by fire and "such other risks as the landlord deems fit".

h) Additional Provisions

i) **Suspension of Rent:** If the premises are so damaged/destroyed by fire or other cause ("acts of god" i.e. natural disasters), so that they become unfit for occupation or use, usually payment of rent and service charge will be suspended until the premises are made fit again. Of course, this will not apply if the damage occurred due to the tenant's fault. The landlord is meant to expend insurance monies recovered to reinstate the building, so the tenant will not be allowed to claim compensation for loss of amenity.

It is usually provided that after a certain time (e.g. 90 days) the landlord may give notice of termination of the lease. The tenant may want to consider having a reciprocal right to do this – especially when major repairs will mean the tenant would need to find alternate short-term premises in the interim.

- ii) **Option to Renew:** Parties may agree on a further lease period to be granted at the expiry of the agreed Term. Tenants should note that this “option” would normally be exercised by notice to be given by them within a specified time, and that the right lapses if not exercised in time.

Parties should agree on a formula to establish the new rate of rent, and specify that the lease be on “same terms and conditions” as the expiring lease. If terms are to be “mutually agreed”, it means that the contract is to be negotiated all over again, in every particular.

- iii) **Early Termination:** Any such provision must be expressly set out in the lease, in the same way as “diplomatic clauses” are for leases of residential property. In the absence of any such provision, the Term will continue to its natural end.

- iv) **Exception of Landlord’s Liability:** It will always be provided expressly in the lease that the landlord (its employees, agents, contractors, etc.) are not to be responsible in any way for any injury, loss or damage which may be suffered for any reason, or caused to any property in the building, “howsoever occurring”.

Under the Unfair Contracts Terms Act, parties may not limit their liability for death caused by negligence; but apart from this liability existing by law, the landlord will be able to effectively exclude all liability for loss or damage on the premises or in the building – so long as the tenant has agreed.

As with the indemnity discussed above, the tenant should try to limit this exception, so that acts of gross negligence or willful default of the landlord (or persons it is responsible for) are not excluded.

- v) **Termination for Breach:** The lease will specify some events which will allow the landlord to terminate the contract; generally:

- 1) Rent and service charge having been unpaid for a specified number of days (e.g. 7 or 14 days);
- 2) The tenant failing to perform or observe any terms, covenants, or conditions of the lease;
- 3) A tenant company entering into liquidation;
- 4) The tenant making an assignment for the benefit of its creditors;
- 5) The tenant suffering any distress or process of execution to be levied on its goods.

The happening of one of these events would entitle the landlord to re-enter the premises and so determine the lease without prejudice to any other claims the landlord may have.

5) Concluding Comments

These are the usual division of obligations to be found currently in commercial tenancies in Singapore. There are special features arising out of this interest in land; for instance, if exclusive possession is not given to the tenant, the agreement could be held to be an agreement for a licence, whatever the parties choose to name it. What the transaction is in law will be construed by interpreting all the terms and conditions expressed in writing.

As stated at the start, in addition to being an interest in land, a lease is also a contract, setting out the rights and obligations of the parties to it. The landlord prepares the lease it wants to have; but, being a contract, terms and conditions may be negotiated, and each party must decide what is commercially viable for it.

6) Quick Check

Business owners who are considering entering into a Tenancy Agreement may wish to make it a point to run through this checklist.

- a) Suitability of premises – check zoning.
 - b) Check the landlord's entitlement – is the offer subject to a head lessor's approval? If so what are the conditions?
 - c) Is it necessary to get approval from the authorities for any special use of the premises?
 - d) The state and condition the premises will be in upon handover – must they be returned in that condition or with the benefit of improvements?
 - e) Is the landlord's offer subject to formal contract, or is it the contract itself?
 - f) Get the landlord's approval for fitting-out the premises, and negotiate for any special requirements (e.g. 24-hour air-conditioning, after business hours access to the premises, and lift services).
 - g) Does the landlord have a Fitting Out Manual to be complied with, or has a nominated contractor been designated to do fitting-out works (e.g. for mechanical & electrical installations)? What costs will be payable to the landlord's consultants (e.g. architects)?
 - h) Is it necessary to survey the area of the premises?
 - i) How much insurance is to be obtained by the tenant, and is the landlord to be jointly assured?
 - j) Get a copy of the MC's Rules & Regulations.
- And finally,
- k) Stamp the contract.



You and Your Lawyer

Chapter Contents

1. Do You Need a Lawyer?
2. Choosing a Lawyer
3. Seeing a Lawyer
4. Legal Fees
5. Reviewing a Lawyer's Bill as Reasonable
6. What If You Cannot Afford to Engage a Lawyer?
7. What If You Are Unhappy With the Services of Your Lawyer?

1) Do You Need a Lawyer?

Some things may be best handled by a lawyer such as starting a company, entering into a complex contract, or protecting a trademark. However you will need a lawyer if you wish to start a court action to recover a debt or claim damages or because you are being sued.

2) Choosing a Lawyer

You can decide on a law practice or lawyer based on recommendations from friends or business acquaintances, Legal Directories that provide write up on law practices or by visiting the Law Society's homepage www.lawsociety.org.sg.

3) Seeing a Lawyer

Before meeting your lawyer, prepare a list of questions you want to ask or clarify. Bring along all the relevant documents and provide your lawyer with all the necessary information. Do not be afraid to ask your lawyer questions.

4) Legal Fees

A lawyer is required by his rules of practice to provide you full information about how he will charge for his services, provide you an estimate of fees and bill you on a regular basis.

Generally, the fees a lawyer will charge is based upon the amount of work done, the time taken, the difficulty of the legal issues involved and the seniority of the lawyer you engage.

There are 2 main components of the legal fees charged by a lawyer. The first component is the “professional fee” which refers to the fee for the amount of time spent and work undertaken by your lawyer in your matter. The second component is “disbursements”, which refers to expenses the lawyer had to incur on your behalf such as court filing fees, stamp fees or payment for third party services, such as experts’ fees.

5) Reviewing a Lawyer’s Bill as Reasonable

If you are dissatisfied with your lawyer’s bill of costs you should try to talk to your lawyer to reach an amicable solution. If you are unable, the Legal Profession Act provides a client the option to apply to Court to review a lawyer’s bill of costs to ascertain reasonableness through a procedure called “Taxation”. Note that you or your lawyer must obtain an order for taxation within one year from the delivery of the bill. If the amount reduced is not less than one sixth of the bill and the application is made by you or if you attend the taxation hearing, you may be asked to pay the costs of taxation.

In addition, the Law Society runs a mediation/arbitration scheme to assist parties (lawyers and their clients) in coming to an amicable agreement on legal costs by way of mediation. In the event if mediation is unsuccessful, the Law Society’s scheme provides a simple and expedited arbitration procedure to resolve the dispute. For more information on this scheme, visit the Law Society’s website.

6) What If You Cannot Afford to Engage a Lawyer?

The government-run Legal Aid Bureau provides legal assistance and representation for those who cannot afford to engage lawyers in civil matters such as civil litigation, and applying to Court for grant of probate and administration of estate. More information is available at <http://www.minlaw.gov.sg/lab>.

If you are charged with a criminal offence in Court and cannot afford a lawyer, you may apply to the Law Society’s Criminal Legal Aid Scheme (CLAS) which covers offences covered under 13 statutes and provides free representation.

7) What If You Are Unhappy With the Services of Your Lawyer?

If you are unhappy with the services provided by your lawyer, you should first try to resolve the matter with your lawyer, as the problem may be the result of a misunderstanding or miscommunication.

You may decide to lay a complaint with the Law Society concerning the conduct of your lawyer if you believe your lawyer had acted improperly/unethically or did not provide adequate legal service.

For information and details of the process to lay a complaint against lawyers, visit the Law Society website www.lawsociety.org.sg.

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