

# Setting the standard

Keon Chee explains Singapore's trust licensing regime and position on confidentiality



#### ABOUT THE AUTHOR

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Singapore is consistently recognised as one of the best cities in the world for business. For instance, the World Bank in 2010 ranked it the world's easiest place to do business. It has a well-established and diversified financial infrastructure, providing a gateway to opportunities in India and China. Financial institutions in Singapore can trade around-the-clock with Asia-Pacific centres, as well as European and American centres, making Singapore a convenient hub for 24-hour trading in foreign exchange and securities.

The wealth-management industry is prospering even as the US and Europe continue to grapple with the most stubborn financial crisis in a generation. The business and financial boom in Asia in the last two decades, particularly in Malaysia, India, China, Indonesia, Thailand and the Philippines have provided the source for much of the managed wealth in Singapore. Singapore has the highest density of millionaires in the world, where millionaire households accounted for 11.4 per cent of all households according to a 2010 Boston Consulting Group report. Just about every major private-banking concern in the world has set up shop in Singapore, with Citigroup, UBS, Credit Suisse, HSBC, Julius Baer and Merrill Lynch leading the charge.<sup>1</sup>

#### Licensing of trust companies

Five new trust business licences were issued by the Monetary Authority of Singapore (MAS) between August and October 2010, bringing the total number of licences issued to

45. While this was not in itself a momentous event, the issuance did allay uncertainty in the market, since before August 2010 the MAS had not issued any new licences since October 2009, a period of ten months.

The Singapore trust licensing regime was established in 2005. At the time, trust companies in Singapore were regulated by the Accounting & Corporate Regulatory Authority (ACRA) under the old *Trust Companies Act*, where the registration of trust companies was voluntary. With the 2005 *Trust Companies Act* (TCA), licensing is mandatory for anyone providing trust services in Singapore regardless of whether the trusts are established under Singapore law or other law. Trust business is defined broadly to include any business of creating or administering an express trust or of acting as, or arranging for a person to act as, a trustee of an express trust. For example, giving advice on how to set up a trust and managing and distributing trust assets, are activities that would fall under the TCA.<sup>2</sup>

The Act regulates financial institutions that provide trust services for investment and wealth-management purposes. The activities regulated include providing services with respect to express trusts in the areas of creation, trustee services, arranging for any person to act as trustee and trust administration. Advisors on wills, executors and administrators of the estates of deceased persons, bare trustees, and managers and trustees of business trusts are excluded from the ambit of the TCA, as the trusts involved are not actively used for investment and wealth-planning purposes.

The related *Trustees Act (Cap 337)* (TA) provides the legislative framework for trustees of trusts established under Singapore law. The TA provides, among others, safeguards to ensure that trustees adhere to certain minimum standards when

they exercise their trustee powers, and defines a duty of care for trustees when carrying out specified duties or acts. The TA is administered by the Ministry of Law.

A trust company regulated by MAS under the TCA would also have to comply with the TA if it is acting as trustee of a trust established under Singapore law. In accordance with the TA, every Singapore trust shall have at least one trustee, and a maximum of four trustees. The trustee must be a Singapore-licensed trust company or individual.

#### Singapore's stand on transparency and confidentiality

Singapore is by and large considered a transparent jurisdiction and most surveys regard Singapore favourably. To cite two surveys:

- *The IMD World Competitiveness Yearbook 2009* ranked Singapore the most transparent country in the world; and
- Transparency International in its *Corruption Perceptions Index 2010* ranked Singapore the most transparent country in the world.

Singapore has one of the largest networks of double tax agreements (DTAs) in the world. It has 62 comprehensive DTAs, which cover all types of income. What is important to note is that each DTA includes provisions for the exchange of information for tax purposes. Treaty partners may make requests for information for tax purposes to the Comptroller of Income Tax. Such a process ensures that there is transparency in how information is exchanged. Additionally, there are strong safeguards in ensuring that information collected is kept confidential and used for purposes defined in the DTA.

In March 2009, Singapore announced its endorsement of the 2005 OECD Model Tax Convention. The Ministry of Finance (MOF) introduced the *Income Tax (Amendment) (Exchange of Information) Bill* to receive the

internationally agreed Standard. The Bill was passed by Parliament on 19 October 2009 and enhances the scope of information exchange cooperation under DTAs.

Singapore signed its 12th agreement on 13 November 2009 and joined OECD's white list. As of 15 November 2010, agreements have been signed with 22 countries: Australia, Austria, Bahrain, Belgium, Brunei, China, Denmark, Finland, France, Ireland, Japan, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Qatar, Saudi Arabia, Slovenia, South Korea and the UK. Singapore's positive response reflects the importance of participating in OECD's global initiative.

Some quarters have expressed worry about whether this increased transparency would diminish confidentiality. After all, according to the amended *Income Tax Act*:

- The new section 105F lifts the domestic interest condition to enable the Inland Revenue Authority of Singapore (IRAS), Singapore's tax authority, to satisfy its obligations under the prescribed DTAs.
- Under previous law, IRAS may only obtain banking and trust information for the purpose of investigating or prosecuting a suspected domestic tax offence. The internationally agreed Standard requires the exchange of information which is foreseeably relevant to the administration of the requesting jurisdiction's own tax laws, without it being predicated on the taxpayer having committed an offence. IRAS's information-gathering powers will be widened under the new Part XXB to enable it to access bank and trust information to accommodate requests on tax administration matters under prescribed DTAs and domestic tax administration matters.

While these new provisions, among others, do appear to create a chink in Singapore's

confidentiality armour, the Act contains added provisions to safeguard confidentiality. Spurious or frivolous requests for information will not be acceded to. Further, it does not allow for what is called 'fishing expeditions' – it requires requests for information to be specific, detailed and relevant to the tax affairs of the taxpayer in question.

Importantly, there will be safeguards for assisting in requests relating to information that is protected from unauthorised disclosure under the *Banking Act* and the TCA. The new Part XXB sets up a judicial process for IRAS to obtain such information in response to requests under prescribed DTAs. The affected taxpayer and bank or trust company will be notified of the request, unless there are exceptional circumstances, such as if doing so would prejudice an investigation into any breach of tax laws, or prevent or unduly delay the effective exchange of information. IRAS will make an application to the High Court for a production order to access the requested information. The affected taxpayer and bank or trust company will have the right to apply to the Court to discharge or vary the Court order.

The Standard does not allow jurisdictions to take advantage of the information system of another jurisdiction if it is wider than their own system. Hence, Singapore will only exchange information that a requesting jurisdiction would have ordinarily been able to obtain under its own laws or administrative practices had the information resided in that jurisdiction in the first place. Jurisdictions must also have pursued all domestic means to access the requested information before putting forth a request to Singapore.

The Standard also sets out clear limits on the types of information that jurisdictions are obliged to exchange. Jurisdictions are not obliged to exchange trade or business secrets, or information that is subject to legal

privilege. They may also decline to exchange certain information if doing so would be contrary to public policy. Some examples of such information include state secrets or information sought for the purposes of political, religious or racial persecution.

Such safeguards do not impede the effective exchange of information. They are provided for by the internationally agreed Standard to uphold the principle of respecting taxpayers' rights. With the amendments, Singapore is committed to respecting these rights, while fully meeting her obligations under the Standard and playing a full role as a trusted and responsible jurisdiction.

#### Conclusion

The OECD Tax Convention is not merely a standard brandished by the group of 33 economically powerful countries to collect tax dollars, but it is in fact an international tax standard that was endorsed by the United Nations Committee of Experts on International Cooperation in Tax Matters in October 2008. The exchange of tax information is a global phenomenon and countries that wish to promote themselves as jurisdictions of substance should certainly pay heed to the Standard.

Singapore's response is aligned with the international community, which clearly sees the critical benefits of a transparent process of exchange of tax information that contains strong safeguards for protecting confidentiality and taxpayers' rights. ■

1. Excerpted from the chapter on Singapore in *World's Leading Financial & Trust Centres*, published in 2010 by Sweet & Maxwell.  
2. 'Explanatory Brief: Trust Companies Bill 2005', 25 Jan 2005, [www.mas.gov.sg](http://www.mas.gov.sg).