

## **CHAPTER 7      FREE TRADE AGREEMENTS: SINGAPORE LEGAL DEVELOPMENTS**

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### **SECTION 1    INTRODUCTION TO SINGAPORE'S FREE TRADE AGREEMENTS**

#### ***General***

7.1.1    Singapore has entered into a number of Free Trade Agreements (FTAs) with its trading partners. As a result, Singapore's legal environment and laws have seen some changes. Many of these changes would interest those who do business with or invest in Singapore. While this section does not attempt to provide comprehensive information on all changes resulting from treaty commitments, it highlights salient changes for those trading or investing in Singapore.

7.1.2    The developments highlighted here include changes made to Singapore legislation, as well as legal commitments made by Singapore as a result of its treaty obligations.

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### **SECTION 2    CHANGES THAT MAY INTEREST THOSE TRADING IN AND WITH SINGAPORE**

#### ***General***

7.2.1    Singapore laws have been amended to reflect commitments made under various FTAs. For instance, the customs legislation in Singapore has been amended to confer preferential tariff treatment and other treatment as agreed under the FTAs. Apart from the legislative changes, Singapore now also guarantees, through treaty obligations, such treatment for imported goods, services and investments as are contained in the commitments made to its FTA partners. Such treatment includes national treatment and access to investor arbitration.

#### ***Preferences***

7.2.2    Apart from changes to reflect preferences in the importation of goods, customs law has also been amended to provide procedures for issue of preferential certificates of origin for relevant manufacturers or exporters of goods from Singapore to FTA partner countries.

7.2.3 Following the entry into force of the US-Singapore FTA, while the general importation of chewing gum still stands, Singapore import/export legislation now permits the import of chewing gum “with therapeutic value”. (See the Regulation of Imports and Exports (Chewing Gum) Regulations, s. 3A, as amended by the Regulation of Imports and Exports (Chewing Gum) (Amendment No. 2) Regulations 2003, s. 632/2003.)

### ***Textiles***

7.2.4 Following the entry into force of the US-Singapore FTA, the export of textile and clothing products specified in the Annex of the WTO Agreement on Textiles and Clothing is now regulated under Singapore import/export law (see the Regulation of Imports and Exports Regulations, s. 530/95). The law requires that where any part of the manufacture of such goods is carried out or procured by any person in Singapore, for such goods to be exported to the USA from Singapore, such a person must be registered (See s. 530/95, Sixth Schedule).

### ***Government Procurement***

7.2.5 Singapore is a party to the plurilateral Government Procurement Agreement of the WTO. As a result of FTA commitments, Singapore now offers a more attractive procurement environment to its FTA partners. The improvements include those relating to threshold values of procurement contracts. FTA agreements containing government procurement commitments by Singapore include the following:

- Korea-Singapore FTA (see [Chapter 16 of the FTA](#))
- New Zealand-Singapore Closer Economic Partnership Agreement (EPA) (See [Part 8 of the agreement](#))
- Panama-Singapore FTA (See [Chapter 8 of the FTA](#))
- Trans-Pacific Strategic Economic Partnership between Singapore, Brunei, Chile and New Zealand (see [Chapter 11 of the FTA](#))
- US-Singapore FTA (see [Chapter 13 of the FTA](#))

7.2.6 To further promote trade, a number of mutual recognition agreements (MRAs) on conformity assessment for a number of goods have been signed by Singapore with her trade partners, including Australia, Japan and the United States. These agreements deal with goods such as electrical and electronic goods, pharmaceutical goods, food and horticultural products and telecommunications equipment. (For more information on Singapore’s MRAs, please click [here](#)).

7.2.7 As a member of ASEAN, Singapore also takes part in [MRA schemes](#) within ASEAN. These include the [ASEAN Harmonized Cosmetic Regulatory Scheme and the ASEAN Cosmetic Directive](#), and the [ASEAN Sectoral Mutual Recognition Agreement for Electrical and Electronic Equipment](#). Singapore also participates in initiatives on [harmonization of standards in ASEAN](#) to promote the integration process of the ASEAN Free Trade Area (AFTA).

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## **SECTION 3 GENERAL CHANGES THAT MAY INTEREST THOSE INVESTING IN SINGAPORE**

### ***Transparency***

7.3.1 Singapore has undertaken commitments through several FTA agreements to ensure a certain level of transparency with respect to its laws and legal processes. The commitments augur well for foreign businesses as they further strengthen Singapore's legal system. Notification and consultation provisions are included in some cases to ensure that interested persons can provide input and feedback on proposed changes to law and policy.

7.3.2 Examples of Singapore FTAs containing transparency commitments are those signed with the United States, with South Korea and with Brunei Darussalam, Chile and New Zealand.

### ***Competition Regulation***

7.3.3 Pursuant to commitments made under FTAs such as that with the United States, Singapore enacted a Competition Act in 2004. The competition legislation adds to Singapore's already open and competitive trading environment by ensuring that anti-competitive practices defined under the law are appropriately dealt with. The Competition Commission of Singapore was launched in August 2005. The law came into effect in three phases. The part dealing with merger notifications came into force in July 2007. (See [Competition Law](#) for more details).

7.3.4 The Commission oversees enforcement of the law, which applies both to local and foreign companies. The Competition Act adds to Singapore's competition regulation regime, which already includes sectoral competition provisions for the energy market (under the Electricity Act and the Gas Act) and the telecommunications industry (Telecommunications Competition Code 2005).

7.3.5 Singapore also has enacted separate legislation for consumer protection in the form of the Consumer Protection (Fair Trading Act).

### ***Services***

7.3.6 As a result of Singapore's commitments in FTAs to liberalize various sectors beyond those made to fellow WTO members, there have been changes to the regulation of entry into and/or activities in various service sectors, such as banking and legal practice. The individual FTAs should be consulted for the commitments made to each FTA partner.

### ***Investment***

7.3.7 Singapore's FTA commitments in respect of investors and investments of FTA partner countries enhance protection for investments, by offering treaty commitments that go far beyond the WTO Trade-related Investment Measures Agreement (TRIMS). Such protection includes the extension of Most-Favoured-Nation Treatment and National Treatment to investors from FTA partner countries. The benefits vary and investors from partner countries should consult the individual FTAs for the benefits that may be available to them.

## ***Intellectual Property***

7.3.8 Singapore is party to the following intellectual property treaties:

- The Berne Convention
- The Budapest Treaty
- The Madrid Protocol
- The Nice Agreement
- The Patent Cooperation Treaty
- The Paris Convention
- The WIPO Convention.

(More information about each of these treaties can be found at <http://www.wipo.org>).

Between 2004 and 2005, Singapore also acceded to the following treaties, following its FTA commitments (dates of accession indicated in bracket):

- The International Convention for the Protection of New Varieties of Plants (UPOV) (30 July 2004)
- The WIPO Copyright Treaty (17 April 2005)
- The WIPO Performances and Phonograms Treaty (1996) (17 April 2005)
- The Hague Agreement Concerning the International Registration of Industrial Designs (17 April 2005).

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As a result of Singapore's FTA commitments, important changes were made to the Trade Marks Act in 2004. The changes include a change in the definition of a trade mark, to remove the requirement of visual perceptibility as a precondition for registrability. The new definition opens the door potentially to registration of non-visual marks. A definition of "well known mark" has also introduced. The amendments also include the addition of provisions relating to the dilution of marks.

Changes have been made to Singapore's Patents Act, such as the introduction of limitations to parallel importation of patented pharmaceutical products.

The Copyright Act was also amended in 2004 to reflect FTA commitments, including the extension of the copyright term from 50 years to 70 years after the author's death.

### ***Choice of Law for Contracts***

7.3.9 The common law choice of law rules apply in Singapore, but the rules are very similar to those in many civil law jurisdictions, as well as the rules embodied in the Rome Convention applicable in the European Union, especially in the respect for party autonomy. The choice of law rules were considered by the Law Reform Committee of the Singapore Academy of Law (Reform of the Law Concerning Choice of Law in Contract), which recommended the retention of the common law. Most issues arising in contract (in the private international law sense) are governed by the proper law of the contract.

### ***Expropriation***

7.3.10 Foreign investors and investments covered under the various FTAs enjoy certain assurances in relation to expropriation of property. The FTAs contain commitments on the circumstances under which such action may take place as well as on the compensation that must be given should such action occur. In some cases, "side letters" accompanying the FTAs provide further information about the parties' stand on such action. These FTA commitments are important in giving investors and investments from FTA partner countries protection beyond that existing under general Singapore business law and WTO agreements.

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## **SECTION 4 DISPUTE SETTLEMENT**

### ***General***

7.4.1 Under Singapore's FTAs, State-to-State dispute settlement processes have been created to provide partner states and Singapore with additional avenues for resolving their disputes. The dispute settlement regimes vary from FTA to FTA in their scope and operation. They usually provide for consultation processes as well as international arbitration.

7.4.2 Singapore is a member of ASEAN and the ASEAN Free Trade Area (AFTA). The ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004 provides a mechanism for settling disputes relating to ASEAN economic agreements, including AFTA-related disputes. The text of the Protocol can be found [here](#).

7.4.3 Singapore's FTAs also provide foreign investors of FTA partner countries with another avenue to resolve their disputes, via the investor-state dispute settlement provisions. These provisions provide an additional avenue apart from the existing judicial means for legal complaint. The scope and procedures for such dispute settlement may vary from one FTA to another.

### ***Investor-State Dispute Settlement***

7.4.4 Singapore has committed to investor-State dispute settlement processes in its FTAs with Australia; EFTA countries; Japan, Jordan, the "Pacific" partners of

Brunei, Chile and New Zealand; the United States, and more recently, India and South Korea.

This section highlights certain changes to Singapore law in relation to its FTA commitments, and is not intended to be a comprehensive guide. Users are advised to consult the texts and related documents of each FTA for a full appreciation of the benefits that they or their countries may be eligible for. Information about Singapore's concluded agreements, and agreements still under negotiation, can be found [here](#).

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