



Template share exchange agreement

User notes

We recommend that Southeast Asian tech start-ups consider incorporating a holding company in Singapore from the outset, irrespective of the key market of the business. However we understand that this is not always possible.

This agreement is for use by Southeast Asian companies looking to redomicile or *flip* to Singapore. Our experience is that, with a few exceptions, most Southeast Asian tech start-ups wishing to raise capital from professional investors end up being domiciled in Singapore (either to attract investment or as a requirement of their investors).

Flipping to a new jurisdiction can be done in two ways: either by a transfer of *shares* or by a transfer of *assets*. Please see our guides to *raising seed capital in Southeast Asia* for more information on the different processes involved. This agreement is for the first option - where the shares in your existing company are transferred to a newly incorporated Singapore company. That new company then issues shares to the shareholders of the existing company in equal proportions. These are separate corporate transactions in two different jurisdictions requiring legal and tax advice in each of those jurisdictions.

Under Singapore securities legislation, a company may not issue (or offer to issue) shares, options or other securities without issuing a prospectus unless it is satisfied that an exclusion applies under the Securities and Futures Act (Cap. 289) in relation to that offer or issue. Please see our guides to *raising seed capital in Southeast Asia* for further information.

using this template

The **User Notes** and the statements in the footer below (all marked in red) are included to assist in the preparation of this document. They are for reference only – you should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- ▲ the requested details need to be inserted
- ▲ there are different options for you to consider within a clause
- ▲ the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and ensure that all square brackets have been deleted. If you delete any clauses or schedules, remember to cross reference check the document.

SHARE EXCHANGE AGREEMENT

DATE

PARTIES

- 1 **[INSERT NAME OF COMPANY]**, company number *[insert]*, a company incorporated in *[insert]* whose registered office is at *[insert]* (**Buyer**)
- 2 The persons whose names and addresses are set out at Schedule 1 (**Sellers**)

AGREEMENT

- ▲ The Sellers own *[insert number]* ordinary shares in *[insert]*, company number *[insert]*, a company incorporated in *[insert]*, whose registered office is at *[insert]* (**Company**).
- ▲ As part of a redomicile of the business of the Company to *[Singapore]*, the Sellers have agreed to sell, and the Buyer has agreed to purchase, shares in the Company in consideration for the issue of shares in the Buyer on the terms set out in this Agreement.

SIGNED for and on behalf of **[INSERT**)
NAME OF BUYER] by:)

Signature of authorised signatory

Print full name of authorised signatory

[User note: Use the following signature block if the Seller is an individual.]

SIGNED by **[INSERT NAME OF**)
INDIVIDUAL]:)

Signature

[User note: Use the following signature block if the Seller is a company.]

SIGNED for and on behalf of **[INSERT**)
NAME OF COMPANY] by:)

Signature of authorised signatory

Print full name of authorised
signatory

TERMS OF THIS AGREEMENT

1 INTERPRETATION1.1 **Definitions:** In this Agreement:

Definition	Meaning
Act	the Companies Act (Chapter 50) of Singapore.
Agreement	this Agreement, together with the Schedules.
Business	the business (or businesses) carried on by the Company.
Business Day	Monday to Friday, other than any public holiday that occurs in [<i>Singapore</i>].
Completion	the completion of the sale and purchase of the Sale Shares in accordance with clause 3.
Constitution	the constitution of the Company.
Encumbrance	includes a security agreement, debenture, mortgage, charge, pledge, lien, title retention, option, right of first refusal, right of pre-emption, any security interest, and any other third party interest of any kind and Encumber includes the creation of or agreement to create an Encumbrance.
Exchange Shares	<p><i>[User note: It would generally be the case that the Seller would be issued an equivalent class of shares as they held in the Company (e.g. ordinary shares or preference shares). If the Exchange Shares are being issued by a Singapore company, the rights attaching to any preference shares issued would need to be set out in the constitution of the Company.]</i></p> <p>the ordinary shares in the Buyer listed in the third column of Schedule 2.</p>
Existing Shareholders' Agreement	the existing shareholders' agreement of the Company between each of the Sellers and the Company dated [<i>insert</i>].
Law	any statute, regulation, by-law, scheme, determination, ordinance, rule or other like provision.
New Shareholders' Agreement	the new shareholders' agreement to be entered into on Completion in respect of the Buyer in the form set out in

Schedule 4.

Sale Shares	the [insert] ordinary shares in the Company as listed in Schedule 2.
Seller Warranties	the warranties set out in clause 4.1 (as they apply to the Sellers) and 4.2.

1.2 **Interpretation:** Unless the context otherwise requires:

- a a reference to:
 - i a **clause** or a **Schedule** is to a clause in or a Schedule to this Agreement;
 - ii a **person** includes a body corporate, an association of persons (whether corporate or not), a trust, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal personality;
 - iii **including** and similar words do not imply any limitation;
 - iv a **statute** or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether made before or after this Agreement);
 - v a **party** is a reference to a party to this Agreement, and includes that party's executors, administrators, successors and permitted assigns; and
 - vi any **document** or **agreement** (including this Agreement) includes a reference to that document or agreement as amended, novated or replaced from time to time;
- b the **headings** in this Agreement are for convenience only and have no legal effect;
- c the **singular** includes the plural and vice versa;
- d words denoting any gender include all genders;
- e unless a contrary indication appears, a reference to a **time of the day** is to Singapore time; and
- f an agreement, representation or warranty:
 - i given or entered into by two or more persons is given or entered into and binds them **jointly** and **severally**; and
 - ii in favour of two or more persons is for the benefit of them **jointly** and **severally**.

2 SALE AND PURCHASE

- 2.1 **Agreement to sell and purchase:** Each Seller will sell with full title guarantee and free from all Encumbrances the number of Sale Shares set opposite his or its name in the second column of the table set out in Schedule 2 and the Buyer will buy the Sale Shares.
- 2.2 **Allotment and issue of Exchange Shares:** The Buyer will satisfy the consideration for the transfer of the Sale Shares by the allotment and issue (credited as fully paid) to each Seller of the number of the Exchange Shares set out opposite such Seller's name in the third column of the table set out in Schedule 2.

[User note: It is important to check what restrictions there may be on the ability of the Sellers to transfer their shares, under any existing agreement, the constitution of the Company or under local law requirements, and obtain all necessary approvals, waivers and consents.]

- 2.3 **Waiver of pre-emptive rights:** The Sellers irrevocably waive, and will procure the waiver of, all rights of pre-emption over, or other rights to restrict the transfer of, the Sale Shares conferred either by the Existing Shareholders' Agreement, the Constitution, or by any other agreement, or in any other way.

3 COMPLETION

- 3.1 **Time and place:** Completion will take place at such place and/or time agreed in writing by the Sellers and the Buyer.
- 3.2 **Sellers' obligations:** At Completion the Sellers must deliver to the Buyer:
- a registrable transfers of the Sale Shares signed by the Sellers in favour of the Buyer, or the Buyer's designated nominee;
 - b the share certificates for the Sale Shares or a certificate from a director of the Company certifying that no share certificates have been issued for those shares;
 - c duly executed waivers or consents (including waivers of any pre-emptive rights) that are required to enable the Buyer or its nominee to be registered as the holder of the Sale Shares;
 - d the New Shareholders' Agreement duly executed; and
 - e *[other]*,

[User note: Check what is required to legally transfer the Sale Shares in accordance with the laws of the jurisdiction of the Company, including documentation, forms, registrations, stamping and approvals. This can vary significantly between different jurisdictions in Southeast Asia.]

and must do all other things, and provide the Buyer with all other resolutions and documents, required to transfer ownership of the Sale Shares to the Buyer in accordance with the terms of this Agreement and to place the Buyer in control of the Company and the Business.

3.3 **Board meetings:** On Completion the Sellers will procure the holding of meetings of the directors of the Company to do such things as are necessary to approve (subject to any stamping requirements and any other approvals) the transfers referred to in clause 3.2a.

3.4 **Buyer' obligations:** On Completion the Buyer will:

- a subject to compliance by the Sellers with their obligations under clause 3.2 and conditional upon completion of the transfer of the Sale Shares, allot to each Seller credited as fully paid the number of Exchange Shares listed opposite that Seller's name in the third column of the table set out in Schedule 2 and the Buyer will enter each Seller in its register of members (if any) as the holders of the Exchange Shares so allotted and will deliver to it or him a share certificate;
- b update the Accounting and Regulatory Authority of Singapore with details of each Seller as the holders of the Exchange Shares so allotted;
- c deliver to the Sellers a copy of the minutes of the board of directors of the Buyer authorising the execution and performance by the Buyer of its obligations under this Agreement; and

[User note: If the Sellers and the Company had already entered into a shareholders' agreement, it is likely that this agreement will be replicated and restated for the Buyer, subject to necessary amendments in accordance with the laws of Singapore.]

- d deliver to the Sellers the New Shareholders' Agreement duly executed by the Buyer.

4 WARRANTIES

4.1 **Mutual warranties:** Each party represents and warrants to the others that the following is true as at the date of the Agreement:

- a if it is a company, it is duly incorporated and validly existing under its applicable law;

- b it has the power, and, if it is a company, it has taken all necessary action (including the passing of all resolutions and obtaining any necessary consents) to enter into, execute and deliver, and exercise its rights, and perform its obligations, under the Agreement; and
- c it has validly executed and delivered the Agreement and its obligations under the Agreement are legal, valid and binding and enforceable against it in accordance with its terms.

4.2 **Sellers' warranties:** Each Seller severally warrants to the Buyer that the following is true as at the date of the Agreement:

- a the Seller's Sale Shares:
 - i are legally and beneficially owned by that Seller;
 - ii comprise the entire shareholding of the Company owned by the Seller;
 - iii are fully paid;
 - iv were validly issued; and
 - v are free of any Encumbrance; and
- b there are no:
 - i options or other entitlements over the Seller's Sale Shares; or
 - ii other rights, arrangements or circumstances in existence which would or could dilute the Buyer's interest or rights in the Company following the sale of the Seller's Sale Shares to it.

4.3 **Right of termination prior to Completion:** If, before Completion the Buyer identifies that any of the Seller Warranties are untrue, inaccurate or misleading the Buyer may (without prejudice to any other remedy available to it) immediately terminate this Agreement by giving written notice to the Sellers.

5 INDEMNITY AND SHARE REPURCHASE

5.1 **Seller indemnity:** Each Seller indemnifies the Buyer against all loss, damage, liability, claim or expense suffered or incurred by the Buyer by reason of or in connection with any of the Seller Warranties being untrue, inaccurate or misleading or any failure by the Seller to perform its obligations under this Agreement.

[User note: The purpose of the below clause is to enable the Buyer to repurchase the Exchange Shares issued to a Seller who it subsequently turned out did not own some or all of the relevant Sale Shares. Note the Singapore Companies Act has some restrictions on the ability of companies to repurchase shares.]

5.2 **Repurchase of Exchange Shares:** If the Buyer identifies that any of the Seller Warranties are untrue, inaccurate or misleading the Buyer will have (without prejudice to any other remedy available to it under this Agreement or otherwise), subject at all times to the Constitution and the Act, an irrevocable and exclusive option to repurchase any or all Exchange Shares which have been issued to the relevant Seller who is in breach.

6 GENERAL

6.1 **Confidentiality:** Each party must keep this Agreement and information it receives about the Company and its business in connection with this Agreement (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the other parties except to the extent that:

- a disclosure is required by law;
- b the relevant information is already in the public domain other than through the default of that party;
- c it is reasonably required to obtain professional advice; or
- d it is reasonably necessary in connection with any proposed:
 - ▲ financing of that party;
 - ▲ sale of that party's interest in the Company; or
 - ▲ sale of all or part of the business of, or the shares in, that party,and the party receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause.

6.2 **Announcement:** Any public announcement by a party regarding this Agreement must be pre-approved by the Buyer.

6.3 **Notices:** All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in Schedule 3 (or at such other address as notified from time to time by the party changing its address).

6.4 **Time of service:** Any notice given under this Agreement will be deemed to be validly given:

- a in the case of delivery, when received;
- b in the case of posting, on the second day following the date of posting; or

- c if emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the addressee's email address is wrong or that the message cannot be delivered,

provided that any notice received after 5 pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.

- 6.5 **Entire agreement:** This Agreement contains all of the terms, representations and warranties made between the parties relating to the matters dealt with in this Agreement and supersedes and cancels all prior discussions and agreements covering the subject matter of this Agreement. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect from the date of this Agreement.
- 6.6 **Further assurances:** The parties must each sign all further documents, pass all resolutions and do all further things as may be reasonably necessary to give effect to this Agreement.
- 6.7 **Amendment:** This Agreement may only be amended by agreement of the parties in writing.
- 6.8 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.
- 6.9 **No assignment:** No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties.
- 6.10 **Costs:** Except as otherwise provided in this Agreement, the parties must meet their own costs relating to the negotiation, preparation and implementation of this Agreement.
- 6.11 **Partial invalidity:** If any provision of this Agreement becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 6.12 **No merger:** The obligations, warranties and representations of the parties under this Agreement, to the extent not already performed at Completion, will not merge on Completion, or on the execution or delivery of any document in connection with this Agreement, but will remain enforceable to the fullest extent despite any rule of law to the contrary.
- 6.13 **Signature:** This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which constitute the same Agreement. A party may enter into this Agreement by signing and sending (including by email) a counterpart copy to each other party.

7 GOVERNING LAW

This Agreement, and any non-contractual obligations arising from or in connection with it, will be governed by, and interpreted in accordance with, the laws of [Singapore].

[User note: The clauses below provide that disputes that are not settled will be referred to the Singapore International Arbitration Centre (SIAC). SIAC is seen as a leading venue for the holding of commercial arbitration and is used by companies across Southeast Asia.]

8 [DISPUTE RESOLUTION

- 8.1 **Dispute:** *If any dispute, controversy or claim (**Dispute**) arises out of or relating to this Agreement, or to the interpretation, breach, termination or validity of this Agreement, the parties to the Dispute (**Disputing Parties**) must use their best efforts to resolve the Dispute through consultation or mediation. The consultation or mediation between the Disputing Parties must begin as soon as practicable after one Disputing Party has delivered to the other Disputing Party or Parties a written notice setting out the matter of the Dispute (**Dispute Notice**).*
- 8.2 **Arbitration:** *If a Dispute is not settled under clause 8.1 within 30 days after the date of the relevant Dispute Notice, the Dispute must be referred to and resolved by arbitration in Singapore in accordance with the Rules of the Singapore International Arbitration Centre (**SIAC Rules** and **SIAC** respectively). The tribunal will consist of one arbitrator, to be appointed by the President of the SIAC. The language of the arbitration will be English.*
- 8.3 **SIAC Rules:** *The SIAC Rules are deemed to be incorporated by reference in this clause 8. However, to the extent that the SIAC Rules are in conflict with the provisions of this clause 8, the provisions of this clause 8 will prevail.]*

SCHEDULE 1

The Sellers

Seller	Address
[insert]	[insert]

SCHEDULE 2**Details of the Sale Shares and the Exchange Shares**

Sellers	Sale Shares	Exchange Shares
[insert]	[insert]	[insert]
Total	[insert] [ordinary] shares	[insert] [ordinary] shares

SCHEDULE 3**Notices**

<i>[Insert name of Buyer]</i>	
Contact Name:	<i>[insert]</i>
Address:	<i>[insert]</i>
Email address:	<i>[insert]</i>

<i>[Insert name of Seller]</i>	
Contact Name:	<i>[insert]</i>
Address:	<i>[insert]</i>
Email address:	<i>[insert]</i>

<i>[Insert name of Seller]</i>	
Contact Name:	<i>[insert]</i>
Address:	<i>[insert]</i>
Email address:	<i>[insert]</i>

SCHEDULE 4

New Shareholders' Agreement