Bird & Bird ATMD

Legal Considerations when launching a Gym in Singapore

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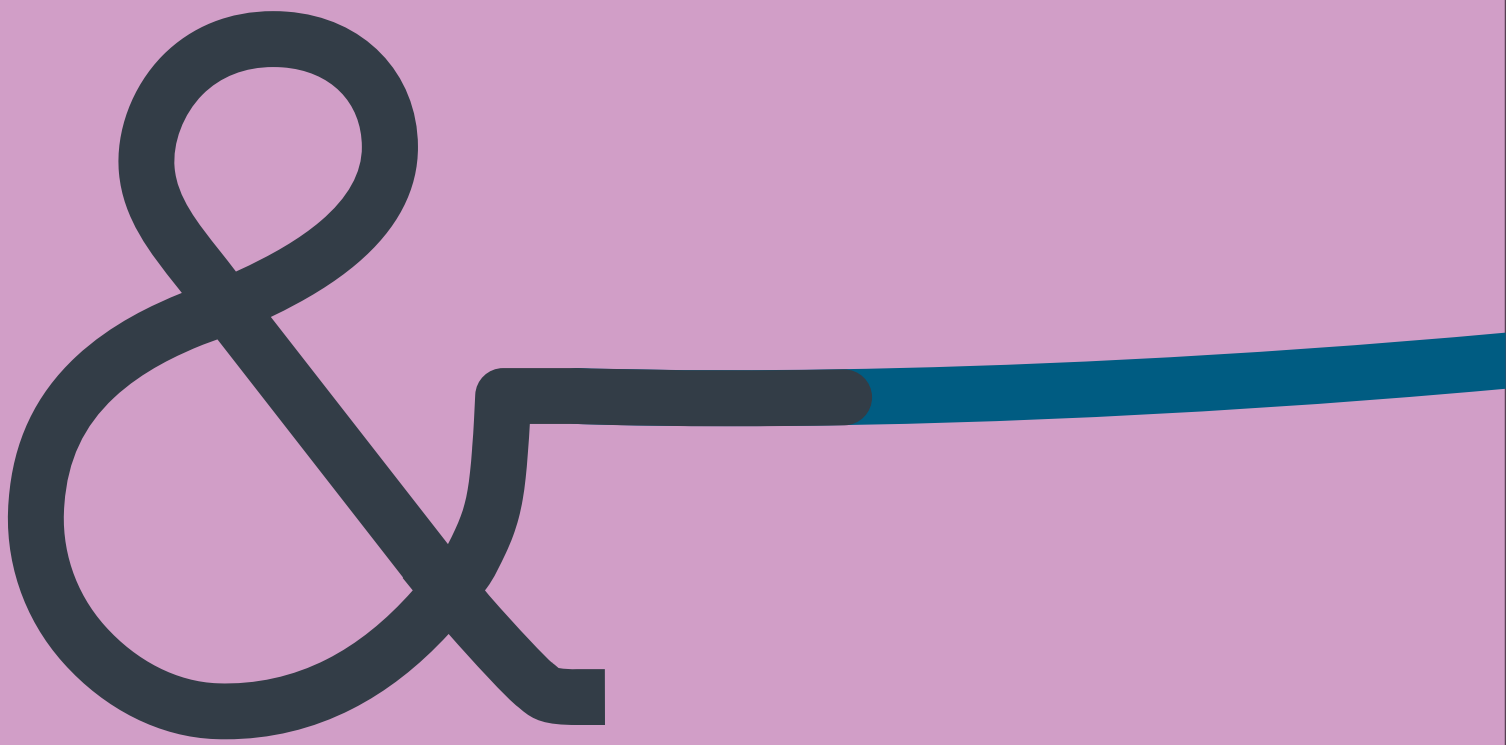


Introduction

Fitness and wellness options in Singapore have burgeoned thanks in large part to the growing awareness of the manifold benefits of exercise and training, and the carryover from the focus on self-care during the COVID-19 pandemic.

Fitness and wellness are no longer the domain of a privileged few but a mainstream need. There are diverse offerings from the many global fitness and wellness brands with an established presence or making their first forays into Singapore, to the numerous boutique gyms springing up across the island offering no-frills 24-hour availability or unusual sporting or wellness activities.

We set out in this article some preliminary information that may be of use to aspiring gym-owners before launching their businesses.

1. Property and Leasing

The gym premises and facilities themselves usually represent the single largest operating expense of running a gym. The location of the gym is critical in getting foot traffic and the right sort of clientele. The level of fit-out required (showers, studios, lighting, stretching zones) is also a key consideration.

Like most businesses in Singapore, gyms are usually situated in rented property that is not owned by the gym operator, and this gives rise to a slew of risks and liabilities. The lease terms may sometimes lead to major unbudgeted expenses and very often lack security of tenure.

The rent may comprise a base rent and variable service charge. In general, the variable portion can be increased at the landlord's discretion. For example, when the landlord needs to incur capital expenditure on the premises or the entire building, this expenditure is factored into the service charge payable by the building's tenants. As gyms typically occupy larger floor areas, a sizeable proportion of such expenditure may well be allocated to the gym, which usually represents an unbudgeted mid-term expense.

The interplay between the retail offering of a gym and the retail concept of the building or mall in which the gym operates is also important to consider. Landlords of shopping malls in Singapore are particularly concerned about managing the mall to optimise revenues, and the operation and performance of the mall may be linked to the stock market in the form of a Real Estate Investment Trust, or REIT, for short. As such, a landlord might place constraints on whether gyms may have an in-house F&B or retail arm, especially if the landlord wishes to maintain a mix of various types of tenants. The landlord may, for example, want to ensure that a juice bar within the mall would not lose revenue due to the opening of a juice bar within the gym, as this could in turn affect the potential rental returns. These constraints are usually reflected in the designated or permitted use of the premises contained in the lease agreement, which should be carefully reviewed prior to entering the lease.

The gym is usually also typically required to pay for any increase in property tax under the lease agreement. Increases in property tax can be triggered by an increase in the annual value (tax authorities' notional estimate of how much rental income the premises can yield) or an increase in the property tax rate (beyond the landlord or the gym's control). This is another area of financial risk which may lead to unbudgeted expenditure.

Perhaps the biggest risk to the gym is the fairly common but onerous "redevelopment right" of the landlord. Almost all commercial landlords reserve a right to "redevelop, renovate, retrofit, refurbish or alter" all or part of the building as long as access to and from the gym is maintained. However, such access routes may be unwelcoming or inconvenient to gym goers, and the noise and disruption of a major renovation and boarded up common areas may also inhibit foot traffic, obstruct street visibility and discourage gym attendance. Collectively, these factors could lead to a significant decline in gym sign-ups and existing gym memberships.

Landlords typically also reserve a right to terminate the gym's lease without compensation with simple advance notice if the building is to be redeveloped. Under the Code of Conduct for Leasing of Retail Premises released by the Fair Tenancy Industry Committee, which landlords of retail leases must comply with, a minimum of 6 months' prior written notice must be given to the tenant before the landlord can exercise such a right. Nonetheless, this is still the most critical clause which every gym operator is advised to scrutinise closely and to negotiate in detail – either for compensation, an even longer notice period, or possibly to secure relocation rights to other premises owned by the landlord.

There are also options for boutique offerings at shophouses or industrial estates. These are often more spartan, no-frills, and sport- or activity-specific, attracting a dedicated clientele or specific sector as their locations are usually less accessible. Such properties are often attractive for being less expensive, with lease terms that are often less onerous. For certain such properties, the gym operator can also be landlord.

Finally, an option for a further term is a valuable right in good commercial properties which are near well-connected transport routes, prime housing, and retail or office precincts. A gym operator should be careful to ensure that the renewal should be on ascertainable and objective terms (e.g. renewal rent amount payable can be pegged to the then prevailing market rent, and not on rent and terms to be "mutually agreed", in which case the landlord could insist on a renewal rent amount that is much higher than is reasonable). In a landlord's market, there is a risk that the landlord may simply refuse to "agree" on the terms of the renewal so that it could price the tenant out. The sunk costs of a gym (such as for special flooring or other fittings) are irrecoverable if the gym has to vacate the premises.

2. Intellectual Property

Fitness Franchises

With the growing trend of proprietary workout routines, the franchising of a gym is becoming increasingly popular in Singapore. A franchise is essentially a contractual licence whereby, in exchange for royalties and fees, the franchisor grants the operator the right to use the intellectual property and know-how, such as trademarks, logos, systems and processes of the franchisor's business, under certain restrictions. The franchisor may further assist the operator in other aspects of the gym's operations, such as management, marketing or personnel, given that the franchisor has a vested interest in the success of the gym.

The recognition that comes with a well-known brand name, often with celebrity tie-ups or a fashion line, is highly alluring. Clients are assured of the same “look and feel” and the standard that they are familiar with whenever they walk into a franchised gym. A gym typically enjoys charging a premium on its fees when it buys a franchise for the premises.

The acquisition of a fitness franchise may, however, turn out to be an Achilles heel if it does not yield sensible profits and, instead, burns through cash. Some of these potential pitfalls can nonetheless be avoided with a bit of care.

Firstly, the charging methodology for the royalty payments must be carefully negotiated. A typical franchisor, which has developed and refined specific methods and techniques that are used for various types of exercises or fitness regimens, will typically demand:

- a non-refundable master franchise fee which is akin to a sign-on fee;
- franchise fees for each gym or studio run by the operator;
- recurring licence fees which are usually payable monthly for each gym or studio;
- renewal fees at the end of each term of the franchise agreement;
- a percentage cut of the gym's revenue derived from goods sold from select vendors; and
- recurring technology fees which are payable for software, mobile applications and tech upgrades provided by the franchisor.

The gym operator must ensure that its revenue comfortably, consistently outpaces its franchise fees. Fee caps, fees pegged to realistic revenues, or fees on a sliding scale can always be negotiated at the beginning to keep a lid on the franchise cost.

Apart from the mandatory start-up costs on branding and training, which could be hefty, the franchisor may also insist that the gym operator spends an agreed percentage of its revenue on marketing and advertising, which further adds to the financial burden. If possible, this expenditure should be pegged to net revenue and not gross revenue.

The gym operator must ensure that the franchise comes with all the requisite support and upgrades so that the gym operator is not just paying for the use of a recognisable name. For instance, the franchise would typically cover the training system which includes the methods, techniques and equipment. However, it should also cover standards and specifications as well as all improvements, supplements, resources, new developments and modifications from time to time.

Finally, the right of termination by the gym operator should also be scrutinised. A franchise confers brand recognition, and one bad egg or another poorly run franchise may well drag down the gym's reputation. Hence, the gym operator should try to seek a right to terminate if the brand no longer attracts or retains clients, or at least seek fee waivers or relief in such circumstances.

There are no statutory laws in Singapore relating to franchising agreements or franchise registration requirements, and the legal obligations are generally found in the franchising agreement between the parties or a franchise operations manual (if provided). Operators who wish to invest in a fitness franchise should conduct proper due diligence on the franchise, which not only includes the abovementioned considerations but also other factors such as the franchisor's business experience, whether it is subject to litigation (threatened or actual) and its financial position. Further, the operator should also scrutinise the franchising agreement to clearly ascertain the scope of the franchised business and any restrictions thereto – for example, the type and quantum of fees payable, scope of intellectual property rights licenced and any other prohibitions imposed on the gym.

Music Licencing

Music played in the gym may be subject to copyright. Gym operators are legally obliged to pay for copyrighted songs which they play in the gym. Copyrights exist to protect the original expression of ideas, and are owned by content creators or music production companies which then sell or licence such rights to others. If a gym infringes on a copyright by failing to obtain permission or a licence to use or play such copyrighted material, legal action may be taken against the gym.

Trademark Protection

Trademarks are a fitness brand's words, slogans and/or designs that assist clients in identifying that brand. A strong choice of trademark separates a brand from others and should be memorable and distinct from other gyms or businesses. A trademark should not be too similar to trademarks used by others so as to avoid a trademark infringement claim. If a strong trademark is adopted, third parties will be prohibited from using a trademark that is similar, which can help to preserve the value of a fitness brand. Without a trademark, the brand loses key protection from similarly designed brands, thus potentially reducing the value of the brand which operators may have worked hard to generate.

Trademarks are governed by the Trade Marks Act 1998. The Intellectual Property Office of Singapore controls the registration process of trademarks. Before registration, one should always seek proper advice on the chosen trademark to avoid trademark infringement claims which could lead to wasted time and resources for rebranding or defending such claims.

3. *Trading Name vs. Business Name*

Particularly for gyms operating on a franchise model where the name being used is the name of the franchise itself, the question is then how does this gel with the registered business name of the corporate entity running the gym?

Under Singapore law, there is no issue for companies to use another customer-facing name (such as the name of the gym franchise) in promoting its business. Such names are usually known as “trading names” and do not need to be the same as the registered business name.

That said, there are certain statutory requirements that companies should note when trading names are used, given that companies must still ensure that they are carrying out business activities under their registered business names.

For instance, the Business Names Registration Regulations 2015 (“**BNRA**”) mandates that all invoices and official correspondence used for the company’s business must still bear the registered business name and registration number. The Companies Act 1967 echoes this, providing that the company’s name and registration number must appear in legible romanised letters on all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, indorsements, cheques, orders, receipts, and letters of credit of or purporting to be issued or signed by or on behalf of the company.

The BNRA further requires companies to furnish evidence that they are carrying on business under their registered business names. Examples include proof that the business name is displayed in the company’s premises and evidence that may allow one to infer that the business name has reference to the business being carried on at the premises (publishing your registered business name on your invoices and official correspondence will likely suffice for such purposes).

In relation to employees, there are generally no explicit requirements under Singapore law for employees to identify the legal entity they work for. Employees may carry name cards that only state the trading name of the company. However, if the registered business name is reflected on their name cards, this may further buttress the position that the business is being carried on under the business name.

The company’s registered business name should also be reflected in the employee’s employment agreement given that the employer’s full name is classified as a Key Employment Term pursuant to the Employment Act 1968 and the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016.

4. *Advertising and Marketing*

When operating a gym, it is advisable to be careful and prudent when making claims regarding fitness transformations or results to clients in all marketing and advertising material, and particularly on social media platforms.

Fair Trading Regulations

Gym operators should take heed of the Consumer Protection (Fair Trading) Act 2003, which protects consumers from "unfair practices" of businesses. "Unfair practices" are broadly defined to include:

- making misleading or deceptive claims;
- omitting to provide information to the consumer with has the effect of misleading or deceiving the consumer;
- making false claims; or
- taking advantage of a consumer who is not in a position to protect his own interest or reasonably able to understand the character, nature, language or effect of a transaction.

Clients who encounter unfair practices may sue the business for damages or seek a court order to invalidate the transaction. In this way, unfair practices could increase the risk of disputes and losses to gyms, especially if inaccurate or unfounded claims are made through its marketing and advertising.

Courts in Singapore also have the power to make a declaration that a business is engaged in unfair practices and may restrain the business from engaging in such practices in the future.

Advertising Claims

Traditional and new media advertisements are also regulated by the Advertising Standards Authority of Singapore ("**ASAS**"), which is an advisory council to the Consumers Association of Singapore ("**CASE**"). The ASAS is the self-regulatory body of ethical advertising in Singapore, which administers the Singapore Code of Advertising Practices ("**SCAP**").

The SCAP requires that advertisements should be honest and truthful. Advertisements making factual assertions, for instance claims such as "10% fat-loss", need to cite their source, which may be a market study or other controlled data collection programme, to back-up such claims.

Any member of the public who feels misled by a particular advertisement may lodge a complaint to ASAS. ASAS may then investigate and review the advertisement. If ASAS considers the advertisement to be misleading, there are no legal sanctions, though publishers, such as newspapers, will likely refrain from selling advertising space to the infringing organisation.

ASAS also practises a "name and shame" policy, whereby misleading advertisements and the infringing organisation's name are made public, causing infringing organisations to also suffer from bad publicity.

As such, failure to comply with the SCAP does not give rise to legal liability but may result in two adverse consequences, namely, that (1) the gym operator may find it difficult to purchase advertising space from publications in the future; and (2) the gym may suffer from bad publicity.

Social Media Campaigns

Social media is typically an important marketing channel for gyms and fitness products.

In Singapore, ASAS also regulates social media marketing through the Guidelines for Interactive Marketing Communication and Social Media ("**Social Media Guidelines**").

The Social Media Guidelines apply to online personalities using social media platforms like Instagram, TikTok, etc. It also applies broadly to any campaigns or marketing that promotes any interest, whether in return for money, products or services, as long as it is done for a commercial purpose.

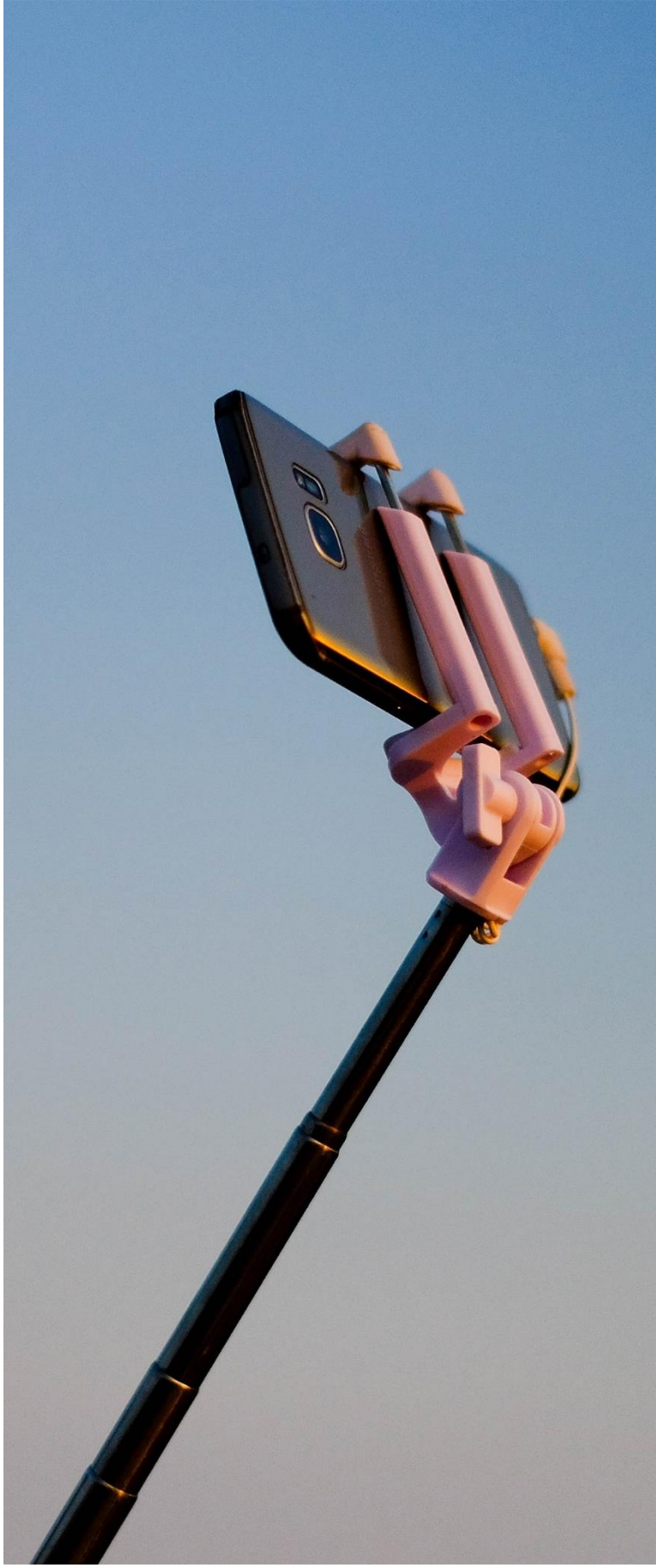
The concern is that the public would be misled by paid posts on social media praising or promoting a product as if it were a personal review, when it is actually a sponsored or paid post. It is important to bear in mind that payment here includes non-monetary benefits.

The foremost principle of the Social Media Guidelines is that all marketing communication must be identified as such and distinguished from editorial or personal opinions. Marketing communications should be clearly distinguishable from personal opinions and should not be made to appear like one.

Social media content may reflect the genuine feeling of the originator for a product or service. However, if the content originator has a commercial relationship with the marketer in question, such a relationship should be indicated in the content. Marketers must not pass themselves off as consumers when expressing an opinion about their own product or service or encourage others to do so.

Disclaimers in marketing communications should be simple and straightforward and placed near the relevant marketing claim.

Finally, care should be exercised in ensuring that software or other technical applications are not used to conceal, mislead or obscure any material factor that is likely to influence consumer decisions.



5. Permits, Licences and Insurance

There are no specific licences or permits required for the operation of a gym or fitness studio. However, given the increasingly competitive fitness and wellness landscape, it is not uncommon now to find gyms with in-house juice bars or other F&B and retail elements.

Gyms which offer or intend to offer such perks should be aware of certain considerations prior to doing so.

Planning Restrictions

Planning restrictions relate to the restrictions on certain business uses in specific areas of Singapore under the Urban Redevelopment Authority ("**URA**"). Gym operators may need to apply for planning permission before going ahead with operating a gym. Some designated areas and locations have requirements for activity generating uses (AGU). This is to enliven certain streets by adding vibrancy to said streets to attract greater visitorship.

For shophouse property, a search on the URA website can be performed to determine the allowable use of a particular shophouse. For State Property on Interim Tenancy and HDB Commercial Premises, no planning permission is required but gym operators have to be cognisant of authorisation conditions by the Singapore Land Authority and Housing Development Board respectively. For commercial buildings, URA has listed some buildings that can be granted instant approval; otherwise, a change of use application must be submitted for URA's evaluation. In the latter case, a planning permission is not guaranteed.

Generally, gyms are barred from operating in residential and industrial units. For other residential property types, the URA website offers detailed directions on whether a gym may operate in that particular property.

F&B Licensing

The Singapore Food Agency ("**SFA**") is a statutory board formed under the Ministry of Sustainability and the Environment, and is the main regulator of all food-related matters such as food safety and security in Singapore.

If the operator intends to set up an in-house F&B establishment for making or preparing food and drink, such as fruits, salads or protein shakes, a licence for the F&B premises must be obtained and all staff handling the food and drink (e.g. chefs, cooks, kitchen helpers) are required to be trained and registered with the SFA.

Additionally, if freshly prepared beverages are sold onsite, these beverages must comply with the Nutri-Grade labelling requirements and advertising prohibitions. The gym operator will need to indicate a grade ("A", "B", "C", "D") according to a Nutri-Grade grading system which is based on the beverages' sugar and saturated fat content ("**Nutri-Grade Mark**"). If the beverage is graded "C" or "D", the Nutri-Grade Mark must be labelled next to the beverages listed for sale. These requirements may have a commercial impact on sales insofar as health-conscious gym-goers might consider beverages graded "C" and "D" unhealthy, so gym operators would be incentivised to sell healthier drinks.

It is also important to note that if the gym intends to have a food vending machine on its premises, such vending machines with either (i) a temperature control requirement (e.g. food or beverage that needs to be stored in chilled temperature such as cut fruits, milk, yoghurt or juice) or (ii) food processing within the vending machine, must be licenced in order to operate.

In addition to administering licences for F&B premises, the SFA will regularly inspect the premises for hygiene, cleanliness, and food safety standards. It will also issue grades for meeting the standards, and failure to meet the standards or rectifying deficiencies can result in fines as well as revocation of the licence.

Business Insurance

As a matter of prudence and to avoid unnecessary costs and expenses in the event things go awry, gym operators should consider purchasing insurance for their businesses.

Although there are different types of insurance in the market, some key insurance policies that gym operators should consider purchasing are property insurance, public liability insurance, and employee insurance.

a. Property Insurance

Generally, property insurance covers loss or damage to property. Property refers to buildings, machinery, inventory, stocks and everything an organisation owns. A common type of property insurance is *material damage insurance*, which involves protection of the property from incidents, such as fire, explosion, water damage, natural disasters, malicious damage, and burglary.

Another type of insurance that is commonly added to a property insurance policy is *business interruption insurance*, which is useful for protecting a business should it suffer downtime due to an insured event such as a fire or flood.

Material damage insurance can also be important to an operator setting up certain types of exercise facilities, particularly those which require relatively significant investment in fitness equipment, such as spin studios or luxury gyms. In the event of unforeseen circumstances resulting in damage or loss to expensive gym fixtures or fittings, at least a certain amount of investment may be recovered. Licenced insurance providers can be consulted to recommend suitable insurance to cover the business.

b. Public Liability Insurance

Gym operators may be responsible for accidental injuries to gym users or other third parties in their premises. Although safety measures are often put in place and rigorously enforced, accidents may still occur, which could lead to unexpected liability and reputational damage. Public liability insurance coverage for a gym is always essential, as it typically covers the legal expenses and compensation, if any.

Waivers and indemnities signed by customers of the gym may help to reduce the company's legal liability to some extent. However, such waivers and indemnity forms are not fool proof because an organisation cannot exclude or restrict its liability for death or personal injury resulting from negligence regardless of whether the customer has consented to it (Section 2(1) of the Unfair Contract Terms Act 1977). Any such limitation of liability will be void, and public liability insurance should be obtained to cover such risks.

c. Employee Insurance

Employee insurance is vital in protecting the gym operator and its employees.

Work injury compensation insurance provides protection for an organisation when its employees submit claims for injuries or diseases suffered during the course of their work. Section 3 of the Work Injury Compensation Act 2019 ("**WICA**") stipulates that an employer is liable to pay an employee, regardless of salary level (and with some exceptions), if that employee suffers a personal injury by accident arising out of and in the course of his/her employment. Section 23 of the WICA (read with the Work Injury Compensation (Insurance) Regulations 2020) further states that all employers are required to purchase such insurance for:

- all employees doing manual work, regardless of salary level; and
- all employees doing non-manual work, earning S$2,600 or less a month, excluding any overtime payment, bonus payment, annual wage supplement, productivity incentive payment and any allowance.

As a prudent measure, gym operators may wish to insure all of its employees to avoid incurring potential liability down the road from claims made by employees without mandatory insurance under WICA.

Other types of employee insurance include group personal accident insurance and group healthcare insurance. Group personal accident insurance provides a lump sum benefit to groups of people upon the occurrence of insured events. Group healthcare insurance insures groups of people on healthcare related costs, such as hospital related services or emergency medical assistance and evacuation services. According to the Employment of Foreign Manpower (Work Passes) Regulations 2012, employers are required to purchase and maintain minimum medical insurance coverage of (i) (for policies with start date effective before 1 July 2023) S$15,000 per year and (ii) (for policies with start date effective on or after 1 July 2023) S$60,000 per year, for each foreign employee holding a work permit or S Pass for in-patient care and day surgery.

Generally, most companies purchase group health insurance policies for their employees as an employment perk and to enhance employee productivity. Operators of a gym business may wish to consider doing the same.

6. Employment

A gym requires employees to run the training sessions and to maintain the premises. Although the relationship between employer and employee is largely regulated by contract, it is important to note that statutory requirements found under the Employment Act 1968 ("**EA**"), which is Singapore's main labour law, will also apply. Operators should therefore ensure that its employment contracts and practices, as well as employee handbooks, are compliant with the EA. In addition to the EA, there are a number of non-statutory employment standards, guidelines and advisories on various elements of the employment relationship that employers should take heed of.

The EA applies to every employee under a contract of service with an employer, other than certain specified classes of workers or employees. Specifically, Part 4 of the EA, which deals with issues such as rest days, working hours, and other conditions of service, applies only to:

- workmen (blue-collar workers involved in manual labour) earning a basic monthly salary of not more than S$4,500; and
- non-workmen earning a basic monthly salary of not more than S$2,600,

but does not cover managers or executives.

Employers are also obliged to take reasonable precautions to ensure workplace safety and health. Failing which, employees may be entitled to claim statutory compensation for injuries suffered out of or in the course of employment.

Where applicable, employers are also obliged to make contributions to the employee's Central Provident Fund, which is a mandatory social security savings scheme.

Part-time staff

Gym operators may hire part-time employees for more worker flexibility and lower employment costs. A part-time employee is one who is under a contract of service to work less than 35 hours a week. Such employees are also covered under the EA. A contract of service for part-timers must specify the following:

- hourly basic rate of pay;
- hourly gross rate of pay;
- number of working hours per day or per week; and
- number of working days per week or per month.

Trainers

Gym trainers hired to work at the gym may be employees of the gym or independent contractors. The importance of knowing this difference is that the contract which governs the relationship between parties carries different rights, duties and obligations.

An employer-employee relationship is governed under a contract **of** service whereby an employer is obliged to provide work for an employee, and the employee is obliged to complete the work. This contract of service is subject to EA compliance.

In contrast, the gym operator may enter into a contract **for** service with the independent contractor. Under a contract for service, the organisation does not owe the same obligations to the independent contractor that an employer would owe an employee under the EA. A contract for service would also typically include certain terms and conditions that are not usually found in an employment contract. For example, a contract for service may contain an indemnity clause, which allocates greater legal risk to the independent contractor in the event of loss suffered by the organisation if specific circumstances were to occur.

Some other examples of obligations owed by organisations to its employees but not to independent contractors include:

- CPF contributions;
- Minimum number of paid leave;
- Minimum number of paid medical leave;
- Notice period for termination; or
- Overtime payment.

It is crucial to note that even if a contract expressly states that it is a contract for service and not an employment contract (in a bid to escape certain mandatory obligations by the employer), the Singapore courts may still treat the relationship as an employer-employee relationship. The substantive content of the relationship will be considered in its totality in determining the type of relationship that exists.

7. Technology and Data Protection

No matter the size of the gym, all operators must be mindful of the personal data that they collect from users. *Personal data* refers to data, whether true or not, about an individual who can be identified (i) from that data or (ii) from that data and other information to which the organisation has or is likely to have access. Personal data is protected under the Personal Data Protection Act 2012 ("**PDPA**").

Sources of data collection, use, and disclosure can vary significantly, depending on the operator's set-up. At the minimum, an operator would have to manage member registrations, fee collections, check-ins, and manage and administer payment of employees and trainers. As the operator's set-up becomes more sophisticated, there will usually be an increase in the potential points of data collection, use, and disclosure, and undoubtedly some level of technology to help manage or even cause this increase. This can come in the form of access control (through access cards, apps or biometrics) membership and class booking apps, membership benefits at external vendors (increasingly via one app or another), participation in subscription and membership marketplaces, and increasingly connected fitness equipment that can sync with members' personal fitness trackers, devices and apps.

Operators should be aware that they are likely to remain the primary point of contact and potential liability in relation to members especially if third party solutions providers are "data intermediaries" subject only to a subset of the data protection obligations under the PDPA. The efficiency and insights that technology can bring to the management of the gym, and the increased level of engagement for members must be balanced against proper understanding and management of the data being shared by and among the various parties lest operators find themselves in the midst of a data breach or controversy for having inadvertently disclosed personal data to a less scrupulous third party.

In dealing with personal data, there are general obligations which should be strictly adhered to:

- Accountability Obligation
- Consent Obligation
- Purpose Limitation Obligation
- Notification Obligation
- Access and Correction Obligation
- Accuracy Obligation
- Protection Obligation
- Retention Limitation Obligation
- Transfer Limitation Obligation
- Data Breach Notification Obligation
- *Data Portability Obligation (yet to come into effect)*

Accountability Obligation

Organisations are subject to an overarching obligation of accountability in relation to their personal data protection obligations.

The gym must ensure that its data protection policies, practices, and complaints process are available on request. This includes ensuring that the policies and practices are properly developed to address the specific circumstances and that these are implemented through regular trainings and reviews. Good practices include incorporating a data-protection-by-design approach to the gym's operations incorporating data protection principles throughout the personal data lifecycle from collection through use and destruction or anonymisation when the personal data is no longer needed for the purpose it was collected. This is particularly important when apps and online platforms are used for engagement, membership management, and session or class bookings.

The gym also remains accountable for any data collected from its clients or its employees. To this end, gyms have to appoint a data protection officer to ensure obligations under the PDPA are met, as well as to address any complaints or queries raised by a client or employee (contact details of the data protection officer must be made available to the public). The data protection officer should be sufficiently skilled and knowledgeable, as well as empowered to discharge their duties. It may be prudent to appoint a member of the gym's senior management team or someone with a direct reporting line to the senior management team to be the data protection officer to ensure effective development and implementation of data protection policies and practices. This is particularly important should there be any data protection incident or breach. The gym must have in place an appropriate incident response plan to address any incident or breach, especially if the breach involves sensitive information or is significant enough to be reportable to the Personal Data Protection Commission and affected individuals.

Consent Obligation

Consent must be obtained from individuals before the collection, using or disclosing of an individual's personal data unless certain exceptions apply. Gyms should assess their operations to determine if consent can be “deemed” or if it is for a “legitimate interest” that qualifies for an exception from the consent obligation. When consent has to be expressly obtained, gyms must inform individuals of the purposes for which their personal data will be collected, used, and disclosed. Gyms should document the assessment as part of their Accountability Obligation, and if a legitimate interest exception is relied upon, the legitimate interest and assessment must be documented.

Purpose Limitation Obligation

When a gym obtains personal data, the usage of such data is restricted by the Purpose Limitation Obligation, which limits the purposes and the extent to which the gym may collect, use, or disclose personal data. Use of the personal data must be reasonably related to the purposes conveyed to the individual and using such personal data beyond such purposes would be considered a violation of the PDPA.

Notification Obligation

To reiterate, it is important for a gym to explain to the individual why there is a need to collect his or her personal data, and how the gym will use and disclose his or her personal data, before collection. To this end, the gym must clearly identify the purposes for such personal data collection and ensure individuals are notified in writing of the usage of their personal data.

Access and Correction Obligations

These obligations relate to the right of an individual to request for access to his or her personal data and for correction of such data that is held by the gym. If an individual wishes to see or change his or her personal data, the gym must ensure such data is provided to the individual or is changed in an accurate manner.

If a gym uses a data intermediary (i.e. a third party organisation that processes personal data on behalf of the gym) to handle the keeping and usage of the data collected, the gym must ensure that the data intermediary abides by the PDPA and carefully contract with the latter to, where possible, minimise liability for any data breaches by the data intermediary.

Accuracy Obligation

This obligation simply requires the gym to make a reasonable effort to ensure that the information collected is accurate and complete.

Protection Obligation

Gyms have to make reasonable security arrangements to protect personal data in their possession. This is to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal, or similar risks. Generally, the gym should design and organise security arrangements that reduce the risk of data breaches. Gyms should also appoint a reliable data protection officer to oversee efforts to ensure security arrangements are effective. Data protection policies should be created and updated as and when required. Gyms should also have procedures to deal with data breach scenarios. The gym should also ensure that its employees are kept abreast of the data protection regulations and policies through the conducting of training sessions.

Retention Limitation Obligation

When a gym no longer needs to retain personal data from an individual, the gym must delete such data from its records in a secure manner. The gym should clearly state when and how it will delete the personal data when such data is no longer necessary for its business or legal purposes.

Transfer Limitation Obligation

Gyms are typically not required to transfer personal data outside Singapore. In the event that such data is to be lawfully transferred outside of Singapore, appropriate steps must be taken by the gym to ensure that the recipient is able to abide by the standards imposed by the PDPA.

Data Breach Notification Obligation

In the event of a data breach, gyms are required to notify the Personal Data Protection Commission and the affected individuals if the data breach is likely to result in significant harm or impact to the individuals or is of a “significant scale” (involving the personal data of 500 or more individuals). The notification must be made as soon as practicable with specified information such as the date and time of the breach, the cause and circumstances of the breach, the types and number of personal data affected, the number of individuals affected, the measures taken or proposed to address the breach, and the contact details of a person who can provide more information. Even if a breach is not notifiable, gyms are required to maintain records of all incidents.

8. Record Keeping and Documentation

A company operating a gym must adhere to the various legal requirements for record keeping and documentation, including those provided under Section 199 of the Companies Act 1967. The company should maintain accounting and other records that will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements and any documents required to be prepared from time to time. Such records should be kept for at least 5 years from the end of the financial year in which the transactions or operations related to the records are completed. These records should be kept in a manner that enables them to be conveniently and properly audited as well as kept at the registered office of the company (or such other place as the directors think fit). The records should also always be available for the directors' inspection.

Good record keeping practices are important not only to avoid legal liabilities, but also important in situations where a gym changes ownership or investors. The business records can then be handed over neatly to the new owners, so as to minimize any disruption to the customers. In establishing a sound record keeping system, gyms should consider the following factors:

- volume of records;
- security of records;
- ease of access to records;
- number of persons authorised to access records;
- feasibility of digitalising records; and
- systemic and human controls in relation to the management of records.

Conclusion

The global rise in the wellness trend tied with the Singapore Government's push to promote an active population has made the fitness industry a lucrative market over the years.

There is a myriad of legal considerations involved, which should necessarily come to the fore when considering how to start up or structure a gym.

With an understanding of the key laws in this area, Bird & Bird is well placed to assist business interested in starting up a gym in Singapore and provide ongoing legal support to navigate the changing regulatory regime.

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