

PUBLIC CONSULTATION ON THE INTRODUCTION OF AN INWARD RE-DOMICILIATION REGIME IN SINGAPORE – COMPANIES (AMENDMENT) BILL 2017

Posted on December 1, 2016



Category: [CNPupdates](#)

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Date Published: 1 December 2016

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Introduction

On 26 October 2016, the Ministry of Finance (“**MOF**”) and the Accounting and Corporate Regulatory Authority of Singapore (“**ACRA**”) jointly invited the public to provide feedback on proposals to amend the Companies Act (the “**Act**”) and introduce an inward re-domiciliation regime in Singapore. The public had up to 16 November 2016 to provide their feedback on these proposed amendments.

The aim of these amendments is to ensure that Singapore’s corporate regulatory regime remains robust and internationally competitive. The proposed amendments are part of a larger Companies (Amendment) Bill. MOF and ACRA will conduct further consultations on the other proposed amendments to the Act later in the year.

MOF and ACRA will also consider whether to introduce an outward re-domiciliation regime in the future.

Proposed inward re-domiciliation regime

Re-domiciliation is a process in which a corporation transfers its registration from its home jurisdiction to another jurisdiction. A corporation may choose to do so for various regulatory, strategic or organizational reasons while keeping its identity and history in the various jurisdictions it has a presence in and minimising operational disruptions. Currently, jurisdictions such as Australia, Canada and New Zealand also have re-domiciliation regimes.

By introducing an inward re-domiciliation regime in Singapore, foreign corporations can transfer their registration here. It is envisaged that this would facilitate relocation by foreign corporations of their regional or worldwide headquarters to Singapore. Under such a regime, an inbound corporation which is redomiciled to Singapore will become a Singapore company and accordingly be required to comply with the requirements of the Act like any other company in Singapore.

Summary of the proposed amendments and the feedback sought to introduce an inward redomiciliation regime

A summary of the proposed amendments and the feedback sought by MOF and ACRA are as follows:

Definition of “foreign entity”

A “foreign entity” is defined as “a body corporate that is incorporated outside Singapore”.

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Requirements for transfer of registration

Under the proposed amendments, the proposed requirements for re-domiciliation include:

- the foreign entity must be of a certain minimum size;
- all relevant laws of the original jurisdiction permit re-domiciliation and have been complied with;
- application for re-domiciliation is not intended to defraud existing creditors;
- the foreign entity must provide a solvency statement; and
- the foreign entity must not
 - be in judicial management or liquidation,
 - entered into a scheme of arrangement or compromise, or
 - be externally administered.

MOF and ACRA are also seeking comments on whether it is appropriate to require that the foreign entities seeking to re-domicile to Singapore meet the small company and small group criteria under the Thirteenth Schedule of the Act.

Application for registration

The proposed amendments require certain information of a foreign entity to be lodged with the Registrar. Feedback is sought on whether it is important to identify certain subscribers to the constitution to be registered, who these persons should be, and whether the proposed requirement that their identities be verified is appropriate.

Registration process

With regards to the registration process, feedback is sought on whether it is appropriate for the Registrar to retain the discretion to decide whether or not to register the foreign entity if the application for the re-domiciliation is in order, or whether to register the foreign entity subject to conditions. Furthermore, MOF and ARCA are seeking comments on whether it is appropriate for a newly registered company to be struck off if there is a breach of any conditions of registration that may have been imposed by the Registrar.

Effect of registration

Once registered, the foreign entity would be subjected to all requirements of the Act. The effects of registration are also clarified. MOF and ACRA are seeking comments on whether to grant these companies a three-month grace period to comply with section 144 of the Act (i.e. publication of the name and registration number) and whether any other effects of redomiciliation should be included.

Duty of company to register pre-existing charges

Upon re-domiciliation, the proposed amendments require the re-domiciled company to register all pre-

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existing charges (if any), according to the registration regime under Division 8 of Part IV of the Act.

Duties of a company with respect to the issue of certificates

The proposed amendments also require the redomiciled company to issue certificates to all shareholders and/or debenture holders as at the date of the notice of transfer of registration. Feedback is sought on whether it is appropriate that share warrants issued before the date of transfer be rendered void since section 66 of the Act provides that Singapore companies shall not issue any share warrant stating that the bearer of the warrant is entitled to the shares therein specified and which enables the shares to be transferred by the delivery of the warrant.

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