ENHANCING TRANSPARENCY, FACILITATING BUSINESS AND POSITIONING FOR GROWTH

COMPANIES (AMENDMENT) BILL 2017 AND LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) BILL 2017

A note from Indranee Rajah S.C., Senior Minister of State for Law and Finance

On 10 March 2017, Parliament passed the Companies (Amendment) Bill and Limited Liability Partnerships (Amendment) Bill. My second reading speeches are available www.mof.gov.sg/Newsroom/Speeches and the two Bills can be accessed www.parliament.gov.sg/publications/bills-introduced:

The Companies Act amendments are aimed at:

- making ownership and control of business entities more transparent;
- introducing an inward re-domiciliation regime for foreign corporate entities;
- reducing regulatory burden and improving the ease of doing business; and
- enhancing Singapore's debt restructuring and corporate rescue framework.

GREATER TRANSPARENCY OF OWNERSHIP AND CONTROL

With money laundering, terrorist financing and tax evasion being of global concern, knowing who the ultimate controllers of business entities are is gaining international importance.

To that end, we will now require three new registers to be kept by business entities:

- *Registers of Controllers (non-public)* – Singapore incorporated companies and foreign companies registered in Singapore must maintain a register of their controllers. This register is not a public register. However, it must be made available to the Registrar and public agencies administering or enforcing any written law (including law enforcement agencies) upon request. The Minister is empowered to direct the Registrar to maintain a central register should it become necessary to do so. A "controller" is an individual or a legal entity that has significant interest in or significant control over an entity. What constitutes significant control and significant interest is spelt out in the Bills (see **Annex**).

- *Registers of members of foreign companies (public)* – Foreign companies registered in Singapore must now maintain a public register of their members. This brings them in alignment with Singapore incorporated companies.
- *Registers of nominee directors (non-public)* – Singapore incorporated companies must now maintain a non-public register of their nominee directors. Likewise, these registers must be made available to the Registrar and public agencies administering or enforcing any written law (including law enforcement agencies) upon request.

These changes will make the ownership and control of business entities more transparent, and reduce opportunities for misuse of corporate entities for illicit purposes. It brings us in line with international standards in combating money laundering and terrorist financing, and facilitating tax transparency.

The period for which records must be kept has been extended from two years to at least five years for the following:

- Liquidators of wound up companies and LLPs;
- Companies and LLPs that are wound up by their members, partners or creditors; and
- Companies and LLPs that are struck off and dissolved.

The five-year period is in line with standards set by the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes (GF). This means past records will be available for a longer period for the purposes of investigation.

The amendments in the LLP (Amendment) Bill mirror those in the Companies (Amendment) Bill. Under the LLP (Amendment) Bill:

- LLPs will likewise be required to maintain registers of their controllers.
- The Minister is empowered to direct the Registrar to maintain a central register should it become necessary to do so.
- The time for record keeping is extended from two years to at least five years.

INWARD RE-DOMICILIATION

We have introduced a framework to allow foreign corporate entities to transfer their registration (i.e. to re-domicile) to Singapore.

Companies re-domicile for various business reasons (e.g. for a more conducive regulatory environment, or to be closer to their main operational base or markets). Re-domiciliation allows them to do so while at the same time retaining their corporate identity and history.

A foreign corporate entity which re-domiciles to Singapore becomes a Singapore company. Once re-domiciled, it is subject to and must comply with the Companies Act like any other Singapore company.

REDUCING COMPLIANCE COSTS AND ADMINISTRATION

We have streamlined some processes to reduce compliance costs and make administration easier.

Private companies now need not hold annual general meetings (AGMs) if they send their financial statements to members within five months of the financial year end (FYE).

However, there are safeguards. Private companies must still hold:

- an AGM if any shareholder requests for it not later than 14 days before the end of the 6th month after FYE; or
- a general meeting to lay financial statements if any shareholder or auditor requests for it not later than 14 days after the financial statements are sent out.

Requirements on holding AGMs and filing annual returns have been simplified and deadlines are now tied to companies' FYE:

Type	Hold AGM	File annual return
Listed company	Within 4 months after FYE	Within 6 months after FYE (if it has share capital and keeps a branch register outside Singapore) Within 5 months after FYE (for any other company)
Any other company	Within 6 months after FYE	Within 8 months after FYE (if it has share capital and keeps a branch register outside Singapore) Within 7 months after FYE (for any other company)

Likewise, there are corresponding safeguards:

- Companies must notify the Registrar of their FYE upon incorporation and of any subsequent change;

- Unless otherwise approved by the Registrar, the duration of a company's financial year must not be more than 18 months in the year of incorporation; and
- Companies must apply to the Registrar for approval to change their FYE if:
  - the change in FYE results in a financial year longer than 18 months; or
  - the FYE was changed within the last 5 years.

The use of the common seal is now no longer mandatory but optional. Companies and LLPs have the option not to use common seals for execution of documents such as deeds and for certain documents such as share certificates. This can now be done via signature by authorised persons.

Authorised persons for companies	Authorised persons for LLPs
- A director and the secretary of a company;	- Two partners of an LLP; or
- Two directors of a company; or	- A partner of an LLP in the presence of a witness who attests the signature.
- A director of a company in the presence of a witness who attests the signature	

ENHANCING DEBT RESTRUCTURING AND CORPORATE RESCUE

The fourth set of amendments are to enhance Singapore as an international debt restructuring centre and facilitate corporate rescues. These were outlined in detail in my previous note which can be read www.mlaw.gov.sg.

In summary, these include legislative provisions for:

- Worldwide moratoriums to be issued by our courts;
- Super priority for rescue financing;
- Cram-down provisions against a dissenting class of creditors;
- Pre-packs;
- Relaxation of criteria for making of a judicial management order from the current "will be unable to pay its debts" to "is likely to become unable to pay its debts";
- Factors to be considered by the court in determining whether a foreign company has "substantial connection to Singapore" for the purposes of winding up, judicial management and schemes of arrangement;
- Adoption of the UNCITRAL Model Law on Cross-Border Insolvency (1997); and
- Abolition of the rule requiring liquidation of foreign companies to "ring fence" Singapore assets and pay off debts incurred in Singapore first (Note: "Ring fencing" for certain specific financial entities like banks and insurance companies will still be retained).

IMPLEMENTATION

The amendments relating to the transparency of ownership and control of business entities and LLPs, and the common seal are effective from 31 March 2017.

The effective date(s) of the amendments relating to inward re-domiciliation, AGMs, annual returns, debt restructuring and corporate rescue will be announced in due course.

More information on the implementation of these amendments can be found at www.acra.gov.sg/CA_2017.

CONCLUSION

These amendments are part of the continuous effort to keep Singapore business friendly and competitive, and properly positioned to pursue growth areas; and at the same time maintaining integrity as an international financial centre and keeping in line with international norms.

– Indranee Rajah S.C., Senior Minister of State for Law and Finance
21 March 2017

Companies

For companies, these definitions of "significant control" and "significant interest" are in the new Sixteenth Schedule of the Companies Act:

Significant Control

- An individual or a legal entity has "significant control" over a company or foreign company if the individual or legal entity:
  a) holds the right, directly or indirectly, to appoint or remove the directors or equivalent persons of the company or foreign company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters;
  b) holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the members or equivalent persons of the company or foreign company; or
  c) has the right to exercise, or actually exercises, significant influence or control over the company or foreign company.

Significant Interest

- An individual or a legal entity has a "significant interest" in a company or foreign company having a share capital –
  a) if the individual or legal entity, as the case may be, has an interest in more than 25% of the shares in the company or foreign company; or
  b) if –
    (i) the individual or legal entity, as the case may be, has an interest in one or more voting shares in the company or foreign company; and
    (ii) the total votes attached to that share, or those shares, is more than 25% of the total voting power in the company or foreign company.
- An individual or a legal entity has a "significant interest" in a company or foreign company that does not have a share capital if the individual or legal entity holds, whether directly or indirectly, a right to share in more than 25% of the capital, or more than 25% profits, of the company or foreign company.

LLPs

For LLPs, the definitions of "significant control" and "significant interest" are in the new Seventh Schedule of the Limited Liability Partnerships Act:

Significant Control

- An individual or a legal entity has "significant control" over an LLP if the individual or legal entity:
  a) holds the right, directly or indirectly, to appoint or remove the manager of the LLP, or if the LLP has more than one manager, a majority of the managers of the LLP;
  b) holds the right, directly or indirectly, to appoint or remove the persons who hold a majority of the voting rights at meetings of the management body of the LLP;
  c) holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the partners of the LLP; and
  d) has the right to exercise, or actually exercises, significant influence or control over the LLP.

Significant Interest

- An individual or a legal entity has "significant interest" in an LLP if the individual or legal entity holds, directly or indirectly –
  a) a right to share in more than 25% of the capital, or more than 25% of the profits, of the LLP; or
  b) a right to share more than 25% of any surplus assets of the LLP on a winding up.