

Company Law Update

Amendments to the Singapore Companies Act (Part 2): Re-domiciliation to Singapore is made possible

Overview

The Companies (Amendment) Act 2017, through Part XA on “Transfer of Registration”, has introduced an inward re-domiciliation regime in Singapore, to allow foreign corporate entities to transfer their registration to Singapore instead of setting up subsidiaries (e.g. foreign corporate entities that may want to relocate their regional and worldwide headquarters to Singapore and still retain their corporate history and branding). The regime is expected to be implemented within the first half of 2017.

Essentially, “re-domiciliation” is a process whereby a foreign corporate entity transfers its registration from its original jurisdiction to a new jurisdiction. A corporation may choose to re-domicile for regulatory, strategic or organisational reasons, while retaining its identity and history in the various regulatory jurisdictions it has presence in, and minimising operational disruptions. Other jurisdictions that currently have re-domiciliation regimes include Australia, Canada and New Zealand. In this case, an inbound foreign corporate entity that is re-domiciled to Singapore will become a Singapore company and be required to comply with the Companies Act like any other Singapore company.

How it works if you are interested in it

To be eligible for this re-domiciliation, foreign entities must be bodies corporate that can adapt their legal structure to the companies limited by shares structure under the Singapore Companies Act.

To proceed with this, the foreign corporate entity must first reserve its proposed name (which could be the same name that is used overseas, as long as the proposed name is in accordance with the usual rules on the acceptability of the names. In proceeding to set up the re-domiciled Singapore company, besides paying the prescribed fee, the foreign corporate entity would need to provide the following documents to the Registrar of Companies:-

- (a) a certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any), in its place of incorporation;
- (b) the constitution by which the foreign corporate entity proposes to be registered (i.e. the re-domiciled Singapore company Constitution); and
- (c) any other documents as may be prescribed.

Once the re-domiciliation process is completed, the re-domiciled company will receive a notice of transfer of registration and a certificate of confirmation of registration, which will serve as conclusive evidence that the foreign corporate entity is registered in Singapore and the date of the company’s registration. The re-domiciled company would now become a Singapore company and has to comply with Singapore laws. In this regard, re-domiciliation does not create a new legal entity, and as such, the originally foreign corporate entity must be deregistered in its place of incorporation within 60 days after

the issue of the notice of transfer of registration and it must submit to the Registrar a document evidencing that the foreign corporate entity has been de-registered in its place of incorporation. This period may be extended if so required and upon application to the Registrar.

For the avoidance of doubt, the re-domiciliation to Singapore does not:-

- (a) create a new legal entity;
- (b) prejudice or affect the identity of the body corporate constituted by the foreign corporate entity or its continuity as a body corporate;
- (c) affect the property, or the rights or obligations, of the foreign corporate entity; or
- (d) render defective any legal proceedings by or against the foreign corporate entity.

Therefore, any legal proceedings that could have been continued or commenced by or against the foreign corporate entity before its registration may be continued or commenced by or against the company after the registration.

Registration of any charges

If before the re-domiciliation there are any charges, whether created by the foreign corporate entity or otherwise, which would have been required to be registered pursuant to the Companies Act (if it were a Singapore company then), within 30 days of the completion of the re-domiciliation, such charges ought to be registered with the Registrar. To do so, a statement containing the prescribed particulars of the charge must be provided accordingly.

It is also clear that if there is a default in complying with this requirement, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

It would be recommended that a thorough evaluation and analysis of the situation be conducted before re-domiciliation is undertaken to ensure that a company's interests are indeed safeguarded.

Should you have any queries as to how this update may affect your organisation or require further information, please do not hesitate to email us.



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This article is intended to highlight the new implementation of re-domiciliation of a foreign company to Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice.