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Singapore Promotes Corporate Transparency, Less Regulation, Easier Redomiciliation with Companies Act Amendments



COMMENTARY
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IN SHORT

The Background: Singapore continues to position itself as a hub for business and financial activities in Southeast Asia.

The Action: Parliament passed Amendments to Singapore's Companies Act, parts of which came into force on 31 March 2017.

Looking Ahead: The Amendments increase corporate transparency, reduce administrative burdens, and introduce a mechanism for companies to redomicile in Singapore.

On 10 March 2017, the Singapore Parliament passed the Companies (Amendment) Act 2017 ("Amendment Act"), which amends the Companies Act. This update focuses on the key amendments that are intended to improve the transparency of ownership and control of companies, reduce their regulatory burden and introduce an inward redomiciliation regime. Unless otherwise specified, the changes took effect on 31 March 2017.

Improve Transparency of Companies

Registers of Controllers, Members and Nominee Directors. Companies must maintain three new registers:

- **Registers of Controllers.** Singapore incorporated companies ("Singapore Companies") and foreign incorporated companies registered in Singapore ("Foreign Companies") (together, "Companies") must maintain a register of controllers. A controller is a beneficial owner with "significant control" over or "significant interest" in the Company.

Briefly, "significant control" and "significant interest" are determined by reference to the right to appoint and remove directors of the Company, exercise significant influence or control over the Company or have an interest in more than 25 percent of the shares or voting shares in the Company.

Generally, all controllers up the chain of ownership are registrable unless their "significant control" or "significant interest" is held through a Company that is already required to maintain a register of controllers or is an exempted entity.

The register of controllers is not public but must be provided to the relevant authorities on request.

Persons who are or who ought reasonably to know that they are registrable controllers must notify the Company of this and provide updates on changes.

There is a transition period of 60 days from 31 March 2017 for existing Companies to comply.

- **Registers of Members.** Foreign Companies must maintain a public register of members in Singapore, bringing them in line with the requirements for Singapore Companies.
- **Register of Nominee Directors.** Singapore Companies must maintain a register of nominee directors. A nominee director must disclose his nominee status and nominator's particulars to the companies where he is a director.



A foreign corporate entity may choose to redomicile for many reasons, including tax and regulatory.



Record Retention. The following changes seek to ensure that enforcement agencies have access to past records:

- **Liquidator Records.** A liquidator must retain the winding-up records of Singapore Companies for a minimum of five years instead of two years.
- **Records Post Winding Up.** Only the court may direct that winding-up records of Singapore Companies be destroyed before the end of the minimum retention period. Previously, this direction could also be made by members in a voluntary winding up or by creditors.
- **Officers to Retain Records.** Officers of a company that has been struck off must retain all books and papers of the company for a minimum of five years.

Reduce Regulatory Burden

Common Seal Abolished. The requirement for Singapore Companies to have a common seal for deeds and certain documents (e.g., share certificates) is now optional. Signatures by these authorised persons are acceptable:

- A director and the secretary of a company;
- Two directors of a company; or
- A director of a company before a witness who attests that director's signature.

Private Companies Exempt from Annual General Meetings ("AGMs"). The Amendment Act provides for a further circumstance where a private company is exempt from holding its AGM: where a private company sends its financial statements to its members within five months of its financial year end. This amendment will take effect on a date to be stipulated in the future.

Introduction of Inward Redomiciliation Regime

Inward Redomiciliation. A foreign corporate entity may transfer its registration to Singapore, following which that foreign corporate entity becomes registered as a Singapore private company limited by shares, domiciled in Singapore and subject to the Companies Act. A foreign corporate entity may choose to redomicile for many reasons, including tax and regulatory. The registration does not create a new legal entity; affect the property, rights or obligations of the foreign corporate entity; or affect any legal proceedings by or against the foreign corporate entity.

The Companies Act does not set out the criteria for determining whether a foreign corporate entity would be granted approval for the redomiciliation but provides that regulations specifying such criteria may be made.

To complete the redomiciliation process, the foreign corporate entity must register with the Singapore Company's Registrar all preexisting charges, deregister in its original jurisdiction of incorporation and complete and deliver appropriate certificates to the persons registered as holders of existing shares or debentures.

The above amendments will take effect on a date to be stipulated in the future.

THREE KEY TAKEAWAYS

1. To improve transparency, companies must retain new registries of controllers, members and nominee directors.
2. Having a common seal is now optional for Singapore companies.
3. Foreign corporate entities will soon be able to transfer their registrations to Singapore, thereby becoming Singapore private companies limited by shares, domiciled in Singapore and subject to the Companies Act.

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