Your cheat sheet to the Singapore company law amendments 2017

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CATEGORY:
ARTICLE

Since its enactment in 1967, the Companies Act of Singapore has undergone several reviews to ensure that the corporate regulatory regime is robust and supports Singapore's growth as a global hub for business and investors. The Companies (Amendment) Bill 2017, passed on 10 March 2017 was supported by the same ideology and the amendments targeted three primary areas: (i) improving transparency of ownership and control of companies in line with international norms; (ii) reducing regulatory burden and improving ease of doing business in the country; and (iii) enhancing the country's debt restructuring framework.

Your quick read on the amendments categorized by its key drivers are as below.

1. **Maintaining a register of controllers.** Locally incorporated companies and foreign companies registered in Singapore are required to maintain registers of their 'controllers' which is defined with reference to entities with 'significant control/interest' using a 25% threshold to help companies determine when control/interest is significant. This is in line with UK and EU regulatory framework. Registers are non-public but must be available to law enforcement authorities on request.

2. **Foreign companies; public register of members.** Bringing foreign companies in alignment with locally incorporated companies, foreign companies registered in Singapore are required to maintain public registers of their members.

3. **Singapore incorporated companies; register of nominee directors.** Singapore incorporated companies are now required to maintain a register of nominee directors, disclosing nominee status and giving particulars of their nomination to their nominator companies.

4. **Record retention; by liquidator and company officers.** On winding-up, the company liquidator is required to retain company's records for at least five years (up from the prior two year retention period) and upon strike off/dissolutions, former officers are required to retain books and papers (including accounting records and registers) for at least five years. This allows enforcement agencies to access past records for their investigations.

This category I of regulatory amendments are effective on 31 March 2017.

II. Ease of doing business in Singapore; reducing regulatory burden and compliance costs

1. **Inward re-domiciliation.** Particularly significant were amendments brought by the introduction of an inward re-domiciliation regime whereby foreign corporate entities will be allowed to transfer their registration to Singapore, besides the current options of setting up a subsidiary or branch in Singapore. Inward re-domiciliation is akin to changing 'corporate citizenship'. Transfer of registration will thus be useful to foreign corporate entities that wish to retain their corporate history and identity. Foreign corporate entities may choose to re-domicile for various reasons, such as for a more conducive regulatory framework or to be closer to their shareholders or operational base. A foreign corporate entity that is re-domiciled to Singapore will be required to comply with the requirements of the Companies Act like any other Singapore company.

2. **Annual general meetings (AGMs) and annual returns.** Listed companies are required to hold AGMs and file annual returns within 4 months and 5 months after their financial year end respectively and non-listed companies within 6 months and 7 months after their financial year end respectively. Private companies are now exempt from holding AGMs if they send their financial statements to members within 5 months from the financial year end however will be required to, (i) hold an AGM on a shareholder(s) request not later than 14 days before the end of the 6th month after financial year end, or (ii) a general meeting to lay financial statements if any shareholder or auditor requests for it not later than 14 days after release of the financial statements.

3. **Removal of the requirement for common seal.** The requirement for a common seal to execute documents such as deeds and share certificates has been removed. The requirement was seen as archaic citing jurisdictions such as Australia, Canada, Hong Kong, New Zealand and the UK which have done away with the concept.

Paragraph 3 (removal of requirement of common seal) of this category II set of amendments is effective on 31 March 2017. The effective date of the remainder is yet to be notified (expected over late 2017 and early 2018).

III. Singapore as a centre for international debt restructuring; enhancing the debt restructuring framework

The debt restructuring amendments introduced were particularly adapted from Chapter 11 of the United States Bankruptcy Code.

1. **Moratorium; from creditor action.** The amendments bring into effect a moratorium preventing creditors from taking action (such as commencing legal proceedings or enforcing security rights), giving the company the breathing room to put forward the restructuring proposal. An automatic moratorium will trigger for a period of 30 days from application, allowing courts to give the moratorium worldwide effect and extending its application to related entities relevant to the restructuring with suitable provisions/subsidiary legislation providing carve-outs from the moratorium (where the moratorium is likely to have disproportionate adverse effects).

2. **Rescue financing; to tide through restructuring.** Provisions are introduced empowering the courts to order priority to rescue financing over all other debts or to be secured by a security interest that has priority over pre-existing security interests, provided the pre-existing interests are adequately protected.

3. **Cram down provisions; preventing influence of dissenting creditors.** The court will now be authorised to approve a scheme even with dissenting creditor classes (unlike the current framework where the court can only sanction a scheme if the requisite majority approval has been obtained from all classes of creditors). These provisions therefore prevent a minority dissenting class of creditors from unreasonably frustrating a restructuring that benefits creditors as a whole.

4. **Pre-packs; approval without creditor consent.** Pre-negotiated restructurings between the company and its key creditors may now be approved without calling creditor meetings if the other creditors will not be affected as the pre-pack is sufficient to rescue the company.

5. **Judicial management; judicial manager steps in earlier.** A judicial management order may now be passed when a company 'is likely to become unable to pay its debts' as opposed to the current 'will be unable to pay its debts'. This will allow the judicial management process to commence earlier in the day, when the prospects of saving a company are higher. Additionally, such an order may be passed despite objections from certain secured creditors if the prejudice caused to unsecured creditors is disproportionately greater (which is presently not permissible if secured creditors oppose the application).

6. **Cross-border insolvency; foreign companies restructuring debt in Singapore.** A list of factors has been put in place for the court to consider whether a foreign company has substantial connection to Singapore in order for it to be wound up under the Companies Act. This has a substantial impact, as a foreign company that qualifies to be wound up under the Companies Act may make an application for a scheme of arrangement or judicial management providing greater certainty to foreign debtors that wish to restructure in Singapore. The amendments also abolish the current rule that requires liquidators of foreign companies to 'ring fence' Singapore assets and pay off debts incurred in Singapore first (except for specific financial entities such as banks and insurance companies, where the rule will be retained). The amendments also envisage the adoption of the UNCITRAL Model Law on Cross-Border Insolvency.

The effective date of this category of amendments is yet to be notified (expected over late 2017 and early 2018).

The Singapore regulatory system has always displayed an arguably unparalleled level of maturity and intelligent flexibility in keeping up with a changing economic environment – the nature of company law amendments are reflective of this reputation. With these amendments Singapore aims to reinforce its positon as a key international financial centre compliant with international business standards.