Inward re-domiciliation regime of Singapore

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INTRODUCTION

On 10 March 2017, amendments to the Companies Act (Chapter 50) ("**Companies Act**") of Singapore were passed to allow a foreign company to transfer its registration from its place of incorporation to Singapore without setting up a subsidiary in Singapore. The re-domiciliation regime came into force on 11 October 2017 with the introduction of Part XA of the Companies Act, the promulgation of the Companies Regulations 2017 and the implementation of a new application procedure instituted by the Accounting and Corporate Regulatory Authority ("**ACRA**").

This regime acts as an alternative to setting up a business presence in Singapore through registering a branch or subsidiary, allowing a re-domiciled foreign corporate entity to retain its employees, corporate history, and branding. As a Singapore company, the re-domiciled entity will need to comply with local legislation, including the Companies Act.

The re-domiciliation regime contributes to Singapore's reputation of being an attractive place of doing business. Re-domiciled entities enjoy certain benefits, including more favourable tax treatment and access to Singapore's developed business environment. This regime, however, does not extend to, or benefit, all applicants as discussed below.

We have identified certain key aspects and specific requirements in relation to the re-domiciliation regime below which should be considered by foreign companies exploring this option.

TARGET BENEFICIARIES

Re-domiciliation will be of interest for foreign corporate entities that (a) aim to expand in South East Asia through relocating their operations in Singapore; (b) have holding company structures in multiple jurisdictions and want to consolidate their activities within a unique jurisdiction; (c) find the use of a simple offshore entity in jurisdictions such as the Bahamas, the British Virgin Islands and Cayman Islands to be no longer appropriate due to other considerations such as the close international scrutiny and pressure to comply with global measures to counter base erosion and profit shifting activities and the requirement for certain entities to have demonstrable economic substance in such jurisdiction; (d) want to benefit from Singapore's extensive network of double tax avoidance treaties and free trade agreements; (e) aim to access the financial and capital markets existing in Singapore; or (f) want to benefit from the range of financial and fiscal incentives offered by Singapore.

WHY RE-DOMICILE

From business-friendly policies, excellent infrastructure, transparent laws and stable economy, Singapore has been ranked as one of the world's easiest place to do business (Doing Business 2019 report by the World Bank). Being a part of this supportive business environment has now been made easier for foreign corporate entities through the implementation of the re-domiciliation regime. Other benefits include:

- access to sophisticated financial and capital markets;
- benefiting from an attractive tax scheme and pro-business policies while minimizing operational disruptions;
- benefiting from a conducive regulatory environment while retaining proven track record, which is especially important for companies operating in highly regulated industries requiring licensing; and
- benefiting from the highly skilled workforce.

CONSIDERATIONS BEFORE RE-DOMICILING

Re-domiciliation impacts foreign corporate entities at several levels; it should be carefully considered whether it will be more prudent to set up a new subsidiary in Singapore or any other form of business presence.

A major factor to keep in mind is that Singapore does not allow outward re-domiciliation to another jurisdiction. Accordingly, if the foreign corporate entity, after re-domiciling to Singapore, finds that Singapore is no longer a suitable jurisdiction to conduct its business, it would not have the option to reverse the transfer of registration.

Consequently, the opportunity to re-domicile to Singapore should be carefully considered in light of the above, and the following factors:

- the costs and time/resources involved to re-domicile as opposed to setting up a new Singapore company or branch;

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- the importance of retaining the foreign corporate entity's branding and corporate history;
- whether there are assets held by the foreign corporate entity in its current jurisdiction that may be expensive and time-consuming to sell and buy back, or re-register;
- whether existing contracts can be easily re-negotiated; and
- tax and stamp duty implications in Singapore and in the original place of incorporation.

EFFECTS OF RE-DOMICILIATION

A foreign corporate entity that re-domiciles to Singapore will become a Singapore private company limited by shares and continue its operations under the laws of Singapore. As re-domiciliation does not create a new legal entity, it will not:

- require the foreign corporate entity to liquidate an existing balance sheet in another jurisdiction and transfer assets to a new entity;
- affect the obligations, liabilities, properties or rights of the foreign corporate entity;
- affect legal proceedings by or against the foreign corporate entity; or
- prejudice or affect the identity or the continuity of the legal entity that the foreign corporate entity constitutes.

However, the re-domiciled foreign corporate entity will be required to de-register in its original place of incorporation and register all pre-existing charges in accordance with the registration regime under Division 8 of Part IV of the Companies Act.

Moreover, shareholders and directors of the re-domiciled foreign corporate entity should be aware of amendments to the Companies Act that require all companies to disclose their beneficial owners, controllers, and nominators of nominee directors except those that are exempt from such requirements.

The Singapore Income Tax Act has also been amended on 26 October 2017 to introduce new provisions addressing the tax treatment of re-domiciled foreign corporate entities: (a) Section 34G prescribes the tax treatment of certain items of expenses incurred or assets acquired by a re-domiciled company that has never carried out any trade or business in Singapore before its transfer; and (b) Section 34H provides for tax credits that can be awarded to companies successful in their re-domiciliation to Singapore. These credits are meant to offset Singapore tax payable on income that was also subject to tax in the original place of incorporation, thereby resolving double taxation issues. It also provides for the tax authority's power to claw back credits if prescribed conditions are not fulfilled.

Re-domiciliation may give rise to tax implications in the originating jurisdiction, such as capital gains tax, exit tax or stamp duty, which should be taken into consideration.

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Companies that re-domicile to Singapore will also be subject to the relevant international tax compliance agreements that Singapore has entered into such as the Model 1 Foreign Account Tax Compliance Act intergovernmental agreement with the United States and the Common Reporting Standard, Country-by-Country Reporting.

ELIGIBILITY TO RE-DOMICILE AND PROCESS

Firstly, the foreign corporate entity proposing to re-domicile to Singapore must be a legal entity that can adapt its legal structure to that of a company limited by shares under the Companies Act.

Secondly, it must meet the following requirements:

(a) The foreign corporate entity should meet any 2 of the following criteria:

- the value of its total assets exceed SGD 10,000,000;
- its annual revenue exceeds SGD 10,000,000; and
- it has more than 50 employees.

This size criteria will be assessed on a consolidated basis when the foreign corporate entity is a parent, and on a single entity basis when the corporate entity is a subsidiary. However, the subsidiary will also meet the criteria when its parent (Singapore incorporated or registered in Singapore through a re-domiciliation) meets the size criteria.

(b) The foreign corporate entity should be solvent, implying that:

- there are no grounds on which the foreign corporate entity could be found to be unable to pay its debts;
- the foreign corporate entity can pay its debts as and when they fall due within 12 months after the date of application for re-domiciliation;
- the foreign corporate entity can pay its debts in full within 12 months after the date of winding up (if it intends to wind up within 12 months after applying for re-domiciliation); and
- the value of its assets is not less than the value of its liabilities (including contingent liabilities).

(c) The laws of the foreign corporate entity's original place of incorporation should allow outward re-domiciliation, and the foreign corporate entity should have obtained all consents and waivers needed, given notice to all existing shareholders and contract counterparties regarding its re-domiciliation, and met filing and other statutory obligations required by the laws of its original place of incorporation.

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(d) The application for re-domiciliation should not be intended to defraud existing creditors of the foreign corporate entity and should be made in good faith.

(e) As at the date of the application, the foreign corporate entity's first financial year end at its place of incorporation should have passed.

(f) The foreign corporate entity should not be under judicial management, liquidation or winding up.

(g) The foreign corporate entity should submit a certified copy of its charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any), in its original place of incorporation; the constitution by which the foreign company proposes to be registered and such other documents as may be prescribed along with the prescribed non-refundable fee of SGD 1,000.

(h) After the transfer of registration, the re-domiciled foreign corporate entity should de-register in its original place of incorporation and update its registration details in all its business correspondence within 3 months.

(i) To complete the registration process, the foreign corporate entity should register all pre-existing charges created prior to the re-domiciliation of the corporate entity within 30 days with the Registrar of Company in Singapore.

(j) The foreign corporate entity should complete and deliver appropriate share certificates to all persons registered as holders of existing shares or debentures within 60 days from registration.

The application for re-domiciliation is required to be submitted to ACRA for its review and approval, which may take up to 2 months from the date of submission of all required documents. This includes the time needed for referral to another government agency for review or approval. Thereafter, an applicant company that is successfully registered as a Singapore company must, within 60 days after the issuance of the notice of transfer of registration, submit to ACRA evidence that it has been de registered in its original place of incorporation.

CONCLUSION

The re-domiciliation regime provides an added alternative for foreign corporate entities to move base to Singapore. This is especially relevant for entities that have grown in revenue and size in their country of origin and who may wish to consider re-domiciling the parent entity, subsidiary or whole group to Singapore to enjoy several benefits of being a Singapore-domiciled company as discussed above.

Ultimately, re-domiciling to Singapore is a permanent decision as there is currently no provision for Singapore

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companies to re-domicile overseas. However, as more countries introduce re-domiciliation regimes, companies are likely to have more choice over which jurisdiction will best suit their needs in terms of tax and other regulatory treatment.