

## THE COMPANIES (AMENDMENT) ACT 2017

## Executive Summary

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*“The first set of amendments came into effect on 31 March 2017”*

The Companies (Amendment) Act 2017 (and the Limited Liability Partnerships (Amendment) Act 2017) of Singapore was recently passed and will take effect in two broad phases. The first set of amendments came into effect on 31 March 2017 (“**the date of commencement**”), while the second set will come into effect in early 2018. The reforms made to the existing regime under the Companies Act (Cap. 20) were made with the following objectives in mind:

- to improve transparency regarding the ownership and control of business entities and thus bring Singapore in line with international standards;
- to reduce the regulatory and administrative burden on business entities and entrench Singapore as an attractive business hub; and
- to improve the debt restructuring and corporate rescue framework in Singapore.

Briefly, the three key reforms to the Act that take effect from 31 March 2017 introduce:

- stringent requirements for the maintenance of corporate registers of a company’s controllers and nominee directors;
- a prolonged period for the retention of records;
- alternatives to the once-mandatory common seal requirement;

The second set of reforms that will take effect in early 2018 introduce:

- the alignment of Annual General Meeting (“**AGM**”) and filing timelines to the financial year-end (“**FYE**”);
- an exemption from holding AGMs for private companies;
- changes to creditor schemes of arrangement, the judicial management regime and ring-fencing;

Other miscellaneous amendments include:

- several amendments to mitigate the risks of money laundering and terrorist financing; and
- a new re-domiciliation regime taking effect within the first half of 2017 that lets foreign corporate entities transfer registration to Singapore.

The amendments similarly apply to LLPs where relevant.

## Maintaining Corporate Registers

Register of Controllers

All locally incorporated companies, locally registered LLPs and foreign companies registered in Singapore, unless exempted by legislation\*, must maintain an up-to-date register of their controllers at prescribed places. Such prescribed places include the entity’s registered office, or the registered office of the registered filing agent.

“**Controllers**” are individuals or legal entities that have significant interest in, or significant control over, the relevant business entity.

*“Existing companies will be given 60 days from the date of commencement of the new regime to effect the required changes (i.e. by 30 May 2017), while new companies incorporated on or after 31 March 2017 will have 30 days to do the same (i.e. by 30 April 2017).”*

*“It is now mandatory for a company that is wound up by its members, partners or creditors to maintain its records for the full 2-year period”*

This is measured by either an interest in more than 25% of shares in or total voting power of the company (or more than 25% share in capital or profits of a company without share capital), or the right to appoint or remove directors who hold a majority of voting rights at directors’ meetings, or the right to exercise significant influence or control over the company.

Companies must obtain information on their controllers by sending notices to potential controllers, or persons who have information about the controllers. ACRA has issued sample notices and guidelines that companies can take guidance from. Once this is done, the company or LLP will not be held liable for any deficiencies in the recipient’s response.

#### Register of Nominee Directors

Nominee directors are required to inform the company of the fact and to provide prescribed particulars of the person for whom the director is a nominee, and to inform the company of changes in the nominee director’s particulars or status as a nominee.

For the purposes of the Act, a director is a nominee if the director is accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of any other person.

The registers of controllers and nominee directors required to be upkept above are not to be disclosed to the public or made available for inspection except upon request by ACRA or other public agencies.

#### Public register of shareholders of foreign companies

In addition, foreign companies registered in Singapore are required to upkeep a public register of shareholders, which brings them into alignment with the current requirement for companies incorporated in Singapore.

#### Window period to implement changes

Existing companies will be given **60 days** from the date of commencement of the new regime to effect the required changes (i.e. by **30 May 2017**), while new companies incorporated on or after 31 March 2017 will have **30 days** to do the same (ie. by **30 April 2017**).

The Ministry of Communications and Information has stated that these changes will serve to uphold Singapore’s reputation as a transparent, trusted and clean financial hub.

*\* Exempted entities include publicly listed companies and Singapore financial institutions (commercial banks etc.). For the full list of exempted entities, please refer to [https://www.acra.gov.sg/Register\\_of\\_controllers/](https://www.acra.gov.sg/Register_of_controllers/).*

### **Prolonged Retention of Records**

#### When a company is wound up

Presently, the records of companies that are wound up can be destroyed within the 2-year retention period if directed by:

- (a) the Court;
- (b) the company by resolution; or
- (c) creditors or a committee of inspection.

*“A common seal is no longer required to execute deeds. A company may still retain a common seal for business purposes”*

This raised concerns that companies might destroy records prematurely to conceal their illicit transactions. Now, a company that is wound up by its members, partners or creditors must maintain its records for the full 2-year period. The liquidator of a wound-up company must retain the records of that company for at least 5 years.

#### When a company is struck off and dissolved

The former officers, partners and managers of such a company will be required to retain all its books and papers (in particular, its accounting records and registers) for a minimum of 5 years from the date on which it was dissolved. The maximum fine for non-compliance is S\$2,000.

### Enhancing the Debt Restructuring Framework

Several key changes to the debt restructuring framework are as follows:

- (a) in granting a judicial management order, the Court may now weigh the prejudice caused to unsecured creditors against the prejudice caused to secured creditors, and can grant the order if the former is disproportionately greater;
- (b) a company that ‘is likely to become unable to pay its debts’ may be placed under judicial management. This is a lower threshold when contrasted with the old requirement (that the company “will be unable to pay its debts”);
- (c) Singapore will adopt the UNCITRAL Model Law on Cross-Border Insolvency (1997) to bring the local administration of cross-border insolvencies in line with international guidelines; and
- (d) the ring-fencing of foreign assets of a company in a winding up is abolished, save for select financial entities such as merchant banks or licensed insurers. The full list of exceptions can be found at s 377(14) CA.

These amendments will provide companies that are in urgent need of rehabilitation and restructuring with opportunities for recovery, and thus position Singapore as a regional forum of choice for debt restructuring and corporate rescue.

*“AGM and Annual Return deadlines will be streamlined with the FYE of the company”*

### Alternatives to the Common Seal

Documents that had to be executed under the common seal of a company (such as a deed or a share certificate) can now be executed under the signature of the following persons instead:

#### For companies

- (a) a director and the secretary of a company;
- (b) two or more directors of a company; or
- (c) a director of a company in the presence of a witness who attests the signature.

#### For LLPs

- (a) two or more partners of an LLP; or
- (b) the partner of an LLP in the presence of a witness who attests the signature.

*“Nominee directors of companies incorporated in Singapore must disclose their nominee status and nominators to their companies”*

### AGMs and the Alignment of Timelines to the FYE

Currently, companies have to re-ascertain the deadlines for holding AGMs and filing annual returns on a yearly basis. With the amendments, the deadlines will be streamlined with the FYE of the company:

- (a) listed companies must hold AGMs within 4 months and file annual returns within 5 months after their FYE; and
- (b) non-listed companies must hold AGMs within 6 months and file annual returns within 7 months after their FYE.

To prevent companies from arbitrarily changing their FYE, the following safeguards apply :

- (a) companies seeking to change their FYE must obtain the Registrar’s approval if (i) the new date will result in a financial year being longer than 18 months; or if (ii) the FYE was changed within the last 5 years;
- (b) unless otherwise approved by the Registrar, the duration of a company’s financial year must not exceed 18 months in its year of incorporation; and
- (c) companies must notify the Registrar of their FYE upon incorporation and upon any subsequent change.

This provides greater clarity and improves the compliance of companies with the Companies Act’s requirements.

To further reduce the administrative burden on business entities, all private companies will now be exempted from holding AGMs, subject to safeguards: private companies are still required to send financial statements to their members within 5 months of their FYE, and will need to hold a meeting if any shareholder or auditor requests for it within the prescribed deadlines .

### Miscellaneous Amendments

#### Mitigating risks of money laundering and terrorist financing

Nominee directors of companies incorporated in Singapore must disclose their nominee status and nominators to their companies, who are required to maintain a register of nominee directors .

The issuance and transfer of bearer shares and share warrants by foreign companies registered in Singapore is void, regardless of when the issue or transfer took place.

The Ministry of Communications and Information has stated that both of these changes serve to mitigate the risks of money laundering and terrorist financing.

#### Inward re-domiciliation regime

To entrench Singapore as a competitive business hub, a new inward re-domiciliation regime will allow foreign corporate entities to transfer their registration to Singapore on top of the current options of setting up subsidiaries or branches locally. This allows entities that prefer Singapore’s regulatory framework to relocate their headquarters to Singapore while retaining their corporate branding and identity.

## FAQs

**1. How should companies go about identifying their controllers?**

Companies may send notices to their shareholders, directors and any other person to ask whether they are controllers, or know any controllers. ACRA has issued sample notices and guidelines: [https://www.acra.gov.sg/Register\\_of\\_controllers\\_resources/](https://www.acra.gov.sg/Register_of_controllers_resources/). For most companies, their shareholders are their controllers. The register of controllers will thus generally be likely to be similar or identical to their register of members.

To avoid duplicative reporting, companies can stop the tracing of controllers once the tracing reaches a locally incorporated/registered company or LLP that is also maintaining registers in their registered offices. A company that hits a foreign entity must trace further to find out who the individual controllers are.

**2. If companies fail to maintain the registers within the given timelines, what should they do, and what are the actions that ACRA might take?**

If a potential controller has received a notice but is unresponsive, the company must include the particulars of that recipient in the register and note that the particulars are unconfirmed. This must be done within 2 business days after the end of 30 days after the date on which the notice is sent by the company to the registrable controller.

The maximum penalty for a failure to maintain a register of registrable controllers is S\$5,000. This is similar to the existing penalty if companies fail to file annual returns.

**3. If I outsource my corporate secretarial work, can my corporate secretary keep my register of registrable controllers?**

Yes, but only if that corporate secretary is a registered filing agent.

**4. Who has a right to view the register of corporate controllers?**

The company's officers may view the register, but shareholders may not as the register is not to be disclosed to the public. The register must be provided for inspection to and upon request by ACRA or any public agencies.

**5. If my company is dormant, can I be exempted from maintaining a register of corporate controllers?**

No.

**6. Can companies and LLPS choose to retain the use of a common seal?**

Yes. Companies and LLPs are free to continue using a common seal if it suits their business needs. It is however no longer necessary to utilise the common seal in order for an instrument to be validly executed as a deed or for any document or instrument which is required under any written law or rule of law to be executed under common seal, provided that the document is duly signed in the manner provided for in the Act.

**7. *How can a foreign corporate entity be re-domiciled in Singapore, and what happens to it upon re-domiciliation?***

The inbound entity must make an application to obtain the Registrar's approval that contains the following:

- 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;
- the constitution by which the foreign corporate entity proposes to be registered;
- such other documents as may be prescribed; and
- the prescribed fee.

Thereafter, it becomes a Singapore-registered company, and will be required to comply with the Companies Act. Re-domiciliation will not affect the obligations, liabilities, properties or rights of the foreign corporate entity.

### Conclusion

The reform of the Companies Act and the Limited Liability Partnerships Act reflects Singapore's goal to implement international standards on corporate transparency and to establish itself as a key international centre for debt restructuring as well as an attractive business hub for foreign corporations looking to relocate their operational headquarters to jurisdictions with minimal administrative and regulatory burdens.

The reforms are also consistent with the trend of jurisdictions in the present economic environment to update their corporate regimes to make ownership and control of business entities more transparent, enhance accessibility of information on beneficial ownership of legal persons to law enforcement agencies (as recommended by the FATF) and thus reduce opportunities for the misuse of corporate entities for illicit purposes, reflecting current social and financial realities.

The greater transparency and efficiency brought about by the amendments will certainly go a long way towards fulfilling these aims.

**Please feel free to check in with Chi-Yen ([chiyen@oonbazul.com](mailto:chiyen@oonbazul.com)) or Faezah ([faezah@oonbazul.com](mailto:faezah@oonbazul.com)) for clarifications or queries on the matters covered above.**

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