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Ministry of Finance
Economic Programmes Directorate
100 High Street
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Singapore 179464

Dear Sirs

PUBLIC FEEDBACK ON PROPOSED LEGISLATIVE CHANGES TO INTRODUCE AN INWARD RE-DOMICILIATION REGIME IN SINGAPORE

We refer to the call for public feedback on proposed legislative changes to introduce an inward re-domiciliation regime in Singapore.

Please find attached the consolidated comments on the proposal from the Corporate Practice Committee.

Thank you.

Yours faithfully

DELPHINE LOO TAN (MRS)
Director, Representation and Law Reform Department

Annex 1

KEY CLAUSES IN THE DRAFT COMPANIES (AMENDMENT) BILL AND CONSULTATION QUESTIONS

Proposed sections	Description	Reasons/ Consultation questions	Response
354A – Foreign entities to which this Part applies	To provide that the proposed inward re-domiciliation regime in the new Part XA applies to a foreign entity that intends to be registered as a company limited by shares under the Companies Act	The foreign entity must ensure that it can adapt its legal structure to the structure of a company incorporated in Singapore. While the Companies Act also provides for other company structures, the company limited by shares structure is most apt for foreign entities intending to re-domicile for commercial purposes.	The relevant subsidiary legislation or some other official confirmation should specify the recognized jurisdictions from which such foreign entity may be re-domiciled into the Singapore Companies Act. It is likely that the client would wish this to be confirmed in preliminary checks made with ACRA before the client commences such re-domiciliation.
354B – Interpretation of this Part	To define the term "foreign entity"	*Consultation question 1* We would like to seek comments on whether the proposed definition of foreign entity is appropriate.	We agree that this definition can be broadened. The relevant subsidiary legislation or some other official confirmation should specify which types of "foreign entity"/foreign "body corporate" would not be allowed to re-domicile into the Singapore Companies Act e.g. foreign trade unions, foreign governments, foreign statutory corporations, foreign co-operatives, foreign social societies, foreign limited liability partnerships
354C – Requirements for transfer of registration	To require a foreign entity (that applies to re-domicile to Singapore) to comply with the proposed sections 354D, 354E and 354F(5), and all other requirements that may be prescribed in the regulations.	Under section 354C(b), the proposed requirements to be prescribed in the regulations[i] are: (a) the foreign entity must be of a certain minimum size before it may re-domicile[ii]; (b) the laws of the Original Jurisdiction permit re-domiciliation; (c) all relevant requirements of the Original Jurisdiction have been complied with;	See comments above. There should be a statutory power empowering the Minister to prescribe other requirements including relevant foreign jurisdictions and relevant excluded entities. We are not in favor of the statute setting out mandatory requirements for small company and small group criteria (such as described in the Thirteenth Schedule of the Companies Act). It is better to set out a statutory power empowering the Minister to prescribe for such small company small

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		(d) application for registration is not intended to defraud existing creditors of the company; (e) the foreign entity must provide a solvency statement (or proof of a genuine intent to restructure for distressed foreign entities[iii]); (f) the foreign entity must not be in judicial management or liquidation and no application has been made to any court to put the foreign entity into judicial management or liquidation; (g) the foreign entity must not have entered into a scheme of arrangement or compromise; and (h) the foreign entity must not be externally administered (e.g. by a receiver) and no application has been made to any court to externally administer the company. _Consultation question 2_ We would like to seek comments on the proposed requirements to be prescribed in the regulations and whether there are other requirements that should be prescribed in the regulations. _Consultation question 3_ We would like to seek comments on whether it is appropriate to require that foreign entities seeking to re-domicile to Singapore meet the small company and small group criteria in the Thirteenth Schedule of the Companies Act.	group criteria if desired as well as a power for the Minister to waive such criteria in cases where the Minister deems to be in the public interest.

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354D – Names of companies to be registered under this Part	To require a foreign entity (that applies to re-domicile to Singapore) to reserve the name of the company in accordance with existing requirements of the Companies Act	For consistency with the regime for locally-incorporated companies. This includes avoiding registration with a name identical to one that is already registered with ACRA.	Agreed, the name should not be identical to other locally incorporated companies nor other registered foreign companies or re-domiciled foreign entities. Presumably ACRA has guidelines on similar names being allowed so long as there are distinguishing additions to such name so that the public knows that it is not the same entity. In any case, there should be a Unique Entity Number given to the re-domiciled entity.
354E – Application for registration	To set out the information that a foreign entity (that applies to re-domicile to Singapore) needs to lodge with the Registrar: (a) the particulars of the foreign entity's registered office; (b) the name of the foreign entity in its place of incorporation; (c) the address of the registered office of the foreign entity in its place of incorporation; (d) a certified copy of the certificate of incorporation in its place of incorporation, or a document of similar effect; (e) a certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any); (f) the constitution to be registered; (g) the date of its last financial year end after its registration; and	In relation to the incorporation of a company, current section 19(2) requires a registered qualified individual engaged in the formation of the proposed company or a person named in the constitution as a director or the secretary of the proposed company to declare to the Registrar that: (a) all of the requirements of this Act relating to the formation of the company have been complied with; and (b) he has verified the identities of the subscribers to the constitution, and of the persons named in the constitution as officers of the proposed company. *<u>Consultation question 4</u>* We would like to seek comments on whether it is important to identify certain persons as subscribers to the constitution to be registered under section 354F(1) and the reasons for being so.	As the foreign entity and its register of members are already in existence in the relevant foreign jurisdiction, we do not think it is essential for the Statute to provide for the verification of the identity of the subscribers to the constitution so that there is at least one member on the register of members. Members have limited liability and do not have a significant role, as a member, in the management of the company. The legislation could also reflect in some way the current requirements under ACRA guidelines on filing agents incorporating a company to do customer due diligence including identifying the beneficial owner(s) with a controlling interest (UBOs) in the customer, and the possibility of requirements being introduced regarding some kind of registration of UBOs of companies. It seems that the issue of who is responsible for doing due diligence on the UBOs of foreign entities re-domiciling to Singapore is relevant to consider and it might be good if the legislation gave some indication how this issue may be understood.

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	(h) such other documents as may be prescribed or required by the Registrar. The foreign entity must also submit a declaration (made by a registered qualified individual engaged in the registration of the company or a person named in the constitution as a director or secretary of the company) to the Registrar that: (i) all requirements of the Companies Act relating to the foreign entity's registration have been complied with; and (ii) he has verified the identities of the subscribers to the constitution and company officers of the company named in the constitution.	If this is important, we would like to seek comments on who these persons should be and whether the proposed requirement under section 354E(3)(ii) [based on the current section 19(2)(b)(ii)] that their identities be verified is appropriate.	The redomiciliation application could indicate the industry classification(s) that the company will be registered with. The application process can be structured to provide an opportunity for ACRA to flag up to other regulators perhaps the need for some review of the application. The relevant regulator should deal with regulatory deficiencies in a similar way it does now and if the company has been redomiciled it should be treated as a normal company in that regard.
354F – Registration	To set out the registration process: – The Registrar may register the foreign entity as a company limited by shares by registering its constitution, subject to such conditions that the Registrar may impose. – The Registrar will then issue a notice of transfer of registration, as well as a certificate of transfer of registration upon the application by the company and payment of the prescribed fee. – A foreign entity registered as a company limited by shares must (within the specified timeframe of the issuance of the notice of transfer of	If the application for re-domiciliation is in order, it remains within the discretion of the Registrar whether or not to register the foreign entity. The Registrar will also have the discretion to subject the registration of the foreign entity to conditions as may be appropriate. For example, if a group of companies applies to re-domicile on the basis that they collectively meet the prescribed minimum size, then a condition may be imposed that the re-domiciliation of each company in the group is subject to a condition that the rest of the companies in the group satisfactorily completes the re-domiciliation process.	As the range of foreign entities from foreign jurisdictions is wide, and as the Registrar and the Singapore legal practitioners may not be familiar with the details of the regulations which such foreign entities were subject to, it is advisable to empower the Registrar with discretion to refuse re-domiciliation until the regulatory status of such foreign entities are clear to the satisfaction of the Registrar. The Registrar should have the power to impose conditions on such foreign applicants if the regulatory status is not clear. Re-domiciliation is not a natural right and should be seen as a privileged

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	registration) submit to the Registrar a document evidencing that it has been de-registered in its place of incorporation.	Breach of any condition imposed will be a ground for striking off the newly registered company. Appropriate amendments will be made to the existing striking off provisions to effect this. *Consultation question 5* We would like to seek comments on whether it is appropriate that if the application for re-domiciliation is in order, the Registrar still retains the discretion to decide whether to register the foreign entity or not. *Consultation question 6* We would like to seek comments on whether it is appropriate that the Registrar should have the discretion to register the foreign entity subject to conditions. *Consultation question 7* We would like to seek comments on whether it is appropriate that the newly registered company be struck off if there is a breach of any of conditions of registration that may have been imposed.	status to be granted by the Registrar on the basis that there is benefit to Singapore. The Registrar should have the power to suspend or strike-off, and should have a range of calibrated powers (including offer of composition, reprimand, suspension of privileges) in case of unintentional, or negligent or wilful misrepresentation on the part of the foreign entity, or its directors or the qualified individuals which assist them in such application for re-domiciliation. In exercising its powers, the Registrar should also consider the harm to Singapore creditors and Singapore subscribers if the foreign entity has been re-domiciled into Singapore for a length of time. The penalty should be levied on the directors/professionals and not on the company as this causes harm to the Singapore creditors and Singapore members of the re-domiciled entity.
354G – Power to refuse registration	To set out when the Registrar can refuse registration of a foreign entity (that applies to re-domicile to Singapore) and provide an appeal channel to the Minister	For consistency with the existing regime for locally-incorporated companies	Agreed

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354H – Effect of registration	To subject the foreign entity to all requirements of the Companies Act once it is registered as a company limited by shares To also clarify the effects of registration i.e. registration does not: (a) create a new legal entity; (b) prejudice or affect the identity of the body corporate constituted by the foreign entity or its continuity as a body corporate; (c) affect the obligations, liabilities, property rights or proceedings of the foreign entity; and (d) affect legal proceedings by or against the foreign entity.	Bearing in mind that a foreign entity may well be continuing in its operations throughout the re-domiciliation process, it may not be feasible to expect all business letters etc. to be updated to factor in the new particulars of registration immediately upon registration under the Companies Act. Hence, a grace period of 3 months has been provided for before section 144 applies. <u>Consultation question 8</u> We would like to seek comments on whether the 3-month grace period during which section 144 will not apply is appropriate. <u>Consultation question 9</u> We would like to seek comments on whether there are other effects of re-domiciliation that should be included.	Agreed. As the re-domiciliation statute is relatively new and unfamiliar to the Singapore business community, and as the effects of re-domiciliation is not extensively covered in the legal literature in the relevant foreign jurisdictions (and certainly not well covered in the Singapore legal literature), the statute/ subsidiary legislation should empower the Minister/ ACRA to provide for other effects of re-domiciliation that need to be mitigated. ACRA should be empowered to issue guidelines, practice notes and practice statements to guide the Singapore business community on such re-domiciliation.
354I – Revocation of registration	To give Registrar the power to revoke the registration of a company registered under new Part XA if the company has failed to: – provide evidence of its discontinuance in its place of incorporation; or – comply with any applicable conditions of its registration.	-	Agreed. In exercising its powers, the Registrar should consider the effect on the Singapore creditors and Singapore subscribers who would suffer losses. The penalty should be imposed on the relevant directors/ individuals who committed the wrong.
354J – Duty of company to register pre-existing charges	To require registration of pre-existing charges, if any, in accordance with existing registration regime under Division 8 of Part IV of the Companies Act	Generally, companies which transfer their registration will have to comply with all provisions of the Companies Act from the date of transfer and there is no need for specific provisions to specify how this is to be done. However, specific provisions are necessary to	It is worthwhile considering that the re-registration of charges should be part of the application process so that at the point that the foreign entity is re-domiciled, the register of charges of such re-domiciled entity already reflects the charges. It seems unfair to the secured creditors of the foreign

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		deal with registration of pre-existing charges and duties with respect to issue of certificates and these have been provided for in section 354J and 354K respectively. *Consultation question 10* We would like to seek comments on whether there are any other Companies Act provisions for which it is necessary to introduce a specific provision to deal with how re-domiciling companies will comply. *Consultation question 11* The 30-day period in section 354J(1) for the newly registered company to lodge with the Registrar a statement containing the prescribed particulars of pre-existing charges is similar to the period provided in section 133. We would like to seek comments on whether the 30-day period is appropriate.	entity that they should be exposed to such re-registration requirements when their security interest is already perfected. Such important matters as the security interest of the foreign entity's secured creditors should be addressed before and not later than the point of re-domiciliation.
354K – Duties of company with respect of issue of certificates	To require issuance of share certificates to all persons registered as holders of existing shares or debentures as of the date of the notice of transfer of registration	Under section 66 of the Companies Act, Singapore companies may not issue any share warrant stating that the bearer of the warrant is entitled to the shares therein specified and which enables the shares to be transferred by delivery of the warrant. Foreign entities which re-domicile into Singapore similarly should not have any share warrants or similar instruments in issue. Accordingly, section 354K(3) provides that share warrants issued before the date of transfer shall be void.	It should be a condition that the foreign entity cancel such share warrants, and if this is not possible without the consent of such warrantholders, that such warrantholders agree to such cancellation of such share warrants prior to and not later than the point of re-domiciliation. Re-domiciliation is a privilege and not a legal right, and the applicant foreign entity should ensure that their constitution and procedures are able to comply with the Singapore Companies Act prior to and not later than the point of re-domiciliation.

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		Consultation question 12 We would like to seek comments on whether it is appropriate that share warrants issued before the date of transfer be rendered void. *Consultation question 13* The 60-day period in section 354K(1) for the newly registered company to complete and have ready for delivery all share or debenture certificates is the same as the period provided in section 130AE for allotted shares. We would like to seek comments on whether the 60-day period is appropriate.	
354L – Extension of time and waiver of requirements	To give the Registrar the power to extend any period for lodging any document and to waive or modify any requirement/ condition	-	Agreed
354M - Regulations	To give the Minister the power to make regulations for the purposes of new Part XA	-	Agreed

[i] The proposed regulations will be geared towards allowing re-domiciliation for foreign entities only where the prospects for a positive commercial contribution are likely.

[ii] One approach is to use the criteria for small company and small group in the Thirteenth Schedule of the Companies Act. At the company level, the criterion is that a company is a small company if it is a private company throughout the financial year and satisfies any 2 of the following criteria for each of the prior 2 financial years:
(a) the revenue of the company for each financial year does not exceed $10 million;
(b) the value of the company's total assets at the end of each financial year does not exceed $10 million;
(c) it has at the end of each financial year not more than 50 employees.

[iii] Re-domiciliation of distressed foreign entities may reap benefits for the professional services sector. However, distressed foreign entities seeking to re-domicile to restructure under the provisions of the Singapore Companies Act may not be in a position to provide a solvency statement. Thus, in place of the solvency statement, distressed companies may be required to provide proof of a genuine intent to restructure under the Companies Act.