FACT SHEET ON THE COMPANIES (AMENDMENT) BILL 2017 AND LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) BILL 2017

Background

1. Since its enactment in 1967, the Companies Act has undergone several reviews to ensure that our corporate regulatory regime is robust and supports Singapore's growth as a global hub for businesses and investors. In this review, the Ministry of Finance (MOF) and the Accounting and Corporate Regulatory Authority (ACRA) are proposing amendments to the Companies Act and Limited Liability Partnerships Act, which will be made via the Companies (Amendment) Bill 2017 and the Limited Liability Partnerships (Amendment) Bill 2017.

What the changes are for

2. The changes aim to reduce regulatory burden on companies and limited liability partnerships (LLPs), improve the ease of doing business in Singapore and improve the transparency of the ownership and control of companies and LLPs.

3. The Companies (Amendment) Bill 2017 also contains amendments proposed by the Ministry of Law (MinLaw) to implement some of the recommendations of the Insolvency Law Review Committee (ILRC) [1] and the Committee to Strengthen Singapore as an International Centre for Debt Restructuring (Restructuring Committee)[2].

Who will benefit

4. Companies including small-and-medium enterprises (SMEs), will benefit from some of the changes. In particular, the compliance cost will be reduced for private companies which will be exempted from holding annual general meetings (AGMs), subject to specified safeguards. To reduce the administrative burden, the timelines for companies to hold AGMs and file annual returns will also be simplified.

5. To further boost Singapore's competitiveness as a business hub, an inward re-domiciliation regime, which allows foreign corporate entities to transfer their registration to Singapore, will be introduced. Changes to Singapore's corporate rescue and restructuring processes will position Singapore as a choice venue to conduct international debt restructuring.

6. To uphold Singapore's reputation as a trusted and clean financial hub, the ownership and control of business entities will be made more transparent with all

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[1] The ILRC was appointed by the Minister for Law in 2010 to conduct a review of Singapore's insolvency regimes.

[2] The Restructuring Committee, which was appointed by the Minister for Law in 2015, built on the work of the ILRC and made recommendations to increase Singapore's attractiveness as an international centre for cross-border debt restructuring.

companies and LLPs, unless exempted, required to obtain and maintain beneficial ownership information.

Changes to reduce regulatory burden and improve ease of doing business

<u>Exempt all private companies from holding AGMs subject to specified safeguards</u>

7. Currently, private companies need not hold AGMs if all members have approved a resolution to dispense with holding AGMs. Under the Companies (Amendment) Bill 2017, private companies will be exempted from holding AGMs if they send their financial statements to members within 5 months of the financial year end (FYE).

8. The following safeguards will be put in place so that private companies will still need to hold:

(a) an AGM if any shareholder requests for it not later than 14 days before the end of the 6th month after FYE;

(b) a general meeting to lay financial statements if any shareholder or auditor requests for it not later than 14 days after the financial statements are sent out.

9. Australia and the United Kingdom (UK) also have a similar regime for private companies. However, private companies in these jurisdictions are only required to hold a general meeting if shareholders holding at least 5% of the votes request for it.

<u>Align the timelines for holding AGMs and filing annual returns</u>

10. Currently, companies have to ascertain the deadlines for holding AGMs and filing annual returns annually, which may change every year based on a series of criteria. To simplify this process, the Companies Act will be amended to generally fix the deadline for holding AGMs and performing annual filings to the same date every year, by aligning the the timelines with companies' FYE.

Current	**Proposed**
Holding of AGMs	
(a) <u>Timeline 1</u>: Hold first AGM within 18 months of incorporation, and subsequent AGMs yearly at intervals of not more than 15 months	<u>For listed company</u> Hold AGM no later than the last day of the 4^{th} month after FYE <u>For any other company</u> Hold AGM no later than the last day of the 6^{th} month after FYE
(b) <u>Timeline 2</u>: Financial statements tabled at AGM must be made up to a date within 4 months (for listed company) or 6 months (for	

Current	Proposed
any other company) before the AGM date.	
Filing of annual returns	
For companies having a share capital and keeping a branch register outside Singapore File annual returns within 60 days after AGM For other companies File annual returns within 30 days after AGM	For companies having a share capital and keeping a branch register outside Singapore File annual returns no later than the last day of the 6th (if listed) or 8th month (if not listed) after FYE For other companies File annual returns no later than the last day of the 5th (if listed) or 7th month (if not listed) after FYE

11. To prevent companies from arbitrarily changing their FYE, the following safeguards will be put in place:

(a) companies must notify the Registrar of their FYE upon incorporation and of any subsequent change;

(b) companies must apply to the Registrar for approval to change their FYE:
   (i) if the change in FYE will result in a financial year longer than 18 months; or
   (ii) if the FYE was changed within the last 5 years; and

(c) unless otherwise approved by the Registrar, the duration of a company's financial year must not be more than 18 months in the year of incorporation.

Remove the requirement for a common seal

12. Currently, companies and LLPs are required to use the common seal when documents need to be executed as a deed, and for certain documents such as share certificates. This is an outdated practice. Jurisdictions such as Australia, Canada, Hong Kong, New Zealand and the UK no longer require the use of common seals. Both bills will remove the requirement for common seals and introduce an alternative of signature by authorised persons. For companies, the authorised persons are limited to:

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

13. Likewise, for LLPs, the authorised persons are limited to:

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

14. The safeguard will be that only signature by the authorised persons will have the same effect as affixing a seal. Companies and LLPs can still choose to retain the use of common seals based on business needs (e.g. if a company enters into contracts with overseas customers where the laws of the overseas jurisdictions may require the company to execute specific document under a seal).

Introduce an inward re-domiciliation regime in Singapore

15. The Companies (Amendment) Bill 2017 will introduce an inward re-domiciliation regime in Singapore. This is to allow foreign corporate entities to transfer their registration to Singapore instead of setting up subsidiaries (e.g. foreign corporate entities that may want to relocate their regional and worldwide headquarters to Singapore and still retain their corporate history and branding). An inbound foreign corporate entity that is re-domiciled to Singapore will become a Singapore company and be required to comply with the Companies Act like any other Singapore company. Re-domiciliation will not affect the obligations, liabilities, properties or rights of the foreign corporate entities.

Changes to improve the transparency of companies and LLPs

Require locally incorporated companies, foreign companies registered in Singapore, and locally registered LLPs to maintain registers of controllers

16. Locally incorporated companies, foreign companies registered in Singapore, and locally registered LLP, unless exempted[3], will be required to:

(a) take reasonable steps to identify their controllers[4] and obtain information on their controllers, including sending out notices to anyone whom they know or have reasonable cause to believe to be controllers, knows the identity of the controllers or is likely to have that knowledge. To avoid duplicative reporting, companies can stop the tracing of controllers once the tracing reaches: (i) a company/ registered foreign company/ LLP that will also be maintaining registers of controllers or is exempted from the regime; (ii) a corporation which shares are listed for quotation on an approved exchange in Singapore; or (iii) a trustee of an express trust to which Part VII of the Trustees Act applies;

[3] Exempted entities include listed companies and companies that are Singapore financial institutions. For the full list of exempted entities, please refer to www.acra.gov.sg/CA_2017
[4] A controller will be defined based on significant control and significant interest (threshold to be set at more than 25%), which is aligned with the Financial Action Task Force's definition of beneficial owners.

(b) maintain registers of controllers at prescribed places;

(c) ensure that the registers of controllers are up to date; and

(d) make registers of controllers available to the Registrar and law enforcement authorities upon request and not to the public.

17. To assist companies and LLPs in complying with these duties, subsidiary legislation and administrative guidelines will be published shortly. Companies and LLPs should take note that their duties can be discharged by sending notices to the relevant parties and recording their particulars, as well as sending further notices to any other parties that have been revealed as potential beneficial owners (i.e. "controllers" under both bills). The company or LLP is not liable should recipients of these notices fail to respond or provide inaccurate responses. It will also be made clear that such notices can be sent via electronic or physical means.

18. Anyone who receives a notice from the company will be required to provide to the company: (a) his particulars if he is a controller; or (b) any information that he is aware of about controllers. Besides the obligation placed on companies, a controller will also be required to provide and update information to the companies. The maximum penalty for non-compliance with the new regime will be $5,000. This is similar to the existing penalty if companies fail to file annual returns.

19. The Bill will also empower the Minister for Finance to:

(a) exempt any person or class of persons from the new regime;

(b) amend the Schedules relating to the list of exempted entities and the definitions of "*significant control*" and "*significant interest*" applicable to controllers; and

(c) direct the Registrar to maintain a central register of controllers of companies. This is a reserve power for the Minister in the event that a central register becomes a new, internationally agreed standard which is implemented by major financial centres worldwide.

20. The LLP (Amendment) Bill 2017 will introduce similar requirements for LLPs.

<u>Require foreign companies registered in Singapore to maintain public registers of shareholders</u>

21. Currently, foreign companies registered in Singapore are required to include shareholder information in a branch register in Singapore, if the shareholder is resident in Singapore and upon the shareholder's application. To improve the transparency of foreign companies registered in Singapore, the Companies (Amendment) Bill 2017 will require foreign companies registered in Singapore to maintain public registers

containing information on their shareholders, similar to the current requirement for locally incorporated public companies. This is also in line with international standards set by the Financial Action Task Force (FATF) and the Global Forum of Transparency and Exchange of Information for Tax Purposes (GF).

<u>Extend the period for a liquidator to retain records of wound up companies and LLPs from a minimum of two years to a minimum of five years</u>

22. Currently, a liquidator is required to retain records of wound up companies and LLPs for two years from the date of dissolution. For companies, this retention period was reduced from five years to two years in 2003 to cut costs. In contrast, the retention period in other jurisdictions such as Australia, Hong Kong and the UK is minimally five years which is also in line with international standards set by FATF and GF. Both bills will extend the retention period for records of wound up companies and LLPs from a minimum of two years to a minimum of five years.

<u>Remove the options for companies and LLPs to destroy records early if they are wound up by members, partners or creditors</u>

23. Currently, records of wound up companies and LLPs can be destroyed before the end of the two-year retention period if directed by: (a) the Court for winding up by the Court; (b) members or partners for voluntary winding up; or (c) creditors of the company/ LLP. Both bills will remove options (b) and (c), and retain option (a). This is to prevent companies/ LLPs that conduct illicit transactions from destroying documents before the end of the required retention period. It will also be in line with FATF and GF standards.

<u>Require former officers/ partners/ managers of struck off companies and LLPs to retain accounting records and registers of controllers for five years</u>

24. Currently, struck off companies and LLPs are not required to keep records. In line with international standards set by FATF and GF, both bills will require former officers/ partners/ managers of a company/ LLP which have been struck off and dissolved to retain accounting records and registers of controllers for five years. A new penalty of up to $2,000 will be imposed for non-compliance with the record-keeping requirement. The proposed penalty is similar to that under section 320(5) of the Companies Act and rule 67(5) of the Fifth Schedule to the LLP Act. Australia, Hong Kong and the UK also impose similar obligations.

<u>Void the issuance and transfer of bearer shares and share warrants by foreign companies registered in Singapore</u>

25. Currently, locally incorporated companies are prohibited from issuing bearer shares and share warrants. There is no such express provision for foreign companies registered in Singapore. To mitigate the risks of money-laundering and terrorist financing posed by bearer shares and share warrants that may be issued by foreign companies registered in Singapore, the Companies (Amendment) Bill 2017 will void the issuance and transfer of bearer shares and share warrants by these companies. This means that any such issuances and transfers will not be recognised legally.

Require nominee directors to disclose their nominee status and nominators to their companies

26. Currently, the Companies Act imposes certain disclosure requirements on directors to disclose information to their companies. There is no requirement for nominee directors to disclose their nominators to their companies or law enforcement authorities. To mitigate the risks of money laundering and terrorist financing, the Companies (Amendment) Bill 2017 will require nominee directors to disclose their nominee status and their nominators to their companies. This is also in line with international standards set by FATF and GF.

FATF-related amendment to the Accountants Act

27. Currently, the Ethics Pronouncement 200 (EP 200) sets out mandatory anti-money laundering and countering the financing of terrorism requirements for accountants in Singapore. The Accountants Act will be amended to clarify that a breach of EP 200 is grounds for disciplinary action under the Act. This will be included as a related amendment in the Companies (Amendment) Bill 2017.

Changes to Singapore's debt restructuring and corporate rescue framework

28. The Companies (Amendment) Bill 2017 will also enhance Singapore's corporate rescue and restructuring processes to provide greater opportunities for the rehabilitation and restructuring of companies that are in financial distress and help to position Singapore as a regional forum of choice for corporate debt work-outs and restructuring.

29. These amendments will strengthen the scheme of arrangement[5] and judicial management[6] regimes, which are the procedures used for corporate rescue and restructuring in Singapore. Additionally, amendments will be made to enhance Singapore's capability in dealing with cross-border insolvencies.

[5] A scheme of arrangement is a proposal between a company and its members or creditors (or classes of them) and can be used to effect a debt restructuring if the scheme terms propose to compromise or modify the rights of creditors. If the scheme is approved by a requisite statutory majority of creditors (or classes of them) and by the court, the terms of the scheme will bind all creditors. Provisions relating to schemes of arrangements are found in Part VII of the Companies Act.

[6] Judicial management is an alternative to liquidation and is a temporary court-supervised procedure where an external officeholder is appointed to manage the company with the purpose of: (i) rehabilitating the company; (ii) preserving all or part of the business as a going concern; or (iii) effecting a more advantageous realisation of the company's assets. Provisions relating to judicial management are found in Part VIIIA of the Companies Act.

Scheme of Arrangement

30. A new framework of provisions will be enacted to specifically support schemes of arrangement that implement debt restructuring proposals, including:

(a) Permitting the Court to grant moratoriums against creditor action to confer greater protection on a debtor during a restructuring in the following ways:
    (i) scope of the moratorium will be expanded so that it is similar to the moratorium in judicial management;
    (ii) a short 30-day moratorium will automatically arise on filing of the scheme application or an intention to file a scheme application as soon as practicable, if certain conditions which safeguard creditor interests are met;
    (iii) the Court will be able to restrain creditor action overseas, if that creditor is within the jurisdiction of the Singapore courts; and
    (iv) allowing extensions of the moratorium to related entities of the debtor.

(b) Rescue financing provisions will allow new financing that is raised to support the debtor during a restructuring to be granted super priority over other creditor claims. The grant of super priority over existing security will be subject to safeguards to ensure that existing secured creditors are not unfairly prejudiced.

(c) Cram-down provisions that will allow a scheme to be approved even if a class of creditors oppose the scheme, provided the dissenting class of creditors are not unfairly prejudiced by the scheme.

(d) Providing greater protection to creditors by requiring debtors to disclose relevant information to allow the creditors to make informed decisions in the restructuring and by introducing provisions to prevent debtors from dissipating assets while it benefits from the protection of the moratorium.

(e) Allows fast-tracking of pre-negotiated schemes of arrangements between a company and its key creditors, by dispensing with scheme meeting.

Judicial Management

31. Currently, an application for judicial management can only be brought when a company is unable to pay their debts. The Companies (Amendment) Bill 2017 will enable companies to apply for a judicial management order when the company is likely to be unable to pay their debts. Additionally, the Court will be given an overriding power to grant a judicial management order even if a secured creditor objects.

32. The Companies (Amendment) Bill 2017 will also introduce provisions to facilitate rescue financing in judicial management.

Cross-border insolvency

33. Provisions will be enacted to enhance Singapore's capability in resolving cross-border insolvencies and increase its attractiveness as a centre for debt restructuring. These include, in particular, the proposed adoption of the UNCITRAL Model Law on Cross-Border Insolvency[7], as well as the abolition of the general ring-fencing rule in the winding up of foreign companies[8].

Phased implementation

34. For amendments under MOF and ACRA: MOF and ACRA will implement the approved Bills in phases. The first phase, which will involve changes to improve the transparency of companies and LLPs, the amendment to the Accountants Act and the new inward re-domiciliation regime, will be implemented by the first half of 2017. The effective date for the first phase and details of the second phase will be announced at later dates.

35. For amendments under MinLaw: In view of the complexity and volume of legislative amendments required to fully implement the recommendations of both Committees, there will be a phased approach to implementation. In this first phase, the proposed amendments will focus on enhancing Singapore's debt restructuring and corporate rescue framework. In the subsequent phase, the remaining recommendations will be enacted in an omnibus Insolvency Bill.

36. Please refer to the following websites for details of the amendments:

(a) Public consultation documents issued by MOF and ACRA: http://www.mof.gov.sg/news-reader/articleid/1710/parentid/59/year/2016?category=Press%20Release; https://app.mof.gov.sg/Public-Consultation/Public-Consultation-Open/MOF-and-ACRA-Invite-Public-Feedback-on-Proposed-Changes-to-The-Companies-Act-Limited-Liability-Partnerships-Act-and-Accountants-Act

[7] The UNCITRAL Model Law on Cross-Border Insolvency ("Model Law") provides a legislative framework that facilitates cooperation and coordination between jurisdictions by providing for consistency in procedural mechanisms applicable to cross-border insolvency cases. The Model Law does not purport to amend substantive domestic insolvency law and enacting States decide how to incorporate the Model Law into domestic legislation. The Model Law has been adopted by major commercial jurisdictions such as Australia, Japan, Korea, New Zealand, the UK and the United States.

[8] The ring-fencing rule is set out in section 377(3)(c) of the Companies Act, which requires the liquidator of a foreign registered company to apply the proceeds realised from assets situated in Singapore to first pay off liabilities incurred in Singapore before remitting any balance to any foreign liquidation. Ring-fencing will be retained for specific classes financial institutions (specified by MAS), such as banks and insurance companies. This approach is consistent with that of major jurisdictions such as Australia, the UK and the US and.

(b) Public consultation documents issued by MinLaw: https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/public-consultation-open-for-feedback-on-proposed-changes-to-sin.html.

(c) MOF's and ACRA's responses to public feedback: http://www.mof.gov.sg/news-reader/articleid/1788/parentId/59/year/2017

(d) MinLaw's responses to public feedback: https://www.mlaw.gov.sg/content/minlaw/en/news/public-consultations/responses-to-feedback-received-from-public-consultation-on-propo.html

(e) Bills as tabled in Parliament: https://www.parliament.gov.sg/publications/bills-introduced

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