

Companies (Amendment) Bill

Bill No. /2016

Read the first time on 2016.

A BILL

intituled

An Act to amend the Companies Act (Chapter 50 of the 2006 Revised Edition), and to make consequential and related amendments to certain other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore as follows:

Short title and commencement

1. This Act may be cited as the Companies (Amendment) Act 2016 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

New Part XA

2. The principal Act is amended by inserting, immediately after section 354, the following Part:

“PART XA

TRANSFER OF REGISTRATION

Foreign entities to which this Part applies

354A. This Part applies to a foreign entity which intends to be registered as a company limited by shares under this Act.

Interpretation of this Part

354B. In this Part –

“foreign entity” means a body corporate that is incorporated outside Singapore.

Requirements for transfer of registration

354C. When a foreign entity applies to be registered as a company limited by shares under this Act, it shall comply, with –

- (a) the applicable requirements set out in sections 354D, 354E and 354F(5); and
- (b) all other requirements that may be prescribed by regulations made under this Part.

Names of companies to be registered under this Part

354D.–(1) A foreign entity which intends to be registered as a company limited by shares under this Act shall apply to reserve the name of the company in accordance with section 27(10)(a).

(2) For the purposes of an application made under subsection (1), section 27(7), (8), (9), (12), (12A), (12B), (12C), (13), and (15) shall extend and apply accordingly.

(3) A foreign entity shall not be registered under section 354F(1) unless the name which it is proposed to be registered has been reserved under section 27(12).

Application for registration

354E.–(1) A foreign entity may apply to the Registrar to be registered as a company limited by shares under this Act.

(2) Where a foreign entity applies to the Registrar for registration as provided by subsection (1), the foreign entity shall

- (a) lodge with the application –
 - (i) the particulars of its registered office, in accordance with section 143(1);
 - (ii) the name of the foreign entity in its place of incorporation;
 - (iii) the address of the registered office of the foreign entity in its place of incorporation;
 - (iv) a certified copy of the certificate of incorporation in its place of incorporation, or a document of similar effect;
 - (v) a certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any);
 - (vi) the constitution to be registered under section 354F(1);
 - (vii) the date of its last financial year end;
 - (viii) such other documents as may be prescribed or as the Registrar may require;
- (b) furnish the Registrar with such information as may be prescribed or as the Registrar may require; and

(c) pay the Registrar the prescribed fee.

(3) Either –

- (a) a registered qualified individual engaged in the registration of the company; or
- (b) a person named in the constitution referred to in subsection (2)(a)(vi) as a director or the secretary of the company,

shall make a declaration to the Registrar that –

- (i) all of the requirements of this Act relating to the registration of the company have been complied with; and
- (ii) he has verified the identities of the subscribers to the constitution, and of the persons named in the constitution as officers of the company,

and the Registrar may accept such declaration as sufficient evidence of those matters.

Registration

354F.–(1) Upon compliance by the foreign entity with section 354E, the Registrar may, if he thinks fit, register the foreign entity as a company limited by shares by registering its constitution, subject to such conditions that the Registrar may impose.

(2) On the registration of the constitution, the Registrar shall issue in the prescribed manner a notice of transfer of registration in the prescribed form stating that the company is, on and from the date specified in the notice –

- (a) registered by way of transfer of registration under this Act;
- (b) a company limited by shares; and
- (c) where applicable, a private company.

(3) A certificate of transfer of registration shall be issued by the Registrar upon the application by the company and payment of the prescribed fee.

(4) A notice of transfer of registration issued by the Registrar under subsection (2) and a certificate of transfer of registration of the Registrar issued under subsection (3) shall each be conclusive evidence of the date of the company's registration under this Act.

(5) A foreign entity registered as a company limited by shares under this section shall, within 30 days of the issuance of the notice of transfer referred to in subsection (2), submit to the Registrar a document evidencing that the foreign entity has been de-registered in its place of incorporation.

Power to refuse registration

354G.—(1) The Registrar shall not register a foreign entity as a company under this Act unless he is satisfied that all the requirements of this Act in respect of the registration have been complied with.

(2) Notwithstanding anything in this Act or any rule of law, the Registrar shall refuse to register a foreign entity as a company under this Act if he is satisfied that –

- (a) the company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- (b) it would be contrary to national security or interest for the company to be registered.

(3) Any person aggrieved by the decision of the Registrar under subsection (2) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final.

Effect of registration

354H.—(1) On and from the date of registration specified in the notice issued under section 354F(2), the foreign entity shall be deemed to be a company as defined in section 4(1) and all such provisions of this Act pertaining to companies shall apply from that date.

(1A) Notwithstanding subsection (1), section 144 shall only apply after the expiration of 3 months after the date of the notice issued under section 354F(2).

(2) For the avoidance of doubt, the registration of a foreign entity under this Act 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 property, or the rights or obligations, of the foreign entity; or
- (d) render defective any legal proceedings by or against the foreign entity,

and any legal proceedings that could have been continued or commenced by or against the foreign entity prior to its registration as a company under this Act may be continued or commenced by or against the company after the registration.

Revocation of registration

354I.–(1) The Registrar may by order revoke the registration of a company registered under section 354F(1) if the company has failed to comply with section 354F(5).

(2) The Registrar shall, before making an order of revocation under subsection (1) –

- (a) give the company notice in writing of the Registrar's intention to revoke the registration;
- (b) specify in the notice a period of at least 30 days within which the company may make written representations to the Registrar; and
- (c) consider the company's written representations (if any) that are received by the Registrar within the time specified in the notice.

(3) When the Registrar has made an order of revocation under subsection (1), the Registrar shall immediately serve on the company a notice of the order.

(4) An order of revocation made by the Registrar under subsection (1) shall be final.

(5) Notice of the revocation made by the Registrar under subsection (1) shall be published in the *Gazette* on the date as specified in the notice.

(6) Upon publication in the *Gazette* under subsection (5), the order of revocation made by the Registrar under subsection (1) shall be effective and the Registrar shall remove the company's name from the register.

(7) Notwithstanding the order of revocation made under subsection (1), the liability, if any, of every officer and member of the company shall continue.

(8) Nothing in this section shall prejudice the enforcement by any person of any right or claim against the company or by the company of any right or claim against any person.

Duty of company to register pre-existing charges

354J.—(1) If, prior to the registration of a foreign entity as a company under section 354F(1), there are any charges, whether created by the foreign entity or otherwise, which would have been required to be registered under Division 8 of Part IV if the foreign entity had been incorporated as a company in Singapore under this Act, there shall be lodged with the Registrar in the prescribed manner for registration, within 30 days of the date specified in the notice of transfer under section 354F(2)(a), a statement containing the prescribed particulars of the charge.

(2) Documents and particulars required to be lodged for registration in accordance with subsection (1) may be lodged for registration in the prescribed manner by the company concerned or by any person interested in the documents.

(3) Where registration is effected by some other person than the company under subsection (2), that person shall be entitled to recover from the company the amount of any fees properly paid by him on the registration.

(4) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

(5) For the avoidance of doubt, a failure to comply with subsection (1) shall not disturb the continuity of status,

operation or effect of any security, right, priority or obligation of the charge registered under subsection (1).

(6) Section 137 shall not apply to this section, but a Court, on being satisfied that the omission or mis-statement of any particular with respect to any pre-existing charge was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the omission or mis-statement be rectified.

(7) For the purposes of sections 134 and 138, any charge requiring registration under subsection (1) shall be deemed to be a charge requiring registration under Division 8 of Part IV.

(8) Sections 135 and 136 shall apply in respect of any charge requiring registration under subsection (1) as if a reference to a charge so registered under section 135, or to a registered charge under section 136, as the case may be, referred to a charge registered under subsection (1).

Duties of company with respect to issue of certificates

354K.—(1) Within 60 days after the date of the notice of transfer issued under section 354F(2), the company shall complete and have ready for delivery appropriate certificates in respect of all persons registered as holders of existing shares or debentures, as the case may be, as of the date of the notice of transfer.

(2) Upon the delivery of the certificates to the holders of existing shares or debentures under subsection (1), all prior certificates in respect of such shares or debentures shall not be operative or have any validity for the purposes of this Act.

(3) Any share warrants which had been issued by the foreign entity before the date of transfer shall be void.

(4) For the purposes of subsection (1), section 130AE(3) and (4) shall extend and apply accordingly.

Extension of time and waiver of requirements

354L.—(1) The Registrar may extend the period prescribed by sections 354F(5), 354J(1) and 354K(1) for lodging any document, or for doing anything, on such terms as it deems fit, [notwithstanding that the application for extension is made after the expiration of that period].

(2) The Registrar may, at any time in the Registrar's discretion, waive or modify any requirement imposed by this Part and any regulations made thereunder, or any conditions imposed by the Registrar under section 354F(1).

Regulations

354M.—(1) The Minister may make regulations for the purposes of this Part.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to —

- (a) prescribing such other requirements which must be satisfied by a foreign entity when it applies to be registered as a company under this Part;
- (b) prescribing forms for the purposes of this Part;
- (c) providing for the payment of fees (including administrative fees and processing fees) and other charges for applications made under this Part, and for related matters; and
- (d) all matters or things which by this Part are required or permitted to be prescribed otherwise than by rules or which are necessary or expedient to be prescribed for giving effect to this Part.

Note: This public consultation is being conducted on the draft Bill before it has been reviewed by the Attorney-General's Chambers (AGC). The Bill may be subject to further changes after AGC's review. The numbering of the clauses is also tentative and may be subject to further changes.