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COMPANIES ACT
(CHAPTER 50)

COMPANIES (TRANSFER OF REGISTRATION)
REGULATIONS 2017

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In exercise of the powers conferred by section 411 of the Companies Act, the Minister for Finance makes the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations are the Companies (Transfer of Registration) Regulations 2017 and come into operation on 11 October 2017.

PART 2

APPLICATION FOR REGISTRATION

Prescribed form under section 358(2)(a) of Act

2. For the purposes of section 358(2)(a) of the Act, the prescribed form is the form set out on the Authority's website at www.acra.gov.sg/redomiciliation_application_form.

Certification of documents under section 358(2)(b)(i) of Act

3. For the purposes of section 358(2)(b)(i) of the Act, a copy of a charter, statute, constitution or memorandum or articles or other instrument constituting or defining a foreign corporate entity's constitution, in its place of incorporation, is certified if, within the period of 4 months immediately preceding the day on which the copy is lodged with the Registrar or within such longer period as the Registrar permits in any particular case, the copy was certified to be a true copy —

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- (a) by an official holding or purporting to hold an office corresponding to that of the Registrar in the foreign corporate entity's place of incorporation;
 - (b) by a notary public;
 - (c) by a director, manager or secretary of the foreign corporate entity by statutory declaration; or
 - (d) by the registered qualified individual who lodges the items mentioned in section 358(2)(b) of the Act for the purpose of registering the foreign corporate entity as a company limited by shares under the Act.

Prescribed documents under section 358(2)(b)(iii) of Act

4.—(1) For the purposes of section 358(2)(b)(iii) of the Act, the prescribed documents are —

- (a) a certified copy of —
 - (i) the certificate of incorporation of the foreign corporate entity in its place of incorporation; or
 - (ii) a document of similar effect to the certificate of incorporation of the foreign corporate entity in its place of incorporation;
- (b) except as provided in regulation 7(5), a declaration in writing signed by all the directors of the foreign corporate entity that they have formed the opinion that the foreign corporate entity meets the minimum requirements mentioned in regulation 7(1)(b), (c) and (d);
- (c) a declaration by each proposed director that he or she consents to act as a director upon registration of the foreign corporate entity as a company limited by shares;
- (d) a statement by each proposed director that he or she is not disqualified from acting as a director under the Act;
- (e) a statement by each proposed director that he or she is not debarred under section 155B of the Act from acting as a director under the Act;

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- (f) any one of the following documents, if applicable:
- (i) a declaration by each proposed director that he or she has agreed, upon registration of the foreign corporate entity as a company limited by shares, to take a number of shares of the company that is not less than his or her qualification, if any;
 - (ii) an undertaking by each proposed director that he or she will, upon registration of the foreign corporate entity as a company limited by shares, take from the company and pay for his or her qualification shares, if any;
 - (iii) a declaration by each proposed director that a specified number of shares, not less than his or her qualification, if any, has been registered in his or her name;
- (g) a declaration by each proposed secretary —
- (i) that he or she consents, upon registration of the foreign corporate entity as a company limited by shares, to act as a secretary;
 - (ii) that he or she is not debarred under section 155B of the Act from acting as a secretary under the Act; and
 - (iii) if the foreign corporate entity is to be registered as a public company limited by shares, that he or she satisfies section 171(1AA)(b) of the Act; and
- (h) where an advocate and solicitor or a registered filing agent is engaged to submit an application under section 358(1) of the Act, a confirmation by the advocate and solicitor or registered filing agent (as the case may be) that —
- (i) each proposed director —
 - (A) has consented to act as a director upon registration of the foreign corporate entity as a company limited by shares; and
 - (B) is not disqualified from acting as a director under the Act; and

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- (ii) each proposed secretary has consented to act as secretary upon registration of the foreign corporate entity as a company limited by shares.

(2) For the purposes of paragraph (1)(a), a copy of the certificate of incorporation of the foreign corporate entity in its place of incorporation, or a copy of a document of similar effect, is a certified copy if, within the period of 4 months immediately preceding the day on which the copy is lodged with the Registrar or within such longer period as the Registrar permits in any particular case, the copy was certified to be a true copy by an official holding or purporting to hold an office corresponding to that of the Registrar in the foreign corporate entity's place of incorporation.

(3) Where the certificate or document mentioned in paragraph (1)(a) is an electronic document, the Registrar may accept a print-out of that certificate or document from an electronic database of an office corresponding to that of the Registry of Companies in the foreign corporate entity's place of incorporation that has, within the period of 4 months immediately preceding the day on which it is lodged with the Registrar or within such longer period as the Registrar permits, been certified to be a true copy of the certificate or document by an official holding or purporting to hold an office corresponding to that of the Registrar in the foreign corporate entity's place of incorporation.

(4) A declaration, statement or undertaking mentioned in paragraph (1)(c), (d), (e) and (f) must be filed with the Registrar —

- (a) by the proposed director who made the declaration, statement or undertaking himself or herself; or
- (b) through a registered qualified individual authorised by that proposed director.

(5) A declaration mentioned in paragraph (1)(g) must be filed with the Registrar —

- (a) by the proposed secretary who made the declaration himself or herself; or
- (b) through a registered qualified individual authorised by that proposed secretary.

(6) In this regulation —

“director”, in relation to a foreign corporate entity, includes any person occupying the position of director of the foreign corporate entity by whatever name called and includes a person in accordance with whose directions or instructions the directors or the majority of the directors of the foreign corporate entity are accustomed to act and an alternate or substitute director;

“electronic document” means a document that is filed, served, delivered or otherwise conveyed by electronic transmission;

“proposed director” means a person who is to be a director of the company limited by shares upon registration of a foreign corporate entity that is applying for registration, whether or not that person is an existing director of the foreign corporate entity;

“proposed secretary” means a person who is to be a secretary of the company limited by shares upon registration of a foreign corporate entity that is applying for registration, whether or not that person is an existing secretary of the foreign corporate entity;

“secretary” includes an assistant or deputy secretary.

PART 3

REGISTRATION

Notice of transfer of registration

5. For the purposes of section 359(3) of the Act, the form of the notice of transfer of registration to be issued by the Registrar upon registration of a foreign corporate entity is set out in the Schedule.

Form of application under section 359(7) of Act

6. For the purposes of section 359(7) of the Act, an application for an extension of the 60-day period mentioned in section 359(6) of the Act must be in the form set out on the Authority’s website at www.acra.gov.sg/deregistration_EOT_application_form.

PART 4

MINIMUM REQUIREMENTS FOR REGISTRATION

Minimum requirements

7.—(1) For the purposes of section 360(1) of the Act, the minimum requirements prescribed for registration are —

- (a) the foreign corporate entity satisfies the size criteria set out in paragraph (2), (3) or (4);
- (b) subject to paragraph (5), as at the date of the application by the foreign corporate entity for registration under section 358(1) of the Act, there is no ground on which the foreign corporate entity could be found to be unable to pay its debts;
- (c) subject to paragraph (5), as at the date of the application by the foreign corporate entity for registration under section 358(1) of the Act, the value of the foreign corporate entity's assets is not less than the value of its liabilities (including contingent liabilities);
- (d) subject to paragraph (5), the foreign corporate entity will —
 - (i) if it is intended to commence winding up of the foreign corporate entity within 12 months immediately after the date of the application by the foreign corporate entity for registration under section 358(1) of the Act, be able to pay its debts in full within the period of 12 months after the date of commencement of the winding up; or
 - (ii) if it is not intended to commence winding up of the foreign corporate entity within 12 months immediately after the date of the application by the foreign corporate entity for registration under section 358(1) of the Act, be able to pay its debts as they fall due during the period of 12 months immediately after the date of the application by the foreign corporate entity for registration under section 358(1) of the Act;

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- (e) the foreign corporate entity is authorised to transfer its incorporation under the law of its place of incorporation;
 - (f) the foreign corporate entity has complied with the requirements of the law of its place of incorporation in relation to the transfer of its incorporation;
 - (g) the application by the foreign corporate entity for registration under section 358(1) of the Act is —
 - (i) not intended to defraud existing creditors of the foreign corporate entity; and
 - (ii) made in good faith;
 - (h) no receiver, or receiver and manager, is in possession of, or has control over, any property of the foreign corporate entity and no proceeding to appoint a receiver, or receiver and manager, in respect of any property of the foreign corporate entity is ongoing or pending;
 - (i) the foreign corporate entity is not under judicial management and no proceeding to place the foreign corporate entity under judicial management is ongoing or pending;
 - (j) no compromise or arrangement made between the foreign corporate entity and another person or other persons is being administered and no proceeding to place the foreign corporate entity under any compromise or arrangement is ongoing or pending;
 - (k) the foreign corporate entity is not in liquidation or being wound up and no proceeding for liquidation or winding up against the foreign corporate entity is ongoing or pending; and
 - (l) no other judicial or administrative proceeding under a law relating to insolvency or adjustment of debt, in which the property or affairs of the foreign corporate entity are or would be subject to control or supervision by a judicial or administrative authority for the purpose of reorganisation or liquidation, is ongoing or pending.

(2) Except where the foreign corporate entity is a parent or a subsidiary, a foreign corporate entity satisfies the size criteria mentioned in paragraph (1)(a) if any 2 of the following criteria are met:

- (a) the value of the foreign corporate entity's total assets exceeds \$10 million;
- (b) the annual revenue of the foreign corporate entity exceeds \$10 million;
- (c) the foreign corporate entity has more than 50 employees.

(3) Where the foreign corporate entity is a parent, the foreign corporate entity satisfies the size criteria mentioned in paragraph (1)(a) if any 2 of the following criteria are met:

- (a) the value of the consolidated total assets of the foreign corporate entity's group, determined in accordance with the accounting standards applicable to the group, exceeds \$10 million;
- (b) the consolidated revenue of the foreign corporate entity's group, determined in accordance with the accounting standards applicable to the group, exceeds \$10 million;
- (c) the foreign corporate entity's group has more than 50 employees.

(4) Where the foreign corporate entity is a subsidiary, the foreign corporate entity satisfies the size criteria mentioned in paragraph (1)(a) if —

- (a) the foreign corporate entity is a subsidiary of a parent that —
 - (i) is a foreign corporate entity registered under Part XA of the Act that satisfies the size criteria mentioned in paragraph (3); or
 - (ii) is a company that would, if it were a foreign corporate entity, satisfy the size criteria mentioned in paragraph (3); or

(b) the foreign corporate entity —

(i) is not itself a parent; and

(ii) meets any 2 of the following criteria:

(A) the value of the foreign corporate entity's total assets exceeds \$10 million;

(B) the annual revenue of the foreign corporate entity exceeds \$10 million;

(C) the foreign corporate entity has more than 50 employees.

(5) A foreign corporate entity need not satisfy the minimum requirements mentioned in paragraph (1)(b), (c) and (d) if the Registrar is satisfied that the foreign corporate entity intends to make, upon registration of the foreign corporate entity as a company limited by shares under the Act, an application to the Court under section 210(1), 211B(1), 211C(1), 211I(1) or 227B of the Act.

(6) For the purposes of paragraph (1)(b) and (d), all liabilities of the foreign corporate entity (including contingent liabilities) must be taken into account.

(7) For the purposes of paragraph (1)(c), the following must be taken into account:

(a) the most recent financial statements of the foreign corporate entity;

(b) all other circumstances that the directors of the foreign corporate entity know or ought to know affect, or may affect, the value of the foreign corporate entity's assets and the value of its liabilities (including contingent liabilities).

(8) For the purposes of paragraph (1)(c), valuations of the foreign corporate entity's assets or estimates of the foreign corporate entity's liabilities that are reasonable in the circumstances may be relied on.

(9) In determining, for the purposes of paragraph (7)(b), the value of a contingent liability, the following may be taken into account:

(a) the likelihood of the contingency occurring;

- (b) any claim the foreign corporate entity is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(10) In this regulation, “group”, “parent” and “subsidiary” have the same meanings as in the Accounting Standards.

PART 5

APPLICATION OF ACT TO REGISTERED FOREIGN CORPORATE ENTITIES

Modification and exclusion of provisions of section 22 of Act

8. In the application of section 22 of the Act to a foreign corporate entity registered under Part XA of the Act —

- (a) subsections (1)(c), (d), (e), (f) and (g), (1AA), (1AB), (1A) and (2) of that section are excluded; and
- (b) subsection (4) of that section is modified by disregarding the words “, duly signed by the subscribers and stating, if the company is to have a share capital, the number of shares that each subscriber has agreed to take,”.

Modification of section 144 of Act

9. Section 144 of the Act does not apply to a foreign corporate entity registered under Part XA of the Act for the first 3 months immediately after the date of registration of the foreign corporate entity.

Modification of section 175 of Act

10. In the application of section 175 of the Act to a foreign corporate entity registered under Part XA of the Act, subsection (1) of that section is modified —

- (a) by reading the reference to “18 months of its incorporation” as a reference to “18 months after the date of registration of the foreign corporate entity”; and
- (b) by reading the reference to “the year of its incorporation” as a reference to “the year of the date of registration of the foreign corporate entity”.

Modification of section 201 of Act

11. In the application of section 201 of the Act to a foreign corporate entity registered under Part XA of the Act —

(a) subsection (1) of that section is modified —

(i) by reading the reference to “a date not later than 18 months after the incorporation of the company” as a reference to “a date not later than 18 months after the date of registration of the foreign corporate entity”; and

(ii) by reading the reference to “the period since the preceding financial statements (or in the case of the first financial statements, since the incorporation of the company)” as a reference to “the period since the end of the last financial year of the foreign corporate entity”; and

(b) subsection (5)(a) of that section is modified by reading the reference to “the period beginning from the date the preceding financial statements were made up to (or, in the case of the first financial statements, since the incorporation of the company)” as a reference to “the period since the end of the last financial year of the foreign corporate entity”.

Modification of section 205 of Act

12. In the application of section 205 of the Act to a foreign corporate entity registered under Part XA of the Act, subsection (1) of that section is modified by reading the reference to “3 months after incorporation of the company” as a reference to “3 months after the date of registration of the foreign corporate entity”.

Modification and exclusion of provisions of Thirteenth Schedule

13. In determining whether a foreign corporate entity registered under Part XA of the Act is a small company for the purposes of section 205C of the Act —

- (a) paragraph 1(a) of the Thirteenth Schedule to the Act is modified by disregarding the reference to paragraph 4;
- (b) paragraph 3 of the Thirteenth Schedule to the Act is modified by reading references to “incorporation” as references to “the date of registration of the foreign corporate entity”;
- (c) paragraph 4 of the Thirteenth Schedule to the Act is excluded; and
- (d) paragraph 6(a) of the Thirteenth Schedule to the Act is modified by reading the reference to “incorporation” as a reference to “the date of registration of the foreign corporate entity”.

THE SCHEDULE

Regulation 5

FORM OF NOTICE OF TRANSFER OF REGISTRATION UNDER SECTION 359(3) OF THE ACT

Name of the company:

Unique entity number:

Former name of the company prior to registration under the Companies Act:
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The company named above, which was incorporated in [place of original incorporation] on [date of original incorporation], is, on and from [date of registration] —

- (a) registered by way of transfer of registration under section 359(1) of the Companies Act (Cap. 50), [subject to the following conditions imposed by the Registrar under section 359(2) of the Companies Act:]*

[set out conditions imposed by the Registrar under section 359(2) of the Companies Act, if any]*; and

- (b) a [private]* [public]* company limited by shares.

*Delete if not applicable.

Made on 6 October 2017.

TAN CHING YEE
*Permanent Secretary,
Ministry of Finance,
Singapore.*

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