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Accounting and Corporate Regulatory Authority  
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**BY EMAIL & POST**

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page)

Dear Sirs

**PUBLIC CONSULTATION ON THE REVIEW OF THE COMPANIES ACT AND  
THE REGULATORY FRAMEWORK FOR FOREIGN ENTITIES**

We refer to the e-mail dated 21 June 2011 from Ms Anitah Ghani of the Accounting and Corporate Regulatory Authority ("ACRA") inviting the Law Society to provide our feedback on the Steering Committee's Report on the review of the Companies Act and ACRA's Consultation Paper on the review of the regulatory framework for foreign entities.

This matter was released to our Corporate Practice Committee (the "Committee") for comments.

The Committee's views on ACRA's Consultation Paper are enclosed. The Committee's views on the Steering Committee's Report have been concurrently sent to the Ministry of Finance separately.

Thank you for giving the Law Society the opportunity to consider the matter.

Yours faithfully

Alvin Chen  
Chief Legal Officer  
Director, Representation and Law Reform

*Encl.*

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We set out below the Corporate Practice Committee's response to the proposals in the Consultation Paper by ACRA on the new regulatory framework for foreign entities in Singapore.

**Recommendation 40**

Annex [40]

**A framework for transfer of incorporation of foreign entities will not be introduced at this time.**

**Response to Recommendation 40:**

1. At the outset, it should be noted that contrary to earlier feedback received by ACRA, members of the Committee have observed evident demand for re-domiciliation of foreign entities, as more than a few of them have received several requests from foreign companies to be re-domiciled in Singapore. However, the Committee's views on this Recommendation are not homogeneous.
2. The majority of the Committee agrees with Recommendation 40 but a minority is in support of advancing a framework for the re-domiciliation of foreign entities and the views of the minority are set out below for the Steering Committee's consideration.
3. Re-domiciliation<sup>1</sup> of a company refers to the process by which a company moves from its original jurisdiction of domicile into a new jurisdiction, where it is incorporated under and subject to the laws of the new jurisdiction. Generally, the process of re-domiciliation allows the company to continue in its new receiving jurisdiction as the same legal entity it was in its original exiting jurisdiction. Hence, this allows for continuity and little disruption to the company's business operations.

4. In 2007, the Accounting & Corporate Regulatory Authority (*ACRA*) issued a consultation paper on, *inter alia*, a proposal to adopt re-domiciliation provisions in Singapore<sup>2</sup>. The decision to put in place such provisions was not made due to feedback received on the matter. As of now, there are no re-domiciliation provisions under Singapore law.
5. This Response sets out some of the salient considerations for the suitability of re-domiciliation legislation in Singapore, specifically on allowing re-domiciliation into Singapore.

#### **COMPARING SINGAPORE WITH OTHER LEADING JURISDICTIONS**

6. A fairly large number of jurisdictions have in place legislation allowing for re-domiciliation of companies into and out of their jurisdictions presently.
7. Corporate-friendly jurisdictions such as the British Virgin Islands, the Cayman Islands, Bermuda and the American state of Delaware have had such legislation for many years.
8. An increasing number of major jurisdictions around the world have also begun to adopt such legislation as these jurisdictions recognize the benefits of having in place re-domiciliation legislation.
9. In fact, New South Wales has long had legislation allowing for the re-domicile of companies into and out of the state. The Australian state had first enacted the Companies (Transfer of Domicile) Act 1968 way back in 1968 in order to facilitate the re-

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<sup>1</sup> "Re-domiciliation" is also referred to by the terms "transfer of registration", "re-incorporation" or "continuation".

<sup>2</sup> Review of the Registration and Regulatory Regime for Foreign Companies under the Companies Act, ACRA Consultation Paper, October 2007

domiciliation of companies into the state<sup>3</sup>. Re-domiciliation of companies into Australian states is now governed by the Australian Corporations Act 2001<sup>4</sup> and the Commonwealth law of Australia.

10. New Zealand is another leading jurisdiction having in place re-domiciliation legislation since 1993<sup>5</sup>.
11. In Canada, the Canada Business Corporations Act allows for the re-domicile of companies into and out of its jurisdiction<sup>6</sup>.
12. In the USA, besides Delaware, states such as Florida<sup>7</sup> and Wyoming<sup>8</sup> also have in place legislation since 2007 and 2010 respectively providing for re-domiciliation into their jurisdictions.

## **REASONS IN FAVOUR OF RE-DOMICILIATION LEGISLATION**

### **(a) Re-domiciliation legislation complements Singapore's business-friendly operating environment**

13. Singapore has long been known for its business-friendly environment. With its favourable corporate tax rates and policies, Singapore has been able to attract much foreign investment and capital, which has enabled it to prosper rapidly. In some ways, it shares many similarities with some of the jurisdictions stated above such as Canada and

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<sup>3</sup> The Companies (Transfer of Domicile) Act 1968 was repealed by Schedule 4 to the Statute Law (Miscellaneous Provisions) Act 2008 No 62 with effect from 1 July 2008.

<sup>4</sup> Australian Corporations Act 2011, Section 601 AI

<sup>5</sup> New Zealand Companies Act 1993, Section 344 and 345

<sup>6</sup> Canada Business Corporations Act, Section 187

<sup>7</sup> 2007 Florida Corporations Act, Section 607.1801

<sup>8</sup> Wyoming Business Corporations Act 2010, Section 17-16-1810

the same policy considerations could apply. Its credible reputation has further ensured that it remains a top destination for many foreign companies to invest in.

**(b) Companies may re-domicile to Singapore for regional positioning or other strategic reasons**

14. A company may also want to re-domicile into Singapore as its main area of business is within Singapore or the nearby region. This can be seen in the case of the Hong Kong and China Gas Company which was incorporated in England in 1862. Although it was an English company, it has no business in England and its business was solely in Hong Kong. It was subsequently re-domiciled from England to Hong Kong as that better facilitates its operations in Hong Kong.
15. Should a company wish to transfer its domicile to Singapore for similar regional positioning, there would be a lack of re-domiciliation allowing such transfer into Singapore. As such, Singapore may lose the opportunity to welcome companies that are thinking of re-domiciling here for reasons of geography and efficiency.
16. A company may want to re-domicile out of a jurisdiction it is currently domiciled in if that jurisdiction is affected by some form of instability, and the company is seeking to protect its assets from expropriation.
17. Before the handover of Hong Kong to China in 1997, there had been a move by some Hong Kong incorporated companies to re-domicile to foreign jurisdictions, so as to escape the risk of expropriation of their assets in Hong Kong by a different future legislature. It was feared that a future legislature after the handover would pass legislation that would nationalize or expropriate the property and shares of the companies,

and all the assets of the company would thus fall under governmental control<sup>9</sup>. This resulted in a significant number of Hong Kong based companies re-domiciling to foreign jurisdictions such as Bermuda<sup>10</sup>.

18. If Singapore had in place legislation permitting re-domiciliation, Singapore would undoubtedly have been one of the jurisdictions to which such Hong Kong based companies would consider re-domiciling. The failure of Singapore to have such legislation in place resulted in Singapore losing out as companies consider re-locating their domicile. As the end of the 50-year autonomy period for Hong Kong looms near, the same loss may recur if Singapore does not have such legislation in place.
19. There are other jurisdictions beside Hong Kong where the situation is not always predictable or stable and companies may from time to time consider re-locating their domicile. As the headquarters of companies are usually in the jurisdiction of domicile, Singapore will lose out if it does not have legislation permitting such re-domiciliation. Given the strenuous efforts that the Economic Development Board (**EDB**) is expending in attempting to attract corporations to locate their regional headquarters or their worldwide headquarters in Singapore, this failure to have legislation permitting re-domiciliation runs counter against the EDB's efforts to attract such headquarters to Singapore.
20. It should be noted that the considerations above do not support the issue of allowing Singapore companies to re-domicile to other jurisdictions. The re-incorporation of companies into Singapore brings economic benefits to Singapore but it is difficult to see what economic benefits there would be to allow Singapore companies to re-incorporate to other jurisdictions.

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<sup>9</sup> Hong Kong: the corporate domicile issue in perspective, Julianne Doe, *Comp. Law.* 1991, 12(9), 188-191 at 188.

<sup>10</sup> Corporate Redomicile, David Lewis, *Comp. Law.* 1995, 16(10), 295-299 at 296

## **SUMMARY**

21. Having in place clearly laid-out legislation for the re-domiciliation of companies into Singapore would clearly facilitate the passage of foreign companies onto our shores. As of now, Singapore has no such provisions in place and there is no clear way of transferring their place of domicile into Singapore even if they wanted to. It should be possible to have such re-domiciliation legislation allowing re-incorporation into Singapore without at the same time allowing re-incorporation out of Singapore as the former brings clear economic benefits whereas the rationale for the latter is doubtful. Many leading jurisdictions including the USA (e.g. Delaware, Florida), Canada, Australia (New South Wales), and New Zealand have already enacted re-domiciliation legislation.
22. With the increasing number of jurisdictions adopting legislation permitting re-domiciliation, the time may be ripe for Singapore to consider doing the same. Singapore is falling behind the other leading jurisdictions and missing out on potential re-locations of corporate headquarters into Singapore and inflows of foreign capital and investment. It seems appropriate for Singapore to consider the introduction of such re-domiciliation legislation.
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