RESPONDEK & FAN
Attorneys At Law

LEGAL E-BULLETIN

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Dear Readers,
This E-Bulletin summarizes important recent legal changes in Singapore and in Thailand, including:

- Important amendments to the Singapore Companies Act
- New regulations for Directors holding Employment Passes in SGP
- New retrenchment regulations in SGP
- Single shareholder limited liability companies in Thailand
- Corporate meetings by telefonference etc.

Best regards,
RESPONDEK & FAN
Dr Andreas Respondek
Managing Director

Ms. Prapasiri Sorapan

Ms. Somruetai Wisalaporn

SINGAPORE

New regulations for Directors in SGP holding Employment Passes

In general, Employment Pass ("EP") holders are only allowed to work for one company, i.e. the company specified in their EP. The Singapore Ministry of Manpower ("MOM") has recognised that Secondary Directorships in related companies (e.g. subsidiaries) may be critical to the roles of EP holders and introduced new regulations for Directors that wish to take up a director's position in another company ("secondary directorship"; http://www.mom.gov.sg/passes-and-permits/employment-pass/taking-up-secondary-directorship).

Companies seeking to appoint an EP holder employed by a company to the Board of Directors in another company other than the company for which the EP has been approved, the EP holder must obtain a Letter of Consent ("LOC") from MOM. MOM will generally grant an LOC only if:

- The company is related by share-holding to the EP holder's employer.
- The EP holder is taking up the secondary directorship for purposes related to their primary employment.

If the secondary directorship position is in an unrelated company, e.g. fund entities, MOM may still grant the LOC if it is relevant to the EP holder's primary occupation. The EP holder's request will take approximately 5 weeks to be processed.

Important Amendments to the SGP Companies Act and Limited Liability Partnerships Act.

The Companies (Amendment) Act 2017 ("**CAA 2017**") was passed by Parliament on 10 March 2017 and came into operation on 31 March 2017. The key amendments of the CAA 2017 are summarised below (https://www.acra.gov.sg/Companies_Amendment_Act_2017/):

1) **Requirement for locally incorporated companies and foreign companies registered in Singapore to maintain a register of controllers and nominee directors (**https://www.acra.gov.sg/Register_of_Controllers_resources/**)**

Locally incorporated companies and foreign companies registered in Singapore (unless exempted) will be required to maintain beneficial ownership information in the form of a register of controllers at prescribed places, and to make the information available to public agencies upon request (Sec. 386 AF). A controller, or beneficial owner, is the individual or legal entity that has more than 25 percent

SINGAPORE Office
1 North Bridge Road
#16-03 High Street Centre
Singapore 179094
Tel: +65-6324-0060 Fax: +65-6324-0223

THAILAND Office
323 Silom Road, United Center,
39th Floor, Suite 3904 B
Bangkok 10500
Tel: +66-2-635-5498 Fax: +66-2-635-5499

interest in or control over a company.

Timeline for implementation

- Companies incorporated on or after 31 March 2017 are required to have and maintain a register of controllers within 30 days from its date of incorporation.
- Companies incorporated before 31 March 2017 are required to have and maintain a register of controllers within 60 days from 31 March 2017.
- A company which is exempted from keeping a register of controllers but is subsequently required to do so, is required to keep the register within 60 days from the date the relevant exemption ceases to apply to the company.

The penalty for failing to maintain a register of controllers is SGD 5,000.

In addition, companies incorporated in Singapore will have to maintain a register of nominee directors (Sec. 386AL), which will not be available to the public. Nominee directors will now have to disclose their nominee status and their nominators. This measure is supposed to mitigate the risk of money laundering and terrorist financing.

2) Requirement for records of wound up companies to be retained for five years instead of two years

The liquidator of a wound-up company will have to retain the company's records for at least five years, instead of the current two years. A company wound up by its members or creditors will also have to retain its records for at least five years.

Currently, struck off companies are not required to keep records. The CAA 2017 will require the former officers of a struck off company to ensure that all books and papers of the company are retained for at least five years, including its accounting records and registers of controllers.

3) Alignment of timelines for holding annual general meetings (AGMs) and filing annual returns (ARs)

The timelines for holding AGMs and filing ARs will be aligned with the companies' financial year-end.
All non-listed companies must hold AGMs within six months and file ARs within seven months after their financial year-end.

All private companies will be exempted to hold AGMs (Sec. 175A), if they sent their financial statements to members within five months of the financial year-end. This is in addition to the current regime where private companies can dispense with the holding of AGMs if all shareholders approve.

Safeguards will be put in place to prevent companies from arbitrarily changing their financial year-end (Sec. 175, 197). For example, companies must apply to ACRA for approval to change their financial year-end if the change in financial year-end will result in a financial year longer than 18 months; or if the financial year-end was changed within the last 5 years.

4) Removing requirement for common seal

In order to align SGP's laws with the current practices of other jurisdictions, the requirement for companies to use the common seal for the execution of deeds and share certificates will be abolished (Sec. 41A, B and C) and instead an alternative of signatures by authorised persons will be introduced. Authorised persons in a company are limited to: (a) a director and the company secretary; (b) two directors; or (c) a sole director, where that director signs in the presence of a witness who attests the signature.

SINGAPORE Office
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5) Inward re-domiciliation regime in Singapore

The CAA 2017 will also introduce an inward re-domiciliation regime in Singapore (Sec. 355 – 364A). Re-domiciliation is a process whereby a corporation transfers its registration from its home jurisdiction to another jurisdiction. A corporation may choose to re-domicile for regulatory, strategic or organisational reasons, while retaining its identity and history in the various regulatory jurisdictions it has presence in, and minimising operational disruptions.

Under the inward re-domiciliation regime, foreign corporate entities will be allowed to transfer their registration to Singapore, besides the current options of setting up a subsidiary or branch in Singapore.

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.

For a foreign entity to be entitled to apply for transfer of registration, it must be a body corporate that can adapt its legal structure to the company limited by shares structure under the Companies Act.

New retrenchment regulations in SGP

Previously, there was no legal requirement to notify the Singapore Ministry of Manpower ("MOM") with regard to any retrenchments. With effect from 1 January 2017, employers which employ at least 10 employees are required to notify MOM if 5 or more employees are retrenched within any 6 months period (http://www.mom.gov.sg/employment-practices/retrenchment).

Retrenchments" are defined as dismissal on the ground of redundancy or by reason of any reorganisation of the employer's profession, business, trade or work. This applies to permanent employees, as well as contract workers with full contract terms of at least 6 months.

The rationale for this change is to provide more complete and timely retrenchment information to the Singapore government to be able to better assist retrenched local employees to find alternative employment and relevant training to enhance their employability.

New Personal Data Protection Guidelines in Singapore

Singapore's Personal Data Protection Commission ("PDPC") has recently introduced and updated its advisory guidelines to help companies better protect personal data in compliance with the Personal Data Protection Act ("PDPA"). The new Guidelines cover several topics including preventing accidental disclosure when processing and sending personal data as well as updates to the (a) Guide to Securing Personal Data in Electronic Medium; (b) Guide to Disposal of Personal Data on Physical Medium; and (c) Guide on Building Websites for SMEs etc. (https://www.pdpc.gov.sg/legislation-and-guidelines/advisory-guidelines/main-advisory-guidelines#AG2)

New Rules on Declaring Tax Residency to Financial Firms

Customers of banks and other financial institutions in Singapore are now required to declare their tax residency status to their respective financial institutions. Singapore is among the several jurisdictions that have agreed to implement an international tax reporting framework known as the Common Reporting Standard (CRS) which would allow countries to automatically exchange financial data for tax purposes. It aims to enhance tax transparency to detect and deter tax evasion through the use of offshore bank accounts. The rule is effective from 1 January 2017 and Singapore has made an international commitment to start exchanging tax information

SINGAPORE Office
1 North Bridge Road
#16-03 High Street Centre
Singapore 179094
Tel: +65-6324-0060 Fax: +65-6324-0223

THAILAND Office
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39th Floor, Suite 3904 B
Bangkok 10500
Tel: +66-2-635-5498 Fax: +66-2-635-5499

automatically under CRS from 2018. With the CRS, the taxman will be able to get information, through the financial institutions, of account holders that are tax residents of jurisdictions with which Singapore has agreed to exchange tax information.

The new rule covers depository institutions such as banks, specified insurance companies, investment entities and custodial institutions. All these institutions must also report to the Inland Revenue Authority of Singapore (IRAS) the financial account information of account holders who are tax residents of jurisdictions with which Singapore has a Competent Authority Agreement (CAA) to exchange the information.

At present, Singapore has such agreements with 15 jurisdictions: Australia, United Kingdom, Japan, Republic of Korea, South Africa, Norway, Italy, Canada, Finland, the Netherlands, Iceland, Malta, Ireland, Latvia and New Zealand.

According to IRAS, the information provided by Singapore will only be disclosed and used for tax purposes such as the assessment, collection, recovery, enforcement, prosecution, determination of appeals for tax purposes, and the oversight of these functions. They will not be used for other purposes unless such disclosure is also permitted in Singapore and with approval from Singapore

For providing false tax information to the financial institutions, it is regarded as an offence under the CRS law and customers can be fined up to SGD10,000, imprisonment for up to two years, or both.

THAILAND

Approval for a New Law to Allow Individuals to Establish a Private Limited Company

In 2008, amendments to the Civil and Commercial Code ("CCC") reduced the minimum number of shareholders required to incorporate a limited company to three from seven.

The current incorporation rules require a minimum of three promoters (a type of shareholder) for a limited liability company. In practice, however, often only one shareholder truly owns and manages the company. When incorporating a limited liability company, this shareholder can incur unnecessary costs as he or she attempts to find at least two others to form the company.

On 24 January 2017, the Thai Cabinet has now approved the draft Establishment of a Private Limited Company by an Individual Person Bill ("the Bill"). Under the Bill, to be eligible to establish an entity by a single individual, the applicant must be a Thai national. The company's name must indicate that this is a one-person entity to differentiate itself from a private limited company registered under the existing law. There will also be other specific requirements applicable to this type of entity relating to the corporate particulars, such as capital, directors and objectives.

Given the above requirement concerning the owner's Thai nationality, the Bill may not be of much relevance to foreign investors in Thailand.

Judicial System in Thailand: New Structures of Appeal System

According to Thai judicial system, Thai law traditionally has allowed parties to appeal any court of first instance decision to the appeal courts and

SINGAPORE Office
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#16-03 High Street Centre
Singapore 179094
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THAILAND Office
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39th Floor, Suite 3904 B
Bangkok 10500
Tel: +66-2-635-5498 Fax: +66-2-635-5499

subsequently the latter's decision to the Supreme Court.

The Supreme Court's judgment is final. This type of appeal system is known as a rights-based system, which means the law recognises the right of the parties to have their cases heard by the Supreme Court. However, the appeal system has been changed since the promulgation of the Civil Procedure Code Amendment Act (No. 27) B.E. 2558 (2015) which has come into force from 8 November 2015. This new law gives the Supreme Court the power to consider whether cases submitted for the appeal to the Supreme Court deserves the permission for the adjudication of the Supreme Court. This results in the change of the appeal system from a right-based system to a permission-based system in the Civil Procedure Code of Thailand.

Due to the change of the appeal system for ordinary civil cases, the appeal system which applied in all specialised courts therefore has been changed in order to harmoniously organise the appeal system nationwide. In this regard, Thailand has enacted the Establishment of the Court of Appeal for Specialized Cases Act B.E. 2558 (2015) and has changed the court system into a three-tiered appeal structure which is expected to reduce the number of cases at the Thai Supreme Court.

Jurisdiction of the Specialized Court of Appeals

In Thailand, the Specialized Court of Appeals (the Court) will have the jurisdiction to hear these types of cases: intellectual property, tax, bankruptcy, juveniles and family and including labour cases which have been appealed from the lower courts. The aim of the establishment of the Court is to lessen the burden of the Supreme Court which has significant workload. Since 8 November 2015, all these appeals against the judgment of the court of the first instance have been sent to the Court instead of referring directly to the Supreme Court. The Court will provide a second level specialised cases from lower courts.

Due to the nature of these specialised cases, the Court consists of judges with specialized knowledge and over 20 years of experience in certain fields of law.
The disputed parties may have the right to appeal cases decided by the Court to the Supreme Court, however, the Supreme Court panel has the power to decide whether to grant permission for the cases to be appealed and reconsidered. In doing so, the Supreme Court takes into account factors such as public order, public interest and conflicting judgments of the appeal court and existing Supreme Court precedents.

Limited liability companies: Holding meetings by teleconference

Previously, the Articles of limited liability companies in Thailand could not provide for the possibility of holding meetings by electronic means. Therefore, all meetings required a physical presence. The announcements of the National Council for Peace and Order No. 74/2557 on Teleconferences through Electronic Devices (Order 74/2557), and the Announcement of the Ministry of Information and Communication Technology on Security Standards for Teleconferences through Electronic Devices B.E. 2557 in connection with an explanatory statement by the Department of Business Development now authorize such meetings, subject to certain conditions. But since one condition for teleconferences is that all attendees participating in the teleconference must be located in Thailand, the use of the new regulations for international investors/shareholders that are usually domiciled abroad, seems rather limited.

SINGAPORE Office
1 North Bridge Road
#16-03 High Street Centre
Singapore 179094
Tel: +65-6324-0060 Fax: +65-6324-0223

THAILAND Office
323 Silom Road, United Center,
39th Floor, Suite 3904 B
Bangkok 10500
Tel: +66-2-635-5498 Fax: +66-2-635-5499