


# Inward Re-domiciliation Regime in Singapore

**Eng and Co. LLC**

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## A. Background

Traditional offshore jurisdictions are under close international scrutiny and are pressured to comply with global measures to counter base erosion and profit shifting activities. In response, countries such as the Bahamas, the British Virgin Islands and Cayman Islands have introduced new legislation that require certain entities to have demonstrable economic substance in that jurisdiction. The consequence of non-compliance may be costly and can include sanctions such as information sharing with other jurisdictions, fines, suspension or even being struck off the local company register. Corporate groups who have entities located in these jurisdictions may consider re-domiciling these entities to Singapore under the new inward re-domiciliation regime.

The Companies (Amendment) Act 2017 introduced an inward re-domiciliation regime in Singapore, which came into effect on 11 October 2017. This regime essentially allows foreign corporate entities to transfer their registration from its place of incorporation to Singapore and become a Singapore company limited by shares registered with the Accounting and Corporate Regulatory Authority of Singapore (ACRA). Key aspects of the Singapore inward re-domiciliation regime and points to consider are summarised below.

## B. Benefits

### Favourable business environment

Singapore is one of the world's easiest places to do business and has an extensive network of international agreements. Coupled with Singapore's stable socio-political and legal structures, business friendly environment and highly skilled workforce, Singapore is an increasingly attractive destination for foreign investors. Its strategic location and international reputation also provides a global platform from which foreign companies can expand their operations in the region and attract potential investment opportunities, particularly in the region around Singapore. Singapore has also recently strengthened its debt restructuring regime by introducing some key features of the US Bankruptcy Code which will provide more flexibility to distressed companies and their managements to work out suitable arrangements with the creditors of such companies.

### Reputable tax jurisdiction

Singapore is a reputable tax jurisdiction which has a strong rule of law domestically and a firm commitment to upholding international tax transparency standards in combating cross border tax evasion. As traditional offshore jurisdictions come under increasing international scrutiny and pressure to comply with global measures to counter base erosion and profit shifting, foreign companies in these locations may find it beneficial, for reputational reasons, to redomicile to and operate from Singapore.

### Flexibility

As the foreign corporate entity will simply transfer its place of registration instead of setting up a new subsidiary, re-domiciliation will not affect the obligations, liabilities, property rights or rights of the foreign corporate entity. Furthermore, it can retain its corporate history, branding and goodwill in the industry. This may be particularly important if the foreign corporate entity operates in a heavily regulated industry which requires a proven track record.

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## C. Requirements

A foreign corporate entity may only be allowed to re-domicile if its application meets the minimum requirements set out in the Companies Act (Chapter 50) of Singapore (the **Companies Act**) and the Companies (Transfer of Registration) Regulations 2017. A summary of the key requirements is set out below:

Requirement	Further details
Authorised by original place of incorporation	The laws of the foreign corporate entity's place of incorporation must allow the transfer of its incorporation and the foreign corporate entity must comply with the legal requirements at its place of incorporation in relation to the transfer of registration.
Structure	The foreign corporate entity must be a body corporate that can adapt its legal structure to the companies limited by shares structure under the Companies Act.
Size	<p>The foreign corporate entity must satisfy <b>any 2</b> of the following criteria:</p> <ul style="list-style-type: none"> <li>the value of its total assets exceeds S\$10 million;</li> <li>its annual revenue exceeds S\$10 million;</li> <li>it has more than 50 employees.</li> </ul> <p>For a foreign corporate entity that is a parent company, the criteria will be assessed on a consolidated basis (even if the subsidiaries are not applying to re-domicile to Singapore). For a foreign corporate entity that is a subsidiary, the criteria applies on a single entity basis or if the parent company (Singapore-incorporated or re-domiciled to Singapore) meets the size criteria above. Both the parent company and subsidiary may apply for re-domiciliation at the same time.</p>
Solvency	<p>At the date of the foreign corporate entity's application for re-domiciliation (<b>Application Date</b>), there must not be any ground upon which it could be found to be unable to pay its debts and the value of its assets must not be less than the value of its liabilities (including contingent liabilities).</p> <p>Additionally:</p> <ul style="list-style-type: none"> <li>if the foreign corporate entity is intending to commence winding up within 12 months of the Application Date, it must be able to pay its debts in full within 12 months after the date of commencement of winding up; or</li> <li>if the foreign corporate entity does not intend to commence winding up within 12 months of the Application Date, it must be able to pay its debts in full as they fall due during the 12 months immediately after the Application Date.</li> </ul>
Good faith	The application for the transfer must not be intended to defraud existing creditors of the foreign corporate entity and must be made in good faith.
First financial year end	As at the Application Date, the foreign corporate entity's first financial year end at its place of incorporation must have passed.
Others	<p>There are other requirements such as the foreign corporate entity not being under judicial or administrative management and not being in liquidation or being wound up.</p> <p>Details such as the foreign corporate entity's registration history, share capital details, charter or similar constitutional documents and the foreign corporate entity's certification of incorporation in its existing place of incorporation will also need to be provided.</p>

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## **D. Factors to consider**

### No option to reverse re-domiciliation

Re-domiciliation is not reversible as Singapore currently does not allow for outward re-domiciliation to another jurisdiction. A non-refundable fee of SGD 1,000 is payable to ACRA in respect of each application to transfer its place of registration to Singapore.

### Existing contractual restrictions to re-domiciliation

Existing contracts of the foreign corporate entity may contain certain restrictions or requirements in the event that the foreign corporate entity changes its place of registration. A review of all existing contracts of the foreign corporate entity may be required prior to the start of the application of the re-domiciliation process to ensure that the re-domiciliation to Singapore does not inadvertently trigger any termination rights of the foreign corporate entity's contractual counterparties under the existing contracts of the foreign corporate entity.

### Application process and timeline

As part of the application process, the directors of the foreign corporate entity must execute declarations confirming: (1) that the foreign corporate entity satisfies the minimum requirements; (2) that they consent to acting as a directors of the foreign corporate entity after it has been re-domiciled; (3) and that they are not disqualified from acting as directors. It may take up to 2 months from the date of submission of all required documents for the processing of the application. This includes the time required for referral to another government agency for approval or review (depending on the business and industry that the foreign corporate entity is in).

If the application to transfer its registration is successful, ACRA will issue a notice of transfer of registration to the foreign corporate entity to confirm that the foreign corporate entity is deemed to be a company registered under the Companies Act starting from the date of registration as specified in the notice. Upon the issuance of such notice of transfer, the foreign corporate entity must, within 60 days, submit to ACRA evidence that it has been de-registered in its place of incorporation.

### Compliance with Singapore law

Once the foreign corporate entity is registered as a Singapore company, the foreign corporate entity will have to comply with all provisions of the Companies Act and all applicable laws and regulations in Singapore and it should obtain all necessary licences and permits before commencing operations in Singapore.

### Tax considerations

Redomiciliation may give rise to tax implications in the originating jurisdiction, such as capital gains tax, exit tax or stamp duty, which should be taken into consideration. Singapore tax laws provide for tax credit if the redomiciled company suffers exit tax on unrealised profits in its originating jurisdiction if those profits are also taxed in Singapore, however this is subject to conditions and requires the approval of the Minister.

Redomiciled companies that move their operations to Singapore will be taxable under Singapore's tax regime. Where they are Singapore resident companies, they will be able to enjoy the benefits accorded by Singapore's extensive network of tax treaties.

Companies that redomicile to Singapore will, however, be subject to the relevant international tax compliance agreements that Singapore has entered into (i.e. Model 1 Foreign Account Tax Compliance Act intergovernmental agreement with the United States, Common Reporting Standard, Country-by-Country Reporting). Singapore has also committed to spontaneously exchange certain rulings under the agreed framework for the compulsory spontaneous exchange of information set out in the BEPS Action 5 Report 'Countering Harmful Tax Practices More Effectively, taking into Account Transparency and Substance'.

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## E. Why us?

We are able to provide multi-disciplinary solutions in the form of one seamless service that addresses all aspects of the re-domiciliation process, including legal, accounting, tax and corporate secretarial services. We will be pleased to discuss further the specific applicability of the re-domiciliation regime and its implications on your business.

## Key Contacts



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