

MS Newsletter

Quarter 3 2018

Adding Value to Your Business

Key Economic Developments



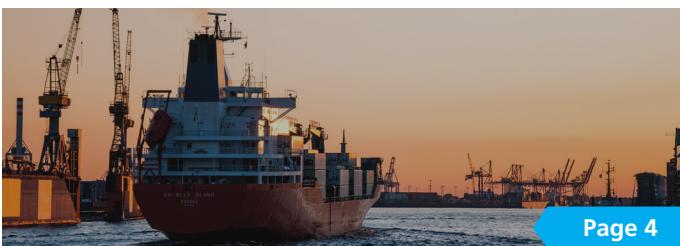
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Key Economic Developments

1. A slew of regulatory developments in Singapore is in progress, including a new Code of Corporate Governance (CCG) and a new Cybersecurity Act. In addition, the Variable Capital Companies (VCC) bill and the Insolvency, Restructuring and Dissolution (IRD) Bill were both passed into law. The Employment (Amendment) Bill was also introduced in Parliament in October 2018.
 - The new CCG will initially take effect for companies with a financial year beginning 1 January 2019. One key change will limit the tenure of Independent Directors (ID) to nine years, beyond which a two-tier shareholder approval is required. In addition, the shareholding threshold to qualify directors as independent, is lowered from 10% to 5%.
 - The Cybersecurity Act 2018 aims to create a regulatory framework for the monitoring and reporting of cybersecurity threats through the appointment of the Commissioner of Cybersecurity.
 - The VCC Bill aims to encourage funds to operate in Singapore, by providing for a new corporate structure, the VCC, to cater to the needs of investment funds. Among other benefits, a VCC can issue and redeem shares without seeking shareholders' approval, create multiple sub-funds under an umbrella structure with economies of scale, allow the use of a wider range of accounting standards in financial reporting, maintain a shareholder register that need not be made public, etc.
 - The IRD Bill aims to update and strengthen Singapore's Insolvency and Debt Restructuring Laws. More details are available inside this issue of MS News.
 - The Employment (Amendment) Bill will extend Singapore's Employment Act by extending its applicability beyond the current salary cap of \$4,500 a month. This means that higher-paid professionals, managers, and executives, will be entitled to such employment terms as minimum days of annual leave, paid sick leave, hospitalisation leave, and compensation for wrongful dismissal. Other key proposals in the Bill include extending overtime pay to more workers, and requiring salary-related disputes to be mediated at the Tripartite Alliance for Dispute Management. If unresolved, the claims are heard at the Employment Claims Tribunal.
2. The fintech sector in Singapore experienced significant activity over the past quarter:
 - In September 2018, the Monetary Authority of Singapore (MAS) and Infocomm Media Development Authority (IMDA) launched the world's first unified payment QR code, which will consolidate multiple payment QR code platforms now used by 27 mobile-payment schemes in Singapore. The Singapore Quick Response Code ((SGQR), which will be rolled out over the next six months, will accelerate mobile payments in the country.
 - In October 2018, MAS revealed that the Singapore Fintech Festival's deal-making platform has attracted 380 investors which indicated their intentions to invest up to a total of S\$8.54 billion in ASEAN enterprises by 2019.
 - In October 2018, Dairy Farm Singapore Group and Nets announced their tie-up with China's e-payment giant WeChat to bring WeChat Pay to retail outlets in Singapore. The service will be available from November in over 600 stores island-wide.
 - In October 2018, Temasek Holdings' Vertex Ventures announced its investment in Binance, one of the world's biggest cryptocurrency exchanges. The funding will help Binance build and launch by year-end an exchange in Singapore for swapping between hard currencies and digital currencies.
3. Data from Bloomberg showed that Singaporean companies engaged in overseas deals amounting to US\$91 billion this year through September, more than double the amount for the same period in 2017. This includes 468 acquisitions of foreign companies, an increase of 7.8 percent from 2017. Key recent developments in the Singapore deals landscape:
 - In September 2018, CapitaLand acquired a portfolio of multifamily properties in America worth US\$835 million, its biggest transaction outside of Singapore in eight years. CapitaLand is also reported to be acquiring the Star Harbour International Center project in Shanghai for about 12.79 billion yuan (S\$2.5 billion).
 - In October 2018, GIC, Singapore's sovereign wealth fund, acquired the 40-storey Tour Ariane office tower in Paris from French real estate firm Unibail-Rodamco-Westfield. GIC also acquired a minority stake in Danish aircraft leasing company Nordic Aviation Capital, a majority stake in French real estate firm AccorInvest, Netherlands-based AkzoNobe's specialty chemicals business, and a 20% stake in ConneCT S.p.A, the largest shareholder in

European telecommunications infrastructure operator Cellnex Telecom.

- In October 2018, water treatment firm Hyflux Ltd, which is in the midst of a court-supervised reorganisation, received a S\$530 million lifeline investment from Indonesian investors, Salim Group and Medco Group. The new joint venture called SM Investments Pte Ltd will own 60 per cent of the equity in Hyflux when the deal is completed.
4. The US-China trade war escalated over the past quarter. US tariffs on US\$34 billion of Chinese goods took effect on 6 July 2018, prompting retaliatory Chinese tariffs against the US goods of similar value. In August 2018, the US finalised its list of 279 Chinese goods worth US\$16 billion that will be subject to 25% tariffs, and China responded against US goods of similar value, on top of complaints against

the US with the World Trade Organisation. In September 2018, the US imposed 10% tariffs on US\$200 billion of Chinese goods prompting China to impose 10% retaliatory tariffs on US\$60 billion of US imports. As at end September 2018, Chinese tariffs on the US goods amounted to US\$110 billion which represented most of its US imports. The US, on the other hand is still threatening tariffs on an additional US\$267 billion of Chinese imports. However, in November 2018, the US hinted at the possibility of a trade deal with China, and President Trump tweeted that trade discussions are positive ahead of the meeting with Chinese President Xi at the G-20 Buenos Aires summit in late November / early December. This development comes on the back of positive moves by the US in Mexico and Canada that are likely to result in a new trade agreement between the US, Mexico and Canada by end November.

5. Singapore's debt market is on the climb. According to data from the report, "Corporate Debt Market Development 2018", published by MAS in August 2018, Singapore corporate debt issuances climbed 39% to reach S\$259 billion in 2017, while first-time issuances nearly tripled to S\$27.4 billion, and the number of first-time issuers rose from 37 to 63, reversing the declining trend of the past few years. Market strength was further validated in October 2018 in the strong demand witnessed at the debut of Temasek Holding's first retail bond, which received valid applications of around S\$1.68 billion, more than eight times over-subscribed. In the same month, ICBC Singapore's RMB1.25 billion (S\$250 million) of three-year SGX-listed offshore bonds was also over-subscribed upon announcement.

Key Shipping Developments

1. The offshore and marine sector continued to show signs of recovery from July to October 2018. In July 2018, Keppel Offshore & Marine secured two contracts with a combined value of S\$70 million, the first contract for the topside module fabrication and integration of FPSO Carioca MV30, and the second contract to convert an LNG carrier to a FSRU. Further positive news emerged in October 2018 when Sembcorp Marine was reported to have a strong 2019 order pipeline that could exceed S\$3 billion, comprising a FPSO contract from Rosebank, two LNG Carriers for SeaOne Caribbean, and a GraviFloat modularised LNG terminal. Shipbuilder Vard Holdings also concluded its exit offer from Financantieri Oil & Gas, priced at \$26.97 million, and de-listed from the Singapore Exchange.

A less positive development was the termination of the deal between Ezra Holdings ("Ezra"), an integrated support provider for offshore oil & gas, and

financial consultancy specialist Asia Fund Space (HK) Ltd in July 2018, which led Ezra to amend its restructuring plan.

2. The shipping mergers and acquisitions (M&A) scene remained active from July to October 2018. In August 2018, Star Bulk Carriers agreed to acquire three dry-bulk vessels from E.R. Capital Holdings for 1.3 million common shares plus US\$42 million cash, with options to acquire another four vessels in excess of US\$100 million. In the same month, Hafnia Tankers ("Hafnia") was reported to be exploring a merger with BW Tankers, following BW's acquisition of Hafnia's shares in July that brought its ownership to 43.5%. Then, in September 2018, Transocean Ltd. agreed to acquire Ocean Rig UDW Inc, for cash and shares worth US\$2.7 billion.

In October 2018, Seaspan Corporation agreed to invest up to US\$200 million in Swiber Holdings, while Stolt-Nielsen LNG

Holdings Limited, Golar LNG Ltd and Höegh LNG Holdings Ltd. announced a joint investment in Avenir LNG Ltd of US\$182 million to pursue LNG opportunities. Additionally, Golden-Agri Stena, a joint venture between Stena Bulk and SGX-listed Golden Agri-Resources, started a new joint venture, GSB Tankers with Bay Crest Management that is set to commence operations in 2019. However, in the same month, BW LPG also with-drew from a US\$1.1 billion merger with Dorian LPG.

3. In September 2018, the International Chamber of Shipping released a reference guide on IMO's 2020 Global Sulphur Cap to help address complexities, and also urged ship owners to plan and implement before the 1 January 2020 deadline. The sulphur cap has led to a nearly four-fold increase in scrubber orders and

installations in 2018. According to data from DNV GL, scrubbers have been installed or ordered for 1,850 vessels as at October 2018, and will easily reach 2,500 by 2020. In October 2018, Scorpio Tankers and Stena Bulk announced their commitment to use scrubbers, joining Maersk and Hapag Lloyd in electing scrubbers as the low-sulphur solution. To defray low-sulphur costs, container shipping companies including OOCL, Hapag-Lloyd, Maersk Line, MSC, CMA CGM and Ocean Network Express (ONE) have announced plans to impose a low sulphur surcharge.

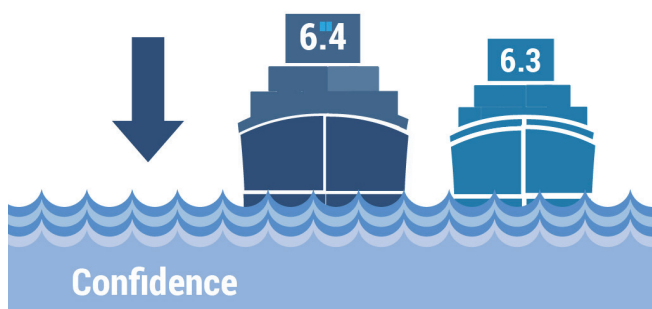
- In October 2018, Japan's ONE and Germany's Hapag-Lloyd inked a Bilateral Strategic Feeder Network Cooperation Agreement that will initially cover trades in intra-Asia and intra-Europe. The feeder agreement has already started on its first intra-Asia trade with the Bohai Feeder in August, and will be expanded to include two more intra-Asian services. ONE and

Hapag-Lloyd are both members of THE Alliance on the long-haul trades.

- Ms Quah Ley Hoon, currently a chief editor at MediaCorp and a board member of Singapore's Energy Market Authority (EMA), is poised to take over as chief executive of the Maritime and Port Authority of Singapore (MPA) effective 1 January 2019.
- Regulators globally have been actively enhancing maritime competitiveness. In October 2018, Hong Kong announced tax relief proposals to promote the development of marine insurance and underwriting of specialty risks in Hong Kong, and measures to enhance the Hong Kong Shipping Registry (HKSR) including setting up overseas desks to support shipowners and promote the HKSR. In the same month, Singapore's MPA announced its recent membership in SEA/LNG to accelerate the adoption of LNG as marine

fuel, and awarded SGD 6 million to co-fund the building of two LNG bunker vessels that will be the first of their kind in Asia and facilitate ship-to-ship LNG bunkering in the Singapore port. Earlier, in July 2018, Singapore's port operator PSA International made its first foray into Canada, by signing an investment agreement with Ashcroft Terminal to acquire 60 per cent of the business in Western Canada. In Greece, newly-appointed shipping minister, Fotis Kouvelis, at an Athens briefing in September 2018, listed key Greek priorities to include an update on the shipping legal framework, incentives to encourage construction of "green ships", regulatory arrangements for private-public partnerships and port sub-concessions, enhanced maritime education and training, and promotion of Greek shipping at international forums.

Shipping Confidence Dips on Geopolitical Factors



Average confidence level dips from 6.4 in May to 6.3 in August 2018

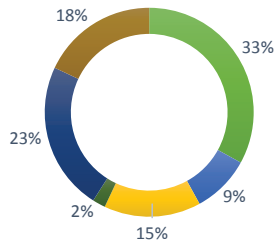
Overall shipping confidence levels declined by a small margin in the three months to end-August 2018, according to the latest Shipping Confidence Survey. The average confidence level expressed by respondents, on a scale of 1 to 10, was 6.3 compared to the four-year-high of 6.4 recorded in May 2018.

Charterers and owners were the most optimistic, with their confidence up from 6.7 to 7.0 and from 6.6 to 6.8, respectively. The confidence level for charterers is the highest level in nine months, while that of the owners equals the highest rating recorded for this category since the launch of the survey in May 2008. Confidence on the part of the managers fell from 6.7 to 6.2, and for brokers from 6.3 to 4.9.

Confidence levels were up in Asia from 6.1 to 6.3, equalling the highest rating achieved over the past 12 months. Confidence in North America was also up from 5.8 to 6.8, but was down in Europe, from 6.6 to 6.2.

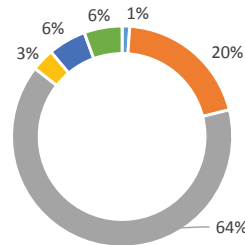
The survey revealed that the likelihood of respondents making a major investment or significant development over the next 12 months was up on the previous survey, from 5.2 to 5.5. Expectations on the part of the owners was up from 5.5 to 6.5, but dropped from 6.7 to 4.0 for charterers. Respondents from Asia and Europe were more confident in this regard, with ratings up from 5.9 to 6.1 and from

Respondents by Type



■ Owner ■ Broker ■ Manager ■ Charterer/Operator ■ Professional Adviser ■ Other

Respondents by Location



■ Africa ■ Asia ■ Europe ■ Latin America ■ North America ■ Rest of the World

4.8 to 5.3 respectively.

59% of respondents expected finance costs to increase over the coming year, down from 63%. Owners' expectations were up from 64% to 70%, while the increase in expectations for charterers was from 33% to 50%.

Managers and brokers, meanwhile, recorded a fall from 65% to 45% and from 75% to 71%, respectively.

Turning to the freight markets, there was an increase in the number of respondents anticipating improved rates over the next 12 months in the tanker sector. Meanwhile, there was a fall in the numbers anticipating higher rates in the dry bulk and containership sectors. Net sentiment was positive in all the main tonnage categories.

When asked about the impact of tariff wars on the shipping industry over the next 12 months, 44% of respondents said they expected tariff wars to have "some" impact on the industry. 42% expected a "considerable" impact, and 11% thought the impact would be "minimal".

Richard Greiner, Moore Stephens Partner, Shipping & Transport, said, "A small dip in confidence is not the news the industry wanted to hear, but confidence remains at its second-highest level for four-and-half years. However, it is significant that the confidence of both owners and charterers actually increased.

"Concerns about geopolitical factors dominated the comments from respondents. These were led by President Trump's efforts to transform US trade relations, but also included state support for shipping in China and South Korea. Shipping will always stand to reap the benefits of its global identity and presence, but will also court the risks that this must inevitably embrace.

Fortunately, shipping is accustomed to playing on the big stage, against a volatile backdrop and to a demanding audience. The Baltic Dry Index is up on a year ago and oil prices are on the rise. These and other positive portents encourage the belief that shipping is starting to recover, albeit slowly, from a ten-year downturn."

Net Sentiment*



↑ +44
Tanker



↑ +27
Dry Bulk

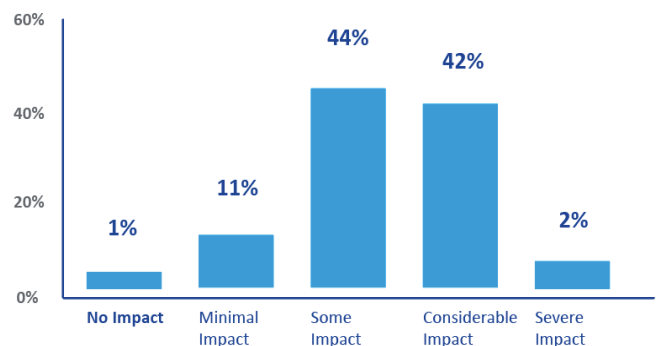


↑ +3
Container Ship

*'Net' figures are the balance of 'higher' and 'lower' responses. Positive 'net' figures imply more 'higher' responses than 'lower' and negative figures imply the opposite.

Tariff Wars

What impact will 'tariff wars' have on the shipping industry over the next 12 months





Moore Stephens - CCS Financial Reporting Seminar 2018

“... There are tax implications associated with the financial reporting changes, and unwary companies that have yet to examine the financial reporting impacts risk unplanned tax exposures...”

Careful and thorough implementation of the new reporting requirements and corporate governance regulations is required to avoid potential pitfalls, according to speakers at the 2018 Moore Stephens-CCS Financial Reporting Seminar. The seminar, held at Suntec City Convention Centre on 21 September 2018, was attended by more than 200 participants including Company Directors, Chief Financial Officers, and Finance Executives.

The seminar was led by financial reporting, corporate governance, and technology specialists from Moore Stephens, and distinguished guest speaker Dr Andrew Lee, Associate Professor of Accounting Practice at the Singapore Management University.

Financial Reporting Implementation Issues

The seminar kick-started with a discussion of common issues relating to the new rules in 2018 relating to revenue recognition, financial instruments, and convergence to the new financial reporting framework, SFRS(I), by Mr Wong Koon Min, Partner and Head of Professional Standards at Moore Stephens LLP. These issues are wide-ranging and include easily-missed changes to cost capitalisation rules on revenue projects, non-revenue gains on asset disposal, property development revenue, inter-company loan provisions, accounting for renegotiation of borrowings, and issues associated with retrospective adoption of SFRS(I). Moving beyond 2018, Koon Min touched on



Mr Wong Koon Min, Partner and Head of Professional Standards at Moore Stephens LLP on Financial Reporting Implementation Issues.

common pitfalls associated with implementation of SFRS(I) 16 Leases.

Equity Investment Valuation Issues

Thereafter, Dr Lee took the stage to discuss valuation of equity investments. Under SFRS(I) 9, companies need to fair value almost all equity investments. This will be challenging in respect of unquoted equity investments. Dr Lee shared insights, examples, and case studies on various types of valuation techniques such as the market approach, income approach, and the cost approach.

New Rules on Corporate Governance

Companies need to plan appropriately for the implementation of the new Code of Corporate Governance, and associated Listing Rule amendments, that take effect in 2019, according to Ms Lao Mei Leng, Partner and Head of Risk Management at Moore Stephens LLP. Additional amendments will take effect in 2022. Mei Leng proceeded to discuss key amendments in various areas including board composition, director independence, director training, internal audit, corporate governance disclosure obligations, and others. According to Mei Leng, an industry-led Corporate Governance Advisory Committee will be set up to enhance compliance with corporate governance requirements.

Panel Session and Conclusion

Companies need to take quick action to comply with the new financial reporting and corporate governance regulations, if they have not already done so. That was the key takeaway message from the panel session led by Mr Neo Keng Jin, Partner and Head of Audit at Moore Stephens LLP, which followed the speakers' presentations.

Panellists noted that the financial reporting changes to revenue and financial instruments have been effective since 1 January 2018. There are tax implications associated with the financial reporting changes, and unwary companies that have yet to examine the financial reporting impacts risk unplanned tax exposures. For corporate governance regulations, panellists observed that the bulk of



Dr Andrew Lee, Associate Professor of Accounting Practice at Singapore Management University on equity investment valuation issues



Ms Lao Mei Leng, Partner and Head of Risk Management on the new Code of Corporate Governance.

the changes take effect in 2019, which is only slightly over 3 months away, and the same is true for the financial reporting changes for leases.

Thereafter, the seminar was thrown open to the floor for questions from participants, following which tokens of appreciation were presented to the guest speaker. The seminar ended at 5.30pm.

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Singapore - Mandatory Transfer Pricing Requirements

In February 2018, the Income Tax (Transfer Pricing Documentation) Rules 2018 (“TPD Rules”) were gazetted and the Inland Revenue Authority of Singapore (“IRAS”) subsequently issued the revised 2018 Transfer Pricing Guidelines (“2018 TP Guidelines”) detailing changes to the Income Tax Act (“ITA”) and explaining the TPD Rules. This marks a distinct shift from the current, guidance-based TP regime to a more formal, rule-based regime, where requirements are now codified in tax legislation and rules.

Most notably, failure to prepare the required Transfer Pricing Documentation (“TPD”) constitutes an offence with effect from the basis year for the Year of Assessment (“YA”) 2019, and the non-compliant taxpayer is liable to a fine or penalty. The transfer pricing regime also introduces a new 5% surcharge on any TP adjustment made by IRAS.

The combined changes are likely to entail an increased compliance burden for many taxpayers and signal the intent of IRAS to continue and make more robust its focus on transfer pricing enforcement. We highlight the key changes below.

Mandatory Transfer Pricing Documentation – from YA 2019, unless certain exemption criteria are met, Section 34F of the ITA requires the tax payers to prepare and maintain contemporaneous TPD for each related party transaction (“RPT”) in accordance to the TPD Rules.

The new exemption comprises of two conditions, and an entity is required to prepare TPD if either of these conditions are met:

- Condition 1 - Annual gross revenue from their trade or business for the basis period concerned exceeds S\$10 million; or

- Condition 2 - It was required to prepare TPD under Section 34F for the immediate preceding year. In other words, YA 2020 would be the first year that this test will be applicable.

The second condition ensures that taxpayers who were required to prepare TPD for a previous basis period will continue to be required to do so for the subsequent basis period. As explained by the IRAS, this is to provide certainty on taxpayers’ compliance effort.

However, where taxpayers who are required to prepare TPD, experience declining revenue such that their gross revenue is consistently below S\$10 million, they will be exempted from preparing TPD for their related party transactions undertaken in a basis period if their gross revenue is not more than S\$10 million for that basis period and the immediate two preceding basis periods and they were required to prepare TPD for the two preceding basis periods.

If a taxpayer is required to prepare TPD under section 34F and the exemption from preparation of the TPD when gross revenue is consistently below S\$10 million is not applicable, the taxpayer would need to assess if it meets specific exemption conditions. The specific exemptions are largely the same as those provided in the previous addition of the Transfer Pricing Guidelines, although now specifically codified under TPD Rules. These specific exemptions are as follows:

- (a) Where a company transacts with a related party in Singapore and such local transactions (excluding related party loans) are subject to the same Singapore tax rates (or exempt) for both parties.

- (b) Where a related domestic loan is provided between a company and a related party in Singapore and the lender is not in the business of borrowing and lending money.
- (c) Where a company applies the 5% cost plus mark-up for routine services in relation to the RPT concerned with certain conditions.
- (d) Where a company applies the indicative margin for related party loans with certain conditions.
- (e) Where the RPT is covered by an Advance Pricing Arrangement (APA). However, an annual compliance report is still required.
- (f) Where the value or amount of the RPT disclosed in the current year's financial accounts does not exceed the threshold as shown in the table.

Category of related party transactions	Threshold (S\$) per financial year
Purchase of goods from all related parties	15 million
Sale of goods to all related parties	15 million
Loans owed to all related parties	15 million
Loans owed by all related parties	15 million
All other categories of RPT. Examples: service income, service payment, royalty income, royalty expense, rental income, rental expense, guarantee income, guarantee expense	1 million per category of transactions

For the purpose of determining if the threshold is exceeded: -

- Aggregation should be done for each category of RPT e.g. all service income received from related parties is to be aggregated.
- Strict pass-through costs should be included.

Information to be included in TPD - The second schedule of TPD Rules, which has been published in the Government Gazette, also codifies the Group and Entity level information that should be included in the TPD. For Singapore taxpayers adopting the OECD master file/local file approach, the information contained in their TPD must be consistent with the TPD Rules. the below table.

Information to be included in TPD - The second schedule of TPD Rules, which has been published in the Government Gazette, also codifies the Group and Entity level information that should be included in the TPD. For Singapore taxpayers adopting the OECD master file/local file approach, the information contained in their TPD must be consistent with the TPD Rules.

Use of Past Transfer Pricing Documentation - To ease the compliance burden, the IRAS allows taxpayers to use the TPD that has been prepared previously i.e. TPD prepared for the past two YAs that immediately precede the year of preparation, as a qualifying past TPD for the current basis period if the following conditions are met:

- The transaction and the parties to the transaction remain the same;
- Past TPD contains the prescribed Group and Entity level information; and
- The details disclosed in the past TPD remain accurate and relevant for the current basis period.

To adopt past TPD as qualifying TPD, taxpayers are required to prepare a "simplified TPD" comprising:

- A declaration, confirming that the circumstances met the conditions stated above; and
- The past TPD as an attachment.

The "simplified TPD" should be prepared by the tax return filing timeline and would need to be submitted upon request.

Where a taxpayer qualifies for the simplified TPD, he nonetheless has the choice not to adopt the simplified TPD but to prepare a new TPD.

The first qualifying past TPD that can qualify will be TP Documentation prepared for YA 2017.

Arm's-Length Adjustments – Under Section 34D, the Comptroller may make one or more adjustments in the case of understatement of profits or overstatement of deductions and losses. The Comptroller may increase taxpayer's income, reduce the amount of the deduction and/or reduce its losses, if conditions surrounding its related party differ from conditions which would be made or imposed on an unrelated party in comparable circumstances. The amendments to the ITA clarify the scope of IRAS' powers to make adjustments to transactions that it deems are not conducted at arm's length. Where such an adjustment results in an increase in the income of a Singapore taxpayer, the additional income is treated as accruing in or derived from Singapore, or received in Singapore from outside Singapore.

Identification of Transaction – Section 34D provides the Comptroller with the power to identify and therefore compute the taxpayer's income upon an arm's-length condition of comparable transactions based on their commercial and financial relations. The foregoing means that the Comptroller may disregard the taxpayer's related party transaction conditions should it differ

from comparable circumstances. The 2018 TP Guidelines significantly expand the existing guidance on comparability analysis and the identification and delineation of related party transactions. This is broadly in line with the BEPS 8-10 framework (now placed within the 2017 OECD Transfer Pricing Guidelines), and is significant as it indicates that IRAS now expects more detailed analysis to substantiate the arm's length nature of taxpayers' related party transactions.

Surcharge – Section 34E introduces a 5% surcharge with effect from YA 2019 on the amount of TP adjustment made by IRAS. The surcharge will be levied upon the quantum of adjustment regardless of whether there is tax payable on the adjustments e.g. tax loss position.

Penalty for Non-Compliance – From YA 2019, Section 34F empowers the Comptroller to impose a fine not exceeding \$10,000 for an offence under the following circumstances:

- (1) Failure to prepare TPD by the deadline for filing a tax return;
- (2) Failure to prepare TPD in accordance with the Rules;

- (3) Failure to retain TPD for a period of at least 5 years from the end of when transaction took place;
- (4) Failure to submit the TPD within 30 days of written notice by the Comptroller; and
- (5) Providing any documentation that the taxpayer knows to be false or misleading.

This penalty regime demonstrates IRAS' intent to reinforce taxpayers' adherence to the arm's-length principle.

Conclusion

Singapore taxpayers should consider the implications of the 2018 TP Guidelines, TPD Rules and changes to the ITA to their specific circumstances and determine whether sufficient transfer pricing analysis and documentation has been prepared in compliance with the new legislative regime. Failure to do so can result in penalties and surcharges.

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Ship Operating Costs Still on Downward Trend For the Sixth Successive Year

Total annual operating costs in the shipping industry fell by 1.3% in 2017, according to the latest Moore Stephens OpCost Survey. This marks the sixth consecutive year-on-year decline in overall ship operating expenditure.

Total operating costs for the tanker, bulker and container ship sec-

tors were all down in 2017. Bulkers and tankers displayed the biggest overall declines on a year-on-year basis, with the bulk carrier index dropping by 3 points (or 1.9%) and the tanker index also by 3 points (or 1.7%). The container ship index, meanwhile, was down by 2 points (or 1.3%).

For the third successive year, all categories of expenditure in 2017 were down on those for the previous 12-month period. The greatest cost decreases were in the Insurance category, followed by the Stores and Repairs and Maintenance categories. According to Richard Greiner, Partner, Shipping and Transport, this is likely to change in the near future.

“The likelihood is that operating costs will increase when the markets improve significantly. Such increases must, however, be balanced against the technological advances which have already started to make shipping markedly more efficient and more cost-efficient.”, said Greiner.

Greiner also noted that, overall, confidence in the shipping industry held up well in 2017, and has continued to do so this year. However, he also warned that big challenges are ahead for shipping that will test owners, operators, charterers and investors. “Planning needs to continue for Ballast Water Management Convention implementation and decisions must be made on how to fund it. Meanwhile,

measures to detect and eliminate cybercrime will come at a price for hardware, software and manpower”, he says.

As for how owners and operators can meet the International Maritime Organisation’s 0.5% global limit on the sulphur content of fuel oil used on ships (from 1 January 2020), Greiner noted that moving to low sulphur fuel is expensive and that installing the likes of scrubbers is both expensive and disruptive, which will lead to a rise in operating costs. He added that decisions will be influenced by individual risk profile and commercial strategy, but will undoubtedly be costly.

“There will be more significant operating efficiencies – and more fluctuations in overall operating costs – to come. That is what makes shipping such a challenge,” he said.

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Enhancing the Singapore Insolvency Framework

New Omnibus Bill unveiled by the Ministry of Law to Update and Strengthen Singapore’s Insolvency and Debt Restructuring Laws

On 10 September 2018, the Ministry of Law (“MinLaw”) has submitted the Insolvency, Restructuring and Dissolution Bill (the “Bill”) for first reading in the Parliament. This will be the final phase of reform to complete the phased approach taken by the MinLaw to update and strengthen Singapore’s Insolvency and Debt Restructuring

Laws following the recommendations by the Insolvency Law Review Committee in October 2013, and the Committee to Strengthen Singapore as an International Centre for Debt Restructuring in April 2016.

Currently, the majority of statutory provisions for individual insolvency are found in the Bankruptcy Act whereas those for corporate insolvency are set out under the Companies Act. Prior to the submission of the Bill, the first phase to amend the Bankruptcy Act and the second phase to amend the Companies Act were respectively completed in July 2015 and March 2017.

The Bill, if passed, will result in the introduction of a new omnibus legislation that consolidates the individual and corporate insolvency and restructuring laws. The existing Bankruptcy Act will be repealed, and the provisions in the Companies Act relating to corporate insolvency and restructuring will be deleted.

Other key changes in the Bill are summarised below:

New regulatory regime for insolvency practitioners

A new regulatory regime will be established for insolvency practitioners acting as officeholders in restructuring and insolvency proceedings which will impose minimum qualifications and conditions for the grant and renewal of licences. A disciplinary framework will also be set up for errant officeholders in respect of breaches in their conduct as insolvency practitioners. The new regulatory regime will be administered by the MinLaw's Insolvency and Public Trustee's Office which seek to professionalise and raise the quality of insolvency practitioners.

Judicial management by creditor's resolution

Under the current Companies Act, a court application will have to be made by the company or its creditors for a judicial management order. The Bill will introduce a new voluntary procedure whereby a company may now be placed under judicial management by resolution of creditors without having to first apply to the Court. This will enable a quicker process of placing a company under judicial management as the court application process generally requires more time and costs.

Third-party funding for actions

The Bill will introduce new provisions which enable judicial managers and liquidators to bring or defend any action or legal proceeding on behalf of the company, and to assign the proceeds from such actions in accordance with the regulations. The introduction of such provisions will allow judicial managers and liquidators to seek third-party funding for recovery actions.

Termination of winding up proceedings

Under the current Companies Act, the Court has only the power to stay winding up proceedings either altogether or for a limited time, but does not explicitly provide for a clear direction on whether wind-up proceedings can be terminated.

The Bill will empower the Court to stay or terminate winding up proceedings, and the Court may give directions for the resumption of the management and control of a company when an order to terminate a wind-up proceeding has been made. This will give companies which have been wound up an option to apply for the termination of winding up, rather than just for a stay, when better restructuring options arise during the winding-up proceedings to turnaround the business.

Summary procedures for early dissolution

Summary procedures have been introduced to enable the early dissolution of a company in liquidation if there is reasonable cause to believe that the realisable assets of the company are insufficient to cover the expenses of the winding up and that the affairs of the company do not require any further investigation. This will provide for a more time and cost-efficient dissolution process for companies with limited realisable assets rather than to go through normal winding up proceedings.

Secured creditors

Currently, there is no specific timeline for secured creditors of a bankruptcy estate to notify the trustee administering the bankruptcy estate to claim interest on their debt. However, secured creditors of a bankruptcy estate are not entitled to any interest on their debt if they do not realise the security within 12 months from the date of bankruptcy order or any further period determined by the Official Assignee.

The Bill will now require secured creditors of a bankruptcy estate to notify the trustee administering the bankruptcy within 30 days after the date of the bankruptcy order if they intend to claim interest on the debt for the period between the order and enforcement of the security. This will allow the bankrupt's assets and liabilities to be ascertained early for more efficient bankruptcy administration.

Restriction on ipso facto clauses

The ipso facto clauses are clauses that permit the termination or modification of contracts upon the occurrence of a specified trigger event, such as insolvency or restructuring of a company which is a party to a contract. Currently, there is no restriction on the application of such clauses.

The Bill will introduce new provisions to restrict the application of ipso facto clauses that are triggered upon the commencement of restructuring proceedings. This will allow companies in restructuring process or insolvency to be able to continue with their contracts to help turnaround their businesses.



Updated guidelines on PDPA for NRIC Rules and other national identification numbers

The National Registration Identification Card (“NRIC”) number, being a unique identifier assigned to Singapore citizens and permanent residents, is often used for transactions with the Government as well as in commercial transactions. The NRIC number is considered personal data of the individual, who can be identified from the unique sequence of numbers and letters.

The NRIC number being a permanent and irreplaceable identifier can potentially be used to unlock large amounts of information relating to the individual. Therefore, indiscriminate or negligent handling of NRIC numbers increases the risk of unintended disclosure and being used for illegal activities such as identity theft and fraud. The retention of an individual’s physical NRIC is also of concern as it contains not only the individual’s NRIC number, but also other personal data, such as the individual’s full name, photograph, thumbprint and residential address.

From 1 September 2019, organisations are not allowed to collect, use or disclose customers’ NRIC or make copies of the identify card under stricter guidelines by the Personal Data Protection Commission. The aim of this advisory guideline is to enhance consumer protection against indiscriminate and unjustified collection, use and disclosure of individuals’ NRIC numbers and retention of physical NRICs. The same treatment will also extend to Birth Certificate numbers, Foreign Identity Numbers and Work Permit numbers.

The only exceptions to the requirement is if the collection, use or disclosure of NRIC numbers (or copies of NRIC) is required under the law or is necessary to accurately establish or verify the identities of the individuals to a high degree of fidelity.

At present, organisations that have been collecting NRIC numbers are encouraged to assess the need to retain these numbers. Those organisations that decide to keep the NRIC

numbers must ensure that these are adequately protected. Otherwise, these organisations have to dispose of them responsibly in compliance with the PDPA disposal methods by the following year.

Moving forward, organisations will need to adopt alternatives to NRIC numbers when implementing identifiers in new systems or to replace NRIC numbers with new identifiers in existing systems. The process of replacing NRIC numbers as identifiers and user names in websites and databases may be a significant undertaking requiring well-planned and phased project management.

For more information on complying to the updated PDPA advisory guidelines, please contact your trusted Moore Stephens advisor who will assist you.

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