

The Kwong-Wai-Shiu Free Hospital (Transfer of Undertaking and Dissolution) Bill

Bill No. 39/2016.

Read the first time on 7 November 2016.

THE KWONG-WAI-SHIU FREE HOSPITAL (TRANSFER OF UNDERTAKING AND DISSOLUTION) ACT 2016

(No. of 2016)

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A BILL

intituled

An Act to provide for the transfer of the assets and liabilities of The Kwong-Wai-Shiu Free Hospital to its successor company, and for the consequent dissolution of The Kwong-Wai-Shiu Free Hospital and for all matters connected therewith, and to make a consequential amendment to the Income Tax Act (Chapter 134 of the 2014 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is The Kwong-Wai-Shiu Free Hospital (Transfer of Undertaking and Dissolution) Act 2016 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Interpretation

2. In this Act, unless the context otherwise requires —

“asset”, in relation to the transferor, means property of any kind of the transferor in Singapore on the eve of the transfer date (whether tangible or intangible, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise, and whether actual or contingent) and includes, without limitation, any —

(a) legal or equitable interest in real or personal property situated in Singapore;

(b) chose in action;

(c) money or securities;

(d) plant or equipment situated in Singapore;

(e) intellectual property;

(f) infrastructure situated in Singapore;

(g) records; and

(h) right;

“committee member” means a member of the committee mentioned in section 5 of the Kwong-Wai-Shiu Hospital Ordinance (Cap. 366);

“liability”, in relation to the transferor, means any liability, duty or obligation of the transferor on the eve of the transfer date (whether actual or contingent, liquidated or unliquidated, and whether owed alone or jointly or jointly and severally with any other person);

“records”, in relation to the transferor, means registers, papers, documents, minutes, receipts, books of account and other

records, however compiled, recorded or stored, of the transferor existing on the eve of the transfer date;

“right”, in relation to the transferor, means any right, power, privilege or immunity of the transferor on the eve of the transfer date and, to avoid doubt, includes (without limitation) any licence, certificate or permit under any written law, and other like privilege to carry out an activity regulated by written law;

“successor company” means the company limited by guarantee incorporated on 7 June 2016 under the Companies Act (Cap. 50) by the name “Kwong Wai Shiu Hospital”;

“transfer date” means the date the Minister appoints, by notification in the *Gazette*, to be the date on which the undertaking of the transferor is transferred to the successor company under this Act;

“transferor” means The Kwong-Wai-Shiu Free Hospital incorporated by the Kwong-Wai-Shiu Hospital Ordinance;

“trustee” means a trustee mentioned in section 5 of the Kwong-Wai-Shiu Hospital Ordinance.

Transfer of undertaking to successor company

3.—(1) On the transfer date, all assets and liabilities of the transferor are transferred to the successor company.

(2) When any assets or liabilities are transferred under subsection (1), the following provisions have effect:

(a) the assets of the transferor that are the subject of the transfer vest in the successor company by virtue of this section and without the need for any further conveyance, transfer, assignment or assurance;

(b) the liabilities of the transferor that are the subject of the transfer become by virtue of this section the liabilities of the successor company;

(c) all legal or other proceedings relating to those assets or liabilities that are started before the transfer date by or

against the transferor and pending immediately before that date are taken to be proceedings pending by or against the successor company;

5 (d) any legal or other proceedings relating to those assets or liabilities which could have been started immediately before the transfer date by or against the transferor may be started by or against the successor company;

10 (e) a judgment or order of a court or other tribunal obtained before the transfer date by or against the transferor relating to those assets or liabilities may be enforced by or against the successor company;

15 (f) any document relating to legal or other proceedings relating to those assets or liabilities that has been served on or by the transferor before the transfer date is taken, where appropriate, to have been served on or by the successor company;

20 (g) any act, matter or thing done or omitted to be done before the transfer date in relation to those assets or liabilities by, to or in respect of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the successor company;

25 (h) a reference in any written law, in any instrument made under any Act, in any contract, agreement, arrangement or undertaking, or in any document of any kind to the transferor, to the extent to which the reference relates to those assets or liabilities, is taken to be, or to include, a reference to the successor company.

30 (3) The operation of this section does not —

(a) constitute a breach of, or default under, an Act or other law or otherwise a civil wrong or criminal wrong;

(b) constitute a breach of duty of confidence (whether arising by contract, in equity, by custom, or in any other way);

- (c) constitute a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets or liabilities or the disclosure of any information;
 - (d) terminate an agreement or fulfil any condition that allows a person to terminate any agreement or obligation, or gives rise to any right or remedy in respect of any agreement or obligation; 5
 - (e) cause any contract or instrument to be void or otherwise unenforceable;
 - (f) frustrate any contract; 10
 - (g) release a surety or other obligor (in whole or part) from an obligation; or
 - (h) constitute an event of breach of, or default under, any contract or other instrument.
- (4) No attornment to the successor company by a lessee from the transferor is required. 15
- (5) The Registrar of Titles and any other authority required or authorised under written law to register or record transactions affecting assets or liabilities transferred under this Act, or documents relating to such transactions, must, on the application of the successor company, lodged in registrable form, register or record in the appropriate manner the transfer to the successor company of any of the transferred assets or liabilities. 20

Trustees and committee members ceasing

- 4.—(1) On the transfer date, every trustee and every committee member stops being a trustee or a committee member, as the case may be. 25
- (2) The operation of subsection (1) in relation to any trustee or committee member does not entitle the trustee or committee member to any payment or other benefit merely because he or she stops being such a trustee or committee member. 30

Transfer of records

5. From the transfer date, all records of the transferor become the records of the successor company.

Confirmation of transfers

5 6.—(1) If any dispute arises —

(a) as to whether an asset or a liability or record is transferred under section 3 or 5; or

10 (b) as to whether any, or any part of any, contract or document relates to an asset or a liability or record transferred under section 3 or 5,

the Minister may determine the matter and is to provide the concerned parties with written notice of that determination.

(2) The determination of the Minister under subsection (1) is final and binding on the successor company.

15 Saving for transfer of employees under Employment Act

7. To avoid doubt, this Act does not affect the operation of section 18A of the Employment Act (Cap. 91).

Dissolution of transferor and repeal

8.—(1) The transferor is dissolved.

20 (2) The Kwong-Wai-Shiu Hospital Ordinance (Cap. 366) is repealed.

Saving of President's and other rights

25 9. Nothing in this Act affects the rights of the President, all bodies politic and corporate, and all others except such as are expressly mentioned in this Act, and those claiming by, from or under them.

Consequential amendment to Income Tax Act

10. Paragraph B of the First Schedule to the Income Tax Act (Cap. 134) is amended by deleting item 2.

EXPLANATORY STATEMENT

This Bill seeks to transfer the assets and liabilities of The Kwong-Wai-Shiu Free Hospital to its successor company, and for the consequent dissolution of The Kwong-Wai-Shiu Free Hospital.

The Bill also makes a consequential amendment to the Income Tax Act (Cap. 134).

Clause 1 relates to the short title and commencement.

Clause 2 is a general definition provision. It contains definitions of terms used in provisions of the Bill.

The transferor is defined to mean The Kwong-Wai-Shiu Free Hospital incorporated by the Kwong-Wai-Shiu Hospital Ordinance (Cap. 366).

The transfer date is a date set by the Minister by notification published in the *Gazette*. The transfer date can be a date any time after the Bill is enacted and brought into force but before The Kwong-Wai-Shiu Free Hospital is dissolved under clause 8.

Clause 2 also names the successor company to which the transferor's undertaking is to be transferred by the Bill. This is the company limited by guarantee incorporated on 7 June 2016 under the Companies Act (Cap. 50) by the name "Kwong Wai Shiu Hospital".

Clause 3 provides for the transfer of all assets and liabilities in Singapore of the transferor to the successor company, without the usual written documents. This legislative approach overcomes the need to identify, transfer ownership and pay duty on the conveyance of individual assets and liabilities.

Clause 3 also contains a series of transitional provisions related to transferred assets and liabilities. The general purpose of the provisions is to put the successor company in the same legal position as the transferor from which assets and liabilities are transferred.

For example, there is a provision providing that all contracts binding on and enforceable by or against the transferor before the transfer date are transferred to the successor company. The relationship between the transferor and each of its contracting parties (such as patients or other customers) becomes a relationship between the successor company and those parties. Service of a document on the transferor is a service on the successor company, and any action by, against or in favour of the transferor is to be continued as if it were by, against or in favour of the successor company.

Clause 3 further declares that such a transfer is not to give rise to any right to damages or compensation. For example, it provides that nothing done or allowed under the Bill will constitute a breach of contract, Act or other law, or allow a party to terminate an agreement, or release a surety or other obligor.

Clause 4 provides that every trustee and committee member of the transferor stops being trustee and committee member on the transfer date. No compensation is payable for this stoppage.

Clause 5 provides for the transfer of all records from the transferor to the successor company. As provided for in clause 3, this transfer does not constitute a breach of duty of confidence or a breach of any contractual provision prohibiting or restricting the disclosure of any information.

Clause 6 supplies the means by which any dispute as to whether any asset, liability or record is transferred to the successor company is to be determined. It provides for a certificate issued by the Minister to be evidence as to whether an asset or a liability or record is or is not so transferred.

Clause 7 makes it clear that the Bill does not affect the law governing the transfer of employees under section 18A of the Employment Act (Cap. 91).

Clause 8 provides for the dissolution of the transferor and for the repeal of the Kwong-Wai-Shiu Hospital Ordinance. This provision is to be brought into force any time after the transfer date.

Clause 9 preserves the rights of the President, and of all bodies politic and corporate. Standing Order 87(2) requires this of all private Bills.

Clause 10 deletes item 2 in Paragraph B of the First Schedule to the Income Tax Act, which is a reference to The Kwong-Wai-Shiu Free Hospital established under the Kwong-Wai-Shiu Hospital Ordinance. The income of the successor company will not be wholly exempt from income tax by operation of section 13(1)(e) of that Act.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
