AMENDMENTS TO THE COMPANIES ACT TO REDUCE REGULATORY BURDEN AND IMPROVE EASE OF DOING BUSINESS

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Author and Contributor: Ken Chia and Joey Ho.

Following a public consultation exercise conducted jointly by the Ministry of Finance ("**MOF**") and the Accounting and Corporate Regulatory Authority ("ACRA") inviting public feedback on the proposed amendments to the Companies Act, the Companies (Amendment) Bill 2017 was passed in Parliament on 10 March 2017 and will be implemented in phases, with the first phase to take effect from 31 March 2017.

This article focuses on the proposed amendments to the Companies Act which are aimed to reduce the regulatory burden on business entities and improve the ease of doing business. Such proposed amendments include:

1. to remove the legal requirement to use common seals;
2. to exempt all private companies from holding Annual General Meetings ("**AGMs**"), subject to specified safeguards; and
3. to align the timelines for holding AGMs and filing Annual Returns ("**ARs**") with financial year-end ("**FYE**").

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Remove the requirement to use common seals (with effect from 31 March 2017)

With the amendments to the Companies Act, the legal requirement to use common seals for the execution of certain documents such as deeds and share certificates will be removed. As an alternative to executing such documents by the affixation of the common seal, the new provisions allow for the execution of such documents by signature on behalf of the company:

1. by a director and a secretary of the company;
2. by at least 2 directors of the company; or
3. by a director of the company in the presence of a witness who attests the signature.

Note these amendments do not extend to foreign companies, which will still need to execute Singapore law deeds under seal.

Similar amendments are made to the Limited Liability Partnerships Act in relation to the use of common seals for limited liability partnerships. Nonetheless, companies and limited liability partnerships may choose to retain the use of common seals based on their business needs.

Exemption from holding AGMs (targeted for implementation in early 2018)

Currently, private companies may dispense with holding AGMs if all members have approved a resolution to dispense with holding AGMs, or if the company is a dormant relevant company as defined under the Companies Act. In addition, with the new amendments, private companies will be exempted from holding AGMs if:

1. the company sends financial statements to its members within 5 months after FYE; and
2. no member requests for an AGM to be held at least 14 calendar days before the last day of the 6th month after FYE.

Directors must hold an AGM within 6 months after the FYE on the request of any member made within the aforementioned deadline. The company will be able to seek the Registrar's approval for an extension of time to hold the AGM.

Align timelines for holding AGMs and filing ARs (targeted for implementation in early 2018)

Currently, companies are required to hold their first AGM within 18 months of incorporation and subsequent AGMs are to be held yearly at intervals of not more than 15 months. Financial statements to be

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tabled at the AGM must be made up to a date within 4 months (for listed companies) or 6 months (for all other companies) before the AGM date. ARs are required to be filed within 30 days after the AGM (60 days if a company has a share capital and keeps a branch register outside Singapore).

With the amendments to the Companies Act, the timelines for companies to hold AGMs and file ARs will be aligned with the company's FYE so the deadlines will be fixed to the same date every year. Companies will be able to apply for an extension of time to hold AGMs and/or file ARs if required.

	Listed companies	All other companies
AGMs	To hold AGMs within 4 months after FYE	To hold AGMs within 6 months after FYE
ARs	To file ARs within 5 months after FYE (6 months if the company has a share capital and keeps a branch register outside Singapore)	To file ARs within 7 months after FYE (8 months if the company has a share capital and keeps a branch register outside Singapore)

With the aforementioned amendments, the following safeguards will also be put in place to prevent companies from arbitrarily changing their FYE:

1. companies must notify the Registrar of their FYE upon incorporation and of any subsequent change thereto;
2. approval of the Registrar is required if companies wish to change their FYE after having previously changed the FYE within the last 5 years;
3. the duration of the financial year ("FY") must not be longer than 18 months in the year of incorporation or any year in which there is a change in FYE unless allowed by the Registrar;
4. companies may change their FYE for the current FY and for the previous FY, but any change in FYE for the previous FY will only be allowed before the expiry of the statutory deadlines for:
    a. holding AGMs;
    b. filing ARs; and
    c. sending financial statements to shareholders;
5. existing companies which were incorporated before the proposed amendments will have an FYE deemed by law:
    a. if the company had previously notified ACRA of its FYE date, that date is deemed by law to be the statutory FYE; and
    b. for companies which had not previously notified ACRA of their FYE, the date of incorporation will be deemed by law to be the statutory FYE; and
6. companies with unusual FY periods (i.e. not 12 months) which will result in changes to the FYE every year, should notify ACRA in order to avoid applying for approval to change FYE every year.

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