

AMENDMENTS TO THE COMPANIES ACT WITH EFFECT FROM 31 AUGUST 2018

Posted on September 28, 2018



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Date Published: 28 September 2018

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Introduction

The Companies Act (Cap.50) of Singapore (the “Act”) has recently undergone various legislative amendments pursuant to the Companies (Amendment) Act 2017. Some of these amendments came into effect on 31 August 2018, and were introduced with the objective of reducing regulatory burden and improving the ease of doing business. Pursuant to these amendments, the timelines for companies with financial years ending on or after 31 August 2018 to hold annual general meetings (“AGM”) and file annual returns (“AR”) were altered to be aligned with the financial year end (“FYE”) of such companies. New exemptions have also been introduced to exempt certain private companies from holding an AGM.

AGM and AR timelines

Prior to 31 August 2018

AGM

Prior to 31 August 2018, a company was required to hold its first AGM within 18 months of incorporation,

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and subsequent AGMs yearly at intervals not more than 15 months after the previous AGM. Further, each AGM had to be held within 6 months after the financial year-end of the Company.

AR

The timelines for the filing of a company's AR were as follows:

1. A company having a share capital and keeping a branch register outside Singapore:
 - within 60 days of the AGM
2. Any other company:
 - within 30 days of the AGM

From 31 August 2018

AGM

With effect from 31 August 2018, pursuant to Section 175 of the Act, unless a company is exempted from or has dispensed with holding AGMs, a company with a FYE on or after 31 August 2018 is now required to hold its AGMs within 4 months of its FYE if it is a public listed company or within 6 months of its FYE any other company.

AR

A company with a FYE on or after 31 August 2018 is now required to file its AR in accordance with the following timelines:

1. A company having a share capital and keeping a branch register outside Singapore:
 - within 6 months of the FYE for a public listed company
 - within 8 months of the FYE for any other company
2. Any company other than a company listed in (a)
 - within 5 months of the FYE for a public listed company
 - within 7 months of the FYE for any other company

The AR can only be filed:

1. after an AGM has been held;
2. after the financial statements are sent to all persons entitled to receive notice of general meetings of the company if the company is no required to hold an AGM; and
3. after the FYE in the case of a private dormant company that is exempted from preparing financial

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statements.

Notwithstanding the above, as was also the case prior to 31 August 2018, a company may apply to extend the timeline for it to hold its AGM and/or file its AR by 60 days through the BizFile+ platform by providing a reason for the application and making payment of the prescribed fee.

Exemption from holding and dispensation of AGM

With effect from 31 August 2018, pursuant to Section 175A of the Act, new exemptions were introduced such that a private company is exempt from holding an AGM if:

1. it sends its financial statements to all persons entitled to receive notice of general meetings of the company within 5 months after the FYE; or
2. it is a dormant relevant company that is exempt from preparing financial statements.

However, such exemptions are subject to the following:

1. an AGM must be held if a member requests for it by notifying the company not later than 14 days before the date falling 6 months after the FYE; and
2. the company will be required to hold a general meeting in the event any member or auditor of the company gives notice to the company not later than 14 days after the financial statements are sent out to require such a general meeting to be held.

The new exemptions are in addition to the right a private company had prior to 31 August 2018 to dispense with its AGM if a resolution is passed by all the shareholders in the company. In this regard, it should be noted that if the dispensation resolution ceases to be in force, an AGM must be held if at least 3 months remain to the AGM due date as prescribed under Section 175 of the Act. For the purposes of consistency, this timeline has been changed from the position under the previous regime whereby if a dispensation resolution ceases to be in force, an AGM must be held if at least 3 months remain to the end of the year.

The financial year of a company

Pursuant to a new Section 198 which also came into effect on 31 August 2018, companies are now required to notify the Accounting and Corporate Regulatory Authority of Singapore (“ACRA”) of their FYE upon incorporation and of any amendments made to their FYE. A company will not be allowed to amend its FYE without approval from ACRA if such amendment results in a financial year being longer than 18 months or if it is lodged less than 5 years after the FYE was previously amended under Section 198.

Comments

These amendments largely help in clarifying the compliance requirements of companies. In particular, whereby companies previously had to refer to two different timeline requirements in relation to the

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holding of their AGM, the requirement now is easier to understand and comply with as there is only one timeline to refer to.

In relation to the new requirements relating to the FYE of a company, considering that the determination of the FYE may have certain implications on a company, such as tax implications, companies may wish to put greater thought into determining their FYE at the point of incorporation or at the point of notifying ACRA of the FYE so as to avoid the need of having to go through the process to amend it subsequently.

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