

COMPANIES (AMENDMENTS) BILL 2014

Posted on October 1, 2014



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Date Published: 1 October 2014

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A Steering Committee ("**SC**") was set up by the Ministry of Finance ("**MOF**") in October 2007 to carry out a fundamental review of the Companies Act ("**CA**") with the aim of reducing regulatory burden on companies and developing an efficient and transparent corporate regulatory framework that supports Singapore's growth as an international hub for both businesses and investors.

The MOF and the Accounting and Regulatory Authority of Singapore ("**ACRA**") conducted 2 public consultations on May 2013 and Oct 2013 inviting feedback on the draft Companies (Amendment) Bill ("**Amendment Bill**"), with the 2 consultations covering different aspects of the legislative amendments.

In September 2014, the MOF completed its review of the feedback received during the 2 rounds of public consultation on the draft Amendment Bill.

The Companies (Amendment) Bill 2014 was passed in Parliament on 8 October 2014 and the amendments will come into operation on such date as the Minister may, by notification in the Gazette, appoint.

The following amendments in the revised CA ("**Revised CA**") are worth noting:

Introduction of "small company" concept for audit exemption

Under the CA, a company is exempted from having its accounts audited if it is an exempt private company with annual revenue of \$5 million or less. The Revised CA will repeal the exempt private company audit exemption and in turn provide for the introduction of a small company concept which allows a private company that fulfills at least two of the following three quantitative criteria: (a) total annual revenue of not more than \$10 million; (b) total assets of not more than \$10 million; or (c) number of employees of not more than 50, to be exempted from statutory audit. A company qualifies as a small company in a particular financial year if it is a private company and meets at least two of the three quantitative criteria in each of the previous two financial years. The intention is to reduce the regulatory burden on small companies and move further towards a risk-based approach in regulation.

Introduction of multiple proxies to enfranchise indirect investors

The CA provides that a member is entitled to appoint a maximum of two proxies to attend and vote at a general meeting unless the articles of association provide otherwise. A new multiple-proxies regime has been introduced under the Revised CA, which would allow specified intermediaries, such as banks and capital markets services licence holders which provide custodial services, to appoint more than two proxies. This will enable indirect investors in listed companies whose shares are held in the clearing system operated by the Central Depository (Pte) Limited ("**CDP**"), including Central Provident Fund ("**CPF**") investors, to be appointed as proxies to participate in shareholders' meetings, thereby encouraging

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shareholder participation and fostering the culture of corporate governance.

Financial Assistance prohibition abolished for private companies and permitted under certain circumstances for public companies

The financial assistance prohibitions will not apply to private companies under the Revised CA. The financial assistance prohibitions will still apply to public companies and their subsidiaries although a new exception has been created in the form of an additional "whitewash" procedure, i.e. a public company and a subsidiary of a public company will be allowed to assist a person to acquire shares (or units of shares) in the company or a holding company of the company so long as it does not materially prejudice the interests of the company or its shareholders or the company's ability to pay its creditors and subject to the satisfaction of certain prescribed conditions.

Removal of voting rights restrictions for companies

The CA permits private companies to issue shares with different voting rights but only fixed-rate preference shares can be created without voting rights (and they are entitled to vote when the dividend payments are in arrears). The CA restricts public companies from issuing shares with one vote per share. The Revised CA will remove the one-share-one-vote restriction for public companies and allow companies to issue shares without voting rights (except for rights to vote on (i) a resolution to wind up the company voluntarily under Section 290; or (ii) a resolution to vary any right attached to a specified share and conferred on the holder) and give companies greater flexibility in capital structuring and separating economic and voting rights between different classes of shareholders. It remains to be seen if there follows any relaxation of the restrictions on variation in voting rights between classes of shares under the listing rules of Singapore Exchange Limited ("**SGX**").

Extension of statutory duty on disclosure to CEOs

Under the CA, only directors are required to disclose conflicts of interest in transactions and shareholdings in the company and related corporations. These disclosure requirements will be extended to chief executive officers ("**CEOs**") of companies under the Revised CA, even where the CEO is not a director.

ACRA's register of members for private companies

Under the CA, every company is required to keep a register of its members. The Revised CA provides for ACRA to maintain the authoritative registers of members of private companies in electronic form. Private companies will be required to file information concerning share ownership and changes in share ownership for registration with ACRA, for example, returns of allotment of shares and share transfers. The date of filing of that information will be taken as the effective date of entry of a person into the register as a member or the date of cessation of a person as a member.

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Changes relating to foreign companies

Reduction of the minimum number of authorised representatives

The Revised CA will require a foreign company to appoint at least one authorised representative (previously referred to as an agent under the CA) instead of the minimum of two under the CA. In addition, there are safeguards put in place e.g. there should be a replacement authorised representative before the existing sole authorised representative is permitted to resign, and a foreign company must appoint a replacement authorised representative within 21 days of the death of the sole authorised representative.

Introduction of additional grounds where the Registrar may strike off a foreign company

The three additional grounds prescribed under the Revised CA where a foreign company could be struck off include:

1. the foreign company failing to respond or appoint another authorised representative within a prescribed period after the sole authorised representative has given notice of his resignation to the company and lodged a notice with the Registrar;
2. the authorised representative of a foreign company receiving no instructions from the company within 12 months of a request by the authorised representative seeking instructions as to whether it intends to continue its registration in Singapore; or
3. where a replacement authorised representative is not appointed within 6 months after the death of the sole authorised representative.

The requirement for a foreign company to file with the Registrar similar components of its financial statements as those expected of a Singapore-incorporated company

In addition to the filing of (i) the balance sheet and other documents as required by the law of the place of its incorporation; and (ii) an audited statement of its assets and liabilities, and profit and loss account in relation to its operations in Singapore, the Revised CA will require foreign companies to file financial statements similar to those expected of Singapore public companies (these include components such as the income statement, statement of changes in equity, statement of cash flows, notes to the accounts, directors' report and auditors' report, where applicable). These changes seek to promote greater transparency for the benefit of individuals dealing with foreign companies.

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