



Legal Update – October 2014

UPDATE ON THE COMPANIES (AMENDMENT) BILL 2014

On 8 October 2014, the Parliament of Singapore passed the Companies (Amendment) Bill 2014 (“the CA Bill”). The resulting amendments to the Companies Act are the most extensive since the enactment of the Companies Act in 1967. The changes are aimed at reducing the regulatory burden on companies, improving business flexibility and the corporate governance landscape in Singapore. More than 200 changes will be made to the Companies Act – the main changes are set out below:

Major amendments to the Companies Act (Cap. 50)

(i) Audit exemption for small companies

Presently, only exempt private companies with annual revenue of S\$5 million or less are exempt from having their accounts audited. The CA Bill expands the category of companies exempted from audit requirements to ‘small companies’. To qualify as a small company in a particular financial year, a private company will have to meet at least 2 of the following three criteria in each of the previous two financial years:

- a) total annual revenue not more than \$10 million;
- b) total assets not more than \$10 million; and
- c) number of employees not more than 50.

Companies should note that, even if the exemption applies, they are still required to keep proper accounts. The Inland Revenue Authority of Singapore also conducts random checks on the accounts of small companies.

(ii) Removal of one-share-one-vote restriction for public companies

When the CA Bill comes into effect, the current one-share-one-vote restriction for public companies in section 64 of the Companies Act will cease. Public companies will be able to issue shares with different voting rights, such as special, limited or even no voting rights. This benefits companies and investors, who will enjoy more flexibility in raising capital and range of investment opportunities.

As for whether the same applies to listed public companies, the Singapore Exchange and Monetary Authority of Singapore are still in the midst of reviewing the same.

(iii) Replacement of Memorandum and Articles of Association with the Constitution

Companies in Singapore currently are incorporated with Memorandum and Articles of Association setting out the objects, powers and internal regulations of the company. Private companies and companies limited by guarantee may now choose to adopt the whole or part of several model constitutions prescribed for different types of businesses. Companies may choose to include additional provisions to the model constitutions. If a company adopts a prescribed model constitution in its entirety, it may choose to adopt the model constitution as it stands in force from time to time, in order to keep up-to-date on changes to the same arising from any changes in the Companies Act or company laws. ‘Older’ companies can choose to switch over to the new constitutions, or

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may choose to continue with its current M&AA.

(iv) ACRA to maintain register of members for private companies

The CA Bill removes the present requirement that private companies keep their own register of members. ACRA will maintain the registers of members of private companies. All share transfers and changes in share ownership will have to be registered with ACRA, and will be effective only upon being updated in the ACRA registry.

(v) Individuals can use an alternate address instead of their residential address in ACRA

Currently, the address reflected in ACRA searches is an individual's residential address. Under the CA Bill, individuals now have the option of providing ACRA with an alternate address to be reflected as their address in the ACRA registry. This alternate address must be one at which the individual can be located. The Registrar will maintain a confidential list of residential addresses of those individuals who choose to disclose their alternate address on the public ACRA register. In limited circumstances, for examples, if the individual cannot be located at the alternate address, the Registrar retains the power to replace the alternate address with the residential address.

(vi) ACRA to have power to debar directors and secretaries

The CA Bill gives ACRA the power to debar directors and/or secretaries of companies who have failed to file relevant financial compliance documents. Disbarment will be in place until the failure is rectified.

(vii) CEOs of companies to be subject to disclosure requirements

The present Companies Act requires directors to disclose conflicts of interests with regard to the shareholding and

transactions in the company. Under the amended Companies Act, this disclosure regime will be extended to CEOs of companies in acknowledgement of the increasing role that CEOs play as well as to bring the same in line with listed companies.

(viii) Only one locally resident agent required for foreign companies

Under the current Companies Act, foreign companies are required to appoint at least two locally resident agents. This will be reduced to one. Foreign companies should take note of the concomitant safeguards, such as the requirement that a replacement agent be appointed before the sole agent is allowed to resign. Agents should note that they bear the responsibility of ensuring the foreign companies' compliance with the Companies Act, and will be held personally liable for penalties imposed on the company, if any.

(ix) Foreign companies to file similar financial statements as Singapore companies

Currently foreign companies are only required to file a balance sheet and such other documents as required under the law of incorporation of the foreign jurisdiction. The CA Bill will now require foreign companies to file financial statements which include components / information similar to a Singapore companies' requires, including income statements, statement of changes in equity, statement of cash flows, notes to accounts, directors' report and auditors' report (where applicable) in order to provide greater transparency and accountability.

(x) Multiple proxies scheme

Currently, each member is entitled to appoint only two proxies to attend and vote on his behalf at general meetings. Under the CA Bill, specified intermediaries such as banks will be permitted to appoint more

than 2 proxies. This allows indirect investors and CPF investors the chance to vote at shareholder's meetings, with the same voting rights as direct shareholders.

(xi) Share warrants to be phased out

All share warrants will be phased out by the end of two years from the date that the CA Bill comes into effect. Within these two years, bearers of share warrants must convert the warrants into registered shares, or lose the benefit of the share warrant.

(xii) Electronic transmission of notices and documents

Companies will be permitted to use electronic modes of transmission to serve notices and send documents to their members. The permitted mode of electronic transmission must be stated in the constitutional documents of the company

(xiii) Financial assistance permitted for private companies

Currently, section 76(1) of the Companies Act prohibits the giving of financial assistance by all companies. Under the CA Bill, this restriction will be lifted for private companies only. Private companies will no longer need to conduct a time consuming whitewash exercise.

(xiv) 20% share buyback limit remains unchanged

The share buyback limit in the Companies Act was recently increased from 10% to 20% on 01 October 2013. Under the CA Bill, this limit remains the same. Companies will be allowed to buy back ordinary and preference shares up to a limit of 20%, if such buy back is sanctioned by its Articles and shareholder approval is obtained, amongst other requirements.

When will these amendments to the Companies Act (Cap. 50) come into effect?

As at the present time it is uncertain when the new amendments by way of the CA Bill will come into force; the same will only take effect on the commencement date gazetted by the Minister.



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