



## Spotlight On: Regulatory Changes

### Companies (Amendments) Bill 2014

A Steering Committee (“SC”) was appointed by the Ministry of Finance (“MOF”) in October 2007 to carry out a fundamental review of the Companies Act (“CA”) with the objective of reducing regulatory burden on companies and to provide greater business flexibility in order to improve the corporate governance landscape in Singapore.

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.

Most notably, the amendments in the revised CA (“Revised CA”) include:

1. **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 S\$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 company to be exempted from statutory audit so long as it fulfils at least two of the following three quantitative criteria:

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

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.

2. **Introduction of multiple proxies to allow indirect investors and CPF investors to vote:**

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 specific intermediaries, such as banks and capital markets services license 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. The purpose of this change is to encourage dynamic shareholder participation and improve the culture of corporate governance. A company will not be able to opt out of the multiple proxies regime.

3. **Abolishment of financial assistance prohibition for private companies:**

The financial assistance prohibitions will not apply to private companies under the Revised CA. It is however still applicable to public companies and their subsidiaries although a new exception has been created in the form of an additional “whitewash” procedure, ie, 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 a 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.

4. **Removal of voting rights restriction for public companies:**

The current restriction on public companies having only “one-share-one-vote” will be removed. Subject to prescribed safeguards to be introduced, a public company will soon be allowed to issue shares with different voting rights, which could be special, limited, conditional or no voting rights.

5. **Extension of statutory duty on disclosure by CEOs in non-listed companies:**

Under the CA, only directors are required to disclose any conflicts of interest in transactions and equity interest in the company and related corporations. These disclosure requirements will be extended to chief executive officers (“CEOs”) of companies under the revised CA regardless of whether they are a director of the company.

6. **Removal of requirement for private company to maintain register of members:**

Private companies will no longer be required to maintain the register of their members. The Revised CA provides for ACRA to maintain the authoritative registers of members in electronic form. Private companies will be required to file information concerning share ownership and changes in share ownership for registration with ACRA and the date of filing 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.

7. **Using an alternate address to residential address:**

An individual will be allowed to enter an alternative address in ACRA’s public records instead of his residential address.

Changes relating to foreign companies

8. **Reduction of the minimum number of authorized representatives:**

The Revised CA will require a foreign company to appoint at least one authorized representative (previously referred to as an agent under the CA) instead of the minimum of two under the current regime.

9. **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 by the Registrar include:

- (a) the foreign company failing to respond or appoint another authorized representative within a prescribed period after the sole authorized representative has given notice of his resignation to the company and lodged a notice with the Registrar;
- (b) the authorized 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
- (c) where a replacement authorized representative is not appointed within 6 months after the death of the sole authorized representative.

10. **Requirement for 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 the balance sheet and other documents required by the law of the place of its incorporation; and 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-incorporated companies. These changes seek to promote greater transparency and accountability for the benefit of parties dealing with foreign companies.

If you wish to understand more on the topics of Companies (Amendments) Bill 2014, please feel free to approach:

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