

BE PREPARED

Directors should take note of and prepare for the changes to directors' obligations under the Companies (Amendment) Act 2014

BY KUNG YONG JIN

THE Companies (Amendment) Act 2014 will amend the current Companies Act and introduce many new legislative changes aimed at reducing the regulatory burden on companies, providing for greater business flexibility and improving the corporate governance landscape in Singapore. Some of these changes relate to enhancing the ability of the Registrar of Companies to hold non-compliant companies, directors and company secretaries more accountable.

There may therefore be serious implications for a director of a company who has breached certain sections of the amended Companies Act. While these changes are targeted to be effected in the first quarter of 2016, directors should start to take note of and prepare for these changes. Some of these key changes are highlighted in this article. But first, a quick recap of some of the key basic statutory obligations that company directors must fulfil.

CURRENT OBLIGATIONS

The director of a company incorporated under the Companies Act must comply with numerous requirements that, among others, protect shareholders who have invested in the company. Among these requirements, directors must:

- Hold an annual general meeting (AGM) every calendar year and not more than 15 months after the holding of the last AGM (The first AGM for a company must be held within 18 months of its incorporation) - Section 175 (1)
- Lodge an annual return (AR) within one month of the AGM date - Section 197 (4)
- Lay at the AGM accounts that are made up to a date not more than six months and not more than four months before the date of the AGM for non-listed companies and listed companies respectively - Section 201 (1)

The AGM provides shareholders with the opportunity to question the directors on the management and financial performance of the company. This is facilitated by requiring companies to lay their accounts at their AGMs and provide these accounts to all shareholders not less than 14 days before the AGM.

The AR provides critical information that helps the company's stakeholders make informed decisions. The format of the AR is prescribed under the Companies Act. The AR is an electronic form lodged with the Accounting and Corporate Regulatory Authority (Acra) through its online platform BizFile. Important particulars of the company are required to be declared in the AR such as the name of the directors, its shareholders, the date to which the accounts of the company are made up and the date of the AGM at which those accounts were laid before the company. The accounts of a company will also be lodged with the AR unless the company is a solvent Exempt Private Company (EPC) or a solvent dormant EPC.

IMPACT OF THE COMPANIES (AMENDMENT) ACT 2014

- **Debarment of directors:** A new section 155B allows the Registrar to make a debarment order against the director of a company where the Registrar is satisfied that the company is in default in relation to a "relevant requirement of the Act" for a continuous period of three months or more. Failing to lodge the company's AR as required under section 197 is a

default "in relation to a relevant requirement of the Act" and the Registrar may issue a debarment order for such a breach. Not less than 14 days before making the debarment order, the Registrar must send the director concerned a notice of the Registrar's intention to make the order. The effect of a debarment order is that the director shall not be appointed to act as either the director or secretary of any other company, but may remain in his current appointment as director or secretary of the company in default. The director may apply to the Registrar to cancel or suspend the order subject to rectification of the default or such conditions as the Registrar may impose.

- **Striking off of a company by the Registrar:** Section 344 has been amended to clarify the Registrar's power to initiate the striking off of a company where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, subject to the company, its directors, secretaries and members failing to show cause to the contrary. Breaches of section 197 over a successive number of years may be grounds for the Registrar to have reasonable cause to believe that a company is not carrying on business or is not in operation.

- **Disqualification of a director:**

A new section 155A has been introduced whereby a director who has had three of his companies struck off by the Registrar within a period of five years will be disqualified from acting as a director of any company for five years starting after the date on which the last of the three companies was struck off. For the avoidance of doubt, the striking off of the three companies relates only to striking off initiated by the Registrar and does not include voluntary applications for striking off. Unlike debarment, disqualification under section 155A is automatic and the director is immediately disqualified from acting as a director without a need for the court or the Registrar to make an order against him. While debarment under section 155B allows a director to remain in his current appointment as director or secretary of the company in default, disqualification under section 155A results in the director not being able to act as a director of any company.

Thus, directors that breach sections 175, 197 and/or 201(1) will not only be liable on conviction to the prescribed penalties under the Companies Act (which includes fines and in the case of section 201(1), fine or imprisonment) but at the same time, these directors may also be subject to a debarment order or even disqualified from acting as a director for failing to lodge the AR under section 197.

For further information concerning these amendments, please refer to Acra's website which provides more details on the upcoming implementation of the Companies (Amendment) Act 2014. (https://www.acra.gov.sg/Legislation/Companies_Act_Reform/Key_legislative_amendments_to_be_effected_in_Phase_2/)

Debarments and disqualifications result in serious consequences for directors. Directors should take note of their statutory obligations under the Companies (Amendment) Act 2014 and take pro-active steps to avoid breaching any of them. ■

The writer is head of compliance, Acra

