

NEW AND IMPROVED

What companies need to know about the legislative changes to the Companies Act

LAST year, on Oct 8, a Companies (Amendment) Bill was passed in Parliament, containing the largest number of changes to the Companies Act since it was enacted in 1967. The changes aim to reduce the regulatory burden on companies, provide for greater business flexibility and improve the corporate governance landscape in Singapore. Stakeholders from industry, professional bodies, societies and academia provided feedback through various public consultation exercises held during the review of the Act.

The changes are targeted to take effect in the first quarter of this year. Some of the significant changes that may have an impact on small and medium-sized enterprises (SMEs) are highlighted below. For more detailed information on the changes to the Companies Act, visit the Accounting and Corporate Regulatory Authority (Acra) website at www.acra.gov.sg

INTRODUCTION OF “SMALL COMPANY” CONCEPT FOR AUDIT EXEMPTION

Currently, 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. To reduce the regulatory burden on small companies and move further towards a risk-based approach, a new small company concept will be introduced for exemption from statutory audit. To qualify as a small company, it must be a private company and fulfil at least two of the following three quantitative criteria in each of the immediate past two financial years:

- Total annual revenue of not more than S\$10 million
- Total assets of not more than S\$10 million
- Number of employees of not more than 50.

The criteria are similar to those used for the Singapore Financial Reporting Standards for Small Entities. For a company which is part of a group, to be exempt from statutory audit, it must qualify as a small company and the group must also meet at least two of the three quantitative criteria on a consolidated basis. Transitional provisions are provided for new companies incorporated

after the effective date of the amendments, and for existing companies during the first two years after the amendments in the Act are implemented.

A significant change is that a company no longer needs to be an exempt private company to be exempted. The new exemption is expected to benefit at least an additional 25,000 companies which do not qualify under the current exemption criteria. Existing safeguards will remain, such as requiring all companies to keep proper accounting records, and empowering shareholders with at least 5 per cent voting rights to require a company to prepare audited accounts.

EXTEND STATUTORY DUTY ON DISCLOSURE TO CEOs

Currently, directors are required under the Companies Act to disclose conflicts of interest in transactions and shareholdings in the company and related corporations. Such disclosures will be extended to CEOs of companies, reflecting their increasingly important roles. This change is consistent with the approach for listed companies under the Securities and Futures Act, under which similar disclosures are already required by both directors and CEOs.

ACRA'S REGISTER OF MEMBERS FOR PRIVATE COMPANIES

Currently, all companies are required to keep a register of members. After the change in the Act, Acra will maintain the registers of members for private companies in electronic form. Private companies will be required to file with Acra information concerning share ownership and changes in share ownership for registration, such as 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.

USE OF ALTERNATE ADDRESSES

Currently, individuals are required to report certain particulars – including their residential addresses – with Acra, and these are accessible by the public. Going forward, an individual will be allowed to reflect an alternate address at which he can be located – instead of his residential address – in Acra's public records. This will accord individuals greater privacy. Safeguards will be in place to minimise fraudulent reporting and filing of invalid addresses.

REGISTRAR'S POWERS TO DEBAR DIRECTORS AND COMPANY SECRETARIES

New provisions will be introduced to empower the Registrar to debar any director or company secretary of a company which has failed to lodge documents at least three months after the required deadlines under the Companies Act. The Registrar will consider representations from the directors and company secretaries before making a decision. A debarred person will not be allowed to take on any new appointments as a director or company secretary, but may continue with his or her existing appointments. The Registrar will lift the debarment when the defaults have been rectified or on other grounds to be set out in regulations. Debarment of irresponsible directors and companies secretaries will prevent such persons from holding similar positions in other companies and hence, help in promoting greater compliance. ■

This article is contributed by the Law Reform Department of the Accounting and Corporate Regulatory Authority

