

FACT SHEET ON THE COMPANIES (AMENDMENT) BILL

Background

The Companies (Amendment) Bill will implement the recommendations of the Steering Committee for the Review of the Companies Act¹, proposed changes relating to foreign companies² and other aspects of the Companies Act. This is the largest number of changes to the Companies Act since it was enacted in 1967. The changes aim to reduce regulatory burden on companies, provide for greater business flexibility and improve the corporate governance landscape in Singapore.

2. Various stakeholder groups such as companies, small-and-medium enterprises (SMEs), and retail investors will benefit from the changes. In particular, companies will have greater flexibility in raising capital as they will be able to issue shares which carry different voting rights. SMEs will benefit from the broader criteria for exemption from statutory audit. The appointment of multiple proxies will allow for more active participation at general meetings by indirect investors, including CPF investors.

3. For better corporate governance, disclosure requirements currently applicable to directors will be extended to Chief Executive Officers (CEOs). Company auditors of public interest companies and their subsidiaries will require the consent of the Accounting and Corporate Regulatory Authority (ACRA) for premature resignation. The Registrar of Companies will also be accorded new powers to debar directors and company secretaries of non-compliant companies.

Significant changes recommended by the Steering Committee

(A) Introduce “small company” concept for audit exemption

4. Currently, a company is exempted from having its accounts audited if it is an exempt private company³ with annual revenue of \$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 be exempted, a company must be a private company that fulfils at least two of the following three quantitative criteria:

(a) total annual revenue of not more than \$10 million;

¹ A copy of MOF’s decision on the Steering Committee’s recommendations can be downloaded at http://app.mof.gov.sg/data/cmsresource/SC_RCA_Final/AnnexA_SC_RCA.pdf.

² A copy of the proposed changes to the regulatory framework for foreign companies can be downloaded at http://app.mof.gov.sg/data/cmsresource/public%20consultation/2013/COACT2013_2/AnnexA_COACT2.pdf.

³ An “exempt private company” is defined as:

- (a) a private company, in which the beneficial interest in shares are not held directly or indirectly by any corporation and which has not more than 20 members; or
- (b) any private company that is wholly owned by the Government, which the Minister, in the national interest, declares by notification in the Gazette to be an exempt private company.

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

5. 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. Notably, a company no longer needs to be an *exempt* private company⁴ to be exempted from audit. For a company which is part of a group to be exempt from statutory audit, the company 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 companies incorporated after the effective date of the amendments and for existing companies.

6. The criteria are consistent with those used for the Singapore Financial Reporting Standards for Small Entities. This is expected to benefit at least an additional 25,000 companies which do not qualify under the current exemption criteria.

7. Existing safeguards will remain, such as requiring all companies to keep proper accounting records, and empowering shareholders with at least 5% voting rights to require a company to prepare audited accounts.

(B) Introduce multiple proxies to enfranchise indirect investors

8. Currently, the Companies Act 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 will be introduced, 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, including CPF investors, to be appointed as proxies to participate in shareholders' meetings. Indirect investors will be given the same rights as direct investors to vote at the shareholders' meetings. This will encourage more active shareholder participation and enhance the culture of corporate governance. To give companies more time to work out new procedures for proxy appointments and potentially larger numbers of attendees at their meetings, a 6-month grace period will be provided. The cut-off time for submission of proxy forms will also be extended from 48 hours to 72 hours to give companies more time to prepare for meetings.

(C) Remove one-share-one-vote restriction for public companies

9. The Bill will remove the current one-share-one-vote restriction in the Companies Act for public companies⁵. This will allow public companies to issue shares with different voting rights and give public companies greater flexibility in

⁴ An exempt private company refers to a private company that has no corporate shareholder and has not more than 20 members.

⁵ Private companies can already issue shares with different voting rights.

capital management. The United States, United Kingdom and Australia already allow companies to issue classes of shares with different voting rights, subject to companies' articles, although Australia restricts listed companies from doing so through its listing rules. Safeguards will be introduced to protect the rights of existing shareholders and ensure that investors are well informed⁶. SGX and MAS are reviewing whether dual-class share structures should be permitted for listed companies. SGX's existing policy of not listing issuers with dual-class share structures will continue to apply pending the conclusion of the review.

(D) Extend statutory duty on disclosure to CEOs

10. Currently, only 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, given the increasingly important role that CEOs play in company decisions. This change is consistent with the approach already adopted for listed companies under the Securities and Futures Act, under which similar disclosures by both directors and CEOs are already required.

(E) Require auditors of public interest companies and their subsidiaries to obtain ACRA's consent for premature resignation⁷

11. Auditors of public interest companies⁸ and their subsidiaries will be required to obtain ACRA's consent for resignation before the end of the term of their appointment. This will ensure that companies are not unfairly left in the lurch without their auditors but also allow auditors to resign, especially in situations where the company refuses to hold a general meeting to appoint a replacement auditor. The requirement for ACRA's consent will allow ACRA to stop the resignation in the public interest where necessary. Guidelines will be issued on what ACRA will consider as valid circumstances under which resignations will be accepted.

(F) ACRA's register of members for private companies

12. Currently, every company is required to keep a register of its members. Under the Bill, ACRA will maintain the 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.

⁶ For example, companies must seek shareholders' approval for the issuance of such shares via special resolution (75% approval threshold), companies' constitutions must specify the rights of the different classes of shares and holders of non-voting shares will have equal voting rights on resolutions to wind up the company.

⁷ The change does not cover the routine rotation of auditors.

⁸ Examples of public interest companies are companies listed on the Singapore Exchange, financial institutions, and large charities or institutions of public character.

(G) Other changes

13. The Bill will allow an individual to reflect an alternate address at which he can be located, instead of his residential address, in ACRA's public records. Safeguards will be in place to minimise fraudulent reporting and filing of invalid addresses. The Bill will also liberalise the rules on electronic transmission by companies to their members. Companies will be allowed to specify in their constitutional documents the mode of electronic transmission to be used. This will help companies reduce costs and increase efficiency.

Changes relating to foreign companies

(H) Reduce the minimum number of authorised representatives

14. The Bill will require a foreign company to appoint at least one authorised representative (currently referred to as an agent⁹) instead of the current minimum of two. This will reduce the regulatory burden for foreign companies and align our requirements with those of the United Kingdom, Hong Kong, Australia and New Zealand. Safeguards will be 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.

(I) Introduce three additional grounds where the Registrar may strike off a foreign company

15. Currently, the Registrar may strike a foreign company off the register when he has reasonable cause to believe that it has ceased to carry on business in Singapore or that it is being used for an unlawful purpose. The three additional grounds where a foreign company could be strike off include:

- (a) the sole authorised representative has given notice of his resignation to the company and lodged a notice with the Registrar, but the foreign company has failed to respond or appoint another authorised representative within the period of 12 months from the date of the lodgement of the notice;
- (b) an authorised representative of a foreign company has received no instructions from the company within 12 months of a request made by the authorised representative as to whether the foreign company intends to continue its registration in Singapore; or
- (c) where the foreign company does not appoint a replacement authorised representative within 6 months after the death of the sole authorised representative.

⁹ The designation "agent" will be changed to "authorised representative" to better reflect the accountability and responsibility expected of the person.

(J) Require a foreign company to file with the Registrar similar components of its financial statements as those expected of a Singapore-incorporated company

16. Currently, foreign companies must file a balance sheet and other documents as required by the law of the place of its incorporation. The Bill will require foreign companies to file financial statements which 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). The new requirement will give the public a more comprehensive picture of the financial position of foreign companies, comparable to that for Singapore-incorporated companies. The penalties for foreign companies failing to comply with the financial reporting requirements will also be aligned with those for Singapore-incorporated companies. These changes will promote greater transparency, accountability for accuracy of financial information relating to foreign companies and enable persons who deal with foreign companies to make better-informed business decisions.

Other significant changes

(K) Update the limit on preferential payment to an employee of an insolvent company

17. Employees of an insolvent company are currently entitled to be paid their wages and salaries, followed by retrenchment benefits and ex-gratia payments, in priority of other unsecured creditors. The limit on such priority payment is "*five months' salary of the employee or \$7,500, whichever is lower*". The \$7,500 limit is based on the monthly salary cap of \$1,500 under the Employment Act in 1993. To ensure that the limit keeps pace with changes in the labour market, the Bill will empower the Minister to adjust the limit via a gazette notification. The gazette notification will specify a new limit of "*five months' salary or five times the salary cap for non-workmen¹⁰ referred to in Part IV of the Employment Act, whichever is lower*". The new limit will strike a balance between the rights of employees and creditors.

(L) Accord powers to the Registrar to debar directors and company secretaries

18. The Registrar will be empowered to debar any director or company secretary of a company who has failed to lodge any documents at least three months after the prescribed 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 appointment as a director or company secretary, although he may continue with 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

¹⁰ Based on the \$2,500 salary cap for non-workmen in the Employment Act, the new limit in the gazette notification will be \$12,500.

companies secretaries will prevent such persons from holding similar positions in other companies and hence, help in promoting greater compliance.

(M) Phase out outstanding share warrants

19. Share warrants, which entitle the bearer of the warrant to shares, have been prohibited since 29 December 1967¹¹. A transitional arrangement has been in place for bearers of share warrants issued before 29 December 1967 to convert the warrants to registered shares. The Bill will phase out the outstanding share warrants by giving bearers of these warrants a final two-year period, from the time the amendment is effected, to surrender the warrants for cancellation and have their names entered in the register of members. Companies will cancel outstanding share warrants that are not surrendered for cancellation after the two-year period.

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¹¹ Under the current section 66 of the Companies Act, a company is prohibited from issuing any share warrant which entitles the bearer of the warrant to the shares specified in the warrant.