

Companies (Amendment) Bill

Bill No. /2017

Read the first time on 2017.

A BILL

i n t i t u l e d

An Act to amend the Companies Act (Chapter 50 of the 2006 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Companies (Amendment) Act 2017 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment to section 19**

2. Section 19(5) of the Companies Act (Cap. 50) is amended by deleting the words “and a common seal”.

Amendment to section 39

10 3. Section 39(1) of the Companies Act is amended by deleting the words “signed and sealed” and substituting the word “executed”.

Amendment to section 41

4. Section 41 of the Companies Act is repealed and the following sections substituted therefor:

15 **“Ratification by company of contracts made before incorporation**

41.—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

25 (2) Prior to ratification by the company, the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

Contract by corporation

41A.—(1) A contract may be made —

30 (a) by a company, under its common seal; or

(b) on behalf of a company, by any person acting under its authority, express or implied.

(2) Where a corporation is incorporated outside Singapore, a contract may be made —

5 (a) by the corporation under its common seal or in any manner permitted by the laws of the territory in which the corporation is incorporated for the execution of documents by such a corporation; or

10 (b) on behalf of the corporation by any person who, in accordance with the laws of the territory in which the corporation is incorporated, is acting under the authority (express or implied) of that corporation.

15 (3) Any formalities required by law in the case of a contract made by an individual shall also apply, unless a contrary intention appears, to a contract made by or on behalf of the corporation.

(4) A contract made by or on behalf of a corporation may be varied or discharged in the manner in which the contract is authorised to be made.

20 **Execution of document by a corporation**

41B.—(1) A document is executed by a company —

(a) by the affixing of its common seal; or

25 (b) by signing on behalf of the company by a director and the secretary of a company, or by 2 directors of a company.

(2) A document signed in accordance with subsection (1)(b), and expressed (in whatever words) to be executed by the company, has the same effect as if executed under the common seal of the company.

30 (3) Where a corporation is incorporated outside Singapore, a document which —

(a) is executed in any manner permitted by the laws of the territory in which the corporation is incorporated for the execution of documents by such a corporation; or

(b) is —

5 (i) signed by a person or persons who, in accordance with the laws of the territory in which the corporation is incorporated, is or are acting under the authority (express or implied) of that corporation; and

10 (i) expressed (in whatever form of words) to be executed by the corporation,

has the same effect in relation to that corporation as it would have in relation to a corporation incorporated in Singapore if executed in accordance with section 41B
15 by the corporation.

(4) Where a document is to be signed by a person on behalf of more than one company, it shall not be taken to be duly signed by that person for the purposes of subsection (1) or (3) unless the person signs it separately in each capacity.

20 (5) This section shall apply in the case of a document which is executed by a company in the name or on behalf of another person whether or not that person is also a company.

(6) A company may have a common seal but need not have one and this section shall apply whether the company has a common
25 seal or not.

Execution of document as a deed by company

41C. A document is validly executed by a company as a deed, if, and only if —

(a) it is duly executed by the company; and

30 (b) it is delivered as a deed.

Execution of document as a deed on behalf of a corporation

41D.—(1) A corporations may, by instrument executed as a deed, empower any person either generally or in respect of any specified matters, as its agent or attorney, to execute deeds on its behalf.

(2) A deed shall have the same effect as if the deed were executed by the corporation if the deed is —

- (a) duly executed by an agent or attorney empowered in accordance with subsection (1) on behalf of the corporation; or
- (b) signed by such an agent or attorney and (subject to section 41E) under the appropriate official seal of the corporation.

(3) The authority of an agent or attorney empowered under subsection (2) shall, as between the corporations and any person dealing with him, continue —

- (a) during the period, if any, mentioned in the instrument conferring the authority; or
- (b) if no period is mentioned in the instrument conferring the authority, until notice of the revocation or determination of his authority has been given to the person dealing with him.

Official seals for use abroad

41E.—(1) A company that has a common seal may have for use in any place outside Singapore one or more official seals, each of which shall be a facsimile of the common seal of the company with the addition on its face of the name of the place where it is to be used.

(2) The person affixing any such official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

(3) The official seal when duly affixed to a document has the same effect as the company's common seal.

Authority of agent of corporation incorporated outside Singapore need not be by deed, unless deed required by law of foreign territory

5 41F.—(1) The fact that a power of attorney or document of
authorisation given to or in favour of the donee of the power or
agent of a corporation incorporated outside Singapore is not
given by deed shall not affect (for any purpose intended to be
10 effected in Singapore) the validity or effect of any instrument
executed as a deed on behalf of that corporation by such donee
or agent, and such an instrument shall for all such purposes be as
valid as if such authority of the donee or agent had been given
by deed.

15 (2) Subsection (1) shall not apply unless the power of attorney
or document of authorisation referred to in that subsection is
valid as a power of attorney or document of authorisation for
such purposes in accordance with the laws of the territory under
which the corporation is incorporated.

20 (3) Notwithstanding section 41H, subsections (1) and (2) shall
apply to every instrument under seal executed before the
commencement of [these amendments] on behalf of a
corporation by a donee of a power or an agent of that corporation
whose authority was not under seal.

Authentication of document

25 41G. A document or proceeding requiring authentication by a
corporation may be authenticated by the signature of a duly
authorised officer of the corporation and need not be
authenticated under the common seal of the corporation, if any.

Application of sections 41A to 41G

30 41H. Sections 41A to 41G shall not apply in relation to
documents or instruments executed (whether or not delivered)
before the commencement of [these amendments].”.

Amendment of section 123 of the Companies Act

5. Section 123 of the Companies Act is amended by deleting subsections (1) and (2) and substituting the following subsections:

5 “(1) Every share certificate shall state as at the date of the issue of the certificate —

- (a) the name of the company and the authority under which the company is constituted;
- (b) the address of the registered office of the company in Singapore, or, where the certificate is issued by a branch office, the address of that branch office; and
- (c) the class of the shares, the amount paid on the shares, the amount (if any) unpaid on the shares and the extent to which the shares are paid up.

(2) Every share certificate shall be —

- (a) under the common seal (if any) of the company or, in the case of a share certificate relating to shares on a branch register, the applicable official seal (if any) of the company; or
- (b) signed in accordance with section 41B(1)(b).

20 (2A) A share certificate specifying any shares held by any member of the company in accordance with subsection (2) shall be prima facie evidence of the title of the member to the shares.”.

Amendment of section 144

25 6. Section 144(1)(a) of the Companies Act is amended by inserting, immediately after the word “seal”, the words “, if any”.

Amendment of section 179

7. Section 179 of the Companies Act is amended by deleting subsection (5) and substituting the following subsection:

30 “(5) Subject to section 41F, a certificate executed by a company in accordance with section 41B(1) or executed by a foreign corporation in accordance with section 41B(3) shall be

prima facie evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (3).”.

Amendment of section 215

5 **8.** Section 215 of the Companies Act is amended by deleting subsection (10) and substituting the following subsection:

10 “(10) The reference in subsection (1) to shares already held by the transferee company includes a reference to shares which the transferee company has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder —

- 15 (a) by deed and for no consideration; or
- (b) for no consideration other than a promise by the transferee company to make the offer.”.

Amendment of section 272

9. Paragraph (d) of section 272(2) of the Companies Act is deleted and the following paragraphs substituted therefor:

- 20 “ (d) use the company’s seal, if any; and
- (e) do all acts and execute in the name and on behalf of the company any deed, receipt or other document;”.

Amendment of section 385

10. Section 385 of the Companies Act is deleted and the following section substituted therefor:

“Certificate as to shareholding

25 385. A certificate specifying any shares held by any member of a foreign company and registered in the branch register which is —

- (a) under the seal (if any) of the foreign company; or

(b) executed in any manner permitted for share certificates by the laws of the territory in which the foreign company is incorporated,

5 shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.”.

Amendment of the Eleventh Schedule

10 **11.** The Eleventh Schedule to the Companies Act is amended by inserting, immediately after the word “company’s seal” in paragraph (h), the words “, if any”.

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20 *Note: This public consultation is being conducted on the draft Bill before it has been reviewed by the Attorney-General’s Chambers (AGC). The Bill may be subject to further changes after AGC’s review. The numbering of the clauses is also tentative and may be subject to further changes.*