

PRACTICE DIRECTION NO. 6 OF 2015

EFFECT OF COMPANIES (AMENDMENT) ACT 2014 ON SECTIONS RELATING TO FINANCIAL REPORTING IN THE COMPANIES ACT

Aim

1. This Practice Direction serves to inform companies of the legislative amendments to sections 23(2), 29(1), 29(2), 29(4), 200(3), 201(12), 202, 373(12) and 373(13) of the Companies Act (the "Act"), as well as the introduction of a new section 29A, pursuant to the implementation of the Companies (Amendment) Act 2014.

A. Legislative Amendments

2. Following the Companies (Amendment) Bill that was passed in Parliament on 8 October 2014, the Companies (Amendment) Act 2014, with the exception of sections 94(e) and 121, is being implemented in two phases on 1 July 2015 and 3 January 2016.
3. The requirements of the sections relating to financial reporting, incorporating the legislative amendments in the first and second phase implementation of the Companies (Amendment) Act 2014 are summarised in the table.

Section	Legislative amendments (incorporating amendments in Companies (Amendment) Act 2014)
23(2)	<ul style="list-style-type: none">■ There is no legislative amendment made to this subsection.■ A company formed for the purpose of providing recreation or amusement, or promoting commerce, industry, art, science, religion or any other like object not involving the acquisition of gain by itself or its individual members, is still required to seek the Minister's approval prior to the acquisition of any land.
29(1) / 29(2) (Revised on 3 January 2016)	<ul style="list-style-type: none">■ A proposed limited company or a limited company that meets the following criteria can apply to the Registrar of Companies ("Registrar") for approval to omit the word "Limited" or "Berhad" from its name:<ul style="list-style-type: none">(a) It is being formed or formed for the purpose of providing recreation or amusement, or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to the community;(b) it has some basis of national or general public interest;

Section	Legislative amendments (incorporating amendments in Companies (Amendment) Act 2014)
	<p>(c) it is in a financial position to carry out the objects for which it is to be/is formed; and</p> <p>(d) it will be/is required by its constitution to, apply its profits, if any, or other income in promoting its objects and will be/is prohibited from paying any dividend to its members.</p> <p>Prior to 3 January 2016, such applications were approved by the Minister.</p> <ul style="list-style-type: none"> ■ The Registrar may revoke the approval granted if he is of the opinion that a company has ceased to satisfy the conditions of approval.
<p>29(4) (Revised on 3 January 2016)</p>	<ul style="list-style-type: none"> ■ The references to “memorandum” and/or “articles of association” have been changed to “constitution”. ■ A company whose constitution, as a result of a direction by the Minister/Registrar under section 29(3), includes a provision that the constitution cannot be altered without the consent of the Minister, may, with the consent of the Minister, by special resolution alter any provision of the constitution.
<p>29A (Effective 3 January 2016)</p>	<ul style="list-style-type: none"> ■ This is a new section. ■ A limited company who is registered as a charity under the Charities Act (Chapter 37) does not require the Registrar’s approval to omit the word “Limited” or “Berhad” from its name and may proceed to file the prescribed form and a copy of the special resolution authorising the change of name with the Registrar. ■ The Registrar shall enter the word “Limited” or “Berhad” at the end of the name of a charitable company that is registered with the omission of the word “Limited” or “Berhad”, if he is satisfied that the company ceased to be a charitable company.
<p>200(3) (Effective from 1 July 2015)</p>	<ul style="list-style-type: none"> ■ Section 200 of the Act has been repealed. There is no statutory requirement for Singapore holding companies to align the financial year ends of their subsidiaries with that of the holding company.

Section	Legislative amendments (incorporating amendments in Companies (Amendment) Act 2014)
	<ul style="list-style-type: none"> ■ However, Singapore holding companies are required by the Accounting Standards¹ to ensure that the financial statements of the companies and their subsidiaries used in the preparation of the consolidated financial statements are made up to the same reporting date as the consolidated financial statements.
<p>201(12)</p> <p>(Revised on 1 July 2015)</p>	<ul style="list-style-type: none"> ■ The previous section 201(14) of the Act has been re-numbered as section 201(12), and the reference to “accounts” has been changed to “financial statements”. ■ The financial statements of a company need not comply with any requirement of the Accounting Standards, if the company has obtained the approval of the Registrar to such non-compliance. ■ To uphold the principles of transparency and equality of treatment for all Singapore-incorporated companies, the Registrar will grant exemption under section 201(12) of the Act only in very limited circumstances.
<p>202</p> <p>(Revised on 1 July 2015)</p>	<ul style="list-style-type: none"> ■ The reference to “accounts” has been changed to “financial statements”. The disclosures previously contained in the directors’ report have been moved to the enhanced directors’ statement, which must comply with the requirements of the Twelve Schedule. ■ Applications can be made to depart from the requirements as to form and content of the financial statements and directors’ statement, but approval will be granted only in very limited circumstances.
<p>373(12) / 373(13)</p> <p>(Revised on 3 January 2016)</p>	<ul style="list-style-type: none"> ■ Whether a foreign company is required to hold an annual general meeting in its country of incorporation is no longer relevant to determine the financial statements to be lodged with the Registrar by the foreign company. The reference to “accounts” has also been changed to “financial statements”. ■ All foreign companies, during their annual filing, are required to lodge their financial statements as well as those of their Singapore Branches with the Registrar.

¹ Accounting Standards refer to the Singapore Financial Reporting Standards (“SFRS”), Singapore Financial Reporting Standards for Small Entities (SFRS for SE) or Charities Accounting Standards, as issued by the Accounting Standards Council, as may be applicable.

Section	Legislative amendments (incorporating amendments in Companies (Amendment) Act 2014)
	<ul style="list-style-type: none"> ■ In relation to the lodgement of foreign companies' financial statements: <ul style="list-style-type: none"> (a) if a foreign company is required by the law of its incorporation to prepare financial statements, and the financial statements are prepared using accounting standards similar² to the Accounting Standards or are acceptable³ to the Registrar, the foreign company can lodge that set of financial statements with ACRA; and (b) for all other foreign companies, they are required to prepare and lodge their financial statements prepared in accordance with the Accounting Standards unless they had obtained approval from the Registrar under section 373(13) of the Act for relief from requirements as to audit or form and content of the financial statements and other documents. There is no exemption for waiver from filing of a foreign company's financial statements. ■ In relation to the lodgement of Singapore Branches' financial statements, all Singapore Branches are required to prepare audited profit and loss accounts which give a true and fair view of the profit or loss arising out of their operations in Singapore, and audited statements showing their assets used in and liabilities arising out of their operations in Singapore and lodge these documents with ACRA, unless they have obtained approval from the Registrar under: <ul style="list-style-type: none"> (a) the new section 373(12) of the Act for waiver from filing of the documents; or (b) the new section 373(13) of the Act for relief from requirements as to audit or form and content of the documents.

² The accounting standards which are similar to Singapore's Accounting Standards are the International Financial Reporting Standards ("IFRS").

³ The financial statements prepared using accounting standards acceptable to the Registrar include:

- (a) financial statements prepared in accordance with the United States' generally accepted accounting principles;
- (b) financial statements prepared in accordance with standards that have converged with the IFRS.

Section	Legislative amendments (incorporating amendments in Companies (Amendment) Act 2014)
	<ul style="list-style-type: none"> <li data-bbox="526 273 1398 376">■ The new sections 373(12) and 373(13) replace the previous sections 373(5) and 373(7) of the Act respectively. <li data-bbox="526 421 1398 743">■ A new section, section 373(9) of the Act, has been inserted to allow a Singapore Branch that is dormant⁴, to lodge with the Registrar, an unaudited profit and loss account with respect to its operations in Singapore and an unaudited statement showing its assets used in and liabilities arising out of its operations in Singapore, without having to seek approval under the new section 373(12) of the Act for waiver from filing of the documents of the Singapore Branch. <li data-bbox="526 788 1398 922">■ To uphold the principles of transparency and equality of treatment for all Singapore-registered foreign companies, the Registrar will grant exemption under sections 373(12) or 373(13) only in very limited circumstances.

B. Processing Guidelines

4. Applicants are requested to submit their applications for exemption only when they have all required information. If applicants do not provide a **complete** set of information when submitting the applications and/or do not **promptly** provide further information and documents upon ACRA's request, ACRA will process the applications based solely on the information made available to ACRA. Applications may be rejected if the available information is insufficient to support the applications. There will be no fee refund for rejected applications.
5. For applications made under sections 23(2), 201(12), 202, 373(12) and 373(13) of the Act, the applicants are reminded to submit their applications at least **one month** before the due date so that in the event their applications are rejected by the Registrar, they will still have sufficient time to prepare and file financial statements that comply with the Accounting Standards and other requirements of the Act within the applicable deadline.

⁴ A Singapore Branch is considered as dormant when there is no accounting transaction arising out of its operations in Singapore. For avoidance of doubt, the following are disregarded as transactions arising out of the operations of a Singapore Branch:

- (a) the appointment of a secretarial agent;
- (b) the appointment of an auditor;
- (c) the maintenance of books and other records; and
- (d) the payment of any fee specified in the Second Schedule or an amount of any fine or default penalty paid to the Registrar under section 409B.

6. For applications made under sections 29(1), 29(2) and 29(4), the applicants are reminded to submit their applications at least **two months** before the date they require a response from ACRA.
7. All applicants must **complete** and submit the following forms as part of the application, together with an application fee of \$200⁵ each:

Section	Name of Application⁶	Structured Form
23(2)	Application under Section 23 of the Act – Licence To Hold Land	Section 23(2) – Structured Form
29(1) / 29(2)	Application under Section 29(1) or 29(2) of the Act – Omission of the word “Limited” or “Berhad”	Section 29(1) or 29(2) – Structured Form
29(4)	Application under Section 29(4) of the Act – Application for Consent of Minister to Alteration of Constitution	Section 29(4) – Structured Form
201(12)	Application under Section 201(12) of the Act – Exemption from compliance with the Accounting Standards	Section 201(12) – Structured Form
202	Application under Section 202 of the Act – Relief from Requirements as to Form and Content of Financial Statements and Directors’ Statement	Section 202 – Structured Form
373(12) / 373(13)	Application under Section 373 of the Act – Exemption/Waiver of Financial Reporting for Foreign Company [Note: This comprises: (a) Waiver from Filing the Singapore Branch’s Financial Statements; or (b) Relief from Requirements as to Audit or Form and Content of Financial Statements and other Documents.]	Section 373(12) or 373(13) – Structured Form

⁵ Following the Companies (Amendment) Act 2014, ACRA has reviewed its regulatory fee structure and increased the application fees to \$200 per application. This increase is necessary to fund the operating costs incurred to maintain an accurate and comprehensive register of companies that is easily accessible for public inspection.

⁶ The electronic forms of the applications, together with the supporting documents filed, will be made available to the public for inspection.

C. Legal Provisions

8. The legal provisions in the Act referred to in this Practice Direction are:
- (a) Section 23;
 - (b) Section 29;
 - (c) Section 29A;
 - (d) Section 201;
 - (e) Section 202;
 - (g) Section 373; and
 - (h) the Companies (Fees and Late Lodgment Penalties) Regulations 2015

D. Related Practice Direction

9. This Practice Direction supersedes the following:
- (a) Practice Direction No. 1 of 2012: Applications for Exemptions under Sections 373(5) and 373(7) of the Companies Act, Cap. 50;
 - (b) Practice Direction No. 1 of 2013: Applications under Sections 23(2), 29(1), 29(2), 29(4), 200(3), 201(14), 202, 373(5) and 373(7) of the Companies Act, Cap. 50;
 - (c) Practice Direction No. 3 of 2014: Financial Reporting: Clarifications on Procedures for Applications under Sections 23(2), 29(1), 29(2), 29(4), 200(3), 201(14), 202, 373(5) and 373(7) of the Companies Act, Chapter 50 (the "Act"); and
 - (d) Practice Direction No. 5 of 2015: Effect of Companies (Amendment) Act 2014 on Sections 200, 201(12) and 202 of the Companies Act.

E. Website Information

10. ACRA has revamped its online business registration and filing portal. To find out more or access the new online business registration and filing portal (from 3 January 2016), please visit www.acra.gov.sg or www.bizfile.gov.sg.

Issued on 31 December 2015

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