

Key Legislative Reforms – Companies Act



ACRA-SAICSA SEMINAR: KEY LEGISLATIVE REFORMS TO THE COMPANIES ACT AND BUSINESS REGISTRATION ACT, AND KEY FEATURES OF THE ENHANCED BIZFILE SYSTEM

Accounting and Corporate Regulatory Authority
January 2015

Overview of reforms

- Largest number of changes since enactment in 1967
 - Steering Committee for the Review of the Companies Act recommendations
 - Other proposed amendments, including in respect of foreign companies
 - Objective of changes:
 - a) Reduce regulatory burden
 - b) Greater business flexibility
 - c) Improve corporate governance landscape

Highlights of key changes for local companies

Key changes for local companies

- ❑ “Small company” concept for audit exemption
- ❑ Revised financial reporting for dormant companies
- ❑ Use of alternate addresses on ACRA’s records
- ❑ ACRA’s electronic register of members/ register of directors etc.
- ❑ Merger of Memorandum and Articles into Constitution
- ❑ New CEO disclosures
- ❑ Removal of one-share-one-vote restriction for public companies
- ❑ Multiple proxies regime to enfranchise indirect investors
- ❑ Updates to the striking-off framework
- ❑ Registrar’s power to debar directors and company secretaries

Small co. audit exemption

Current criteria for audit exemption

- ❑ Exempt private companies (EPCs) with annual revenue of \$5m or less

New “small company” criteria for audit exemption

- Private company
- Meets at least 2 of 3 criteria for immediate past two financial years:
 - ❖ total annual revenue \leq \$10m,
 - ❖ total assets \leq \$10m,
 - ❖ no. of employees \leq 50.

Small co. audit exemption

- For a company which is part of a group:
 - ❖ company must qualify as a small company;
and
 - ❖ entire group must be a “small group”.

- For a group to be a small group, it must meet at least 2 of the 3 quantitative criteria on a consolidated basis for the immediate past two consecutive FYs.

Small co. audit exemption

- Company qualified as a small company continues until disqualified i.e.:
 - ❖ ceases to be a private company at any time during the FY; or
 - ❖ does not meet at least 2 of the 3 the quantitative criteria for the immediate past two consecutive FYs.

- Small group status continues until it does not meet at least 2 of the 3 the quantitative criteria for the immediate past two consecutive FYs.

Small co. audit exemption

Application

- ❑ Timing for application of new exemption: FYs commencing on or after effective date of amendments.
- ❑ Transitional provisions: First 2 FYs after commencement of amendments - must be private company and meets 2 of the 3 quantitative criteria in either the 1st or 2nd year after the commencement of the amendments.
- ❑ New companies - must be private company and meets 2 of the 3 quantitative criteria in either its 1st or 2nd year.

Small co. audit exemption

Illustration (General)

- ❑ To determine whether a co. qualifies as a small co. in 2020:
 - ❖ determine if the co. is a private co. in 2020;
 - ❖ whether it meets 2 out of the 3 quantitative criteria in 2018 and 2019.

- ❑ If co. qualifies as a small co. in 2020, it continues to be a small co. until disqualified:
 - ❖ co. ceases to be a private co. during the FY;
 - ❖ it fails to meet 2 out of the 3 quantitative criteria in the immediate past 2 consecutive FYs.

Small co. audit exemption

Illustration (Transitional)

- To determine whether a co. qualifies as a small co. in 2015/16:
 - ❖ determine if the co. is a private co. in 2015/16;
 - ❖ whether it meets 2 out of the 3 quantitative criteria in 2015 or 2016 respectively.

- If co. qualifies as a small co. in 2015, it continues as a small co. until disqualified.

- If co. does not qualify in 2015, it may qualify in 2016 if quantitative criteria is met in 2016.

Reasons for change

- Reduce regulatory costs for smaller companies that do not have wide market impact.
- Recognises broader group of stakeholders (e.g. creditors, employees, customers) other than just shareholders.
- Similar to criteria used for differentiated financial reporting in other countries (e.g. UK, Australia).

Dormant co. financial reporting

Current requirement

- ❑ Dormant company exempted from statutory audit requirements but is still required to prepare accounts.

Revised dormant company financial reporting

- ❑ Dormant non-listed companies (other than subsidiaries of listed companies) are exempt from requirement to prepare accounts.
- ❑ Exemption from preparation of accounts is subject to a substantial assets threshold test (i.e. company's total assets must be not more than S\$500,000). Companies with assets more than the threshold are treated the same as listed companies.
- ❑ No change for listed companies and their subsidiaries (i.e. exempt from audit but must prepare accounts).

Dormant co. financial reporting

Reasons for change

- Reduction in regulatory costs for dormant companies which have lower public impact.

Alternate addresses

Current requirement

- ❑ Individuals report personal particulars (including residential address) to ACRA. Information made available to public.

New alternate address

- Allow reporting of alternate address where the person can be located.
- Alternate address: Cannot be a P.O. Box, one alternate address per person, same jurisdiction as residential address.

Alternate addresses

- Conditions:
 - ❖ Must still provide residential address to ACRA
 - ❖ Publish residential address if alternate address is inaccurate, after giving individual opportunity to make representations; barred from using alternate addresses for 3 years.

Note: Alternate addresses are also available to persons registered under the new Business Names Registration Act, public accountants registered under the Accountants Act, partners or managers of a limited liability partnership, and partners or local managers of a limited partnership.

Alternate addresses

Reasons for change

- Protection of privacy for individuals

ACRA's electronic register of members

Current requirement

- ❑ All companies required to maintain register of members at registered offices.

ACRA's electronic register of members

- ❑ Electronic register of members for private co.s will be updated and maintained with ACRA:
 - Companies to register share ownership and changes with ACRA.
 - Real time registration of share ownership and changes i.e. filing date is effective date of membership/ cessation.

ACRA's electronic register of members

- Companies may prepare registration details one week in advance, save as draft and then file at appropriate time.
- ACRA ROM will be publicly available. No charge for access by the company.
- Companies still required to keep its ROM as at the time of change in the law until the retention period* expires.

** 7 years after last member on that ROM ceases membership*

Reasons for change

- Streamline administrative process for companies.
- Public will have greater access to records.

ACRA's electronic registers of directors, secretaries, auditors and CEOs

Current requirement

- ❑ All companies required to maintain registers of directors, secretaries, auditors and managers.

ACRA's electronic registers of directors etc.

- ❑ Electronic registers of directors, secretaries, auditors and CEOs will updated and maintained with ACRA for all companies:
 - Companies are required to update ACRA within 14 days after the date of change.

ACRA's electronic registers of directors, secretaries, auditors and CEOs

Change in ACRA's records from manager to CEO

- A manager of a company incorporated before the commencement of the new amendments will be treated as a CEO.
- For a company which has previously reported names and particulars of managers with the ACRA, the names and particulars of such managers will be entered into the register of CEOs, until a notification of change is filed with ACRA.

Reasons for change

- Streamline administrative process for companies.
- Public will have greater access to records.

Merging of memorandum and articles into constitution

Current Requirements

- ❑ Person incorporating a company submits memorandum and articles of the company to the Registrar.
- ❑ Articles may adopt all or any of the regulations contained in Table A of the Fourth Schedule.

Merged constitutional document

- ❑ A person desiring to incorporate a company must submit the constitution of the company to the Registrar.
- ❑ Model constitutions will be prescribed in regulations.

Merging of memorandum and articles into constitution

- ❑ Company may choose:
 - ❖ to adopt the whole model constitution for the type of company to which it belongs; and
 - ❖ to adopt the model constitution in force at the time or a model constitution in force from time to time.
 - If whole model constitution is adopted, no need to file constitution with ACRA, only need to refer to title of the model constitution chosen.
 - If company chooses to adopt part of the model constitution, adds provisions into it or adds objects clauses to it, have to file constitution with ACRA.

Reasons for change

- Streamline administrative process for companies.

CEOs disclosures

Current requirement

- ❑ Directors required to disclose:
 - Conflict of interests in transactions
 - Shareholdings in company and related corporations

New CEO disclosures:

- ❑ Extend disclosure requirements to CEOs of all companies
- ❑ For CEOs of non-listed companies, disclosures on shareholding exclude:
 - ❖ securities of related corporations; and
 - ❖ participatory interests made available by the company or its related corporations.

(In line with disclosures required for CEOs of listed companies under listing rules.)

CEOs disclosures

Reasons for change

- Recognises significance of CEO's role at apex of management and in decision making.
- Improve transparency and promote better corporate governance.

Remove one-share-one-vote restriction for public companies

Current requirement

- ❑ Public companies may only issue shares with one vote per share, except preference shares.

New requirement

- ❑ Remove restriction for public companies and introduce safeguards:
 - Shareholders must approve issuance of shares with different voting rights (special resolution)
 - Info on voting rights for each class of shares to accompany notice of meeting & proposed resolution
 - Rights of shares must be specified in constitutions and clearly demarcated so that shareholders know rights attached
 - Holders of non-voting shares will have equal voting rights on resolutions to wind up company or vary rights of non-voting shares.

For listed companies, SGX's existing policy of not allowing different voting rights will continue to apply pending conclusion of MAS' and SGX' review.

Remove one-share-one-vote restriction for public companies

Reasons for change

- Give companies greater flexibility in capital management.
- Give investors a wider range of investment opportunities.
- Similar to UK, NZ and Australia, which allow shares with different voting rights (Australia restricts listed companies in its listing rules).

Multiple proxies regime to enfranchise indirect investors

Current requirement

- ❑ Unless articles provide otherwise,
 - Member can appoint up to two proxies;
 - Proxy can only vote by poll.
- ❑ 48-hour cut off time for submission of proxy form.

New requirement

- ❑ Specified intermediaries can appoint more than two proxies:
 - custodian banks, nominee companies that are subsidiaries of banks
 - other persons licensed to provide custodial services to investors
 - CPF Board.
 - ❑ Allow such proxies to vote on a show of hands.
 - ❑ 72-hour cut off time for submission of proxy form.
- 6-month grace period for companies to work out new procedures.*

Multiple proxies regime to enfranchise indirect investors

Reasons for change

- Facilitate indirect investors attending shareholders meetings as proxies and vote by show of hands.
- Enhance corporate governance and encourage shareholder participation.
- Longer cut-off time so that companies have more lead time to process proxy submissions and handle administrative matters.

Updating ACRA's striking off regime for local companies

Current requirement

- ❑ Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send a letter requesting company to showing cause as to why it should not be struck-off.
- ❑ If the Registrar does not receive an answer within 1 month, he may publish in the Gazette and send to the company a notice that at the expiration of 3 months from the date of that notice the name of the company be struck off, unless cause is shown to the contrary.
- ❑ At the expiry of 3 months, the company will be struck off the register if no cause to the contrary is shown.
- ❑ A person aggrieved by the striking off may appeal to the Court within 15 years after the striking off for restoration of the company.

Updating ACRA's striking off regime for local companies

Key changes to the striking off regime

- Period for cause to be shown has been reduced from 3 months to 60 days.
- Period to appeal to the court for restoration has been reduced from 15 years to 6 years.
- Act makes clear distinction in provisions for a company to apply to the Registrar for striking-off, and for striking-off initiated by the Registrar. Procedures for notification of company and objection will however be similar.
- Registrar empowered to administratively restore a struck-off company where striking-off was initiated by the Registrar. Application must be made within 6 years after the dissolution of the company.

Updating ACRA's striking off regime for local companies

- Registrar empowered to restore a company struck-off due to Registrar's mistake (excludes striking-off on the basis of wrong, false or misleading information given by an applicant where company applies for the striking off).

Note: Similar amendments are also being made to the striking-off regime for LLPs, for consistency.

Reasons for change

- Shortening of restoration period for consistency with limitation period for recovery of debts.
- Administrative restoration by Registrar reduces costs for restoration.

Registrar's power to debar directors and company secretaries

New debarment regime

- ❑ Registrar empowered to debar any director or company secretary of a company that has failed to lodge any documents at least three months after the prescribed deadlines.
- ❑ Debarred person cannot take on any new appointment as a director or company secretary. May continue with existing appointments.
- ❑ Registrar will lift debarment when default has been rectified or on other prescribed grounds.

Registrar's power to debar directors and company secretaries

Reasons for change

- Prevent irresponsible directors and company secretaries from holding similar positions in other companies.
- Promote greater compliance with filing requirements.

Highlights of key foreign company changes

Key changes for foreign companies

- ❑ Reduction in the number of agents.
- ❑ Renaming “agents” as “authorised representatives”.
- ❑ Alignment of financial reporting requirements with those of locally-incorporated companies.
- ❑ Expanding grounds for striking-off.

Reduction in the number of agents & renaming to “authorised representative”

Current requirement

- ❑ Foreign company to appoint at least two locally-resident agents.

New agent requirements

- ❑ Reduce the minimum number of agents to one.
 - Sole agent can only resign where a replacement agent has been appointed.
 - In the event of death of sole agent, company must appoint a replacement within 21 days.
- ❑ “Agent” will be called “authorised representative” to better reflect accountability and responsibility of this important role.

Reasons for change

- Reduce regulatory burden for foreign companies.

Alignment of financial reporting requirements with local co.s

Current requirement

- ❑ Foreign companies to file copy of balance-sheet and any documents as required to be prepared in the place of registration.
- ❑ Test is whether company required by the law of the place of its incorporation or origin to hold an annual general meeting and prepare a balance-sheet; otherwise foreign company prepares in accordance with SFRS.
- ❑ Breach attracts general penalty of a fine not exceeding \$1,000 and a default penalty.

Alignment of financial reporting requirements with local co.s

New requirement

- ❑ Foreign companies to lodge financial statements with the Registrar with similar components as those expected of locally-incorporated companies.
- ❑ Test is whether company is required by the law of the place of its incorporation to prepare financial statements in accordance with applicable accounting standards which are similar to SFRS or which are acceptable to Registrar; otherwise foreign company prepares in accordance with SFRS.
- ❑ Company and director/authorised representative who knowingly and wilfully authorises or permits default liable to fine not exceeding \$50,000.

Alignment of financial reporting requirements with local co.s

Reasons for change

- Gives stakeholders transacting with foreign companies a more comprehensive picture of the financial position of such companies.
- Greater consistency with information available for local company.

Expanding grounds for striking-off of foreign co.

Current requirement

- Registrar may strike-off foreign company:
 - (i) where the Registrar has reasonable cause to believe that it has ceased to carry on business or to have a place of business in Singapore; or
 - (ii) if he is satisfied that the foreign company is being used for an unlawful purpose or for a purpose prejudicial to public peace, welfare or good order etc.

Expanding grounds for striking-off of foreign co.

New grounds

3 additional new grounds for striking-off:

- (i) Agent wishes to resign but is unable to do so because there is no replacement agent, and foreign company has failed to respond or act within a period of 12 months;
- (ii) Agent has received no instructions within a period of 12 months as to whether the foreign company intends to continue its registration.
- (iii) Foreign company has no agent (the foreign company does not appoint a replacement agent for more than 6 months following the death of the sole agent).

Reasons for change

- Safeguards for sole authorised representative.


For More Information...

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Legislative Amendments and Enhanced BizFile
will be uploaded by end Jan on**

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Second Reading Speech by Senior Minister of State for Finance and Transport, Mrs Josephine Teo, On the Business Names Registration Bill

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Second Reading (Response) Speech by Mrs Josephine Teo, Senior

OCT 08 2014 Second Reading Speech By Senior Minister of State for Finance and Transport, Mrs Josephine Teo, On The Statutes (Miscellaneous Amendments) (No.2) Bill 2014

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