

Selected Legislative Reforms to the Companies Act

21 January 2016



Overview of presentation



Overview of presentation

- Matters relating to directors
 - a) Removal of age limit for directors of public companies.
 - b) New exception from shareholder approval for payment of compensation to executive directors.
 - c) Extension of loan restrictions to quasi-loans.
 - d) Expressly allowing indemnities for directors against third party claims.
 - e) CEOs to make similar disclosures as directors.

Overview of presentation

- Companies' internal matters:
 - a) Facilitating the use of electronic transmission of documents.
 - b) New multiple proxies regime.
- Financial reporting requirements:
 - a) Small company audit exemption.
 - b) Dormant company exemptions.
 - c) New provisions on auditor resignation.

Directors



Removal of age limit for directors

Previous requirement

Shareholder approval required for appointment of person who is 70 years old and above as director of a public company or subsidiary of a public company.

New requirement

This requirement has been removed.

Reason for change

- A person's ability to act as a director of a company is not principally determined by his age.
- Today, persons of or above 70 years of age can be capable of doing the job of a director, and are often re-appointed in practice.

Payment of compensation to executive directors

Previous requirement

Shareholder approval required for payment of compensation to a director for loss of office as an officer, or payment as consideration for or in connection with his retirement.

New requirement

New exception introduced to exempt requirement for shareholders' approval for payment of compensation to executive directors for loss of employment up to a limit of total emoluments for the past one year.

Disclosure to shareholders still necessary.

Payment of compensation to executive directors

Reasons for change

- Exception recognises the distinction between loss of office as a director and termination as an executive director, who is both a director and an employee.
- Many companies provide for compensation for executive directors, including compensation for termination of employment in employment contracts. If shareholder approval is required for payment, company may potentially be in breach if shareholders do not approve.

Extension of loan restrictions to quasi-loans

Previous requirement

A company (other than an EPC) is not allowed to make loans or provide guarantee or security in connection with loans made to:

- Its directors or directors of a related company, their spouses or children; or
- Another company if the directors of the lending company have interest in 20% or more of shares of borrowing company.

Extension of loan restrictions to quasi-loans

New requirement

The prohibition is extended to the making of quasi-loans, credit transactions or taking part in arrangements in connection with such director-connected loans by the company.

Reasons for change

- There is no limit to creativity in financial arrangements. The loan regime should be updated to address the use of devices other than loans.

Expressly allowing indemnities for directors against third party claims

Previous requirement

This is not expressly provided for under the Act.

New requirement

A company is expressly allowed to provide indemnity to its officers (including directors) for claims brought by third party, except for certain specified liabilities.

Expressly allowing indemnities for directors against third party claims

Reason for change

- As Singapore companies become more globalised, the risk of exposure to liabilities to third parties, for example, arising from the class actions by shareholders in the US, increases.
- Previously, there was some uncertainty as to whether a company is prohibited under section 172 from providing indemnity for claims brought by third parties. Companies Act has been amended to clarify that a company may provide indemnity to its directors for claims brought by third parties.

CEOs disclosures

Previous requirement

Directors required to disclose:

- Conflict of interests in transactions
- Shareholdings in company and related corporations

New requirement

- Extend disclosure requirements to CEOs
- 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.

Companies' Internal Matters



Multiple proxies regime

Previous requirement

- Unless articles provide otherwise,
 - ❖ Member can appoint up to two proxies;
 - ❖ Proxy can only vote by poll.
- Articles usually provide for 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 proxy to also vote on a show of hands
- Companies may provide for a 72-hour cut off time for submission of proxy form

Multiple proxies regime

Reasons for change

- Enable indirect investors to attend shareholders meetings as proxies and vote by show of hands.
- Enhance corporate governance and encourage shareholder participation.
- Longer cut-off time would allow companies more lead time to process proxy submissions and handle administrative matters.

Multiple proxies regime

Note

- Transitional provision drafted in the Companies (Amendment) Act 2014 to enable companies whose constitution indicates a 48 hour cut-off time for the submission of proxy forms to automatically rely on the longer 72 hour cut-off time, has not been brought into force.
- Existing companies whose constitution indicates a 48 hour cut-off time for the submission of proxy forms, will have to amend their constitutions to extend the cut-off time for submission of proxy forms to 72 hours, if necessary.

Facilitating the use of electronic transmission of documents

Previous requirement

Company can transmit document and notices by electronic means subject to certain conditions in the Act (e.g. must be sent to current address; company and member must have agreed in writing to website publication).

New requirement

- Allow companies to send notices and documents by means of electronic transmission in accordance with its constitution with express, implied or deemed consent.
- Implied consent approach – constitution provides for and specifies manner of electronic transmission, and members do not have the right to elect to receive physical copies.
- Deemed consent approach - constitution provides for electronic transmission, members are given an opportunity to choose mode of transmission; member who fails to elect will be deemed to have consented to electronic transmission.

Facilitating the use of electronic transmission of documents

Cont'd

- Safeguards imposed in regulations:
 - (i) For deemed consent approach, company must notify members of the option to ask for physical copies, and the member must be allowed to change his mind at any time.
 - (ii) If company chooses to make use of website publication, company must separately notify members of the presence of the document on the website and how the document may be accessed.
 - (iii) Notices/documents in relation to takeovers and rights issues are excluded and must be sent to members in physical copy.
- New provisions are in addition to existing regime in s387A and 387B.

Facilitating the use of electronic transmission of documents

Reasons for change

- Reduce administrative burden on companies.
- Reduce cost for companies in sending out documents to their members.
- Faster communication.

Financial reporting



Small co. audit exemption

Previous requirement

- Exempt private companies (EPCs) with annual revenue of \$5m or less are exempted from audit.

New requirement

- New “small company” criteria for audit exemption
- Small company is defined as -
 - 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

Cont'd

- 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

Cont'd

- 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 on a consolidated basis for the immediate past two consecutive FYs.

Small co. audit exemption

Application

- Timing for application of new exemption: FYs commencing on or after 1 Jul 2015.
- Transitional provisions for first 2 FYs after 1 Jul 2015: 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 may qualify in their 1st or 2nd FY: 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 for first FY after 1 Jul 2015)

- To determine whether a co. qualifies as a small co. in 2016:
 - ❖ determine if the co. is a private co. in 2016;
 - ❖ whether it meets 2 out of the 3 quantitative criteria in FY2016.
- If co. qualifies as a small co. in 2016, it continues as a small co. until disqualified. It does not need to fulfil criteria again in 2017.
- If co. does not qualify in 2016, it may qualify in 2017 if quantitative criteria is met in 2017 (the 2nd transitional year).

Small co. audit exemption

Illustration (Transitional) (cont'd)

- Assuming in 2016 – Meets criteria, qualifies as small co.
- 2017 – Does not meet criteria, but continues to be qualified as small co. [Because it has already qualified in 2016.]
- (i) If in 2018 – Meets criteria, still qualified as small co.
- (ii) If in 2018 – Does not meet criteria, still qualified as small co. [Because it has not yet fulfilled the criteria for disqualification.]
- In 2019 – Co. ceases to be a small co. in 2019 (assuming (ii)) [Because it fails to meet the criteria for 2 consecutive years prior to the FY in question.]

Small co. audit exemption

Relevance to Annual Return filing

Audit Status

Is the Company exempted from audit? *	Is the company a small company as defined in the Companies Act? (Select if applicable)
<input checked="" type="radio"/> Yes <input type="radio"/> No	<input checked="" type="checkbox"/>
Are the financial statements audited? *	Attachment of Statement by Director (Small Company) *
<input type="radio"/> Yes <input checked="" type="radio"/> No	<input type="button" value="Choose File"/> No file chosen

Declaration by directors

Directors must state:

- (i) that the company qualifies as a small company under section 205C read with the Thirteenth Schedule;
- (ii) that no request to have the financial statements audited has been made by member in relation to the financial year; and
- (iii) the accounting and other records required by the Companies Act to be kept by the company have been kept in accordance with section 199.

Small co. audit exemption

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.

Small co. audit exemption

Additional points to note

- ✓ Applies from financial years starting on or after 1 Jul 2015.
- ✓ The small company audit exemption does not abolish the concept of exempt private company (EPC), which is still relevant (e.g. for exemption from filing of financial statements where the EPC is solvent).
- ✓ More information available on ACRA website:
https://www.acra.gov.sg/details_on_small_company_concept_for_audit_exemption.aspx

Dormant co. financial reporting

Previous requirement

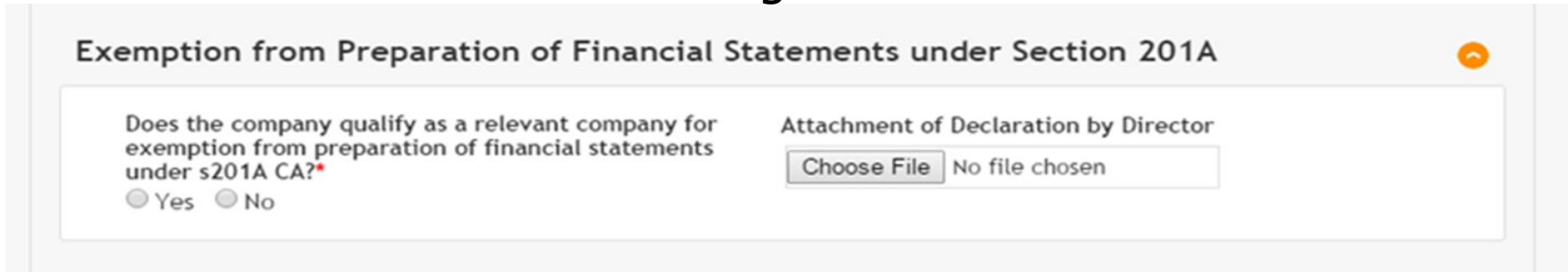
- Dormant company exempted from statutory audit requirements but is still required to prepare accounts.

New requirement

- 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

Relevance to Annual Return filing



Exemption from Preparation of Financial Statements under Section 201A

Does the company qualify as a relevant company for exemption from preparation of financial statements under s201A CA?*

Yes No

Attachment of Declaration by Director

Choose File No file chosen

Declaration by directors

Directors must state:

- (i) that the company has been dormant for the period from the time of its formation or since the end of the previous financial year, as the case may be;
- (ii) that no request to prepare financial statements has been made by member/ Registrar in relation to the financial year; and
- (iii) the accounting and other records required by the Companies Act to be kept by the company have been kept in accordance with section 199.

Dormant co. financial reporting

Reasons for change

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

Additional points to note

- ✓ Exemption from preparation of financial statements applies from financial years ending on or after 3 Jan 2016.
- ✓ The test for dormancy is provided for in the Companies Act, i.e. that there is no accounting transaction during that financial year.

Dormant co. financial reporting

Additional points to note

- ✓ The Companies Act also states the transactions which will be disregarded when determining dormancy:
 - (a) the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum;
 - (b) the appointment of a secretary of the company;
 - (c) the appointment of an auditor;
 - (d) the maintenance of a registered office;
 - (e) the keeping of registers and books;
 - (f) the payment of any fee and charges payable under written law;
 - (g) the payment of any composition amount payable under written law;
 - (h) the payment or receipt by the company of a nominal sum not exceeding \$5,000.

Resignation of auditors

Previous requirement

- An auditor can resign if he is not the sole auditor, or at a general meeting, and where a replacement auditor is appointed.

New requirements

- An auditor of a non-public interest company (other than a subsidiary of a public interest company) may resign before the end of the term of his appointment by giving written notice to the company.
- Auditors of public interest companies and their subsidiaries will be required to obtain ACRA's consent for resignation before the end of the term of their appointment.

Resignation of auditors

Definition of public interest company (relevant sections s205AA(4) CA and Reg 89A of the Companies Regulations)

- Company which is listed or in the process of issuing its debt or equity instruments for trading on a securities exchange in or outside Singapore;
- Company which is a relevant financial institution regulated by MAS (as listed in Regs);
- Company —
 - (a) which is a charitable company or an institution of a public character under the Charities Act; and
 - (b) where gross annual receipts in each of the immediately preceding 2 financial years is not less than \$10 million.

Resignation of auditors

Reasons for change

- Allow auditors to resign, especially in situations where company refuses to hold a general meeting to appoint a replacement auditor.
- Ensure that companies which greater public impact are not unfairly left in the lurch without their auditors.
- Allow ACRA to stop the resignation in the public interest where necessary.

Resignation of auditors

Additional points to note

- ✓ For guidance on how to apply to ACRA's consent - Refer to PRACTICE DIRECTION NO. 4 OF 2015 on ACRA's website.
- ✓ Does not apply to resignation at the end of auditor's term or change of auditor at an AGM.
- ✓ Does not apply to removal of auditor by company, unless the auditor agrees and initiates the resignation.
- ✓ There is a requirement for company to appoint a replacement auditor within 3 months.



Accounting and Corporate Regulatory Authority

10 Anson Road #05-01/15
International Plaza
Singapore 079903

www.acra.gov.sg
www.facebook.com/SG.ACRA
www.twitter.com/ACRA_SG