

Registry of Companies and Businesses
10 Anson Road # 05-01/15 (079903)
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RCB Legal Digest

April 2003, Issue No 1.

Editorial: Welcome to our maiden issue of RCB Legal Digest

RCB is launching an online newsletter on a quarterly basis. The purpose of this newsletter is to update the business community and professionals on developments in business law and interesting issues, which the business community faces. This newsletter is available online at www.rcb.gov.sg and no special software is required to access this newsletter. In our very first issue, we highlight the implementation of several recommendations from the Company Legislation and Regulatory Framework Committee that have major impact on the business community. We hope you find our newsletter helpful.

Juthika Ramanathan (Ms)
Registrar

After Note: *Please note that the Amendments mentioned in this Legal Digest have been implemented since 15 May 2003. Audit exemptions applicable to dormant and small EPCs shall be applicable for new financial year beginning on or after 15 May 2003. – Info inserted 23/05/03, The Editor.*

Company Legislation and Regulatory Framework Committee [“CLRFC”]

On 22 Oct 2002, our DPM Mr Lee Hsien Loong announced that the Government has accepted all the 77 recommendations from the Company Legislation and Regulatory Framework Committee [“CLFRC”].

The first phase of amendments to the Companies Act is targeted to take place May 2003 after the law has been amended, through the Companies (Amendment) Bill. This is intended to effect 20 of the CLRFC recommendations. The other

recommendations will be implemented in late 2003 after further amendments to the Companies Act have been effected.

Highlights and Impact of Recommendations

1. Simplifying the maintenance of Private Companies

1.1 Removal of legal requirement of audit

The law will be amended to remove the requirement for dormant companies and small exempt private companies to have their accounts audited by an external auditor.

Under the proposed law, dormant companies and small exempt private companies' annual revenue threshold set at **\$2.5 million** and below are not mandated by law to audit their accounts but they must continue to maintain proper accounting records and prepare “true and fair” financial statements that comply with the Financial Reporting Standards [“FRS”] that are prescribed by the Council on Corporate Disclosure and Governance [“CCDG”].

The Companies Act will also contain other safeguards such as, shareholders representing 5% or more of a company's ordinary shares can require the company to prepare audited accounts and/or the Registrar of Companies and Businesses [“Registrar”] can require a company to submit audited accounts.

1.2 Requirement to appoint professionally qualified company secretaries

The current law will be amended to remove the requirement for private companies to appoint professionally qualified secretaries. This would mean that such a company still needs a secretary but he/she need not be a professional.

As a safeguard, the Registrar will be empowered to compel a private company to appoint professionally qualified company secretary, if s/he is of the view that the company had failed to maintain proper records in accordance with the requirements under the Companies Act.

1.3 Filing of annual returns and accounts for exempt private companies

Exempt private companies, which are exempted from statutory audit, will be allowed to file their declaration of solvency, signed by just their director and company secretary. The auditor's signature will not be required. If the company is unable to file the declaration, it will be required to file a set of unaudited accounts with the Registry of Companies & Businesses [“RCB”]. However, exempt private companies, which are not exempted from statutory audit, must continue to file a declaration of solvency that is signed by a director, the company secretary and the auditor. If the company is

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unable to file the declaration, it must file a set of audited accounts with RCB.

Further, all dormant companies would be exempted from the mandatory audit requirement as well. A company is dormant if it has no significant accounting transaction. Examples of insignificant accounting transactions will be provided in the amended Companies Act for clarity. A company can also be dormant from the time of formation. Dormant companies would still have to comply with the requirements of the Act for filing of annual returns and accounts, where applicable.

1.4 One share one vote

Presently, all private companies that are subsidiaries of public companies can only issue ordinary shares with one vote each. This restriction will be removed and all private companies will be allowed to issue ordinary shares with any number of votes per share.

2 **Meetings**

2.1 Notice period for shareholder meetings

The current requirement of 21 days notice for meetings to pass a special resolution for private companies will be amended to 14 days. This will allow private companies to make decisions quickly.

2.2 Written resolutions

The current law is that all members must agree to the resolution before a written resolution (without a physical meeting) can be passed.

The law will be changed such that the members can pass a resolution without a physical meeting provided 75% of the members approve, for a special resolution and 50% of the members approve for ordinary resolutions

These written resolutions may be passed via electronic channels, e.g. emails instead of via hardcopies.

2.3 Passing of resolutions at general meetings

All companies in Singapore must hold an annual general meeting [“AGM”] every year. In future, private companies need not hold AGM if all its shareholders agree that AGM is not required, but instead matters to be decided at an AGM will be done via written means.

3 **Company Directors**

3.1 Loans to directors

Current practice is that only exempt private companies are allowed to extend loans to their directors and non-exempt private companies and public companies are not allowed to do so. This is unless the loan falls

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within the scope of section 162 of the Companies Act, i.e. a loan may be given to a director who is a full-time employee of the company who wants to buy a home. However, it is not clearly stated whether multiple loans can be given or whether the director has to occupy the home.

The amendment Bill clarifies this point and prevents companies from giving multiple loans to buy several properties for investment purposes. A director who is a full-time employee of the company can only be allowed one housing loan at any one time. Further, the property that is bought must be occupied or will have to be occupied by the director.

3.2 Retirement age of directors

Currently, if a director of a public company or a subsidiary of a public company reaches 70 years (of age) he must seek reappointment. This reappointment must be approved by at least 75% of the shareholders that are present and voting. However, after the amendment of the law, this reappointment can be approved by at least 50% of those present and voting. Directors of private companies that are not subsidiaries of public companies will not be required to go for annual reappointment.

3.3 Registration of foreign branches

Currently, a foreign company is exempted from registering a branch in Singapore if it has established a share transfer or share registration office in Singapore, with the intention of being listed on the Singapore Exchange. With the amendment of the law, all foreign companies (regardless of whether they plan to be listed on the Singapore Exchange or not), which establish share transfer or share registration offices in Singapore, are exempted from the need to register branches in Singapore.

Coming up in the next issue:

Limited Liability Partnerships [“LLP”s] & Limited Partnerships [“LP”s]

- What are these new Business Structures
- What are the Benefits
- Who are the registration and regulatory authorities?

Finally, feedback and comments:

We welcome your comments about any issues raised in this newsletter. Feedback or suggestions for future articles may also be forwarded to The Editors at kuraishia_pakir_maideen@rcb.gov.sg.

All information contained herein are correct at the time of publication, April 2003.