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RCB Legal Digest

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Welcome to the third issue of our Digest.

The law reform recommendations from the Company Legislation and Regulatory Framework Committee ("CLRFC") have been implemented in phases. The last batch of recommendations was introduced in May 2003.

Soon after that, a draft of the Companies (Amendment) Bill 2004 was launched for public consultation in August 2003. As a result of public feedback received, the Government has decided to hold back the implementation of reforms relating to capital maintenance, including abolition of par value shares pending further studies.

In this issue, we will give an overview of the resulting Companies (Amendment) Bill 2004 and the rationale for these amendments. The Companies (Amendment) Bill 2004 was 1st read in Parliament in January 2004.

Also in this issue, we will discuss the changes that will take place to the Companies Act and the introduction of the Accountants Bill and the Accounting and Corporate Regulatory Authority ("ACRA") Bill.

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I HIGHLIGHTS OF KEY AMENDMENTS IN THE COMPANIES (AMENDMENT) BILL 2004

The Companies (Amendment) Bill 2004 was 1st read in Parliament on 5 Jan 2004 and is expected to be read for the 2nd and 3rd time shortly. The proposed date of commencement is 1st April 2004. Below are the highlights of the key amendments to the Companies Act.

1. Simplifying and streamlining the incorporation process:

1.1 The CLRFC recommends the deletion of Section 18(1)(c) and Section 18(1)(d) of the Companies Act. Effectively, this would allow private companies to raise capital through private and exempted offerings without the need to convert to public

companies. Companies raising funds still have to comply with the legal requirements found in the Securities and Futures Act for offerings made to the public.

1.2 The CLRFC had recommended the requirement for all companies to include their RCB registration numbers on all business letters, statements of account, invoices, official notes and publications and the Bill puts this recommendation into effect. There will, however, be a grace period of 6 months given to enable companies to take steps to comply.

2. Corporate personality: The CLRFC had recommended the abolition of the *ultra vires* doctrine. A company should be statutorily conferred with all the powers of a natural person but, the ultra vires doctrine should be retained for the limited purpose of preserving the rights of internal redress by members against the directors, where the company's constitution places limits on a company's capacity and powers. It was proposed that Singapore adopts, with appropriate modifications, the provisions from the New Zealand Companies Act 1993. However, a new additional provision will be introduced. This new provision states that no one shall be deemed to have constructive notice of the contents of the Memorandum and Articles of Association simply because the documents are registered with the Registrar of Companies or that it is available for inspection at the company's registered office. This makes the law clear that a person shall not be deemed to have constructive notice of any document filed with RCB merely because it has been so registered or is available for public inspection at the company. This provision is modeled after the New Zealand legislation.

3. One shareholder/one director companies: The CLRFC recommended that all private companies incorporated in Singapore be required to have at least one shareholder and one director who is ordinarily resident in Singapore instead of the current 2 directors requirement. The shareholder and director can be the same person. The Government accepted this recommendation but has decided that one director/one shareholder companies shall apply to **all** companies. Companies can be incorporated by any one person and continue to exist by one person. There is however a legal requirement that the sole director must be locally resident in Singapore. The Government has decided that there is no compelling reason to restrict the director requirement to private companies only, so long as adequate safeguards are in place to uphold transparency and to prevent conflict of interests. The safeguards which are in place for two director companies presently would be duplicated for sole director/shareholder company. Duplication of safeguards include imposition of legal requirements for proper record keeping and endorsements of decisions made by sole directors and shareholders. In addition, the director and the company secretary **cannot be the same person** to ensure there is no conflict of interest. A new safeguard introduced is to allow the Registrar and the court to compel the shareholders of a company to appoint a director when there is no director left to manage the company and it is in the interests of the company to make such a direction. In the event that such a direction is not made, shareholders will be personally liable for the debts incurred by the company at any time 6 months after the office of director becomes vacant.

4. Non-executive directors: The CLRFC recommended that Section 201B of the Companies Act relating to audit committees of listed companies be migrated to the Securities and Futures Act. The Government has after consideration decided that there will be no migration of the S201B to the Securities Futures Act but to leave it in the Companies Act. The amendments made to S 201B are technical ones.

5. Use of information and advice: The CLRFC recommended that directors be accorded protection for reasonable reliance on advice and information from professionals and experts similar to that of the New Zealand legislation. The reason being that the law should recognize the need to rely on professional and expert advice. A new Section 157B (which adopts the position in Section 138 of the New Zealand Companies Act 1993) is being inserted into the Companies Act. Such protection would only be applicable to a director who acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances and has no knowledge that such reliance is unwarranted.

6. Limitation of majority rights: The CLRFC recommended the adoption of the recommendation in the UK Steering Committee's Final Report to statutorily impose limits on majority rule in the context of alterations of the articles of association or alteration of class rights. As regards this recommendation, a new provision is being inserted into the Companies Act setting out the power to entrench provisions of the memorandum and articles of association at the time a company is formed, or subsequently at any time by a special resolution.

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7. Electronic Distribution of Reports: The CLRFC recommended that the Companies Act be amended to provide for the electronic distribution of statutory reports to shareholders and for hardcopies to be available to shareholders who require them. As a result, the Bill would introduce the methods by which statutory reports can be distributed electronically or displayed at websites. These can be found as amendments to sections 387A and 387B.

8. Book-entry securities in Singapore – legal title and ownership: The CLRFC recommended that the statutory treatment of book-entry securities should be extended to the following range of securities:

(a) Listed equity securities issued by non-Singapore incorporated corporations and securities issued by supra-nationals and states;
(b) Listed debt and derivative securities issued by Singapore and non-Singapore incorporated issuers other than debt and derivative securities of Singapore-incorporated companies who have Central Depository (Pte) Limited named in its register of members;
(c) Unlisted securities by Singapore and non-Singapore issuers;
(d) Dematerialised securities; and
(e) Interests in collective investment schemes.

With respect to securities issued by Singapore corporations, the same treatment may be accorded. With respect to securities issued by non-Singapore corporations, it should be provided that insofar as Singapore law is relevant such depositor shall be

treated as if he was a member of the corporation or registered holder of the relevant securities.

Section 130B will be amended to extend the Division to include a new class of securities known as "designated securities". "Designated securities" would refer to other types of securities, such as dematerialised securities, and may need to be treated very differently from book-entry securities as defined in section 130A. For instance, dematerialised securities do not have physical documents of title. Thus, the amended section 130B allows the Minister to make regulations to modify the provisions relating to book-entry securities to cater for designated securities. The Act will also be amended to expressly include collective investment schemes. The requirement under section 130B that require the securities to be listed will also be removed.

9. Equitable title or ownership: The CLRFC recommends that the Companies Act and/or Securities and Futures Act respectively should expressly define the depositors' collective ownership of the Central Depository (Pte) Limited's ("CDP") trust assets, so that each depositor is only entitled to a pro rata share in the pool of securities or proceeds arising from such assets held in trust by CDP. The CLRFC further recommends that statutory provisions should be introduced to enhance the protection of securities in the sub-accounts of a depository agent upon the insolvency of the Depository Agent, by providing for pro rata entitlements to the pool of securities held by the depository agent.

The Companies Act will be amended to implement the above recommendation. The new section 130CA will make it clear that the book-entry securities (or designated securities) deposited with the Depository and depository agents are held on trust and kept separate from the Depository's (or depository agent's) own assets. This will provide protection for investors in the event of the insolvency of the Depository or the depository agent. Protection is further enhanced providing that depositors are entitled to a pro-rata share in a collective pool of securities belonging to all the depositors. This recognises the fungible nature of the securities and allows a valid trust to be established over the common pool.

10. Scrip lending transactions: The CLRFC recommends that scrip lending intermediaries, whose securities are transferred to and out of its securities account in connection with a scrip lending transaction within two market days, be exempted from Division 4 of Part IV of the Companies Act. Section 80 of the Companies Act will be amended to allow the Minister to prescribe persons or class of persons who may be exempted from the reporting requirements in Division 4, Part IV, such as these scrip lending intermediaries.

11. Approved company auditors and liquidators: The Act will be amended to remove the requirement for a person to be approved by the Minister for Finance to act as an auditor for any company. Instead, any person who is a public accountant under the Accountants Act (Chapter 2) shall automatically be allowed to act as a company auditor. As for liquidators, the law will be amended to allow any person to apply to the Minister to be approved as a liquidator and public accountants registered under the Accountants Act, shall be exempted from the approval process to act as a

liquidator. Currently, only approved company auditors can become approved liquidators under the Companies Act.

12. Display of name at all offices: The statutory requirement under Section 144(3) for every company to display its name outside its office will be removed. With an improved infrastructure in Singapore, members of the public can locate the address of a company even without a signboard. Members of the public can extract such information from RCB and it is easy to locate a company by referring to the registered office address. There is therefore no compelling reason to impose a mandatory requirement that all companies must display a signboard which adds to business costs. In addition, this also facilitates the setting up of home-based businesses in Housing Board Flats under the new Home Office Scheme.

13. Notification of closure of register of members: The requirement under Section 192 for every company to notify RCB of its intention to close its register of members at least 14 days before closure will be removed.

14. Directors' report: Section 201 will be amended to enable the Minister for Finance to prescribe any additional information in the directors' report.

15. Consolidated accounts: The requirement under Section 201A pertaining to the issuance of consolidated accounts will be removed as this is already provided for under the prescribed accounting standards. In addition, the Companies Act will be amended to provide that companies do not need to prepare consolidated accounts if the accounting standards say so.

16. Penalty for non compliance with prescribed accounting standards: With effect from January 2003, the law requires all companies in Singapore to prepare their financial statements in accordance with the prescribed accounting standards. When there is non compliance with such a legal requirement, there will be a fine of up to $ 50 000. The fine will be increased to $ 100 000 and the offender may also be imprisoned for up to 3 years if the offence is committed with an intent to defraud. The criminal sanction provided is intended to send a strong signal that the Government takes a serious view of such offences.

II HIGHLIGHTS OF THE NEW ACCOUNTANTS BILL

The current Accountants Act will be repealed and re-enacted with amendments. Consequential amendments will be made to other written laws. These amendments are done in conjunction with the establishment of the Accounting and Corporate Regulatory Authority ["ACRA"].

The Accountants Act Bill was read in Parliament on 5 Jan 2004 and is expected to be read again for the 2nd and 3rd time shortly. The proposed date of commencement is also 1st April 2004. The key purposes of the Bill, amendments and the reasons for the amendments are highlighted below.

1. The new Accountants Bill gives ACRA the overall responsibility for the administration of the Accountants Act; this includes the registration of public

accountants, accounting corporations accounting firms and the regulation of the auditing practice.

2. The Bill will also set up the Public Accountants Oversight Committee ["PAOC"]. This Committee will assist ACRA in the dealing with operational matters pertaining to the regulation of public accountants.
3. At present the Institute of Certified Public Accountants of Singapore ["ICPAS"] is a statutory body constituted under the Accountants Act. With the repeal of the Act and the introduction of the new Accountants Act, ICPAS will be registered as a society which is consistent with the practices in other leading jurisdictions such as the UK, US and Australia.
4. The Bill will require only two-thirds, rather than all, of the partners of an accounting firm to be public accountants. This will allow the firms that engage in tax or corporate secretarial work, in addition to audit work, to register as accounting firms. It also removes the need for every partner of an accounting firm to register as public accountants, even when they do not perform any audit work.
5. The Bill also introduces the Practice Monitoring Program ["PMP"]. This is a key provision in strengthening the regulatory framework for public accountants. The PAOC will use the PMP to monitor the professional practice of public accountants. A Practice Monitoring Sub-Committee will be set up to assist the PAOC in designing and implementing the PMP. The PAOC will be given powers to take actions against public accountants who fail PMP reviews, including recommending remedial steps to improve professional practice, restriction of practice, suspension and de-registration. The Bill also provides an avenue for the public accountants to appeal to the High Court against the decisions of the PAOC.
6. A two-tier system comprising the Complaints Committee and the Disciplinary Committee will also be set up to deal with complaints against public accountants. All complaints will first be evaluated to see if there is sufficient cause to set up a Complaints Committee. Depending on the severity of the case, the Complaints Committee will have the powers to dismiss the case or to recommend to the PAOC to either issue a letter of advice or warning to the public accountant, Accounting Corporation or Firm. Where a formal inquiry is necessary, the Complaints Committee will recommend to the PAOC to constitute a Disciplinary Committee to investigate the case. The Disciplinary Committee will have the powers to recommend to the PAOC to take disciplinary actions, including de-registration, suspension, restriction of practice, imposition of penalty and censure. This two-tier system is modeled after the legal and medical professions in Singapore.

III HIGHLIGHTS OF THE ACRA BILL

The Registry of Companies & Business ["RCB"] and the Public Accountants Board ["PAB"] will be merged in April this year and will be called the Accounting and Corporate Regulatory Authority ["ACRA"]. The merger of RCB and PAB into ACRA, will achieve synergies between the monitoring of the companies' compliance with accounting standards and the regulation of auditors. The merger will also build up expertise to carry out these functions more effectively

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The ACRA Bill was also read in Parliament on 5 Jan 2004, targeted for 2nd and 3rd reading shortly and commencement on 1st April 2004. Currently, the RCB oversees the incorporation of companies and the registration of businesses, assures compliance with the laws for companies and maintains a repository of financial reports and business information. The PAB is a statutory board which registers and regulates public accountants who are qualified to sign off companies' accounts as auditors. It also maintains professional auditing standards. The Bill provides for the formation of a new statutory board called the Accounting and Corporate Regulatory Authority ["ACRA"]. This new board will focus on issues concerning business, such as developing the corporate law framework, accounting and corporate governance and also register and regulate public accountants.

The mission of ACRA will be "to provide a responsive and forward looking regulatory environment for companies, businesses and public accountants, conducive to enterprise and growth in Singapore." We understand that an effective enforcement regime cannot rely solely on tough penalties for those convicted for offences. ACRA hopes to play a more pro-active role in promoting greater awareness and understanding of the existing requirements. It will also engage stakeholders more actively through public consultations.

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 RCB_DPD_Feedback@rcb.gov.sg.

All information contained herein is correct at the time of publication, 30th January 2004.