

REGISTRAR'S INTERPRETATION NO. 1 OF 2019

ALTERATION OF CONSTITUTION WITH RESPECT TO OBJECTS OF COMPANY UNDER SECTION 33 AND LODGING REQUIREMENTS UNDER SECTIONS 26 AND 33 OF THE COMPANIES ACT

Summary

1. This Registrar's Interpretation serves to clarify ACRA's view that in determining whether an alteration constitutes an alteration of the provisions of the constitution with respect to the objects of a company under section 33 of the Companies Act ("CA"):

- (a) any changes to the wordings of the object clauses in the constitution (e.g. correcting errors, replacing old English terms with modern English terms) ought to be regarded as changes that amount to alterations of the provisions of a company's constitution with respect to the objects of the company; and
- (b) any changes to the constitution of a company that only involve the renumbering of the objects clauses without affecting the original language of the constitution may be regarded as changes that do not amount to alterations of the provisions of a company's constitution with respect to the objects of the company.

2. With respect to paragraph 1(b), the special resolution altering the constitution of the company would have to be lodged with the Registrar in accordance with section 26 of the CA. The above is not an exhaustive list, and there may be other changes which may amount to an alteration with respect to the objects of a company, which depends on the facts of each case. If there is no such alteration, then the company is not required to comply with section 33.

3. This Registrar's Interpretation also serves to clarify ACRA's view that:

- (a) if a company intends to alter the provisions of its constitution with respect to the objects of the company, the company may only do so by passing a special resolution that only alters the provisions of its constitution with respect to the objects in its constitution; and
- (b) the company must lodge that special resolution under section 33 in accordance with the timelines stipulated therein, and is not required to lodge the special resolution under section 26.

Explanation

Paragraphs 1 and 2: Alteration of constitution with respect to objects of the company

4. Section 33(1) of the CA provides that “a company may by special resolution alter the provisions of its constitution with respect to the objects of the company”. Subsections (8)-(9) collectively require the company to lodge a copy of the special resolution with the Registrar according to the stipulated timelines. Subsection (10) provides that the alteration of the objects takes effect upon compliance with the lodgement requirement. It is important to determine what constitutes an alteration of the provisions of the constitution with respect to the objects of the company, because such an alteration triggers the lodgement requirement under subsection (9).

5. Section 33(1) is worded broadly and does not make a distinction between major and minor alterations to the objects of the company in the constitution. There are two safeguards in section 33. Subsections (2)-(3) requires written notice to be given to, *inter alios*, all members, specifying the intention to propose the resolution to alter the constitution of the company with respect to the objects of the company and to submit the resolution for passing at a meeting of the company. Subsection (5) allows the qualifying members of the company to apply to court to cancel the alteration.

6. Bearing in mind the safeguards in section 33, the approach described in paragraph 1 should be adopted to determine whether an alteration constitutes an alteration of the provisions of the constitution with respect to the objects of a company for the purpose of section 33.

7. With respect to paragraph 1(b), any changes to the constitution of a company that only involve the renumbering of the objects clauses without affecting the original language of the constitution should not fall under section 33. The relevant special resolution should be lodged pursuant to section 26 of the CA, which requires any resolution of a company affecting the constitution of a company to be lodged with the Registrar within 14 days after the passing of the resolution.

8. A renumbering of the objects clauses which results in references being made to substantively different clauses should be regarded as an alteration of the provisions of the constitution with respect to the objects of a company. For example, object clause 1 in company X’s constitution sets out X’s objects by making reference to clause 2. Renumbering both clauses to clauses 2 and 3 respectively throughout the constitution should not be regarded as an alteration of the provisions of the constitution with respect to the objects of a company. However, renumbering clause 1 to clause 3 and changing the reference in the new clause 3 to a different clause (e.g. clause 4) should be regarded as such an alteration.

9. The approach described in paragraph 1 is based on a reading of section 33 that seeks to avoid the risk of such alterations being subject to challenge at a later stage. It would be difficult for challengers to show that they are prejudiced by changes that

only involve the renumbering of the objects clauses. The approach also gives effect to the safeguards contained in section 33.

Paragraph 3(a): Alteration of objects in constitution by special resolution

10. If a company intends to alter the provisions of its constitution with respect to the objects of the company, the company may only do so by passing a special resolution that only alters the provisions of its constitution with respect to the objects of the company (i.e. the special resolution must not, in addition to alterations to the objects in the constitution, contain alterations to other aspects of the constitution). This is because a company which passes a special resolution that alters both the objects in the constitution as well as other aspects of the constitution has to, but will be unable to, comply with both section 26 and 33, as the special resolution would be subject to the lodging requirements in both sections, but the two applicable timelines are not aligned.

11. Section 26(1) provides that the constitution of a company may be altered or added to by special resolution. Subsection (2) provides that: “[i]n addition to observing and subject to any other provision of this Act requiring the lodging with the Registrar of any resolution of a company or order of the Court or other document affecting the constitution of a company, the company shall *within 14 days after the passing of any such resolution* or the making of any such order lodge with the Registrar a copy of such resolution or other document or a copy of such order together with (unless the Registrar dispenses therewith) a copy of the constitution as adopted or altered, as the case may be.” [emphasis added in *italics*]

12. In contrast, section 33(1) provides that: “[s]ubject to this section, a company may by special resolution alter the provisions of its constitution with respect to the objects of the company”. Subsections (5)-(6) collectively empowers certain persons to make an application to court within 21 days after the date on which the special resolution was passed and subsection (7) empowers the court to make certain orders in relation to the application, including cancelling or confirming the alteration of the constitution. Subsection (8) provides that: “Notwithstanding any other provision of this Act, a copy of a resolution altering the objects of a company *shall not be lodged with the Registrar before the expiration of 21 days after the passing of the resolution, or if any application to the Court has been made, before the application has been determined by the Court, whichever is the later.*” Subsection (9) provides that: “[a] copy of the resolution shall be lodged with the Registrar by the company *within 14 days after the expiration of the 21 days referred to in subsection (8), but if an application has been made to the Court in accordance with this section, the copy shall be lodged with the Registrar together with a copy of the order of the Court within 14 days after the application has been determined by the Court.*” [emphasis added in *italics*]

Paragraph 3(b): Lodgement requirements under section 33 of the CA

13. A company that passes a special resolution to alter the provisions of its constitution with respect to the objects of the company must lodge that special resolution under section 33 of the CA in accordance with the timelines stipulated therein, and is not required to lodge the special resolution under section 26 of the CA.

14. This approach is consistent with the use of the words “[u]nless otherwise provided in this Act” in section 26(1) and “[i]n addition to observing and subject to any other provision of this Act requiring the lodging with the Registrar of any resolution of a company” in section 26(2), which suggest that the lodging requirement in section 26 does not apply where the special resolution alters the provisions of its constitution with respect to the objects of the company. Instead, section 33 applies to the special resolution such that it must be lodged in accordance with section 33. In addition, the words “Notwithstanding any other provision of this Act” in section 33(8) suggests that the lodging requirement under section 33(9) takes precedence over and displaces the lodging requirement under section 26(2). The approach also gives effect to the purpose of the minimum waiting period under section 33(8), which is to allow for any application to the court to be determined before lodging the confirmed special resolution, and avoids requiring a company to lodge the same special resolution twice with ACRA.

Further clarification

15. If you seek any further clarifications, you may contact ACRA’s Helpdesk at 62486028.

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For Chief Executive, Accounting and Corporate Regulatory Authority and
Registrar of Companies, Business Names, Public Accountants, Limited Liability
Partnerships and Limited Partnerships