

REGISTRAR'S INTERPRETATION NO. 2 OF 2017

REQUIREMENT TO HOLD STATUTORY MEETINGS UNDER SECTION 174 OF THE COMPANIES ACT – ONLY APPLICABLE TO NEW PUBLIC COMPANIES

Summary

1. This Registrar's Interpretation serves to clarify that the requirement to hold a statutory meeting under section 174(1) of the Companies Act ("CA") only applies to a public company incorporated as such and not to a public company that is converted from a private company.

Explanation

2. A public company may be formed either by incorporation under section 19 of the CA or by conversion from a private company to a public company under section 31(2) of the CA.

3. Section 174(1) provides that: "Every public company that is a limited company and has a share capital shall, within a period of not less than one month and not more than 3 months after the date at which it is entitled to commence business, hold a general meeting of the members of the company to be called the "statutory meeting".

4. A public company is *entitled to commence business* upon the Registrar issuing a notice under section 61(3) of the CA that the company is entitled to commence business and to exercise its borrowing power¹.

5. The use of the phrases "*formation of the company*"² and "*entitled to commence business*"³ in section 174 suggests that the section is intended to apply only to a newly formed public company.

6. The purpose of the statutory meeting is "to apprise shareholders of important information on the company's formation"⁴. Since section 31(2) of the CA requires a private company to pass a special resolution determining to convert to a public company, before it can convert into a public company, there is no necessity for a converted public company to hold another meeting just to satisfy section 174. Any

¹ *Walter Woon on Company Law* (rev 3rd ed, 2009) at para 6.7, footnote 4 and *Woon's Corporations Law* at [4102].

² See section 174(7) of the Companies Act

³ See section 174(1) of the Companies Act.

⁴ Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015) at para 04.009.

issues relating to the converted public company could already be discussed at the meeting where the special resolution was passed.

7. Section 174 is drafted based on section 130 of the United Kingdom's Companies Act 1948 and section 135 of the Victorian Companies Act 1961⁵. Both of those overseas provisions have been interpreted by commentaries to apply to public companies formed as such, and not to public companies that were converted from private companies⁶.

8. For the reasons above, the Registrar interprets section 174 as being intended to apply only to public companies incorporated as such and not to public companies that are converted from private companies under section 31(2).

9. Accordingly, a public company that is converted from a private company under section 31(2) is not required to hold a statutory meeting under section 174(1), prepare the statutory report under section 174(2), or lodge a copy of the statutory report with the Registrar under section 174(5).

Further clarification

10. If you seek any further clarifications, you may contact ACRA's Helpdesk at 62486028.

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⁵ Both provisions have been repealed.

⁶ See e.g. *Palmer's Company Law* (19th ed, 1949) at 140; *Palmer's Company Law* (21st ed, 1968) at 462; Gower, *The Principles of Modern Company Law* (2nd ed, 1957) at 432; *Ranking and Spicer's Company Law* (8th ed, 1949) at 191; W John Taggart, *Horsley's Meetings: Procedure, Law and Practice* (2nd ed, 1978) at 433; HAJ Ford, *Principles of Company Law* (2nd ed, 1978) at 433; Yorston and Brown, *Company Law* (2nd ed, 1964) at 194; Magnus & Estrin, *Companies Law and Practice* (5th ed, 1978) at 142.