
KEY REVISIONS TO THE BILL FOLLOWING PUBLIC CONSULTATION

Extending the existing prohibition to give loans, guarantee or security under section 163 to a limited liability partnership (LLP)

1. Currently, section 163 of the Companies Act prohibits a company from giving a loan, guarantee or security to another company if the directors of the lending company own or control 20% or more of the shares of the borrowing company. There was a suggestion to extend the prohibition under section 163 to LLPs, as they are bodies corporate with separate legal personalities. This would address any conflict of interest in giving a loan to an LLP in which a director of the lending company is interested. The Bill will be amended to extend the prohibition to an LLP i.e. section 163 will prohibit a company from giving a loan, guarantee or security to another company or LLP if the directors of the lending company own or control 20% or more of the total voting power or interest of the borrowing company or LLP.

Not requiring a Chief Executive Officer (CEO) of a non-listed company to disclose interests in: (i) securities of related corporations; and (ii) participatory interests¹ made available by the non-listed company or its related corporations

2. The draft Bill extended the disclosure requirements under section 165 to CEOs. Some respondents suggested aligning the proposed disclosure requirements in the draft Bill for CEOs of non-listed companies with those for CEOs of listed companies in the Securities and Futures Act, by excluding the two areas specified above. The Bill will be amended to require a CEO of a non-listed company to disclose interests in shares, debentures, rights, options and contacts of the company, but without requiring disclosure of the two areas specified above.

Removing the qualification that the multiple proxies regime can be subject to contrary provisions in a company's constitution

3. The provision implementing the multiple proxies regime in the draft Bill had included the qualification “subject to contrary provision in the company’s constitution”, which would allow companies to opt out of the multiple proxies regime through provisions in their constitutions. As existing companies might not amend their

¹ Under section 164(13) of the Companies Act, participatory interest refers to a unit in a collective investment scheme. In Singapore, local and foreign unit trusts or funds are regulated as collective investment schemes.

constitutions to provide for the appointment of multiple proxies, this might not meet the intent of enfranchising indirect shareholders. Thus, the Bill will be amended to remove the qualification so that companies cannot opt out of the multiple proxies regime.

Replacing the term “total gross assets” with “total assets” in the new small company criteria

4. The draft Bill introduced a new small company concept for determining exemption from statutory audit. To qualify as a small company, the draft Bill provided that the company must be a private company that meets at least two of the following three criteria: (i) Total annual revenue of not more than S\$10 million; (ii) Total gross assets of not more than S\$10 million; (iii) Number of employees of not more than 50. The reference to “total gross assets” will be replaced with “total assets” for clarity and certainty. This is consistent with the positions in other jurisdictions like the UK, Hong Kong and New Zealand.

Requiring share ownership and any change in share ownership of private companies to be filed on a real-time basis, instead of within a 14-day period

5. The draft Bill had proposed a 14-day period for companies to file information on allotment or transfer of shares with ACRA, which would maintain the authoritative electronic register of members for private companies. Some respondents indicated that there should be real-time registration of share ownership information and changes to it, for legal and commercial certainty and accuracy of ACRA’s register. The Bill will be amended to remove the 14-day filing requirement and require real-time registration of share ownership information and changes to it. Such share ownership or change in share ownership will not take effect until ACRA updates its electronic register of members. ACRA will update its electronic register of members upon receipt of the filing and hence, the filing date will be taken as the date of entry into the electronic register of member. Real time registration also mirrors how companies are currently supposed to update and maintain their registers.

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