Annex 3

SUMMARY OF FEEDBACK AND MOF/ ACRA'S RESPONSES ON PROPOSED AMENDMENTS ON ANNUAL GENERAL MEETINGS, ANNUAL RETURNS AND COMMON SEALS[1]

A. Proposed amendments on annual general meetings (AGMs) and annual returns

Simplify the timelines for holding AGMs

Whether regulation of changes in financial year end (FYE) should apply equally if the financial year is lengthened or shortened[2]

1. Feedback: Three respondents disagreed that regulations of changes in FYE should apply equally when the financial year was shortened previously. One respondent suggested giving companies at least one month after incorporation to provide the FYE, instead of upon incorporation. Another respondent suggested giving companies 6 months to provide the FYE if this could not be decided at the point of incorporation.

2. MOF's and ACRA's response: With the amendment to simplify the timelines for holding AGMs, the FYE date will take on a new significance as the date from which time starts to run for compliance with statutory obligations. Any change to FYE will affect the due dates for holding AGMs and filing annual returns, which will impact shareholders. Thus, it is appropriate that the date should be considered upon incorporation and any change should be subject to regulation, even if the change is to shorten the financial year. If companies are undecided about the appropriate FYE date at the point of incorporation or subsequently decide that another FYE date is suitable, they can still change their FYE.

Whether a change in FYE should only be allowed for the current financial year and not any previous financial year

3. Feedback: A respondent disagreed that a change in FYE should only be allowed for the current financial year and not any previous financial year. The respondent suggested clarifying in the Bill that a change in FYE would be allowed for the company's previous financial year as well as for current and subsequent financial years. Another respondent also disagreed to allow a change in FYE only for the current financial year. The respondent counter-suggested that if companies would not be allowed to change its FYE for any previous financial year, an exception to the rule should be provided if the period for holding the AGM for the preceding financial year had not expired. The respondent cited an example of a company that had a change in its holding or parent company after the FYE had passed. The new holding or parent company might want to change the company's FYE and align to its FYE.

[1] The amendments are set out in Annexes 1 and 2 during the second public consultation: https://app.mof.gov.sg/Public-Consultation/Public-Consultation-Open/MOF-and-ACRA-Invite-Public-Feedback-on-Proposed-Changes-to-The-Companies-Act-Limited-Liability-Partnerships-Act-and-Accountants-Act

[2] To prevent companies from manipulating their FYE and circumventing the requirements relating to the simplified timelines for holding AGMs, MOF and ACRA had proposed the following safeguards:

(a) Companies must notify the Registrar of their FYE upon incorporation and of any subsequent change;

(b) Companies will require the approval of the Registrar if they wish to change their FYE after having previously changed the FYE within the last 5 years; and

(c) Unless otherwise allowed by the Registrar, the duration of the financial year must not be longer than 18 months in the year of incorporation or any year in which there is a change in FYE.

4. MOF's and ACRA's response: We have considered the feedback and agree that companies should be allowed to change FYE for the previous financial year. However, any change in FYE for the previous financial year will only be allowed before the statutory deadlines for: (i) sending financial statements to shareholders; (ii) holding AGMs; and (iii) filing annual returns. This is similar to the position in Hong Kong and the United Kingdom (UK).

Whether the proposed deeming of statutory FYE is appropriate

5. Feedback: Instead of deeming the date of incorporation as the statutory FYE for existing companies that had not notified ACRA of their FYE, a respondent suggested retaining the current 18-month default FYE and allowing companies to update the actual FYE when filing the annual return. There was also feedback for the deemed FYE to be tied to the calendar year (i.e. 31 December).

6. MOF's and ACRA's response: The deeming provision will apply to existing companies that have not notified ACRA of their FYE before the effective date of these amendments. Such companies would not have filed an annual return as it is mandatory for them to indicate an FYE date when filing annual returns. If such companies prefer any other date to be deemed by law to be the statutory FYE, they should notify ACRA of the new FYE date before the effective date of the new laws on FYE. That new FYE date will then be deemed by law to be the statutory FYE. Alternatively, companies can change their FYE after the new law is in place.

Simplify the timelines for filing annual returns

7. Feedback: A respondent asked whether a company would be given 5 or 7 months after FYE to file annual returns even if it held its AGM at an earlier date that would give it more than 30 days after the AGM date to file the annual return. The respondent added that companies that could not meet the AGM timeline would likely miss the timeline for filing annual returns. There were suggestions to:

(a) retain the filing timeline to AGM date (i.e. file annual return within 30 days after AGM date); and

(b) grant an automatic extension of time for filing annual return if companies apply for extension of time for holding AGM, to avoid duplicating efforts in applying for an extension.

8. MOF's and ACRA's response: Companies that hold AGMs early will have more than 30 days after the holding of AGM to file their annual returns, as long as the annual returns are filed within 5 or 7 months after FYE for listed companies and non-listed companies respectively. Suggestion (a) runs counter to the objective of simplifying the timelines by aligning with FYE. Thus, we will retain the proposed amendment. On suggestion (b), there may be companies that require an extension of time only for holding AGMs or only for filing annual returns. Thus, it is appropriate to distinguish the two applications for companies to have the option of applying for either one or both. For companies that require an extension of time for both the holding of AGM and filing of annual return, ACRA will make available a single transaction for both.

Exempt all private companies from holding AGMs subject to specified safeguards

9. Feedback: A respondent suggested applying the exemption only to dormant companies or companies with very small asset bases, instead of all private companies. Another respondent suggested extending the exemption to certain public companies and companies limited by guarantee, provided the safeguards were met. One respondent disagreed with the proposal and suggested retaining the current regime of having private

companies dispense with holding AGMs through passing a resolution approved by its members. There were suggestions on the specified safeguards:

(a) allow only shareholders with at least 5% of voting rights (instead of any shareholder) to ask for an AGM;

(b) allow auditors of the company (in addition to any shareholder) to ask for an AGM to be held at least 14 calendar days before the last day of the 6th month after FYE;

(c) peg the deadline for holding AGM (upon request by any shareholder) to the date on which the shareholder's notice is received at the company's registered office (e.g. company to hold AGM a month after receiving the notice from shareholder), instead of FYE;

(d) allow a shorter notice period (instead of the proposed 14 calendar days before the last day of the 6th month after FYE) for any shareholder to ask for an AGM, as long as the shorter notice period is approved by all shareholders; and

(e) consider having other safeguards for cases where there is a change in company's FYE or solvency status.

10. MOF's and ACRA's response: The proposal to exempt all private companies from holding AGMs (subject to specified safeguards) is to reduce regulatory burden for private companies. The proposal will save private companies from having to take the additional step of passing a resolution to dispense with AGM. The majority of respondents supports the proposal. As the existing option to dispense with holding AGMs is only available to private companies, the exemption from holding AGMs will apply only to private companies for consistency. We may consider in future whether the exemption from holding AGMs should be extended to other types of companies.

11. On suggestion (a), empowering any shareholder to request for AGM offers better protection to shareholders, rather than limiting to shareholders with 5% voting rights. On suggestion (b), within 14 days after the financial statements are sent out by the company, auditors will have the right to request a general meeting for the purpose of laying the financial statements before the company. Hence, there is no need for auditors to have a separate right to request for an AGM. On suggestion (c), specifying a different deadline for holding AGMs based on when a member submits a request to hold one will run counter to the objective of simplifying the statutory obligations. On suggestion (d), providing for a shorter notice period to request for AGMs if all members approve will be a further complication and it does not seem necessary. In any case, two or more members holding at least 10% of the issued shares of a company can already request for a general meeting under the current law. On suggestion (e), just as a change of FYE and solvency status does not affect the option of dispensation of AGM, it will not affect the option of exemption from AGM either.

Other issues

12. Feedback: A respondents asked:

(a) whether a company, which previously dispensed with holding AGMs but had failed to send financial statements to members within 5 months, yet subsequently sent the financial statements at a later date with penalties paid, could continue to dispense with holding AGMs for subsequent years; and

(b) following (a) above, if the dispensation from holding AGMs lapsed upon the company's failure to send financial statements to members within 5 months, whether penalties would apply if the company: (i) held an AGM within 6 months; or (ii) failed to hold an AGM within 6 months.

13. MOF's and ACRA's response: The existing regime for dispensation of holding AGMs is separate from the new avenue for exemption from holding AGMs. The existing regime for dispensation of holding AGMs requires a unanimous resolution passed by all members entitled to vote. Such dispensation of holding AGMs continues as long as the resolution is in force, and will not be affected by the proposed amendments on exemption from holding AGMs.

B. Proposed amendments on common seals

Execution of documents by a company

14. Feedback: A respondent asked whether the method for executing documents (i.e. signing by a director and secretary, or by two directors) under section 41B of the draft Companies (Amendment) Bill would apply only to deeds and suggested explicitly linking section 41B to section 41C to make this clearer. Another respondent indicated that a document executed by a company under section 41B need not be executed by two officers and should be aligned with the requirements under section 41A. There were also suggestions:

(a) to allow a director and another person appointed by the directors in place of the secretary to sign documents, in the event a company only has one director and the secretary position is vacant;

(b) to allow a single director or any authorised person acting singly (e.g. by way of a board resolution or power of attorney) to sign documents;

(c) not to allow secretaries to execute documents for companies as they are not involved in the management of companies' businesses. It would suffice for the secretary to counter-sign to witness the execution of documents by the director;

(d) to allow company's constitution to specify the method for executing documents under section 41B(1)(b);

(e) to clarify that the proposed amendment would modify only the modality of executing deeds and not other legal agreements or instruments, and apply only to documents that a company would execute by affixing its common seal;

(f) to provide that in favour of third parties, a document would be deemed to be duly executed if executed in accordance with section 41B(2);

(g) to delete section 41C of the draft Bill which provides that a document is validly executed as a deed only if it is duly executed by the company and is delivered as a deed. As this meant that a deed was validly executed by a company if the company physically delivered the deed, it would be hard to pinpoint where the delivery was made and to whom it was made. An alternative would be to include a new subsection under section 41C setting out that a document is presumed to be delivered upon its being executed, unless a contrary intention is proved; and

(h) to clarify the drafting of section 41C(b) of the draft Bill on the delivery of documents as a deed.

15. MOF's and ACRA's response: We agree with the feedback to clarify which documents the provisions apply to. Thus, we will modify section 41B to deal specifically with deeds. In addition, we will remove the earlier proposed section 41C since the objective of the common seal reform is to allow companies and LLPs an alternative to affixing a seal and not to make any changes to existing law on delivery of deeds. We will include a new section 41C on the alternative to affixing of seal for documents apart from deeds. The new sections 41B and 41C will thus focus on providing an alternative to the affixing of a common seal, rather than dealing with execution of documents in general. We will also retain the existing section 41 and modify the earlier proposed section 41A on contracts as contracts will continue to be dealt with by the existing section 41(3).

16. On the suggestion for alternative signatories under section 41B, we will add a third option for signature by a director of the company in the presence of a witness who attests the signature. This is in line with the position in the UK. We have considered and decided not to adopt the suggestion for section 41B to be subject to a company's constitution. This is to avoid creating uncertainty for persons dealing with companies as to whether the constitution of a company specifies something different from that under section 41B. We have considered (f) and decided not to adopt the suggestion. The reason for not doing so was that the common law presumption of due execution, the internal management rule and general agency principles (e.g. ostensible or implied authority) may assist a person seeking to rely on an instrument which appears on its face to be regular.

Execution of deeds by foreign companies

17. Feedback: A respondent suggested having separate provisions on execution of deeds for Singapore companies and foreign companies.

18. MOF's and ACRA's response: As we will retain the existing section 41, sections 41(5) and (6) on execution of deeds will continue to apply to corporations.

Other comments

Other types of seals

19. Feedback: A respondent suggested removing the requirement for other types of seals, such as official seals, duplicate common seals and share seals.

20. MOF's and ACRA's response: Official seals under section 41(7) and share seals under section 124 are not required by law. They are options available to companies. As these options may be useful to companies in some situations, it is not necessary to remove these provisions.

Mode of signature

21. Feedback: A respondent suggested revising section 123(2)(b)[3] such that a share certificate may bear facsimile signatures which may be reproduced by mechanical, electronic or other method approved by the directors of the company, as opposed to signing certificates autographically. Another respondent suggested including a definition of "*signing*" in the Companies Act to clarify the documents and deeds could be signed electronically, for consistency with the Electronic Transactions Act.

[3] The earlier proposed section 123(2)(b) allows a share certificate to be signed in accordance with proposed section 41B(1)(b) (i.e. by a director and a secretary of the company, or by two directors of the company) as an alternative to being under the common seal or the applicable official seal of the company.

22. MOF's and ACRA's response: It is not unusual for the constitution of a company to require that an instrument to which the seal is affixed must be signed by a director and another authorised person. The alternative of signature without affixing of the seal which these reforms provide therefore makes the process easier. Whether it is appropriate to specify that facsimile or electronic signatures are adequate for share certificates or documents in general can be considered for future reform. For now, the mode of signature will continue to be addressed by existing laws.

Impact on third parties

23. Feedback: Some respondents asked how third parties dealing with a company would know whether a company has a common seal.

24. MOF's and ACRA's response: With the amendments, third parties dealing with a company may no longer find it relevant to know whether a company has a common seal or not. Notwithstanding, they may ask or check the constitution of the company for any mention of a common seal.