

Company Law Update

Changes on statutory requirements for Annual General Meeting (AGM) and filing of Annual Returns (AR)¹

Overview

The Singapore Registrar of Companies (ACRA) has made legislative changes relating to the holding of AGMs and filing of ARs with effect from 31 August 2018, including a longer time to hold an AGM as well as file the AR, as well as possible dispensation with holding of an AGM. Such changes are intended to reduce the regulatory burden on companies. In addition, a simplified process for filing of ARs for Solvent Exempt Private Companies (EPCs) and Dormant Private Relevant Companies has been introduced, allowing such companies to do so with greater ease.

A. Timelines to adhere to

For companies whose financial year-end (FYE) ends on or after 31 August 2018, the timeline to hold the AGM would be within 6 months after the FYE. Public Listed companies on the other hand, are required to hold the AGM within 4 months after the FYE.

With respect to filing of ARs, companies that have a share capital and keeps a branch register outside Singapore are to file their AR within 8 months after the FYE. Public-listed companies in this regard must file their AR within 6 months after the FYE. To better illustrate, take for instance a *non-listed Singapore private limited subsidiary of a US company called XYZ Pte. Ltd.*, whose FYE falls on 31 December 2018 this year. XYZ Pte. Ltd. must therefore hold its AGM by 30 June 2019 (within 6 months) and file its AR by 31 July 2019 (within 7 months).

For all other types of companies, if they are non-listed, it is mandatory to file the AR within 7 months after the FYE whereas for other public-listed companies, the timeline to do so is within 5 months after the FYE. As such, a Singapore private limited company with no foreign corporate shareholder would now have 7 months after the FYE, a longer period of time to file its AR.

B. If an existing company wishes to change its FYE

For companies incorporated before 31 August 2018, the FYE date is deemed by law to be the anniversary of the FYE date previously notified to the Registrar. In the absence of said notification before 31 August 2018, the FYE date is deemed by law to be the anniversary of the date of incorporation.

If there is any change to the FYE and such change will result in a financial year longer than 18 months and/or if the FYE was changed within the last 5 years, companies must notify and apply to ACRA for approval to change their FYE. Unless otherwise approved by the Registrar, the company's financial year period must not be more than 18 months in the year of incorporation.

¹ The authors of this article would like to thank Ms Gan Wen Xuan for her kind contribution.

In addition, only the FYE of the current and immediate previous financial year may be changed (provided that statutory deadlines for the holding of AGM, filing AR and sending of financial statements have not passed). Do note that a company's financial period starting on or after 31 Aug 2018 by default will be taken to be a period 12 months for each financial period.

C. New safeguards for private companies exempted from holding AGMs

Private companies are exempted from holding AGMs if they send their financial statements to members within 5 months after the FYE, subject to the following conditions:-

- (a) A member who wishes to request that an AGM be held must notify the company to do so within 14 days before the end of the 6th month after the FYE;
- (b) Directors must hold an AGM within 6 months after the FYE as requested by a member. The company may seek ACRA's approval for an extension of time to hold AGM, as the case may require; and
- (c) Private companies must hold an AGM to lay financial statements if any member or auditor requests for it not later than 14 days after the financial statements are sent out.

Dormant private companies exempted from preparing financial statements are also similarly not required to hold their AGM, subject to the above-mentioned safeguards which would apply to their case too.

D. Choice of dispensation with holding of AGMs for private companies

In addition, private companies need not hold their AGM if all members have approved a resolution to dispense with the holding of the AGM. This would mean that the AR is due within 7 months after the FYE. Do note that in any event, a member of the company may still request for an AGM to be held, not later than 14 days before the last day of the 6th month after the FYE.

If the dispensation resolution ceases to be in force, the AGM must still be held if there is at least 3 months remaining to the AGM due date from the date of the cessation of effect of the aforementioned resolution. In the case where an AGM is held (due to a member's request) after the filing of the AR, the new notification of the AGM date must be filed with the Registrar within 14 days.

E. Simplified process for Solvent EPCs and Dormant Private Limited Companies to file AR:-

Companies who are eligible for the simplified process approach are those that meet the following requirements:-

- (a) Companies with FYE ending on or after 31 August 2018;
- (b) Declared themselves as "Solvent Exempt Private Company" or "Private Dormant Relevant Company" in their last AR; and
- (c) Are not preparing audited financial statements and are also not required to file financial statements with ACRA.

A “Private Dormant Relevant Company” is a private company which is dormant that is not listed nor a subsidiary of a listed company and whose total assets are less than or equal to SGD\$500,000 (consolidated value if it is an ultimate parent).

A Simplified AR can be filed only after an AGM has been held (if needed); or after financial statements have been sent to members (if the company need not hold its AGM); or after the FYE for a Private Dormant Relevant Company that is exempted from preparing financial statements.

Conclusion

These amendments and changes to the regulatory requirements are certainly welcome as they help businesses to focus on the salient parts of its commercial development and growth. It is envisaged that these changes would help to continue to promote Singapore as a business friendly and competitive hub in the region.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.



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This article is intended to discuss the changes to the compliance framework in relation to companies in Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice.