



## **Amendments to the Singapore Companies Act: Companies Act (Amendment) Bill 2014**

Much has been said about the need for better corporate regulation and improved liberalisation of the commercial sector in Singapore. This eventually culminated in an extensive review of the Companies Act (Cap 50, 2006 Rev Ed) (“CA”). The product, i.e. the Companies (Amendment) Bill 2014 (“Amendment Bill”), was passed on 8 October 2014 by the Singapore Parliament.

It was recently announced that the legislative changes to the CA will be effected in two different phases. The first phase has been implemented on 1 July 2015, while the second phase will be implemented in the first quarter 2016.

This article aims to highlight some of the key amendments that will be implemented, and explain how some of these changes will impact individuals who may want to operate a company in Singapore.

### **A. Audit exemption for small companies**

Currently, only private companies with an annual revenue of SGD\$5 million or less, which do not have any corporate shareholder, nor have more than 20 members, are exempted from having to submit audited accounts, pursuant to section 205C of the CA.

The current provision is criticised as being restrictive because it does not recognise the need for reduced regulatory costs for smaller companies that do not have a wide market impact. It also does not recognise the fact that a company has many other stakeholders (i.e. employees and customers) besides its shareholders.

As such, the Amendment Bill seeks to expand the pool of companies that can be exempted from audit requirements. Notably, the current definition of “exempt private company” will be repealed and replaced with “small companies”. To qualify as a “small

company” under the new amendment, a private company must meet at least 2 of the following 3 criteria for the immediate past two financial years:-

- The company’s total revenue is not more than SGD\$10 million;
- The company’s total assets is not more than SGD\$10 million; and/or
- The company’s number of employees does not exceed 50.

Nevertheless, companies should also note that even if there is mandatory requirement for “small companies” to submit audited accounts, they are still required to keep proper accounts because such accounts may be subject to random checks by the regulatory authorities in Singapore.

### **B. Exemption from preparation of accounts for dormant companies**

Currently, under section 205B of the CA, a “dormant company” is exempted from audit requirements. However, it must still prepare and maintain accounts.

It has been recognised that the current framework on “dormant companies” unduly imposes regulatory costs on such companies because they do not have any accounting transaction. As such, they have a lower impact on the public.

Given this recognition, the new amendment seeks to exempt dormant non-listed companies from having to prepare accounts altogether. It should be noted that the exemption is subject to the company satisfying the substantial assets threshold test (i.e. that the company’s total assets are not more than SGD\$500,000). It should also be noted that this does not apply to listed companies. In other words, listed dormant companies still have to prepare accounts.



## C. Alternate addresses

Under the current regime, individuals who are directors of companies are required to stipulate their residential address with the Accounting and Corporate Regulatory Authority (“ACRA”). The main concern is that such information will be made available to the public, and the privacy of such individuals are not adequately protected.

As such, the new amendments seek to allow the reporting of alternate addresses for such individuals where the person can be located. This means that an individual may use its company secretary’s address. However, it should also be noted that P.O. Box addresses are not allowed. Individuals must still provide their personal particulars to ACRA, and if the alternate address provided is inaccurate, after an opportunity has been given to the individual to make representations to ACRA, the residential address of the individual will be used. It is also important to note that the individual will be barred from using alternate addresses for 3 years.

## D. Maintenance of register of members

Under the current regime, all companies are required to maintain a register of members at their registered offices.

To streamline the administrative process for companies and allow the public to have greater access to records, ACRA will setup and maintain an electronic register of members for private companies. Companies will have to register any changes in share ownership with ACRA. It should be noted that companies are still required to maintain its register of members as at the time of change in the law for at least 7 years after the last member on the register of members ceases to be a member.

## E. New Debarment Regime

Under the current regime, a person can only be disqualified to act as a director if he/she is convicted of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more. While a company secretary, except for public listed companies, is only prohibited from being one if he/she is not residing locally in Singapore and if he/she is the sole director of the company.

The said current regime does not address the current problem of irresponsible directors and company secretaries who constantly fail to ensure that their respective companies are compliant with the filing requirements required by the Companies Act.

As a remedy a new debarment regime is now instituted in the new regime. The said new regime empowers the Registrar to issue a debarment order to a director and a company secretary who failed to ensure and comply to lodge any documents at least three months after the prescribed deadlines.

A debarred person cannot take on a new appointment as a director or company secretary.

## F. Conclusion

The Amendment Bill was a piece of change that has been anticipated by many in the commercial world in Singapore. While there has been an increase in emphasis on corporate regulation, the Singapore Government has also noted that such regulation should not unduly hinder commercial and economic prosperity. The new changes are largely welcomed. However, whether these changes will result in a more prosperous commercial environment in Singapore remains to be seen.

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*Should you have any queries as to how the amendments to the Singapore Companies Act may affect your organisation or require further information, please do not hesitate to email us.*



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*This article is intended to be a brief summary of the above amendments, and is not intended to be comprehensive nor should it be construed as legal advice.*