

ACRA SEEKS FEEDBACK ON PROPOSED AMENDMENTS TO COMPANIES ACT

24 July 2020

The Accounting and Corporate Regulatory Authority (“ACRA”) is conducting a public consultation from 20 July 2020 to 17 August 2020 to seek feedback on proposed amendments to the Companies Act (the “CA”). The proposed amendments are aimed primarily at ensuring that Singapore’s corporate regulatory regime stays competitive.

A Companies Act Working Group (the “CAWG”) was appointed by ACRA in January 2018 to undertake a focused review of the CA building on the amendments to the CA in 2014 and 2017, with a view to promoting a more pro-business environment while upholding market confidence and safeguarding public interest. The CAWG’s review covers digitalisation, types of companies and financial reporting, matters relating to directors and secretaries, safeguarding shareholders’ interests, share capital and financial assistance, and updating outdated provisions.

ACRA separately also reviewed existing regulatory processes and requirements in the CA, and has proposed amendments to streamline and clarify financial reporting requirements as well as to remove outdated requirements and clarify provisions in the CA.

Highlights of some of the key proposed legislative changes are set out below.

1. Digitalisation

(a) Dematerialisation of share certificates

Presently, companies are required to issue physical share certificates to shareholders after an allotment or transfer of shares, and share certificates are *prima facie* evidence of share title. To ensure that the position in Singapore is in line with international practice, the CAWG has recommended that the CA provides that companies are not required to have physical share certificates, and that ACRA should consider keeping the register of members for non-listed public companies that wish to dematerialise their shares.

The CAWG has also suggested that the Singapore Exchange (“SGX”) considers if dematerialisation of share certificates should be made mandatory for all SGX-listed companies.

(b) Digital meetings

The existing provisions of the CA do not expressly provide for the manner in which general meetings are to be held, though some provisions suggest the holding of physical general meetings. To provide flexibility for companies to hold digital general meetings, the CAWG has recommended that the CA be amended to clarify that a company may hold general meetings digitally and in more than one location unless the constitution provides otherwise, and that it may be necessary to amend specific provisions in the CA to address any ambiguity as to how shareholders’ rights may apply to digital meetings.

In relation to the holding of digital general meetings by listed companies, the CAWG has suggested that SGX should decide whether and what other rules should be prescribed under the SGX Listing Rules.

2. Types of Companies and Financial Reporting

(a) Publicly accountable companies

To tailor the applicability of financial reporting obligations in the CA based on the public interest/ accountability of companies to a broader group of stakeholders, the CAWG has recommended that for such purposes, the concepts of publicly accountable and non-publicly accountable companies be introduced into the CA to replace the current concepts of public and private companies, and “publicly accountable company” be defined as:

- (i) a company that is listed or is in the process of issuing its debt or equity instruments for trading on a securities exchange in Singapore;
- (ii) a company the securities of which are listed on a securities exchange outside Singapore;
- (iii) a financial institution; and
- (iv) a company limited by guarantee registered under the Charities Act.

(b) Simplified financial statements for micro non-publicly accountable companies

All companies other than dormant relevant companies are presently required to prepare full financial statements. To reduce costs for very small companies, the CAWG has recommended introducing the concept of a “micro” company, which should be defined as one which fulfils the requirements of total annual revenue and total assets each being not

more than S\$500,000 for the previous two consecutive financial years, and that micro non-publicly accountable companies be allowed to prepare reduced/ simplified financial statements (e.g. containing only the statement of comprehensive income, statement of financial position and specific key disclosures).

(c) Refinement of small company audit exemption criteria

Dormant companies and small companies are currently exempted from the requirement to audit financial statements, and such exemption applies in respect of a company that is part of a group if it qualifies as a small company and its entire group qualifies as a "small group". The CAWG has recommended that the scope of the small company audit exemption be narrowed so that it applies only to small companies that are also non-publicly accountable.

The CAWG has further recommended that the criteria for the small company audit exemption be refined by removing the criterion of number of employees from the current small company definition and removing the "small group" concept, with such criteria to continue to apply on a consolidated basis to parent companies.

3. Matters Relating to Directors and Secretaries

(a) Removal of prohibition against appointment of sole director as secretary

Section 171 of the CA prohibits a sole director from acting or being appointed as the company secretary. To reduce the associated compliance costs, the CAWG has recommended removing such prohibition.

(b) Disclosure exemption for directors of wholly-owned subsidiary of foreign company

A director is presently required to disclose to the company his interests in the company and its related corporations pursuant to Sections 164 and 165 of the CA. Given the practical difficulties faced by directors of companies which are wholly-owned subsidiaries of foreign holding companies in complying with such requirement, the CAWG has recommended that such directors be exempted from such disclosure requirements in respect of their interests in the foreign holding company.

4. Safeguarding Shareholders' Interests

(a) Approval threshold for variation or abrogation of class rights

The variation or abrogation of the rights attached to a class of shares presently requires the consent of any specified proportion of the class rights-holders under Section 74 of the CA, which is silent on such specified proportion. To provide greater clarity on shareholders' rights, the CAWG has recommended that the CA mandates that a variation or abrogation of class rights must be approved by at least 75% of the class rights-holders, unless the constitution of the company states otherwise.

(b) Two tiers of approval for selective off-market buybacks within a class of shares

Section 76D of the CA provides that a company may acquire its own shares otherwise than on a securities exchange and not in accordance with an equal access scheme, if it is in accordance with an agreement authorised in advance by a special resolution of the company (with no votes being cast by any selling shareholder or his associated persons). To better protect the rights of the shareholders within a class of shares, the CAWG has recommended that two tiers of approval by both the shareholders of the company and the shareholders of the class of shares be required for such selective buybacks within that class of shares.

5. Alteration of Share Capital

Section 71 of the CA, which provides for the alteration of share capital by a company, does not address whether a company can receive further consideration from an existing shareholder or capitalise its profits without the need to issue new shares. To increase the flexibility for companies to raise capital and at a lower cost, the CAWG has recommended that the provision be amended to allow directors to alter the share capital of the company by increasing its share capital or capitalising its profits, without issuing new shares and without the need for an ordinary resolution approving the alteration.

6. Streamlining and Clarifying Financial Reporting Requirements

(a) Accounting standards exemption

To provide clarity under Section 201 of the CA on the scope of the Registrar's and the Minister's powers in relation to exemption from the requirements of the Accounting Standards (prescribed by the Accounting Standards Council of

Singapore), ACRA has proposed amending the provision to grant the Registrar the power to exempt any company, and grant the Minister the power to exempt any specified class of companies, from compliance with any or all of such requirements and to require that it complies with other accounting standards instead.

(b) Financial statements of foreign companies

To reduce compliance costs for foreign companies, ACRA has proposed amending Section 373 of the CA to allow foreign companies to file financial statements prepared in accordance with the applicable accounting standards in its jurisdiction of incorporation. ACRA has further proposed to allow foreign companies with insignificant operations in Singapore (i.e. none of its total revenue, total expenses, total assets or total liabilities arising out of its Singapore operations exceeds S\$5 million) to file unaudited branch accounts, instead of an audited statement of assets, liabilities and profit and loss in respect of their operations in Singapore.

7. Removing Outdated Requirements and Clarifying Provisions in the CA

(a) Removal of statutory meeting and statutory report requirements

Section 174 of the CA stipulates the requirements for a public company limited by shares to hold a statutory meeting and for its directors to forward a statutory report to its members prior to such meeting. To reduce such compliance burden, ACRA has proposed to remove such requirements.

(b) Registrar's power to update changes in appointments of directors and secretaries

To enhance the accuracy of information in the registers of directors and secretaries maintained by ACRA pursuant to Sections 173 and 173A of the CA, ACRA has proposed amending the CA to grant the Registrar the power to update such registers on changes in the appointments of directors and secretaries at his discretion.

(c) Striking off and restoration of companies

Sections 344 and 344A of the CA provide that a company is dissolved on the publication of the notice of striking off in the Gazette, and Sections 344E and 344F of the CA provide that the restoration of a struck off company name takes effect (in the case of an application for administrative restoration) as from the date that the notice of restoration is sent or (in the case of deregistration by mistake) on the date of publication of the notice of restoration. To remove ambiguity over a company's legal status after its name has been struck off or restored and before the notice of striking off or restoration is published, ACRA has proposed to provide that a company is dissolved or its name is restored on the date that the Registrar strikes off or restores its name from or to the register as indicated in ACRA's BizFile system.

Reference Materials

The consultation documents can be accessed on [ACRA's website](http://www.acra.gov.sg) (www.acra.gov.sg) and the [REACH consultation portal](http://www.reach.gov.sg) (www.reach.gov.sg).

If you have any queries on how these developments may affect your business or would like to obtain advice, please do not hesitate to get in touch with us.



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