

RECENT LEGISLATIVE CHANGES TO THE COMPANIES ACT

Highlights of Key Amendments

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The Companies (Amendment) Act 2014 (Amendment Act) was passed by Parliament in October 2014, introducing the largest

number of changes to the Companies Act since its enactment in 1967. The changes are intended to reduce the regulatory burden on companies, provide for greater business flexibility and improve the corporate governance landscape in Singapore. The Amendment Act is targeted to take effect in 2015.

This article highlights some of the key changes being made to the Companies Act. Further information on the amendments is available at the Accounting and Corporate Regulatory Authority (ACRA) website.

NEW "SMALL COMPANY" CONCEPT FOR AUDIT EXEMPTION

Currently, a company is exempted from having its accounts audited if it is an exempt private company with

annual revenue of \$5 million or less. The Amendment Act introduces a new small company concept for exemption from statutory audit, which replaces the current criteria.

To qualify as a "small company", a company must be a private company that fulfils at least two of the following three quantitative criteria in each of the immediate past two financial years:

- (a) Total annual revenue of not more than \$10 million;
- (b) Total assets of not more than \$10 million;
- (c) Number of employees of not more than 50.

These criteria are similar to those used for the Singapore Financial Reporting Standards for Small Entities.

A company which belongs to a group can be exempted from statutory audit only if it qualifies as a small company and the entire group meets at least two of the three quantitative criteria on a consolidated basis. A "group" refers to a group as determined up to the ultimate holding company, and would include a group where the ultimate holding company is a foreign corporation.

Transitional provisions have been provided for new companies incorporated after the effective date of the amendments, and to cater for existing companies during the first two years after the amendments in the Act are implemented.



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The new small company criteria recognises a broader group of stakeholders who may have an interest in the financial statements, and reduces the regulatory costs for smaller companies that do not have wide market impact.



NEW EXEMPTION FROM PREPARATION OF FINANCIAL STATEMENTS FOR DORMANT UNLISTED COMPANIES

A dormant company, at present, is exempted from the statutory audit requirements but is still required to prepare financial statements.

With the new amendments, a dormant non-listed company (other than a subsidiary of a listed company) is exempt from requirement to prepare financial statements, if:

- (a) The company fulfils a substantial assets test, and
- (b) The company has been dormant from the time of formation or since the end of the previous financial year.

The substantial assets test is that the total assets of the company at any time within the financial year must not exceed \$500,000. For a parent company, the consolidated total assets of the group at any time within the financial year must not exceed \$500,000.

The new exemption from preparation reduces regulatory costs for dormant companies which have lower public impact.

Dormant listed companies and their subsidiaries, and dormant unlisted companies which do not fulfil the substantial assets test, must prepare financial statements but are exempt from audit. This remains unchanged from the current position.

A summary of the effect of the exemption for dormant companies is illustrated in Figure 1:

Existing safeguards in the Companies Act will be retained. These include the requirement for all companies to keep proper accounting records and empowering shareholders with at least 5% voting rights to require a company to prepare audited accounts.

The new small company criteria recognise a broader group of stakeholders who may have an interest in the financial statements, and reduce the regulatory costs for smaller companies that do not have wide market impact.

PHOTO: SHUTTERSTOCK

Figure 1 Effect of exemption for dormant companies

	Dormant non-listed company (excluding subsidiary of listed company) which fulfils the substantial assets test	Dormant listed company OR Dormant subsidiary of listed company OR Dormant non-listed company which does not fulfil the substantial assets test
Financial statements must be prepared	X	✓
Financial statements must be audited	X (since no financial statements are prepared)	X

NEW PROCEDURES FOR RESIGNATION OF AUDITORS

Under the current Companies Act, an auditor can resign only if he is not the sole auditor or at a general meeting and where a replacement auditor is appointed.

The Amendment Act will provide that an auditor of a non-public interest company (other than a subsidiary of a public interest company) may resign before the end of the term of his appointment by giving written notice to the company. An auditor of a public interest company or a subsidiary of a public interest company may resign before the end of the term of his appointment by giving written notice to the company, and upon consent by the Registrar of Companies. The auditor must give the company reasons for his resignation, and any such reasons must be circulated by the company to the shareholders, unless the Court orders otherwise.

A public interest company includes a company listed or to be listed on a securities exchange in Singapore. Additional categories of companies will be prescribed in regulations to align the definition with similar concepts for the purposes of the Practice Monitoring Programme conducted by ACRA under the Accountants Act.

These changes allow auditors to resign mid-term, especially in situations where the company refuses to hold a general meeting to appoint a replacement auditor. The requirement for Registrar's consent will allow the Registrar to stop the resignation in the public interest where necessary. The reasons for resignation for companies with greater public interest should be circulated so as to promote greater corporate governance.

USE OF ALTERNATE ADDRESSES IN ACRA'S RECORDS

Individuals currently report particulars such as their residential addresses to ACRA, and such information is accessible by the public. The Companies Act has been amended to allow an



individual to reflect an alternate address at which he can be located in ACRA's public records, instead of his residential address. This will accord individuals greater privacy. Safeguards will be put in place to minimise fraudulent reporting and filing of invalid addresses.

STATUTORY DUTY ON DISCLOSURE EXTENDED TO CEOs

Directors are required under the Companies Act to disclose conflicts of interest in transactions and shareholdings in the company and related corporations. Going forward, such disclosures will be extended to CEOs of companies to better reflect the increasingly important role of CEOs. This is consistent with the requirements for listed companies under the Securities and Futures Act where both directors and CEOs must provide similar disclosures.

NEW POWERS FOR THE REGISTRAR TO DEBAR DIRECTORS AND COMPANY SECRETARIES

The Registrar will be accorded new powers under the amended Act to debar any director or company secretary of a company who has failed to lodge documents at least three months after the required deadlines under the Companies Act. Debarment of irresponsible directors and company secretaries will prevent such persons from holding similar positions in other companies. Before making a decision, the Registrar will consider

representations from the directors and company secretaries. A debarred person will not be allowed to take on any new appointments as a director or company secretary, but may continue with his or her existing appointments. Debarment will be lifted when the defaults have been rectified or on other grounds to be set out in regulations.

ACRA'S REGISTER OF MEMBERS FOR PRIVATE COMPANIES

Currently, all companies are required to keep a register of members. With the changes in the Amendment Act, ACRA will maintain the registers of members for private companies in electronic form. Such companies will be required to file information concerning share ownership and changes in share ownership for registration with ACRA (for example, returns of allotment of shares and share transfers). The date of filing of that information will be taken as the effective date of entry of a person into the register as a member or the date of cessation of a person as a member. These changes streamline the administrative process for private companies and give the public greater access to the register. ISCA

For further information on the amendments to the Companies Act, please visit the ACRA website at www.acra.gov.sg.

Also look out for a two-part article (in *IS Chartered Accountant*, April and May issues) for an in-depth discussion as well as illustrations on small company audit exemption.

This article is contributed by the Law Reform Department, Accounting and Corporate Regulatory Authority.