

# CA AMENDMENTS: LESS REGULATORY BURDEN, MORE FLEXIBILITY

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After seven years of review, the most extensive amendments to the Companies Act since its enactment in 1967 have finally been passed.

In October 2007, the finance minister appointed a steering committee, chaired by SID honorary fellow professor Walter Woon, to review the Act. Its brief: provide an effective and efficient regulatory framework that is conducive to setting up and doing business in Singapore.

The committee sought to remove regulatory burdens, promote business flexibility, and clarify the scope and extent of directors' duties. At the same time, it took the opportunity to deal with structural

flaws in the Act that had been created by piecemeal amendments over the years.

Several rounds of public consultation followed the committee's proposed amendments, before the Companies Act (Amendment) Bill was passed this October. Here are some of the key changes that promote the twin objectives of removing regulatory burdens and promoting business flexibility.

### REDUCING REGULATORY BURDENS

The costs of compliance are being reduced for small companies. A private company that meets two of three criteria (annual revenue or total assets not more than S\$10 million, or number of employees not more than 50) for two consecutive financial years is exempt from audit. In addition, all companies (and not just listed companies previously) may send summary financial statements to members. A dormant non-listed company is exempt from preparing accounts if its total assets are not more than S\$500,000.

The administration of company registers is streamlined. Private companies no longer need to keep a register of members. Instead, the Accounting and Corporate Regulatory Authority (ACRA) will maintain electronic records including registers of directors, secretaries, auditors and chief executive officers (CEOs). This will allow for real-time registration of share ownership and transfers of shares, while allowing the public greater access to records.

The Act now also allows for an auditor of a company to resign in situations where the company refuses to hold a general meeting or to appoint a director. However, if the company is listed on the Singapore Exchange, ACRA's consent is required.

The Act allows for notices or documents to be given to members by way of electronic communications with the consent of members.

A member is implied to have consented if the company's constitution specifies the manner in which electronic communications are to be used, and provides that the member shall not have the right to elect to receive physical copies of such documents.

The striking-off process for companies has also been streamlined. The period for showing cause has been reduced from three months to 60 days, while the period of time for appeal to the court by an aggrieved person to the striking-off has been reduced from 15 years to six years.

The Act also merges the memorandum and articles of associations of companies into a single constitution. The new regulations further provide model constitutions which companies can choose to adopt wholesale (in which case there will be no need to file the constitution with ACRA), or to adopt partially and adapt provisions as needed.

## PROMOTING BUSINESS FLEXIBILITY

The Act provides for greater flexibility in corporate fund-raising and a wider range of investment opportunities.

Public non-listed companies can now issue shares with different voting rights, though this right is subject to certain conditions – such as the requirement to seek shareholders' approval to issue such shares, and for the company's constitution to specify the rights of the different classes of shares. Holders of non-voting shares will, however, have equal voting rights on resolutions to wind up the company.

A multiple proxy regime has been introduced to enfranchise indirect investors. Several intermediaries can now appoint more than two proxies (which was the former limit). These intermediaries are essentially the CPF Board, and banks and other companies

licensed to provide custodial services. There is a longer cut-off period of 72 hours (versus the previous 48 hours) for the submission of proxies. Proxy holders can also vote in a show of hands instead of voting only by poll.

The previous prohibition on private companies providing financial assistance for the acquisition of its own or its holding company's shares has been removed – the rationale being that private companies are closely held and shareholders have greater control over such a decision. Public companies remain subject to the existing prohibition, but there is an exception where the assistance does not materially prejudice the interests of the company or its shareholders, or the company's ability to pay its creditors.

## IMPACT ON DIRECTORS

The above amendments are of interest to directors as they increase the efficiency and flexibility of companies to meet modern business demands. However, a number of amendments will have a direct impact on directors and their duties and liabilities. These are covered in the next chapter. ■