



# NAVIGATING THROUGH THE WINDS OF CHANGE

What directors of Singapore companies should know about the Companies (Amendment) Act 2014 **BY ABDUL JABBAR & LEE XIN MEI**

**I**N OCTOBER 2014, the Singapore Parliament passed the Companies (Amendment) Bill 2014 and culminated a seven year endeavour to update and rejuvenate the existing Singapore Companies Act. The Companies Act, which was last reviewed in 2002 and updated over the few years that followed, has gone through almost a fifth of our country's history in more or less its present form.

How exactly are directors of Singapore companies affected under the impending amendments? How should they react? We set out some salient amendments from the Company (Amendment) Act 2014 (Amendment Act) and their effects below.

## LOANS AND OTHER CREDIT TRANSACTIONS

Under the current regime, save for an exempt private company, a company is prohibited from providing a loan to its directors (or a director of a related corporation). This is to ensure independence of the directors and is corollary to the duties owed by the directors to the company. The Amendment Act extends the prohibition to include quasi-loans, credit transactions and other related arrangements to keep the prohibition relevant in light of evolving financial structures and products. The new prohibitions are very wide ranging, and directors should be wary of transactions that they enter into with the company. In particular, transactions with directors that are entered into on a recurring basis should be reviewed for their compliance with the new prohibitions even if they were permissible in the past.

In addition, under the existing Companies Act, save for an exempt private company, a company is prohibited from providing a loan, quasi-loans, credit transaction, guarantee or security to a second company in which the director(s) of the first company and his family members have an interest of 20 per cent (or more) of the total number of equity shares (excluding treasure shares). The Amendment Act introduces a new exception allowing this to be done where prior approval is obtained at a general meeting at which the interested director(s) and his family members abstains from voting (unless all the shareholders have each voted to approve the arrangement). This provides flexibility for companies that wish to transact with companies owned by its directors, which can result in a win-win situation for all.

## INDEMNITY FOR DIRECTORS

Currently, a company may not indemnify a director of a company against any liability which by law would attach to him in respect of any negligence, default, breach of duty or breach of trust for which he may be guilty. With the upcoming amendments to the Companies Act, companies will be able to indemnify directors against actions by third parties (subject to certain exceptions). It is hoped that this amendment will help directors by offering more protection in a world where company officers are increasingly exposed to high risks of liabilities in a global market, and help them avoid having to practise defensive management so that they can freely act in the best interests of the company.

## ALTERNATE ADDRESS

Based on current practice, the residential addresses of directors of a company are reflected on the public searches made of the company with the Accounting and Corporate Regulatory Authority (Acra). Once the Amendment Act comes into force, the residential address of directors, although still submitted to Acra, will be kept confidential, where an alternate address has also been submitted to Acra. In such a case, that alternate address will be reflected on Acra's register instead of the residential address. The alternate address must be one where the director can be located, is an address in the same jurisdiction as the residential address, and is not a PO Box number. Going forward, directors can enjoy greater privacy and peace of mind since there is no real disadvantage using an alternate address if the directors are contactable there.

## APPOINTMENT, RESIGNATION AND REMOVAL

Under the Amendment Act, it is now clear that a company may appoint a director by ordinary resolution unless the constitution of the company provides otherwise. With the latest amendments, it has also been clarified that a director of a company may resign by giving a written notice of resignation, and such resignation is not conditional upon the company's acceptance. In addition, where the articles of a company are silent on this, a company is now able to remove a director by ordinary resolution before the expiration of his period of office

notwithstanding anything in any agreement between the company and the director.

Further amendments have also made to reduce administrative costs and provide some discretion to a board of a company in the event that a company wishes to make compensation to a director for loss of office. Under the Amendment Act, any compensation for loss of office under any agreement between the company and the director will not need members' approval if the amount of compensation does not exceed total emoluments of the director for the year immediately preceding his termination, and the particulars of the proposed payment have been disclosed to the members of the company upon or prior to the payment. Directors should keep this threshold in mind when negotiating any severance fees if they want future parting of ways to be as painless and as non-confrontational as possible.

## DEBARMENT

In tandem with other changes under the Amendment Act, Acra has also been granted new powers to debar a director from taking up new appointments if his company has failed to file relevant documents at least three months after they are due (if the director was a director of the company during that period). This is intended to raise the compliance rate for the filing of annual returns and ensure that the business information on the Acra register is accurate and reliable, as well as to prevent irresponsible directors from becoming directors (or secretaries) in other companies. Directors should pay greater focus on compliance obligations of the companies to prevent themselves from being subject to debarment, especially where the compliance breaches were not intentional.

## DISQUALIFICATION OF DIRECTOR OF STRUCK-OFF COMPANIES

In addition to the debarment regime, where a person is a director of not less than three companies which are struck off as a result of an Acra-initiated review within a five-year period, such a person is disqualified from acting as a director, or in any way (whether directly or indirectly) take part in or be concerned in the management, of any company for a period of five years from the date of the striking off of the last company. Directors should start to be conscious about taking active steps to wind up defunct companies on their own accord.

## DISCLOSURE OF COMPANY INFORMATION

Based on current laws, a director may disclose company information, which he has only in his capacity as a director or employee, if he is authorised by board of directors, the disclosure is not likely to prejudice company, and he declares at a directors' meeting the name and office or position of person to whom information is to be disclosed and particulars of information.

With the upcoming amendments to the Companies Act, a director is no longer required to make any declarations at a directors' meeting as described above. The proposed changes will allow directors to make disclosures without undergoing the impractical and cumbersome requirements of making declarations and promotes efficiency of their management of companies.

## CONCLUSION

Probably unintentional, but possibly auspiciously, the Amendment Act will likely come into force in the second quarter of our nation's golden jubilee. Singapore has survived and flourished in its short history partly thanks to its pro-business outlook. While the amendments under the Amendment Act will affect directors in mixed ways, they ultimately form part of the new and more pro-business corporate regime, which will be welcomed by all companies. ■

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