

March 2015

UPCOMING REVISIONS TO THE COMPANIES ACT

On 8 October 2014, the Companies (Amendment) Bill 2014 (the “Bill”) was passed by Parliament, and on 1 December 2014, the Bill was gazetted as the Companies (Amendment) Act 2014. The Companies (Amendment) Act 2014 seeks to introduce various revisions to the existing Companies Act when it comes into effect.

We set out below, some of its key revisions for local companies.

(1) Exemption from audit to apply to small companies

Currently, only exempt private companies (that is, companies with less than 50 members, all of whom are individuals) with annual revenue of S\$5 million or less are exempt from having to audit their accounts.

With the revision to the Companies Act, the concept of the exempt private company will be repealed and in its place, audit exemptions will apply to all ‘small companies’.

A small company is defined as a private company that fulfils at least 2 out of the following 3 criteria, for its previous 2 financial years:

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

(2) Removal of requirement for private companies to maintain a register of members

Currently a company is required under the Companies Act to maintain a register of members.

With the revision to the Companies Act, a private company no longer has to maintain a register of members. The register will now only be maintained by the Accounting and Corporate Regulatory Authority (“ACRA”).

A private company is however still required to register share ownership and changes to share ownership with ACRA.

(3) Abolition of prohibition against financial assistance for private companies, and introduction of ‘no material prejudice’ concept for public companies

Currently, companies are generally not permitted (unless certain ‘whitewash procedures’ are undertaken) to provide financial assistance for the acquisition of its own shares, or for the acquisition of shares of its holding company.

With the revision to the Companies Act, the prohibition against financial assistance will no longer apply to private companies whose holding, or ultimate holding company is not a public company.

For public companies, and subsidiaries of public companies, financial assistance may be provided if there is no ‘material prejudice’ to the company, its shareholders, or its creditors. A board resolution stating that (i) financial assistance should be given (and the grounds in support thereof), and (ii) the terms are fair and reasonable to the company, is required. The solvency statement, required under the current Companies Act will no longer be required once the revisions to the Companies Act come into effect.

(4) Duty of disclosure to extend to the Chief Executive Officer (who is not a director) of a non-listed company

Currently, only directors are required under the Companies Act to disclose conflicts of interest in transactions, and their shareholdings in the company, and related corporations.

With the revision to the Companies Act, the Chief Executive Officer (who is not a director) of a non-listed company is now also obliged to disclose conflicts of interests, and his shareholdings in the company and related corporations.

(5) The use of an alternate address instead of the residential address by directors, shareholders and company secretaries

Currently, the residential addresses of individuals (such as directors and shareholders) are kept and reflected in ACRA's public records.

With the revision to the Companies Act, individuals may elect for an alternate address, in which they can be located, to be reflected in ACRA's public records.

ACRA will nonetheless retain the residential addresses of the individual, but these shall, in the absence of any reason for disclosure, be kept confidential.

(6) Issuance of shares with multiple votes or no votes

Currently, public companies may only issue shares which carry one vote per share, save in the case of management shares issued by a newspaper company.

With the revision to the Companies Act, public companies may now, subject to compliance with certain safeguards (such as having to specify the rights of the different classes of shares, and requiring a special resolution of the shareholders to approve the issuance of shares with different voting rights), issue shares with different voting rights.

Conclusion

When in effect, the revisions to the Companies Act seek to reduce regulatory burden, improve business flexibility, and enhance corporate governance in companies, while ensuring that the law remains updated.

If you would like to have a detailed discussion on how the changes to the Companies Act may affect your business, please feel free to contact our corporate department.

This update is for general information only and is not intended to constitute legal advice. JTJB has made all reasonable efforts to ensure the information provided is accurate at the time of publication.



Contributed by:
Loretta Lim
Associate
lorettalim@jtjb.com

Loretta joined JTJB in December 2012 and is an associate in the corporate and commercial department. Her work includes drafting and reviewing corporate and commercial agreements, tenancy and employment agreements, and advising on the starting up and running of companies and businesses.

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6 Shenton Way, OUE Downtown 2
#23-08, Singapore 068809
T: +65 6220 9388
F: +65 6225 7827
E: info@jtjb.com W: www.jtjb.com