

Luther.

Amendments to the Companies Act in Singapore coming into force on 1 July 2015

Singapore News

On 1 July 2015 the first part of wide-ranging changes to the Singapore Companies Act will become effective. Further changes will be implemented in a second phase in the first quarter of 2016. The changes are the largest since the Companies Act was first enacted in 1967. They are expected to reduce the regulatory burden and compliance costs, provide greater flexibility for companies, and enhance corporate governance.

First implementation phase

Some of the key changes that will take effect on 1 July 2015 include:

- **Introduction of a “small company” concept for audit exemption:** currently, a private company is only exempted from statutory audit if (a) it is dormant or (b) its annual turnover is below S\$ 5 million and it has not more than 20 shareholders, all of whom must be natural persons. Under the new provisions, a private company qualifies for audit exemption if it is dormant or fulfils at least two of the following criteria regardless of its shareholding structure: (i) total annual revenue of not more than S\$ 10 million, (ii) total assets of not more than S\$ 10 million, or (iii) number of employees of not more than 50, amongst other criteria. A subsidiary or holding company may only qualify as a small company if it is a small company itself and if the group qualifies under the “small company” criteria on a consolidated basis. These new audit exemption rules will only apply in regard to financial years starting 1 July 2015.
- **Removal of financial assistance prohibition for private companies:** The current Companies Act prohibits companies from providing financial assistance for the acquisition of shares in the company or its holding unless special exceptions (“whitewash exemption”) apply. Under the new legislation, the financial assistance prohibition will no longer apply to private companies. It will, however, still apply – with a few amendments – to public companies.
- **Introduction of issuance of shares for no consideration:** For many years already, Singapore has not had a par-value per share. This is ideal for start-up, private equity and venture capital structures. Founders could for example pay only 1 cent or less per share, whereas investors could pay 1 million for a share with the same rights attached. While this allowed already for great flexibility, it was still necessary to issue shares for minimal nominal amounts. This is no longer

necessary with the introduction of the possibility to issue shares for “no consideration”.

- **Removal of requirement to align the financial years between parent and subsidiaries.**
- **Removal of shareholders' approval requirement for compensation paid to an executive director for termination of employment up to a prescribed limit:** for any payment of compensation to a director for loss of office as an officer of the company or its subsidiary, or any payment as consideration for, or in connection with, his/her retirement from such office, it is currently required that such payment is disclosed to and approved by the shareholder(s) of the company, otherwise the payment would not be lawful. Only certain types of payments are currently exempted from shareholders' approval under the Companies Act. Under the new provisions, a shareholders' approval is not required if the following conditions are satisfied: (a) the amount that is paid out is not more than the director's total emoluments for the one year immediately preceding that director's termination of employment; (b) the termination of employment is based on an existing agreement between the company and the director; and (c) the particulars of payment are disclosed to shareholders before payment is made.

Second implementation phase

Some of the key changes that are expected to take effect in the first quarter of 2016 include:

- **Reduction of number of authorised representatives/ agents of branch offices of foreign companies:** only one local authorised representative (currently referred to as “agent”) will be required instead of at least two.
- **Removing the maximum age limit (70 years old) for directors** of public companies and subsidiaries of public companies.
- **Further restrictions on loans and other financial assistance given to directors:** The current Companies Act is already restrictive in regard to loans given to directors of companies other than exempt private companies. The latter are companies that do not have corporations as shareholders and do not have more than 20 members. Companies that are not private exempt ones, can give loans to their directors or to a company in which the director holds 20 % or more shares, or give a security or guarantee for such a loan only in very few circumstances (e.g. for home

acquisition, to meet expenditures for the company, as part of a scheme granted to all employees). The amendments to the Companies Act will extend the prohibition to also cover “quasi-loans” and “credit transactions”.



Birgitta von Dresky
Attorney-at-law, Partner
Luther LLP
Singapore
Phone +65 6408 8008
birgitta.von.dresky@luther-lawfirm.com

- **Extension of the statutory disclosure duty to persons actively involved in the management and conduct of the business of the company:** presently only appointed directors are required to disclose conflicts of interest in transactions with and shareholdings in the company. These disclosure requirements will be extended to “Chief Executive Officers” (“CEO”) of companies. Thereby the definition of the term CEO is quite broad. CEO is defined as a person who is in direct employment of, or acting for or by arrangement with, the company and who is principally responsible for the management and conduct of the business of the company, or part of the business of the company respectively. The disclosure requirement can therefore apply to General Managers as well as CFO’s and the like.
- **Allowing directors to report an alternate address:** Currently, the actual residential address of directors must be provided and is publicly available in the commercial register. The amendment will allow an individual to use an alternate address at which she/he can be located, instead of her/his residential address, in ACRA’s public records. Such alternate address must satisfy certain conditions, e.g. it must be an address where the individual can be located and must be in the same jurisdiction as the residential address. It also cannot be a post office address. Security concerns raised led to this change of the Companies Act.
- **Memorandum and Articles of Association will be merged into a single “Constitution”:** It is not mandatory to exchange existing Memorandum and Articles of Association with the new “Constitution” format. However, an update of the provisions under the new “Constitution” format is recommended in order to have a current constitution for the company in place which is in line with the current Companies Act and allows for full utilisation of its new provisions.

For a full list of the changes please refer to the following webpage:

[www.acra.gov.sg/Legislation/Two-Phase_Implementation_of_Companies_\(Amendment\)_Act_2014/](http://www.acra.gov.sg/Legislation/Two-Phase_Implementation_of_Companies_(Amendment)_Act_2014/)

For further guidance and information, please feel free to contact us anytime.

Luther LLP

Imprint

Luther Rechtsanwalts-gesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com

Editor: Birgitta von Dresky, Lawyer, Partner, Luther LLP, 4 Battery Road,
Bank of China Building, #25-01, 049908 Singapore, Phone +65 6408 8008,
Fax +65 6408 8001, birgitta.von.dresky@luther-lawfirm.com

Copyright: These texts are protected by copyright. You may make use of the information contained herein with our written consent, if you do so accurately and cite us as the source. Please contact the editors in this regard
contact@luther-lawfirm.com

Disclaimer

Although every effort has been made to offer current and correct information, this publication has been prepared to provide information on recent regulatory and legal developments in Singapore only. It is not exhaustive and thus does not cover all topics with which it deals. It will not be updated and cannot substitute individual legal and/or tax advice. This publication is distributed with the understanding that Luther, the editors and authors cannot be held responsible for the results of any actions taken on the basis of information contained herein or omitted, nor for any errors or omissions in this regard.

Luther Rechtsanwaltsgesellschaft mbH und Luther LLP advise in all areas of business law. Our clients include medium-sized companies and large corporations, as well as the public sector.

With “Luther Corporate Services”, we assist our clients in Asian core markets with all administrative tasks regarding their current business.

Berlin, Brussels, Cologne, Dusseldorf, Essen, Frankfurt a. M., Hamburg, Hanover, Leipzig,
London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon

Luther Corporate Services: Delhi-Gurgaon, Kuala Lumpur, Shanghai, Singapore, Yangon

Your local contacts can be found on our websites www.luther-lawfirm.com and www.luther-services.com.



Hits the mark. Luther.

