

# Legal Update

## The Companies (Amendment) Bill 2004

### Introduction

Following the consultation, Parliament has on 5 January 2004 introduced the Companies (Amendment) Bill No. 3/2004 ('Bill') to amend the Companies Act, Chapter 50 ('Companies Act'). The amendments proposed in the Bill follow from the Company Legislation and Regulatory Framework Committee ('CLRFC') recommendations and deal with the following areas:

- small businesses;
- capital maintenance; and
- corporate governance.

This short article highlights some of the key amendments detailed in the Bill.

### Reducing Compliance Costs For Private Companies

The CLRFC had made various recommendations intended to streamline and reduce compliance costs for private companies. These recommendations will have the effect of law once the Bill is passed.

Firstly, the CLRFC recommended that private companies be allowed to be incorporated and maintained with one shareholder and one director who is ordinarily resident in Singapore, instead of the present requirement for two shareholders and directors. To give effect to this, sections 4, 17, 145, 171 will be amended, a new section 157B will be introduced and section 42 will be repealed. Additionally, a new section 20A which clarifies that a company must have at least one member will be introduced.

Next, to enable private companies to raise funds more effectively through private and exempted offerings without the need to convert to public companies, section 18(1) of the Act will be amended by modifying its existing definition. Essentially, the new definition of a private company has been simplified to refer only to a company which has restrictions in its share transfer and which limits the number of shareholder to not more than 50.

Finally, following on from the CLRFC's desire that the

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distinctive registration number of Singapore incorporated companies should become a useful identifier of companies, section 144 of the Act will be amended to require all companies to include their company registration numbers on all business letters, statements of account, invoices, official notes and publications.

## Clarifying Powers Of A Company

Sections 22, 23 and 33 of the Act will be amended to make clear that a company's memorandum of association need not also include the objects of a company. Instead, section 23(1) of the Act will be amended to make it clear that a company has, subject only to its memorandum or articles of association or any other written law, full capacity to carry on or undertake any business or activity, do any act or enter into any transaction. Finally, the Third Schedule will be repealed.

These changes are being brought about to recognize the CLRFC recommendation that a company, being a legal entity, should be statutorily conferred with all the powers of a natural person to undertake any lawful activity.

Following from this, a new section 26A will be introduced to the Act to enable the company to entrench

provisions of the memorandum and articles of the company. This had originally been proposed as a new section 37A in the Consultation Bill.

## Refinement Of Existing Statutory Duties Of Directors

Directors should be accorded protection for reasonable reliance on advice and information from professionals and experts. To recognize this, a new section 157C will be introduced to the Act. Under this new section 157C, a director is entitled to rely on information supplied by the following persons:

- an employee of the company whom the director believes to be reliable and competent;
- a professional adviser or an expert in relation to matters which the director believes to be within the adviser's or expert's competence; or
- any other director or a committee of directors in relation to matters within the director's or committee's designated authority.

The relying director must nevertheless show that he has acted in good faith, had made proper inquiry where the need for inquiry arises, and has no knowledge that the reliance was unwarranted.

## Shareholdings Disclosure

A new sub-section 80(3) will be introduced into the Act to empower the Minister to exempt any person that the Minister deems appropriate from needing to comply with the substantial shareholding disclosure requirements.

## Sole Director Cannot Be Company Secretary

Section 171 of the Act has been amended to make it clear that one director companies cannot have the sole director also act as a company secretary.

## One Member Companies Resolutions

A new section 184G to the Act clarifies that a resolution can be passed by a single member of a company if he records a resolution and signs the record. A corresponding amendment is made to the Fourth Schedule through the addition of clause 90A.

Consequential amendments are made to section 188 to provide guidance on how minutes are to be kept for such one member companies.

## Accounts

The requirement for consolidated accounts will be removed. Additionally, section 201 is to be amended to

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provide that audited accounts, if required, must be audited not less than 14 days before the AGM of a company.

More importantly, the penalties for non-compliance by directors of their duties under the accounting requirements will go up substantially to S\$100,000 or imprisonment for a term not exceeding three years or to both, from the existing S\$15,000, where fraud is involved.

Section 206 will be amended to require a public company to, in certain circumstances, undertake a review of the fees, expenses and emoluments of its auditor to determine whether the independence of the auditor has been compromised. Interestingly, the outcome of the review will be made available to all persons entitled to receive notice of general meetings of the company.

## **Audit and Audit Committee**

Section 201B will be amended to require all listed companies to have at least three members on its audit committee. Additionally, the definition of who is not an executive director will be clarified. Essentially, it is any director who is not an employee of and does not hold any other office of profit in the company or in a related corporation.

## **Electronic Distribution Of Statutory Reports To Shareholders**

It was recommended that the Act be amended to provide for the electronic distribution of statutory reports to shareholders and for hard copies to be made available to shareholders who require them. Arising from this

recommendation, new section 387A & 387B of the Act has been proposed, which enables notice of a meeting to be sent using electronic communications provided certain specified conditions are met.

## **Conclusion**

These changes are to be welcomed as it will make it easier for businesses to operate.

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