

# Proposed Amendments: Singapore Companies Act

Note that these proposals are still being discussed by, among others, the Companies Act Working Group (CAWG) and have not yet been adopted. That said, if adopted, this quick guide provides a good flavour of how the amended Companies Act (CA) may look in the near future.

## 1

### Dematerialisation of Physical Share Certs



#### Current Position

Companies are required to give shareholders physical share certificates (i) within 30 days in respect of share transfers or (ii) within 60 days in respect of new allotment of shares.

#### Proposed Amendments

It is proposed that companies no longer need to issue physical share certificates.

#### Practical Implications

- To be confirmed if this means that physical share certificates will be replaced with digital share certificates, or if the requirement for companies to issue share certificates will be abolished altogether.
- This may have an impact on the perfection of share pledges and share charges.

## Digital General and Board Meetings

## 2

#### Current Position

CA is currently silent on digital general and board meetings.

This is typically addressed by incorporating provisions in the Constitution, specifying that the conduct of digital general meetings and board meetings is valid.

#### Proposed Amendments

It is proposed that the CA be amended to specify that companies are allowed to hold digital general and board meetings unless the Constitution provide otherwise.

It is further proposed that the CA does not mandate what technology has to be used.

#### Practical Implications

This may reduce the costs involved in holding meetings and potentially increase shareholder participation / attendance.

Certain shareholder rights may be affected, eg. the right to speak or ask questions during a virtually held AGM. That said, a shareholder still has the right to invalidate a meeting through section 392 of the CA.

## 3

### Online Shareholder Proxy Instructions



#### Current Position

Currently, section 181 of the CA does not state how shareholders should submit their instructions when appointing proxies, including whether this can be done electronically or not.

#### Proposed Amendments

It is proposed that the CA makes it mandatory for all companies to accept proxy instructions given by electronic means and that this cannot be prohibited by a company's Constitution.

#### Practical Implications

In most cases, the default position is as follows: shareholders have to deposit physical proxy forms at the company's registered office. This practice may discourage shareholder engagement, as it makes it less convenient for shareholders to appoint proxies.

## 4

### Review of AGM Requirements

#### Current Position

Currently, all companies with shareholders have to hold an annual general meeting (AGM), including dormant relevant companies.

#### Proposed Amendments

It is proposed that dormant non-listed public companies be exempted from the requirement to hold an AGM if:

- (a) it sends its financial statement to its members within 5 months of the end of the financial year; and
- (b) no member has requested that an AGM be held not later than 14 days before the last day of the 6th month after the end of the financial year.

#### Practical Implications

This proposal may reduce costs for dormant companies. Since dormant companies have not engaged in any business for an extended amount of time, there may be nothing substantive to present to shareholders.

## Financial Reporting Criteria

## 5

#### Current Position

The CA currently requires all companies except dormant relevant companies (DRCs) to prepare financial statements.

#### Proposed Amendments

It is proposed that micro-companies (ie. companies whose total annual revenue and total assets < \$500k for the previous 2 consecutive financial years) submit simplified financial statements.

#### Practical Implications

This proposal would enable small companies and start-ups in Singapore (that qualify as micro-companies) to reduce legal and accounting costs.

## 6

### Audit Exemptions



#### Current Position

Currently, all companies except for small companies and dormant companies must have their financial statements audited.

Small company audit exemption: A small private company is exempted from audit requirements if 2 out of the 3 requirements below are satisfied:

- (a) total annual revenue of not more than S\$ 10 million,
- (b) total gross assets of not more than S\$ 10 million; or
- (c) total number of employees does not exceed 50.

Small group audit exemption: Furthermore, a group of small companies ie. a "small group" may also qualify for audit exemptions.

#### Proposed Amendments

It is proposed that the small group audit exemption be removed from the CA, and the small company audit exemptions should continue to apply on a consolidated basis to parent companies.

Furthermore, the CAWG proposes to remove the number of employees as a criterion for the small company audit exemption.

#### Practical Implications

The small group audit exemption has often been used by companies who structure their holdings in multiple smaller companies in a group so that they can apply for the exemption. This proposal may mean that this exemption may no longer apply to such companies.

## 7

### Removal of Prohibition Against Sole Directors Acting Both as Director and Company Secretary

#### Current Position

Currently, the CA prohibits a sole director from acting both as the director and the company secretary.

#### Proposed Amendments

It is proposed that the prohibition be removed.

#### Practical Implications

Companies with only one director can save on costs by having that director concurrently act as a company secretary. That said, given that the secretary needs to be a qualified one, query if this will have a significant impact (because the sole director would first have to undergo training and education before becoming an eligible company secretary).

## Threshold for Variation of Class Rights

## 8



#### Current Position

Currently, section 74 of the CA allows any variation or abrogation of rights attaching to any class of shares, to be first consented by any specific proportion of the holders. However, the CA is silent on the threshold required and leaves it to the company to decide.

#### Proposed Amendments

It is proposed that the CA be amended to specify that any abrogation of class rights must be approved by at least 75% of the shareholders of that class of shares, unless the Constitution states otherwise.

#### Practical Implications

This proposal will ensure that shareholder rights are protected. At the same time, there is flexibility for the Constitution to provide an alternative threshold that is appropriate for the specific company.

## 9

### Approval for Selective off-market Share Buybacks

#### Current Position

Under the CA, a company can conduct selective off-market share buyback within a class of shares via a special resolution. However, the special resolution does not necessarily require votes from the members holding the affected class of shares.

#### Proposed Amendments

It is proposed that the special resolution authorising selective off-market share buybacks be passed by: (i) the shareholders of the company and (ii) the shareholders of the class of shares affected. For both tiers of approval, the approval threshold should be 75% and no votes should be casted by the shareholders whose shares are proposed to be purchased.

#### Practical Implications

Shareholders who are most affected by this company action will have an amplified voice with the 2-tier approval structure.

## Altering Share Capital

## 10

#### Current Position

Under section 71 of the CA, a company may alter its share capital if it is permitted under the Constitution and if it has been authorised during a general meeting.

#### Proposed Amendments

It is proposed that directors of a company be allowed to alter the share capital of the company without issuing new shares and without passing an ordinary resolution. Directors may alter share capital by: (i) increasing share capital; and (ii) capitalising profits.

#### Practical Implications

This proposal will give companies increased flexibility to raise capital. Furthermore, companies would be able to raise capital at lower costs, faster, and without disrupting current shareholding structures.