

## **FAQs - Implementation of Companies (Amendment) Act 2014**

### **Phased implementation/ Amendments taking effect on 1 Jul 2015**

**Q: When will the full list of amendments coming into effect on 1 Jul 2015 be published? Where can we find a list of the amendments?**

A: The full list of amendments is contained in the Companies (Amendment) Act 2014 (Commencement) Notification 2015, which can be referred from ACRA's website [here](#).

**Q: Is there an updated version of the Companies Act which is available which contains all the amendments?**

A: The updated version of the Companies Act will only be available after the amendments have taken effect and the official online version of the Companies Act on the Singapore Statutes Online has been updated. The online version of the Companies Act is accessible [here](#).

**Q: Will there be a public consultation on the subsidiary legislation?**

A: There will not be a public consultation on the subsidiary legislation supporting the amendments coming into effect on 1 Jul 2015. The amendments and new subsidiary legislation are mainly implementing policy changes already discussed during the earlier rounds of consultation or are technical changes. For the Phase 2 implementation of the amendments, where there are amendments which affect specific stakeholder groups, ACRA may seek feedback subsequently through closed consultation with such groups.

### **Liberalising financial assistance prohibition**

**Q: The proposed amendment will remove the financial assistance prohibition for private companies and introduce a new exception for public companies. Are there safeguards to protect the interests of shareholders and creditors?**

A: The interests of shareholders can be specifically provided for in the constitution of the company and abusive transactions can be controlled in other ways, e.g. through provisions on directors' duties or through fraudulent/wrongful trading provisions. Creditors can also rely on the law relating to breach of directors' duties and provisions on wrongful trading. For prudence, the regime for public companies will be refined by introducing a new "material prejudice" exception. The Board will determine whether a transaction will "materially prejudice" a company. Shareholder and creditors may rely on the law on directors' duties to ensure that their interests are protected.

## **Small companies audit exemption**

### **Q: When will the small company audit exemption take effect?**

A: The audit exemption will be applicable for financial years beginning on or after the change in the law (1 Jul 2015). Transitional provisions have been provided for the first two years after the change in law.

### **Q: Is the exempt private company concept still relevant or has it been replaced by the small company concept?**

A: Yes. The exempt private company concept is still relevant – solvent exempt private companies are exempted from filing financial statements with ACRA. The small company audit exemption only replaces the audit exemption for small exempt private companies.

### **Q: How does the small company criteria apply in the first 2 years (transitional period) after the exemption takes effect (1 Jul 2015)?**

A: To determine if a company qualifies as a small company in the first 2 financial years commencing after the exemption takes effect, the company must assess if it fulfils the requirements in each of the years. E.g. in order to determine whether a company would qualify in FY2016, the company should look at whether it is a private company in FY2016 and whether it meets the 2 out of 3 quantitative criteria in FY2016. If it does not qualify for that year, it will still get a chance to qualify for FY2017, if it is a private company and meets the 2 out of 3 quantitative criteria in FY2017.

### **Q. How does a new company incorporated after 1 Jul 2015 qualify as a small company? For a new company, because the company is newly incorporated, there would not be any financial information to assess for the previous 2 years.**

A: To determine if a company qualifies as a small company in its first 2 financial years after its incorporation, the company must assess if it fulfils the requirements in each of the years. E.g. if a company is incorporated after Jul 2015, in order to determine whether a company would qualify in its first financial year, the company should look at whether it is a private company and whether it meets the 2 out of 3 quantitative criteria in that year. If it does not qualify in that year, it will still get a chance to qualify in its second financial year, if it is a private company and meets the 2 out of 3 quantitative criteria in its second financial year.

### **Q: How do companies determine their total assets and total revenue?**

A: The total revenue and total assets of a company would be determined by the accounting standards and what appears as the total revenue or total assets in the financial statements of the company.

**Q: How do companies determine their number of employees?**

A: The number of employees is based on the number of full-time employees employed by the company at the end of the financial year.

**Q: If a company has corporate shareholders and meet the criteria, can they enjoy the small company audit exemption?**

A: There is no longer a requirement that the company has to be an exempt private company (one of the requirements for which is that there is no corporate shareholder) to qualify for the audit exemption. A private company which has corporate shareholders but fulfils the criteria can be entitled to the small company audit exemption.

**Q: If a holding company has audited the consolidated financial statements for the group, would the subsidiary be required to audit its financial statements, even if the subsidiary satisfies as a small company?**

A: In order for a subsidiary to be able to qualify for the small company exemption, the group to which it belongs would have to qualify as a small group and fulfil the thresholds on a consolidated basis. Therefore, even if the subsidiary is able to qualify as a small company, but the group to which it belongs is not a small group, and the holding company has to audit the consolidated financial statements, the subsidiary would not be able to enjoy the benefits of audit exemption.

**Q: Does the small company audit exemption apply to foreign companies?**

A: The small company audit exemption only applies to Singapore incorporated companies. However, for the purposes of determining whether the group to which a company belongs is a small group, all entities within that group are taken into account, including foreign entities, in determining whether the consolidated total revenue and consolidated total assets of the group meet the thresholds.

**Q: If the holding company is a foreign company, how do you determine the consolidated total revenue and consolidated total assets for the purpose of determining whether the group is a small group?**

A: Even where the holding company is a foreign company, a Singapore subsidiary will need to determine whether the group to which it belongs qualifies as a small group, to determine if it can qualify for the small company audit exemption. Where the holding company has prepared consolidated financial statements, the “consolidated total

assets” and “consolidated revenue” of the group shall be determined in accordance with the accounting standards applicable to the group. Where the holding company does not prepare consolidated financial statements, the consolidated total assets should be determined by the aggregation of the total assets of all the members of the group, and the consolidated revenue should be determined by the aggregated revenue of all the members of the group.

**Q: Does the small company criteria affect the obligations for filing financial statements with ACRA?**

A: No. The obligations for filing financial statements are determined by whether the company is a solvent exempt private company. There are no changes to the current criteria for determining the obligation for filing financial statements.

**Requirement for auditors of public interest companies and their subsidiaries to obtain ACRA’s consent for premature resignation**

**Q: Is ACRA’s consent required for all resignation of auditors? Is ACRA’s consent required for when companies rotate auditors at an annual general meeting?**

A: No, consent is required only for auditors of public interest companies or subsidiaries of public interest companies who resign other than at the annual general meetings.

**Q: Under what circumstances would ACRA give the consent for resignation?**

A: The premature resignation of an auditor of a public interest company or their subsidiaries is a serious matter due to the public interest implications involved. Hence, approval of such resignations will generally only be granted if there are exceptional circumstances such as where the auditor is no longer capable of performing a competent audit or where it is impractical or inappropriate for the auditor to continue his appointment. Examples include the failing health of an auditor practising as a sole proprietor; loss of independence of the auditor; or a change in auditor stipulated by the company’s parent entity which is audited by another auditor. Please refer to Practice Direction No. 4 of 2015 for further details.

**Q: What is the definition of a “public interest company”?**

A: Public interest companies are: (a) companies listed or in the process of listing on the Singapore Exchange or a securities exchange outside of Singapore; (b) selected financial institutions e.g. (i) Companies that are part of the banking and payment system; (ii) Insurers and insurance brokers; (iii) capital market infrastructure providers; and (iv) capital markets intermediaries; and (c) large charities or institutions of a public

character which are companies. The full list of public interest companies can be found in the amended Companies Regulations to be published by Jun 2015.

**Q: How does an auditor apply for consent to resign?**

A: Applications should be submitted to ACRA using the application form “Application for consent to resign as an auditor under s205AB of the Companies Act”. Further details on the application process can be found in Practice Direction No. 4 of 2015.

**Multiple proxies**

**Q: It was previously announced that there will be a 6-month grace period for the implementation of the multiple proxies regime? Does this mean that the multiple proxies provisions take effect only after the middle of 2016, if the effective date of the provision is 1Q 2016?**

A: No, the effective date for the implementation of the multiple proxies regime will be 1Q 2016 and no further grace period will be given. With the announcement of the implementation date on 15 Apr 2015, companies have more than 6 months to prepare for the changes.

**Striking-off**

**Q: What are the changes relating to striking-off which take effect from 1 Jul 2015?**

A: Most of the procedures for striking-off will only be implemented in Phase 2. However, from 1 Jul 2015, ACRA will set out in regulations the circumstances which indicate that a company is not carrying on business and ACRA may initiate the striking-off process. The circumstances include:

1. the fact that the company has failed to file its annual return;
2. the fact that the company has failed to respond to correspondence sent by ACRA by registered post, where a response is required;
3. the fact that mail sent by ACRA to the registered address of the company is returned undelivered;
4. the fact that credible information has been received by ACRA indicating that the company is not carrying on business;
5. the fact that none of the locally resident directors of the company can be contacted or located by ACRA; or

6. the fact that the sole director or the last remaining director of the company, as reflected in ACRA's registers, has passed away or is disqualified from acting as a director.