ACRA
ACCOUNTING AND CORPORATE REGULATORY AUTHORITY

Key changes to Companies Act impacting Directors and CEOs

Topic	Current Provision/Requirement	Changes and Reasons
No maximum age limit for directors [repeal of section 153]	Before the appointment of person who is 70 years old and above as director of a public company or subsidiary of a public company, approval from shareholders must be sought first.	This requirement will be done away with. **Reason for amendment** • A person's ability to act as a director of a company is not principally determined by his age. • Other factors should be taken into account • Today, persons of or above 70 years of age can be capable of doing the job of a director, and are often re-appointed in practice.
Company expressly allowed to indemnify directors against claims from 3rd party [New section 172B]	The position is currently not very clear in the Act.	The Act will expressly provide that a company may provide indemnity to its officers (including directors) for claims brought against them by third parties. **Reason for change** • As Singapore companies become more globalised, the risk of them being exposed to liabilities to third parties, for example, arising from the frequent class actions by groups of shareholders in the US, is real and should be addressed.

		• Currently, there appears to be some uncertainty as to whether a company is prohibited under section 172 from providing indemnity for claims brought by third parties. The Companies Act will therefore be amended to expressly allow a company to provide indemnity to its directors for claims brought by third parties.
Allowing company to indemnify directors against potential liability [New sections 163A and 163B]	This is currently not clearly provided for in the Act.	A company will be allowed to lend, on specified terms, funds to a director for meeting expenditure incurred or to be incurred by him in defending: • Criminal/ civil proceedings; or • Investigations/ actions taken by a regulatory authority; • in connection with any alleged negligence, default or breach of duty/ trust by the director in relation to the company. **Reason for amendment** • To clarify that a company is allowed to do this. Currently, it is not very clear. • As Singapore companies become more globalised,

		the risk of them being exposed to liabilities to third parties, for example, arising from the frequent class actions by groups of shareholders in the US, is real and should be addressed. • Currently, there appears to be some uncertainty as to whether a company is prohibited under section 172 from providing indemnity for claims brought by third parties. The Companies Act will therefore be amended to expressly allow a company to provide indemnity to its directors for claims brought by third parties.
Extend regime for loans to include quasi-loans, credit transactions, related arrangements [amendments to sections 162 and 163]	A company (other than an EPC) is not allowed to make loans or provide guarantee or security in connection with loans made to: (a) Its directors or directors of a related company and their spouse or children; and (b) Another company ("borrowing company") if the directors of the lending company have interest in 20% or more of shares of borrowing company.	The prohibition will be extended to: (a) quasi-loans, credit transactions or taking part in arrangements in connection with such director-connected loans by the company; and (b) Loans, quasi-loans, credit transactions and related arrangements made or entered into for limited liability partnerships ("LLP") connected to a company's directors (ie where a director(s) is/are

		interested in 20% or more of the total voting power in that LLP). **Reason for amendment** • There is no limit to creativity in financial arrangements; and • The regime in Singapore should be updated to address the use of devices other than loans.
Company allowed to make loans <u>and quasi loans</u> to company or LLP connected to directors with prior shareholders' approval [amendment of section 163]	Section 163: A company (other than EPC) ["lending company"] cannot make a loan or give a guarantee or provide any security for a loan to another company ["borrowing company"] if the directors of the lending company have an interest in 20% or more of the total number of equity shares in the borrowing company (excluding treasury shares).	New section 163: A company (other than ECP) will be allowed to make a loan/ quasi-loan, enter into a credit transaction and related arrangement involving another company/ LLP connected to its director(s) where: (a) There is prior shareholders' approval for the quasi-loan, credit transaction or related arrangement; and (b) The interested director(s) and his/ their family members abstained from voting on the approval. **Reason for amendment** • To achieve parity of treatment between Singapore companies and foreign companies in relation to section 163.

		• There was feedback that companies incorporated in Singapore are subject to the prohibition in section 163, but the prohibition does not apply to foreign companies listed on the Singapore Exchange. Such disparity has caused difficulty in practice.
No shareholders' approval required for compensation paid to executive director for termination of employment up to a prescribed limit [amendment of section 168]	Section 168(1)(a) of the Companies Act requires 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 retirement from such office, to have been disclosed to and approved by the shareholders of the company, otherwise the payment would not be lawful. Certain types of payments are currently exempted from shareholders' approval under the CA.	<u>New exception</u> Shareholders' approval not required if following conditions are satisfied: (a) Amount that is paid out is not more than director's total emoluments for the one year immediately preceding that director's termination of employment; (b) Termination of employment is based on an existing agreement between the company and the director; and (c) Particulars of payment are disclosed to shareholders before payment is made. **Reason for amendment** • Compensation for loss of office as a director should be for the shareholders to decide because the shareholders appoint the directors.

		• However, if the payment is to an executive director as an employee, then it should be for the board of directors to decide as employees are appointed by the board. Such a distinction is critical especially in the case of a person who wears both the hats of director and employee. • It would not be good corporate governance for executive directors to make payment to themselves without the shareholders' approval.
Relaxing conditions for nominee directors to disclose information to nominating shareholders [amendment of section 158]	Nominee director is allowed to disclose to his nominator, information which he has in his capacity as director/ employee of company, if the nominee director - (a) declares at BOD meeting the name, office or position of the person to whom information is to be disclosed, & particulars of information; (b) BOD authorise the disclosure to be made; (c) Disclosure not likely to prejudice company.	Section 158 is amended: (a) to enable the board of directors to allow the disclosure of company information, whether by general or specific mandate, subject to the overarching consideration that there should not be any prejudice caused to the company; and (b) to remove the requirement in section 158(3)(a) for declaration at a meeting of the directors of the name and office or position held by the person to whom the information is to be disclosed and the particulars of such information, but to leave it to the

		board of directors to require such details if desired. **Reason for change** This will facilitate more efficient management of groups with listed subsidiaries. Concerns relating to improper use of information or insider trading will be mitigated and governed under the SFA.
CEO disclosures [amendment of section 156]	Directors required to disclose: (a) Conflict of interests in transactions (b) Shareholdings in company and related corporations	The Amendment Act introduces the following changes: (a) Extension of the disclosure requirements to CEOs of all companies (b) However, For CEOs of non-listed companies, disclosures on shareholding exclude: • securities of related corporations; and • participatory interests made available by the non-listed company or its related corporations. (The amendments are in line with disclosures required for CEOs of listed companies under listing rules.) **Reasons for change** • Recognise significance of CEO's role at apex of

		management and in decision making; • Improve transparency and promote better corporate governance
Debarment regime [New section 155B]		The Amendment Act introduces a new debarment regime: (a) The Registrar is empowered to debar any director or company secretary of a company that has failed to lodge any documents at least three months after the prescribed deadlines (b) A debarred person cannot take on any new appointment as a director or company secretary. May continue with existing appointments (c) The Registrar will lift the debarment when the default has been rectified or on other prescribed grounds. **Reasons for change** • Prevent irresponsible directors and company secretaries from holding similar positions in other companies • Promote greater compliance with filing requirements
Shadow director [deletion and	The position is not very clear in the Act.	The Act is amended to clarify that a person who controls the

substitution of section 4(2)]		majority of the directors is to be considered a director. **Reason for amendment** The SC had noted that it would be unrealistic to subject a person who controls only one director to all the obligations and duties of a director. The SC also cautioned that it would result in corporate shareholders who nominated directors to the boards of companies being regarded as shadow directors. This might result in corporate shareholders owing duties of care to one another in closely held joint venture companies.
Appointment of directors [New section 149B]	The Act is silent on this point.	The Act is amended to provide expressly that a company may appoint a director by ordinary resolution passed at a general meeting, subject to contrary provision in the constitution. **Reason for amendment** As the Act is currently silent on this point it will provide greater clarity on the appointment of directors.
Vacation of office and removal of directors [amendment of section 152]	Section 152 of the Companies Act provides for the removal of a director of a public company by ordinary resolution, notwithstanding anything in the company's memorandum or articles or in any agreement	The Act is amended to expressly provide - (a) that unless the constitution states otherwise, a director may resign by giving the company written notice of his resignation.

	between the company and the director.	(b) that subject to section 145(5), the effectiveness of a director's resignation shall not be conditional upon the company's acceptance. **Reason for amendment** • The issue of removal of directors of private companies is currently left to the Articles. (NB: The Amendment Act will provide that the memorandum and articles will be referred to as the constitution.) • Specifying the default position in the Act will provide greater clarity. Private companies may be given flexibility on this issue by allowing the constitution to override the default position. In the case of public companies, which includes listed companies, there should not be entrenchment of directors and so the existing right to remove any director by ordinary resolution should not be subject to the constitution.
Removal of director by ordinary resolution	Section 152 of the Companies Act provides for the removal of a director of a public company by ordinary resolution,	The Act is amended to expressly provide that a private company may by ordinary resolution remove any director, subject to

[New subsection (9) of section 152]	notwithstanding anything in the company's memorandum or articles or in any agreement between the company and the director. The Companies Act, however, does not provide for the removal of a director of a private company. This is left to the company's articles.	contrary provision in the constitution. **Reason for amendment** Specifying the default position in the Act will provide greater clarity. Private companies may be given flexibility on this issue by allowing the Articles to override the default position. In the case of public companies, which includes listed companies, there should not be entrenchment of directors and so the existing right to remove any director by ordinary resolution should not be subject to the constitution.
Supervisory role of directors [Amendment of section 157A]	Section 157A(1) of the Companies Act provides that the business of a company shall be managed by or under the direction of the directors.	Section 157A(1) is amended to expressly provide that the business of a company shall be managed by, or under the direction or supervision of, the directors. **Reason for amendment** The modification to section 157A(1) is to better reflect the powers and responsibilities of the board of directors. The amendment is not intended to reduce the duty of care expected of directors.
Power of directors to bind the company [New section 25B]	Currently, section 25A provides that a person is not deemed to have constructive knowledge of a company's Memorandum and Articles merely because it is filed with ACRA or available for	The Act introduces a new section 25B to provide that a person dealing with the company in good faith should not be affected by

	inspection at a company's registered address.	any limitation in the company's constitution. **Reason for amendment** • Section 25A has not been deleted as it will be unduly onerous to impose constructive knowledge of the company's constitution on third parties. • The new section 25B is not made redundant by section 25A since a person may have knowledge of a company's constitution in situations outside of section 25A.
Directors' fiduciary duty [amendment of section 157]	Section 157(2) of the Companies Act provides that an officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.	The prohibition in section 157(2) is extended to cover improper use by an officer or agent of a company of his position to gain an advantage for himself or for any other person or to cause detriment to the company. **Reason for amendment** The extension is based on the Australian position which is a wider provision, and which is useful for Singapore to adopt. It is logical to widen the scope of section 157(2) to extend the prohibition to cover improper use of a person's position as an officer or agent of a company, other than the present prohibition covering improper use of any

		information acquired by virtue of a person's position as an officer or agent, to gain an advantage for himself or any other person or to cause detriment to the company. The ultimate test is that an individual obtained an unfair advantage through an abuse of his position. It is irrelevant whether it concerns merely information or otherwise.