ACRA
ACCOUNTING AND CORPORATE REGULATORY AUTHORITY

FAQs - Phase 2 of Companies (Amendment) Act 2014 - Frequently Asked Questions

Alternate Address

Q: Can a person use a different alternate addresses for different companies in which he is an officer?

A: No. The alternate address is intended to be the place where a person can be located, and this should be the same place for any particular individual, regardless of how many companies in which he is holding position as an officer.

Q: Can CSPs file an alternate address once for multiple companies/entities (i.e. LLP, LPs, business)? Are there multiple fees for this?

A: CSPs are able to file an alternate address once for multiple companies/entities. There is a one-time fee of $40 (no multiple fees).

Q: Can all the directors use the same company address as alternate address?

A: Yes, provided that the company address is one where they can be located. However, if there is a foreign director, he may not be able to use the company address as his alternate address because he may not be located i.e. physically present at that company's address.

Dormant Companies

Q: If a dormant unlisted company is exempted from the requirement to prepare financial statements, does it still need to hold an annual general meeting (AGM)?

A: The company must still hold an AGM. However, if the company is a private company, the company can dispense with the holding of its AGM if there are no other resolutions which need to be tabled.

Q: What is the test for whether a company is dormant?

A: The test for dormancy is provided for in the Companies Act, i.e. that there is no accounting transaction during that financial year. The Companies Act also states the transactions which are to be disregarded when determining dormancy:

a. the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum;

b. the appointment of a secretary of the company;

c. the appointment of an auditor;

d. the maintenance of a registered office;

e. the keeping of registers and books;

f. the payment of any fee and charges payable under written law;

g. the payment of any composition amount payable under written law;

h. the payment or receipt by the company of a nominal sum not exceeding $5,000.

Q: Can insolvent dormant company be exempted from preparing financial statements?

A: Yes, if the dormant company is unlisted, is not a subsidiary or a listed company, and the company's total assets is not more than S$500,000, if the company is exempted even if insolvent.

Q: Is there is a requirement for declaration for dormancy? Will ACRA be providing the attachments?

A: There is a requirement for a director's statement to declare the company's status of dormancy. There are no attachments/format provided. However, the requirements contained in the statement should follow those required under the Companies Act (s201A and s205B). The statement by the directors for the exemption from preparation of financial statements must state:

i. that the company has been dormant for the period from the time of its formation or since the end of the previous financial year, as the case may be;

ii. that no notice has been received under section 201A(3) in relation to the financial year; and

iii. the accounting and other records required by the Companies Act to be kept by the company have been kept in accordance with section 199.

Q: When will the exemption for dormant companies from preparation of financial statements take effect?

A: The exemption would be available in respect of financial years ending on or after 3 Jan 2016.

Model Constitution

Q: What is the difference between adopting the Model Constitution in force at a point in time, and adopting the Model Constitution in force from time to time?

A: If a company chooses to adopt the Model Constitution in force from time to time, it would be taken to have adopted any changes to the provisions in the Model Constitution as made in the law over time, without having to go through any procedures to amend the Model Constitution that it has adopted. Adopting the Model Constitution in force at a point in time would mean that the Model Constitution adopted is fixed, unless the company subsequently makes amendments to it.

Q: What happens to a company's Memorandum and Articles of Association on or after 3 Jan 2016? Does it have to adopt the Model Constitutions?

A: The memorandum and articles of association of existing companies will be treated in law as their constitution, from 3 Jan 2016. Existing companies do not need to adopt the Model Constitutions. The Model Constitutions do not apply automatically to all companies; companies have a choice as to whether they wish to adopt them or not.

Multiple Proxies

Q: Can CPF investors be appointed as multiple proxies to attend and vote at AGMs?

A: CPF investors can be appointed as proxies to attend and vote at annual general meetings like any other shareholder.

Q: Do companies need to take any action in view of the changes to introduce multiple proxies?

A: The changes in the law which allow a relevant intermediary (within the meaning in the Companies Act) to appoint more than 2 proxies will apply without any changes needing to be made to the constitution of the company. If the company requires a longer period of time within which to process proxy forms in view of the appointment of multiple proxies, it should amend its constitution to provide for a cut-off time for the submission of proxy forms of up to 72 hours before the meeting.

Q: Who is a "relevant intermediary" who can appoint multiple proxies?

A: A "relevant intermediary" who may appoint multiple proxies is defined under the Companies Act as:

i. A banking corporation licensed under the Banking Act or a wholly-owned subsidiary of such a banking corporation whose business includes the provision of nominee services and who holds shares in that capacity;

ii. A person holding a capital markets services licence to provide custodial services for securities under the Securities and Futures Act and who holds shares in that capacity; or

iii. The Central Provident Fund Board (CPF Board) in respect of shares held by it in the capacity of an intermediary under regulations made under the CPF Act.

Directors

Q: Is there any age limit for person who wishes to be a director of a company in Singapore?

A: No. There is no age limit.

Q: Can a company indemnify its director against potential liability?

A: Yes. A company can lend, (subject to some specified terms, below), funds, to a director for meeting expenditure incurred or to be incurred by him in defending criminal/ civil proceedings in connection with any alleged negligence, default or breach of duty/ trust by the director in relation to the company. This is to enable the director to avoid incurring such expenditure.

Q: What are these specified terms?

A:The loan must be repaid to the company / or any liability of the company must be discharged if in the event that the director is convicted in the proceedings, or judgement is given against him in the proceedings, or the court refuses to grant the director relief.

CEO Disclosures

Q: Are the disclosure requirements for a CEO the same as that of a director?

A: Under the CA, the disclosure requirements of directors, are now extended to CEOs of all companies, and these include:

- Conflicts of interests in transactions or proposed transactions with the company, or by virtue of holding any office or property; and
- Shareholdings, debentures, rights and options in the company. However, for CEOs of non-listed companies, the disclosures on shareholdings exclude the securities of related corporations; and the participatory interests made available by the non-listed company or its related corporations.

The disclosures would need to be made by the CEO to the company, and the information disclosed would appear in the company register. This would align the disclosure requirements under the Securities and Futures Act for CEOs of listed companies.

Shares with Different Voting Rights

Q: Can a company issue shares with different voting rights?

A: Yes, the CA now allows a company to issue shares with different voting rights.

However, where the company is a listed company, it would still have to comply with the listing requirements of the Singapore Exchange and Monetary Authority of Singapore. Insofar as the shares of listed companies are concerned, the Singapore Exchange and the Monetary Authority of Singapore are still reviewing whether such listed companies should be permitted to issue shares with different voting rights.

Debarment of Company Officers

Q: Will ACRA debar a person immediately after the company's failure to comply with a filing requirement?

A: Under the new section 155B of the CA, the Registrar will have powers to debar a director or secretary of a company from taking up new appointments if the company has failed to file relevant documents **at least three months after the prescribed deadlines under the Companies Act**.

The powers of debarment are discretionary and do not operate automatically in respect of all non-filings. It is intended to be used to weed out irresponsible directors/ secretaries, and hence will be applied accordingly. ACRA will give written notice and will allow directors and secretaries to show cause as to why they should not be debarred. ACRA will consider the reasons as to why there was a default before exercising the powers to debar.

Q: What would be the consequence if a director or secretary is debarred?

A: If a director or secretary is debarred, he cannot take on any new appointment as director or secretary.

Striking-off of Local Companies

Q: For the disqualification under the new s155A, does the disqualification apply to companies which are struck-off upon application by the company?

A: No. The disqualification only applies where three or more companies in which the person is a director of are struck off as a result of ACRA-initiated reviews within a period of five years.

Q: Does the disqualification under the new s155A apply to companies which are struck-off before 3 Jan 2016?

A: No. The disqualification only applies in respect of companies struck-off on or after 3 Jan 2016.

Requirements for Foreign Companies

Q: When can a foreign company prepare its financial statements in accordance with the requirements of the place that it is incorporated?

A: If the law of the place of incorporation of the foreign company requires the company to prepare its financial statements according standards similar to those in Singapore or which are acceptable to the Registrar, then the company may prepare its financial statements in accordance in accordance with the requirements of the place that it is incorporated. The foreign company need not prepare a fresh set of financial statements for filing in Singapore.

Q: What is the difference between an "agent" and an "authorised representative" of a foreign company?

A: They mean the same thing, although the term "agent" will no longer be used, as this will be replaced with the term "authorised representative". This new change of name is meant to show the importance of the role of the agent. As he is the authorised representative of the foreign company in Singapore, he is accountable and responsible for the foreign company in Singapore.

Q: How many authorised representatives must a foreign company have?

A: A foreign company must have at least one authorised representative.

Q: What are the new grounds for striking off a foreign company?

A: Currently, ACRA may strike-off a foreign company:

a. where we have reasonable cause to believe that the foreign company has ceased to carry on business or to have a place of business in Singapore; or

b. if we are satisfied that the foreign company is being used for an unlawful purpose or for a purpose prejudicial to public peace, welfare or good order etc.

To safeguard the sole authorised representative of a foreign company, there are now 3 additional grounds for striking-off a foreign company:

i. where the authorised representative wishes to resign but is unable to do so because there is no one to replace him, and the foreign company has failed to respond or act on this matter within 12 months;

ii. where the authorised representative has asked the foreign company whether the foreign company intends to cancel or continue its registration under the Companies Act, and the foreign company has not responded with any instructions within 12 months of this request.

iii. where the foreign company has no authorised representative (i.e. the foreign company does not appoint a replacement authorised representative for more than 6 months following the death of the sole authorised representative).

Click here to view the Frequently Asked Questions on the implementation of Phase 1 of the Companies (Amendment) Act 2014.