

## Details of key legislative amendments effected in Phase 1

### Selected key legislative amendments effected in Phase 1 (1 July 2015):

Topic	Current Provision/Requirement	Changes and Background
<b>No shareholders' approval required for compensation paid to executive director for termination of employment up to a prescribed limit</b>  [Amendment of section 168]	<p>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.</p> <p>Certain types of payments are currently exempted from shareholders' approval under the CA.</p>	<p><b>New exception</b></p> <p>Shareholders' approval not required if following conditions are satisfied:</p> <p>(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;</p> <p>(b) Termination of employment is based on an existing agreement between the company and the director; and</p> <p>(c) Particulars of payment are disclosed to shareholders before payment is made.</p> <p><b>Background</b></p> <p>Compensation for loss of office as a director are usually decided by shareholders because the shareholders appoint the directors.</p> <p>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.</p> <p>Safeguards are the specifying of a payment limit and requiring the particulars of the payment to be disclosed to shareholders for transparency and as a check on the Board.</p>

<b>No more prohibition against financial assistance by private companies</b>  <b>New exceptions to financial assistance provisions</b>  [Amendment of section 76]	A company may not give financial assistance to any person (whether directly or indirectly) for the purpose of acquisition/ proposed acquisition of shares or units of shares in the company or holding company.	<p>The financial assistance prohibition for private companies will be done away with, but will still apply to public company / subsidiary of public company.</p> <p><b>Background</b></p> <ul style="list-style-type: none"> <li>• Private companies are usually closely held and shareholders have greater control over the decision to give financial assistance.</li> <li>• This will reduce cost for private companies and is consistent with the position in the UK.</li> </ul> <p>To clarify/ address concerns that the present financial assistance prohibition may impede potentially beneficial or innocuous transactions, the following new exceptions will be introduced for a public company or a subsidiary of a public company:</p> <p>(a) Where the giving of assistance does not materially prejudice interests of company or shareholders or company's ability to pay its creditors (subject to the company satisfying certain prescribed conditions);</p> <p>(b) Distributions made in the course of the company's winding up;</p> <p>(c) Allotment of bonus shares;</p> <p>(d) Redemption of redeemable shares of a company in accordance with its constitution.</p>
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<b>Audit exemption for small companies</b>  [New section 205C and Thirteenth Schedule]	<p>An exempt private company with annual revenue of \$5m or less for the financial year is exempt from auditing its financial statements.</p> <p>An exempt private company is a company which has not more than 20 members and in which no corporation holds any beneficial interest in its shares.</p>	<p>A new small company concept will be introduced for exemption from statutory audit.</p> <p>A company qualifies as a small company if:</p> <p>(a) it is a private company in the financial year in question; and</p> <p>(b) it meets <u>at least 2 of 3 following criteria</u> for immediate past two financial years:</p> <ol style="list-style-type: none"> <li>1. total annual revenue <math>\leq</math> \$10m;</li> <li>2. total assets <math>\leq</math> \$10m;</li> <li>3. no. of employees <math>\leq</math> 50.</li> </ol> <p>For a company which is part of a group:</p> <p>(a) the company must qualify as a small company; and</p> <p>(b) entire group must be a “small group to qualify to the audit exemption.</p> <p>For a group to be a small group, it must meet at least 2 of the 3 quantitative criteria on a consolidated basis for the immediate past two consecutive financial years.</p> <p>Where a company has qualified as a small company, it continues to be a small company for subsequent financial years until it is disqualified. A small company is disqualified if:</p> <p>(a) it ceases to be a private company at any time during a financial year; or</p> <p>(b) it does not meet at least 2 of the 3 the quantitative criteria for the immediate past two consecutive financial years.</p>
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	<p>Where a group has qualified as a small group, it continues to be a small group for subsequent financial years until it does not meet at least 2 of the 3 the quantitative criteria for the immediate past two consecutive financial years.</p> <p>Existing safeguards will remain, such as requiring all companies to keep proper accounting records, and empowering shareholders with at least 5% voting rights to require a company to prepare audited accounts.</p> <p><b>Background</b></p> <ul style="list-style-type: none"><li>• The small company criteria recognises broader group of stakeholders (e.g. creditors, employees, customers) who may have an interest in the financial statements, other than just shareholders.</li><li>• It would reduce regulatory costs for smaller companies that do not have wide market impact.</li><li>• Similar criteria are used for differentiated financial reporting in other countries (e.g. UK, Australia).</li></ul> <p><b>Useful information</b></p> <p><a href="#">Additional information on “small company” concept for audit exemption</a></p> <p>Write up on "<a href="#">New “small company” concept for audit exemption (PDF, 419KB)</a>"</p> <p><i>This article was first published in the IS Chartered Accountant, April 2015.</i></p>
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<p><b>Resignation of auditor before end of term of office</b>  [New sections 205AA to 205AF]</p>	<p>An auditor can resign if he is not the sole auditor, or at a general meeting, and where a replacement auditor is appointed.</p>	<p>An auditor of a non-public interest company (other than a subsidiary of a public interest company) may resign before the end of the term of his appointment by giving written notice to the company.</p> <p>Auditors of public interest companies and their subsidiaries will be required to obtain ACRA's consent for resignation before the end of the term of their appointment. This will ensure that companies are not unfairly left in the lurch without their auditors but also allow auditors to resign, especially in situations where the company refuses to hold a general meeting to appoint a replacement auditor. The requirement for ACRA's consent will allow ACRA to stop the resignation in the public interest where necessary. Guidelines will be issued on what ACRA will consider as valid circumstances under which resignations will be accepted.</p> <p>Examples of public interest companies are companies listed on the Singapore Exchange, financial institutions, and large charities or institutions of public character.</p>
<p><b>Phasing out share warrants</b>  [Amended section 66]</p>	<p>The bearer of a share warrant issued before 29 December 1967 shall be entitled on surrendering it for cancellation to have his name entered into the company's register of members.</p>	<p>The amendment will phase out any outstanding share warrants by giving bearers of these warrants a two-year period, from the time the amendment is effected, to surrender the warrants for cancellation and have their names entered in the register of members. Companies will</p>

		<p>cancel any outstanding share warrants that are not surrendered.</p> <p><b>Background</b></p> <p>This transitional arrangement has been in place for more than 40 years. It was put in place for bearers of share warrants issued before 29 December 1967 to convert the warrants to registered shares. This amendment addresses the growing international expectation to strengthen transparency of companies.</p>
<b>Update limit on preferential payments to employees of insolvent companies.</b>  [Amended section 328]	Employees of an insolvent company are currently entitled to be paid their wages and salaries, followed by retrenchment benefits and ex-gratia payments, in priority of other unsecured creditors. The limit in the Companies Act on such priority payment is “five months’ salary of the employee or \$7,500, whichever is lower”.	<p>The amendment will update the limit and specify in the subsidiary legislation a new limit of “five months’ salary or five times the salary cap for non-workmen referred to in Part IV of the Employment Act, whichever is lower”.</p> <p><b>Background</b></p> <p>The \$7,500 limit is based on the monthly salary cap of \$1,500 for non-workmen under the Employment Act in 1993 more than two decades ago. This approach has the benefit of ensuring that the limit will be automatically updated each time the salary cap for non-workmen is adjusted in the Employment Act.</p>

- [Selected key legislative amendments implemented in Phase 2](#)
- [Frequently Asked Questions on the phased implementation of the Companies \(Amendment\) Act 2014](#)