

# The CCS Newsletter

## New Developments

in Corporate Secretarial By Shirley Lim (Director)

### Changes to the Business Registration Act

Professional firms (sole proprietorships or partnerships) carrying on business such as law firms, clinics and architecture firms, previously exempted from having to register with ACRA, must now do so.

The Business Registration Act (Cap.32) has been amended to effect this change.

---

### Steering Committee to review the Companies Act



The current review of the Companies Act is being carried out by a high level Steering Committee, chaired by the Attorney-General Professor Walter Woon. The Steering Committee is assisted by 5 Working Groups who are each reviewing different areas of the Companies Act. The goal of the review is to develop a more efficient and transparent corporate regulatory framework which will attract international business.

The Steering Committee will:-

- Examine ways in which the regulatory burdens on companies can be lessened or the statutory requirements made easier to comply with, without compromising on transparency and accountability to third parties
- Attempt to avoid "hard-coding" too many regulatory rules in the body of the Companies Act and instead enable procedures to be modified as the environment changes, through subsidiary legislation
- Examine three specific areas, codification of directors' duties, removing restrictions on financial assistance and replacing the concept of the Exempt Private Company (EPC) with a "small company" definition.

---

### Codification of Directors' Duties

Section 157 of the Companies Act contains the statutory statement of a director's duties. However, Section 157 does not purport to be an exhaustive statement of a director's duties. It complements a body of case law, or what lawyers dub "common law", relating to fiduciary duties and responsibilities of directors of a company.

The Steering Committee is evaluating whether Singapore should follow the UK approach of setting out in the Companies Act a list of directors' duties which are derived from common law rules and equitable principles. Specifically, the UK spelt out seven duties of directors, namely the duties to act within powers, promote success of the company, exercise independent judgment, exercise reasonable skill and care, avoid conflicts of interests, declare interests in proposed transactions or arrangements and not to accept benefits from third parties. While Australia and New Zealand also adopt certain general duties as statutory duties, the UK model is the most extensive and exhaustive.

The UK model helps directors to better understand their fiduciary duties which were previously difficult to interpret due to case law. However, there has been criticism that the approach may not allow for the flexibility that is needed to keep pace with developments and evolving practices in the business arena, or that companies would adopt a "box ticking" approach, making reference to the consideration of all the factors required, at board meetings and in the board minutes. Some of the codified duties only came into force in the UK from October 2008. Thus, it is still uncertain whether it will be successful in its aim of balancing precision of the statutory statement against the need for continued flexibility and development of the law.

Instead of codifying all the directors' duties in the Companies Act, the Steering Committee is also exploring the option of providing greater clarity to directors via practice directions or guidance notes.

*Complete Corporate Services Pte Ltd is proud to present to you our first issue of The CCS newsletter. This newsletter features new developments, in corporate secretarial.*

*We hope that you will find our first issue of The CCS Newsletter to be useful and welcome any feedback and comments that will make future issues catered towards the topics you are interested in.*



## Removing restriction on Financial Assistance

The Steering Committee is studying the reforms in several other countries such as Australia, New Zealand, Canada, Italy and the UK which has liberalized the restrictions on financial assistance by a company for the acquisition of its own shares or those of its holding company. This is currently prohibited under Section 76 of the Companies Act which relates to restrictions existing to protect creditors and shareholders against possible misuse and depletion of a company's assets.

Section 76 is known to be rather complex and has also been interpreted differently by judges, resulting in uncertainty and difficulty in application. Responses have been broadly positive in the countries that have removed the financial assistance prohibitions. When the UK considered abolishing the prohibition, it had in fact studied the US position and concluded that the absence of such prohibitions did not create any significant problems in the US. The Steering Committee will examine this aspect carefully before making its recommendations.

## Replacing the concept of the Exempt Private Company with a "small company" definition

The Steering Committee is considering whether to introduce a "small company" definition in the Companies Act with qualifying criteria such as total annual turnover, gross assets and number of employees so as to reduce the regulatory burden and simplify compliance for such companies.

The current definition of an Exempt Private Company (EPC) allows large private companies in terms of assets or operations to enjoy the benefits of EPC status such as exemption from filing accounts with ACRA if they are solvent.

This means that other stakeholders such as creditors, customers and employees may not have ready access to the company's financial information. Introducing "small company" definition with appropriate qualifying criteria to replace the EPC concept would be more consistent with the market perception of a company's size and would recognize the interests of this broader group of stakeholders besides shareholders. Adopting a "small company" regime would also align Singapore's company law with other countries such as the UK, Australia and New Zealand.

## Proposed changes to the Rule Book of The Singapore Exchange (SGX)

In the wake of a series of corporate scandals tossed up by S-chips in the wake of the global financial crisis, the SGX is proposing sweeping changes to its Rule Book on how a listed company should behave itself. As these proposed changes extend to the Companies Act, they would involve approvals from other authorities such as the Monetary Authority of Singapore. SGX intends to put its proposals out for public consultation. The salient features of the proposed changes include:-



- Disclosure on pledged shares by controlling shareholders is mandatory if the amount is large enough to trigger a change in the control of the listed company. If implemented, it would force a controlling shareholder to make an appropriate announcement if the amount of shares pledged represents at least 30% of the issued shares in a listed company. A controlling shareholder may also be forced to disclose his/her share pledge arrangements if the seizure of shares causes a breach of loan covenants by the listed company, regardless of the size of loan covenants.
- Controlling shareholders of listed companies to custodise their shares in Singapore so that during an investigation of irregularities involving the controlling shareholders, there would be greater regulatory purchase over them
- Restriction on shares transfer if a company is suspended from trading
- All newly listed companies would have to appoint corporate governance advisors for an initial period of two years post initial public offering (IPO). This will help companies institute a robust framework of reporting, accountability, internal controls and other components of corporate governance
- Chief Financial Officers and Independent Directors should be appointed at least six months prior to IPO submissions so that they have adequate time to perform proper due diligence on an IPO candidate's suitability
- A joint sign-off by a local auditor if the company is audited by an accounting firm from a foreign jurisdiction

*Complete  
Corporate  
Services Pte Ltd  
offers  
integrated,  
tailor-made  
corporate service  
solutions to  
public and  
private  
companies  
which leaves you  
time to  
concentrate on  
your core  
business...*

*Over the last 20 years, we have grown to be a substantial outsource accounting, corporate secretarial and tax consulting group. In conjunction with our associates located in major cities around the world, we ensure that clients' expectations are met in full. Regardless of the size of client, our philosophy remains constant - to provide personalised professional service.*

For more information, please contact:

*Lim Peng Huat*

E: [phlim@complete-corp.com.sg](mailto:phlim@complete-corp.com.sg)

T: (65) 6329 2741

F: (65) 6221 9265

*Shirley Lim*

E: [shirleylim@complete-corp.com.sg](mailto:shirleylim@complete-corp.com.sg)

T: (65) 6329 2731

F: (65) 6221 9265

This publication is issued exclusively for the general information of clients and staff of Complete Corporate Services Pte Ltd. The material should not be relied upon. Complete Corporate Services Pte Ltd will not be liable for any loss or damage arising out of or in connection with the materials contained in this publication. Copyright 2010. Complete Corporate Services Pte Ltd.

All rights reserved.

## Proposed amendments to SGX's listing rules

SGX is looking to raise the bar for mainboard listings to put a difference between larger companies on the mainboard and companies on the secondary Catalist board. It was noted that the mainboard was better positioned for more established companies with longer track records while Catalist catered to fast-growing companies under a sponsor-supervised regime.

**Currently**, companies seeking mainboard listing must meet any one of the following three criteria, which cater to a wide spectrum of companies with different business models:-

### Criteria 1

Cumulative pre-tax profit of at least \$7.5 million over the last 3 consecutive years with a pre-tax profit of at least \$1 million in each of those 3 years

### Criteria 2

Cumulate pre-tax profit of at least \$10 million for the latest 1 or 2 years

### Criteria 3

Market capitalization of at least \$80 million at the time of the initial public offering, based on the issue price

SGX is now **proposing** that mainboard aspirants must meet one of the following two criteria:-

### Criteria 1

It must be profitable in the latest financial year and have an operating track record of 3 years and a market capitalization of \$150 million

### Criteria 2

It must generate operating revenue in the latest financial year and have a market capitalization of at least \$300 million at the time of the initial public offering, based on the issue price

The proposed criteria will additionally apply to reverse takeovers. Catalist companies seeking a transfer to the mainboard must meet the first criteria only.

SGX is also proposing raising the minimum issue price of the equity securities offered in an initial public offering or reverse takeover to 50 cents, from the current 20 cents.

### Special Purpose Acquisition Companies (SPACs)

SGX is **proposing** new listing rules for the listing of SPACs or cash companies. Such companies are described as "cash pools seeking to acquire viable businesses through public funding" and must have a market capitalization of at least \$150 million.

After the listing and prior to the implementation of any proposed business combination, public shareholders will be given the rights to vote for or against the proposed business combination. The SPAC is given a period of 3 years to complete a business combination. If it fails to do so, the SPAC should return the cash to the shareholders.

### Codifying the measures for secondary fund raising

SGX is **proposing** to shorten the notice period of book closure dates from ten market days to five market days for secondary fund raising.

## About Complete Corporate Services Pte Ltd

### Accounting Solutions Division

The Accounting Solutions Division provides various types of assistance depending on your needs.

- Setting up of accounting systems and procedures
- Update and Maintenance of your Accounting Records and Reports
- Payroll Administration

### Taxation Services Division

The Division offers a broad range of both direct and indirect taxation services, providing you with up to date information and advice to achieve tax effective solutions.

- Tax Compliance Services
- Tax Advisory Services

### Corporate Secretarial Division

The Corporate Secretarial Services Division can offer the following services depending on your needs:

- Formation of Companies and Singapore Branches (foreign companies)
- Acting as Corporate Secretaries and Secretarial Agents for private or public limited companies
- Registration of a Business Name, Limited Liability Partnership and Representative offices
- Liquidation

### Executive Search Division

We can assist in the search for suitable candidates to hold executive positions in client companies.

The Management team of Complete Corporate Services Pte Ltd, comprises:

**Directors** *Lim Peng Huat*  
*Shirley Lim*

[phlim@complete-corp.com.sg](mailto:phlim@complete-corp.com.sg)  
[shirleylim@complete-corp.com.sg](mailto:shirleylim@complete-corp.com.sg)

**Managers** *Tan Eng Hock*  
*Jason Tan*  
*Esther Choo*  
*Shirley Tay*

[tan\\_eh@complete-corp.com.sg](mailto:tan_eh@complete-corp.com.sg)  
[jasantan@complete-corp.com.sg](mailto:jasantan@complete-corp.com.sg)  
[estherchoo@complete-corp.com.sg](mailto:estherchoo@complete-corp.com.sg)  
[shirleytay@complete-corp.com.sg](mailto:shirleytay@complete-corp.com.sg)



Complete Corporate Services Pte Ltd

10 Anson Road #15-07 International Plaza Singapore 079903 Tel: 6226 2555 Fax: 6221 9265 Email: [email@complete-corp.com.sg](mailto:email@complete-corp.com.sg)