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MOF and ACRA Respond to Feedback on Proposals Relating to Digitalisation and Compulsory Acquisition in 2020 Consultation Paper on Proposed Amendments to Companies Act

On 6 February 2023, the Ministry of Finance ("**MOF**") and the Accounting and Corporate Regulatory Authority ("**ACRA**") published their responses ("**Response**") to feedback received from the public pursuant to the Public Consultation on Proposed Amendments to the Companies Act which ran from 20 July 2020 to 17 August 2020. The Response covered some of the proposals made by the Companies Act Working Group ("**Working Group**"). We broadly outline certain key proposals and responses below. Responses to other Proposals will be issued by MOF and ACRA in due course.

- (a) **Facilitating digital general meetings and digital board meetings.** The Working Group proposed to revise the Companies Act 1967 ("**CA**") to clarify that a company may hold general meetings digitally and in more than one location, unless the company's constitution provides otherwise. To facilitate this, it was proposed to amend the provisions of the CA to address shareholders' rights in relation to digital meetings.

The CA will explicitly specify that companies that hold digital general meetings must use technology that enable members to attend, listen, speak and vote at the meeting, and to specify that companies may hold digital general meetings unless expressly prohibited by their constitution. Additional safeguards and requirements may be introduced later through subsidiary legislation.

General meetings held using digital means will also be subject to section 392(3) of the CA, which allows an application to be made to the court to declare proceedings at a general meeting to be void, on the grounds of a procedural irregularity that has caused or may cause substantial injustice.

There will be an enabling provision which provides that nothing in the CA prohibits board meetings from being held digitally.



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The CA will mandate all companies to accept proxy instructions given by electronic means, modifying the current practice where the manner for appointing a proxy and providing proxy instructions is prescribed in a company's constitution.

- (b) **Clarifying the application of existing digitalisation provisions to documents under the CA.** The CA provisions that permit the giving, sending or serving of notices of meetings, accounts, balance sheets, financial statements, reports and other documents using electronic communications will be revised to include all documents that the CA requires or permits companies or directors to send to members, officers or auditors.

The CA provisions that permit the keeping of company records in electronic form and the inspection of company records by electronic means will be revised to apply to all documents that the CA requires companies and foreign companies to keep or make available for inspection.

The CA will be amended so that a document may be sent using a mode of electronic communication (including via publication on website) by (i) companies or directors to persons who are not members, officers or auditors of the company; (ii) members, officers, or auditors to companies or directors; and (iii) persons who are not members, officers, or auditors to companies or directors, where in each case there is an agreement between the parties for the document to be sent using that mode of electronic communication.

MOF and ACRA will further clarify what constitutes an agreement between parties for a document to be sent using electronic communications.

- (c) **Other areas concerning digitalisation.** MOF and ACRA agreed with the Working Group that the CA should not be amended to address the sending of documents by foreign companies using digital means, because this may potentially contradict foreign law.

MOF and ACRA will conduct further study on the following proposals concerning digitalisation in other areas, as these proposals may have implications on other sections of the CA:

- whether and how court-ordered meetings under section 210 of the CA may be held digitally;
- whether common seals can be in digital form;
- whether certain things made by companies, directors, members, auditors or accounting entities (e.g. debentures, certificates, declarations and reports) can be in digital form; and
- the sending of documents between certain persons (e.g. transferees, auditors, officers and the Minister) using digital means.

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- (d) **Review of the threshold for the compulsory acquisition of shares under section 215 of the CA.** Section 215 of the CA provides for the right of a person ("**transferee**") to compulsorily acquire the shares of any dissenting shareholder where a scheme or contract involving the transfer of all the shares, or all of the shares in any particular class, in a company ("**transferor company**") to the transferee has been approved by at least 90% of the holders of all the shares or the shares of that class ("**90% threshold**"). Shares held or acquired by persons connected to the transferee are excluded from the computation of the 90% threshold.

Working Group's Proposal: Computation of the 90% threshold for compulsory acquisition under section 215 of the CA should also exclude the shares held or acquired by:

- a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the transferee in respect of the transferor company;
- a body corporate **controlled*** by the transferee;
- a person who is, or is a nominee of, a party to a share acquisition agreement with the transferee;
- the transferee's close relatives;
- a person whose directions, instructions or wishes the transferee is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the transferor company; and
- a body corporate **controlled*** by a person described in the preceding item.

*The Consultation Paper sought comments on whether the threshold to be adopted to establish a control of a body corporate referred to in the second and sixth bullet points above should be 30%.

MOF's and ACRA's Response: The threshold to establish control of a body corporate will be revised to 50%, instead of the 30% threshold that was originally proposed. Based on feedback received, a person who is, or is a nominee of, a party to a share acquisition agreement with a transferee will not be excluded in computing the 90% threshold for compulsory acquisition under section 215 of the CA.

For details on the proposals in the Consultation Paper, click [here](#) to read our July 2020 Legal Update titled "Proposed Changes to Companies Act to Cope with Evolving Business Environment". For more information on the Response, please click on the following links (available on the ACRA website at www.acra.gov.sg):

- [ACRA Press Release titled "Summary of Responses to Public Consultation on Proposed Amendments to the Companies Act"](#)

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- [Annex: MOF and ACRA's responses to key feedback on the proposed amendments to the Companies Act](#)

Contacts



Abdul Jabbar
Head, Corporate and
Transactional Group

T +65 6232 0465

abdul.jabbar@rajahtann.com



Evelyn Wee
Deputy Head, Corporate
and Transactional Group
Head, Capital Markets

T +65 6232 0724

evelyn.wee@rajahtann.com



Hoon Chi Tern
Deputy Head, Capital Markets

T +65 6232 0714

chi.tern.hoon@rajahtann.com



Cynthia Goh
Partner, Capital Markets

T +65 6232 0316

cynthia.goh@rajahtann.com



Khairil Suhairee
Partner, Corporate Commercial

T +65 6232 0571

khairil.suhairee@rajahtann.com

Please feel free to also contact Knowledge Management at eOASIS@rajahtann.com

Regional Contacts

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346

F +95 1 9345 348

mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP

Shanghai Representative Office

T +86 21 6120 8818

F +86 21 6120 8820

cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32

F +632 8552 1977 to 78

www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800

F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550

F +62 31 5116 4560

www.ahp.co.id

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600

sg.rajahtannasia.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239

F +856 21 285 261

la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673

F +84 28 3520 8206

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

Hanoi Office

T +84 24 3267 6127

F +84 24 3267 6128

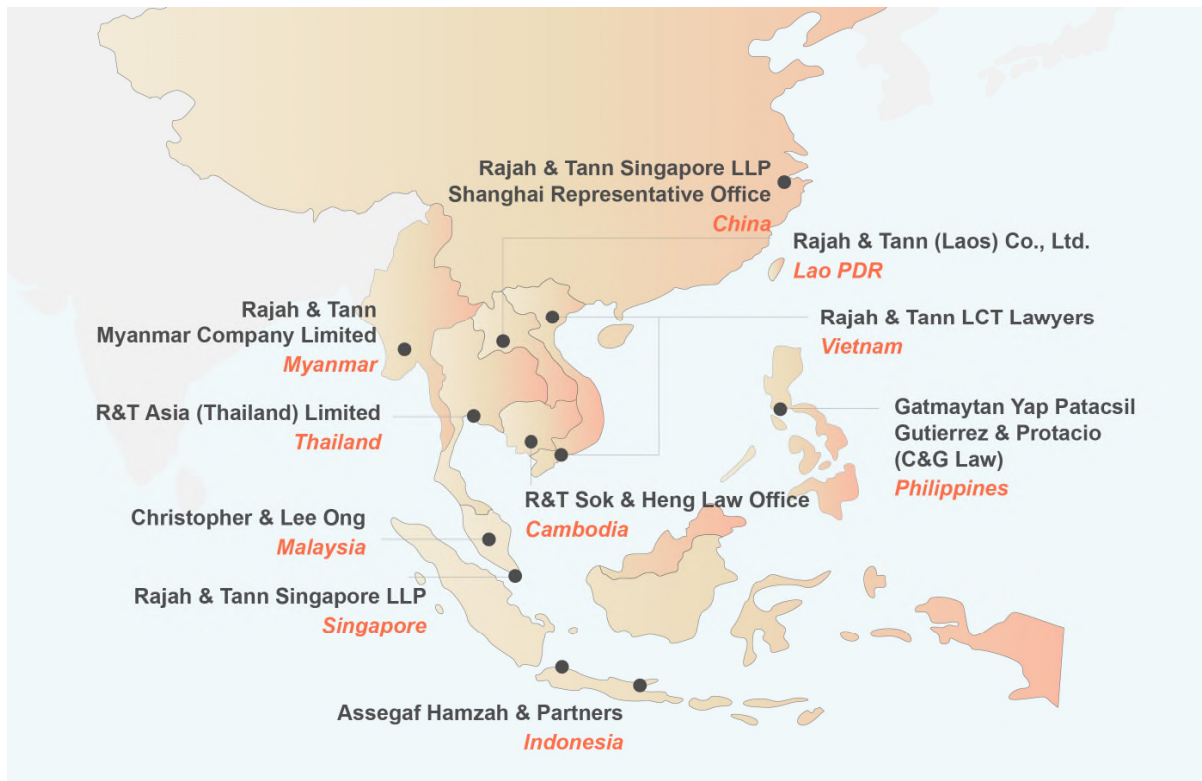
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