

HIGHLIGHTS OF KEY PROPOSED CHANGES

Key proposed changes relating to foreign companies

1. Streamline registration requirement by requiring a foreign company to appoint at least one authorised representative (currently referred to as agent¹) instead of at least two. This will reduce the regulatory burden for foreign companies and align our requirements with those of the United Kingdom (UK), Hong Kong, Australia and New Zealand. Safeguards will be put in place, e.g. there should be a replacement authorised representative before the existing sole authorised representative is permitted to resign and a foreign company must appoint a replacement authorised representative within 21 days of the death of the sole authorised representative.

2. Enhance disclosure requirement by requiring a foreign company to file with the Registrar similar components of its financial statements as those expected of a Singapore-incorporated company. Currently, a foreign company is required to file a copy of its balance sheet and accompanying documents, and a copy of the audited branch accounts of its operations in Singapore. We will align the components of the foreign company’s financial statements that must be filed with those for a Singapore-incorporated company. This means that the required documents will be expanded to include the income statement, statement of changes in equity, statement of cash flows, notes to the accounts, directors’ report and auditors’ report (where applicable). The public will have access to a more comprehensive picture of the financial position of such companies, comparable to what they can access for Singapore-incorporated companies. This will promote greater transparency and enable persons who deal with foreign companies to make better-informed business decisions. The requirement for audited branch accounts will be retained.

Current filing requirements	Proposed changes
Foreign company that is required to prepare/ file financial statements in its place of incorporation	
(i) File balance sheet and other documents required to be prepared by the law of the place of its incorporation. Prepared in accordance with the requirements of its place of incorporation.	(i) File <u>financial statements</u> prepared in accordance with the requirements of the place of its incorporation. Financial statements will include similar components as those expected of a Singapore-incorporated company.
(ii) File a statement showing the assets and liabilities arising out of the operations	(ii) No change.

¹ The designation “agent” will be changed to “authorised representative” to better reflect the accountability and responsibility expected of the person.

Current filing requirements	Proposed changes
in Singapore, as well as the profit and loss statements for its Singapore business (“Singapore Branch Accounts”), prepared as if it were a Singapore-incorporated company.	
Foreign company that is <u>not</u> required to prepare/ file financial statements in its place of incorporation	
(i) Prepare and file balance sheet as if it were a Singapore public company.	(i) Prepare and file its <u>financial statements</u> as if it were a Singapore public company.
(ii) Prepare and file Singapore Branch Accounts prepared as if it were a Singapore-incorporated company.	(ii) No change

3. Enhance accountability for financial information by introducing specific liability and penalty for failure by foreign companies to file financial statements and Singapore branch accounts. The new liability and penalty will be imposed on foreign companies, every director (or any person of a similar responsibility) and authorised representative. The penalties will be aligned with those for Singapore-incorporated companies. As the directors are the persons who control or govern the affairs of the company and the authorised representatives are responsible for compliance with the regulatory requirements in Singapore, they should be held accountable for the lodgement of financial statements. This will help to ensure that persons dealing with foreign companies will have access to current financial information on the companies. This will also align our requirements with those in UK, Hong Kong and Australia.

4. Introduce three additional grounds for the Registrar to strike off a foreign company. Currently, the Registrar may strike a foreign company off the register when he has reasonable cause to believe that it has ceased to carry on business in Singapore or that it is being used for an unlawful purpose. Three additional grounds for striking off a foreign company will be introduced as follows:

- (a) the sole authorised representative has given notice of resignation to the company and lodged a notice with the Registrar, but the foreign company has failed to respond or appoint another authorised representative within a period of 12 months;
- (b) an authorised representative of a foreign company has received no instructions from the company within 12 months of a request made by the authorised representative to determine if the foreign company intends to continue its registration in Singapore; or

- (c) where the foreign company does not appoint a replacement authorised representative for more than 6 months after the death of the sole authorised representative.

Key proposed changes relating to other aspects of the Companies Act (CA)

5. Narrow the scope of the deemed interest provision by excluding holding company and fellow subsidiaries from the definition of associates. Currently, if a person and his associates control 20% or more of a body corporate, the person is deemed to have an interest in any shares held by that body corporate. The current definition of an associate includes a holding company, fellow subsidiaries and subsidiaries. The definition will be amended to exclude a holding company and fellow subsidiaries from the definition of associates, for consistency with the manner in which corporate control is exercised.

6. Give the Registrar more powers to rectify errors in the register. Currently, the Registrar may rectify typographical or clerical errors contained in a document upon notification by the company. However, the company must apply to the Court to rectify other defects or errors. The Registrar will be given wider powers to rectify errors in filing that are unintended and do not prejudice any person, upon application by a company. Examples of such errors in filing include double filing of the same document, or filing of a document for the wrong company.

7. A new provision will also be introduced to allow the Registrar to rectify or update the register on his own initiative if the Registrar is satisfied that:

- (a) there is a defect or error in the particulars arising from any grammatical, typographical or similar mistake; or
- (b) there is evidence of a conflict between the particulars of a company or person with other information on the register or information obtained from credible third-party sources such as government agencies.

The proposed changes will lower costs for companies and improve the accuracy of ACRA's register.

8. Extend the record-keeping requirement to financial statements laid before an annual general meeting or sent to members. Currently, every company, its directors and managers are required to retain documents that are used to prepare financial statements for a minimum period of five years. The record keeping requirement will be extended to financial statements and other documents laid before an annual general meeting or sent to members. This is to better facilitate ACRA's verification, where necessary, of the accuracy of financial information that is filed with the Registrar.

9. Enhancement of the circumstances under which the Registrar may determine that a company is not carrying on business for the purposes of striking off. Currently, the Registrar has the power to strike off a company if he has reasonable cause to believe that the company

is not carrying on business or is not in operation (i.e. a “defunct” company). Going forward, subsidiary legislation may prescribe the following circumstances which the Registrar will take into consideration in determining whether a company is not carrying on business:

- (a) the company has failed to file its financial statements/annual return for a prescribed period;
- (b) the company has failed to respond to correspondence sent by the Registrar beyond a specified period;
- (c) the Registrar has received information from credible third-party sources such as government agencies that the company is not carrying on business and these agencies have requested ACRA to initiate striking-off action;
- (d) the company is left with no directors or locally resident directors, or the Registrar is unable to contact or locate the directors of the company.

The proposal modifies Recommendation 5.19² of the Report of the Steering Committee for the Review of the Companies Act by expanding the grounds for determining if a company is defunct.

10. Disqualify a person from acting as a director if three or more companies in which he is a director are struck off as a result of ACRA-initiated reviews within a period of five years. A provision will be introduced to disqualify a person from acting as a director, if three or more companies in which he is a director are struck off as a result of ACRA-initiated reviews within a period of five years. This amendment complements ACRA’s existing powers to strike-off a company on its own initiative and is intended to prompt company directors to wind up defunct companies on their own accord.

11. Introduce powers to allow the Registrar to debar directors and company secretaries. Currently, a person is automatically disqualified from acting as a director under section 155 if there are at least three court orders or judgements for non-compliance with the CA. To complement this, the Registrar will be given new powers to debar any director of a company /company secretary which has failed to lodge any documents at least three months after the prescribed deadlines under the Act. A debarred person will not be allowed to take on any new appointment as director/company secretary, although he may continue with existing appointments. The Registrar will lift the debarment when the default has been rectified or the person has ceased to be a director/company secretary of the company in default.

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² Under Recommendation 5.19, it was recommended that ACRA adopt the following criteria for identifying and reviewing “defunct” companies for striking off:

- (i) the last accounts lodged by that company with ACRA was more than 6 years ago; or
- (ii) the company has not filed any annual return for 6 years since its date of incorporation, and that company has not created any charge for the last 6 years.