

Revamping the Companies Act



By Dawn Chang

The last fundamental review of Singapore's Companies Act was conducted in 1999 by the Company Legislation and Regulatory Framework Committee. In line with reviews of local company laws in UK, Australia and Hong Kong that have been undertaken since then, the Minister for Finance recently announced that Singapore has formed a Steering Committee with the aim of following suit.

The review aims to re-craft and update the Companies Act in light of recent changes to company law in other jurisdictions as well as in the business arena. The Committee will also evaluate how to avoid 'hard-coding' too many regulatory rules in the body of the Companies Act so that procedures can be easily modified via changes to the subsidiary legislation instead.

The following three specific areas were targeted for review: 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

The fiduciary duties of a director of a company are currently found in a non-exhaustive statement in section 157 of the Companies Act, and are supplemented by common law principles. In contrast, the UK has statutorily encoded an exhaustive list of directors' duties in their Companies Act. While the UK approach has clarified the law on directors' duties which was previously largely dependent on the evolution of case law, this approach has been criticized as hampering flexibility. The Committee is thus evaluating whether directors' duties should be exhaustively set out in the Companies Act, or whether practice directions or guidance notes on such duties would provide sufficient clarity.

Removing restrictions on financial assistance

Financial assistance by a company for the acquisition of its own shares or those of its holding company is currently prohibited

under section 76 of the Companies Act. The rationale for this restriction is to protect creditors and shareholders against possible misuse and depletion of a company's assets. However, there have been many problems with section 76, both in its interpretation and application, and responses in countries that have removed or liberalized such prohibitions have been largely positive. The Committee is thus evaluating whether the section 76 prohibition should be removed.

Replacing the concept of the EPC with a 'small company' definition

The Committee is also considering introducing a 'small company' definition based on qualifying criteria such as total annual turnover, gross assets and number of employees so as to reduce the regulatory burden and simplify compliance for smaller companies. Currently, an EPC is defined to be a company with no more than 20 shareholders who are individuals. This means that large private companies in terms of assets or operations which fall under the EPC definition enjoy reduced regulatory and disclosure requirements such as exemption from filing accounts with the Accounting and Corporate Regulatory Authority. This results in stakeholders such as customers, creditors and employees not having ready access to the company's financial information. Introducing a 'small company' definition to replace the EPC concept would help to protect such stakeholders' interests, and align Singapore's company law with overseas legislation.

Costs and benefits review

The Committee will weigh the costs and benefits of undertaking the actions mentioned above before issuing a consultation paper on its recommendations for comments.

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