

Key Companies Act recommendations concerning directors



By Valerie Komaran

In June 2011, the Steering Committee set up by the Ministry of Finance in 2007 to review the Companies Act (Cap. 50) (CA) issued a report making recommendations for changes to the CA. The Steering Committee's recommendations cover six key areas:

- Directors,
- Shareholders' rights and meetings,
- Shares, Debentures, Capital Maintenance, Schemes, Compulsory Acquisitions and Amalgamations,
- Accounts and Audit,
- General Company Administration, and
- Registration of Charges.

This article focuses on certain recommendations for changes to the CA regarding company directors.

Certain directors' duties extend to the CEO

Chief Operating Officers (CEOs) who are not directors are currently not subject to common law and statutory directors' duties. The recommendation that directors' disclosure obligations and duties to act honestly and exercise reasonable diligence should extend to the CEO ensures that the CEO is subject to similar duties that apply to directors. It was however, considered too onerous and costly to extend these duties to all officers or key management officers.

Termination payments to directors

Shareholder approval is currently required for any termination payment made to a director for loss of office or retirement as an officer of the company. The recommendation is to replace the blanket requirement for shareholder approval with a requirement to only disclose termination payments to shareholders provided this does not exceed the director's base salary received in the last three years before termination. Shareholder approval will still be required for termination payments exceeding the three year base salary threshold.

Directors' indemnities against liability to third parties and potential liability

Currently any provision which indemnifies a director against any lia-

bility for negligence, default, breach of duty or breach of trust in relation to the company is void. Companies may however indemnify directors against any liability incurred in defending civil or criminal proceedings where the court finds in the director's favour or where the court decides that the director should be excused from liability. The recommendation is to clarify that companies may indemnify directors for: (i) claims brought by third parties; and (ii) for potential liability (not yet incurred) in defending civil or criminal proceedings where the court finds in the director's favour or decides that the director should be excused from liability.

Application to court by disqualified directors to act as directors

Currently a director who is convicted (in Singapore or elsewhere) of an offence involving fraud or dishonesty that is punishable with imprisonment for three months or more is automatically disqualified from acting as a director and is not entitled to apply to court for leave to act as a director. The recommendation is to allow automatically disqualified directors to apply to court for leave to act as a director. The Steering Committee also considered that clarification on offences involving fraud or dishonesty would be useful.

Removal of the age limit for directors

Shareholders' approval is currently required for the appointment or re-appointment of any person above the age of 70 as a director of a public company. The recommendation to remove the age limit for directors recognises that a person's ability to act as a director does not depend on his age.

Conclusion

The Steering Committee's recommendations seek to ensure that the Companies Act remains relevant in view of business advancements and legal developments in foreign jurisdictions. It will be interesting to see how, and the extent to which, these recommendations will translate into actual legislation.

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