Annex D

ACRA'S PROPOSED AMENDMENTS TO THE COMPANIES ACT AND SUBSIDIARY LEGISLATION

	Statutory provision	**Current requirement**	**Proposed amendment**	**Reason for amendment/ Consultation questions**
A.	Streamline and clarify financial reporting requirements for companies and foreign companies			
1.	Section 201(12)	The financial statements or consolidated financial statements of a company need not comply with any requirement of the Accounting Standards[1], if the company has obtained the approval of the Registrar to such non-compliance (section 201(12)).	To grant the Registrar the power to exempt a company from compliance with any or *all* of the requirements in the Accounting Standards and require the company to comply with other accounting standards.	The proposed amendment will provide clarity on the scope of the Registrar's and Minister's powers in relation to exemptions from any or all of the requirements of the Accounting Standards and substitution with other accounting standards.
2.	Section 201(15)	The Minister may, by order published in the Gazette, in respect of companies of a specified class or	To grant the Minister the power to exempt by order published in the Gazette a specified class or description of companies from compliance of the financial statements or consolidated financial statements with *any or* all of the requirements of	

[1] The Accounting Standards are prescribed by the Accounting Standards Council, and comprise Singapore Financial Reporting Standards (International), Singapore Financial Reporting Standards ("SFRS"), and SFRS for Small Entities.

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		description, substitute other accounting standards for the Accounting Standards (section 201(15)).	the Accounting Standards and require the companies of the specified class or description to comply with other accounting standards.	
3.	Section 202(2)	The financial statements of a company shall be accompanied by a directors' statement (section 201(16)). A directors' statement must contain disclosures on directors' interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company (Twelfth Schedule).	[*Note: This proposal does not involve legislative amendments.*] Registrar to make a class exemption order under section 202(2) to relieve public non-listed companies and private companies from disclosing directors' interests in shares in, or debentures of, the company and other body corporate, where: (a) all shareholder(s) of the company give consent for the non-disclosure in writing; and (b) all shareholder(s)' consents are filed with the Registrar, as part of the annual return filing.	This proposal will level the playing field between public non-listed companies and private companies that apply to the Registrar under section 202(1) to be exempted from disclosing directors' interests in shares in, or debentures of, the company and other body corporate, and those that do not. Making an order under section 202(2) provides flexibility and ease for change, while providing the necessary transparency to the public. For the avoidance of doubt, the Registrar will continue to be prepared to consider case-by-case exemption applications made under section 202(1). However, the granting of exemption for circumstances that did not meet the two safeguard measures mentioned above is expected to be

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		The directors of a company may apply to the Registrar in writing for an order relieving them from any requirement of the Companies Act (“CA”) relating to the form and content of the directors’ statement (section 202(1)). The Registrar may make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any specified requirements of the CA relating to the form and content of the directors’ statement (section 202(2)).		rare. This is because shareholders will need such information for their investment decision-making. **<u>Consultation question</u>** We seek comments on the types of companies to be covered under the proposed class exemption order and the proposed safeguards of requiring shareholder(s)’ consent and filing of such consent.

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4.	Section 373(2)	Foreign companies required to lodge the following financial statements with the Registrar (sections 373(1)-(2)): (a) **If the foreign company's jurisdiction of incorporation requires the company to prepare financial statements in accordance with any applicable accounting standards which are similar to the Accounting Standards or which are acceptable to the Registrar[2]**: those	To streamline the financial reporting requirement for foreign companies by requiring foreign companies to lodge the following instead: (a) **If the foreign company prepares financial statements in accordance with accounting standards that are substantially similar[3] to the Accounting Standards**: those financial statements. (b) **If the foreign company does not prepare financial statements in accordance with accounting standards that are substantially similar to the Accounting Standards, but prepares financial statements in accordance with the applicable accounting standards in the foreign company's jurisdiction of incorporation**: those financial statements. The extent of audit should also follow the laws of the foreign company's country of incorporation. (c) **If the foreign company does not fall under (a) or (b)**: unaudited summary financial statements as prescribed by ACRA[4].	The proposed amendment will reduce compliance costs for foreign companies that operate in jurisdictions that uses accounting standards that are not comparable to Singapore's, or are not required to prepare financial statements in accordance with any accounting standards, as the foreign companies will not be required to prepare two different sets of financial statements.

[2] Practice Direction No. 6 of 2015 states that US Generally Accepted Accounting Principles are accounting standards that are acceptable to the Registrar.
[3] The term "substantially similar" will be defined via Practice Direction.
[4] The foreign company's summary financial statements shall comprise at minimum:
(1) statement of financial position, statement of comprehensive income, and significant accounting policies (including basis of measurement) prepared based on the accounting records kept in compliance with the law of the foreign company's incorporation or formation; and

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		financial statements. (b) **In any other case (i.e. where the foreign company does not fall under (a))**: financial statements prepared as if the foreign company were a public company incorporated under the CA.		
5.	Section 373(7)	Foreign companies shall lodge with the Registrar the audited accounts of its Singapore branch (section 373(7)), *i.e.*: (a) a audited statement	To allow foreign companies with insignificant operations in Singapore to lodge with the Registrar unaudited branch accounts, instead of an audited statements of assets, liabilities and profit and loss in respect of the Singapore branch, *i.e.*: (a) an *unaudited* statement showing its assets used in and liabilities arising out of its	The proposed amendment will reduce compliance costs for foreign companies with insignificant operations in Singapore, and addresses feedback that the preparation and audit of financial statements for a foreign company's insignificant operations in Singapore may

(2) statement by directors of the foreign company (one of directors who signed the statement must be registered with the Registrar). The statement by directors shall include: whether in the opinion of the directors (i) the unaudited management accounts give a true and fair view of the financial position as at year-end and the financial performance for the financial year covered by the financial statements, (ii) at the date of the statement, there are reasonable grounds to believe the foreign company will be able to pay its debts as and when they fall due; and the list of directors of the foreign company in office at the date of the statement.

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		showing its assets used in and liabilities arising out of its operations in Singapore as at the date to which its balance-sheet was made up; (b) a audited profit and loss account which, in so far as is practicable, complies with the requirements of the Accounting Standards and which gives a true and fair view of the profit or loss arising out of the company's operation in Singapore for the last preceding financial year of the company; and	operations in Singapore as at the date to which its balance-sheet was made up; (b) an *unaudited* profit and loss account arising out of the company's operation in Singapore for the last preceding financial year of the company; (c) significant accounting policies (including basis of measurement) that are used in preparing the unaudited balance sheet and profit and loss account that comply with the Accounting Standards; and (d) a statement by the company's authorised representative(s) that the unaudited balance sheet and profit and loss account give a true and fair view of the financial position and performance, and the operations in Singapore is able to pay its debts as and when it falls due. "Insignificant operations in Singapore" means that <u>none</u> of the following balances in the unaudited balance sheet and profit and loss account arising out of the foreign company's operations in Singapore exceeds S$5 million: (i) total revenue;	involve expense unduly out of proportion to its value. **<u>Consultation question</u>** We seek comments on whether there are any concerns with allowing foreign companies with insignificant operations in Singapore to prepare a reduced set of financial statements, and file unaudited branch accounts for public use with a statement by their authorised representatives. **<u>Consultation question</u>** We seek comments on whether the proposed definition of "insignificant operations in Singapore" is appropriate.

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		(c) a statement of the name of the auditor who audited the documents referred to in paragraphs (a) and (b).	(ii) total expenses; (iii) total assets; and (iv) total liabilities.	
B.	Abolish the statutory meeting and the statutory report for public companies limited by shares			
1.	Section 174	A public company that is a limited company and has a share capital is required to hold a statutory meeting within a period of not less than one month and not more than 3 months after the date at which it is entitled to commence business (section 174(1)). The directors of the said company is required to forward a statutory report to the members at least 7 days before the day on which the statutory	To remove the requirements for public limited companies with a share capital to convene the statutory meeting and to prepare the statutory report.	The proposed amendment will reduce compliance burden on public limited companies limited by shares. The CA already provides other means to convene meetings and for members to obtain the same information in the statutory report. Equivalent requirements in Australia, Hong Kong, New Zealand and the United Kingdom have been abolished.

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		meeting is held (section 174(2)).		
C.	Rights of holders of options or convertible securities in a compulsory acquisition of shares under section 215			
1.	Section 215(1C)	Under section 215, an offeror can serve a notice of compulsory acquisition on dissenting shareholders within two months after 90% of the shareholders approve the offer to acquire all the shares of the company. Presently, computation of the 90% threshold excludes new shares issued after the date of the offer (section 215(1C)). This provides certainty to the offeror who would otherwise face a moving 90% target if new shares that were	To allow holders of options or convertible securities issued on or before the date of the offer who exercise their conversion rights prior to the date of the notice of compulsory acquisition to express their approval or disapproval of the offer by having their shares count towards the 90% threshold.	The current approach prejudices the rights of holders of options or convertible securities as potential shareholders of the company that is the target of the offer. The proposed amendment seeks to respect their rights as potential shareholders by allowing them to exercise conversion rights and express their approval or disapproval of the offer, while preserving certainty to the offeror.

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		issued after the date of offer are included[5].		
D.	Registrar's power to update the register on any change to the appointments of directors and secretaries			
1.	Sections 173 and 173A	The Registrar keeps a register of the company's directors and a register of the company's secretaries (sections 173(1)(a) and 173(1)(c)). Companies are required to notify the Registrar of any change in the appointment of any director or secretary[6] (section 173A(1)(b)(i)).	To grant the Registrar the power to update the registers on changes in the appointments of directors and secretaries at his discretion.	The proposed amendment will enhance the accuracy of information maintained in these registers. The current CA does not provide that (a) the Registrar can amend these registers upon being notified of changes in appointments; or (b) the Registrar has the discretion not to amend the registers on changes in appointments e.g. after considering conflicting information from other government agencies.
2.	Sections 173A(1)(b)(i) and 173E(1)	Only directors who are disqualified to act due to bankruptcy or	To require all directors disqualified under the CA[7] to notify their companies of their disqualification; and allow all disqualified directors to notify the	The proposed amendment ensures a consistent approach towards all

[5] See Recommendation 3.52 and pages 3-45, paragraphs 183 to 185 of *Report of the Steering Committee for Review of the Companies Act* (June 2011).

[6] A change in the appointment of a director would include the case where a director ceases to be qualified to act as a director by virtue of disqualification under sections 148; 149; 149A; 154; 155; 155A; or 155C.

[7] Besides disqualification due to bankruptcy (section 148) or persistent default in relation to delivery of documents to the Registrar (section 155), a director may be disqualified under the CA due to insolvency (section 149); national security or interest grounds (section 149A); conviction of certain offences (section 154); striking-off of

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		persistent default in relation to delivery of documents to the Registrar must notify their companies of their disqualification, and may notify the Registrar themselves if they have reasonable cause to believe that their company will not do so (section 173E(1)).	Registrar if they have reasonable cause to believe that their companies would not do so.	disqqualified directors, regardless of disqualification type.
E.	Striking off and restoration of companies			
1.	Sections 344; 344A; 344E and 344F.	The Registrar may strike off a company's name from the register after a certain duration if no one shows sufficient cause as to why the company's name should not be struck off, and publish a notice in the Gazette stating that the company's name has	To provide that a company is legally dissolved/restored on the date that the Registrar strikes off/restore the company's name from/to the register as indicated in ACRA's BizFile^{+} system.	The proposed amendment will remove ambiguity over a company's legal status after the Registrar has struck off/restored the company's name from the register and before the notice of striking-off/restoration is published.

three companies of which he or she is a director of within a 5-year period (section 155A); disqualification under the Limited Liability Partnerships Act (section 155C); and disqualification under the Variable Capital Companies Act (section 155D).

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		been struck off the register[8]. The company is considered dissolved only on the day that this notice is published. A similar process applies for restoration of a struck-off company to the register.		
F.	Criteria for re-domiciliation			
1.	Regulation 7 of the Companies (Transfer of Registration) Regulations 2017	A foreign corporate entity must satisfy any two of the following criteria before it can re-domicile to Singapore:	To remove the criterion of more than 50 employees.	The current criteria was introduced to restrict re-domiciliations to foreign corporate entities that are likely to make a positive commercial contribution to Singapore[9]. The proposed amendment aligns with Recommendation 2.10 of the Report of the Companies Act

[8] The chronological events leading to the Registrar striking off a company's name from the register is as follows:

(a) The Registrar sends a letter to the company and its directors, secretaries and members to state that they are to show cause within 30 days as to why the company's name should not be struck off the register, and to inform them that a notice would otherwise be published in the *Gazette* with a view to striking the company's name off the register (the "first *Gazette* notice").

(b) If the Registrar does not receive an answer after 30 days, the Registrar may publish the first *Gazette* notice. Any person will then have a 60-day window to show cause as to why the company's name should not be struck off the register.

(c) If no person shows sufficient cause after 60 days, the Registrar may strike the company's name off the register. This day will be reflected as the striking-off date in ACRA's BizFile+ system.

[9] See para 13 of *Summary of feedback and MOF/ACRA's responses on proposed amendments to introduce an inward re-domiciliation regime in Singapore* and pages 1 and 2 of *Annex 1 – Key Clauses in the draft Companies (Amendment) Bill and consultation questions*, both dated 24 Feb 2017.

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		(a) the value of its total assets exceeds S$10 million; (b) its annual revenue exceeds S$10 million; (c) it has more than 50 employees. The above criteria mirror the criteria of small company for audit exemption under the CA.		Working Group ("CAWG") to remove the criterion of number of employees from the small company audit exemption criteria[10]. The CAWG was of the view that the number of employees is not a good determinant of whether a company has public interest, because although employees could be considered one of the stakeholders in a company, companies may outsource work and large business operations may be automated with few employees. It is also difficult to determine or verify the number of employees as this is not required to be reported in a company's financial statements and are accordingly not audited.

[10] Presently, under the CA, "small companies" are exempted from the CA's requirement to audit financial statements. The Thirteenth Schedule to the CA sets out the criteria for "small company" whereby a company is small if it satisfies any two of the criteria below for each of the two financial years immediately preceding the financial year that the financial statement relates to:

(a) the revenue of the company for each financial year does not exceed $10 million;
(b) the value of the company's total assets at the end of each financial year does not exceed $10 million;
(c) the company has at the end of each financial year not more than 50 employees.

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				By extension of CAWG's reasoning, the employee criterion is similarly not a good proxy for the likelihood of a foreign corporate entity making a positive commercial contribution to Singapore. A foreign corporate entity may have few employees but strong potential to positively contribute to Singapore's economy (e.g. by moving intellectual property and financial assets to and generating substantial revenue from Singapore). In addition, it is operationally difficult to determine or verify the number of employees that a foreign corporate entity has. The proposed amendment will ensure congruency in the regime[11].

[11] If a foreign corporate entity that meets the revised minimum size criteria re-domicile to Singapore, it will apply the same financial thresholds to determine whether it qualifies for the small company audit exemption.