

Proposed amendments to the Companies Act



By Claire Gomez

The Accounting and Regulatory Authority and the Attorney-General's Chambers in Singapore conducted a joint consultation exercise to seek the public's feedback on several proposed changes to the *Companies Act* (Cap. 50) (CA). The consultation exercise ended on 10 December 2010.

A supplementary report (2010 Report) was issued for the consultation exercise as a follow-up to the *Report on the Proposed Instruments (Formalities) Bill* published in October 2001 (2001 Report). The 2001 Report introduced proposals seeking to simplify the execution of instruments and clarify the law on execution of instruments by agents.

In summary, the 2010 Report proposes, inter alia, the following amendments to the CA:

Foreign entities to be governed by separate standalone legislation

Currently, foreign companies incorporated outside Singapore are governed by the CA, and referred to therein as "corporations". The 2010 Report proposes exporting these provisions relating to foreign companies to a new legislation. The CA would therefore govern only Singapore companies.

A Singapore company need not have a common seal

It may be optional for a company to have a common seal. Consequentially, for example, it may not be required to issue a share certificate under the common seal of the company.

A Singapore company need not affix its common seal to a document for it to be validly executed as a deed

The abolition of the use of the common seal on deeds was first proposed in the 2001 Report. The 2010 Report proposes to state that alternative modes of execution are equally acceptable. If a document is executed by a company by:

- (a) one director and the company secretary;
- (b) two directors; or
- (c) the director in the presence of a witness who attests the signature,

that executed document has the same effect as if executed under the common seal of the company. This applies even if the company has a common seal.

The requirement for delivery remains - a deed will only be validly executed as a deed upon delivery of the deed.

Execution of documents by foreign companies to be governed by the laws of incorporation

The 2010 Report seeks to codify the common law position that a foreign company may execute documents in the manner that is binding on it in accordance with the laws in the country in which the foreign company was incorporated.

A company may authorise an agent or attorney to execute deeds on its behalf

The current provisions in the CA allow a company to authorise an agent to execute deeds on its behalf, under the agent's seal or company's official seal. The proposed amendment clarifies that the duly authorised agent or attorney need not affix a seal to the deed for the deed to be effective.

Deeds to have a 'face value requirement'

First proposed in the 2001 Report, the 2010 Report reiterates that clear indication should be required within a document that it is intended to be a deed. This 'face value requirement', however, is not satisfied merely because the deed is executed under seal.

Conclusion

The proposed amendments under the 2010 Report are welcome as they seek to abolish the rather archaic concept of the common seal. While the common seal was imported into Singapore law from the UK, the UK has since abolished the need for its use, stating that "the process of sealing is no longer a meaningful formality to individuals". The proposed amendments nonetheless seek to retain a level of security, by requiring at least two individuals to be present when executing a deed.

ATMD Bird & Bird LLP

Corporate & Commercial Group

2 Shenton Way, #18-01 SGX Centre 1, Singapore

Tel: (65) 6428 9415

Fax: (65) 6223 8762

Email: claire.gomez@twobirds.com

www.twobirds.com