WONG & PARTNERS
MEMBER FIRM OF BAKER & MCKENZIE INTERNATIONAL

Client Alert

April 2016

Key changes under the revised Companies Bill

Updates

The new Companies Bill 2015 ("**Bill**"), which will replace the current Companies Act 1965 ("**Act**") as a whole, was passed in Dewan Rakyat (Lower House of Parliament) on 4 April 2016 and is anticipated to be passed by Dewan Negara (Upper House of Parliament) in its next sitting. It is anticipated that the Bill will come into force by the end of 2016. It is also anticipated that in the coming months, the Companies Commission of Malaysia ("**CCM**") will release the new regulations under the Companies Bill for public consultation.

The provisions relating to interest schemes (e.g. time-share schemes) under the Act will be replaced by provisions under the new Interest Schemes Bill 2015, which was also passed in Dewan Rakyat on 4 April 2016.

Our previous alert in February 2014 below, highlights the key changes between the Act and the Bill including the:

- introduction of unlimited capacity for companies;
- introduction of single shareholder and director companies;
- abolishment of mandatory Annual General Meetings for private companies;
- abolishment of the unanimity rule for written shareholder resolutions for private companies
- abolishment of the par value regime;
- new financial assistance whitewash;
- alternative reduction of capital and share buy-back procedures;
- increased oversight over directors' remuneration;
- relaxation of restrictions against indemnification of directors; and
- introduction of alternative corporate rescue mechanisms such as the corporate voluntary arrangement and judicial management schemes.

Click HERE to view our previous client alert in February 2014.

This current alert highlights several other key features of the Bill and some refinements to the final version of the Bill against the first version released for public consultation in 2013.

Key Changes under the Bill

Dividends

Currently, a company may only distribute dividends to its shareholders out of profits. While this position does not change under the Bill, the Bill provides for further accountability by the directors of a company by requiring the directors to satisfy themselves that the company will be solvent immediately after the dividend is paid (i.e. be able to pay its debts as and when the debts become due within 12 months after the distribution is made).

Under the new regime, companies are also empowered to clawback from shareholders, dividends which were not properly paid, unless the shareholder has received the dividend in good faith and is not aware that the company did not satisfy the solvency test.

Business Review Section

Currently, directors of a company are required to prepare an Annual Directors' Report regarding the affairs of the company. This requirement is also in the Bill and is enhanced by the introduction of more comprehensive and robust disclosure requirements including a new business review section.

The business review section may include information relating to the principal risks and uncertainties facing the company, the performance and position of the company's business, key performance indicators. The business review may also include information on the company's policies on environmental matters and social and community issues, which is in line with the recent changes to the annual report content requirements for Malaysian public listed companies to encourage reporting of wider social economic and sustainability matters.

While the business review section is expressed as being optional under the Bill, we understand that the CCM views this as a positive step and is likely to introduce measures to encourage such disclosure.

Resignation of Auditors

Currently, an auditor is only permitted to resign once a new auditor has been appointment to replace the outgoing auditor. This gives rise to a potential issue that an auditor who wishes to resign, for example on professional ethical grounds, are compelled to continue acting as auditors until the directors convene a general meeting to appoint a new auditor.

Under the Bill, this potential issue will no longer arise as the resignation of an auditor will take effect 21 days after depositing a written notice at the company's office, regardless of whether a new auditor has been appointed.

In addition, in recognition of the importance of the role of an auditor in ensuring good corporate governance, the Bill now grants an auditor the right to require directors of a public company to convene a general meeting so that the auditor may explain the circumstances connected with its resignation. An auditor may also require the directors to circulate a written statement to the shareholders, prior to the general meeting, setting out the circumstances connected with its resignation. This is a welcomed move to promote transparency and good corporate governance.

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