

Client Alert

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Update: Companies Act amendments simplifying AGM timelines, extending AGM exemptions in force 31 August 2018

- Aligns Annual General Meeting (AGM) timeline with financial year end (FYE)
- Introduces new AGM exemptions and shareholder safeguard for private companies

The Accounting and Corporate Regulatory Authority (ACRA) has announced that amendments to the Companies Act, Chapter 50 of Singapore (CA) will take effect on 31 August 2018 to:

- align timelines for holding AGMs and the filing of annual returns (ARs) with the company's FYE; and
- simplify the process for exempting a private company from holding its AGM.

Directors should pay particular attention to the forthcoming changes, summarised below, to ensure compliance with the new obligations, as well as to properly qualify for the new exemption.

Aligning AGM and AR timelines

Currently, the stepped approach in the CA does not require companies to determine a fixed year end to their financial year. Instead the timelines in sections 175 (on AGMs), 197 (on ARs) and 201 (on financial statements) of the CA are stepped up from the date of the last AGM.

The amended sections now fix the due dates of the AGM and the filing of AR based on the date of a company's FYE.

The following table compares the current pre-amendment position with the position that will apply for most private companies after 31 August 2018:

Current stepped timelines	New fixed dates
FYE uncertain: can fall on any date between 0 to 6 months before AGM due date	Companies allowed to fix FYE date, by either: <ul style="list-style-type: none">• notifying ACRA of their

Current stepped timelines	New fixed dates
	<p>preferred FYE date; or</p> <ul style="list-style-type: none"> indicating FYE in its AR previously filed with ACRA.
<p>AGM due date can fall on any date:</p> <ul style="list-style-type: none"> first AGM to be held within 18 months of incorporation; and subsequent AGMs at yearly intervals of not more than 15 months 	All AGMs to be held within 6 months after FYE, unless it is a private company to which AGM exemptions apply.
Financial statements to be made up to a date to be determined by AGM due date.	Financial statements to be made up within 6 months after FYE
AR filing due date based on AGM due date plus 30 days.	AR filing due date is 7 months after FYE.

Note: The time periods above differ for listed companies and for those companies, whether listed on a securities exchange or not, which keep a branch register outside of Singapore.

Preparing for the change

All companies should note the new significance of the FYE date:

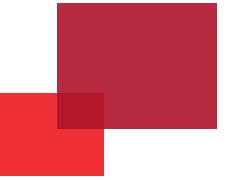
- the FYE date will be the date from which time starts to run for compliance with statutory obligations; and
- any change to FYE will affect the due dates for holding AGMs, filing ARs and preparing financial statements, which will impact shareholders.

Accordingly, companies with FYEs ending on or after 31 August 2018 should notify ACRA of the new FYE date before the effective date of the new laws. ACRA will accept that new FYE date as the statutory FYE. Companies may change their FYE after 31 August 2018, provided certain conditions are met.

Companies which take the step of notifying ACRA of their FYE dates will avoid application of the deeming provisions under the new section 198 of the CA. The effects of the deeming provisions are summarised below:

Notification measures	Example of application of section 198
<p><u>Existing company</u> which intends to file its AR with ACRA before 31 August 2018 has the option of:</p> <ul style="list-style-type: none"> • notifying ACRA by indicating on BizFile+ a preferred date; or • stating its FYE in the AR. <p>ACRA will take this date as its FYE going forward, falling on the anniversary of this indicated date.</p>	<p>Where a company has indicated in its AR previously filed with ACRA that its FYE is 31 March 2018, after new law comes into effect, the company's next FYE will be deemed by the new law to be 31 March 2019.</p>
<p><u>Recently-incorporated company</u> which will not have lodged its AR before 31 August 2018 has the option of:</p> <ul style="list-style-type: none"> • notifying ACRA of a preferred date of its FYE; or • allowing ACRA to deem the company's first FYE to be the anniversary of the incorporation date in 2019. 	<p>A company incorporated on 1 January 2018 and has not yet lodged any AR with ACRA will have the company's first FYE deemed as 1 January 2019 after the new law comes into effect.</p>
<p><u>Company to be incorporated after 31 August 2018</u> must furnish ACRA with its FYE upon incorporation. The maximum period allowed will be 18 months from the date of incorporation.</p>	<p>A company incorporated on 1 September 2018 will be taken to have its first financial year to start on the date of incorporation and to end on such date as earlier furnished to ACRA, and each subsequent financial year ends on the last day of the period of 12 months.</p>

A company's financial period starting on or after 31 Aug 2018 by default will be taken to be a period of 12 months for each financial period. Companies with an unusual financial year period (e.g. 52 weeks) should



notify ACRA via the notification of change of FYE if they want to avoid applying for approval to change FYE every year.

After 31 August 2018, a company will require ACRA's approval for any of the following changes to its FYE:

- if the change in FYE will result in a financial period longer than 18 months; or
- if the FYE was changed within the last 5 years (not including any changes made prior to 31 August 2018).

Exempting a private company from holding AGM

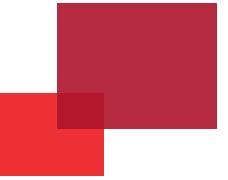
To reduce the compliance burden for private companies, the new section 175A introduces a separate and new avenue for exemption from holding AGM. To qualify for this new exemption, the private company has to send its financial statements to shareholders within 5 months after the FYE.

The existing provisions in the CA relating to the dispensation of holding AGMs require a unanimous resolution passed by all shareholders who are entitled to vote. ACRA expects this new exemption will save private companies from having to take the additional step of passing such a resolution.

Please note that this exemption is subject to new shareholder safeguards. Any shareholder may request for the AGM to be held, and this right is not limited to shareholders holding voting rights of 5% or greater. Such a shareholder request must be made not later than 14 days before the statutory deadline, which is the last day of the sixth month after the company's FYE. Directors must hold the AGM initiated by such a shareholder request within 6 months after FYE.

Companies intending to make use of this new exemption should also note that these existing safeguards continue to apply:

- within 14 days after the financial statements are sent out by the company, the company's auditors will have the right to request a general meeting for the purpose of laying the financial statements before the company; and
- two or more shareholders holding at least 10% of the issued shares of the company can request for a general meeting.



ACRA enforcement for director's non-compliance

ACRA has emphasised the importance of directors complying with the statutory requirements on holding of AGM and filing of AR. Both provide a forum for shareholders to be informed of the financial position of the company and to engage the directors of the company on the matter. Filing ARs on time enables timely public disclosure of key information such as the health and status of the company.

ACRA has organised the Directors Compliance Programme (DCP) for directors who fail to comply with the AR filing requirements. ACRA accepts that first time offenders may be unaware of their statutory obligations and requirements, and ACRA allows directors to attend the DCP in lieu of prosecuting them.

However, ACRA takes a serious view of offenders who persistently fail to hold the AGM and file the AR on time. [ACRA has recently announced](#) it has prosecuted a company director for multiple offences under sections 175 and 197 of the CA for failing to hold the AGM, and failing to file ARs in relation to 19 companies. This director had been convicted in 2014 for similar offences and compounded 60 similar offences. A further 78 charges were taken into consideration for the purpose of sentencing. The company director was convicted and fined a record SGD57,000 for 38 charges (SGD1,500 per charge) in the State Courts.

ACRA will also publish the status of disqualified directors. From 25 July 2018, ACRA will display the disqualified status for a director in the business profile and directors profile report of the company.

Members of the public can purchase the business profile and directors profile report from ACRA's online business registration and filing portal for a small fee. ACRA intends this measure to help investors and interested stakeholders conduct due diligence on a company.

If you have any questions on the above changes or require more detailed advice, please feel free to contact us.

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