

Common Seals – Heading to Extinction

On 28 February 2017, the Companies (Amendment) Bill (the "**Bill**") was tabled before Parliament and passed on 10 March 2017 (but has yet to come into force). Among many other interesting amendments, there are amendments to **abolish the need for companies to use their common seals** which this note seeks to address. The other amendments are addressed separately in our other updates.

Execution formalities relating to deeds

The current law

Currently, section 41(3) of the Companies Act provides that contracts which if made between private persons would by law be required to be made in writing under seal may be executed by a corporation (which definition in the Companies Act includes a Singapore-incorporated company) in writing under its common seal. Read with the common law, the formal execution of a deed by a company requires the use of its common seal, which is in practice, a metal seal impressed onto the document being executed.

Instruments appointing attorneys to be made under common seal

Alternatively, under section 41(5) of the Companies Act, a corporation may enter into a deed by having an attorney execute the same on its behalf under such attorney's personal seal. For Singapore-incorporated companies, the instrument giving the authority to an attorney must itself be executed under the common seal of such corporation.

Apart from banks, it is not really common for Singapore-incorporated companies to have standing powers of attorney authorising certain individuals to execute documents under seal on behalf of companies, and so there is typically a need to use the common seal.

Reforms brought about by the Bill

The new section 41B removes the requirement for a company to execute a deed by way of common seal

The Bill seeks to introduce the new sections 41B and 41C which apply to Singapore-incorporated companies (and not corporations incorporated outside of Singapore) and removes the formal execution requirement for affixation of a common seal on a document to be executed as a deed by the company. This amendment is related to the elimination of the requirement of companies to have a common seal under section 19(5) of the Companies Act.

Section 41B provides that a company may execute a deed without affixation of a common seal but may do so by way of signature:

- (a) on behalf of the company by a director of the company and a secretary of the company;**
- (b) on behalf of the company by at least 2 directors of the company; or**
- (c) on behalf of the company by a director of the company in the presence of a witness who attests the signature,**

and a document executed in accordance with this manner would have the same effect as a document executed under the common seal of the company.

The new section 41C removes the requirement for a company to execute documents required under law to be executed under common seal

Section 41C extends the effect of section 41B by providing *inter alia*, that where any written law or rule of law requires a document to be executed under the common seal of a company, that requirement of execution by way of common seal is satisfied if the document is signed in the manner set out in the previous paragraph.

There are also amendments to other sections of the Companies Act to reflect that it is no longer mandatory for a Singapore-incorporated company to have a common seal.

How does this affect you?

General

Reforms would result in companies no longer having to adopt or maintain common seals

From the perspective of a company incorporated in Singapore, the reforms would remove the requirement to bring its common seal along to execute deeds (which may be outside of Singapore). A company wishing to enter into a deed may do so by having the authorised person(s) specified in section 41B(1) execute the agreement in the manner specified thereunder. If the intended signing is outside of Singapore, there would no longer be any need to bring the common seal to the place of signing, nor create a separate common seal for use outside of Singapore under section 41(7). This new provision is not subject to the constitution of the company.

However, it is to be noted that to invoke these new provisions, the signing has to include at least 1 director of the company.

It is also to be noted that while the new sections 41A, 41B and 41C deal with the formalities of execution of deeds by companies, they do not address the requirement for delivery of deeds in order for them to take effect. As the Summary of Feedback and Ministry of Finance ("**MOF**") /Accounting and Corporate Regulatory Authority ("**ACRA**")'s Responses state, "the objective of the common seal reform is to allow companies and LLPs an alternative to affixing a seal and not to make any changes to existing law on delivery of deeds".

Resolutions

Effect of Resolutions

With the removal of the common seal requirements, a company need not (and preferably, should not, unless it specifically wants to use its common seal) authorise the affixation of its common seal on documents it intends to execute in its resolutions.

When granting credit facilities, banks may give to borrowers the banks' standard form resolutions which commonly contain the wording "***That the Common Seal of the Company be affixed in accordance with the [constitution]...***". For the foreseeable future, most borrowers' constitutions (articles of association) will still retain the current wording requiring the common seal to be affixed and countersigned by 2 directors or 1 director and the company secretary. If a company passes such standard form resolutions at the request of a bank, this may lead to uncertainty as to whether there is a continued need to use the common seal for signing of deeds by the company in favour of the bank, since the use of the common seal appears to be the express requirement of the bank, notwithstanding these new legislative amendments.

Therefore, it is suggested that banks should amend the standard form resolutions to cater for these legislative amendments.

Foreign corporations

The position in respect of execution of documents for foreign corporations remain unchanged

From the perspective of a foreign corporation, the formal requirements as regards execution of a deed or other document requiring execution under common seal is not as clear. Despite feedback to have separate provisions for execution of deeds for foreign corporations in the Bill, the MOF and ACRA ultimately decided to not incorporate separate provisions for foreign



corporations. In that regard, as far as foreign corporations are concerned, the current Companies Act will continue to apply to it and the position remains unchanged.

As such, issues such as the complications associated with a foreign corporation seeking to execute a deed expressed to be governed by Singapore law continue to persist.

If you would like more information on this or any other area of law, you may wish to contact the partner at WongPartnership LLP that you normally deal with or any of the following partners:

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