

# LEGAL ALERT

## ANNUAL REPORT AND FINANCIAL STATEMENTS



Preparing and sending annual reports and financial statements in hard copy has been a cumbersome obligation for companies holding considerable number of shareholders, and more so during the COVID-19 period.

On 21 December 2021, the Registrar of Companies (“**ROC**”) has recently issued Practice Direction (No. 2 of 2022) in relation to sending of annual reports and financial statements (the “**Practice Direction**”) in an attempt to assuage the administrative burden of companies and paving the way for the legislator.

Our legal alert highlights the amendments brought by the Practice Direction together with our commentary.

### 1. Obligation to prepare an annual report

The Companies Act 2001 (the “Act”) imposes several duties on the board of a company (the “Board”). One such duty is the mandatory obligation on the Board to prepare, within 6 months after the balance sheet date of a company, an annual report on the affairs of the company during the accounting period ending on that date.

It is to be noted that the shareholders of a private company or small private company may depart from this obligation by resolving by way of unanimous resolution that the obligation of the Board to prepare an annual report will not apply to the company. From the date of any such resolution, the Board is not required to comply with the provisions relating to annual report.

However, any shareholder may during the period of 3 months after the company’s balance sheet date in any year

request the Board in writing to comply with the provisions relating to annual report. The Board must then prepare the annual report next due and for any subsequent year until any further unanimous resolution is passed.

## **2. Sending of annual report to shareholders**

After the annual report has been prepared, the Board must cause a copy of the annual report to be sent to every shareholder of the company not less than 14 days before the date fixed for holding the annual meeting of the shareholders.

The only instances where the Board is not required to send an annual report to a shareholder is where-

- (a) the shareholder has given notice in writing to the company waiving the right to be sent a copy of the annual report or copies of annual reports of the company generally;
- (b) the shareholder has not revoked that notice; and
- (c) a copy of the report is available for inspection by the shareholder at the place at which the company's records are kept between the hours of 9.00 a.m. and 5.00 p.m. on each working day during the inspection period.

As far as a public company is concerned, it must deliver a copy of its annual report to the ROC for registration at the same time as it delivers its financial statements to the ROC.

## **3. Sending of financial statements to shareholders who elect not to receive annual report**

In the event that shareholders have elected not to receive an annual report or, in the case of a private company, have passed a unanimous resolution to disapply the provisions on annual report, the Board must then send to every shareholder of the company not less than 14 days before the annual meeting of the shareholders –

- (a) the financial statements for the most recent accounting period;
- (b) any auditor's report on those financial statements and any group financial statements.

## **4. What amounts to sending under the Act?**

In accordance with section 327 of the Act, a report or an account to be sent to a shareholder who is a natural person may:

- (a) be delivered to that person;
- (b) be posted to that person's address or delivered to a post office box which that person is using at the time;
- (c) be sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile; or
- (d) subject to such shareholder's written consent and such shareholder having provided an electronic address to which the documents may be sent, be sent by email or other electronic form of communication to the address provided by that person for the transmission of documents by electronic means.

## **5. Changes brought by the Practice Direction**

Although there was a relaxation of the obligation to physically send the annual report and financial statements to shareholders during the Covid-19 period and despite the request from several market players to allow companies to communicate the annual report and financial statements electronically, the law remains unchanged on the subject matter.

However, by way of the Practice Direction, the ROC has finally allowed that a copy of the annual report may be in any electronic version and may be sent by any electronic means to the shareholders. In case the shareholder waives his rights to receive a copy of the annual report, the following procedures should be strictly complied with:

- (a) The company must seek the consent in writing of every shareholder not to receive any copy of the annual report.
- (b) The consent not to receive any copy of the annual report must be signed by the shareholder. The consent remains in force unless revoked by him.

- (c) The consent to seek the approval of the shareholder and the consent not to receive the annual report may be sent by any electronic means.
- (d) In case no consent is received at all, the company may elect not to send a copy of the annual report to the shareholder until such time that the shareholder makes a request to receive a copy.

As far as the financial statements which are required to be sent to the shareholders are concerned, they may be in any readable electronic format.

A shareholder nonetheless retains his right to receive a copy of the annual report or the financial statements at any time upon request within three working days.

The modernisation of the delivery method of annual reports and financial statements nonetheless entail a new requirement for company secretaries who must now maintain a record of all such correspondences.

## 6. Paving the way

The changes brought by the Practice Direction, though much delayed, will be welcomed with some relief by the corporates. The time and financial savings will not be negligible as will the improvement in efficiency and effectiveness of complying with statutory obligations.

It is hoped that the ROC as well as other authorities (and we dare hope, the legislator) will continue to digitalise the Mauritian corporate and regulatory framework, and converge the use of technology and ease of doing business, without compromising on statutory obligations.

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