

CONSULTATION PAPER

June 2011

**Report of the  
Steering Committee  
for Review of the  
Companies Act**

MINISTRY OF FINANCE

## **PREFACE**

The last comprehensive review of the Companies Act was conducted in 1999 by the Company Legislation and Regulatory Framework Committee (CLRFC). The review introduced many significant and meaningful changes that took Singapore's corporate regulatory framework forward. Since then, many other countries have undertaken or completed their own reviews of their company law frameworks and redrafted their company legislation.

2. The Ministry of Finance (MOF) had thus set up a Steering Committee in October 2007 to carry out a fundamental review of the Companies Act. The review is aimed at ensuring an efficient and transparent corporate regulatory framework that supports Singapore's growth as an international hub for both businesses and investors.

### **Approach Taken by Steering Committee**

3. In its review, the Steering Committee considered existing legislation in leading jurisdictions such as Australia, New Zealand, the United Kingdom and the United States. The Steering Committee recommended that the Companies Act should contain core company law, while provisions relating to specific types of companies (e.g. foreign companies) should belong in legislation specifically dealing with such entities.

4. The Steering Committee also consulted key stakeholders before finalising its recommendations. Six consultation papers were issued to businesses, professional bodies, individuals who practise or are interested in corporate law and corporate finance, as well as other stakeholders. The Steering Committee received 128 written comments and held 17 focus group meetings to hear oral comments.

### **Steering Committee's Report**

5. The Steering Committee submitted its report to MOF on 29 April 2011. The Steering Committee's Report comprises six chapters and 217 recommendations:

- (a) Chapter 1 – Directors;
- (b) Chapter 2 – Shareholders' Rights and Meetings;
- (c) Chapter 3 – Shares, Debentures, Capital Maintenance, Schemes, Compulsory Acquisitions and Amalgamations;
- (d) Chapter 4 – Accounts and Audit;
- (e) Chapter 5 – General Company Administration; and
- (f) Chapter 6 – Registration of Charges.

## **Request for Comments**

6. MOF, together with the Accounting and Corporate Regulatory Authority (ACRA) which administers the Companies Act, invite the public to give your comments on the Steering Committee's report by 16 September 2011. Comments may be submitted to:

Corporate Regulation and Governance Unit  
Economic Programmes Directorate  
Ministry of Finance  
100 High Street  
#10-01, The Treasury  
Singapore 179464

Fax: (+65) 6337 4134

Email: [mof\\_pccompaniesact@mof.gov.sg](mailto:mof_pccompaniesact@mof.gov.sg) (preferred mode)

7. To ensure that the consultation exercise is effective, respondents are requested to follow these guidelines:

- (a) Identify yourself and the organisation you represent (where applicable) so that we may follow up to clarify any issues, if necessary; and
- (b) Cite the specific recommendation that you are commenting on, and provide reasons on why you agree or disagree with the recommendation.

8. MOF and ACRA will publish a summary of the comments received together with our responses after the end of the consultation period. The summary will not disclose the identity of respondents, and will not separately address or acknowledge every comment received.

## **Concurrent Public Consultation on Foreign Entities**

9. The Companies Act contains provisions relating to foreign companies. Given the Steering Committee's recommendation that the Companies Act should only contain core company law, ACRA has conducted a separate review on the regulatory framework for foreign entities. The public consultation on the proposals relating to foreign entities is launched concurrently to provide the public with a comprehensive view of the proposed changes to the Companies Act. A copy of the consultation paper on proposals relating to foreign entities is available on the MOF website ([www.mof.gov.sg](http://www.mof.gov.sg)), ACRA website ([www.acra.gov.sg](http://www.acra.gov.sg)) and REACH consultation portal ([www.reach.gov.sg](http://www.reach.gov.sg)).

**REPORT**  
Of THE

**STEERING COMMITTEE FOR  
REVIEW OF THE  
COMPANIES ACT**

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**APRIL 2011**

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## **SUMMARY OF RECOMMENDATIONS**

### **Recommendation 1.1**

**It is not necessary to have a separate definition of “shadow director” in the Companies Act.**

### **Recommendation 1.2**

**The Companies Act should clarify that a person who controls the majority of the directors is to be considered a director.**

### **Recommendation 1.3**

**The Companies Act should provide expressly that a company may appoint a director by ordinary resolution passed at a general meeting, subject to contrary provision in the articles.**

### **Recommendation 1.4**

**Section 170 of the Companies Act requiring approval for assignment of office of director or manager should be repealed.**

### **Recommendation 1.5**

**It would not be necessary to allow corporate directorships in Singapore.**

### **Recommendation 1.6**

**The Companies Act should not prescribe the academic or professional qualifications of directors or mandate the training of directors generally.**

### **Recommendation 1.7**

**It is not necessary to impose a maximum age limit for directors in the Companies Act.**

### **Recommendation 1.8**

Section 153 of the Companies Act should be repealed.

### **Recommendation 1.9**

The automatic disqualification regime for directors convicted of offences involving fraud or dishonesty should be retained in the Companies Act, and directors so disqualified should be allowed to apply to the High Court for leave to act as a director or take part in the management of the company.

### **Recommendation 1.10**

The Companies Act should expressly provide that unless the articles state otherwise, a director may resign by giving the company written notice of his resignation.

### **Recommendation 1.11**

The Companies Act should expressly provide that subject to section 145(5), the effectiveness of a director's resignation shall not be conditional upon the company's acceptance.

### **Recommendation 1.12**

It is not necessary for the Companies Act to mandate the retirement of directors.

### **Recommendation 1.13**

The Companies Act should expressly provide that a private company may by ordinary resolution remove any director, subject to contrary provision in the articles.

### **Recommendation 1.14**

The requirement in section 168 for shareholders' approval for payment of compensation to directors for loss of office should be retained.

### **Recommendation 1.15**

A new exception should be introduced in the Companies Act to obviate the need for shareholders' approval where the payment of compensation to an executive director for termination of employment is of an amount not exceeding his base

salary for the 3 years immediately preceding his termination of employment. For such payment, disclosure to shareholders would still be necessary.

**Recommendation 1.16**

The share interest threshold of 20% in section 163 should be retained.

**Recommendation 1.17**

The following two new exceptions to the prohibition in section 163 should be introduced:

- (a) to allow for loans or security/guarantee to be given to the extent of the proportionate equity shareholding held in the borrower by the directors of the lender/security provider;
- (b) where there is prior shareholders' approval (with the interested director abstaining from voting) for the loan, guarantee or security to be given.

**Recommendation 1.18**

The regulatory regime for loans should be extended to quasi-loans, credit transactions and related arrangements.

**Recommendation 1.19**

Section 157A(1) of the Companies Act should be amended to provide that the business of a company shall be managed by, or under the direction or supervision of, the directors.

### **Recommendation 1.20**

The Companies Act should provide that a person dealing with the company in good faith should not be affected by any limitation in the company's articles.

### **Recommendation 1.21**

Section 161 of the Companies Act should be amended to allow specific shareholders' approval for a particular issue of shares to continue in force notwithstanding that the approval is not renewed at the next annual general meeting, provided that the specific shareholders' approval specifies a maximum number of shares that can be issued and expires at the end of two years. This does not apply to the situation referred to in section 161(4) for the issue of shares in pursuance of an offer, agreement or option made or granted by the directors while an approval was in force.

### **Recommendation 1.22**

It would not be desirable to exhaustively codify directors' duties. The developments in the UK and other leading jurisdictions should continue to be monitored.

### **Recommendation 1.23**

Pending ACRA's review, a breach of the duties in section 157 should still render an officer or agent of a company criminally liable.

### **Recommendation 1.24**

The prohibition in section 157(2) should be extended to cover improper use by an officer or agent of a company of his position to gain an advantage for himself or for any other person or to cause detriment to the company.

### **Recommendation 1.25**

The disclosure requirements under sections 156 and 165 should be extended to the Chief Executive Officer of a company.

### **Recommendation 1.26**

The duty to act honestly and use reasonable diligence in section 157(1) should be extended to the Chief Executive Officer of a company.

### **Recommendation 1.27**

Section 158 of the Companies Act should be amended —

- (a) to enable the board of directors to allow the disclosure of company information, whether by general or specific mandate, subject to the overarching consideration that there should not be any prejudice caused to the company; and
- (b) to remove the requirement in section 158(3)(a) for declaration at a meeting of the directors of the name and office or position held by the person to whom the information is to be disclosed and the particulars of such information, but to leave it to the board of directors to require such details if desired.

### **Recommendation 1.28**

Section 172 of the Companies Act should be amended to expressly allow a company to provide indemnity against liability incurred by its directors to third parties.

### **Recommendation 1.29**

The Companies Act should be amended to clarify that a company is allowed to indemnify its directors against potential liability.

### **Recommendation 2.1**

Sections 178 and 184 should not be amended to require all companies to have all resolutions tabled at general meetings voted by poll.

### **Recommendation 2.2**

Section 178(1)(b)(ii) should be amended to lower the threshold of 10% of total voting rights for eligibility to demand a poll to 5% of total voting rights.

### **Recommendation 2.3**

The requisite majority vote requirements for the passing of written resolutions in private companies should continue to be specified in section 184A.

### **Recommendation 2.4**

The requisite majority vote requirements for the passing of written resolutions in private companies should not be changed.

### **Recommendation 2.5**

The existing restrictions in section 184A(2) on the type of “business” that cannot be conducted using written resolutions should be maintained.

### **Recommendation 2.6**

Section 184A should be amended to provide that a written resolution will be passed once the required majority signs the written resolution, subject to contrary provision in the memorandum or articles of the company.

### **Recommendation 2.7**

The Companies Act should be amended to provide that a proposed written resolution will lapse after 28 days of it being circulated if the required majority vote is not attained by the end of the 28-day period, subject to contrary provision in the memorandum or articles of the company.

### **Recommendation 2.8**

The Companies Act should not specify the categories and manner of appointment of authorised persons who may be appointed to act on behalf of a corporate member in signifying the corporate member’s agreement to a written resolution.

### **Recommendation 2.9**

Sections 184A to 184F should be amended to extend the procedures contained therein for passing resolutions by written means to unlisted public companies as well.

### **Recommendation 2.10**

Section 181 should be amended to the effect that, subject to contrary provision in the company's articles, members falling within the following two categories are allowed to appoint more than two proxies, provided that each proxy is appointed to exercise the rights attached to a different share or shares and the number of shares and class of shares shall be specified:

- (a) any banking corporation licensed under the Banking Act or wholly-owned subsidiary of such a banking corporation, whose business includes the provision of nominee services and who holds shares in that capacity; and
- (b) any person holding a capital markets services licence to provide custodial services for securities under the Securities and Futures Act.

### **Recommendation 2.11**

The Companies Act should be amended to allow the proposed multiple proxies to each be given the right to vote on a show of hands in a shareholders' meeting.

### **Recommendation 2.12**

The Companies Act should be amended to bring earlier the cut-off timeline for the filing of proxies from 48 hours prior to the shareholders' meeting, to 72 hours prior to the shareholders' meeting.

### **Recommendation 2.13**

The Companies Act should not be amended to adopt sections 145 to 153 of the UK Companies Act 2006 to enable indirect investors to enjoy or exercise membership rights apart from the right to participate in general meetings.

### **Recommendation 2.14**

The Companies Act should be amended to give CPF share investors their shareholders' rights in respect of company shares purchased using CPF funds through the CPF Investment Schemes or the Special Discounted Share scheme.

### **Recommendation 2.15**

The multiple proxies regime recommended at Recommendations 2.10, 2.11 and 2.12 should be adopted to enfranchise CPF share investors.

### **Recommendation 2.16**

**Section 179(4) should not be amended to clarify the meaning of the phrase “not otherwise entitled to be present at the meeting”.**

### **Recommendation 2.17**

**The Companies Act should not be amended to deal with the recognition of the appointment of representatives of members that take other business forms such as limited liability partnership, association, co-operative, etc.**

### **Recommendation 2.18**

**The rules for the use of electronic methods for transmission of notices and documents by companies should be amended to be less restrictive and prescriptive.**

### **Recommendation 2.19**

**The Companies Act should be amended to provide that companies may use electronic communications to send notices and documents to members with their express consent, implied consent or deemed consent, and where –**

**(1) A member has given implied consent if –**

- (a) company articles provide for use of electronic communications and specify the mode of electronic communications, and**
- (b) company articles provide that the member shall agree to the use of electronic communications and shall not have a right to elect to receive physical copies of notices or documents; and**

**(2) A member is deemed to have consented if –**

- (a) company articles provide for use of electronic communications and specify the mode of electronic communications, and**
- (b) the member was given an opportunity to elect whether to receive electronic or physical notices or documents, and he failed to elect.**

### **Recommendation 2.20**

**The following safeguards shall be contained in subsidiary legislation:**

- (a) For the deemed consent regime, the company must on at least one occasion, directly notify in writing each member that –
- (i) the member may elect to receive company notices and documents electronically or in physical copy;
  - (ii) if the member does not elect, the notices and documents will be transmitted by electronic means;
  - (iii) the electronic means to be used shall be as specified by the company in its articles, or shall be website publication if the articles do not specify the electronic means;
  - (iv) the member's election shall be a standing election (subject to the contrary provision in the articles), but the member may change his mind at any time.
- (b) If the company chooses to transmit documents by making them available on a website, the company must notify the members directly in writing or electronically (if the member had elected or deemed to have consented or impliedly consented to receive notices electronically) of the presence of the document on the website and how the document may be accessed;
- (c) Documents relating to take-over offers and rights issues shall not be transmitted by electronic means.

#### **Recommendation 2.21**

As a default, where companies fail to amend their articles to make use of the deemed consent regime, sections 387A and 387B shall continue to apply.

#### **Recommendation 2.22**

Section 33 should be amended to allow companies to use electronic methods for transmission of notices of special resolution to alter the objects of a company in its memorandum, in accordance with the proposed amendments in Recommendations 2.19, 2.20 and 2.21.

#### **Recommendation 2.23**

The scope of coverage of section 130D(3) should not be expanded to extend the 48-hour rule (effecting notional closure of the membership register) to Singapore-incorporated companies listed on overseas securities exchanges.

#### **Recommendation 2.24**

**There should be no change to the rule in section 176 that the cost of convening a requisitioned extraordinary general meeting is to be borne by the company, subject to a clawback of the costs from defaulting directors in the event of default by the directors in convening the meeting.**

#### **Recommendation 2.25**

**The Companies Act should not be amended to introduce a minority buy-out right / appraisal right in Singapore where such rights would enable a dissenting minority shareholder who disagreed with certain fundamental changes to an enterprise or certain alterations to shareholders' rights, to require the company to buy him out at a fair value.**

#### **Recommendation 2.26**

**Section 254(1)(i) should be amended to allow a court hearing a winding-up application under that limb the option to order a buy-out where it is just and equitable to do so, instead of ordering that the company be wound up.**

#### **Recommendation 2.27**

**Section 254(1)(f) should be amended to allow a court hearing a winding-up application under that limb the option to order a buy-out where it is just and equitable to do so, instead of ordering that the company be wound up.**

#### **Recommendation 2.28**

**The scope of the statutory derivative action in section 216A should be expanded to allow a complainant to apply to the court for leave to commence an arbitration in the name and on behalf of the company or intervene in an arbitration to which the company is a party for the purpose of prosecuting, defending or discontinuing the arbitration on behalf of the company.**

#### **Recommendation 2.29**

**Section 216A should be amended to achieve consistency in the availability of the statutory derivative action for Singapore-incorporated companies that are listed for quotation or quoted on a securities market, whether in Singapore or overseas.**

### **Recommendation 2.30**

**Section 216A should be amended such that the statutory derivative action in section 216A is applicable to Singapore-incorporated companies that are listed for quotation or quoted on a securities market, whether in Singapore or overseas.**

### **Recommendation 2.31**

**The Companies Act should not be amended to introduce a system of cumulative voting for the election of directors.**

### **Recommendation 2.32**

**The Companies Act should not be amended to create a mechanism to allow minority shareholders to obtain copies of board resolutions without the need to go through a discovery process.**

### **Recommendation 2.33**

**The exemption in section 21(6) should be extended to include a transfer of shares in a holding company, in order to align the section 21(6) exemption with the prohibition in section 21(1) and to cater for a transfer of shares in the holding company by way of distribution in specie, amalgamation or scheme of arrangement.**

### **Recommendation 2.34**

**Section 21(6) should be amended to allow a subsidiary to receive a transfer of shares in its holding company that are transferred by way of distribution in specie, amalgamation or scheme of arrangement:**

- (a) provided that the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof, and the subsidiary shall, within the period of 12 months or such longer period as the court may allow after the transfer, dispose of all of its shares in the holding company; and**
- (b) any such shares in the holding company that remain undisposed after the period of 12 months or such longer period as the court may allow after the transfer –**
  - (i) shall be deemed treasury shares or shall be transferred to the holding company and held as treasury shares, and subject to a maximum aggregate limit of 10% of shares in the holding company being held as treasury shares or deemed treasury shares; and**

- (ii) provided that the subsidiary / holding company shall within 6 months divest its holding of the shares in the holding company in excess of the aggregate limit of 10%.

### **Recommendation 3.1**

The definition of “preference share” in section 4 should be deleted.

### **Recommendation 3.2**

Section 180(2) should be deleted. Transitional arrangements should be made to preserve the rights currently attached under section 180(2) to preference shares issued before the proposed amendment.

### **Recommendation 3.3**

The definition of “equity share” be removed and “equity share” be amended to “share” or some other appropriate term wherever it appears in the Companies Act.

### **Recommendation 3.4**

Companies should be allowed to issue non-voting shares and shares with multiple votes.

### **Recommendation 3.5**

Section 64 should be deleted.

### **Recommendation 3.6**

Section 5(1)(a)(iii) should be deleted. Section 5(1)(a) should be amended to recognize that a company S is a subsidiary of another company H if company H holds a majority of the voting rights in company S.

### **Recommendation 3.7**

The current 12-month time-frame for a subsidiary to dispose of shares in its holding company should be retained. Such shares will be converted to treasury shares thereafter. Once these shares are converted to treasury shares, they would be regulated in accordance with the rules governing treasury shares.

### **Recommendation 3.8**

Section 21(4) should be amended to allow retention of up to an aggregate 10% of such treasury shares, taking into account shares held both by the company as well as its subsidiaries.

### **Recommendation 3.9**

A statutory mechanism for redenomination of shares similar to the UK provisions, with appropriate modifications, should be inserted into the Companies Act.

### **Recommendation 3.10**

Section 7 of the Companies Act should be amended to be consistent with section 4 of the SFA.

### **Recommendation 3.11**

Section 7 need not be amended to bring economic interests in shares within the definition of “interest in shares” at this point.

### **Recommendation 3.12**

The exemption afforded under section 63(1A) should be extended to all listed companies, wherever listed.

### **Recommendation 3.13**

Section 63(1) should not be amended to replace the 14-day reporting timeline with quarterly reporting (on an aggregate basis) of all shares allotted and issued during each financial quarter where the allotment takes place under equity-based incentive plans pursuant to which shares are issued to employees and other service providers of issuers.

### **Recommendation 3.14**

Section 4 definition of “share” and section 121 which defines the nature of shares should not be changed.

### **Recommendation 3.15**

Shares of public companies should be eventually be dematerialised but the law need not mandate such a requirement at this time.

### **Recommendation 3.16**

The provisions in the Companies Act which relate to the CDP should be extracted and inserted into a separate stand-alone Act.

### **Recommendation 3.17**

Section 93 of the Companies Act on debentures should be retained. However the register of debenture holders and trust deed should be open to public inspection.

### **Recommendation 3.18**

One uniform solvency test should be applied for all transactions (except amalgamations).

### **Recommendation 3.19**

Section 7A solvency test should be adopted as the uniform solvency test and be applied to share buybacks (replacing section 76F(4)).

### **Recommendation 3.20**

Solvency statements under sections 7A(2), 215(2) and 215J(1) should be by way of declaration rather than statutory declaration.

### **Recommendation 3.21**

There should be no change to the requirement for all directors to make the solvency statements under sections 70(4)(a), 76(9A)(e), 76(9B)(c), 78B(3)(a), and 78C(3)(a).

### **Recommendation 3.22**

The definition of the “relevant period” for share buybacks in section 76B(4) should be amended to be from “the date an AGM was held, or if no such meeting was held as required by law, then the date it should have been held and expiring on the date the next AGM after that is or is required by law to be held, whichever is earlier”.

### **Recommendation 3.23**

The reference to “the last AGM ... held before any resolution passed ...” in sections 76B(3)(a) and 76B(3B)(a) should be replaced with “the beginning of the relevant period”.

### **Recommendation 3.24**

Also wherever “the relevant period” appears in section 76B, it should be replaced with “a relevant period”.

### **Recommendation 3.25**

The Companies Act should be amended to provide for an additional exception to the share acquisition prohibition, viz, that listed companies be allowed to make discriminatory repurchase offers to odd-lot shareholders.

### **Recommendation 3.26**

Section 76K(1)(b) should be amended by deleting the word “employees”, in order to remove the restriction imposed on the use of treasury shares. If specific safeguards are necessary for listed companies, these should be imposed by rules applicable solely to listed companies.

### **Recommendation 3.27**

Section 76(1)(a) and associated provisions relating to financial assistance should be abolished for private companies, but continue to apply to public companies and their subsidiary companies. A new exception should be introduced to allow a public company or its subsidiary to assist a person to acquire shares (or units of shares) in the company or a holding company of the company if giving the assistance does not materially prejudice the interests of the company or its shareholders or the company’s ability to pay its creditors.

### **Recommendation 3.28**

Section 76(8) and (9) should be reviewed against the list of excepted financial assistance transactions in the UK to determine if they should be updated.

### **Recommendation 3.29**

Section 76(1)(b), (c) and associated provisions should be integrated with the provisions on share buybacks.

### **Recommendation 3.30**

The requirement for a solvency statement in capital reductions without the sanction of the court should be maintained.

### **Recommendation 3.31**

Sections 78B(2) and 78C(2) should be amended to dispense with solvency requirements as long as the capital reduction does not involve a reduction/distribution of cash or other assets by the company or a release of any liability owed to the company.

### **Recommendation 3.32**

The time frame specified in sections 78B(3)(b)(ii) and 78C(3)(b)(ii) should be amended from the current 15 days and 22 days to 20 days and 30 days respectively.

### **Recommendation 3.33**

A provision requiring directors to declare that their decision to reduce capital was made in the best interests of the company is not required as the obligation to act in the best interests of the company is already covered by existing directors' duties.

### **Recommendation 3.34**

The section 403 test for dividend distributions should be retained.

### **Recommendation 3.35**

Provisions should be made in law to allow a company to use its share capital to pay for expenses, brokerage or commissions incurred in an issue or buyback of shares.

### **Recommendation 3.36**

The requirement to disclose the “amount paid” on the shares in the share certificate under section 123(2)(c) should be removed. Companies should be required to disclose the class of shares, the extent to which the shares are paid up (i.e. whether fully or partly paid) and the amounts unpaid on the shares, if applicable under section 123(2)(c).

### **Recommendation 3.37**

There should be no changes made to the Companies Act on account of the new FRS 32, FRS 39 and FRS 102.

### **Recommendation 3.38**

Section 63 should be amended so that a company is required to lodge with the Registrar a return whenever there is an increase in share capital regardless of whether it is accompanied by an issue of shares.

### **Recommendation 3.39**

Section 210 should be amended to state explicitly that it includes a compromise or arrangement between a company and holders of units of company shares.

### **Recommendation 3.40**

The words “unless the Court orders otherwise” should be inserted preceding the numerical majority requirement in section 210(3). This would serve the twin purpose of dealing with cases of “share-splitting” and allowing the court latitude to decide who the members are in a particular case.

### **Recommendation 3.41**

For the purposes of section 210, if a majority in number of proxies and a majority in value of proxies representing the nominee member voted in favor of the scheme, it would count as the nominee member having voted in favor of the scheme.

### **Recommendation 3.42**

For the purposes of section 210, where shares are registered in the name of a nominee that is a foreign depository, there is no need to provide for a look-through to the actual beneficial shareholders.

**Recommendation 3.43**

Sections 210 and 212 should apply to both “companies” and “foreign companies”.

**Recommendation 3.44**

Section 210 and associated provisions should not be amended to provide for the scheme to be binding on the offeror.

**Recommendation 3.45**

Section 210 need not be amended to specifically provide that section 210 schemes should comply with the Code of Takeovers and Mergers or be approved by the Securities Industry Council.

**Recommendation 3.46**

Section 215 should be amended to extend to units of a company’s shares.

**Recommendation 3.47**

Section 215 should be extended to cover individual offerors.

**Recommendation 3.48**

A provision similar to section 987 of the UK Companies Act 2006 on joint offers should be added to the Singapore Companies Act.

**Recommendation 3.49**

The UK definition of “associate” should be adopted for parties whose shares are to be excluded in calculating the 90% acceptances for section 215.

**Recommendation 3.50**

There should be provision for Ministerial exemptions for very large holding companies with interests in many companies.

### **Recommendation 3.51**

A new 95% alternative threshold for squeeze out rights along the lines of section 103(1) of the Bermudan Companies Act was considered but not recommended.

### **Recommendation 3.52**

A cut-off at the date of offer should be imposed for determining the 90% threshold for the offeror to acquire buyout rights so that shares issued after that date are not taken into account.

### **Recommendation 3.53**

Section 215(3) should be amended by deleting “(excluding treasury shares)” and substituting “(including treasury shares)” so as to grant sell out rights when the offeror has control over 90% of the shares, including treasury shares.

### **Recommendation 3.54**

Where the terms of the offer give the shareholders a choice of consideration, the shareholder should be given 2 weeks to elect his choice of consideration and the offeror should also be required to state the default position if no election is made.

### **Recommendation 3.55**

The words “other than cash” in section 215(6) should be deleted so that all forms of consideration may be transferred by the target company to the Official Receiver if the rightful owner cannot be located. Such powers should be available in sections 210 and 215A to 215J situations as well.

### **Recommendation 3.56**

An exemption should be added so that if overseas shareholders are not served with a takeover offer, that does not render section 215 inapplicable as long as service would have been unduly onerous or would contravene foreign law.

### **Recommendation 3.57**

It should be specifically stated that a holding company may amalgamate with its wholly-owned subsidiary by short form.

**Recommendation 3.58**

The amalgamation provisions should not be extended to foreign companies.

**Recommendation 3.59**

The amalgamation provisions should not be extended to companies limited by guarantee.

**Recommendation 3.60**

The boards of amalgamating companies should make a solvency statement regarding the amalgamating company at the point in question and within a 12-month forward-looking period. The components of the solvency test will be assets/liabilities and ability to pay debts.

**Recommendation 4.1**

Small company criteria should be introduced to determine whether a company is required to be audited. Small companies would be exempted from the statutory requirement for audit. The following are the criteria for determining a “small company” —

- (a) the company is a private company; and
- (b) it fulfils two of the following criteria:

<b>Criterion One</b>	<b>Criterion Two</b>	<b>Criterion Three</b>
<b>Total annual revenue of not more than S\$10 million.</b>	<b>Total gross assets of not more than S\$10 million.</b>	<b>Number of employees not more than 50.</b>

**Recommendation 4.2**

Where a parent company prepares consolidated accounts, a parent should qualify as a “small company” if the criteria in Recommendation 4.1 are met on a consolidated basis.

**Recommendation 4.3**

A subsidiary which is a member of a group of companies may be exempt from audit as a “small company” only if the entire group to which it belongs qualifies on a consolidated basis for audit exemption under the “small company” criteria.

#### **Recommendation 4.4**

The current status of “exempt private company” should be abolished.

#### **Recommendation 4.5**

Solvent companies which qualify under the proposed “small company” criteria should file basic financial information, but with the following exceptions where such companies are solvent:

- (a) private companies wholly-owned by the Government, which the Minister, in the national interest, declares by notification in the Gazette to be exempt;
- (b) private companies falling within a specific class prescribed by the Minister as being exempt (e.g. specific industries where confidentiality of information is critical and public interest in the accounts is low); and
- (c) private companies exempted by the Registrar upon application on a case-by-case basis and published in the Gazette.

#### **Recommendation 4.6**

Dormant non-listed companies (other than subsidiaries of listed companies) should be exempt from financial reporting requirements, subject to certain safeguards.

#### **Recommendation 4.7**

To benefit from the dormant company exemption, the following proposed safeguards must be complied with:

- (a) Annual declaration of dormancy by the directors of a dormant company;
- (b) The company must be dormant for the entire financial year in question; and
- (c) Shareholders and ACRA will be empowered to direct a dormant company to prepare its accounts, and to lodge them unless exempted under any other exemption.

#### **Recommendation 4.8**

Dormant listed companies should continue to prepare accounts but be exempted from statutory audit requirements (status quo).

#### **Recommendation 4.9**

**A dormant company which is a subsidiary of a listed company should continue to prepare accounts but be exempt from audit, similar to a dormant listed company.**

#### **Recommendation 4.10**

**The list of disregarded transactions in determining whether a company is dormant should be extended to include statutory fees/fines under any Act and nominal payments/receipts.**

#### **Recommendation 4.11**

**A total assets threshold test of S\$500,000 (which may be varied by the Minister for Finance by way of regulations) should be introduced for dormant companies.**

#### **Recommendation 4.12**

**The use of summary financial statements should be extended to all companies.**

#### **Recommendation 4.13**

**Section 201(8) of the Companies Act which requires disclosure of directors' benefits in the directors' report should be repealed.**

#### **Recommendation 4.14**

**There is no need to require all companies to prepare a statement of business review and future developments in the accounts or directors' report under the Companies Act.**

#### **Recommendation 4.15**

**The requirement for a separate directors' report should be abolished.**

#### **Recommendation 4.16**

**Section 201(15) of the Companies Act should be clarified to require that the full list of directors of companies appear in the statement by the directors.**

#### **Recommendation 4.17**

The UK approach of requiring the directors to ensure that the company auditors are aware of all relevant audit information need not be adopted.

#### **Recommendation 4.18**

There is no need to legislatively mandate compliance with auditing standards, but the existing requirements in section 207(3) of the Companies Act, which set out a list of duties of auditors, should be streamlined.

#### **Recommendation 4.19**

Section 207(3)(b) of the Companies Act, which requires an auditor to form an opinion on whether proper accounting and other records (excluding registers) have been kept by the company, should be retained, but the drafting of that section should be clarified.

#### **Recommendation 4.20**

The requirement for an auditor to form an opinion on the procedures and methods of consolidation in section 207(3)(d) of the Companies Act should be repealed.

#### **Recommendation 4.21**

Section 207(9A) should not be extended to include a requirement for an auditor to report on instances of suspected accounting fraud.

#### **Recommendation 4.22**

The amount stated in section 207(9D)(b) used as the threshold to define a “serious offence involving fraud or dishonesty”, should be raised from \$20,000 to \$250,000.

#### **Recommendation 4.23**

The auditor of a non-public-interest company (other than a subsidiary of a public interest company) should be allowed to resign upon giving notice to the company. The status quo should be retained for the auditor of a non-public-interest company which is a subsidiary of a public interest company, viz, such a company's auditor may only resign if he is not the sole auditor or at a general meeting, and where a replacement auditor is appointed.

#### **Recommendation 4.24**

The auditor of a public-interest company should be required to seek the consent of ACRA before he can resign.

#### **Recommendation 4.25**

There is no need for an express requirement for an auditor to disclose to the shareholders of the company that appointed it the reasons for his resignation.

#### **Recommendation 4.26**

The provisions relating to auditor independence in section 10 of the Companies Act should be consolidated under the Accountants Act.

#### **Recommendation 4.27**

There is no need to introduce statutory provisions on the limitation of liability of auditors at this time, but the issue will be monitored by ACRA.

#### **Recommendation 4.28**

A company should not be expressly allowed to indemnify auditors for claims brought by third parties.

#### **Recommendation 4.29**

The drafting of section 172(2)(b) of the Companies Act should be amended to clarify that a company is allowed to indemnify its auditors against potential liability.

**Recommendation 4.30**

The provisions relating to audit committees should be moved to the Securities and Futures Act.

**Recommendation 4.31**

The directors' duty to keep accounting and other records in section 199(1) does not require amendment.

**Recommendation 4.32**

The requirement under section 199(2A) for a public company to devise and maintain a system of internal controls need not be extended to private companies.

**Recommendation 4.33**

Any misconception that private companies currently do not require internal controls should be corrected through non-statutory guidance.

**Recommendation 4.34**

The requirement under section 199(2A) for a public company and its subsidiaries to devise and maintain a system of internal controls need not be extended to the associated companies and related companies of a public company.

**Recommendation 4.35**

The components of the accounts in the relevant provisions in the Companies Act should be clarified by referring to the definition of "accounts" contained in the Financial Reporting Standards.

**Recommendation 4.36**

The directors' duties in section 201 to lay the financial statements before the company at every annual general meeting and to ensure that the financial statements are audited do not require amendment.

#### **Recommendation 4.37**

The directors' duty in section 203(1) to send to all persons entitled to receive notice of general meetings a copy of the company's profit and loss account and balance-sheet does not require amendment.

#### **Recommendation 4.38**

The determination of whether a company should prepare consolidated accounts should be set by only the financial reporting standards and not the Companies Act.

#### **Recommendation 4.39**

The requirements for alignment of the financial year-end of a parent company and its subsidiaries should be set in accordance with the financial reporting standards.

#### **Recommendation 4.40**

A regulatory framework similar to that in the UK should be adopted for the purposes of requiring the revisions of defective accounts, i.e. the determination of whether an order for revision of defective accounts is made is decided by the courts.

#### **Recommendation 4.41**

Provisions for the voluntary revisions of defective accounts should be introduced in Singapore.

#### **Recommendation 5.1**

Section 190 (Register and index of members) should no longer apply to private companies as the registers maintained by ACRA in electronic form and accessible by the public can be used as the main and authoritative register of members for private companies in Singapore.

#### **Recommendation 5.2**

Any person who is not notified as a member by the company to the Registrar is not a member of that company.

### **Recommendation 5.3**

The status of members in the context of share allotments and transfers for private companies should be determined in the following manner:

- (a) a 14-day period should be given for the filing of information regarding the allotment or transfer of shares with ACRA;
- (b) the effective date of notice of the allotment or transfer would be based on the date of filing with ACRA; and
- (c) such filing shall be prima facie evidence of the change in interest in the shares of the company.

### **Recommendation 5.4**

Companies should continue to maintain the register of directors' shareholdings.

### **Recommendation 5.5**

- (a) The definitive register for directors, secretaries and auditors should be kept by ACRA;
- (b) it should not be mandatory for companies to keep a register of directors, secretaries, auditors and managers; and
- (c) there is no requirement for ACRA to keep a register of managers.

### **Recommendation 5.6**

The memorandum and articles of association should be merged as one document, to be known as the Constitution.

### **Recommendation 5.7**

There should be two models of the Constitution:

- (a) for private companies – with variations for companies with only one director, and those with two directors or more;
- (b) for companies limited by guarantee.

### **Recommendation 5.8**

There should be no prescribed Model Constitution for public companies (other than companies limited by guarantee) as the provisions in the Constitution for such companies would be determined by the relevant industries concerned.

### **Recommendation 5.9**

Where a company elects to adopt the proposed Model Constitution, there is no need to file a copy of that Model Constitution with ACRA.

### **Recommendation 5.10**

The Model Constitution should be made available on ACRA's webpage, instead of in legislation.

### **Recommendation 5.11**

(a) A natural person who is presently legally required to report his residential address under the Companies Act (e.g. directors, secretaries, managers) may choose to report either his residential address or to report any other address where he can be located ("alternate address"). ACRA will distinguish and indicate whether the reported address appearing on the public records is the residential or an alternate address; and

\*(b) Directors who are currently required to disclose their residential address on the register of directors, managers, secretaries and auditors kept at the registered office will similarly be permitted to elect to disclose their alternate address where they can be located.

\*(b) will not be applicable if recommendation 5.5 is accepted.

### **Recommendation 5.12**

For purposes of non-insolvency matters, the notification periods for the ACRA registers should be standardised to 14 calendar days, with the exception of the following:

(a) Charges, which will still be required to be registered within 30 days; and

(b) Financial assistance and reduction of share capital for which there will be no change to the present timelines.

### **Recommendation 5.13**

**There should be different levels of penalties accorded to default and non-compliance, depending on the severity of the default.**

### **Recommendation 5.14**

**ACRA should take into account the impact of the default on different groups of stakeholders when enforcing such penalties.**

### **Recommendation 5.15**

**Amend section 395:**

- (a) to clarify that any register, index, minute book or book of account may be kept in the form of electronic records (in addition to or as an alternative to physical records);**
- (b) to provide for some definite form of authentication or verification of the electronic records;**
- (c) to provide that directors be responsible for ensuring:**
  - (i) the authenticity of such electronic records;**
  - (ii) the proper maintenance of such electronic records.**

### **Recommendation 5.16**

**Directors should be responsible for the most updated copy of the minutes and to make sure that it is verified to be the correct and definitive copy.**

### **Recommendation 5.17**

**The process for the verification of electronic records should be left to the company. The Companies Act should be facilitative not prescriptive.**

### **Recommendation 5.18**

**The current specified time of one month allowed for updating the minute book under section 188 of the Companies Act should be maintained.**

### **Recommendation 5.19**

The following should be stated in legislation:

- (A) criteria that the company should meet if their directors want to apply for striking off, viz:
- (i) the company must not have commenced business or must have ceased trading;
  - (ii) the company must not be involved in any court proceedings, whether inside or outside Singapore;
  - (iii) the company must have no assets and liabilities when the application is made, and the company's charge register must also be cleared;
  - (iv) the company must not have any outstanding penalties or offers of composition owing to the Registry;
  - (v) the company must not have any outstanding tax liabilities with the Inland Revenue Authority of Singapore (IRAS);
  - (vi) the company must not be indebted to other government departments;
- (B) criteria that ACRA should adopt for identifying and reviewing "defunct" companies for striking off. In this regard, a company is "defunct" if:
- (i) the last account lodged by that company with ACRA was more than 6 years ago; or
  - (ii) the company has not filed any Annual Return for 6 years since its date of incorporation,
- and that company has not created any charge for the last 6 years.

### **Recommendation 5.20**

The current 3-month notification period under section 344(2) of the Companies Act, before a company is struck off the register, should be reduced to 2 months.

### **Recommendation 5.21**

Section 344(1) of the Companies Act should be expanded to include the requirement for ACRA to send the striking off notice to other relevant parties, namely, the company's officers (directors, secretary), shareholders (if different from the directors) and IRAS.

### **Recommendation 5.22**

In addition to the requirement for publication of a notice in the Gazette under section 344(2), the list of companies to be struck off and which have been struck off should be made available online (on the ACRA Home Page).

### **Recommendation 5.23**

There should be no requirement for ACRA to send notifications via registered post to the company concerned.

### **Recommendation 5.24**

The current 15-year period before which a struck-off company may be restored to the register should be reduced to 6 years instead.

### **Recommendation 5.25**

Section 344(5) should be amended to allow the Registrar to restore companies which have been struck-off as a result of a review conducted by ACRA.

### **Recommendation 5.26**

For objections to the striking off of a company, it should be specified in legislation:

- (a) who may object to the striking-off;
- (b) how the objection is to be submitted;
- (c) action to be taken by ACRA; and
- (d) relevant fee payable to ACRA for processing the objection.

### **Recommendation 5.27**

ACRA should not be required to determine the validity or relevance of documentary evidence used by aggrieved parties to support objections to striking off action, and this should instead be adjudicated by the courts.

### **Recommendation 5.28**

**It should be specified in legislation:**

- (a) that an applicant may withdraw the striking off application at any time before the company is struck off;**
- (b) that ACRA must update the status of the application and send a notification to the company to inform it that the application for striking off has been withdrawn; and**
- (c) that this information should be updated online (in the ACRA Home Page).**

### **Recommendation 5.29**

**The fees for striking off should be placed under subsidiary legislation rather than the parent Act.**

### **Recommendation 5.30**

**The recommended new provisions on striking off should be in a separate set of subsidiary legislation (the Companies (Striking Off) Rules).**

### **Recommendation 5.31**

**The status quo of companies limited by guarantee should be preserved.**

### **Recommendation 5.32**

**Maintain the status quo of the role of the Registrar in approving names.**

### **Recommendation 5.33**

**Maintain the status quo of the current criterion for refusal of name registration by the Registrar.**

### **Recommendation 5.34**

**Maintain the status quo of the current regime for similar name registration.**

### **Recommendation 5.35**

ACRA should not be responsible for the protection of “famous” names by preventing the registration of “famous” names as one cannot come up with a definitive list of “famous” names. For such cases, the owner of the name can seek recourse under the current section 27(2)(c) via an injunction under the Trade Marks Act (Cap. 332), following which the Registrar can direct a change of name.

### **Recommendation 5.36**

Maintain the status quo of the ambit of section 27 (Names of companies).

### **Recommendation 5.37**

There should be no change to the current time period of 12 months allowed by a complainant to lodge his complaint with the Registrar regarding registration of a similar name by another company under section 27(2A).

### **Recommendation 5.38**

The periods for reuse of names of companies that have ceased should be as follows:

- (a) After 2 years for companies which have been dissolved (based on section 343); and
- (b) After 6 years for companies which have been struck off (based on section 344).

### **Recommendation 5.39**

There is no need for the formation of a panel of company name adjudicators (unlike the position in the UK).

### **Recommendation 5.40**

Both parties to a name complaint should have the right of appeal to the Minister vis-à-vis a Registrar’s decision under section 27(2)(b) or 27(2C).

### **Recommendation 5.41**

Maintain the status quo such that it remains mandatory for private companies to appoint a company secretary.

#### **Recommendation 5.42**

**Company secretaries of private companies need not be physically present at the company's registered office.**

#### **Recommendation 5.43**

**The current distinction in section 171(1AA) whereby secretaries of public companies are required to possess certain qualifications, whilst secretaries of private companies are not so required, be maintained.**

#### **Recommendation 5.44**

**Prior registration of secretaries before their appointment as secretaries of listed companies is an unnecessary measure to adopt.**

#### **Recommendation 6.1**

**The current framework for registration of charges should be maintained but the list of registrable charges at section 131(3) should be reviewed and updated.**

#### **Recommendation 6.2**

**Section 132 should be broadened to provide for the registration of charges in the name of a business entity, rather than just in an individual's or company's name.**

#### **Recommendation 6.3**

**The current requirements for satisfaction of a charge should be maintained.**

#### **Recommendation 6.4**

**Section 138(1) of the Companies Act should be amended to specify that an instrument should be kept for as long as the charge is in force.**

#### **Recommendation 6.5**

**Upon discharge of the charge, the instrument by which the charge is created should be retained on the basis that it forms part of the accounting and other records required to be kept under and for the purposes of section 199 of the Act.**

**Recommendation 6.6**

**There should be a review of ACRA's form for registration of charges in which a confirmation is required by the chargee (if the charge is registered with ACRA by the chargee) that the instrument is kept at the company's registered office.**

**Recommendation 6.7**

**A reminder of the chargor's responsibility to keep a copy of the charge at the registered office should be included in the e-notification confirming registration.**

**Recommendation 6.8**

**The registration of charges regime should continue to apply only to foreign companies registered under the Companies Act and should not be extended to unregistered foreign entities.**

**Recommendation 6.9**

**Maintain ACRA's current practice/position that the mere physical lodgment of charge documents with ACRA does not equate with successful registration of the charge and that the lodgment of the charge documents must be made through BizFile.**

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## THE STEERING COMMITTEE FOR REVIEW OF THE COMPANIES ACT

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### INTRODUCTION

The Steering Committee for Review of the Companies Act (the Steering Committee) was appointed by the Ministry for Finance in October 2007 to review and rewrite the Companies Act so as to retain an efficient and transparent corporate regulatory framework that supports Singapore's growth as a global hub for both businesses and investors.

2. The Steering Committee is chaired by Professor Walter Woon SC and comprises ten members from varied backgrounds, including accountancy, corporate law, corporate governance, academia and the government. The composition of the Steering Committee and the supporting secretariat is as follows:

**Chairman:**

Professor Walter Woon

**Members:**

Mr Lucien Wong	Managing Partner, Allen & Gledhill LLP
Mr Dilhan Pillay Sandrasegara	Managing Partner, WongPartnership LLP (until 31st August 2010) Head, Portfolio Management and Co-Head, Singapore, Temasek Holdings (Private) Limited
Mr Gautam Banerjee	Executive Chairman, PriceWaterhouseCoopers LLP
Mr John Lim	Chairman, Singapore Institute of Directors
Prof Tan Cheng Han SC	Dean, Faculty of Law, National University of Singapore
Mr Charles Lim Aeng Cheng (Secretary)	Parliamentary Counsel, Legislation and Law Reform Division, Attorney-General's Chambers
Mr Ng Heng Fatt	General Counsel, Monetary Authority of Singapore
Ms Juthika Ramanathan	Chief Executive, Accounting and Corporate Regulatory Authority
Mr Chin Chee Kiat	Director (Economic Programmes), Ministry Of Finance (from 1st September 2010)

### SECRETARIAT

Wendy Chang	Deputy Senior State Counsel, Legislation and Law Reform Division ("LLRD"), Attorney-General's Chambers ("AGC")
Chong Kah Wei	Deputy Senior State Counsel, LLRD, AGC

Toh Wee San	Legal Officer, Legal Services Division (“LSD”), Accounting and Corporate Regulatory Authority (“ACRA”)
Elena Yeo Ju-Lan	Legal Officer, LSD, ACRA
Thomas Koshy	Legal Officer, LSD, ACRA
Andrew Abraham (until 30th September 2009)	Legal Officer, LSD, ACRA

3. In addition, Dr Philip Pillai<sup>1</sup>, Mr Laurence Lien (Director (Governance & Investment), Ministry Of Finance) and Mr Derrick Wan (Director (Reserves & Investment), Ministry Of Finance) served as members of the Committee until 30th September 2009, 30th September 2008 and 31st August 2010 respectively.

### SCOPE OF THE REVIEW

4. The present Companies Act was enacted in 1967. It was based on the Malaysian Companies Act 1965, which in turn was based on the Companies Act 1961 of the Australian state of Victoria. This latter act can trace its ancestry back to the UK Companies Act 1948. The Singapore Companies Act retains sections that are similar to (and in many cases word for word the same as) sections in the ancestral acts. This has allowed recourse to authorities from Malaysia, Australia and the UK. In the four decades since the introduction of the Companies Act, it has been amended 16<sup>2</sup> times. The amendments took the form of additions and deletions rather than a comprehensive reform. The result is that the present Companies Act is a patchwork quilt of old sections from the ancestral legislation, new sections borrowed from other more modern foreign statutes and locally-drafted sections with no foreign equivalents.

5. The last review of the Companies Act was conducted in 1999 by the Company Legislation and Regulatory Framework Committee (CLRFC). Several changes came out of that review. However, no attempt was made to deal with the structural flaws in the Act caused by piecemeal amendment over the years. In the meantime, a number of Commonwealth jurisdictions have undertaken or completed reviews of their own company law framework. For instance, the Australians re-drafted their Corporations Act in 2001 and the UK completed its company law reform in 2006. The UK Companies Act review was a broad-ranging one. It also had particular emphasis on making the UK Companies Act more user-friendly to the small companies, with what was called a “Think Small First” approach. Hong Kong is currently in the midst of its Companies Ordinance rewrite, which was launched in 2006. The Hong Kong Companies Bill was recently gazetted on 14 January 2011 and aims to achieve four main objectives, namely, enhancing corporate governance, ensuring better regulation, facilitating business and modernising the law<sup>3</sup>.

6. The Steering Committee was therefore charged by the Minister for Finance to:

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<sup>1</sup> Dr Philip Pillai was a Partner of Shook Lin & Bok LLP until September 2009.

<sup>2</sup> These amendments do not include consequential amendments made to the Companies Act by amendment Acts promulgated under other Acts, for instance, the Residential Property (Amendment) Act 2006 (Act 9 of 2006).

<sup>3</sup> The website of the Hong Kong Companies Registry at <http://www.cr.gov.hk/en/publications/press20110114.htm>

- provide a conducive, effective and efficient regulatory framework for setting up and doing business in Singapore;
- keep pace with relevant international legal developments and technological advances;
- provide flexibility and clarity to directors and management of enterprises in the operation of corporate entities, but without compromising the interests of stakeholders and the public;
- maintain an appropriate balance in the use of statutory provisions and non-statutory standards in regulating corporate behaviour; and
- promote greater accountability and transparency while keeping the costs of compliance low and manageable.

## **THE APPROACH OF THE STEERING COMMITTEE**

7. The Steering Committee determined at its first meeting that the Companies Act should be re-written and not merely amended again. There was some discussion on whether legislation from the UK or some other jurisdiction should be used as a template. It was decided that foreign legislation could not provide an adequate template for Singapore's needs. In deciding to re-write the Act, the Committee did not suggest that everything should be done from scratch. It is undesirable to abandon wording that is well-understood and with which the market is familiar just for the sake of change. What is required is that the Act should be streamlined and the inconsistencies ironed out. Where sections have proven problematic in practice, they should be clarified. Sections that have outlived their usefulness should be deleted. In reviewing the Companies Act, it is necessary to constantly ask what the policy behind a section is or should be.

8. The guiding principle of the Steering Committee is that we should not change things just for the sake of doing so. The fact that the other jurisdictions may or may not have certain provisions is a factor which was taken into account, but was not in itself determinative. The question to ask is whether changes made in foreign legislation serve a useful purpose in Singapore. The ultimate aim is to make the legislation comprehensible and coherent. Above all, the Act has to be practical. In its review, the Steering Committee has taken into account companies legislation from the United Kingdom, Australia and New Zealand where appropriate. Where additional jurisdictions such as Hong Kong<sup>4</sup>, Canada and the United States have been considered, they are included as well.

9. The Steering Committee was also guided by the principle that we should examine the regulatory requirements to see how the regulatory burdens placed on companies can be lessened. Regulatory rules should not be 'hard-coded' in the body of the Act, so as to allow the procedures to be modified as the environment changes. The overarching ideal is to make it easier for companies to comply with the statutory

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<sup>4</sup> In its review, the Steering Committee had considered the Hong Kong Government's Consultation Proposals relating to the rewrite of the Companies Ordinance, where relevant.

requirements whilst ensuring transparency and accountability to third parties. It is desired that the new Companies Act will convey the intent of the rules in clear, concise and unambiguous language which can be readily understood by people involved in running or investing in a business enterprise.

10. The Steering Committee's approach is to have the Companies Act contain core company law which applies to all forms of companies. In view of the decision to enact a new Insolvency Act, the provisions on the winding-up of companies will no longer be contained in the Companies Act, but in the Insolvency Act. Specific rules which apply to specific types of companies should, if possible, be migrated to other legislation so as to reduce the complexity of the Act. For example, rules that apply only to listed companies should be moved to the Securities and Futures Act (or some other appropriate legislation) and the Listing Rules. The vast majority of companies do not have to concern themselves with audit committees or with the provisions pertaining to the Central Depository; these rules do not belong in the Companies Act. Similarly, the provisions for registration and winding-up of foreign companies would more appropriately belong in legislation dealing with such entities.

## **WORKING GROUPS**

11. The Steering Committee has conducted a comprehensive review of the Companies Act with the assistance of Working Groups. From November 2007 to July 2010, the Steering Committee held a total of fourteen meetings to discuss various issues raised by the Working Groups.

12. The Working Groups, chaired by the Steering Committee members, were formed to study five distinct areas of the Companies Act, as follows:

Working Group 1 – Corporate Governance covering Directors' Duties  
Chairman: Mr John Lim

Working Group 2 – Shareholders' Rights and Meetings  
Chairman: Professor Tan Cheng Han

Working Group 3 – Capital Maintenance and Shares including Takeovers and Amalgamation  
Chairman: Mr Lucien Wong

Working Group 4 – Accounts and Audit  
Chairman: Mr Gautam Banerjee

Working Group 5 – Company Administration including Registration of Charges  
Chairman: Ms Juthika Ramanathan

13. The members of the Steering Committee and co-opted members of the Working Groups had a wide range of expertise and experience, and were drawn from the professions, industry, academia and non-profit organisations. The members and secretaries of the Working Groups and the members of the general secretariat are listed in the **Annex 1**.

## **CONSULTING THE PROFESSIONS, BUSINESS AND STAKEHOLDERS**

14. In the course of its review, the Steering Committee actively sought views from lawyers, accountants, businessmen and other stakeholders in order to ensure that the recommendations made are practical. Hence, in 2009 and 2010, the Steering Committee issued a number of consultation papers seeking feedback from businesses, professional bodies and other stakeholders. Individuals who practise corporate law and corporate finance or are interested in corporate governance issues were also invited to provide their input. Written representations were received from many of the persons and organisations consulted. Focus group meetings were held to hear oral comments. The businesses, professional bodies, individuals and other stakeholders from whom we sought feedback are listed in the **Annex 2**.

15. Specific questions were asked rather than merely inviting the respondents to give general comments. It was felt that this sort of focused feedback was more useful than general feedback from the public at this point. The feedback received was extensively discussed amongst the respective Working Groups and by the Steering Committee. This final report containing the Steering Committee's recommendations incorporates the results of these consultations with professional and business groups.

### **FINAL POINTS**

16. The recommendations of the Steering Committee contained in this Report are only the beginning of the process of review of the Companies Act. Equally important will be the subsequent drafting of the actual legislation. While it is desirable to keep as much of the present wording of the Act as is feasible, the opportunity should be taken to rationalise the various provisions to provide coherence. Some provisions of the Act are in separate sections only for historical reasons. Other provisions need to be consolidated and made internally consistent (eg, the various sections prescribing disqualifications of directors and managers). Finally, it is necessary to consider section by section whether breaches of the Act should be offences or whether it would be more efficient that such breaches should be dealt with by administrative sanctions or even civil proceedings.

17. During the course of the review, the Steering Committee also received feedback on a number of issues that concern listed companies rather than all companies in general. This Report does not discuss such issues as they were or will be referred to SGX for consideration.

## **WORKING GROUP 1 : CORPORATE GOVERNANCE COVERING DIRECTORS' DUTIES**

### **Chairman**

Mr John Lim

### **Members**

Professor Tan Cheng Han	Dean, Faculty of Law, National University of Singapore
Mr Adrian Chan	Senior Partner and Head of Corporate Department, Lee & Lee
Dr Lee Tsao Yuan	Executive Coach Practice Leader, Capelle Consulting and former director of Keppel Corporation Ltd and Oversea-Chinese Banking Corporation Ltd.
Mr Yeoh Oon Jin	Partner and Head of Assurance, PricewaterhouseCoopers LLP
Mr Lawrence Wong	Executive Vice President & Head of Listings, Singapore Exchange Limited
Mr Laurence Lien (until 30th September 2008)	Director (Governance & Investment), Ministry Of Finance
Mr Derrick Wan (until 31st August 2010)	Director (Reserves & Investment), Ministry Of Finance

### **Secretary**

Wendy Chang	Deputy Senior State Counsel, Legislation and Law Reform Division ("LLRD"), Attorney-General's Chambers ("AGC")
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## **WORKING GROUP 2 : SHAREHOLDERS' RIGHTS AND MEETINGS**

### **Chairman**

Professor Tan Cheng Han SC

### **Members**

Mr John Lim	Chairman, Singapore Institute of Directors
Mr Thio Shen Yi SC	Joint Managing Director, TSMP Law Corporation
Ms Annabelle Yip	Partner, WongPartnership LLP
Mr David Gerald J.	President/CEO, Securities Investors Association (Singapore)
Mr Laurence Lien (until 30th September 2008)	Director (Governance & Investment), Ministry Of Finance
Mr Derrick Wan (until 31st August 2010)	Director (Reserves & Investment), Ministry Of Finance

### **Secretary**

Chong Kah Wei	Deputy Senior State Counsel, LLRD, AGC
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## **WORKING GROUP 3 : CAPITAL MAINTENANCE AND SHARES INCLUDING TAKEOVERS AND AMALGAMATION**

### **Chairman**

Mr Lucien Wong

### **Vice-Chairmen**

Mr Dilhan Pillay Sandrasegara

Mr Ng Heng Fatt

### **Members**

Mr Hong Tuck Kun	Managing Director & Head, Enterprise Credit Group, DBS Bank Ltd
Mr Jeffrey Chua	Managing Director, Investment, Temasek Holdings (Private) Ltd
Mr Olivier Lum	Group CFO, CapitaLand Limited
Mr Ronald Ong	Managing Director, Chairman & CEO, South East Asia, Morgan Stanley Asia (Singapore) Pte
Mr Quek See Tiat	Partner & Deputy Chairman, PricewaterhouseCoopers LLP
Mr Richard Teng	Senior Vice President, Singapore Exchange Limited
Mr Tham Sai Choy	Managing Partner, KPMG LLP
Mr Andrew Lim	Partner & Co-Head of Corporate Mergers and Acquisitions, Allen & Gledhill LLP
Mr Michael Ewing Chow	Associate Professor, Faculty of Law, National University of Singapore

### **Secretary**

Toh Wee San  
Legal Officer, Legal Services Division (“LSD”),  
Accounting and Corporate Regulatory Authority (“ACRA”)

## **WORKING GROUP 4 : ACCOUNTS AND AUDIT**

### **Chairman**

Mr Gautam Banerjee

### **Members**

Mr Yap Chee Keong	Company Director and former Chief Financial Officer of Singapore Power Ltd
Mr Shariq Barmaky	Partner, Deloitte & Touche LLP
Ms Kok Moi Lre	Partner, PricewaterhouseCoopers LLP
Mr Tan Kay Kheng	Partner, WongPartnership LLP
Ms Christine Chan	Partner, Allen & Gledhill LLP

### **Secretary**

Elena Yeo Ju-Lan  
Legal Officer, LSD, ACRA

## **WORKING GROUP 5 : COMPANY ADMINISTRATION INCLUDING REGISTRATION OF CHARGES**

### **Chairperson**

Ms Juthika Ramanathan

**Members**

Ms Vemala Rajamanickam	Consultant, Allen & Gledhill LLP
Ms Stefanie Yuen Thio	Joint Managing Director, TSMP Law Corporation
Mr Bobby Tan Cher Chong	Director, Secretariat of the Board of Trustees, National University of Singapore
Mr Cheung Pui Yuen	Partner, Deloitte & Touche LLP
Mr Low Kah Keong	Partner, WongPartnership LLP

**Secretary**

Andrew Abraham (until 30th September 2009)	Legal Officer, LSD, ACRA
Thomas Koshy	Legal Officer, LSD, ACRA

## GENERAL SECRETARIAT

Melinda Moosa	Deputy Senior State Counsel, LLRD, AGC
Jaime Tey	State Counsel, LLRD, AGC
Jenny Tan	Manager, LLRD, AGC
Fanny Chang (until 31st Jan 2011)	Manager, LLRD, AGC
Mariana Othman	Legal Executive, LLRD, AGC
Cheok Yu-Liang	Legal Officer, LSD, ACRA
Tan Keng Yong	Legal Policy Officer, LSD, ACRA
Hannah Goh (until 4th Feb 2010)	Legal Policy Officer, LSD, ACRA
Lim Wei Jan (until 29th May 2010)	Legal Policy Officer, LSD, ACRA
Aaron Lim	Legal Executive, LSD, ACRA

**PROFESSIONAL BODIES**

Allen & Overy LLP  
Association of Small & Medium Enterprises  
Clifford Chance Pte Ltd  
Deloitte & Touche LLP  
Ernst & Young LLP  
General Insurance Association of Singapore  
Herbert Smith LLP  
Institute of Certified Public Accountants, Singapore  
Investment Management Association of Singapore  
KPMG LLP  
Latham & Watkins LLP  
Life Insurance Association Singapore  
Norton Rose (Asia) LLP  
PricewaterhouseCoopers  
Securities Investors Association of Singapore  
Singapore Association of the Institute of Chartered Secretaries and Administrators  
Singapore Business Federation  
Singapore Corporate Counsel Association  
Singapore Institute of Directors  
Singapore International Chamber of Commerce  
Singapore Reinsurers' Association  
The Association of Banks In Singapore  
The Law Society of Singapore  
White & Case Pte Ltd

**CORPORATIONS**

CapitaLand Group  
Sembcorp Industries Ltd  
Singapore Airlines Ltd  
Singapore Exchange Limited  
SingTel  
Temasek Holdings (Private Limited)

**ACADEMIA**

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College of Business (Nanyang Business School)

Nanyang Technological University

Professor Lim Kian Guan  
Interim Dean  
Lee Kong Chian School of Business  
Singapore Management University

Professor Michael P. Furmston  
Dean  
School of Law  
Singapore Management University

Professor Tan Cheng Han, S.C.  
Dean  
Faculty of Law, National University of Singapore

Professor Yeung Yin Bernard  
Dean  
Business School  
National University of Singapore

#### **SPECIALISTS/OTHER STAKEHOLDERS**

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Associate Professor  
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Chairman & Managing Director  
Rotary Engineering Ltd

Douglas Foo  
Chairman & Chief Executive Officer  
Apex-Pal International Ltd

Ho Kwon Ping  
Executive Chairman  
Banyan Tree Holdings Limited

Nash Benjamin  
Group Chief Executive Officer  
F J Benjamin Holdings Ltd

Olivia Lum  
Group Chief Executive Officer & President  
Hyflux Ltd

Philip Ng Chee Tat  
Chief Executive Officer  
Far East Organization

Sunny Verghese  
Group Managing Director & Chief Executive Officer  
Olam International Limited

Terry Clontz  
President & Chief Executive Officer  
Starhub Ltd

**GOVERNMENT AGENCIES**

Accountant-General's Department  
Economic Development Board  
Inland Revenue Authority of Singapore  
Monetary Authority of Singapore