

REVIEW OF THE SINGAPORE COMPANIES ACT

Ministry of Finance's Responses to the Report of the Steering Committee for Review of the Companies Act
3 October 2012



Photo courtesy of Singapore Tourism Board

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1. INTRODUCTION

BACKGROUND

The Companies Act (henceforth referred to as the “Act”) was enacted in 1967. It applies to all companies incorporated in Singapore, and contains provisions relating to the life-cycle of companies, from incorporation to management to winding up. The Act also contains some provisions that apply only to listed companies and branches of foreign companies (“foreign companies”) set up in Singapore. Besides the Act, companies listed on the Singapore Exchange are required to abide by the Securities and Futures Act (SFA), Singapore Code of Takeover and Merger, Listing Rules and Code of Corporate Governance as well.

2. The last review of the Act was conducted in 1999 by the Company Legislation and Regulatory Framework Committee (“CLRFC”). Several key changes were made to the Act as a result of that review, such as allowing one-director private companies, removing statutory audit for dormant companies¹ and exempt private companies² with annual turnover less than S\$5million, and abolishing the concept of par value shares and authorized share capital.

STEERING COMMITTEE REPORT

3. In October 2007, the Ministry of Finance (MOF) appointed a Steering Committee to Review the Companies Act (“Steering Committee”) to undertake a comprehensive review of the Act. Refer to *Annex A* for the list of Steering Committee members. The objectives of the review were to reduce regulatory burden and ease compliance, while retaining an efficient and transparent corporate regulatory framework that supports Singapore’s growth as a global hub for both businesses and investors.

4. The Steering Committee canvassed views from a wide range of local stakeholders, including business community, lawyers, accountants and academia. The Steering Committee also considered the law and practices in jurisdictions such as Australia, Hong Kong, New Zealand, United Kingdom and United States of America. The Steering Committee submitted its final report to MOF in April 2011, which comprised 217 recommendations relating to directors, shareholder rights, capital maintenance, accounts, company administration and charges³.

¹ A dormant company refers to a company with no significant accounting transactions during a financial year.

² An exempt private company is

(a) a private company with no corporate shareholders and not more than 20 shareholders; or

(b) any private company that is wholly owned by the Government, which the Minister, in the national interest, declares by notification in the Gazette

³ The Steering Committee’s report can be found at

<http://app.mof.gov.sg/data/cmsresource/public%20consultation/2011/Review%20of%20Companies%20Act%20and%20Foreign%20Entities%20Act/Anx%20A%20SC%20Report%20Complete.pdf>.

RESPONSE TO STEERING COMMITTEE REPORT

5. To reach out to a broader spectrum of stakeholders beyond those consulted by the Steering Committee, MOF conducted a public consultation on the *Report of the Steering Committee* from June to October 2011⁴. At the close of the public consultation, MOF received substantive comments from 70 respondents. Refer to *Annex B* for the list of respondents.

6. MOF evaluated all relevant inputs for each of the 217 recommendations. In doing so, we have adopted a principled, yet pragmatic approach, with a view to balancing the interests of various stakeholders while not losing sight of the objectives of the review. We have decided to **accept 192 recommendations and modify 17. Eight of the 217 recommendations have not been accepted at this point.** This report sets out a summary of the feedback received during the public consultation and MOF's response to the recommendations submitted by the Steering Committee.

7. Besides the detailed recommendations on changes to the Act, the Steering Committee had recommended rewriting the Act to rationalise the various provisions for greater coherence. MOF agrees with the Steering Committee that it is timely to rewrite the Act given the various amendments that have been made over the years. To allow the business community and practitioners sufficient time to adapt to the changes in the Act, **MOF will implement the changes and rewrite of the Act in two phases.** In the first phase, MOF will amend the Act to implement the Steering Committee's recommendations which have been accepted by the Ministry. After the changes have been implemented, in the second phase, MOF will undertake a rewrite of the Act to rationalise the provisions and improve the clarity.

8. The Steering Committee had also recommended that as part of the rewrite of the Act, provisions relating to foreign companies could be migrated to a separate dedicated legislation. MOF shares the view of the Steering Committee that it would be helpful to have a consolidated source of reference on the provisions relating to foreign companies. As the existing provisions on foreign companies can already be found in a dedicated part of the Act; namely Part XI Division 2 of the Act, MOF is of the view that there is no compelling need for a separate legislation for foreign companies. MOF will thus **retain the provisions relating to foreign companies in the Act.**

9. MOF would like to thank the Steering Committee for its recommendations and the respondents that had provided valuable feedback on these recommendations through the public consultation.

⁴ The link to the public consultation can be found at http://app.mof.gov.sg/pc_coact_2011.aspx.

NEXT STEPS

10. MOF plans to table the amendment Bill in Parliament to implement the changes by end of 2013. MOF will seek public feedback on the draft Bill in early 2013.

2. DIRECTORS

PREAMBLE

1. In Chapter 1 of the *Report of the Steering Committee for Review of the Companies Act*, the Steering Committee (SC) had reviewed the following issues relating to directors:

- definition of shadow director;
- appointment and qualifications of directors;
- disqualification of directors on conviction of certain offences;
- vacation and removal of directors;
- payment of compensation to directors for loss of office;
- loans to directors and connected companies;
- supervisory role of directors;
- powers of directors to bind the company and issue shares of company;
- directors' fiduciary duties;
- imposition of liability on other officers;
- disclosure of company information by nominee directors; and
- indemnity for directors.

SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

I. SHADOW DIRECTORS

<u>Recommendation 1.1</u>

It is not necessary to have a separate definition of "shadow director" in the Companies Act.
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Summary of Feedback Received

2. Most respondents agreed that a separate definition of "shadow director" is not necessary.

MOF's Response

3. **MOF accepts Recommendation 1.1.** "Director" is currently defined to include "a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act". The SC had noted that the existing definition of "director" already encompasses shadow directors. MOF agrees with the SC's views.

Recommendation 1.2

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

Summary of Feedback Received

4. Most respondents agreed with this recommendation but some asked whether a person who controls a single director should be deemed a director

MOF's Response

5. **MOF accepts Recommendation 1.2.** The SC had noted that it would be unrealistic to subject a person who controls only one director to all the obligations and duties of a director. The SC also cautioned that it would result in corporate shareholders who nominated directors to the boards of companies being regarded as shadow directors. This might result in corporate shareholders owing duties of care to one another in closely held joint venture companies. MOF agrees with the SC's views.

II. APPOINTMENT OF DIRECTORS

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.

Summary of Feedback Received

6. All respondents agreed with this recommendation.

MOF's Response

7. **MOF accepts Recommendation 1.3.** MOF shares the views of the SC that as the Act is currently silent on this point it will provide greater clarity on the appointment of directors.

Recommendation 1.4

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

Summary of Feedback Received

8. All respondents agreed with this recommendation.

MOF's Response

9. **MOF accepts Recommendation 1.4.** MOF shares the views of the SC that section 170 is obsolete since assignment of the office of directors is not done in practice.

III. QUALIFICATIONS OF DIRECTORS

Recommendation 1.5

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

Summary of Feedback Received

10. Most respondents agreed with this recommendation. A few respondents disagreed and suggested that corporate directorship be allowed as in the United Kingdom (UK) and Hong Kong. The potential benefits cited included fostering of cohesion in a group of companies, cost effectiveness and facilitating the operations of corporate service providers. Safeguards proposed included limiting corporate directorship to entities licensed by the Monetary Authority of Singapore or regulated professionals, or allowing only investment holding companies to appoint corporate directors.

MOF's Response

11. **MOF accepts Recommendation 1.5.** The SC had considered the position in other jurisdictions, including the UK and Hong Kong, but found no compelling reason to allow corporate directorship in Singapore, especially in view of the difficulties in determining the person who actually controls the company and in holding a corporate director accountable. MOF agrees with the view of the SC. The safeguards proposed do not adequately address concerns about the lack of transparency and the difficulties in enforcement of corporate directors.

Recommendation 1.6

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

Summary of Feedback Received

12. All respondents agreed with this recommendation.

MOF's Response

13. **MOF accepts Recommendation 1.6.** MOF shares the views of the SC that there is no compelling reason to prescribe qualifications or mandate training for directors of all companies.

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.

Summary of Feedback Received

14. Almost all respondents agreed with these recommendations. A few respondents suggested that the current position of requiring directors above 70 years old to be re-appointed annually should be retained. It was noted that the age limit of 70 years is past the retirement age of 65 years and that shareholders have the option under current provisions of passing an ordinary resolution to appoint a director above the age limit.

MOF's Response

15. **MOF accepts Recommendation 1.7 and 1.8.** The SC had noted that persons above 70 years of age can be capable of doing the job of a director and are often re-appointed in practice. There is also no age limit for directors in the UK, Australia, New Zealand and Hong Kong. MOF agrees with the SC and is of the view that this is best left to shareholders to decide whether to approve the appointment of a director.

IV. DISQUALIFICATION OF DIRECTORS ON CONVICTION OF OFFENCES INVOLVING FRAUD OR DISHONESTY

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.

Summary of Feedback Received

16. Most respondents agreed with this recommendation. However, a few respondents suggested variants on the automatic disqualification regime, such as limiting it to a list of specified offences or to offences committed overseas, while

applications for disqualification orders would be required for other offences. One respondent suggested requiring shareholders' approval via a special resolution before disqualified directors can apply to court for leave. A number of respondents also suggested providing clarity and certainty on the offences that constituted offences involving fraud or dishonesty.

MOF's Response

17. **MOF accepts Recommendation 1.9.** The SC had considered whether a disqualification order regime where an application has to be made to Court specifically to disqualify a director was preferable but decided against it in favour of the existing automatic disqualification regime for conviction of offences involving fraud or dishonesty. Under the present automatic disqualification regime where a person is convicted (whether in Singapore or elsewhere) of an offence involving fraud or dishonesty punishable with imprisonment for three months or more, he is automatically disqualified from acting as a director or from taking part in the management of the company for five years, without any requirement for a disqualification order to be made by the Court. It was noted that a difficulty with putting the onus on the Court is that in sentencing an offender, the Court may not have in mind the relevance of an offence to the role of a company director. It is also too prescriptive to include a requirement in the legislation for shareholders' approval before disqualified directors can apply to court for leave. MOF agrees with the SC to retain the automatic disqualification regime for directors convicted of offences involving fraud or dishonesty, but to allow automatically disqualified directors to apply to the High Court for leave. To provide guidance on the scope of "offences involving fraud or dishonesty", a non-exhaustive list of offences will be made publicly available e.g. on ACRA's website.

V. VACATION OF OFFICE AND REMOVAL OF DIRECTORS

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.

Summary of Feedback Received

18. All respondents agreed with these recommendations.

MOF's Response

19. **MOF accepts Recommendation 1.10 and 1.11.** MOF shares the views of the SC that specifying these default positions in the Act will provide greater clarity.

Recommendation 1.12

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

Summary of Feedback Received

20. While most respondents agreed with this recommendation, one respondent suggested that the Act require retirement by rotation, which would give guidance to companies.

MOF's Response

21. **MOF accepts Recommendation 1.12.** The current position is consistent with practices in UK, Australia, New Zealand and Hong Kong, which leave this issue to be dealt with in the Articles of Association (“Articles”) of a company. MOF shares the views of the SC that there is no compelling reason to have the Act mandate 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.

Summary of Feedback Received

22. While most respondents agreed with this recommendation, one respondent suggested that the position be the same for both public and private companies such that shareholders have the right to remove a director by ordinary resolution.

MOF's Response

23. **MOF accepts Recommendation 1.13.** The SC had noted that the issue of removal of directors of private companies is currently left to the Articles. MOF agrees that specifying the default position in the Act will provide greater clarity. MOF also agrees with the views of the SC that private companies may be given flexibility on this issue by allowing the Articles to override the default position. In the case of public companies, which includes listed companies, there should not be entrenchment of directors and so the existing right to remove any director by ordinary resolution should not be subject to the Articles.

VI. PAYMENT OF COMPENSATION TO DIRECTORS FOR LOSS OF OFFICE

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.

Summary of Feedback Received

24. Most respondents agreed with these recommendations. However, one respondent commented that executive pay should be left to the board to decide whilst another indicated that shareholders should approve compensation payment and the new exception was unnecessary. On the quantum specified in the new exception, some respondents suggested various permutations, including salary of 3 years, base salary of 2 years and base salary of 6 years. Another alternate view was to specify the quantum in terms of emoluments rather than base salary given that the trend is for remuneration to be performance-based.

MOF's Response

25. **MOF accepts Recommendation 1.14**, as seeking shareholders' approval for payment of compensation to directors for loss of office is a matter of good corporate governance. **MOF also accepts Recommendation 1.15 but will adopt a payment limit of total emoluments for the past one year (i.e. modify Recommendation 1.15)**. MOF notes that payment of compensation to executives is usually determined by the Board. Thus, MOF has no objection to introducing a new exception for payment of compensation to executive directors for loss of employment if the payment does not exceed a certain payment limit. However, MOF prefers to use total emoluments instead of base pay based on the following considerations. First, companies are already moving towards performance-based payments. Using base pay as the payment limit may lead to an unintended consequence of companies increasing the base pay component. Second, it may be difficult to define base pay in practice. The phrase "total emoluments" provides greater clarity and is already defined in section 169(2) of the Act. For prudence, the payment limit will be based on total emoluments for the past one year, instead of three years. MOF also agrees with the SC to retain disclosure to shareholders for transparency and as a check on the Board.

VII. LOANS TO DIRECTORS AND CONNECTED COMPANIES

Recommendation 1.16

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

Summary of Feedback Received

26. All respondents agreed with this recommendation.

MOF's Response

27. **MOF accepts Recommendation 1.16.** MOF shares the view of the SC that there is no need to change the threshold of 20% in section 163.

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.

Summary of Feedback Received

28. Most respondents agreed with this recommendation. Some respondents commented that Recommendation 1.17(a) could result in a loan exceeding the proportionate equity shareholding of the investor company, which may not be in the best interests of its shareholders. There was also uncertainty expressed as to how the calculations should be done to comply with Recommendation 1.17(a).

MOF's Response

29. **MOF accepts Recommendation 1.17 to introduce the new exception (b) but will not introduce the new exception (a) (i.e. modify Recommendation 1.17).** MOF notes the concerns expressed by respondents on Recommendation 1.17(a) and is of the view that it is adequate to introduce the new exception in Recommendation 1.17(b). This approach is consistent with that of UK and Australia

Recommendation 1.18

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

Summary of Feedback Received

30. Most respondents agreed with this recommendation. One respondent expressed concern that this recommendation was too broad and that too many transactions would then fall within the regulatory regime.

MOF's Response

31. **MOF accepts Recommendation 1.18.** The SC had noted that the UK regulatory regime already extends to quasi-loans, credit transactions and related arrangements and relevant definitions are in place that properly scopes the provisions. MOF agrees with the views of the SC.

VIII. SUPERVISORY ROLE OF DIRECTORS

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.

Summary of Feedback Received

32. All respondents agreed with this recommendation. One respondent said that this amendment should not result in a reduction in the duty of care expected of directors.

MOF's Response

33. **MOF accepts Recommendation 1.19.** The SC had proposed the modification to section 157A(1) to better reflect the powers and responsibilities of the board of directors. MOF agrees with the SC. The recommendation is not intended to reduce the duty of care expected of directors.

IX. POWER OF DIRECTORS TO BIND THE COMPANY

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.

Summary of Feedback Received

34. Most respondents agreed with this recommendation as it is unduly onerous to impose constructive knowledge⁵ of the contents of the Memorandum of Association ("Memorandum") and Articles on third parties. One respondent suggested this recommendation was unnecessary since section 25A of the Act provides against constructive knowledge of the Memorandum and Articles merely because it is publicly available. Another respondent suggested that section 25A be deleted and persons be deemed to have constructive knowledge of the Memorandum and Articles of a company as these are public documents. Accordingly, a company should not be bound if transactions are entered into contrary to limitations. Some respondents expressed concern on the scope of the phrase "good faith".

MOF's Response

35. **MOF accepts Recommendation 1.20.** Currently, section 25A provides that a person is not deemed to have constructive knowledge of a company's Memorandum and Articles merely because it is filed with ACRA or available for inspection at a company's registered address. Section 25A should not be deleted as it will be unduly onerous to impose constructive knowledge of the Memorandum and Articles on third parties. The recommendation is also not made redundant by section 25A since a person may have knowledge of a company's Memorandum and Articles in situations outside of section 25A. Thus, MOF agrees with the views of the SC that it is useful to introduce a provision as recommended. Feedback received on the interpretation of "good faith" will be considered during drafting of the relevant provisions.

X. POWER OF DIRECTORS TO ISSUE SHARES OF COMPANY

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.

⁵ Constructive knowledge is different from actual knowledge in that it is knowledge which a person is deemed by law to have in certain circumstances even if he did not actually have such knowledge.

Summary of Feedback Received

36. Although a majority of the respondents agreed with this recommendation, a few respondents disagreed and made significant observations in their responses. The respondents indicated that it is good corporate governance for the company to refresh approval at every Annual General Meeting (AGM) as shareholders' views might change with different company and market conditions. This will not increase the administrative burden or costs, as the company is required to hold an AGM. Some respondents were of the view that there was no reason why companies should need two years to complete a transaction and issue the shares.

MOF's Response

37. **MOF does not accept Recommendation 1.21.** The observations made by the respondents who disagreed with the recommendation are valid. The economic context for the issue of shares may change. Seeking shareholders' approval will not result in an administrative burden for companies as such approvals are sought at AGMs.

XI. DIRECTORS' FIDUCIARY DUTIES

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.

Summary of Feedback Received

38. Most respondents agreed with this recommendation. Two respondents suggested that further codification of directors' duties even if not exhaustive would be useful.

MOF's Response

39. **MOF accepts Recommendation 1.22.** The Companies Act already contains a statutory statement on directors' duties. ACRA has also published a guidebook for directors⁶. MOF will monitor the developments in the UK and other jurisdictions.

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.

⁶ ACRA's publication ("ACRA and I: Being an Effective Director") is available at <http://www.acra.gov.sg/Publications/Guidebook+for+Directors.htm>.

Summary of Feedback Received

40. Most respondents agreed with this recommendation. One respondent commented that civil liability was an adequate deterrent and that there was no need for criminal liability.

MOF's Response

41. **MOF accepts Recommendation 1.23.** MOF agrees with the views of the SC that the current position should be retained as a deterrent and to improve for better governance. With respect to the possible introduction of a civil penalties regime, MOF notes that this issue (which is within the scope of the ACRA review⁷) was an issue which the SC left open.

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.

Summary of Feedback Received

42. Most respondents agreed with this recommendation. However, one respondent commented that the civil liability under the common law was adequate and it was not necessary to extend the scope of section 157(2).

MOF's Response

43. **MOF accepts Recommendation 1.24.** Section 157(2) already criminalises the improper use of information. MOF agrees with the views of the SC that it is useful to widen the scope of section 157(2) to extend the prohibition to cover the improper use of position.

XII. IMPOSITION OF LIABILITY ON OTHER OFFICERS

Recommendation 1.25

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

Summary of Feedback Received

44. Most respondents agreed with this recommendation. Some suggested the disclosure requirements should extend beyond the CEO to other high level executives. On the other hand, one respondent indicated that it was not necessary to extend

⁷ ACRA is tasked to review the current penalties regime. Amendments pursuant to ACRA's review are targeted to be implemented as part of the second phase involving a rewrite of the Act.

beyond directors and another commented that this recommendation was not necessary for private companies. A few respondents suggesting introducing a suitable definition as some companies use “Vice-President” or “General Manager” instead of “Chief Executive Officer”.

MOF’s Response

45. **MOF accepts Recommendation 1.25.** MOF agrees with the views of the SC that the disclosure requirements should be extended to the CEO as the person who is at the apex of management. This is consistent with the SFA which requires the directors and CEO of listed companies to notify the company of their shareholdings. This recommendation is relevant to private companies, just as the disclosure obligations of directors are. Suggestions on the definition of CEOs will be addressed in the draft Bill.

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.

Summary of Feedback Received

46. Almost all respondents agreed with this recommendation. The sole dissenting respondent was of the view that the offence of failure to act honestly and with reasonable diligence should not be extended beyond directors as directors owed a fiduciary duty to the company and were the ultimate overseers of the company.

MOF’s Response

47. **MOF does not accept Recommendation 1.26.** Although MOF agrees with the intent of SC’s recommendation to promote better standards of corporate governance, it would not be timely to extend the statutory duties to CEOs now. Most jurisdictions have not adopted this position despite the precedent in Australia since 1981. For example, UK, New Zealand and Hong Kong impose the duty to act honestly and use reasonable diligence on directors only. Neither UK nor Hong Kong had changed their position in their recent reviews of their companies legislation. Therefore, MOF rejects the recommendation but will monitor developments in other jurisdictions in the mean time. MOF notes that SC had also highlighted that in practice, the CEO is usually a director of the company. Even if not formally appointed, the CEO may be considered a de facto director and be subject to the statutory duty.

XIII. DISCLOSURE OF COMPANY INFORMATION BY NOMINEE DIRECTORS

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.

Summary of Feedback Received

48. All respondents agreed with this recommendation. One respondent commented that provision of information to a nominating shareholder should not be prohibited as long as it is not detrimental to the company or prohibited by the Board. Another suggestion was that there should be exemption from the requirement for a general or specific mandate for unlisted joint ventures subject to the overarching consideration that there should not be any prejudice caused to the company.

MOF's Response

49. **MOF accepts Recommendation 1.27.** MOF agrees with the views of the SC that section 158 should be amended. This will facilitate more efficient management of groups with listed subsidiaries. Concerns relating to improper use of information or insider trading will be mitigated and governed under the SFA. There is no pressing need to further liberalise the position for unlisted joint ventures.

XIV. INDEMNITY FOR DIRECTORS

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.

Summary of Feedback Received

50. Most respondents agreed with this recommendation. However, two respondents indicated that this recommendation was too wide and that the

qualifications in the relevant provisions in the UK Companies Act 2006 could be considered.

MOF's Response

51. **MOF accepts Recommendation 1.28 but will include qualifications (i.e. modify Recommendation 1.28).** MOF agrees with the SC that it should be expressly allowed for a company to provide indemnity to its directors for claims brought by third parties. However, MOF agrees with the feedback that this should be subject to appropriate qualifications. MOF will seek views on the proposed qualifications in the draft Bill.

Recommendation 1.29

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

Summary of Feedback Received

52. All respondents agreed with this recommendation.

MOF's Response

53. **MOF accepts Recommendation 1.29.** MOF agrees with the views of the SC that it should be clarified that a company is allowed to indemnify its directors against potential liability.

CONCLUSION

54. The following table summarises MOF's decision on the recommendations in Chapter 1 of the *Report of the Steering Committee for Review of the Companies Act*.

Classification	No. of Recommendations	Recommendation Reference
Accepted by MOF	24	-
Modified by MOF	3	Recommendations 1.15, 1.17 and 1.28
Not adopted by MOF	2	Recommendation 1.21, 1.26
Total	29	-

3. SHAREHOLDERS' RIGHTS AND MEETINGS

PREAMBLE

1. In Chapter 2 of the *Report of the Steering Committee for Review of the Companies Act*, the SC had reviewed the following issues relating to shareholders' rights and meetings:
 - voting;
 - written resolutions;
 - enfranchising indirect investors;
 - corporate representatives;
 - electronic transmission of notices and documents;
 - general meetings;
 - minority shareholder rights; and
 - membership of holding company.

SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSE

I. VOTING

(a) *Voting of resolutions by poll*

<u>Recommendation 2.1</u>

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

Summary of Feedback Received

2. Most respondents agreed with this recommendation. However, some respondents highlighted that voting by poll would enhance corporate governance, and make voting more transparent, fair and equitable to all shareholders. There was a suggestion to prescribe the type of matters that have to be voted by poll, and those which could be voted on through a show of hands.

MOF's Response

3. **MOF accepts Recommendation 2.1.** The SC had noted that it would not be practical for the Act to require that all resolutions have to be voted by poll, as it would be too onerous and time-consuming. It would also increase the cost of holding general meetings. Whilst SC had also considered that it would be desirable for certain types of

important resolutions tabled at general meetings of listed companies to be voted by poll, it was of the view that this was an issue for SGX to consider. MOF agrees with the SC's views.

(b) Lowering of threshold for eligibility to demand a poll (section 178)

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.

Summary of Feedback Received

4. Most respondents agreed with this recommendation. A few respondents were of the view that this amendment was not necessary.

MOF's Response

5. **MOF accepts Recommendation 2.2.** The SC was of the view that there is no compelling reason to maintain the 10% threshold in section 178(1)(b)(ii)⁸, if shareholders holding less than 10% of the voting rights have the power to call for a poll under the alternative 5-member threshold under section 178(b)(i). Moreover, lowering the threshold to 5% would be consistent with the 5% threshold adopted for the purposes of notification of substantial shareholdings under the Act. MOF agrees with the SC's views.

II. WRITTEN RESOLUTIONS

(a) Requisite majority of votes for passing written resolutions

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.

Summary of Feedback Received

6. All respondents agreed with these recommendations.

⁸ Section 178(b) sets out the shareholders' rights to demand a poll at a general meeting.

MOF's Response

7. **MOF accepts Recommendations 2.3 and 2.4.** MOF agrees with the SC's views that the relevant majority vote requirement should not be determined entirely by a company via its Articles. The requisite majority vote requirements for the passing of written resolutions in private companies should continue to be specified in section 184A.

(b) Restrictions on types of "business" that can or cannot be conducted using written resolutions

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.

Summary of Feedback Received

8. All respondents agreed with this recommendation.

MOF's Response

9. **MOF accepts Recommendation 2.5.** The SC had determined that the status quo in section 184A(2), i.e. private companies may not pass resolutions by written means where a special notice is required, should be maintained as these matters would usually involve the removal of directors, liquidators and auditors. These parties should be given the opportunity to be heard at meetings. MOF agrees with the views of the SC. Our current regime is in line with that in the UK, Hong Kong and Australia, where a director and/or an auditor cannot be removed by written resolution.

(c) When a written resolution is considered passed

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.

Summary of Feedback Received

10. Most respondents agreed with this recommendation. One respondent suggested that greater flexibility could be given by replacing the word "signs" with "signifies agreement".

MOF's Response

11. **MOF accepts Recommendation 2.6.** Section 184A(3) and 184A(4) of the Act specify that a written resolution is considered as passed when the requisite number of members have formally agreed to the resolutions. The SC had decided that the requirement for the majority to “sign” the written resolution accords greater certainty compared to the current regime. Companies have the flexibility to provide for other means of signifying agreement in its constitutional documents. MOF agrees with the views of the SC.

(d) When a proposed resolution will lapse

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.

Summary of Feedback Received

12. Most respondents agreed with this recommendation. Some respondents disagreed as they were concerned that imposing a 28-day period would create administrative and practical difficulties for companies, especially those with many foreign shareholders or a large shareholder base. It was suggested that the change was unnecessary as the current practice whereby the proposed written resolution is passed once the requisite majority has agreed to the resolution has proven to be effective. One respondent suggested that a 45-day period could be implemented as opposed to a 28-day period.

MOF's Response

13. **MOF accepts Recommendation 2.7.** The SC had considered the administrative concerns of companies but on balance had proposed the recommendation as it was not desirable to have a proposed written resolution which was not signed or acted upon. As the directors and shareholders of a company might change over time, it is prudent to stipulate that a written resolution would lapse if the required majority vote is not attained by the end of a certain period. It is noted that the UK had provided for a 28-day period, unless otherwise stated in the companies' Articles. MOF agrees with the views of the SC, and notes that a company may provide a longer lapsing period in its Articles where necessary.

(e) Where a member is another company: exercising vote by corporate representative

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.

Summary of Feedback Received

14. All respondents agreed with this recommendation.

MOF's Response

15. **MOF accepts Recommendation 2.8.** MOF agrees with the SC that ultimately, it would be prudent for the company to retain the flexibility in deciding who it would want to authorise to sign the written resolution, as opposed to prescribing the signatory in legislation.

(f) Extending procedures for passing resolutions by written means to unlisted public companies

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.

Summary of Feedback Received

16. All respondents agreed with this recommendation. One respondent commented that the procedures for passing written resolutions which are provided for under sections 184A-184F of the Act are administratively burdensome.

MOF's Response

17. **MOF accepts Recommendation 2.9.** The SC had observed that many unlisted public companies operated like private companies and therefore proposed that the procedures for written resolutions be extended to them so that decisions could be made more expeditiously and conveniently. MOF agrees with the views of the SC, and will review sections 184A-184F when the Act is re-written.

III. ENFRANCHISING INDIRECT INVESTORS

(a) Multiple proxies for members providing custodial or nominee services

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.

Summary of Feedback Received

18. Most respondents agreed with these recommendations. Some respondents expressed strong disagreement with the proposal on the grounds that permitting multiple proxies will lead to higher costs and logistical problems for companies and share registrars arising from expected higher attendance at meetings. One respondent highlighted the concern that majority shareholders who own shares directly may be outvoted by proxies on a show of hands. A number of respondents suggested that voting by poll should be used instead. Some respondents expressed concerns about the difficulty in identifying who should be recognised for voting purposes and who would have the power to appoint proxies.

MOF's Response

19. **MOF accepts Recommendations 2.10 and 2.11.** MOF notes that the SC had considered the feedback received on the recommendations and the positions adopted in the UK and Hong Kong which permit the appointment of multiple proxies. While noting the concerns over the administrative cost and logistical issues for companies administering the multiple proxies regime, MOF agrees with the SC's recommendation, which will better enfranchise indirect investors (namely beneficial shareholders who hold shares via a nominee company or custodian bank) and

encourage more active participation at general meetings. MOF also supports the views of the SC that allowing proxies to vote by show of hands will give effect to the true intention behind the implementation of the multiple proxies regime. If majority shareholders are concerned that they may be outvoted on a show of hands by proxies holding the minority shareholding, they could request that decision be taken by way of voting by poll.

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.

Summary of Feedback Received

20. Most respondents agreed with this recommendation. Some respondents who disagreed had commented that the proposed 72-hour time-frame was insufficient given the potential significant increase in the number of proxies, and especially so for companies with a large pool of beneficial shareholders. One respondent suggested the retention of the 48-hour time-frame, as the proposed longer period given to companies to process the proxy forms would disadvantage overseas shareholders who would have less time to respond with the proxy appointment.

21. One respondent sought to clarify whether section 130D(3), i.e. relating to the cut-off time for the closing of the Depository Register in respect of shares traded through the Central Depository, would correspondingly be amended to extend the time period from 48 hours to 72 hours in view of the time extension under Recommendation 2.12.

MOF's Response

22. **MOF accepts Recommendation 2.12.** The SC had acknowledged and considered in detail the administrative and logistical challenges that a company might face when multiple proxies were introduced. MOF agrees with the SC's recommendation for the cut-off timeline to be brought earlier to 72 hours. This will better balance the companies' need for more time to handle the increased number of proxy form submissions and the need to provide adequate time for the notification of the Annual General Meeting and preparation of accounts laid at that meeting. The impact of this recommendation on section 130(D)(3) of the Act is noted and will be addressed during the drafting of the amendments.

(b) Nomination of beneficial shareholder to enjoy membership rights

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.

Summary of Feedback Received

23. Most respondents agreed with this recommendation. One respondent disagreed and suggested that voting by poll would be the best way to enfranchise the shareholders.

MOF's Response

24. **MOF accepts Recommendation 2.13.** The SC had proposed that it would be sufficient to adopt a multiple proxies regime in Singapore for the purposes of enfranchising indirect investors who held shares through nominees, and that companies were able to provide for members to nominate other persons to enjoy their membership rights in their Articles. The SC was also of the view that there was no compelling reason to expressly enable indirect investors to receive company documents and information that were sent to members by companies, as the indirect investors could easily obtain such corporate information of Singapore listed companies through their nominees. MOF agrees with the SC's views.

(c) Enfranchising CPF members who purchased shares using CPF funds

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.

Summary of Feedback Received

25. Most respondents agreed with these recommendations. One respondent disagreed and suggested that voting by poll would be the best way to enfranchise CPF share investors.

MOF's Response

26. **MOF accepts Recommendations 2.14 and 2.15.** The SC had agreed with the principle that CPF investors should be given their due shareholders' rights as though they were cash investors. The SC had studied various options to achieve this outcome and eventually decided to adopt the multiple proxies approach after considering the operational and practical issues in implementation. MOF agrees with the SC's recommendation.

IV. CORPORATE REPRESENTATIVES

(a) *Clarification of meaning of "not otherwise entitled to be present at the meeting" in section 179(4)*

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*".

Summary of Feedback Received

27. A majority of the respondents agreed with this recommendation. A few respondents who disagreed sought clarification on whether the phrase should be interpreted as "not otherwise entitled to be present and vote at a meeting as a member, proxy or a corporate representative" or any other person who is "not otherwise entitled by law or the Articles to be present at a meeting, for example, a director or auditor". If it was the latter interpretation, they asked whether that would mean that a director or auditor who is entitled to be present in that capacity will be disqualified from acting as a corporate representative.

MOF's Response

28. **MOF accepts Recommendation 2.16, but will clarify the clause during drafting (i.e. modify Recommendation 2.16).** Section 179(4) of the Act provides that a corporation which has given authority to a person to act as its corporate representative at a shareholder or creditor meeting is deemed to be personally present at the meeting, provided that the person is "not otherwise entitled to be present at the meeting". The SC was of the view that the wording in section 179(4) was sufficiently unambiguous and the legislative intent was clear.

29. However, in view of the feedback received, MOF will amend section 179(4) to clarify that a corporation would be taken to be present if its corporate representative is present at a meeting and that representative is not otherwise entitled to be present at the meeting as a member or a proxy, or a corporate representative of another member. The intent is not to prevent a director or an auditor from acting as a corporate representative if they are entitled to be present at the meeting in that capacity.

(b) Appointment of representatives of members that take other business forms

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.

Summary of Feedback Received

30. Most of the respondents agreed with this recommendation. One respondent disagreed and suggested that some guidance should be provided. It would validate the status of such representatives at the shareholders' meeting and address the issue of how such representatives may be counted for the purposes of forming a quorum or voting on a show of hands.

MOF's Response

31. **MOF accepts Recommendation 2.17.** MOF agrees with the SC's views that it would be too onerous, if not impossible, to cater for all possible forms of existing and future corporate business vehicles in the provisions of the Act. It should be left to the law of agency to determine whether the appointment of a representative of other business forms was valid and should be recognised.

V. ELECTRONIC TRANSMISSION OF NOTICES AND DOCUMENTS

(a) Electronic transmission of notices and documents

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.

Summary of Feedback Received

32. All respondents agreed with this recommendation. One respondent suggested that where electronic transmission is used, materials should be published at least one month in advance.

MOF's Response

33. **MOF accepts Recommendation 2.18.** MOF agrees with the SC's view, and notes that the obligations for sending notices and documents should be independent of mode of transmission.

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.

Summary of Feedback Received

34. Most respondents agreed with this recommendation. Some respondents disagreed as they were concerned that members must accept electronic transmission as the only mode of dissemination of documents and suggested that companies should allow members to opt for physical copies of documents. Clarification was also sought as to whether shareholders would be allowed to use electronic modes of communication to respond to the company.

MOF's Response

35. **MOF accepts Recommendation 2.19.** MOF agrees with the SC's views that the proposed framework will facilitate electronic communications by companies. MOF had noted the concerns of some shareholders who would prefer to have an option to receive physical hardcopies of documents, notwithstanding that the company adopts the implied consent regime. These shareholders will have a chance to highlight their concerns when the company proposes amendments to its Articles to move to an implied consent regime. The method for members to respond to the company will be left to the companies to determine and will not be prescribed in the Act.

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.

Summary of Feedback Received

36. All respondents agreed with the proposed safeguards. However, some respondents suggested alternative modes of notifying shareholders of the publication of documents on a website e.g. the placing of an advertisement in a local newspaper, making an SGXNET announcement, or allowing notification by means specified in the company’s Articles. One respondent suggested expanding the ambit of documents where physical delivery would be required to include documents relating to disposals, mergers and acquisitions, and interested party transactions.

MOF’s Response

37. **MOF accepts Recommendation 2.20 but will provide that the notification of the publication on a website can be by any means specified in the companies’ Articles, rather than “in writing or electronically” (i.e. modify Recommendation 2.20).** MOF agrees with the SC that it will be useful to alert members about documents posted on the website. However, in view of the feedback received, MOF will grant companies greater flexibility by allowing them to alert members of such publication via any means specified in the companies’ Articles (e.g. by email or SMS). On the suggestion to expand the categories for which physical copies of

documents must be delivered, MOF is of the view this will be more stringent than the current regime and there is no pressing reason to tighten it.

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.

Summary of Feedback Received

38. All respondents agreed with this recommendation.

MOF's Response

39. **MOF accepts Recommendation 2.21.** The SC had proposed that the current sections 387A and 387B which provide for electronic transmission of notices of meeting and documents will continue to be applicable where companies do not provide for electronic transmission in their Articles. MOF agrees with the SC's recommendation.

(b) Electronic notice of special resolution

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.

Summary of Feedback Received

40. Most respondents agreed with this recommendation. One respondent sought clarification as to whether the proposal for electronic methods for transmission of notices may be extended to notices for all special resolutions, and not just those to alter the objects of a company in its memorandum.

MOF's Response

41. **MOF accepts Recommendation 2.22.** MOF agrees with the SC's views that companies should be allowed to use electronic methods for transmission of notices of special resolution to alter the objects of a company in its memorandum. Section 33 was cited specifically because it is a standalone provision. MOF would like to clarify that the proposals relating to electronic transmission would also apply to other special resolutions.

VI. GENERAL MEETINGS

(a) Extension of 48-hour rule for notional closure of membership register to overseas-listed Singapore incorporated companies (section 130D(3))

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.

Summary of Feedback Received

42. All respondents agreed with this recommendation.

MOF's Response

43. **MOF accepts Recommendation 2.23.** Under Section 130D(3), a person is regarded as a member of a company entitled to attend and vote at a company's general meeting if his name appears on the depository register 48 hours before the meeting. (Note: this will be extended to 72 hours in view of Recommendation 2.12). MOF shares the SC's views that there is no compelling reason to amend this provision to make it easier for Singapore-incorporated companies to prefer an overseas listing.

(b) Shifting cost of general meeting to requisitioning members

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.

Summary of Feedback Received

44. All the respondents agreed with the spirit of the recommendation but a few suggested that the cost of the meeting should be borne by the shareholders who requisitioned the meeting if the resolution was not passed or not voted in favour by a sizeable percentage of members at the meeting.

MOF's Response

45. **MOF accepts Recommendation 2.24.** MOF agrees with the SC that the fact that the resolution was not passed at the meeting should not lead to the conclusion that the meeting is not validly convened. Furthermore, shifting the cost of the meeting to requisitioning members may place an undue fetter on the minority shareholders' right

to convene a meeting to discuss controversial proposals made by the board. As there has been no evidence that section 176 is being abused by shareholders, MOF agrees with the SC's recommendation to maintain status quo.

VII. MINORITY SHAREHOLDER RIGHTS

(a) *Introduction of minority buy-out right or appraisal right*

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.

Summary of Feedback Received

46. Most respondents agreed with this recommendation. One respondent disagreed and was of the view that the current absence of requirements for shareholder approvals for major corporate actions creates a stronger case for the introduction of minority buy-out rights, as such rights would accord greater protection to minority shareholders and strike a better balance of power between majority and minority shareholders.

MOF's Response

47. **MOF accepts Recommendation 2.25.** The SC had considered the approaches in other jurisdictions such as New Zealand, USA and Canada which have minority buy-out rights, and had concluded that the circumstances in these jurisdictions differed from those in Singapore. MOF agrees with the SC that on balance, there does not seem to be compelling reasons to introduce a minority buy-out right. However, an additional remedy for minority shareholders seeking relief is being introduced under Recommendations 2.26 and 2.27.

(b) *New buy-out remedy where court finds just and equitable*

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.

Summary of Feedback Received

48. Most respondents agreed with this recommendation. One respondent disagreed and expressed concerns over the possibility of the provision encouraging speculative litigation by shareholders seeking to profit from forcing a buy-out from the company. One respondent questioned whether this remedy would allow a minority shareholder to circumvent negotiated buy-out rights in a shareholders' agreement.

MOF's Response

49. **MOF accepts Recommendation 2.26.** The SC had noted that it would be useful to give the courts additional power to order a buy-out of shares under the "just and equitable" ground when hearing a winding up application. MOF agrees with the SC's views and notes that the proposed power to order a buy-out of shares gives an additional remedy to the court which it may invoke at its discretion. As the court will have control over the situations under which such an order will be made, and there are legal costs involved in bringing the application to court, it will help safeguard against speculative litigation and prevent the abuse by minority shareholders.

(c) New buy-out remedy where directors acted in their own interest or in unfair or unjust manner

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.

Summary of Feedback Received

50. Most respondents agreed with this recommendation. Some respondents disagreed and expressed similar concerns to those raised in Recommendation 2.27.

MOF's Response

51. **MOF accepts Recommendation 2.27.** The SC had noted that it would be useful to give the courts additional power to order a buy-out of shares under a winding-up application on the grounds that the directors have acted in their own interest or in an unfair or unjust manner. The mirroring of the new buy-out remedy in both sections 254(1)(i) (see Recommendation 2.26) and 254(1)(f) will prevent the parties from engaging in arbitrage between these two limbs. MOF agrees with the SC's views. In respect of the concerns raised over speculative litigation, MOF notes that safeguards are in place, as highlighted in MOF's response to Recommendation 2.26.

(d) Extension of section 216A (statutory derivative action) to arbitration proceedings

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.

Summary of Feedback Received

52. All the respondents agreed with this recommendation.

MOF's Response

53. **MOF accepts Recommendation 2.28.** MOF agrees with the SC's views that this recommendation will recognise the increasing use of arbitration as alternative dispute resolution.

(e) Application of section 216A (statutory derivative action) to Singapore companies listed in Singapore and overseas

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.

Summary of Feedback Received

54. All respondents agreed with these recommendations. One respondent suggested that certain statutory or judicial criteria should be considered for approving such an application to screen out frivolous claims.

MOF's Response

55. **MOF accepts Recommendations 2.29 and 2.30.** The SC had noted that consistency should be achieved by extending the application of section 216A to all Singapore-incorporated companies that were listed for quotation or quoted on a securities market, whether in Singapore or overseas. MOF agrees with the SC's views. In respect of the concerns raised about frivolous claims, MOF notes that there are already conditions for an application in section 216A(3) of the Act, and that it will not be appropriate to fetter the Courts' discretion to allow an action with further criteria.

(f) Cumulative voting for election of directors

Recommendation 2.31

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

Summary of Feedback Received

56. Most respondents agreed with this recommendation. Some respondents disagreed and cited cumulative voting as being increasingly prevalent in other countries and were of the view that this voting system was an important mechanism to foster greater shareholder activism and minority shareholder participation in relation to director representation.

MOF's Response

57. **MOF accepts Recommendation 2.31.** The SC had noted that there has been limited effectiveness in implementing the cumulative voting system in the other jurisdictions surveyed (such as the US), and had reservations that such a system would be any more effective in Singapore. MOF agrees with the SC's views.

(g) Enabling minority shareholders to obtain board resolutions

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.

Summary of Feedback Received

58. All respondents agreed with this recommendation.

MOF's Response

59. **MOF accepts Recommendation 2.32.** MOF shares SC's views that board resolutions are confidential and noted that even majority shareholders do not have a right to obtain copies of the board resolutions.

VIII. MEMBERSHIP OF HOLDING COMPANY

Extension of section 21(6) exemption to include transfer of shares

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%.

Summary of Feedback Received

60. All respondents agreed with these recommendations.

MOF's Response

61. **MOF accepts Recommendations 2.33 and 2.34.** MOF agrees with the SC's proposal that for consistency, the exemption in section 21(6) of the Act should be

extended to include “transfers” of shares in a holding company to a subsidiary, subject to certain safeguards.

CONCLUSION

62. The following table summarises MOF’s decision on the recommendations in Chapter 2 of the *Report of the Steering Committee for Review of the Companies Act*.

Classification	No. of Recommendations	Recommendation Reference
Accepted by MOF	32	-
Modified by MOF	2	Recommendations 2.16 and 2.20
Total	34	-

4. SHARES, DEBENTURES, CAPITAL MAINTENANCE, SCHEMES, COMPULSORY ACQUISITIONS AND AMALGAMATIONS

PREAMBLE

63. In Chapter 3 of the *Report of the Steering Committee for Review of the Companies Act*, the Steering Committee (SC) had reviewed the following issues relating to shares, debentures, capital maintenance, schemes, compulsory acquisitions and amalgamations:

- preference and equity shares;
- holding and subsidiary companies;
- other issues relating to shares;
- debentures;
- solvency statements;
- share buybacks and treasury shares;
- financial assistance for the acquisition of shares;
- reduction of capital;
- dividends;
- other issues pertaining to capital maintenance;
- schemes of arrangements;
- compulsory acquisition; and
- amalgamations.

SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

I. PREFERENCE AND EQUITY SHARES

(a) *Definition of "preference shares"*

<u>Recommendation 3.1</u>

The definition of "preference share" in section 4 should be deleted.
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Summary of Feedback Received

64. All respondents agreed with this recommendation.

MOF's Response

65. **MOF accepts Recommendation 3.1.** The SC had noted that in commercial practice, preference shares may be voting and/or participating. However, the definition of “preference share”, in relation to sections 5, 64 and 180 of the Act, means a share that does not entitle the holder to the right to vote at a general meeting (except in specified circumstances) or participate beyond a specified amount in any distribution (e.g. dividend, on redemption or in a winding up). These inconsistencies in the use of “preference share” should be removed. MOF agrees with the SC's views.

(b) Voting rights of holders of preference shares

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.

Summary of Feedback Received

66. Most respondents agreed with this recommendation. However, one respondent suggested that section 180(2)⁹ be retained as it serves to protect the basic rights of preference shareholders, and that these shareholders must be able to vote upon a resolution that varies their rights.

MOF's Response

67. **MOF accepts Recommendation 3.2.** The SC had noted that a company should be allowed to determine the rights that would be attached to its shares and there was no persuasive reason for the rights of preference shares to be mandated in the Act. However, SC had recommended certain safeguards to be introduced for the issuance of non-voting shares. Some of these safeguards were similar to those found in section 180(2). Since the definition of “preference share” in section 4 will be deleted, section 180(2), which relates to such shares, can be removed. We will consider if the remaining safeguards in section 180(2) are still relevant during drafting and where they can be better placed within the Act.

⁹ Section 180(2) states that “Notwithstanding subsection (1), the articles may provide that holders of preference shares shall not have the right to vote at a general meeting of the company except that any preference shares issued after 15th August 1984 shall carry the right to attend any general meeting and in a poll thereat to at least one vote in respect of each such share held:

- (a) during such period as the preferential dividend or any part thereof remains in arrear and unpaid, such period starting from a date not more than 12 months, or such lesser period as the articles may provide, after the due date of the dividend;
- (b) upon any resolution which varies the rights attached to such shares; or
- (c) upon any resolution for the winding up of the company.

(c) Definition and use of the term “equity share”

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.

Summary of Feedback Received

68. All respondents agreed with this recommendation.

MOF’s Response

69. **MOF accepts Recommendation 3.3.** The SC had noted that for consistency with Recommendation 3.1 (i.e. delete the definition of “preference share”), the definition of “equity share” as “any share which is not a preference share” should be deleted. MOF agrees with SC’s views.

(d) Non-voting/multiple vote shares

Recommendation 3.4

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

Summary of Feedback Received

70. A majority of respondents agreed with this recommendation. However, a few respondents disagreed because they were of the view that treating all shareholders equally in respect of voting rights was fundamental for good corporate governance. They also felt that in the Asian context where one or two large shareholders might control a company, allowing non-voting or multiple-voting shares would enhance majority control to the detriment of minority shareholders.

MOF’s Response

71. **MOF accepts Recommendation 3.4.** Private companies are currently allowed to issue shares with different voting rights. MOF agrees with the SC that this right to issue shares with different voting rights should be extended to public companies, which will give them greater flexibility in capital management. This will align our law with that of the US, UK, New Zealand and Australia, which allow companies to issue classes of shares with different voting rights, subject to companies’ Articles. The Australian Stock Exchange imposes prohibitions on listed companies through listing rules.

72. In addition, MOF accepts the safeguards recommended by the SC and the need for the companies' articles to provide clarity on the different classes of shares and their rights. The following safeguards will be introduced: (i) shareholders must approve the issuance of shares with different voting rights via a special resolution; (ii) information on the voting rights for each class of shares must accompany the notice of meeting at which a resolution is proposed to be passed; (iii) companies must specify the rights for different classes of shares in their Articles and clearly demarcate the different classes of shares so that shareholders know the rights attached to any particular class of shares; and (iv) holders of non-voting shares will have equal voting rights on resolutions to wind up the company or on those that vary the rights of non-voting shares.

73. In the case of public listed companies, MOF and MAS recognise that dual class share structure may give rise to issues pertaining to entrenchment of control. SGX should, in consultation with MAS, carefully evaluate whether the listing of companies with dual class share structure should be permitted and whether listed companies should be allowed to issue non-voting shares and shares with multiple votes.

Recommendation 3.5

Section 64 should be deleted.

Summary of Feedback Received

74. Most respondents agreed with this recommendation. One respondent disagreed and indicated that although he agreed with Recommendation 3.4, section 64, which relates to the voting rights of equity shares in certain companies, should not be deleted because the proposed safeguards for listed companies should be incorporated into section 64 instead of the listing rules.

MOF's Response

75. **MOF accepts Recommendation 3.5.** Section 64 should be removed as a consequence of our acceptance of Recommendation 3.4. As with Recommendation 3.4, whether listed companies would be permitted to issue non-voting shares and shares with multiple votes would be dependent on SGX's evaluation on whether the dual class share structure should be permitted.

II. HOLDING AND SUBSIDIARY COMPANIES

(a) Amend the definition of “subsidiary”

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.

Summary of Feedback Received

76. Most respondents agreed with this recommendation. One respondent disagreed and indicated that the definition of “subsidiary” should be set by the financial reporting standards so that the Act would not have to be amended whenever the financial reporting standards change. Some comments received were on the distinction between “voting power” (existing concept) and “voting rights” (under the Recommendation).

MOF’s Response

77. **MOF accepts Recommendation 3.6.** The SC had noted that section 5(1)(a)(iii)¹⁰ was first introduced for the purpose of prescribing the requirement for consolidation of accounts. Under Recommendation 4.38, the SC had recommended that the determination of whether a company should prepare consolidated accounts should be set only by the financial reporting standards and not the Act. Hence, MOF agrees that section 5(1)(a)(iii) should be deleted since it is no longer necessary. However, section 5 is still relevant and can continue to apply to the other provisions in the Act, we are therefore of the view that the Act should be amended. The SC had noted that **section 5(1)(a) should be amended to recognise the situation where a parent-subsidiary relationship could be determined by whether a company holds a majority of voting rights in another company.** This will align our law with the UK’s position to recognise various ways of “control” to determine whether one company is the subsidiary of another. MOF agrees with the SC’s views.

¹⁰ Section 5(1)(a) states that “For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation, if that other corporation:

- (i) controls the composition of the board of directors of the first-mentioned corporation;
- (ii) controls more than half of the voting power of the first-mentioned corporation; or
- (iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part thereof which consists of preference shares and treasury shares).”

(b) Subsidiary holding shares of its holding company

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.

Summary of Feedback Received

78. All respondents agreed with these recommendations. One respondent sought clarifications on the “conversion” to treasury shares.

MOF’s Response

79. **MOF accepts Recommendations 3.7 and 3.8.** The basis of the recommendations was to extend the treasury shares regime to a subsidiary that holds shares of its holding companies. After the 12 month period, the holding company shares held by the subsidiary company will be deemed “holding company treasury shares” held by the subsidiary company. Further details will be available when the draft bill is issued for consultation.

III. OTHER ISSUES RELATING TO SHARES

(a) Redenomination of shares

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.

Summary of Feedback Received

80. All respondents agreed with this recommendation. Some respondents queried if the recommendation was necessary as the UK reform was prompted by European Union impact or the recommendation was relevant only in a par value environment.

MOF's Response

81. **MOF accepts Recommendation 3.9.** The SC had noted that it was common for companies with foreign businesses to re-denominate their share structure and hence the statutory mechanism would be useful and provide greater certainty. MOF agrees with SC's views and notes that Hong Kong, which has suggested abolition of par value shares, will also introduce a redenomination regime.

(b) Interest in shares

Recommendation 3.10

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

Summary of Feedback Received

82. All respondents agreed with this recommendation.

MOF's Response

83. **MOF accepts Recommendation 3.10.** The SC had noted that the definition of "interest in shares" in section 7 should be aligned with the definition of "interest in securities" in section 4 of the Securities and Futures Act (SFA) for consistency. The SC was also of the view that amending section 7 in this manner would not have any unintended consequences on the Act provisions referring to an "interest in shares." MOF agrees with SC's views.

(c) Economic interests in shares

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.

Summary of Feedback Received

84. All respondents agreed with this recommendation. One respondent suggested requiring all companies to disclose directors' economic interests in the company's securities.

MOF's Response

85. **MOF accepts Recommendation 3.11.** The SC had noted that it would be premature to recognise economic interests as being an "interest in shares" and suggested monitoring overseas developments in this area. MOF agrees with SC's

views. As for the comment on recognition of directors' economic interest, MOF will similarly monitor international developments on this matter.

(d) Exemptions under section 63(1A)

Recommendation 3.12

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

Summary of Feedback Received

86. All respondents agreed with this recommendation.

MOF's Response

87. **MOF accepts Recommendation 3.12.** Section 63(1A) exempts a company, whose shares are listed on a stock exchange in Singapore, from having to lodge a return of allotment that includes the shares held by the top 50 members of the company, and their personal particulars. MOF agrees with the SC's proposal to extend section 63(1A) to include Singapore incorporated companies that are listed overseas.

(e) Introduction of a carve-out for reporting of share issuances pursuant to shareholder-approved equity-based employee incentive plans

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.

Summary of Feedback Received

88. All respondents agreed with this recommendation.

MOF's Response

89. **MOF accepts Recommendation 3.13.** Currently, section 63(1) imposes a 14-day timeline for companies to file the return of allotment. MOF agrees with the SC not to replace the current timeline with quarterly reporting as this will not promote greater transparency nor prompt reporting. It is also not consistent with the position in jurisdictions like the UK, New Zealand and Australia.

(f) Definition of “share”

Recommendation 3.14

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

Summary of Feedback Received

90. All respondents agreed with this recommendation.

MOF’s Response

91. **MOF accepts Recommendation 3.14.** The definition and nature of shares differ across jurisdictions. MOF agrees with the SC that no change is required as we have not received feedback that differences lead to any difficulties.

(g) Dematerialisation of shares

Recommendation 3.15

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

Summary of Feedback Received

92. Majority of the respondents agreed with this recommendation.

MOF’s Response

93. **MOF accepts Recommendation 3.15.** The SC had recommended dematerialisation for public companies. For private companies, the share certificates show evidence of ownership and may be needed by the shareholders. Also, as fresh issues and transfers of shares are not likely to be as frequent for private companies, it is more cost efficient to retain share certificates. MOF agrees with SC’s views. There is no compelling reason to mandate dematerialisation for public companies for now.

(h) Central Depository System (“CDP”) Provisions

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.

Summary of Feedback Received

94. All respondents except the Monetary Authority of Singapore (MAS) agreed with this recommendation. MAS intends to migrate the CDP provisions to the SFA.

MOF's Response

95. **MOF accepts Recommendation 3.16 but with the modification that the CDP provisions would be migrated to the SFA (i.e. modify Recommendation 3.16).** This is in line with the SC's recommendation to retain core company law in the Act.

IV. DEBENTURES

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.

Summary of Feedback Received

96. Most respondents agree with this recommendation. However, a few respondents disagreed. They indicated that the register of debenture holders should not be open for public access due to confidentiality reasons. Some commented that even if the register was open to the public, transparency would not be promoted as the registered debenture holder would either be the Central Depository or a nominee of a foreign clearing system for listed debentures. The respondents also pointed out that the trust deeds should not be open for public access as these were confidential documents.

MOF's Response

97. **MOF accepts the recommendation to retain the need to maintain the register of debenture holders, but does not accept the recommendation to give public access to the register of debenture holders or trust deeds (i.e. modify Recommendation 3.17).** The SC had noted there was no call to remove the current requirements for a company to keep the register of debenture holders. Currently, only debenture holders and shareholders can inspect the register and trust deed. To promote corporate transparency, SC had recommended that the register and the trust deeds be open for public inspection. While MOF agrees that section 93¹¹ should be retained, MOF is of the view that the register of debenture holders should not be open for public inspection. Opening the register for public inspection may reduce the investment attractiveness of debentures as some investors may be concerned about

¹¹ Section 93 relates to the register of debenture holders and copies of trust deed.

loss of confidentiality. MOF also agrees that trust deeds, which may contain commercially sensitive information, should not be open to public inspection for confidentiality reasons. This is consistent with the practice in the other jurisdictions like UK and Hong Kong.

V. SOLVENCY STATEMENTS

(a) *Uniform solvency statement*

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)).

Summary of Feedback Received

98. All respondents agreed with these recommendations.

MOF's Response

99. **MOF accepts Recommendations 3.18 and 3.19.** The SC had noted that it was timely to consider a uniform solvency test for all transactions. The SC had preferred the section 7A test (i.e. statement by the directors which states that based on the company's current situation, there are no grounds on which it is unable to pay its debts at the point of amalgamation and within a 12-month forward looking period, and that the value of its assets will not become less than the value of its liabilities after the transaction) because it was less onerous and less hypothetical when compared to the section 76F(4) test, which required that the company should be "able to pay its debts in full at the time of the payment". MOF agrees with the SC's views.

(b) *Declaration, not statutory declaration*

Recommendation 3.20

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

Summary of Feedback Received

100. Most respondents agreed with this recommendation. One respondent who disagreed indicated that a statutory declaration would provide more protection to creditors or third parties.

MOF's Response

101. **MOF accepts Recommendation 3.20.** The SC had noted that directors were reluctant to provide a statutory declaration because of the penalties under the Oaths and Declarations Act, and that it was not pro-business to retain the current requirements for a statutory declaration. The SC was also of the view that a declaration was sufficient as false statements were still subject to criminal sanctions in the Act. MOF agrees with the SC's views.

(c) Solvency statement by the Board of Directors

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).

Summary of Feedback Received

102. Most respondents agreed with this recommendation. One dissenting respondent indicated that it would be sufficient for the board of directors to make these solvency statements rather than requiring the approval of "all directors".

MOF's Response

103. **MOF accepts Recommendation 3.21.** The SC had noted that having all the directors make the solvency statements provides better protection for creditors. As our wrongful trading provisions present more obstacles for creditors to seek redress than those found in other jurisdictions, a more stringent approach should be taken in relation to the declaration of solvency. MOF agrees with the SC's views.

VII. SHARE BUYBACKS AND TREASURY SHARES

(a) Relevant period for share buybacks

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".

Summary of Feedback Received

104. All respondents agreed with this recommendation.

MOF's Response

105. **MOF accepts Recommendation 3.22.** The SC had noted that the definition of the “relevant period” in section 76B(4)¹² could lead to different lengths of time permitted depending on when the buyback mandate was adopted. MOF agrees with the SC that the definition of the “relevant period” should be amended for clarity.

(b) Time periods for measuring threshold of share buybacks

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”.

Summary of Feedback Received

106. All respondents agreed with these recommendations.

MOF's Response

107. **MOF accepts Recommendations 3.23 and 3.24.** MOF agrees with the consequential amendments (as a result of Recommendation 3.22) to section 76B.

(c) Repurchase of “odd-lot” shares through a discriminatory offer

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.

¹² Section 76B(4) states that “In subsection (3), “relevant period” means the period commencing from the date the last annual general meeting of the company was held or if no such meeting was held the date it was required by law to be held before the resolution in question is passed, and expiring on the date the next annual general meeting is or is required by law to be held, whichever is the earlier, after the date the resolution in question is passed.”

Summary of Feedback Received

108. All respondents agreed with this recommendation. One respondent agreed that listed companies might be allowed to make discriminatory repurchase offers to odd lot shareholders subject to the current safeguards in the Act, and that a 105% price cap could apply in the SGX Listing Rules (similar to that for selective on-market purchases). In addition, it should be clarified that a listed company that sponsored an odd-lot program was not taken to have violated the financial assistance prohibition.

MOF's Response

109. **MOF accepts Recommendation 3.25, but with some modifications as elaborated below (i.e. modify Recommendation 3.25).** Currently, the Act prohibits listed companies from buying back shares through discriminatory offers (i.e. selective off-market buybacks). The recommendation will reduce administrative costs for companies with a substantial number of odd-lot shareholders and allow odd-lot shareholders, who are currently discouraged from selling their small holdings due to high transaction costs, to dispose their shares. MOF is of the view that it is more appropriate for prohibitions on listed companies to be specified under the listing rules, as these are not core company law. Therefore, MOF will modify the SC's recommendation. Instead of amending the Act to provide for an additional exception to the share acquisition prohibition, MOF will amend the Act to remove the existing restriction of selective off-market acquisitions for listed companies. Existing safeguards for selective off-market buybacks (e.g. approval by special resolution) will be retained in the Act. Additional rules relating to repurchase offers to odd-lot shareholders by listed companies may be specified in the listing rules. In response to feedback, MOF will clarify in the Act that sponsoring an odd-lot program does not amount to financial assistance.

(d) Treasury shares

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.

Summary of Feedback Received

110. All respondents agreed with this recommendation.

MOF's Response

111. **MOF accepts Recommendation 3.26.** The SC had noted treasury shares transfers for the purposes of "an employees' share scheme" was unduly restrictive. SC

was also of the view that specific safeguards necessary for listed companies should be imposed by the listing rules. MOF agrees with the SC's views.

VII. FINANCIAL ASSISTANCE FOR THE ACQUISITION OF SHARES

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

Sections 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

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

Summary of Feedback Received

112. A majority of respondents agreed with Recommendation 3.27. Dissenting feedback was received that section 76¹³ should be abolished for all companies. There were views that section 76 should be reformed to provide greater clarity. One respondent suggested introducing a "predominant reason" test (i.e. financial assistance transactions will not be unlawful where the company's predominant reason for entering into the transaction is not to give financial assistance), which was considered by the UK in 1993, to narrow the scope of the current prohibition. Another alternative was to introduce a "material prejudice" test based on the Australian legislation (i.e. financial transactions will not be unlawful where the transactions do not materially prejudice the company or its shareholders or the company's ability to pay its creditors).

113. Most respondents agreed with Recommendation 3.28. The dissenting respondent stated that the financial assistance prohibition should be abolished entirely. All respondents agreed with Recommendation 3.29.

¹³ Section 76 relates to company financing dealings in its shares.

MOF's Response

114. **MOF accepts Recommendations 3.27, 3.28 and 3.29.** MOF agrees to remove the financial assistance prohibition under section 76 for private companies as they are usually closely held and shareholders have greater control over the decision to give financial assistance. This will reduce cost for private companies and is consistent with the position in the UK. For prudence, MOF agrees with the SC to refine the regime for public companies by introducing a new “material prejudice” exception. MOF has also evaluated the various alternatives to the “material prejudice” exception, but found them to be less suitable.

VIII. REDUCTION OF CAPITAL

(a) Solvency statements for capital reductions without court sanction

Recommendation 3.30

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

Summary of Feedback Received

115. All respondents agreed with this recommendation.

MOF's Response

116. **MOF accepts Recommendation 3.30.** MOF agrees with the SC to retain the solvency statement as it is an objective measure that serves a useful purpose in protecting creditors.

(b) Capital reductions not involving a distribution or release of liability

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.

Summary of Feedback Received

117. All respondents agreed with this recommendation.

MOF's Response

118. **MOF accepts Recommendation 3.31.** Sections 78B(2) and 78C(2) provide that the solvency requirements do not apply if the reduction of capital is in respect of the cancellation of capital lost or unrepresented by available assets. The SC had noted that the requirements should cover all situations, which do not involve a reduction/distribution of cash or other assets by the company or a release of any liability owed by the company. MOF agrees with the SC's views as the solvency requirements are not necessary in those circumstances.

(c) Time frames for capital reduction

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.

Summary of Feedback Received

119. All respondents agreed with this recommendation.

MOF's Response

120. **MOF accepts Recommendation 3.32.** The SC had noted that a notice period of 14 and 21 days is required to pass the resolution for capital reduction in private and public companies respectively. This leaves only a single day for the solvency statement to be made. MOF agrees with the SC that more time should be given for the making of the solvency statement.

(d) Declaration by directors

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.

Summary of Feedback Received

121. Most respondents agreed with this recommendation. One respondent disagreed and indicated that directors should make an explicit declaration that the capital reduction would be in the best interest of the company given the significance of such an exercise. The respondent added that to address the possible misconception that there was some higher standard of duty associated with capital reduction, the declaration could be made with reference to section 157 of the Act, which defines directors' duties.

MOF's Response

122. **MOF accepts Recommendation 3.33.** The SC had noted that directors had a fiduciary duty to act in the best interests of the company. The SC opined that expressly requiring the directors to make a declaration (i.e. that any capital reduction was in the best interests of the company when the act took place) might serve as a reminder to the directors. However, there was also a possibility of a misunderstanding that there was some higher standard of duty associated with capital reduction, which might deter directors from issuing a declaration. MOF notes the SC's views and the dissenting comment that this can be overcome by making reference to the relevant provision that imposes the said duty. However, on balance, MOF accepts the SC's recommendation since there is no evidence of more directors breaching their duties in such transactions. The recommendation is also consistent with the position in the UK, Australia and New Zealand.

IX. DIVIDENDS

Recommendation 3.34

The section 403 test for dividend distributions should be retained.

Summary of Feedback Received

123. Most respondents agreed with this recommendation. Some dissenting views included: (i) the solvency test approach used in New Zealand was more holistic; (ii) "profits" should be defined and that the "middle of the road" approach set out in the report would be more prudent than the current test; (iii) the common law position that dividends were payable when there were profits in a particular year, even if the company had accumulated losses, should be included in the Act for clarity; and (iv) section 403 might be retained but a further requirement that directors should pay due regard to the effects of making a distribution on the company's ability to meet its obligation to achieve long term shareholder value should be introduced.

MOF's Response

124. **MOF accepts Recommendation 3.34.** The SC had considered the tests for dividend payments in jurisdictions like UK, Australia and New Zealand and concluded that we should retain the current position which is sufficiently well understood. While the SC acknowledged that there were some merits to the proposed "middle of the road" approach, it preferred to monitor the developments in other jurisdictions before reconsidering this issue. MOF agrees with the SC's views. MOF is also of the view that codifying the common law position may have unintended consequences and the views expressed in (iv) above introduces uncertainty for directors.

X. OTHER ISSUES PERTAINING TO CAPITAL MAINTENANCE

(a) Permitted uses of capital for share issues and buybacks

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.

Summary of Feedback Received

125. All respondents agreed with this recommendation.

MOF's Response

126. **MOF accepts Recommendation 3.35.** The SC had noted the uncertainty on whether a company might use its share capital for payment of brokerage or commission incurred for share buybacks. Thus, the SC had recommended that the Act explicitly provide for this. MOF agrees with the SC's views.

(b) Reporting of amounts paid up on the shares in a share certificate

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).

Summary of Feedback Received

127. All respondents agreed with this recommendation.

MOF's Response

128. **MOF accepts Recommendation 3.36.** MOF agrees with the SC that there is not much value in including such historical information in the share certificates of fully paid shares. The return of allotment is a better source of information on the amounts paid for shares.

(c) *Financial reporting standards and section 63*

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.

Summary of Feedback Received

129. Most respondents agreed with Recommendation 3.37. The views on Recommendation 3.38 were split. Respondents who disagreed indicated that companies would face increased costs in having to regularly report changes in accounting share capital. It was also pointed out that: (i) shareholders looked to areas other than share capital in order to determine a company's financial strength; (ii) information about a company's accounting share capital could be found in its financial statements; and (iii) there was no equivalent in other jurisdictions.

MOF's Response

130. **MOF accepts Recommendation 3.37.** MOF agrees with the SC that no changes to the law are warranted on account of changes in the accounting treatments. Accounting treatments in certain areas are complex and change from time to time. There is no compelling reason for the Act to be amended to align with these changes.

131. **MOF does not accept Recommendation 3.38.** The SC had made the recommendation to ensure that the amount of capital reflected in the financial statements would be consistent with the statutory records. However, MOF notes that accounting share capital is currently only reported in the financial statements that are prepared at year-end. As accounting share capital can change frequently without a change in the statutory share capital, companies will be faced with increased business costs without a comparable benefit if they are required to file accounting share capital with ACRA on an ongoing basis. MOF also notes that there is no such precedent in other jurisdictions.

XI. SCHEMES OF ARRANGEMENT

(a) *Holders of units 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.

Summary of Feedback Received

132. All respondents agreed with this recommendation.

MOF's Response

133. **MOF accepts Recommendation 3.39.** The SC had noted that there might be doubts on whether holders of options and convertibles could be parties to a section 210¹⁴ scheme of arrangement. MOF agrees with the SC that the position should be clarified by amending section 210.

(b) *Share-splitting and voting by nominees*

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.

Summary of Feedback Received

134. Most respondents agreed with this recommendation. One dissenting respondent was of the view that this amendment would lead to uncertainty as it was not only restricted to a share splitting situation and could suggest that the court might also allow a lesser majority to agree to and bind all relevant parties to any compromise or arrangement. In addition, it was suggested that the court could already exercise its power in section 210(4)¹⁵ of the Act to deal with any risk of share splitting.

MOF's Response

135. **MOF accepts Recommendation 3.40.** The purpose of the amendment is to prevent the defeat of a member's scheme of arrangement by opposing parties engaged in share-splitting, which involves one or more members transferring small parcel of

¹⁴ Section 210 relates to the powers to compromise with creditors and members for companies.

¹⁵ Section 210(4) states that “Subject to subsection (4A), the Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.”

shares to a large number of other persons who are willing to vote in accordance with the transferors' instructions. MOF agrees with SC's views and notes that the amendment has been used in Australia to tackle the share splitting issue. MOF is of the view that section 210(4), when read literally, empowers the court to grant alteration or set conditions for the compromise or arrangement rather than share splitting. Thus, we agree with SC on the need for the amendment.

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.

Summary of Feedback Received

136. Most respondents agreed with the recommendation. One dissenting respondent commented that the recommendation was not necessary as it reflected the industry practice while another suggested allowing the court to decide in exceptional situations.

MOF's Response

137. **MOF accepts Recommendation 3.41.** Currently, the Act does not specify how a nominee member who is represented by proxies is counted for under the schemes of arrangement. MOF notes the comment that the recommendation reflects the practice and accepts the recommendation to provide greater certainty and clarity. It will be further reviewed during drafting if the court can be permitted some discretion in exceptional instances.

(c) Look-through to beneficial shareholders

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.

Summary of Feedback Received

138. Most respondents agreed with this recommendation. One dissenting respondent commented that the determination of the beneficial shareholders of a nominee should be left to the discretion of the court.

MOF's Response

139. **MOF accepts Recommendation 3.42.** The SC had noted that section 130D of the Act provides for a look-through to the members behind the Central Depository so

that the actual owners of shares retain their rights as shareholders. However, there is no such provision in relation to overseas-listed shares when it comes to voting on a scheme of arrangement. After consideration, the SC recommended that a consistent approach be adopted on this issue and recognition of overseas depositors for all matters under the Act. MOF agrees with the SC's views and notes that this is consistent with Recommendation 2.23.

(d) Definition of "company"

Recommendation 3.43

Sections 210 and 212 should apply to both "companies" and "foreign companies".

Summary of Feedback Received

140. Most respondents agreed with the recommendation. One dissenting respondent was of the view that sections 210 and 212¹⁶ should not apply to "foreign companies", as this would result in the Act being given extraterritorial jurisdiction over foreign companies.

MOF's Response

141. **MOF accepts Recommendation 3.43.** The SC had noted the different definition of "companies" and "foreign companies" in sections 210 and 212 of the Act, with the section 212 definition being narrower¹⁷. The SC also felt that section 212 should be extended to foreign companies in order to facilitate cross-border transactions. MOF agrees with the SC's views.

(e) Binding the offeror

Recommendation 3.44

Section 210 and associated provisions should be amended to provide for the scheme to be binding on the offeror.

Summary of Feedback Received

142. All respondents agreed with this recommendation.

¹⁶ Sections 210 and 212 relate to "power to compromise with creditors and members" and "approval of compromise or arrangement by Court" respectively.

¹⁷ Under section 210, "company" means any corporation or society liable to be wound up under this Act. Section 212 states that "company" in this section does not include any company other than a company as defined in section 4.

MOF's Response

143. **MOF accepts Recommendation 3.44.** The SC had noted that section 210 of the Act and the associated provisions did not have binding force on the offeror and recommended that the relevant provisions be amended. MOF agrees with SC's views.

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.

Summary of Feedback Received

144. Most respondents agreed with this recommendation. One respondent who disagreed suggested requiring schemes of arrangement to comply with the Code of Takeovers and Mergers ("Code") or be approved by the Securities Industry Council. This would provide assurance that the principles expounded by the Code would be applied in appropriate situations.

MOF's Response

145. **MOF accepts Recommendation 3.45.** The SC was of the view that it would be more in keeping with the self-regulatory nature of securities regulation to maintain status quo. Moreover, parties in a take-over or merger transaction are to adhere to the Code and the Securities Industry Council or any aggrieved shareholder can also make an application to the court. Thus, MOF agrees with the SC not to amend section 210.

XII. COMPULSORY ACQUISITION

(a) *Holders of units of shares*

Recommendation 3.46

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

Summary of Feedback Received

146. All respondents agreed with this recommendation.

MOF's Response

147. **MOF accepts Recommendation 3.46.** Section 215¹⁸ is meant to allow an offeror to take up remaining minority positions in order to complete the takeover of a company. MOF agrees with the SC that the provision should be amended to extend to options and convertibles of all sorts.

(b) Individual offeror

Recommendation 3.47

Section 215 should be extended to cover individual offerors.

Summary of Feedback Received

148. All respondents agreed with this recommendation.

MOF's Response

149. **MOF accepts Recommendation 3.47.** Currently, section 215 applies to the transfer of shares in one company to “another company or corporation”. MOF agrees with the SC that there is no compelling reason why section 215 cannot be invoked by a natural person.

(c) Joint offers

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.

Summary of Feedback Received

150. All respondents agreed with this recommendation.

MOF's Response

151. **MOF accepts Recommendation 3.48.** The SC had noted that it should be made clear that where a takeover offer is made jointly by more than one person, all the joint offerors would have the same legal obligations. Therefore, section 987 of the UK Companies Act 2006, which deals specifically with joint offers, should be introduced into the Act. MOF agrees with SC's views.

¹⁸ Section 215 relates to the power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority.

(d) Associates

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.

Summary of Feedback Received

152. Although a majority of respondents agreed with these recommendations, substantial concerns were expressed by some respondents. Dissenting respondents were generally concerned that the UK’s definition of “associate”¹⁹ was too wide and might lead to uncertainty. For example, it was highlighted that the UK definition included “a body corporate in which the offeror is substantially interested” (i.e. any company over which the offeror is entitled to exercise or control the exercise of one-third or more of the voting power) and this might generate uncertainty as to what amounted to control. Difficulties in determining the appropriate scope and setting clear criteria in the exercise of the exemptions under Recommendation 3.50 were also noted.

MOF’s Response

153. **MOF does not accept Recommendations 3.49 and 3.50.** Currently, an offeror company can compulsorily acquire the shares of the dissenting minority shareholders of a target company if 90% of the shareholders of the target company approve the takeover offer. Shares held by the offeror group, which comprises the offeror and its related companies, are excluded from the 90% computation. Although it is conceptually sound to exclude parties not independent of the offeror in calculating the 90% acceptances, the present provisions have not given rise to any particular concerns. Thus, there is no compelling reason to change the position at this time. Moreover, Recommendation 3.49 will make it more difficult for an offeror to obtain full ownership, especially if the offeror already has a substantial shareholding when the offer is made. For a healthy functioning financial market, it is important to ensure that our requirements are not overly stringent or make it difficult for companies to restructure. In case of unfairness, dissenting minority shareholders can apply to court

¹⁹ Section 988 of the UK Companies Act 2006 states that “associate”, in relation to an offeror, means:

- (a) a nominee of the offeror,
- (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary,
- (c) a body corporate in which the offeror is substantially interested,
- (d) a person who is, or is a nominee of, a party to a share acquisition agreement with the offeror, or
- (e) (where the offeror is an individual) his spouse or civil partner and any minor child or step-child of his.

under section 215. MOF also agrees with the feedback that it will be difficult to establish clear and transparent criteria for exemption if Recommendation 3.50 were to be implemented.

(e) Threshold for squeeze-out rights

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.

Summary of Feedback Received

154. Most respondents agreed with this recommendation. One respondent was of the view that such a new 95% alternative threshold should be introduced.

MOF's Response

155. **MOF accepts Recommendation 3.51.** The SC had noted that there were no strong calls for such a policy change. MOF agrees that it is not necessary to introduce such an alternative threshold for squeeze out rights at this time.

(f) Cut-off date

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.

Summary of Feedback Received

156. All respondents agreed with this recommendation.

MOF's Response

157. **MOF accepts Recommendation 3.52.** The SC had noted that in order to create greater certainty for the offeror, a cut-off at the date of offer should be in place for determining the 90% threshold for the offeror to acquire buyout rights. MOF agrees with the SC's views.

(g) Computation of 90% threshold

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.

Summary of Feedback Received

158. All respondents agreed with this recommendation.

MOF’s Response

159. **MOF accepts Recommendation 3.53.** Currently, section 215(3), which deals with minority shareholders’ perspective of sell-out right, provides that treasury shares should be excluded from the 90% threshold. The SC recommended adopting the UK position, which is in favour of sell-out rights of minority shareholders. Amending the law to include treasury shares recognises the reality that the offeror who crosses the 90% threshold when treasury shares are included is already in a position to control the target company (and therefore the treasury shares) by virtue of his majority shareholding. MOF agrees with SC’s views.

(h) Dual consideration

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.

Summary of Feedback Received

160. All respondents agreed with this recommendation.

MOF’s Response

161. **MOF accepts Recommendation 3.54.** Currently, the Act is silent on offers involving a choice of consideration to be paid by the offeror to the target company shareholders. For clarity, MOF agrees with the SC that a period of two weeks would be adequate for shareholders to elect any choice of consideration, and that offerors should be required to state the default position if no election is made.

(i) Unclaimed consideration

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.

Summary of Feedback Received

162. All respondents agreed with this recommendation.

MOF’s Response

163. **MOF accepts Recommendation 3.55.** Currently, section 215(6) allows consideration other than cash to be transferred by the target company to the Official Receiver if the rightful owner cannot be located. Arising from feedback from the industry, the SC had recommended allowing the Official Receiver to handle unclaimed cash consideration as well. MOF agrees with SC’s views.

(j) Overseas shareholders

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.

Summary of Feedback Received

164. All respondents agreed with this recommendation. One respondent suggested that it would be useful to provide illustrations of situations in which it would be deemed unduly onerous to serve the offer on overseas shareholders.

MOF’s Response

165. **MOF accepts Recommendation 3.56.** The SC had noted that it might be unduly onerous or impossible to deliver an offer to overseas shareholders who do not have local addresses. To address the problem, a provision similar to section 978 of the UK Companies Act 2006²⁰ would be incorporated into the Act, but broadened so that the exemption would apply whenever it was “unduly onerous”. MOF agrees with the SC’s views to incorporate a similar provision to section 978 but with a broader ambit so that the exemption applies whenever it is unduly onerous to serve the offer on the

²⁰ Section 978 of the UK Companies Act relates to the effect of impossibility etc of communicating or accepting offer.

overseas shareholders or when it would contravene foreign law. During the drafting of the provision, we will consider if providing illustrations of such situations is feasible.

XIII. AMALGAMATIONS

(a) Short form amalgamation of holding companies with wholly-owned subsidiary

Recommendation 3.57

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

Summary of Feedback Received

166. All respondents agreed with this recommendation.

MOF's Response

167. **MOF accepts Recommendation 3.57.** Short-form amalgamations involve either vertical amalgamation of a holding company and one or more wholly-owned subsidiaries, or horizontal amalgamation of two or more wholly-owned subsidiaries. The SC had noted that it was currently not clear whether a holding company might amalgamate with its wholly-owned subsidiary by short form where the subsidiary was to be the surviving amalgamated company, or whether it was only the holding company which could be the surviving amalgamated company. MOF agrees with the SC's views to clarify that short-form amalgamations extend to those of a holding company with its wholly-owned subsidiary.

(b) Amalgamation of foreign companies

Recommendation 3.58

The amalgamation provisions should not be extended to foreign companies.

Summary of Feedback Received

168. Most respondents agreed with this recommendation. One respondent disagreed as extending amalgamation provisions to foreign companies would be economically beneficial to Singapore to allow cross-border amalgamations.

MOF's Response

169. **MOF accepts Recommendation 3.58.** The SC had noted that none of the jurisdictions allow cross border amalgamations and that it would be preferable to

avoid potential jurisdictional issues that might arise from allowing them. MOF agrees with SC's views.

(c) Amalgamation of companies limited by guarantee

Recommendation 3.59

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

Summary of Feedback Received

170. All respondents agreed with this recommendation.

MOF's Response

171. **MOF accepts Recommendation 3.59.** The SC had noted that the amalgamation provisions were introduced to facilitate businesses rather than for companies limited by guarantee that generally do not carry on business activities. The SC therefore recommended that the amalgamation provisions not be extended to companies limited by guarantee. MOF agrees with SC's views.

(d) Solvency statement

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.

Summary of Feedback Received

172. Most respondents agreed with the recommendation. One dissenting respondent indicated that the recommendation might compromise the rights of minority shareholders and suggested that the board of the amalgamated company be required to provide a solvency statement for the amalgamated company. This would ensure that the shareholders of the amalgamated company are not prejudiced by the amalgamation.

MOF's Response

173. **MOF accepts Recommendation 3.60 but with modifications.** MOF notes that the SC had originally considered two options. The first option was for the boards of the amalgamating companies to make a solvency statement regarding the amalgamating companies at the point in question and within a 12-month forward-

looking period. The second option was to retain the present solvency test for amalgamations, but only require the boards of the amalgamating companies to comment on the amalgamated company's ability to pay its debts when it is formed. The SC had made its recommendation (i.e. the first option) on the basis that it was reasonable to assume that two solvent amalgamating companies would form a solvent amalgamated company.

174. On balance, MOF prefers to accept the second option as MOF recognises the difficulty and reluctance for directors of two amalgamating companies to give a 12-month forward looking solvency statement when the boards of the amalgamated company may adopt a different business strategy. MOF is also of the view that it is not meaningful to have forward looking statements of the amalgamating companies as they will not exist after the merger. Section 215E(1)(e) of the Act currently requires directors or proposed directors of the amalgamated company to issue a declaration of its assets and creditors' status at the point of amalgamation. Thus, MOF will modify the recommendation by requiring the boards of amalgamating companies to issue a solvency statement for the amalgamated company at the time it is formed, together with solvency statements for the amalgamating companies. This modified approach is consistent with the NZ position, on which our amalgamation regime is largely based on. It is also noted that there is no evidence of adverse outcomes in NZ or Canada, which also shares a similar model.

CONCLUSION

175. The following table summarises MOF's decision on the recommendations in Chapter 3 of the *Report of the Steering Committee for Review of the Companies Act*.

Classification	No. of Recommendations	Recommendation Reference
Accepted by MOF	53	
Modified by MOF	4	Recommendations 3.16, 3.17, 3.25, 3.60
Not adopted by MOF	3	Recommendations 3.38, 3.49, 3.50
Total	60	-

5. ACCOUNTS AND AUDIT

PREAMBLE

176. In Chapter 4 of the *Report of the Steering Committee for Review of the Companies Act*, the SC had reviewed the following issues relating to accounts and audit:

- financial reporting for small companies;
- financial reporting for dormant companies;
- summary financial statements;
- the directors' report;
- obligations relating to audit;
- resignation of auditors;
- auditor's independence;
- limitation of auditor's liability
- indemnity for auditors under section 172 of Companies Act;
- audit committee provisions;
- accounting records and systems of control;
- components of statutory accounts;
- presentation of the accounts;
- framework for consolidation of accounts; and
- revision of defective accounts.

SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

I. FINANCIAL REPORTING FOR SMALL COMPANIES

(a) *Audit exemption for small companies*

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:

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

Summary of Feedback Received

177. A majority of the respondents agreed with this recommendation. Some respondents who disagreed indicated that the thresholds were too high, resulting in many companies being exempt from audit. One respondent cautioned that stakeholders like creditors would lose a source of independent assurance on a company's financial standing which an audit would give. Some respondents also sought clarity on the timeframe within which a company must satisfy the criteria.

MOF's Response

178. **MOF accepts Recommendation 4.1.** The SC had noted that the "small company" criteria would recognise a broader group of stakeholders (e.g. creditors, employees, customers) other than just shareholders and that similar criteria were already used to determine differentiated financial reporting requirements in other jurisdictions such as UK and Australia. MOF agrees with the SC's view and notes that this recommendation will reduce business and compliance cost for companies who will otherwise not qualify under the current exemption criteria²¹. The proposed criteria are also consistent with those used in the Singapore Financial Reporting Standard for Small Entities²² ("SFRS for Small Entities"). The criteria for a small company will be assessed on a two-year timeframe, consistent with the approach to assess the eligibility to apply the SFRS for Small Entities.

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.

Summary of Feedback Received

179. All respondents agreed with this recommendation.

²¹ Currently, an exempt private company with annual revenue of S\$5m or less is exempt from audit requirements. Exempt private companies are defined as private companies with not more than 20 members and having no corporate shareholders.

²² The Singapore Accounting Standards Council (ASC) adopted the International Financial Reporting Standard for Small and Medium-sized Entities ("IFRS for SMEs") as the Singapore Financial Reporting Standard for Small Entities ("SFRS for Small Entities") for financial reporting periods beginning on or after 1 Jan 2011. The SFRS for Small Entities requires a lower level and extent of disclosure compared to the Singapore Financial Reporting Standards (SFRS) and aims to reduce the compliance burden for companies, which meet the following criteria:

- (a) It is not publicly accountable
- (b) It publishes general purpose financial statements for external users; and
- (c) It is a small entity.

An entity qualifies as a small entity if it meets at least two of the three following criteria:

- (a) Total annual revenue of not more than \$10m;
- (b) Total gross assets of not more than \$10m;
- (c) Total number of employees of not more than 50.

MOF's Response

180. **MOF accepts Recommendation 4.2.** MOF agrees with the SC's recommendation that a parent should qualify as a "small company" if the criteria in Recommendation 4.1 are met on a consolidated basis. This approach is consistent with that adopted in the UK.

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.

Summary of Feedback Received

181. A majority of respondents agreed with this recommendation. Respondents who disagreed indicated that the recommendation was not consistent with auditing standards, which determine whether a subsidiary should be audited based on its materiality relative to the group. Clarification was also sought on whether overseas companies within a group should be included in determining if a group qualified as a small company on a consolidated basis, and whether this requirement would also apply to a group headed by an overseas parent company.

MOF's Response

182. **MOF accepts Recommendation 4.3.** The SC had noted that if the parent company was required to prepare audited consolidated accounts, it would be difficult for it to do so if the companies it held were exempt from audit. MOF agrees with the SC's views and notes that the typical business practice is to consider the business of a group of companies as a whole. This is consistent with the proposed approach to consider the application of audit exemption based on the group of companies as a whole. This approach will also provide companies with certainty to their audit obligations, as opposed to leaving the assessment to the auditing standards and the group auditors. When the small company criteria are assessed on a consolidated basis, the group will include all local and foreign-incorporated companies within the group. To achieve parity of treatment of subsidiaries of local parent and foreign parent companies, this recommendation will apply regardless of whether the parent company is incorporated in Singapore or otherwise.

(b) Exempt private companies and filing obligations

Recommendation 4.4

The current status of "exempt private company" should be abolished.

Summary of Feedback Received

183. Most respondents agreed with this recommendation. The respondents who disagreed commented that abolition of the exempt private company (EPC) regime would result in the loss of Singapore's attractiveness to certain groups of companies (e.g. family investment companies). Such companies had chosen to incorporate in Singapore as an EPC so as to benefit from the confidentiality afforded by the exemption from filing financial information.

MOF's Response

184. **MOF does not accept Recommendation 4.4.** The SC had noted that the lack of transparency might prejudice persons dealing with solvent EPCs, as they were unable to verify the financial position of these companies. In addition, confidentiality of certain companies could still be protected through exemptions granted on a case-by-case basis as proposed in Recommendation 4.5. MOF agrees in-principle with the SC's views but notes that the EPC concept has worked well in practice and is not inconsistent with the introduction of the small company criteria for the audit exemption. Feedback was also received which indicated that financial information confidentiality was important to certain companies (e.g. family investment companies and companies where their financial statements contain commercially-sensitive information), which if disclosed to the public, would be detrimental to the interests of the company. Case-by-case exemptions may introduce significant uncertainty for such companies. New business vehicles, such as the Limited Liability Partnership and Limited Partnership, may not be suitable alternatives to the EPC regime due to tax implications. Abolishing the EPC regime may thus negatively impact Singapore's competitiveness. On balance, MOF will keep the status quo, and retain the concept of the EPC and the exemption from filing for solvent EPCs.

Recommendation 4.5

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.

Summary of Feedback Received

185. A majority of respondents agreed with this recommendation. Some respondents disagreed on the same grounds as their disagreement to Recommendation 4.4. One respondent suggested that all companies should file similar information based on the applicable financial reporting standards, rather than to require small companies to file basic financial information.

MOF's Response

186. **MOF does not accept Recommendation 4.5.** This recommendation is consequential to the decision not to accept Recommendation 4.4.

II. FINANCIAL REPORTING FOR DORMANT COMPANIES

Recommendation 4.6

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

Summary of Feedback Received

187. All respondents agreed with this recommendation. One respondent suggested that the exemption be extended to subsidiaries of listed companies.

MOF's Response

188. **MOF accepts Recommendation 4.6.** Currently, although dormant companies are exempt from audit, they are still required to prepare accounts. The SC had considered lightening the regulatory burden for dormant companies by allowing non-listed dormant companies, other than subsidiaries of listed companies, to be exempt from the preparation of accounts as the cost of preparing accounts would outweigh the benefits. However, a dormant subsidiary of a listed company should continue to prepare accounts to facilitate consolidation of accounts by the group. MOF agrees with the SC's views.

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.
- (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.

Summary of Feedback Received

189. All respondents agreed with this recommendation.

MOF's Response

190. **MOF accepts Recommendation 4.7.** MOF agrees with SC's views that safeguards are necessary to provide assurance that a company is indeed dormant.

Recommendation 4.8

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

Summary of Feedback Received

191. Most respondents agreed with this recommendation. Some respondents who disagreed suggested that dormant listed companies should seek to de-list, and that if they did not do so, they should be audited as such companies had a large group of stakeholders.

MOF's Response

192. **MOF accepts Recommendation 4.8.** MOF agrees with the SC's views that if the company is dormant for the financial year in question, shareholders and other stakeholders are not likely to be unduly prejudiced if the accounts are not audited, even in the case of a listed company.

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.

Summary of Feedback Received

193. Most respondents agreed with this recommendation. One respondent suggested that dormant non-listed subsidiaries of listed companies should not be treated differently from other non-listed companies.

MOF's Response

194. **MOF accepts Recommendation 4.9.** MOF agrees with the SC that dormant companies, which are subsidiaries of listed companies, should continue to prepare accounts, since listed companies will need to incorporate the financial information from their subsidiaries for the purposes of consolidation of accounts.

(a) Disregarded transactions

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.

Summary of Feedback Received

195. Most respondents agreed with this recommendation. One respondent disagreed and suggested that a principles-based approach should be used to avoid the need for a list of disregarded transactions.

MOF's Response

196. **MOF accepts Recommendation 4.10.** MOF agrees with the SC's views that statutory fees/fines and nominal payments/receipts can be disregarded for the purposes of determining whether a company is dormant. Such transactions do not constitute active trading and should not be taken to prejudice the determination of a company's dormant status. MOF does not see a strong need to change the current approach of determining dormancy and notes that a principles-based approach may create uncertainty on whether a company qualifies as being dormant.

(b) Substantial assets threshold

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.

Summary of Feedback Received

197. Most respondents agreed with this recommendation. However, one respondent was of the view that setting an asset threshold was not effective in preserving the assets of a dormant company as the assets could be sold off by the time the accounts were made available.

MOF's Response

198. **MOF accepts Recommendation 4.11.** MOF agrees with the SC's view that a total assets threshold test will provide accountability in respect of preservation of the assets, and notes that even if the asset is sold off within the year, the requirement for accounts to be prepared will ensure accountability in respect of that transaction.

III. SUMMARY FINANCIAL STATEMENTS

Recommendation 4.12

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

Summary of Feedback Received

199. All respondents agreed with this recommendation.

MOF's Response

200. **MOF accepts Recommendation 4.12.** MOF agrees with the SC's view that the option to use summary financial statements should be extended to all companies for consistency. This is in line with the practices of the UK, Australia and New Zealand.

IV. THE DIRECTORS' REPORT

(a) Disclosure of directors' benefits

Recommendation 4.13

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

Summary of Feedback Received

201. Most respondents agreed with this recommendation. The respondents who disagreed pointed out that disclosures required under the Singapore Financial Reporting Standards (SFRS) were different and did not cover certain types of benefits.

MOF's Response

202. **MOF accepts Recommendation 4.13.** The SC was of the view that the disclosure of directors' benefits was adequately addressed as the SFRS required key personnel compensation to be disclosed. Therefore, it was not necessary to have a separate disclosure requirement in section 201(8) to list directors' benefits in the directors' report. MOF agrees with the SC's views.

(b) Inclusion of business review

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.

Summary of Feedback Received

203. Most respondents agreed with this recommendation. Respondents who disagreed felt that the director's report should contain information such as how companies were dealing with risk and future uncertainties, and the developments in the companies' operations for future financial years.

MOF's Response

204. **MOF accepts Recommendation 4.14.** The SC had noted that while listed companies usually prepared business reviews, this was not necessary for all companies. MOF agrees with the SC's views and notes that while such a statement may be useful, it is not necessary to be mandatory for all companies.

(c) Requirement for directors' report

<u>Recommendation 4.15</u>

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

Summary of Feedback Received

205. Most respondents agreed with this recommendation. A few respondents who disagreed felt that the directors' report was important for accountability and should be developed into a more meaningful and informative statement instead. One respondent asked if the disclosure requirements currently in the directors' report²³ would be extended to the Chief Executive Officer (CEO) given that there was a recommendation to extend other disclosure requirements relating to directors to CEOs (i.e. Recommendation 1.25).

MOF's Response

206. **MOF accepts Recommendation 4.15.** The SC had noted that the disclosures in the directors' report could be made elsewhere, e.g. in the accounts, notes to the accounts, or the statement by the directors as required under section 201(15) of the Act, and there was little value in having a separate document for these disclosures. MOF agrees with the SC's views. The statement by the directors can be enhanced to include the mandatory disclosures currently required under the directors' report. MOF will consider the extension of these mandatory disclosures under the directors' report to CEOs together with the implementation of Recommendation 1.25 on the extension of disclosure requirements under sections 156 and 165 to the CEO.

²³ Disclosures made in the directors' report includes names of directors in office at the date of the report, directors' interest in the shares, options and debentures of the company and/or related companies.

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.

Summary of Feedback Received

207. A majority of respondents agreed with this recommendation. One respondent who disagreed did so on the same basis as for Recommendation 4.15, i.e. that the directors' report should not be abolished.

MOF's Response

208. **MOF accepts Recommendation 4.16.** Currently, sections 201(6)(a) and (6A)(a) require the full list of directors to be disclosed in the directors' report. The SC had noted that should Recommendation 4.15 be accepted, section 201(15) of the Act should be clarified to require that the full list of directors of companies appear in the statement by the directors. MOF agrees with the SC's views.

V. OBLIGATIONS RELATING TO AUDIT

(a) *Imposition of statutory duty on directors to ensure that auditors are aware of all relevant audit information*

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.

Summary of Feedback Received

209. A majority of respondents agreed with this recommendation. Some respondents who disagreed were of the view that an approach similar to that in the UK would make audits more effective and result in better-informed directors. One respondent also suggested that directors be required to provide critical or material information that affected the going concern of their company or that related to significant breaches in internal controls.

MOF's Response

210. **MOF accepts Recommendation 4.17.** The SC had noted that section 207 of the Act already gave the auditors a right of access at all times to the accounting and other records of the company, and allowed the auditors to request from any officer, including a director of the company, such information and explanations as might be required for the audit. The SC took the view that this provision would achieve

adequate information flow and communication between the directors and the auditors. MOF notes the concerns of the respondents, but takes the view that similar declarations by directors are already made in the management representation letter, which the auditors require the management of a company to sign. Thus, MOF agrees with SC's views that the status quo represents the appropriate balance of the obligations between the auditor and the directors in the audit process.

(b) Mandating auditing standards

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.

Summary of Feedback Received

211. Most respondents agreed with this recommendation. Respondents who disagreed indicated that giving force of law to the auditing standards would add clarity and highlight the importance of the auditing standards. Clarification was also sought on how the list of duties of auditors would be streamlined.

MOF's Response

212. **MOF accepts Recommendation 4.18.** MOF agrees with the SC's view that it is not necessary to mandate compliance with auditing standards in the Act. Compliance with the auditing standards by public accountants can be adequately regulated through ACRA's Practice Monitoring Programme under the Accountants Act. The streamlining of the duties of auditors will be presented in the draft Bill which will be available for public consultation.

(c) Requirement to report on record-keeping

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.

Summary of Feedback Received

213. Most respondents agreed with this recommendation. One respondent who disagreed stated that section 207(3)(b) need not be retained as proper accounting and other records would already be required to enable auditors to express their audit opinion on a company's financial statements.

MOF's Response

214. **MOF accepts Recommendation 4.19.** MOF agrees with the SC's view that section 207(3)(b) of the Act sets out an important obligation that should be retained. The phrase "accounting and other records" will be clarified to refer to section 199 of the Act²⁴. This will be addressed in the draft Bill which will be available for public consultation.

(d) Requirement to comment on consolidation procedures

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.

Summary of Feedback Received

215. Most respondents agreed with this recommendation. The respondents who disagreed commented that the opinion of the auditor on these matters was important to the investing public, and therefore should not be repealed.

MOF's Response

216. **MOF accepts Recommendation 4.20.** The SC took the view that the requirement was unnecessary as the auditors' opinion on whether the accounts complied with the accounting standards and were true and fair would already give sufficient assurance in respect of the consolidation procedures. MOF agrees with the SC's views.

(e) Requirement to report on fraud

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.

Summary of Feedback Received

217. Most respondents agreed with this recommendation. Respondents who disagreed highlighted that the consequences of accounting fraud were serious and that auditors could use their professional judgment to assess if there was an instance of suspected accounting fraud, which should be reported to the Minister for Finance.

²⁴ Section 199(1) states that "...accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto to be prepared from time to time..."

MOF's Response

218. **MOF accepts Recommendation 4.21.** The SC had noted that it might be difficult in practice for an auditor to determine from the circumstances of a misstatement whether there was case of accounting fraud or if it was just an honest mistake. In any case, auditors already dealt with material misstatements detected in accounts by: (i) raising these to the company and having suspicious transactions reflected in the accounts; or (ii) qualifying their opinion where necessary. In either of these instances, the risk that readers of the accounts would be misled would be limited. MOF agrees with the SC's views that it is not necessary to extend section 207(9A) 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.

Summary of Feedback Received

219. Most respondents agreed with this recommendation. One respondent suggested keeping the status quo, as an act of fraud or dishonestly would be significant irrespective of the amount involved. Another respondent highlighted that a low threshold would be good from a risk reduction perspective as companies would be encouraged to put in place procedures to prevent offences involving fraud and dishonesty. Other respondents suggested that there should be clearer articulation on the objective of reporting and sought clarity on the types of offences that would be included.

MOF's Response

220. **MOF accepts Recommendation 4.22 with modification.** The SC had noted that the current threshold amount had been set in 1989 and proposed that the threshold level be raised to \$250,000 as the appropriate amount to be considered a serious offence in current times. MOF agrees with the SC's intent to keep the threshold current and relevant. However, MOF will modify the recommendation to increase the threshold from \$20,000 to \$100,000 instead. This will be a substantial increase, while at the same time retain the strong signal that cases of fraud and dishonesty should be taken seriously. MOF notes that section 207(9D) is intended to be broad and serve as a general guideline. It is also intended to be facilitative in giving an auditor discretion in what to report, while protecting the auditor from breach of duty where he does so in good faith.

VI. RESIGNATION OF AUDITORS

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.

Summary of Feedback Received

221. Most respondents agreed with this recommendation. One respondent suggested that the focus be on appointment of the auditor rather than resignation.

MOF's Response

222. **MOF accepts Recommendation 4.23 with modifications.** The SC had noted that the current provisions in the Act would make it difficult for auditors to resign in a situation where the company refused to hold a general meeting or appoint a new auditor. MOF agrees with the SC's recommendation to make it easier for an auditor of a non-public-interest company, other than a subsidiary of a public company, to resign. However, maintaining status quo will make it onerous for an auditor of a non-public-interest company, which is the subsidiary of a public-interest company, to resign. MOF notes that there can be greater public interest on the resignation of an auditor of a subsidiary of a public-interest company. Thus, MOF will modify the recommendation to require an auditor of such a company to seek ACRA's consent to resign. This will make the requirement for resignation of an auditor of a non-public-interest company, which is the subsidiary of a public-interest company, consistent with that for an auditor of a public interest company.

Recommendation 4.24

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

Summary of Feedback Received

223. Most respondents agreed with this recommendation. One respondent who disagreed highlighted that this might involve ACRA in disputes between the company and the auditors and that it was not clear how ACRA would exercise its discretion in this role. Another indicated that ACRA's consent should not be required as there were already requirements relating to auditors' resignation under the listing rules. It was

also suggested that the auditor of a public-interest company, which is a charity, should also require the consent of the Commissioner of Charities before he can resign.

MOF's Response

224. **MOF accepts Recommendation 4.24.** The SC had noted that ACRA would take an interest in the resignation of auditors of “public-interest entities” where the departure took place prematurely before the end of the term for which the auditor was appointed. A requirement for ACRA’s approval would allow ACRA to stop the resignation in the public interest where such resignation was not appropriate. MOF agrees with SC’s views as ACRA’s involvement in the resignation of the auditor of a public-interest company will also protect such companies from being unfairly left in the lurch and at the same time, alert ACRA to any potential breaches by the company under the Act. ACRA will raise any issues of concern to other regulatory bodies (e.g. the Commissioner of Charities) where appropriate, before deciding whether to grant consent. Such concerns will not be adequately addressed under the current listing rules, which only relate to disclosures of the circumstances for the resignation of auditors.

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.

Summary of Feedback Received

225. Respondents were split in their opinion on whether there was a need for an express requirement for an auditor to disclose to the shareholders the reasons for his resignation. Some respondents who disagreed with the recommendation cited the importance of the disclosure for transparency and good corporate governance, and that shareholders had a right to know if there were exceptional circumstances connected with the auditor’s resignation. One respondent added that disclosure obligations under legislation were preferred to requirements in the listing rules, as breaches of legislation would incur more severe sanctions.

MOF's Response

226. **MOF accepts Recommendation 4.25 with modifications.** The SC had considered concerns raised by auditors of the risks of defamation if auditors were required to disclose the reasons for resignation. The SC also noted that the shareholders could request the information from the company where necessary. MOF notes these considerations, but is of the view that auditors resign before the end of their term of appointment only in rare circumstances. Reasons for such resignation should be disclosed to promote good corporate governance. MOF’s modification is therefore to require an auditor of a public interest company or a subsidiary of a public interest company to give the company that appointed him reasons for his resignation,

and any such reasons should be circulated by the company to the shareholders. However, MOF agrees with the SC that there is no need for auditors of non-public interest companies to make such disclosures as the impact on public interest is low. Shareholders will have the opportunity to enquire on the previous auditor's resignation at the meeting where the replacement auditor is appointed. As part of the drafting process, MOF will be put in place necessary safeguards to address concerns relating to defamation.

VII. AUDITOR'S INDEPENDENCE

Recommendation 4.26

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

Summary of Feedback Received

227. All respondents agreed with this recommendation.

MOF's Response

228. **MOF accepts Recommendation 4.26.** MOF agrees with the SC's view that all the provisions relating to independence of auditors should be consolidated in the rules under the Accountants Act, to reduce duplication of legislation.

VIII. LIMITATION OF AUDITOR'S LIABILITY

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.

Summary of Feedback Received

229. Most respondents agreed with this recommendation. Some respondents disagreed, citing concerns of increased liability exposure due to the increasing size of companies, and that unlimited liability would threaten the long-term sustainability of the audit function. Some respondents also suggested that introducing limitation of liability of auditors would promote a competitive and innovative market for audit firms.

MOF's Response

230. **MOF accepts Recommendation 4.27.** The SC had noted that the UK allowed auditors to limit their liability through contractual agreements. However, the SC had felt there was no pressing need to statutorily provide for a limitation of auditor's liability at the moment. MOF agrees with the SC's views and notes that there is professional indemnity insurance available for auditors to manage their exposure.

IX. INDEMNITY FOR AUDITORS UNDER SECTION 172 OF COMPANIES ACT

Recommendation 4.28

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

Summary of Feedback Received

231. Most respondents agreed with this recommendation. Some respondents who disagreed suggested that auditors be expressly allowed to be indemnified, but subject to certain conditions.

MOF's Response

232. **MOF accepts Recommendation 4.28.** The SC felt that an auditor should not be treated in the same way as a director, given that he was not an officer or employee of the company. On this basis, the SC was unwilling to extend the scope of protection for directors in respect of indemnification for claims brought by third parties to auditors. MOF agrees with the SC's views.

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.

Summary of Feedback Received

233. All respondents agreed with this recommendation.

MOF's Response

234. **MOF accepts Recommendation 4.29.** MOF agrees with the SC's recommendation to clarify that the indemnity in respect of auditors in section 172(2)(b) of the Act can be extended to liabilities that are to be incurred.

X. AUDIT COMMITTEE PROVISIONS

Recommendation 4.30

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

Summary of Feedback Received

235. Most respondents agreed with this recommendation. One respondent disagreed and cited that some public companies which were not listed also had audit committees.

MOF's Response

236. **MOF does not accept Recommendation 4.30.** The SC had proposed to move the provisions relating to audit committees out of the Act so that the Act contains only core company law. However, MAS had indicated that the migration of the provision to the SFA would not be appropriate as SFA relates more to market conduct. MOF considered whether the requirements relating to audit committees could be moved to the Code of Corporate Governance or the listing rules, but concluded that it was important for the audit committee to remain as a statutory committee. MOF will therefore retain the provisions relating to audit committees in the Act.

XI. ACCOUNTING RECORDS AND SYSTEMS OF CONTROL

(a) Keeping of accounting records

Recommendation 4.31

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

Summary of Feedback Received

237. All respondents agreed with this recommendation.

MOF's Response

238. **MOF accepts Recommendation 4.31.** The SC had noted that it would not be possible or desirable to provide a comprehensive list of the type of accounting records that were to be kept and that the current requirement was sufficient. MOF agrees with the SC's views.

(b) Devising and maintaining system of internal controls

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.

Summary of Feedback Received

239. A majority of respondents agreed with these recommendations. Some respondents suggested extending the requirement to larger private companies. Another respondent highlighted that ensuring that there were sufficient internal accounting controls to facilitate the preparation of proper accounts would already be part of a director's duty under section 157 of the Act, and that a specific express obligation to devise and maintain a system of internal controls would therefore not lead to increased compliance costs.

MOF's Response

240. **MOF accepts Recommendations 4.32 and 4.33.** The SC had taken the view that it might amount to over-regulation to impose a mandatory requirement on private companies for which failure to comply would constitute an offence. The SC had noted that using a size test to determine the mandatory requirement to maintain internal controls would not be practical, as the size of the company might vary within short periods of time. It would also present difficulties in enforcement as it would be difficult to determine at what point in time the obligation was mandatory and whether a breach had occurred. While the overarching directors' duty under section 157 of the Act would include ensuring sufficient internal accounting controls, the SC was concerned that the introduction of an express provision might be perceived as a stricter duty, resulting in increased compliance costs. The SC recognised that it was nonetheless important for directors of private companies to be aware of the need for internal accounting controls, and proposed promotion of awareness through non-statutory guidance. MOF agrees with the SC's views.

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.

Summary of Feedback Received

241. Most respondents agreed with this recommendation. One respondent who disagreed suggested that where a company had control over associated companies, it should also arguably be accountable for the internal controls of those associated companies.

MOF's Response

242. **MOF accepts Recommendation 4.34.** MOF agrees with the SC's views that the directors of a public company will not have direct control over its associated companies and related parties, and that it will be too onerous to extend the scope of the legal requirement for public companies to devise and maintain internal controls to their associated companies and related parties.

XII. COMPONENTS OF STATUTORY ACCOUNTS

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 SFRS.

Summary of Feedback Received

243. All respondents agreed with this recommendation. One respondent highlighted that it would be difficult for a company that adopted the Charities Accounting Standards to comply with the SFRS.

MOF's Response

244. **MOF accepts Recommendation 4.35.** The SC had proposed that the components of the accounts be set out in the SFRS to better align the requirements in the SFRS and those in the Act. In addition, if there were changes to the components in the SFRS, it would not be necessary to make amendments to the Act. MOF agrees with SC's views. It is not intended for a company, which is required to comply with the Charities Accounting Standards, to have to comply with SFRS because of this recommendation. This will be reflected accordingly in the drafting of the provision.

XIII. PRESENTATION OF THE ACCOUNTS

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.

Summary of Feedback Received

245. All respondents agreed with this recommendation.

MOF's Response

246. **MOF accepts Recommendation 4.36.** The SC had noted that the directors' duties in section 201 included laying the financial statements before the company at every annual general meeting and ensuring that the financial statements were audited. SC had felt that the duties were still relevant and no change was necessary. MOF agrees with the SC's views.

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.

Summary of Feedback Received

247. Most respondents agreed with this recommendation. One respondent disagreed and suggested that the section be amended to allow the accounts to be sent less than 14 days before the date of the annual general meeting (AGM), where all persons entitled to receive notice of AGM consented to a shorter period.

MOF's Response

248. **MOF accepts Recommendation 4.37 with modifications.** MOF agrees with the SC's views that the current requirement for all persons entitled to receive notice of general meetings, and a copy of the company's profit and loss account and balance-sheet is still relevant. However, MOF notes the concerns that directors will be considered in breach of the Act if accounts are sent less than 14 days before the date of the AGM, even where all persons who are entitled to receive notice of the AGM have agreed to a shorter notice of the meeting and to receive the accounts within the shorter period. MOF will therefore modify Recommendation 4.37 to expressly allow accounts to be sent less than 14 days before the date of the AGM, subject to agreement by all persons entitled to receive notice of the meeting. This will provide clarity and certainty, and bring the position in line with the requirements in jurisdictions such as Hong Kong and the UK.

XIV. FRAMEWORK FOR CONSOLIDATION OF ACCOUNTS

(a) Determination of which entity needs to prepare consolidated accounts

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.

Summary of Feedback Received

249. All respondents agreed with this recommendation.

MOF's Response

250. **MOF accepts Recommendation 4.38.** The SC had recommended that the requirement for preparation of consolidated accounts be set solely by the SFRS. This would align the provisions in the Act and the financial reporting standards, and minimise any future alignment issues if and when the definitions in the accounting standards changed. MOF agrees with the SC's views.

(b) Alignment of financial year-end of subsidiary and parent

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.

Summary of Feedback Received

251. All respondents agreed with this recommendation.

MOF's Response

252. **MOF accepts Recommendation 4.39.** The SC had recommended that the alignment of the financial year-end of a parent company and its subsidiaries be determined by the SFRS to align the provisions in the Act and the financial reporting standards. MOF agrees with the SC's views.

XV. REVISION OF DEFECTIVE ACCOUNTS

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.

Summary of Feedback Received

253. Most respondents agreed with this recommendation. One respondent disagreed and indicated that it was not clear how ACRA would exercise its role and that ACRA might get involved in disputes between the company and the auditors. Another respondent suggested that a whistle-blowing mechanism might be useful to facilitate reporting of defective accounts to ACRA.

MOF's Response

254. **MOF accepts Recommendation 4.40.** Currently, the only enforcement action available for defective accounts is to prosecute the directors under section 204 of the Act. The SC had recommended an express procedure to allow ACRA to require a company to revise its defective accounts where such defects had been detected as a complementary enforcement action. MOF agrees with the SC's views. ACRA's role will be to bring proceedings for adjudication by the Court under the appropriate circumstances. MOF is of the view that no specific whistle-blowing mechanism is necessary as any person can already write to ACRA to inform ACRA of defective accounts of companies.

Recommendation 4.41

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

Summary of Feedback Received

255. All respondents agreed with this recommendation. Some respondents however sought clarification on the mechanisms for voluntary revisions of defective accounts and the potential impact on offences by directors for misstatements in the accounts.

MOF's Response

256. **MOF accepts Recommendation 4.41.** MOF agrees with the SC's views that a provision for voluntary revision of accounts will allow diligent directors of a company to revise the accounts of the company on their own accord before the accounts in respect of the next financial period are prepared. The details of the mechanism for revision of accounts will be provided in subsidiary legislation. While voluntary revision of accounts can operate as mitigation to a breach of the Act for defective accounts, if a breach has already occurred, the directors will still be potentially liable regardless of whether they revise the accounts.

CONCLUSION

257. The following table summarises MOF's decision on the recommendations in Chapter 4 of the *Report of the Steering Committee for Review of the Companies Act*.

Classification	No. of Recommendations	Recommendation Reference
Accepted by MOF	34	-
Modified by MOF	4	Recommendations 4.22, 4.23, 4.25 & 4.37
Not accepted by MOF	3	Recommendations 4.4, 4.5 & 4.30
Total	41	

6. GENERAL COMPANY ADMINISTRATION

PREAMBLE

55. In Chapter 5 of the *Report of the Steering Committee for Review of the Companies Act*, the SC had reviewed the following issues relating to general company administration:

- registers;
- memorandum and articles of association;
- alternate address policy;
- standardised timelines for updating of company records;
- different levels of penalties according to defaults;
- company records – minutes, minute books, etc;
- striking off of defunct local companies;
- companies limited to guarantee;
- regulation of company names; and
- company secretaries.

SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

I. REGISTERS

(a) Register and index of members: authoritative ACRA register of members for private and public companies

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.

Summary of Feedback Received

56. A majority of the respondents agreed with the recommendations. There were views that this would reduce administrative hassle and avoid inconsistency between

the company's and ACRA's records. However, some respondents expressed concerns on the capacity of ACRA's computer systems and availability of historical information. A few respondents disagreed with the recommendations. Some of them indicated that the current practice of notifying ACRA of changes in membership was procedural and should not be changed to take on legal significance. It was also noted that companies maintained more information than what was filed with ACRA, for example a Register of Allotment of Shares. Some respondents asked whether the ACRA Register was intended to act in the same manner as the Register of Land Titles under the Land Titles Act, i.e. ACRA's records would be conclusive evidence of title to shares and when legal title would be transferred.

MOF's Response

57. **MOF accepts Recommendations 5.1 and 5.2.** MOF agrees with the SC that these recommendations will improve accessibility and eliminate duplication. MOF would like to clarify that these recommendations do not change the legal effect of the Register of Members. The recommendations are intended to dispense with the need for companies to maintain such a register and to rely on the ACRA Register in its place. Updating of the ACRA Register will remain the responsibility of companies and their officers. In line with section 190(4) of the Act, being on the ACRA Register will be prima facie evidence that a person is a member of a company. Therefore, on issues such as the point of transfer of legal or beneficial interest in shares, the existing legal position will remain unchanged. ACRA will address the practical issues on its computer system during the implementation of these recommendations. Separately, companies that wish to maintain more detailed records than that mandated by the Act can continue to do so.

(b) Status of members lodged in ACRA register

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.

Summary of Feedback Received

58. A majority of the respondents agreed with this recommendation. A few respondents suggested that the 14-day period allowed for filing was too short and suggested 30 days instead, especially if the instrument of transfer was executed

outside Singapore. One respondent highlighted that 30 days would be consistent with the time which the company was given to settle the stamp duty upon receipt of the documentation in Singapore. Another respondent asked whether the effective date was the date that the documents were filed with ACRA or whether a different effective date could be specified during filing.

MOF's Response

59. **MOF accepts Recommendation 5.3.** Although the ACRA Register will only be updated when the necessary notifications have been filed with ACRA, companies can indicate the effective date of such allotment or transfer of shares in its filing. This is similar to the existing practice where the company enters the date of allotment or transfer on the Register of Members maintained by the company. Companies may notify ACRA of transfers after execution but before payment of any applicable stamp duty. The instrument of transfer is not required to be produced or filed with ACRA. MOF thinks that the 14-day period for filing is reasonable.

(c) Register of directors' shareholdings

Recommendation 5.4

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

Summary of Feedback Received

60. Most respondents agreed with this recommendation. However, one respondent suggested that the requirement for this register should be dispensed with since other jurisdictions have done so.

MOF's Response

61. **MOF accepts Recommendation 5.4.** The SC had noted that while UK, Hong Kong and Australia had done away with this register, the information about directors' shareholdings was useful for shareholders and minority investors in assessing whether there was a conflict of interest. MOF shares the views of the SC that the register of directors' shareholdings remains relevant and should be retained.

(d) Register of directors, secretaries, managers and auditors

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.

Summary of Feedback Received

62. Most respondents agreed with this recommendation. One respondent disagreed with the recommendation as the ACRA Register would not retain historical information. Another respondent suggested that a new register of ‘key executives’ be introduced.

MOF’s Response

63. **MOF accepts Recommendation 5.5.** MOF agrees with the SC that there is no compelling need to retain the Register of Managers or introduce a new register of key executives. MOF also agrees with the SC that information on directors, secretaries and auditors should be kept by ACRA and the mandatory requirement for companies to maintain such registers can be dispensed with. With the implementation of this recommendation, historical information filed with ACRA from the time of implementation will be available.

II. MEMORANDUM AND ARTICLES OF ASSOCIATION

(a) Merging of Memorandum and Articles of Association

Recommendation 5.6

The Memorandum and Articles of Association should be merged as one document, to be known as the Constitution.

Summary of Feedback Received

64. All respondents agreed with this recommendation. A few respondents asked whether existing companies needed to take steps to replace their existing Memorandum and Articles of Association with a new Constitution.

MOF’s Response

65. **MOF accepts Recommendation 5.6.** MOF shares the views of the SC that there is no need for the Memorandum and Articles of Association to be separate documents and these should be merged and renamed as the ‘Constitution’. Companies do not need to take any steps or incur any costs as amendments to the law will be made to deem existing Memorandum and Articles of Association of companies to be merged to form the new Constitution.

(b) Model 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; and
- (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.

Summary of Feedback Received

66. Most respondents agreed with these recommendations. One respondent suggested that a model Constitution for public companies (other than companies limited by guarantee) be provided. Some respondents were of the view that it was not necessary to have a separate model Constitution for single-director companies. On the other hand, there were suggestions to introduce a model for one-member companies. Some respondents asked whether the use of the model Constitution would be mandatory.

MOF's Response

67. **MOF accepts Recommendations 5.7 and 5.8.** MOF agrees to introduce the two models of the Constitution as they will be helpful references for most companies and reduce their set-up cost if they choose to adopt the models. MOF also agrees with the views of the SC that given the complexity of public companies, having a standard model Constitution for public companies will be of limited use. Adoption of any model is not mandatory and all companies should decide on their Constitution based on their own needs.

(c) Necessity of filing Model Constitution

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.

Summary of Feedback Received

68. All respondents agreed with this recommendation. A few respondents suggested that companies that adopted one of the models of the Constitution with

certain variations should only be required to file the variations. One respondent asked whether a company that adopted a one-director model Constitution and later appointed more directors would be deemed to adopt the multiple-directors model Constitution.

MOF's Response

69. **MOF accepts Recommendation 5.9.** MOF agrees with the views of the SC. MOF notes that the suggestions will not require legislative amendments but will impact implementation. MOF will take into account the suggestions when implementing the recommendation.

(d) Model Constitution to be available on ACRA's webpage

Recommendation 5.10

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

Summary of Feedback Received

70. Most respondents agreed with this recommendation. However, a few respondents suggested that the models should be included in subsidiary legislation, given the significance of the constitutional documents of a company.

MOF's Response

71. **MOF accepts Recommendation 5.10 and agrees with the suggestion to include models of the Constitution in subsidiary legislation (i.e. modify Recommendation 5.10),** given that model Articles are already in the legislation.

III. ALTERNATE ADDRESS POLICY

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.

Summary of Feedback Received

72. Most respondents agreed with this recommendation. One respondent disagreed due to concerns about potential abuse by directors providing false alternate addresses. A few respondents asked about the procedures involved in substituting a defunct alternate address with the residential address, whether different alternate addresses would be allowed for different entities an individual was involved with, and whether foreigners would be able to provide an alternate address.

MOF's Response

73. **MOF accepts Recommendation 5.11.** MOF agrees with the SC that having an alternate address will protect the privacy of individuals but an alternate address should be a place where a person can be located and cannot be a postal box. The recommendation applies to both local and foreigners. MOF agrees that there must be safeguards against abuse. For individuals who are exempted from the National Registration Act (e.g. foreigners who hold work passes and persons who do not reside in Singapore), ACRA will keep a confidential list of their residential addresses. For other individuals, ACRA will have access to their residential addresses from the National Registration Department. If ACRA receives a complaint that the alternate address is not valid and the complaint is proven valid after ACRA's investigation, the alternate address will be replaced by the residential address in the Register. The individual will also be disallowed from using an alternate address for a period of time.

IV. STANDARDISED TIMELINES FOR UPDATING OF COMPANY RECORDS

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.

Summary of Feedback Received

74. All respondents agreed with this recommendation. However, there was one suggestion that the standardised notification period be one month or 30 days. Another suggestion was that the filing period for annual returns should not be changed.

MOF's Response

75. **MOF accepts Recommendation 5.12 but will clarify that the filing period for annual returns remains unchanged (i.e. modify Recommendation 5.12).** MOF agrees with the SC that it is helpful to companies to standardise the filing periods as far as possible. 14 days is a suitable period, bearing in mind the need to keep the Register up to date. However, MOF agrees with the feedback that the filing period for annual returns should remain unchanged, i.e. within one month unless the company keeps its branch register outside Singapore, in which case the filing period is within two months.

V. DIFFERENT LEVELS OF PENALTIES ACCORDED TO DEFAULTS

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.

Summary of Feedback Received

76. All respondents agreed with this recommendation.

MOF's Response

77. **MOF accepts Recommendations 5.13 and 5.14.** MOF will consider these recommendations. ACRA is tasked to review the current penalties regime and these recommendations will be part of the study²⁵.

²⁵ Amendments pursuant to ACRA's review of the penalties regime are targeted to be implemented as part of the second phase involving a rewrite of the Act.

VI. COMPANY RECORDS – MINUTES, MINUTE BOOKS, ETC

(a) *Electronic records*

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; and
- (c) to provide that directors be responsible for ensuring:
 - (i) the authenticity of such electronic records; and
 - (ii) the proper maintenance of such electronic records.

Summary of Feedback Received

78. Most respondents agreed with this recommendation. One respondent disagreed due to concerns that an electronic record could impede third parties who wanted to inspect the documents. One respondent who supported the recommendation suggested that there should be safeguards in place and there should be serious consequences if companies failed to maintain proper records.

MOF's Response

79. **MOF accepts Recommendation 5.15.** MOF agrees with the SC that it is useful to clarify the position relating to electronic records and that the legislation should be facilitative rather than prescriptive. The existing provision already provides that in the event of default, a criminal offence will be committed by the company and the officers in default.

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.

Summary of Feedback Received

80. All respondents agreed with this recommendation.

MOF's Response

81. **MOF accepts Recommendations 5.16 and 5.17.** MOF agrees with the SC that the process for the verification is best left to the company. Section 395(2) provides sufficient guidance in requiring that reasonable precautions be taken against falsification of records and proper facilities be provided to enable inspection.

(b) Time for updating of minute books

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.

Summary of Feedback Received

82. All respondents agreed with this recommendation.

MOF's Response

83. **MOF accepts Recommendation 5.18.** MOF shares the views of the SC that the current specified time of one month allowed for updating the minute book under section 188 should be maintained.

VII. STRIKING OFF OF DEFUNCT LOCAL COMPANIES

(a) Specification of criteria for “defunct” company

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); and
 - (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 accounts lodged by that company with ACRA was more than 6 years ago; or 5-17
 - (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.

Summary of Feedback Received

84. All respondents agreed with this recommendation. One respondent suggested that a fast-track restoration service for restoration within 24 hours be introduced.

MOF’s Response

85. **MOF accepts Recommendation 5.19.** MOF agrees with the SC that setting these criteria out in legislation will improve transparency. Once administrative restoration under Recommendation 5.25 has been implemented, ACRA will consider the demand and feasibility of a fast-track service.

(b) Shortening of time for striking off process

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.

Summary of Feedback Received

86. Most respondents agreed with this recommendation. One respondent who disagreed indicated that it would be useful for creditors to have more time to consider whether to object.

MOF’s Response

87. **MOF accepts Recommendation 5.20.** MOF agrees with the SC that two months is a reasonable period for objections to be lodged. MOF is also of the view that the cost of lodging an objection must be kept affordable to facilitate the filing of objections by creditors and to protect their interest.

(c) *Extension of the striking off notification to relevant parties*

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.

Summary of Feedback Received

88. All respondents agreed with this recommendation. Some respondents suggested that the striking off notice be sent to the Central Provident Fund ("CPF") Board as well.

MOF's Response

89. **MOF accepts Recommendation 5.21 and agrees with the suggestion to send the striking off notice to CPF Board as well (i.e. modify Recommendation 5.21).** MOF agrees with the SC that the administrative action already being adopted by ACRA should be codified. CPF Board has confirmed that it finds it useful to receive striking off notices as it will serve to alert them if the company has not already informed CPF Board that it no longer has any employees requiring CPF contributions.

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).

Summary of Feedback Received

90. All respondents agreed with this recommendation.

MOF's Response

91. **MOF accepts Recommendation 5.22.** MOF shares the views of the SC that this will make it easier for creditors to check whether ACRA is planning to strike off the company and take immediate steps to lodge their objections online.

Recommendation 5.23

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

Summary of Feedback Received

92. Half of the respondents agreed with this recommendation while the other half disagreed. Those who disagreed were of the view that ACRA should continue to send the notifications via registered post, given the seriousness of striking off a company and the need for certainty by formal notification to the company.

MOF's Response

93. **MOF accepts Recommendation 5.23.** MOF notes that the recommendation only applies to striking off action initiated by the company. There is no need to send the notification by registered post in such situations as the company will be aware of their application. Instead, ACRA will send striking off notices by ordinary mail or any other means as prescribed in the Act.

(d) Reducing 15-year period for restoration to register

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.

Summary of Feedback Received

94. All respondents agreed with this recommendation.

MOF's Response

95. **MOF accepts Recommendation 5.24.** MOF agrees with the SC that a six-year period for restoration, which is generally consistent with the limitation period for recovery of debts, is appropriate.

(e) Restoration of struck-off company

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.

Summary of Feedback Received

96. All respondents agreed with this recommendation.

MOF's Response

97. **MOF accepts Recommendation 5.25 and will specify that an appeal to the High Court will be allowed if the Registrar refuses to restore the company (i.e. modify Recommendation 5.25).** MOF agrees with the SC that this will complement the current requirement that restoration can only be done by application to the court. This recommendation will reduce costs for companies. For consistency with the approach in the UK and to provide an avenue for appeal, the applicant can apply to the Courts if the registrar rejects the application to restore the company.

(f) Objections to striking off

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.

Summary of Feedback Received

98. All respondents agreed with these recommendations.

MOF's Response

99. **MOF accepts Recommendations 5.26 and 5.27.** MOF agrees with the SC that these recommendations provide greater clarity on the procedures for objections to striking off.

(g) Withdrawal of striking off application

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).

Summary of Feedback Received

100. All respondents agreed with this recommendation.

MOF's Response

101. **MOF accepts Recommendation 5.28.** MOF agrees with the SC that the recommendation will provide greater clarity on the process for withdrawal of striking off applications.

(h) Transfer of relevant provisions to subsidiary legislation

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).

Summary of Feedback Received

102. All respondents agreed with this recommendation.

MOF's Response

103. **MOF accepts Recommendations 5.29 and 5.30.** MOF agrees with the SC that placing the provisions on striking off in subsidiary legislation instead of in the main Act (otherwise referred to as the parent Act by the SC), will allow for greater flexibility.

VIII. COMPANIES LIMITED BY GUARANTEE

Recommendation 5.31

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

Summary of Feedback Received

104. All respondents agreed with this recommendation.

MOF's Response

105. **MOF accepts Recommendation 5.31.** MOF shares the views of the SC that there are no compelling reasons to abolish companies limited by guarantee (CLGs). CLGs fulfill the needs of those who wish to set up vehicles for non-commercial reasons. The SC had noted that this approach is consistent with most jurisdictions.

IX. REGULATION OF COMPANY NAMES

(a) No change in role of Registrar in approval of names

Recommendation 5.32

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

Summary of Feedback Received

106. All respondents agreed with this recommendation.

MOF's Response

107. **MOF accepts Recommendation 5.32.** The Registrar will continue to be responsible for preventing the registration of undesirable, identical or gazetted names of businesses registered with ACRA. Apart from these, a complainant may ask the Registrar to direct a change of name if the name in question is similar to the name of another business entity such that the two names are likely to be mistaken for one another, or the use of the name in question has been restrained by an injunction granted under the Trade Marks Act (Cap. 332). However, the Registrar should not be regarded as a “protector of company names” in all instances. Enforcement of other rights relating to names (e.g. trademarks or passing off) should be dealt with by an application to the Court.

(b) No change to current criterion for refusal of name registration by Registrar

Recommendation 5.33

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

Summary of Feedback Received

108. All respondents agreed with this recommendation.

MOF's Response

109. **MOF accepts Recommendation 5.33.** MOF agrees with the SC that there are no compelling reasons to change the current criteria for refusal of name registration, which are that the name is undesirable, identical to another registered name or one that the Minister has disallowed.

(c) Registration of similar names

Recommendation 5.34

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

Summary of Feedback Received

110. All respondents agreed with this recommendation.

MOF's Response

111. **MOF accepts Recommendation 5.34.** MOF shares the views of the SC that the status quo for similar name registration should be maintained i.e. although registration of a similar name may be done, this is subject to the power of the Registrar to direct a change of name and any application to the Registrar to make such a direction must be made within 12 months of incorporation. What is deemed "similar" is a matter of judgment and the potential impact of a similar name being registered depends on the specific facts and circumstances.

(d) Protection of "famous" names

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.

Summary of Feedback Received

112. All respondents agreed with this recommendation.

MOF's Response

113. **MOF accepts Recommendation 5.35.** MOF agrees with the SC that ACRA should not be responsible for the protection of “famous” international or local names of businesses by preventing the registration of “famous” names, as it is not possible to have a definitive list of “famous” names.

(e) Ambit of section 27 to apply to all corporations

Recommendation 5.36

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

Summary of Feedback Received

114. All respondents agreed with this recommendation.

MOF's Response

115. **MOF accepts Recommendation 5.36.** MOF agrees with the SC that the ambit of the Registrar to direct a change of name under section 27 should remain as it is, i.e. it should continue to apply to locally-incorporated companies, foreign companies registered with ACRA and other overseas companies not registered in Singapore.

(f) No change in current time period of 12 months within which to lodge name complaint

Recommendation 5.37

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

Summary of Feedback Received

116. All respondents agreed with this recommendation.

MOF's Response

117. **MOF accepts Recommendation 5.37.** MOF agrees with the SC that the 12-month time-bar for name complaint applications should be maintained. This provides certainty and protects the new company from having to change its name after having

built up 12 months' worth of goodwill to its name. The 12-month time bar is similar to that in the United Kingdom and Hong Kong, and does not eliminate any other avenue of recourse, e.g. applications to court.

(g) Change in current time period for disallowing re-registration of identical names

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).

Summary of Feedback Received

118. All respondents agreed with this recommendation.

MOF's Response

119. **MOF accepts Recommendation 5.38.** MOF shares the views of the SC that sufficient time should be allowed before companies are allowed to reuse names so as not to cause confusion.

(h) No requirement for panel of company name adjudicators

Recommendation 5.39

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

Summary of Feedback Received

120. All respondents agreed with this recommendation.

MOF's Response

121. **MOF accepts Recommendation 5.39.** Currently, the Registrar looks into and decides on complaints relating to the existence of similar names or what is commonly referred to as "name complaints". The Act also provides for an avenue to appeal to the Minister against the Registrar's decision on such name complaints. The SC noted that the formation of a panel of name adjudicators would not be a cost effective measure to be adopted in Singapore. It would also incur unnecessary time and costs and might slow down the appeal process. MOF shares the views of the SC that the current system of dealing with name complaints is adequate.

(i) Parties to name complaints should be granted equal rights of appeal to Minister

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).

Summary of Feedback Received

122. All respondents agreed with this recommendation.

MOF's Response

123. **MOF accepts Recommendation 5.40.** MOF agrees with the SC that both parties to a name complaint should have similar rights of appeal.

X. COMPANY SECRETARIES

Recommendation 5.41

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

Summary of Feedback Received

124. Most respondents agreed with this recommendation. One respondent who disagreed said that since the law did not mandate a private company to have a professionally qualified company secretary, there was no need to mandate the appointment of a company secretary for private companies. A few respondents suggested that the appointment of a corporate entity as a company secretary be allowed.

MOF's Response

125. **MOF accepts Recommendation 5.41.** MOF agrees with the SC that the status quo should be maintained for better company administration. Although the requirements on professional qualifications of company secretaries do not apply to private companies, directors of private companies are required under the Act to take all reasonable steps to ensure that whoever the directors appoint as a company secretary has the requisite knowledge and experience. MOF does not support the suggestion to allow a corporate entity to be appointed as a company secretary in view of the difficulties with accountability and enforcement (similar to concerns on allowing corporate directors under Recommendation 1.5).

Recommendation 5.42

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

Summary of Feedback Received

126. All respondents agreed with this recommendation.

MOF's Response

127. **MOF accepts Recommendation 5.42.** MOF agrees with the SC that company secretaries of private companies need not be physically present at the company's registered office. It suffices for company secretaries to be contactable.

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.

Summary of Feedback Received

128. Most respondents agreed with this recommendation. Some respondents who disagreed suggested that all company secretaries should possess professional qualifications.

MOF's Response

129. **MOF accepts Recommendation 5.43.** MOF agrees with the SC that the current distinction in requirements for private and public companies should be maintained. The requirement for private company secretaries to have certain mandatory qualifications was removed by amendments to the Act made in 2003. Our current regime is consistent with that in UK, Australia and Hong Kong.

Recommendation 5.44

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

Summary of Feedback Received

130. Most respondents agreed with this recommendation. One respondent who disagreed suggested that corporate secretarial service providers be monitored to maintain standards.

MOF's Response

131. **MOF accepts Recommendation 5.44.** MOF agrees with the SC that a new registration regime for listed company secretaries is not necessary. ACRA will separately consider the regulation of corporate secretarial service providers.

CONCLUSION

132. The following table summarises MOF's decision on the recommendations in Chapter 5 of the *Report of the Steering Committee for Review of the Companies Act*.

Classification	No. of Recommendations	Recommendation Reference
Accepted by MOF	40	-
Modified by MOF	4	Recommendations 5.10, 5.12, 5.21 and 5.25
Total	44	

7. REGISTRATION OF CHARGES

PREAMBLE

133. In Chapter 6 of the *Report of the Steering Committee for Review of the Companies Act*, the SC had reviewed the following issues relating to registration of charges:

- conceptual issues in registration of charges; and
- operational issues in registration of charges.

SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

I. CONCEPTUAL ISSUES IN REGISTRATION OF CHARGES

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.

Summary of Feedback Received

134. All respondents agreed with this recommendation. Some respondents suggested specific amendments to be made to the list of registrable charges.

MOF's Response

135. **MOF accepts Recommendation 6.1.** MOF shares the views of the SC that the current system works and should be maintained. The specific suggestions made by respondents will be considered when the list of registrable charges is reviewed during drafting of the Bill.

II. OPERATIONAL ISSUES IN REGISTRATION OF CHARGES

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.

Summary of Feedback Received

136. All respondents agreed with this recommendation. A few respondents indicated that the scope of registration of charges should not be expanded to require registration of charges created by a business entity other than a company or registered branch of a foreign company

MOF's Response

137. **MOF accepts Recommendation 6.2.** Currently, only companies or individuals can be reflected as a chargee (i.e. lender). This recommendation will allow a business entity to be reflected as a chargee. MOF agrees with the feedback that the scope of registration of charges should not extend beyond companies and foreign companies.

Recommendation 6.3

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

Summary of Feedback Received

138. All respondents agreed with this recommendation.

MOF's Response

139. **MOF accepts Recommendation 6.3.** MOF shares the views of the SC that the current requirements should be maintained to avoid any potential abuse by the chargor (i.e. borrower).

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.

Summary of Feedback Received

140. All respondents agreed with these recommendations.

MOF's Response

141. **MOF accepts Recommendations 6.4 and 6.5.** Currently, section 138(1) of the Act provides that a company must keep the instrument of charge at its registered office. MOF shares the views of the SC that a company should keep the instrument of charge at its registered office for as long as it is in force, and that the retention period for the instrument of charge should be consistent with the requirements 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.

Summary of Feedback Received

142. All respondents agreed with these recommendations. One respondent said that the Act should specify the responsibilities of the chargor to register the charge and retain a copy of the charge instrument at its registered office.

MOF's Response

143. **MOF accepts Recommendations 6.6 and 6.7.** MOF shares the views of the SC that the form for registration of charges should be reviewed and that the chargor should be reminded to keep a copy of the charge instrument at its registered office in the e-notification. The responsibilities of a chargor are already specified in sections 132 and 138 of the Act. Section 132(1) provides that in the event of failure to register a registrable charge, the company and every officer in default shall be guilty of an offence. Section 138(1) provides that every company shall cause the instrument creating any registrable charge or a copy thereof to be kept at the registered office.

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.

Summary of Feedback Received

144. All respondents agreed with this recommendation. One respondent suggested that section 141²⁶ should be amended to make it clear that it excludes unregistered foreign companies. Another respondent suggested that it should be clarified that if a foreign company, having created a charge which was unregistrable at the point of its creation, is subsequently registered with ACRA as a foreign company, and prior to such registration, had failed to register the charge within 30 days as set out in section 133²⁷, the validity of the charge is not affected by the non-registration and the sanction is only penal.

MOF's Response

145. **MOF accepts Recommendation 6.8.** MOF agrees with the views of the SC that unregistered foreign companies should not be allowed to register charges with ACRA. As part of the drafting process, MOF will consider whether section 141 should be amended to make this clearer. MOF thinks that there is no need to amend section 133, to make the clarification required. Section 133 deals with registration of charges in specific situations. For foreign companies which become registered in Singapore, section 133 requires that they lodge a statement of any registrable pre-existing charge²⁸ within 30 days of registration as a foreign company. There is no doubt that the sanction for non compliance with section 133 by foreign companies is only penal and does not affect the validity of the charge.²⁹

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.

Summary of Feedback Received

146. All respondents agreed with this recommendation. Two respondents suggested amending the Act to clarify the position. One respondent suggested reducing the particulars required for registration of charges. The respondent pointed out that some chargees are reluctant to register charges as they are unable to confirm that the charge instrument will be kept at the chargor's office.

²⁶ Section 141 states "A reference in this Division to a company shall be read as including a reference to a foreign company registered under Division 2 of Part XI, but nothing in this Division applies to a charge on property outside Singapore of such foreign company."

²⁷ Section 133 requires companies to register pre-existing charges on a property acquired and the duty upon registration of a foreign company to register pre-existing charges.

²⁸ A pre-existing charge would be registrable if at the time when the charge was created by the foreign company, the charge was one that an existing registered foreign company would have been required to register.

²⁹ Section 131(1) renders a charge void against the liquidator and any creditor of the company if the section 131 requirement to register is not complied with. However it is stated at section 131 that this consequence applies only to a charge to which section 131 itself applies.

MOF's Response

147. **MOF accepts Recommendation 6.9.** MOF agrees with the SC's views that physical delivery of documents does not amount to lodgment and therefore does not equate to a successful registration of a charge. As indicated under Recommendation 6.8, MOF will consider whether it is necessary to amend section 141. Although the SC did not recommend any reduction in the particulars required for registration of charges, in view of the feedback, ACRA will review the design of the form to ensure the information required continues to be relevant and useful. The comment that some chargees are reluctant to register charges due to the requirement to confirm that the charge will be kept at the chargor's office will be addressed by the implementation of Recommendation 6.6.

CONCLUSION

148. The following table summarises MOF's decision on the recommendations in Chapter 6 of the *Report of the Steering Committee for Review of the Companies Act*.

Classification	No. of Recommendations	Recommendation Reference
Accepted by MOF	9	-

8. NEW ISSUES

PREAMBLE

149. MOF also received feedback on new issues that were not covered by the SC in its report. This chapter presents a summary of the feedback received and MOF's responses to the feedback. As some of the feedback received will require further study and review, MOF and ACRA will consider whether to, and if so, how to, incorporate these suggestions when the Act is re-written.

SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

I. DIRECTORS

(a) New Issue 1: Appointment of directors

150. *Feedback.* It was suggested that measures be put in place to avoid situations where vulnerable persons might be exploited by being installed as the sole director but with no real control of the company. Measures proposed were to impose minimum shareholding or salary requirements for directors or even to impose some responsibility on majority shareholders who are not formally appointed as directors.

151. *MOF's Response.* MOF is of the view that it will be inappropriate to impose minimum shareholding or salary requirements for directors as there are legitimate reasons for companies to have flexibility in these matters. Other jurisdictions do not impose such requirements. Moreover, shareholders with whose instructions any director is accustomed to act will fall within the definition of 'director' under section 4 of the Act.

(b) New Issue 2: Waive the requirement for a locally resident director

152. *Feedback.* It was suggested that incorporation without a locally resident director should be allowed if a monetary bond of a suitable quantum is provided to ensure that companies will fulfill their legal obligations of filing etc. Alternatively, the requirement for a locally resident director should be waived altogether.

153. *MOF's Response.* MOF is of the view that it is not appropriate to waive the requirement as it will be difficult to hold directors and/or the company accountable if there is no locally resident director.

(c) *New Issue 3: Directors' remuneration*

154. *Feedback*. It was suggested that perquisites granted to top level executives and directors should be subject to shareholders' approval. There was also a suggestion to bar certain shareholders (e.g. who have a right to nominate directors) from voting on directors' remuneration.

155. *MOF's Response*. Section 169 already requires that directors' emolument (which has a broad inclusive definition) be approved by a resolution of the shareholders. Compensation for loss of office also requires shareholder approval in certain circumstances. (Recommendation 1.15 proposes a refinement in this regard.) Furthermore, approval by the Board of Directors of any unwarranted benefits may be a breach of directors' duties. MOF is of the view that it is not appropriate to restrict certain shareholders from voting on directors' remuneration. As shareholders are owners of the company, they should have the right to vote on such matters. On the issue of remuneration of executives, it is generally a contractual matter between the company and the executives.

II. SHAREHOLDERS' RIGHTS AND MEETINGS

(a) *New Issue 4: Lowering the threshold for calling extraordinary general meetings*

156. *Feedback*. It was suggested that section 176 of the Act (relating to the calling of extraordinary general meetings) be amended to lower the threshold at which members of a company may requisition a meeting from 10% of the total voting rights to 5% of the total voting rights.

157. *MOF's Response*. MOF notes this feedback and will consider this issue at a later stage when the Act is re-written.

(b) *New Issue 5: Guidelines on ordinary and special resolutions*

158. *Feedback*. There was feedback that it was unclear as to when ordinary or special resolutions should be used.

159. *MOF's Response*. MOF is of the view that there is sufficient clarity on this as the Act already specifies the situations where special resolutions are necessary. Where the Act does not specify that a special resolution is needed, an ordinary resolution would be sufficient. It would not be possible to provide an exhaustive list of decisions to be made by way of ordinary resolutions.

(c) New Issue 6: Power to entrench provisions of memorandum and articles of company and class rights

160. *Feedback.* It was suggested that section 26A of the Act relating to the inclusion of entrenching provisions in the constitutional documents gave rise to interpretation issues and was unnecessary in Singapore's context.

161. *MOF's Response.* MOF had introduced section 26A in 2004 at the recommendation of the Company Legislation and Regulatory Framework Committee (CLRFC) in 2002. MOF's view is that there is no compelling reason to substantially review section 26A at this time. This can be further reviewed during the rewrite of the Act.

(d) New Issue 7: Electronic communications by the Central Depository (CDP)

162. *Feedback.* It was suggested that provisions relating to electronic communication by the CDP should also be considered along the lines of Recommendations 2.18 to 2.21 in relation to electronic communications by companies.

163. *MOF's Response.* The Monetary Authority of Singapore (MAS) is the appropriate party overseeing CDP matters. This suggestion has been forwarded to MAS for its review and consideration.

(e) New issue 8: Appointment of corporate representative

164. *Feedback.* It was suggested to revise section 179(3) of the Act to allow the appointment of a corporate representative, not just by resolution of its directors or governing body but by other means so long as it can be shown that the appointment was duly authorised by a corporate member in accordance with the laws of its incorporation.

165. *MOF's Response.* The introduction of a provision which allows the appointment of corporate representatives by other means, while providing more flexibility, could give rise to some operational difficulties. MOF observes that this does not appear to be an issue which will concern all companies in general. Therefore, MOF intends to maintain status quo.

(f) New issue 9: Procedure for alteration of objects in memorandum

166. *Feedback.* There was a suggestion to revise section 33(2) of the Act and to adopt a more practical procedure that allows a company to amend its objects clause first, and then allow members and debenture holders to file and object subsequently.

167. *MOF's Response.* MOF notes that in respect of section 33, the SC had not recommended any revisions to the procedures. In view of the feedback received, MOF will consider this further when the Act is re-written.

III. SHARES, DEBENTURES, CAPITAL MAINTENANCE, SCHEMES, COMPULSORY ACQUISITIONS AND AMALGAMATIONS

(a) New Issue 10: Redemption of Preference Shares

168. *Feedback.* In January 2006, the Act was amended such that shares could not be redeemed using the capital of a company unless all the directors had made a solvency statement in relation to such redemption and lodged a copy of the statement with ACRA. There was feedback that it was unclear whether using the proceeds from a fresh issue of shares for the purposes of share redemption would now require a solvency statement to be made (when it was previously not required under section 70³⁰ of the Act). If this was required, it would not be business friendly.

169. *MOF's Response.* MOF notes the feedback, and will review if section 70 needs to be clarified when drafting the bill.

(b) New Issue 11: Inconsistency between sections 192 and 130D(2)(a) of the Act

170. *Feedback.* There was feedback that section 130D(2)(a) (which does not require a listed company to continually update its hard copy register of members) is inconsistent with section 192 (which requires all companies to keep a register of members and allow inspection of such register).

171. *MOF's Response.* The rationale of section 130D(2) is to avoid a situation where a company has the obligation to continually update its share register to reflect changes to its members, especially for listed companies whose shares are traded at high volume and frequency. Section 192 provides that any person may ask the company to provide him with a copy of the register of members. The purpose of section 130D(2)(a) is not to prevent shareholders from requesting and obtaining a list of the members of a listed company, and therefore there is no inconsistency between the two sections. Nevertheless, MAS will consider the feedback as part of its review of the Central Depository provisions.

(c) New Issue 12: Share Capital

172. *Feedback.* The following suggestions were received: (a) all provisions relating to shares and share capital should be grouped together in the same part in the Act; (b) section 71(1)(a) should be clarified such that an issue of new shares constitutes an alteration of share capital; (c) Article 40(a) of Table A of the Act should be reconciled

³⁰ Section 70 relates to the redemption of preference shares by companies.

with section 160; and (d) a new part should be introduced in the Act to cover the issuance of different classes of shares and class rights.

173. *MOF's Response.* MOF will address (a), (b) and (c) during the drafting of the bill. For (d), MOF is of the view that instead of introducing a new section in the Act, it will be sufficient to amend the Act to introduce a new reporting requirement when shares are converted from one class to another so as to ensure that the share registers are more updated.

(d) *New Issue 13: Section 7(4A) of the Companies Act*

174. *Feedback.* The following suggestions were received: (a) “voting share” in section 7(4A) of the Act should be amended as it is not broad enough to require a limited partnership with no voting shares but has substantial shareholding in a company to disclose its deemed interests in shares of the company; and (b) the reference to “subsection 4” in section 7(5)(b) should be amended to read “subsection 4A”.

175. *MOF's Response.* For (a), we agree with the intent of the suggestion. This can be addressed through the proposal to amend the concept of “voting share” to “voting power”. The position in jurisdictions such as Australia, UK Hong Kong and New Zealand is to adopt the “voting power” approach. MOF will clarify (b) during the drafting of the Bill to adopt the recommendations of the SC.

(e) *New Issue 14: Notification requirements of substantial shareholders*

176. *Feedback.* It was suggested that a knowledge element should be introduced into sections 82 and 84 of the Act, which relate to reporting of substantial shareholdings.

177. *MOF's Response.* The notification requirements for substantial shareholders of listed companies will be migrated to the Securities Futures Act (SFA) which will come into effect on 19 November 2012. Under the SFA, the notification requirement is triggered upon the substantial shareholder becoming aware of the event e.g. becoming or ceasing to be a substantial shareholder.

IV. ACCOUNTS AND AUDIT

(a) *New issue 15: Audit requirements for groups with overseas subsidiaries*

178. *Feedback.* There was feedback that the requirement for Singapore-incorporated companies having overseas subsidiaries to have their group financial statements audited by the group auditors in Singapore gives rise to high costs.

179. *MOF's Response.* The Act does not mandate whether overseas subsidiaries of Singapore-incorporated companies are required to be audited by the group auditors in

Singapore. There may be cases where the group auditors are of the view that certain audits of the overseas subsidiaries need to be conducted to ensure that the consolidated financial statements for the group are true and fair. Such decisions would be taken by the company in consultation with their auditors. The change to the Act to introduce audit exemption for small companies may help to address some of the issues regarding costs of auditing if the entire group is small and is exempted from audit.

(b) *New issue 16: Appointment of auditor of audit-exempt company*

180. *Feedback.* It was suggested that a “small company” or “dormant company” which was exempt from statutory audit should not be required to appoint an auditor until such time when the audit exemption no longer applied.

181. *MOF’s Response.* MOF notes that currently, section 205A of the Act exempts the appointment of an auditor for companies which are exempt from audit as a small exempt private company or dormant company. Similar provisions will be in the bill.

(c) *New issue 17: Disclosure of audit/ non-audit fees*

182. *Feedback.* It was suggested that the Act mandate the disclosure of audit and non-audit fees paid to the auditors within the financial statements, so as to improve shareholders’ ability to assess the auditor’s independence and audit quality.

183. *MOF’s Response.* MOF notes the feedback but is of the view that there is no compelling need to mandate disclosure of audit and non-audit fees in the financial statements at this juncture. The level of audit and/or non-audit fees is determined by commercial considerations and would not be an accurate gauge of the auditor’s independence or quality. MOF is of the view that the concerns of audit quality can be addressed through other ways, e.g. ACRA’s work in inspecting the work of auditors and promoting better understanding of audit among the audit committees and investors.

(d) *New issue 18: Filing in Extensible Business Reporting Language (XBRL) format*

184. *Feedback.* There was feedback that the requirement to file in XBRL format creates difficulties and that it is also difficult to file a Notice of Error in respect of financial statements.

185. *MOF’s Response.* MOF and ACRA have noted the feedback. These issues will be considered separately as part of the ongoing review of ACRA’s XBRL filing system.

V. GENERAL COMPANY ADMINISTRATION

(a) *New Issue 19: Listed Corporations Act*

186. *Feedback.* It was suggested that there should be a separate piece of legislation for all listed companies and separate provisions for private and public companies.

187. *MOF's Response.* MOF agrees with the SC that the Act should contain core company law that is applicable to all companies. Provisions relating to the Central Depository will be moved out of the Companies Act. After the migration of the provisions on Central Depository, the Companies Act will contain very few provisions that apply only to listed companies. Thus, MOF is of the view that there is no need for a separate piece of legislation specifically for listed companies at this point.

(b) *New Issue 20: Verification upon incorporation*

188. *Feedback.* It was suggested that the regulator should verify particulars such as address for authenticity.

189. *MOF's Response.* There are existing safeguards in place, e.g. directors' addresses are verified against the National Registration Office's records where applicable and a congratulatory letter is sent to all directors at their official addresses upon incorporation, which will alert the persons if their identities have been used by others. False declaration of information to ACRA will also result in prosecution.

VI. REGISTRATION OF CHARGES

(c) *New Issue 21: Registration of Charges*

190. *Feedback.* It was suggested that there should be a specific exclusion for the need for a Licensed Trust Company ("LTC") to register charges over assets if the entity is acting as a trustee and has no beneficial interest in the assets.

191. *MOF's Response.* MOF is of the view that such a specific exclusion is not necessary as the Singapore position is currently in line with other major jurisdictions. Although a LTC may have no beneficial interest in the assets, it is still the legal owner.

VII. OTHER ISSUES

(a) *New Issue 22: Protected Cell Companies*

192. *Feedback.* It was suggested that a new entity structure akin to the Protected Cell Company in other jurisdictions be introduced as such a structure is relevant to the fund management industry.

193. *MOF's Response.* As the fund management industry is regulated by MAS, the issue was referred to MAS for consideration. MAS is of the view that there is no pressing need for such structures presently, but may review the position in future if necessary.

(b) *New Issue 23: Judicial Managers*

194. *Feedback.* It was suggested that an approved liquidator be allowed to act as a judicial manager.

195. *MOF's Response.* This suggestion will be considered by the Ministry of Law as part of its ongoing review of the insolvency regime.

**ANNEX A - COMPOSITION OF STEERING COMMITTEE TO REVIEW
THE COMPANIES ACT**

Name		Designation
1.	Professor Walter Woon (SC Chairman)	Attorney-General (until Apr 2010) David Marshall Professor of Law, Centre for International Law, NUS & Dean, Singapore Institute of Legal Education
2.	Mr Lucien Wong	Chairman and Senior Partner, Allen & Gledhill LLP
3.	Mr Dilhan Pillay Sandrasegara	Head (Portfolio Management), Head (Singapore), Head (Private Equity Funds Investment) and Co-Head (Europe), Temasek Holdings
4.	Mr Gautam Banerjee	Executive Chairman, PriceWaterhouseCoopers LLP (retiring on 31 Dec 2012)
5.	Mr John Lim	Chairman, Singapore Institute of Directors
6.	Prof Tan Cheng Han	Professor, Faculty of Law, NUS
7.	Mr Charles Lim	Parliamentary Counsel (Legislation and Law Reform Division), AGC
8.	Mr Ng Heng Fatt	General Counsel, MAS
9.	Ms Juthika Ramanathan	Chief Executive, ACRA
10.	MOF representative	Director, MOF
11.	Dr Philip Pillai (served until 30 Sep 2009)	Partner, Shook Lin & Bok LLP (until Sep 2009) Judicial Commissioner, Supreme Court

ANNEX B – LIST OF RESPONDENTS

Companies Listed on Singapore Exchange

1. Banyan Tree Holdings Limited
2. Overseas-Chinese Banking Corporation Ltd
3. Singapore Exchange Limited
4. Singapore Technologies Engineering Ltd
5. Singapore Telecommunications Limited
6. StarHub Limited
7. Supplementary Retirement Scheme Operators (i.e. DBS Group Holdings Limited, Overseas-Chinese Banking Corporation Ltd and United Overseas Bank Ltd)

Other Singapore Incorporated Companies

8. Abacus Advisory Services Pte Ltd
9. Advance Management Pte Ltd
10. Azec Worldlink Management Services Pte Ltd
11. CMC Markets Singapore Pte Ltd
12. DrewCorp Services Pte Ltd
13. Eton Associates (S) Pte Ltd
14. Everbest Secretarial Pte Ltd
15. Hudson Minerals Holdings Pte Ltd
16. Raffles Corporate Consultants Pte Ltd
17. Temasek Holdings (Pte) Ltd
18. Tetra Pak Asia Pte Ltd

Other Corporations

19. Hermes Equity Ownership Services Ltd
20. The Hong Kong and Shanghai Banking Corporation Limited (Singapore Branch)
21. UBS AG
22. Walker, Chandiok & Co, India

Associations

23. ACCA Singapore
24. Asian Corporate Governance Association
25. Association of Small and Medium Enterprises
26. CFA Institute and CFA Singapore

27. Consumers Association of Singapore
28. CPA Australia (Singapore Office)
29. Institute of Certified Public Accountants of Singapore
30. Life Insurance Association Singapore
31. Securities Investors Association (Singapore)
32. Singapore Institute of Directors
33. Singapore International Chamber of Commerce
34. Singapore Trustees Association
35. The Law Society of Singapore
36. The Singapore Association of the Institute of Chartered Secretaries and Administrators (on behalf of company secretaries of listed companies)
37. The Singapore Association of the Institute of Chartered Secretaries and Administrators (on behalf of SAICSA members and practitioners)

Audit Firms

38. Deloitte & Touche LLP
39. Ernst & Young LLP
40. KPMG LLP
41. PricewaterhouseCoopers LLP
42. PricewaterhouseCoopers Services LLP
43. S B Tan & Co

Law Firms

44. AbrahamLow LLC
45. Allen & Gledhill LLP
46. AV & P Legal
47. Drew & Napier LLC
48. Glen Koh (law firm)
49. Harry Elias Partnership LLP
50. Herbert Smith LLP
51. Legis Point LLC
52. RHT Law LLP
53. Shook Lin & Bok
54. Wong Tan & Molly Lim LLC
55. WongPartnership LLP

Academia

56. Associate Professor Ng Eng Juan (Nanyang Technological University)
57. Associate Professor Wan Wai Yee (Singapore Management University)
58. Dr Christopher Chen Chao-Hung (Singapore Management University)
59. Dr Pearl Tan (Singapore Management University)

Individuals

60. Mr Kang Siew Khing
61. Mr Konidala Perumal Munirathnam
62. Mr Lawrence Kwan
63. Mr Mark See
64. Mr Moses Oh

Government Agencies

65. Accountant-General's Department
66. Central Provident Fund Board
67. Department of Statistics
68. Economic Development Board
69. Ministry of Law (Insolvency Law Review Committee)
70. Monetary Authority of Singapore