

Government's Response to Key Recommendations by the Steering Committee for the review of the Companies Act

I. Impact on Companies

(a) Liberalise rules governing electronic transmission

MOF's decision:

Companies will be allowed to specify in their constitutional documents the mode of electronic transmission to be used. Certain safeguards will also be imposed to set minimum standards on the use of electronic transmission.

Basis for decision:

Given the high penetration of info-communication technology in Singapore, it is timely to simplify the rules governing use of electronic transmission. Although companies are currently allowed to send notices and documents via electronic means (subject to certain conditions and rules), there has been feedback that the existing provisions are too prescriptive and onerous. **Liberalising the rules will help companies reduce cost and increase efficiency.**

(b) Allow companies to issue shares with multiple and non-voting rights, subject to safeguards

MOF's decision:

Currently, private companies are allowed to issue shares with multiple and non-voting rights. There is a restriction on public companies doing so. This one-share-one-vote restriction will be removed for public companies. Safeguards will be imposed to protect the rights of existing shareholders and ensure that shareholders know the rights attached to any particular class of shares.

Basis for decision:

This will allow all companies **greater flexibility in capital management**. Jurisdictions like the UK, Australia and New Zealand already allow classes of shares with different rights, subject to the companies' constitutional documents. The Australian stock exchange, however, restricts listed companies from doing so through its listing rules. MOF and MAS recognise that the dual class share structure may give rise to issues pertaining to entrenchment of control for public listed companies.

SGX should, in consultation with MAS, carefully evaluate if dual class share structure should be permitted for listed companies and whether listed companies should be allowed to issue non-voting shares and shares with multiple votes.

(c) Extend disclosure requirements for directors to Chief Executive Officer (CEO)

MOF's decision:

The statutory duty to disclose conflict of interests in transactions, and shareholdings in the company and related corporations will be extended to CEOs. This is consistent with the approach adopted under the Securities and Futures Act.

Basis for decision:

CEOs, being the apex of the management, play an influential role in the decision-making of a company, sometimes more so than the directors of the company who may not work full-time for the company. The statutory duty for disclosure currently applies only to directors. To promote better standards of corporate governance and to send a strong signal that CEOs are held to a similar level of conduct as directors for disclosure obligations, this statutory duty will be extended to CEOs.

(d) Retain "Exempt Private Company" ("EPC") regime for filing of financial information

MOF's decision:

The concept of the EPC¹ and the exemption from filing financial information for solvent EPCs will be retained.

Basis for decision:

Currently, solvent EPCs need not file financial information. MOF notes the SC's view that greater transparency on the financial information of solvent EPCs could facilitate due diligence by persons dealing with them. However, the feedback received indicated **that confidentiality afforded by the EPC regime is important to companies** where their financial statements contained commercially-sensitive information which, if disclosed to the public, will be detrimental to the interests of the company.

¹ Under Section 4 of the Companies Act, an "exempt private company" is defined as –

- (a) A private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members; or
- (b) Any private company, being a private company that is wholly owned by the Government, which the Minister, in the national interest, declares by notification in the Gazette to be an exempt private company.

Though the SC also proposed that the confidentiality of such companies could still be protected through exemptions granted on a case-by-case basis, this may introduce significant uncertainties for companies.

Abolishing the EPC regime may therefore negatively impact Singapore's competitiveness. Furthermore, persons dealing with the solvent EPCs can seek the relevant financial information directly from these companies as part of their commercial agreements.

II. Impact on Small-Medium Enterprises (SMEs)

(a) New small company criteria for exemption from statutory audit

MOF's decision:

A new small company concept will be introduced for determining the requirement for statutory audit. A small company which is a private company that fulfils two of the following three criteria will be exempt from audit:

- (i) Total annual revenue of not more than S\$10million;
- (ii) Total gross assets of not more than S\$10million;
- (iii) Number of employees of not more than 50.

To provide certainty to companies, the criteria are consistent with those used in the Singapore Financial Reporting Standard for Small Entities ("SFRS for Small Entities"). Existing safeguards will also be retained².

Basis for decision:

As small companies have limited public interest, there is no compelling need to mandate an audit. Small companies may still choose to have their accounts audited based on business needs. This will help to **keep compliance costs low**. This is expected to benefit about an additional 10% of all companies or approximately 25,000 more companies, which do not qualify under the current exemption criteria³.

² Safeguards such as requiring all companies to keep proper accounting records and empowering shareholders representing at least 5% voting rights to require a company to prepare audited accounts will be retained.

³ Currently, only EPCs with annual revenue not more than S\$5million can be exempt from audit.

Estimated number of companies that will benefit from the new small companies criteria

As at end Sept 2012:

Total number of 'live' companies	≈ 250,000
Total number of EPCs exempt from audit ^[a]	≈ 79% (≈ 197,500)
Remaining companies:	
• Public companies	≈ 1%
• Private companies	≈ 20%

Going forward under the new small companies regime:

EPCs currently exempt from audit will continue to be exempt from audit ≈ 79%.

Additional companies that could be exempt from audit: Private companies with annual revenue not more than \$10 million, and not subsidiaries of group with more than \$10 million revenue^[b] ≈ 10% (≈ 25,000^[c])

Notes:

^[a] EPCs with annual revenue not more than \$5million are exempt from audit

^[b] A private company can qualify as a small company if it fulfils 2 out of 3 criteria which are based on revenue, assets and number of employees. ACRA currently does not have data relating to assets or number of employees of companies.

^[c] Estimated based on the number of live companies as at end Sept 2012.

(b) Easing compliance cost for dormant companies

MOF's decision:

A dormant non-listed company which is not a subsidiary of a listed company will be exempt from the requirement to prepare accounts, subject to safeguards⁴.

Basis for decision:

Currently a dormant company is exempted from statutory audit requirements but is still required to prepare accounts that are in compliance with accounting standards. With the exemption, **the regulatory burden for this group of dormant companies will be further reduced**. Such companies have limited public interest and the cost of preparing accounts outweighs the benefits.

⁴ For example, the exemption would not apply if the company holds substantial assets. This is to provide accountability in respect of preservation of the assets.

III. Impact on Retail Investors

- (a) Introduce multiple proxies regime for indirect investors, including CPF investors

MOF's decision:

A multiple proxies regime will be introduced to give indirect investors and CPF investors the same rights as direct investors in respect of attendance at shareholders' meetings. Nominee companies and custodian banks will be allowed to appoint more than two proxies so that indirect investors can be appointed as proxies to participate in shareholders' meetings. This regime will be extended to allow CPF investors who purchase shares through the CPF Investment Schemes or the Special Discounted Share Scheme to attend shareholders' meetings. Each proxy will be given the right to vote on a show of hands, in addition to voting on a poll.

Basis for decision:

This will provide for more active participation at general meetings by indirect investors, and help to **strengthen the culture of corporate governance**.

IV. Impact on Company Directors

- (a) Allow directors to reflect alternate addresses in ACRA's register

MOF's decision:

Currently, Directors are required to reflect their residential addresses in ACRA's register. The revised Act will allow Directors to reflect alternate addresses. Safeguards will be in place to prevent abuse⁵.

Basis for decision:

This serves to **protect the privacy of directors**.

⁵ For example, if ACRA receives a valid complaint that the alternate address is false, the alternate address will be replaced by the residential address in the Register. 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.

(b) Not codify directors' duties

MOF's decision:

It will not be desirable to codify the directors' duties in the same manner as the UK⁶.

Basis for decision:

While codification may provide greater clarity on what is expected of directors, this can result in a loss of flexibility and may not be the best for business efficacy. Moreover, the Companies Act already contains a statutory statement on directors' duties⁷. MOF will monitor the situation in the UK and other jurisdictions to ascertain if the codification of directors' duties is indeed useful.

⁶ In 2006, the following directors' duties were codified in the UK Companies Act 2006:

- (a) Duty to act within powers;
- (b) Duty to promote the success of the company;
- (c) Duty to exercise independent judgment;
- (d) Duty to exercise reasonable care, skill and diligence;
- (e) Duty to avoid conflicts of interests;
- (f) Duty not to accept benefits from third parties;
- (g) Duty to declare interests in proposed transaction or arrangement.

⁷ Section 157(1) of the Companies Act states that a director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office. Section 157(2) provides that an officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.