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# GENERAL COMPANY ADMINISTRATION

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## **PREAMBLE**

1. 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

2. 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

3. **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

4. 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

5. **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

6. 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

7. **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

8. 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

9. **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

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

MOF's Response

11. **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

12. 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

13. **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

14. 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

15. **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

16. 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

17. **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.

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

#### Summary of Feedback Received

18. 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

19. **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

20. 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

21. **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

22. All respondents agreed with this recommendation.

MOF's Response

23. **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 study<sup>1</sup>.

**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

24. 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

25. **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

<sup>1</sup> 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.

26. All respondents agreed with this recommendation.

MOF's Response

27. **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

28. All respondents agreed with this recommendation.

MOF's Response

29. **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

30. 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

31. **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

32. 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

33. **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

34. 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

35. **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

36. All respondents agreed with this recommendation.

MOF's Response

37. **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

38. 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

39. **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

40. All respondents agreed with this recommendation.

#### MOF's Response

41. **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

42. All respondents agreed with this recommendation.

#### MOF's Response

43. **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 reduces 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

44. All respondents agreed with these recommendations.

MOF's Response

45. **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

46. All respondents agreed with this recommendation.

MOF's Response

47. **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

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

48. All respondents agreed with this recommendation.

MOF's Response

49. **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

50. All respondents agreed with this recommendation.

#### MOF's Response

51. **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

52. All respondents agreed with this recommendation.

#### MOF's Response

53. **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. trade marks 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

54. All respondents agreed with this recommendation.

#### MOF's Response

55. **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

56. All respondents agreed with this recommendation.

#### MOF's Response

57. **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

58. All respondents agreed with this recommendation.

MOF’s Response

59. **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

60. All respondents agreed with this recommendation.

MOF’s Response

61. **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

62. All respondents agreed with this recommendation.

MOF’s Response

63. **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

64. All respondents agreed with this recommendation.

MOF's Response

65. **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

66. All respondents agreed with this recommendation.

MOF's Response

67. **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

68. All respondents agreed with this recommendation.

MOF's Response

69. **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

70. 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

71. **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

72. All respondents agreed with this recommendation.

#### MOF's Response

73. **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

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

#### MOF's Response

75. **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

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

#### MOF's Response

77. **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**

78. 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*.

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