# 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*

Recommendation 2.1

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

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<br><br>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. |
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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)[1], 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<br><br>The requisite majority vote requirements for the passing of written resolutions in private companies should continue to be specified in section 184A.<br><br>Recommendation 2.4<br><br>The requisite majority vote requirements for the passing of written resolutions in private companies should not be changed. |
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[1] Section 178(b) sets out the shareholders' rights to demand a poll at a general meeting.

Summary of Feedback Received

6. All respondents agreed with these recommendations.

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<br><br>The existing restrictions in section 184A(2) on the type of "business" that cannot be conducted using written resolutions should be maintained. |
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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<br><br>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. |
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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 |
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| 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 |
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| 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 |
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| 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 a 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(l)(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 | - |