Annex A

IMPLEMENTATION OF STEERING COMMITTEE'S RECOMMENDATIONS IN THE DRAFT COMPANIES (AMENDMENT) BILL 2013

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Shadow Directors			
1	Recommendation 1.1 It is not necessary to have a separate definition of "shadow director" in the Companies Act.	Not applicable since there is no change.	-
2	Recommendation 1.2 The Companies Act should clarify that a person who controls the majority of the directors is to be considered a director.	Clause 3 Amendments to section 4(1) and (2).	-
Appointment of Directors			
3	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.	Clause 84 New section 149B.	-
4	Recommendation 1.4 Section 170 of the Companies Act requiring approval for assignment of office of director or manager should be repealed.	Clause 102 Repeal section 170.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Qualifications of Directors			
5	Recommendation 1.5 It would not be necessary to allow corporate directorships in Singapore.	Not applicable since there is no change.	-
6	Recommendation 1.6 The Companies Act should not prescribe the academic or professional qualifications of directors or mandate the training of directors generally.	Not applicable since there is no change.	-
7	Recommendation 1.7 It is not necessary to impose a maximum age limit for directors in the Companies Act.	Clauses 88 and 100 Repeal section 153 and related provisions in section 165(1)(d) and (2)(c).	-
8	Recommendation 1.8 Section 153 of the Companies Act should be repealed.		
Disqualification of Directors on Conviction of Offences Involving Fraud or Dishonesty			
9	Recommendation 1.9 The automatic disqualification regime for directors convicted for 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.	Clause 89 Repeal and re-enact section 154(6).	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Vacation of Office and Removal of Directors			
10	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.	Clause 79 New section 145(4A).	-
11	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.	Clause 79 New section 145(4B).	This provision is not subject to the constitution as there are no good justifications for holding a director to a term in the constitution that his resignation is subject to the acceptance of the company or the board.
12	Recommendation 1.12 It is not necessary for the Companies Act to mandate the retirement of directors.	Not applicable since there is no change.	-
13	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.	Clause 87 New section 152(1A).	*Consultation question 1* *We would like to seek comments on whether the right to remove any director should be subject not only to the constitution but also to any agreement between the director and the company.* *Consultation question 2* *We would like to seek comments on whether private companies should also be subject to a similar condition as specified in section 152(1) so that removal of any director of a private*

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			company appointed to represent the interests of any particular class of shareholders or debenture holders shall not be effective until his successor has been appointed. *Consultation question 3* *We would like to seek comments on whether the requirement for special notice and the provisions granting the director the right to make representations under section 152(2)-(4) should also apply to private companies.*
Payment of Compensation to Directors for Loss of Office			
14	Recommendation 1.14 The requirement in section 168 for shareholders' approval for payment of compensation to directors for loss of office should be retained.	Not applicable since there is no change.	-
15	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.	Clause 101 New subsections 168(1A) and (1B). Repeal and re-enact section 168(7).	*Consultation question 4* *We would like to seek comments on whether this new exception should only apply to payments made pursuant to an agreement made between the company and the director as specified in the proposed section 168(1A).* *Consultation question 5* *We would like to seek comments on whether the new exception should provide in similar terms as the existing section 168(1) that if there has been no disclosure to shareholders, the amount*

<table>
<tr><th>S/n</th><th>Steering Committee's Recommendation</th><th>Clause in Draft Bill and Description of Amendment</th><th>Remarks/ Consultation Questions</th></tr>
<tr><td></td><td><u>Recommendation modified by MOF</u>. To adopt a payment limit of total emoluments for the past one year.</td><td></td><td>received by the director shall be deemed to have been received by him in trust for the company.</td></tr>
<tr><td colspan="4">Loans to Directors and Connected Companies</td></tr>
<tr><td>16</td><td><u>Recommendation 1.16</u>
The share interest threshold of 20% in section 163 should be retained.</td><td>Not applicable since there is no change.</td><td>-</td></tr>
<tr><td>17</td><td><u>Recommendation 1.17</u>
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.

<u>Recommendation modified by MOF</u>. To only introduce the exception under Recommendation 1.17(b), not that</td><td><u>Clause 97</u>

Amendment to section 163(1).</td><td><u>Consultation question 6</u>
We would like to seek comments on whether besides the interested director, members of his family should abstain from voting as provided in the proposed section.

<u>Consultation question 7</u>
We would like to seek comments on whether ratification should be allowed for the new exception such that the approval may be obtained after the transaction, or whether ratification should be expressly disallowed.</td></tr>
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S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	under Recommendation 1.17(a).		
18	Recommendation 1.18 The regulatory regime for loans should be extended to quasi-loans, credit transactions and related arrangements.	Clauses 96 and 97 Repeal and re-enact sections 162(1), (2), and 163(1) and (2). New sections 162(1A), (7)-(9), and 163(2A) and (2B). Amend sections 162(3)-(6) and 163(3)(a), (6) and (7). Amend the section headings for sections 162 and 163.	-
Supervisory Role of Directors			
19	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.	Clause 92 Amendment to section 157A(1).	-
Power of Directors to Bind the Company			
20	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	Clause 20 New section 25B.	Unlike section 40 of the UK Companies Act, the proposed section 25B does not elaborate on terms used, including "dealing with", "good faith" and "limitation". We propose to leave these for the courts to interpret based on the facts

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	articles.		of each case. For similar reasons, the exceptions in the UK sections 41 and 42 have not been adopted. *Consultation question 8* *We would like to seek comments on whether the above approach is appropriate.*
Power of Directors to Issue Shares of Company			
21	Recommendation 1.21 Section 161 of the Companies Act should be amended to allow specific shareholders' approval for a particular issue of shares to continue in force notwithstanding that the approval is not renewed at the next annual general meeting, provided that the specific shareholders' approval specifies a maximum number of shares that can be issued and expires at the end of two years. This does not apply to the situation referred to in section 161(4) for the issue of shares in pursuance of an offer, agreement or option made or granted by the directors while an approval was in force. Recommendation 1.21 was not accepted for implementation.	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Directors' Fiduciary Duties			
22	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.	Not applicable since there is no change.	-
23	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.	Not applicable since there is no change. ACRA will conduct a separate review of the penalty regime in the Companies Act.	-
24	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.	Clause 91 Amendment to section 157(2).	-
Imposition of Liability on Other Officers			
25	Recommendation 1.25 The disclosure requirements under sections 156 and 165 should be extended to the Chief Executive Officer of a company.	Clauses 90, 99, 100 and 105 Amendments to sections 156, 164, 165 and 173. Amend the section headings for sections 164 and 173.	As the disclosure requirements under section 165 relate to information in the registers maintained under sections 164 and 173, the latter sections are amended accordingly.

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26	Recommendation 1.26 The duty to act honestly and use reasonable diligence in section 157(1) should be extended to the Chief Executive Officer of a company. Recommendation 1.26 was not accepted for implementation.	Not applicable since there is no change.	-
Disclosure of Company Information by Nominee Directors			
27	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	Clause 93 Amendment to section 158.	-

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	information, but to leave it to the board of directors to require such details if desired.		
Indemnity for Directors			
28	Recommendation 1.28 Section 172 of the Companies Act should be amended to expressly allow a company to provide indemnity against liability incurred by its directors to third parties. Recommendation modified by MOF. To allow a company to provide indemnity subject to appropriate qualifications.	Clause 104 Repeal section 172 and substitute with new sections 172, 172A and 172B.	This recommendation has been modified during the drafting. Recommendation 1.28 proposed that section 172 should be amended to expressly allow a company to provide indemnity against liability incurred by its directors to third parties but did not explicitly address the position for officers who are not directors. The implementation approach involves applying the new regime (which is based on the UK regime applicable only to directors) not only to directors but to all officers for consistency. *Consultation question 9* *We would like to seek comments on whether the proposed exceptions in section 172B in which circumstances third party indemnity provisions will be void are appropriate.* *Consultation question 10* *We would like to seek comments on the extension of the new regime to include officers who are not directors.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
29	Recommendation 1.29 The Companies Act should be amended to clarify that a company is allowed to indemnify its directors against potential liability.	Clause 98 New sections 163A and 163B.	With the repeal of section 172 (i.e. Provisions indemnifying directors or officers) in relation to Recommendation 1.28, the implementation of this recommendation introduces new exceptions to sections 162 and 163, which prohibit loans to directors and related persons. These new exceptions, which are similar to those in the UK Companies Act, will be limited to loans and will not extend to quasi-loans, credit transactions and related arrangements. *Consultation question 11* *We would like to seek comments on whether the proposed approach to allow a company to indemnify its directors against potential liability is appropriate.* *Consultation question 12* *We would like to seek comments on whether there are any concerns on the different regimes for loans as compared to quasi-loans, credit transactions and related arrangements, in relation to indemnifying directors.*

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Voting			
30	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.	Not applicable since there is no change.	-
31	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.	Clause 109 Amendments to section 178(1)(b)(ii) and (iii).	We have also provided for the percentage threshold in section 178(1)(b)(iii) to be reduced from 10% to 5% for consistency with the amendment to section 178(1)(b)(ii), as the concepts under both of the limbs are similar. *Consultation question 13* *We would like to seek comments on whether section 178(1)(b)(iii) should be amended to reduce the percentage threshold to 5% as well.*
Written Resolutions			
32	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.	Not applicable since there is no change.	-
33	Recommendation 2.4 The requisite majority vote requirements for the passing of written	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	resolutions in private companies should not be changed.		
34	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.	Not applicable since there is no change.	-
35	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.	Clause 116 Amendment to section 184A(5)(a)(ii).	The concept of "formal agreement" under section 184A has been retained. However, section 184A(5)(a)(ii) has been amended to clarify that manner of the indication of a member's agreement should be by way of a member's signature. The company however retains the flexibility of providing for other methods of agreement in its constitution. The other safeguards currently in place under section 184A(5) have been preserved.
36	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.	Clause 119 New section 184DA.	A company will have the flexibility to provide in its constitution that (a) a written resolution does not lapse, or (b) it will lapse if not passed at the end of a shorter or longer period than the 28 day period imposed under the new section 184DA(1).
37	Recommendation 2.8 The Companies Act should not specify	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	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.		
38	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.	Clauses 116, 117 and 118 Amendments to sections 184A(1), 184B(1), 184C(1), 184D(1), 184E(1) and 184F(1). New section 184A(9) to define "unlisted public company".	A new definition of the term "unlisted public company" is introduced, and the application of the procedures for passing resolutions by written means have been extended to such companies.
Enfranchising Indirect Investors			
39	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:	Clause 112 Amendments to section 181(1). New section 181(1A), (1B), (1C) and (6).	New section 181(1C) relates to the implementation of Recommendation R3.41. Please refer to the remarks relating to that recommendation. New section 181(1B) permits the appointment of multiple proxies where shares are held by a relevant intermediary as defined under section 181(6).

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	(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.		
40	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.	Clause 112 New section 181(1B).	-
41	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.	Clause 109 Amendment to section 178(1)(c).	The increase in cut-off time from 48 hours to 72 hours applies to all companies and all proxies. We note that it would be impractical to increase the cut-off time only where multiple proxies are appointed, as it would not be possible to ascertain beforehand whether a company has shareholders who are relevant intermediaries or if multiple proxies will in fact be appointed for a meeting.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			<u>*Consultation question 14*</u> *We would like to seek comments on whether it is appropriate to extend the increase in the cut off time from 48 hours to 72 hours for all companies and all proxies regardless whether multiple proxies are appointed.*
42	<u>Recommendation 2.13</u> 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.	Not applicable since there is no change.	-
43	<u>Recommendation 2.14</u> 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.	<u>Clause 112</u> New section 181(6).	Please refer to Recommendations 2.10, 2.11 and 2.12 above on the multiple proxies regime. The agent banks and CPF board are included in paragraphs (a) and (c) respectively of the definition of "relevant intermediary" in the new section 181(6).
44	<u>Recommendation 2.15</u> The multiple proxies regime recommended at Recommendations 2.10, 2.11 and 2.12 should be adopted to enfranchise CPF share investors.		

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Corporate Representatives			
45	Recommendation 2.16 Section 179(4) should not be amended to clarify the meaning of the phrase "not otherwise entitled to be present at the meeting". Recommendation modified by MOF. To amend section 179(4) and 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.	Clause 110 Amendment to section 179(4)(b).	The amendment to section 179(4)(b) is for clarity and is not intended to change the substance of the sub-section. It remains such that each member, proxy, or corporate representative should be counted only once for purposes of determining the quorum or for voting on a show of hands.
46	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.	Not applicable since there is no change.	-
Electronic Transmission of Notices and Documents			
47	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	Clause 185 New section 387C.	New section 387C allows a company to provide, in its constitution, for an alternative set of rules for the use of electronic communications to transmit notices or documents (with express, implied or deemed consent of the member),

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	prescriptive.		failing which sections 387A and 387B continue to apply.
48	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		Express consent by a member will be determined in accordance with the constitution of the company so as to provide companies with the flexibility of determining how express consent may be obtained. Section 387C(3)(c) and (d) require the constitution to provide for the period of time within which a member must elect before he will be deemed to have consented if he fails to make an election.

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	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.		
49	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		Section 387C(4) gives the Minister the power to prescribe safeguards for the use of electronic communications as proposed in Recommendation 2.20.

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	contrary provision in the articles), but the member may change his mind at any time. (b) If the company chooses to transmit documents by making them available on a website, the company must notify the members directly in writing or electronically (if the member had elected or deemed to have consented or impliedly consented to receive notices electronically) of the presence of the document on the website and how the document may be accessed; (c) Documents relating to take-over offers and rights issues shall not be transmitted by electronic means. Recommendation modified by MOF. To provide that the notification of the publication on a website (in paragraph (b) above) can be by any means specified in the companies' articles, rather than "in writing or		

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	electronically".		
50	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.		The new section 387C will only apply if the constitution of the company provides for electronic communications.
51	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.	Clause 29 Amendment to section 33(2).	-
General Meetings			
52	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.	Not applicable since there is no change.	-
53	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	Not applicable since there is no change.	-

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	company, subject to a clawback of the costs from defaulting directors in the event of default by the directors in convening the meeting.		
Minority Shareholder Rights			
54	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.	Not applicable since there is no change.	-
55	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.	Clause 172 New subsections 254(2A) and (2B).	Instead of amending section 254(1)(i) and (1)(f), the buy-out remedy will be introduced under new subsections 254(2A) and (2B). The new buy-out remedy provides flexibility such that the court may order a buy-out by either the majority or minority shareholder(s), or by the company, where appropriate. Where an order is made for the buy-out by the company, the order may also provide for a reduction of the company's capital.
56	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		

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	that the company be wound up.		
57	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.	Clause 168 Amendment to section 216A(2), (3) and (5).	-
58	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.	Clause 168 Amendment to section 216A(1).	The definition of "company" has been deleted from section 216A to remove the exclusion of a company listed on a securities exchange in Singapore.
59	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.		

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60	Recommendation 2.31 The Companies Act should not be amended to introduce a system of cumulative voting for the election of directors.	Not applicable since there is no change.	-
61	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.	Not applicable since there is no change.	-
Membership of Holding Company			
62	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.	Clause 15 New section 21(6A).	-
63	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:	Clause 15 New section 21(6A), (6B), (6C), (6D), (6E) and (6F). New section 21(6B), (6C). (6D) and (6E) allow the	This recommendation has been modified during the drafting. As the concepts are similar to those for Recommendations 3.7 and 3.8, the proposed implementation of this recommendation follows the modified implementation approach for

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	(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	subsidiary to retain shares in its holding company, subject to: a. 10% cap; b. reporting requirements relating to shares held by subsidiaries; and c. suspension of rights (other than the right to distribution of non-wholly owned subsidiaries) attached to shares held by the subsidiary. New section 21(6F) to specify that various references to 'treasury shares' shall include shares held under section 21.	Recommendations 3.7 and 3.8. The proposed approach under section 21(6A)(b) gives a subsidiary 12 months or such longer period as the court may allow to dispose of the holding company shares held. After the 12 months or such longer period, the subsidiary can continue holding such shares provided that the aggregated number of such shares held by all the subsidiaries of the holding company and by the holding company (as treasury shares) does not exceed 10% of the shares issued for that class of shares. Shares held by a subsidiary would be under the control of the holding company, much like treasury shares. A number of provisions in the Act exclude treasury shares when calculating percentages etc. and it may be appropriate to similarly exclude holding company shares held by a subsidiary. We have listed such provisions, except for the following provisions, in section 21(6F): • section 76B(9)(d) – this relates to the reporting requirements for treasury shares. As shares held under section 21 will have their own reporting requirements, this provision is not included in section 21(6F).

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	excess of the aggregate limit of 10%.		• section 403(1B)/(1C) – these relate specifically to dealings of a company in its own shares. Thus, it is not necessary to include the provision in section 21(6F). The proposed approach under section 21(6D) does not suspend the right to distribution of such shares held by the subsidiary, except for wholly owned subsidiaries. This is to avoid prejudicing minority shareholders of the subsidiary. However, the proposed approach is different from the current section 76J(4), which suspends distribution rights of treasury shares. Holding companies will also be required under section 21(6C) to report the number of shares held under section 21 by their subsidiaries and any changes in such numbers. *Consultation question 15* *We would like to seek comments on the implementation approach for Recommendation 2.34.* *Consultation question 16* *We would like to seek comments on the approach to subject shares held by the subsidiary under section 21 to section 76J(2) i.e. the subsidiary*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			would not be able to exercise any right in respect of such shares and any purported exercise of such a right would be void. *Consultation question 17* *We would like to seek comments on whether the subsidiary should be able to exercise certain rights, and if so what rights those should be.* *Consultation question 18* *We would like to seek comments on the proposed section 21 (6D)(d), which provides that a wholly owned subsidiary will not be entitled to distributions for shares held under section 21.* *Consultation question 19* *We would like to seek comments on whether the list of provisions in section 21(6F) is complete and whether the exclusion of sections 76B(9)(d) and 403(1B)/(1C) is appropriate.*

IMPLEMENTATION OF STEERING COMMITTEE'S RECOMMENDATIONS IN THE DRAFT COMPANIES (AMENDMENT) BILL 2013

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Preference and Equity Shares			
64	Recommendation 3.1 The definition of "preference share" in section 4 should be deleted.	Clause 3 Amendment to section 4(1) by deleting the definition of "preference shares".	-
65	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.	Clause 111 Repeal and re-enact section 180. Transitional provisions for rights attached to preference shares are in the new section 180(4) and (5).	• Existing rights under section 180(2)(a): Transitional arrangements have been made in the re-enacted section 180(4) and (5) to preserve the rights of preference shares issued before the amendment. • Existing rights under section 180(2)(b) and (c): Transitional arrangements are not necessary since these rights will be preserved under the new section 64A(4). Section 64A(4) sets out one of the safeguards under Recommendation 3.4. The safeguard provides that non-voting shares (called "specified shares" under section 64A(4)) will have at least one vote on any resolution to wind up or vary rights.
66	Recommendation 3.3 The definition of "equity share" be	Clauses 3 and 97	*Consultation question 20* *We would like to seek comments on whether*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	removed and "equity share" be amended to "share" or some other appropriate term wherever it appears in the Companies Act.	Amendments to: • section 4(1) by deleting the definition of "equity share"; and • section 163(1) and (2)(i) to amend 'number of equity shares' to "voting power".	*the proposed amendments to section 163 to use 'voting power' like in section 5(1)(a)(ii), is appropriate and broad enough to factor in multiple vote shares.*
67	Recommendation 3.4 Companies should be allowed to issue non-voting shares and shares with multiple votes.	Clauses 39 and 111 Repeal and re-enact section 64 to allow public companies to issue shares with differing voting rights subject to safeguards. New section 64A to provide for alteration of rights attached to shares including safeguards applicable to non-voting shares of all companies. Repeal and re-enact section	New section 64A In paragraph 72 of MOF response report[1], it was stated that holders of non-voting shares should have equal rights on resolutions to wind up the company or on those that vary the rights of non-voting shares. We propose to modify the implementation by requiring holders of non-voting shares to have at least one vote for the two types of resolutions instead. This is for consistency with the current regime for private companies under the existing section 180(2). *Consultation question 21* *We would like to seek comments on the modified implementation approach under*
68	Recommendation 3.5 Section 64 should be deleted.		

[1] A copy of MOF's responses to the Report of the Steering Committee for Review of the Companies Act is at http://app.mof.gov.sg/data/cmsresource/SC_RCA_Final/AnnexA_SC_RCA.pdf.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
		180 to remove the right to vote from section 180(1) since non-voting shares will only be allowed to vote for two types of resolutions under new section 64A.	*section 64A i.e. non-voting shares should have at least one vote on any resolution to wind up or vary rights.* Consultation question 22 *We would like to seek comments on whether the safeguard under section 64(1) (i.e. allowing the issue of different classes of shares in a public company only if provided for in the constitution) should apply to all different classes of shares or only those with special, limited, conditional or no voting rights.*
Holding and Subsidiary Companies			
69	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.	Clause 4 Amendments to section 5(1)(a) to remove limb (iii).	This recommendation has been modified during the drafting of the Bill. We are of the view that there is no need to amend section 5(1)(a) "*to recognise that a company S is a subsidiary of another company H if company H holds a majority of the voting rights in company S*". This is because such a situation would fall within the ambit of the existing section 5(1)(a)(ii), as company H would control more than half the voting power of company S. We also considered whether to amend section 5 to be as extensive as section 1159 and

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			Schedule 6 of the UK Companies Act but are of the view that this does not appear necessary at this stage.
70	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.	Clause 15 Amendment to section 21(4)(b) to allow for the new section 21(4A), (4B), (6D) and (6E). New section 21(4A), (4B), (6D) and (6E) allow the subsidiary to retain shares in its holding company, subject to: • 10% cap; • reporting requirements relating to shares held by subsidiaries; and • suspension of rights (other than the right to distribution of non-wholly owned subsidiaries) attached to shares held by the subsidiary. New section 21(6F) to	This recommendation has been modified during the drafting of the Bill. The proposed approach under section 21(4)(b) gives a subsidiary 12 months or such longer period as the court may allow to dispose of the holding company shares held. After the 12 months or such longer period, the subsidiary can continue holding such shares provided that the aggregated number of such shares held by all the subsidiaries of the holding company and by the holding company (as treasury shares) does not exceed 10% of the shares issued for that class of shares. Shares held by a subsidiary would be under the control of the holding company, much like treasury shares. A number of provisions in the Act exclude treasury shares when calculating percentages etc. and it may be appropriate to similarly exclude holding company shares held by a subsidiary. We have listed such provisions, except for the following provisions, in section 21(6F): • section 76B(9)(d) – this relates to the
71	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.		

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
		specify that various references to 'treasury shares' shall include shares held under section 21.	reporting requirements for treasury shares. As shares held under section 21 will have their own reporting requirements, this provision is not included in section 21(6F). • section 403(1B)/(1C) – these relate specifically to dealings of a company in its own shares. Thus, it is not necessary to include the provision in section 21(6F). The proposed approach under section 21(6D) does not suspend the right to distribution of such shares held by the subsidiary, except for wholly owned subsidiaries. This is to avoid prejudicing minority shareholders of the subsidiary. However, the <u>proposed approach is different from the current section 76J(4)</u>, which suspends distribution rights of treasury shares. Holding companies will also be required under section 21(4B) to report the number of shares held under section 21 by their subsidiaries and any changes in such numbers. *<u>Consultation question 23</u>* *We would like to seek comments on the implementation approach for Recommendations 3.7 and 3.8.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			<u>*Consultation question 24*</u> *We would like to seek comments on the approach to subject shares held by the subsidiary under section 21 to section 76J(2) i.e. the subsidiary would not be able to exercise any right in respect of such shares and any purported exercise of such a right would be void.* <u>*Consultation question 25*</u> *We would like to seek comments on whether the subsidiary should be able to exercise certain rights, and if so what rights those should be.* <u>*Consultation question 26*</u> *We would like to seek comments on the proposed section 21(6D)(d), which provides that a wholly owned subsidiary will not be entitled to distributions for shares held under section 21.* <u>*Consultation question 27*</u> *We would like to seek comments on whether the list of provisions in section 21(6F) is complete and whether the exclusion of sections 76B(9)(d) and 403(1B)/(1C) is appropriate.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Other Issues Relating to Shares			
72	Recommendation 3.9 A statutory mechanism for redenomination of shares similar to the UK provisions, with appropriate modifications, should be inserted into the CA.	Clause 45 New sections 73, 73A and 73B to introduce a statutory mechanism for redenomination of shares.	United Kingdom allows limited companies with share capital to redenominate their share capital whereas Hong Kong allows both unlimited and limited companies with share capital to do so. Like Hong Kong, Singapore does not have par value shares. To be more business friendly, the proposed approach allows all companies (whether limited or unlimited) with share capital to redenominate their share capital. The redenomination exercise must be approved by ordinary resolution and made at an appropriate "spot of exchange" specified in the resolution.
73	Recommendation 3.10 Section 7 of the Companies Act should be amended to be consistent with section 4 of the SFA.	Clause 5 Amendments to section 7 to make it consistent with the SFA.	This recommendation has been modified during the drafting of the Bill. Although the SFA uses the term "corporation", the term "body corporate" is retained in section 7(4), (4A) and (5) of the Companies Act since the scope of body corporate (which includes limited liability partnerships) is broader and relevant. New subsections (1A) and (1B) are based on section 4(1) and (2) of the SFA.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
74	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.	Not applicable since there is no change.	-
75	Recommendation 3.12 The exemption afforded under section 63(1A) should be extended to all listed companies, wherever listed.	Clause 37 Amendment to section 63(1A).	-
76	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.	Not applicable since there is no change.	-
77	Recommendation 3.14 Section 4 definition of "share" and section 121 which defines the nature of shares should not be changed.	Not applicable since there is no change.	-
78	Recommendation 3.15 Shares of public companies should eventually be dematerialised but the law need not mandate such a requirement at this time.	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
79	Recommendation 3.16 The provisions in the Companies Act which relate to the CDP should be extracted and inserted into a separate stand-alone Act. Recommendation modified by MOF. The CDP provisions will be migrated to the Securities and Futures Act.	Clauses 3, 4, 5, 15, 50, 63, 69, 73 and 196 Repeal Division 7A of Part IV of the Companies Act (i.e. sections 130A to 130P). Except for section 130M, the other provisions will be moved to the Securities and Futures Act in new sections 81SC to 81SS. Consequential amendments • New section 4 definitions of 'book-entry securities' and 'Depository' • Amend section 5(5) • New sections 7(6A), 21(1A), 76A(1A), 86(2A), 125(4) and 125(5)	As section 130M relates to sections 21 and 76A, it has been incorporated into these provisions. The Companies (Central Depository System) Regulations will be repealed and the provisions will be moved to the Securities and Futures (Central Depository System) Regulations. However, as regulations 21 and 22 relate to the "non-application of section 86" and "application of section 125" respectively, the regulations have been incorporated into the Companies Act and regulation 24 has been moved to section 7(6A). Section 4 introduces definitions of 'book-entry security' and 'Depository' which are used in the new sections 21(1A), 76A(1A), 86(2A), 125(4) and 125(5).
Debentures			
80	Recommendation 3.17 Section 93 of the Companies Act on debentures should be retained. However the register of debenture	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	holders and trust deed should be open to public inspection. Recommendation modified by MOF. Register of debenture holders and trust deed will not be open for public inspection.		
Solvency Statements			
81	Recommendation 3.18 One uniform solvency test should be applied for all transactions (except amalgamations).	Clause 55 Repeal subsections 76F(4), (5) and (6) and enact new subsections 76F(4) and (5) to apply the section 7A solvency test to share buybacks.	-
82	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)).		
83	Recommendation 3.20 Solvency statements under sections 7A(2), 215I(2) and 215J(1) should be by way of declaration rather than statutory declaration.	Clauses 6, 164 and 165 Amendments to sections 7A(2), 215I(2) and 215J(1) to amend 'statutory declaration' to 'declaration in writing'.	Currently, there are no prescribed forms for solvency statements. This allows companies some degree of flexibility to frame the solvency statements as long as statutory requirements are met. *Consultation question 28* *We would like to seek comments on whether it would be useful to have prescribed forms for solvency statements.*
84	Recommendation 3.21 There should be no change to the	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	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).		
Share Buybacks and Treasury Shares			
85	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".	Clause 51 Repeal and re-enact section 76B(4) in line with the modified implementation approach.	These recommendations have been modified during the drafting of the Bill. Recommendation 3.22 was intended to address potential difficulties arising from the current definition of the 'relevant period' beginning from the date of the last AGM. However, amending this to 'the date an AGM was held' would not address the difficulties since such date would have to refer to a past AGM. Thus, the implementation of Recommendation 3.22 is modified such that the 'relevant period' begins from the date of the relevant resolution. Since Recommendation 3.22 will be implemented by using "date of resolution" as the commencement date for the relevant period and there is no intention to allow more than one possible relevant period, the consequential amendment under Recommendation 3.24 is not necessary.
86	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".	Clause 51 Repeal and re-enact section 76B(3) and (3B), in line with the modified implementation approach for Recommendation 3.22.	
87	Recommendation 3.24 Also wherever "the relevant period" appears in section 76B, it should be replaced with "a relevant period".	Not applicable since there is no change, in line with the modified implementation approach for Recommendation 3.22.	

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			<u>*Consultation question 29*</u> *We would like to seek comments on whether the 'relevant period' should commence from the date of the relevant resolution.* <u>*Consultation question 30*</u> *We would like to seek comments on whether to amend 'the relevant period' to 'a relevant period'.*
88	<u>Recommendation 3.25</u> 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. <u>Recommendation modified by MOF</u>. To amend the Companies 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 Companies Act. To also clarify that sponsoring an odd-lot program does not amount to financial assistance.	<u>Clauses 49 and 53</u> Delete section 76D(1)(b) so that listed companies are not prohibited from selective off-market acquisitions. Introduce new section 76(8)(m) and 76(8A) to clarify that sponsoring an odd-lot program does not amount to financial assistance.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
89	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.	Clause 58 Amendment to section 76K(1)(b) by replacing "an employees' share scheme" with "any share scheme, whether for employees, directors or other persons".	-
Financial Assistance for the Acquisition of Shares			
90	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.	Clauses 49 and 50 Repeal and re-enact section 76(1) and introduce a new section 76(1A) to restrict the financial assistance prohibition to public companies. Consequential amendments to section 76(3) and (4) to update references. New section 76(9BA) and (9CA) to introduce new exception to the financial assistance prohibition if there is no material prejudice. Consequential amendments to section	Unlike the existing exceptions under subsections (9A) and (9B), the new exception under subsection (9BA) does not require a solvency statement, notice or approval by members but requires a board resolution. *Consultation question 31* *We would like to seek comments on whether the new exception should require approval by the Board and whether there should be any other requirements.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
		76(9D)(a) and section 76A.	
91	Recommendation 3.28 Section 76(8) and (9) should be reviewed against the list of excepted financial assistance transactions in the UK to determine if they should be updated.	Clause 49 Amendments to existing exception under section 76(8)(a). New exceptions under section 76(8)(aa), (k) and (l).	*Consultation question 32* *We would like to seek comments on the amended and new exceptions.*
92	Recommendation 3.29 Section 76(1)(b), (c) and associated provisions should be integrated with the provisions on share buybacks.	-	This recommendation has been modified during the drafting of the Bill. Recommendation 3.29 arose from the Steering Committee's earlier consideration of whether section 76(1)(a) should be deleted for all companies. Since section 76(1)(a) retains the financial assistance prohibition for public companies and Recommendation 3.29 does not involve policy changes, we will consider whether to implement Recommendation 3.29 when the Companies Act is repealed and re-enacted in the future. Besides, it will require significant consequential amendments to implement Recommendation 3.29, given the intricacies of the financial assistance provisions and the cross-references and inter-linkages between provisions.
Reduction of Capital			
93	Recommendation 3.30 The requirement for a solvency	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	statement in capital reductions without the sanction of the court should be maintained.		
94	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.	Clauses 61 and 62 Repeal and re-enact sections 78B(2) and 78C(2) to remove the solvency statement requirement as stated.	-
95	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.	Clauses 61 and 62 Amendment to sections 78B(3)(b)(ii) and 78C(3)(b)(ii) to change the time periods as stated.	-
96	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.	Not applicable since there is no change.	-
Dividends			
97	Recommendation 3.34 The section 403 test for dividend distributions should be retained.	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Other Issues Pertaining to Capital Maintenance			
98	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.	Clauses 41, 55 and 56 New section 67 to allow the use of share capital for share issue expenses. New section 76F(1A) to apply the provision on solvency statement to include share buyback expenses. New section 76G(2) to include share buyback expenses as part of the share buyback purchase costs.	Existing section 76G allows for a reduction of capital or profits or both on cancellation of repurchased shares. The new section 76G(2) will apply the same rule to expenses in a buyback of shares i.e. expenses, brokerage or commissions incurred in a buyback of shares will be treated similarly to the cost of the shares bought back. Similarly, provision on solvency statement will apply to such expenses. *Consultation question 33* *We would like to seek comments on whether expenses, brokerage or commissions incurred in a buyback of shares should be treated in a similar manner as the cost of the shares bought back.*
99	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).	Clause 67 Repeal and re-enact section 123(2)(c) as stated.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
100	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.	Not applicable since there is no change.	-
101	Recommendation 3.38 Section 63 should be amended so that a company is required to lodge with the Registrar a return whenever there is an increase in share capital regardless of whether it is accompanied by an issue of shares. Recommendation 3.38 was not accepted for implementation.	Not applicable since there is no change.	-
Schemes of Arrangement			
102	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.	Clauses 155, 156 and 170 To provide for holders of units of company shares by making the following amendments: • repeal section 210(1) and substitute with new section 210(1) and (2) • repeal section 210(2) and substitute with new section 210(3) • repeal section 210(3)	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
		and substitute with new section 210(3AA) and (3AB) • amend section 210(8)(b), (10), (11) and section heading • amend section 211(1), (3) and section heading Consequential amendments to sections 210(5), (6) and 227X(a).	
103	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.	Clause 155 The phrase is included in the new section 210(3AB).	
104	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	Clause 112 New section 181(1C) to allow each member to appoint only one proxy for the purposes of section 210, unless the Court	This recommendation has been modified during the drafting of the Bill. Recommendation 3.41 was originally intended to clarify how votes for schemes of arrangements under section 210 should be counted with the introduction of a multiple

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	voted in favor of the scheme.	orders otherwise. This is based on the proposed modified approach.	proxies regime (i.e. Recommendation 2.10). However, practitioners had commented that proxies for each nominee member would have to be aggregated and separately analysed in order to operationalise the counting approach under Recommendation 3.41. This would create practical difficulties if there were many nominee members that had multiple proxies. To avoid the complications of implementing the multiple proxies regime on schemes of arrangements, we propose to <u>only allow each member to appoint one proxy for the purposes of section 210, unless the Court orders otherwise</u>. The proposed default position of restricting each member to one proxy is in line with current practice. The new section 181(1C) provides for the proposed modified approach. <u>*Consultation question 34*</u> *We would like to seek comments on whether each member should be allowed only one proxy for schemes of arrangement under section 210, unless the Court orders otherwise.*
105	<u>Recommendation 3.42</u> For the purposes of section 210, where shares are registered in the name of a	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	nominee that is a foreign depository, there is no need to provide for a look-through to the actual beneficial shareholders.		
106	Recommendation 3.43 Sections 210 and 212 should apply to both "companies" and "foreign companies".	Clause 157 Repeal and re-enact section 212(6) so that section 212 applies to foreign companies.	-
107	Recommendation 3.44 Section 210 and associated provisions should not be amended to provide for the scheme to be binding on the offeror.	Not applicable since there is no change.	-
108	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.	Not applicable since there is no change.	
Compulsory Acquisition			
109	Recommendation 3.46 Section 215 should be amended to extend to units of a company's shares.	Clause 158 New section 215(8A) and (8B) to extend section 215 to units of a company's shares.	The new subsection (8B), which is based on section 989(2)(b) of the UK Companies Act, is intended to clarify that convertibles are not in the same class as the shares they are convertible to.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
110	Recommendation 3.47 Section 215 should be extended to cover individual offerors.	Clause 158 Amend sections 215(1)-(4) and (8)-(11) so that section 215 is extended to individual offerors.	-
111	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.	Clause 159 New section 215AA on joint offers based on section 987 of the UK Companies Act 2006.	-
112	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 3.49 was not accepted for implementation.	Not applicable since there is no change.	-
113	Recommendation 3.50 There should be provision for Ministerial exemptions for very large holding companies with interests in many companies. Recommendation 3.50 was not accepted for implementation.	Not applicable since there is no change.	

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
114	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.	Not applicable since there is no change.	-
115	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.	Clause 158 New section 215(1C) to state that shares allotted after the date of offer are not to be included.	Section 979(5) of the UK Companies Act 2006 excludes not only shares that are allotted after the date of the offer but section 979(5)(b) also excludes relevant treasury shares that cease to be held as treasury shares after the date of offer. *Consultation question 35* *We would like to seek comments on whether the proposed section 215(1C) should exclude shares that cease to be held as treasury shares after the date of offer.*
116	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.	Clause 158 Amendment to section 215(3).	-
117	Recommendation 3.54 Where the terms of the offer give the shareholders a choice of consideration, the shareholder should be given 2	Clause 158 New section 215(1A) and (1B).	*Consultation question 36* *We would like to seek comments on whether the periods of 1 month and 14 days specified in the proposed section 215(1A) are*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	weeks to elect his choice of consideration and the offeror should also be required to state the default position if no election is made.		*appropriate.*
118	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.	Clauses 158, 155 and 166 Amendments to sections 215(6) and (7) to make reference to 'money or other consideration'. New sections 210(10A), (10B) and 215K to make similar powers available in section 210 and 215A to 215J situations.	-
119	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.	Clause 159 New section 215AB adapted from section 978 of the UK Companies Act 2006.	-
Amalgamations			
120	Recommendation 3.57 It should be specifically stated that a holding company may amalgamate with its wholly-owned subsidiary by short	Clause 162 Amendments to section 215D(1).	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	form.		
121	Recommendation 3.58 The amalgamation provisions should not be extended to foreign companies.	Not applicable since there is no change.	-
122	Recommendation 3.59 The amalgamation provisions should not be extended to companies limited by guarantee.		
123	Recommendation 3.60 The boards of amalgamating companies should make a solvency statement regarding the amalgamating company at the point in question and within a 12-month forward-looking period. The components of the solvency test will be assets/liabilities and ability to pay debts. Recommendation modified by MOF. To retain the present solvency test for amalgamations and require 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.	Clauses 162 and 165 Amendments to sections 215D(1)(c) and (2)(c) and 215J(1)(a).	-

IMPLEMENTATION OF STEERING COMMITTEE'S RECOMMENDATIONS IN THE DRAFT COMPANIES (AMENDMENT) BILL 2013

<table>
<tr><th>S/n</th><th>Steering Committee's Recommendation</th><th>Clause in Draft Bill and Description of Amendment</th><th>Remarks/ Consultation Questions</th></tr>
<tr><td colspan="4">Financial Reporting for Small Companies</td></tr>
<tr><td>124</td><td><u>Recommendation 4.1</u>
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
<table><tr><td>Criterion One</td><td>Criterion Two</td><td>Criterion Three</td></tr><tr><td>Total annual revenue of not more than S$10 million.</td><td>Total gross assets of not more than S$10 million.</td><td>Number of employees not more than 50.</td></tr></table></td><td><u>Clauses 7, 148 and 195</u>

Repeal and re-enact section 205C.

New Thirteenth Schedule and new section 8(7)(b) which allows Minister to amend the Thirteenth Schedule.</td><td>In accordance with Recommendation 4.1, a private company needs to fulfil any 2 out of the 3 proposed criteria to qualify as a small company, and this is reflected in the new Thirteenth Schedule.

The applicability of the criteria has been drafted to follow that for the Singapore Financial Reporting Standards for Small Entities as far as possible. An illustration of the applicability of the small company criteria under various scenarios is set out at the end of this table.

It was proposed by the Steering Committee that the threshold quantum for each of the criteria be prescribed in the regulations so that they can keep pace with changes in the business environment. However, we are of the view that setting out the small company criteria, including the quantum, under the Thirteenth Schedule allows for easier reference. Powers will be granted to the Minister under section 8(7)(b) to amend the Schedule so that the quantum can be adjusted where necessary.</td></tr>
</table>

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			The audit exemption will be applicable to companies for a financial year commencing on or after the effective date of the change in law. The financial statements for a financial year which commences before the effective date should be prepared in accordance with the current requirements. <u>*Consultation question 37*</u> *We would like to seek comments on whether a private company should be able to qualify as a small company if it fulfils any 2 out of the 3 proposed criteria, or if it fulfils the revenue threshold and one other criterion.* <u>*Consultation question 38*</u> *We would like to seek comments on whether the transitional provisions provided are appropriate and adequate.*
125	<u>Recommendation 4.2</u> 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.	<u>Clause 148</u> New section 205C(3).	Section 205C(3) is drafted such that the audit exemption is available to a parent company only if it qualifies as a small company and if it belongs to a small group. The calculation of the revenue and gross assets criteria on a consolidated basis would be in accordance with the accounting standards applicable to the group (not necessarily the Singapore Financial Reporting Standards).

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			Where the parent of the group is not required to prepare consolidated financial statements, the criteria would be determined by aggregating the revenue and gross assets of all the members of the group. <u>*Consultation question 39*</u> *We would like to seek comments on whether a parent company should be able to qualify as long as it is a private company and belongs to a small group, <u>regardless of whether the parent company itself qualifies as a small company</u>.* <u>*Consultation question 40*</u> *We would like to seek comments on whether the above approach for determining the thresholds on a group basis is appropriate.*
126	<u>Recommendation 4.3</u> 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.	<u>Clause 148</u> New section 205C(4).	Section 205C(4) is drafted such that the audit exemption is available to a subsidiary company only if it qualifies as a small company and if it belongs to a small group. When the small company criteria are assessed on a group basis, the group will include all Singapore and foreign-incorporated companies within the group, regardless of whether the parent is incorporated in Singapore. We did not specifically require that the parent also has to be a small company in order for the subsidiary

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			company to qualify, as the small company criteria would only be applicable to a company incorporated in Singapore. Our view is that the exemption should be applicable to subsidiary companies which are members of a group headed by either a Singapore or a foreign parent. We have provided transitional provisions in the Thirteenth Schedule such that for groups that have been formed before the effective date of the change in law, the small group criteria would be applied for financial years commencing on or after the effective date of the change. This would mean that the small company criteria would not be applicable to a subsidiary company for the first financial year after the effective date if it belongs to a group which was formed before the effective date, but has a financial year commencing before the effective date of the change in law. *Consultation question 41* *We would like to seek comments on whether a subsidiary company should be able to qualify as long as it is a private company and belongs to a small group, regardless of whether the subsidiary company itself qualifies as a small company.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			<u>*Consultation question 42*</u> *We would like to seek comments on whether the transitional provisions provided are appropriate and adequate.*
127	<u>Recommendation 4.4</u> The current status of "exempt private company" should be abolished. <u>Recommendation 4.4 was not accepted for implementation</u>.	Not applicable since there is no change.	-
128	<u>Recommendation 4.5</u> Solvent companies which qualify under the proposed "small company" criteria should file basic financial information, but with the following exceptions where such companies are solvent: (a) private companies wholly-owned by the Government, which the Minister, in the national interest, declares by notification in the Gazette to be exempt; (b) private companies falling within a specific class prescribed by the Minister as being exempt (e.g. specific industries where confidentiality of information is critical and public interest in the accounts is low); and (c) private companies exempted by		-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	the Registrar upon application on a case-by-case basis and published in the Gazette. Recommendation 4.5 was not accepted for implementation.		
Financial Reporting for Dormant Companies			
129	Recommendation 4.6 Dormant non-listed companies (other than subsidiaries of listed companies) should be exempt from financial reporting requirements, subject to certain safeguards.	Clause 137 New section 201A.	The definition of a "relevant company" in section 201A(5)(a), which determines the scope of the exemption from preparation of financial statements for dormant companies, is restricted to a dormant company which is not a Singapore-incorporated company listed in Singapore ("Singapore listed company")or a subsidiary company of a Singapore listed company. If a dormant company which is exempt from preparation of financial statements under section 201A chooses to prepare financial statements, it would still be able to enjoy the exemption from audit under section 205B. We have provided a transitional provision in section 201A(6) which retains the applicability of the current requirements for a dormant company which has a financial year that ends before the change in the law.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			<u>*Consultation question 43*</u> *We would like to seek comments on whether the proposed definition of "relevant company" for the purpose of the exemption in relation to dormant companies is appropriate.* <u>*Consultation question 44*</u> *We would like to seek comments on whether the transitional provisions provided are appropriate and adequate.*
130	<u>Recommendation 4.7</u> To benefit from the dormant company exemption, the following proposed safeguards must be complied with: (a) Annual declaration of dormancy by the directors of a dormant company; (b) The company must be dormant for the entire financial year in question; and (c) Shareholders and ACRA will be empowered to direct a dormant company to prepare its accounts, and to lodge them unless exempted under any other exemption.		-
131	<u>Recommendation 4.8</u> Dormant listed companies should continue to prepare accounts but be	<u>Clause 137</u> Definition of "relevant	The exemption from audit under section 205B would still apply to such companies.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	exempted from statutory audit requirements (status quo).	company" in section 201A(5)(a), read with section 205B.	
132	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.		
133	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.	Clause 147 Repeal section 205(B)(3)(f) and enact new section 205B(3)(f), (fa) and (fb).	The quantum of what would constitute nominal payments/ receipts will be prescribed in regulations.
134	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.	Clause 137 Definition of "relevant company" in section 201A(5)(a), read with section 205B.	A dormant non-listed company which does not qualify for the exemption from preparation of financial statements because it exceeds the total asset threshold can still qualify for audit exemption under section 205B.
Summary Financial Statements			
135	Recommendation 4.12 The use of summary financial statements should be extended to all companies.	Clause 143 Amendments to section 203A so that it applies to all companies.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
The Directors' Report			
136	Recommendation 4.13 Section 201(8) of the Companies Act which requires disclosure of directors' benefits in the directors' report should be repealed.	Clauses 136 and 195 New section 201 and new Twelfth Schedule omit requirement for disclosure.	-
137	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.	Clauses 136 and 195 New section 201 and new Twelfth Schedule omit requirement for business review disclosure.	-
138	Recommendation 4.15 The requirement for a separate directors' report should be abolished.	Clauses 136 and 195 New section 201(16) and new Twelfth Schedule omit requirement for a separate directors' report.	The extension of the disclosure requirements in the directors' report to the CEO was considered, but it was decided that no such extension be made at this time for the following reasons: • The extension of the disclosure requirements under Recommendation 1.25 is already a significant shift and there is no compelling need to extend disclosures further than what has been recommended under Recommendation 1.25. • It would not be appropriate for disclosures relating to CEOs be made in the directors' statements (as the directors' report will be abolished) as the directors should not be made to be responsible for disclosing interests

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			of CEOs. We have provided a transitional period in section 201(23) such that the new requirements shall not apply to a company in respect of a financial year which ends before the effective date of the changes in the law, and that the current provisions will continue to apply to such companies instead. *Consultation question 45* *We would like to seek comments on whether the transitional provisions provided are appropriate and adequate.*
139	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.	Clause 136 and 195 New section 201(16) and Paragraph 7 of the new Twelfth Schedule.	-
Obligations Relating to Audit			
140	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.	Not applicable since there is no change.	-
141	Recommendation 4.18 There is no need to legislatively mandate compliance with auditing standards, but the existing requirements	No changes have been made.	We are of the view that no further streamlining is necessary, apart from amendments to give effect to Recommendations 4.19 and 4.20.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	in section 207(3) of the Companies Act, which set out a list of duties of auditors, should be streamlined.		
142	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.	Clause 151 Amendment to section 207(3)(b).	Section 207(3)(b) has been amended to clarify that "other accounting records" is with reference to the records required to be kept under section 199(1).
143	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.	Clause 151 Repeal section 207(3)(d).	-
144	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.	Not applicable since there is no change.	-
145	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.	Clause 151 Amendment to section 207(9D)(b).	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	Recommendation modified by MOF. Maximum fine changed from $250,000 to $100,000.		
Resignation of Auditors			
146	Recommendation 4.23 The auditor of a non-public-interest company (other than a subsidiary of a public interest company) should be allowed to resign upon giving notice to the company. The status quo should be retained for the auditor of a non-public-interest company which is a subsidiary of a public interest company, viz, such a company's auditor may only resign if he is not the sole auditor or at a general meeting, and where a replacement auditor is appointed. Recommendation modified by MOF. The requirement for resignation for an auditor of a non-public-interest company, which is a subsidiary of a public-interest company, is made consistent with that for an auditor of a public-interest company (under Recommendation 4.24).	Clauses 145 and 146 Repeal section 205(14) and (15). New sections 205AA and 205AB, read with new section 205AF.	Under section 205AB(1), the auditor of a subsidiary company of a Singapore public interest company can only resign with ACRA's consent. This does not apply to the auditor of a subsidiary company of a foreign corporation. Where the auditor of a company (in respect of both recommendations 4.23 and 4.24) has resigned, a replacement auditor must be appointed as soon as practicable, and in any case, not more than 3 months from the date of the auditor's resignation. *Consultation question 46* *We would like to seek comments on whether the proposed scope of the provision for the resignation of auditors of subsidiary companies of public-interest companies is appropriate.* *Consultation question 47* *We would like to seek comments on whether the period of 3 months is appropriate for the appointment of a replacement auditor.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
147	Recommendation 4.24 The auditor of a public-interest company should be required to seek the consent of ACRA before he can resign.	Clause 146 New section 205AB, read with sections 205AA(4) and 205AF.	In addition to companies that are listed or are in the process of issuing debt or equity instruments for trading on the Singapore Exchange as stated in section 205AA(4), the definition of public interest company is also intended to draw reference from the concept of "public interest entities" used for the purposes of the Practice Monitoring Programme conducted by ACRA under the Accountants Act. Additional categories of companies may be prescribed at a later stage to align the definition with that used in the Practice Monitoring Programme. Section 205AB(3) states that statements made by the auditor in an application for consent or in the answer to an inquiry by the Registrar cannot be admissible in court proceedings or used as a ground for prosecution against the auditor.
148	Recommendation 4.25 There is no need for an express requirement for an auditor to disclose to the shareholders of the company that appointed it the reasons for his resignation. Recommendation modified by MOF An auditor of a public-interest company or its subsidiaries is required to give the company that appointed him reasons	Clause 146 New sections 205AC to 205AE.	A procedure has been provided under section 205AC(2) by which the company or other aggrieved person may apply to Court to prevent the circulation of the auditor's statement of reasons under certain circumstances. A provision for privilege against defamation has also been included under section 205AE to protect publication of such statements in the absence of malice or where publication has been directed by the Court. These are intended as safeguards to address concerns relating to defamation.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	for his resignation. Such reasons should also be circulated by the company to the shareholders.		
Auditors' Independence			
149	Recommendation 4.26 The provisions relating to auditor independence in section 10 of the Companies Act should be consolidated under the Accountants Act.	Clause 8 New section 10 omits existing provisions relating to auditor independence.	-
Limitation of Auditor's Liability			
150	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.	Not applicable since there is no change.	-
Indemnity for Auditors under Section 172 of Companies Act			
151	Recommendation 4.28 A company should not be expressly allowed to indemnify auditors for claims brought by third parties.	Clause 152 Existing provisions in section 172 relating to the indemnification of auditors has been re-drafted into a new section 208A. No substantive changes have been made to the provisions.	The provision relating to indemnity of auditors has been drafted separately from that for directors to clarify that the treatment of auditors and directors in this area is distinct.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
152	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.	Clause 152 New section 208A(2).	-
Audit Committee Provisions			
153	Recommendation 4.30 The provisions relating to audit committees should be moved to the Securities and Futures Act. Recommendation 4.30 was not accepted for implementation.	Not applicable since there is no change.	-
Accounting Records and Systems of Control			
154	Recommendation 4.31 The directors' duty to keep accounting and other records in section 199(1) does not require amendment.	Not applicable since there is no change.	-
155	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.	Not applicable since there is no change.	-
156	Recommendation 4.33 Any misconception that private companies currently do not require	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	internal controls should be corrected through non-statutory guidance.		
157	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.	Not applicable since there is no change.	-
Components of Statutory Accounts			
158	Recommendation 4.35 The components of the accounts in the relevant provisions in the Companies Act should be clarified by referring to the definition of "accounts" contained in the Financial Reporting Standards.	Clauses 154 and 182 New definitions of "financial statements", "consolidated financial statements" in sections 209A and 386A.	New definitions of "financial statements" and "consolidated financial statements" are being introduced for the purposes of Part VI. The use of the term "accounts" remains for the rest of the Act and the definition of "accounts" has been retained in section 4.
Presentation of the Accounts			
159	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.	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
160	Recommendation 4.37 The directors' duty in section 203(1) to send to all persons entitled to receive notice of general meetings a copy of the company's profit and loss account and balance-sheet does not require amendment. Recommendation modified by MOF. Financial statements may be sent less than 14 days before the date of the AGM, if all persons entitled to receive notice of the meeting agree to such shorter period.	Clause 142 New section 203(1A).	-
Framework for Consolidation of Accounts			
161	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.	Clause 136 and 154 New definitions of "financial statements", "consolidated financial statements", "consolidated entity", "parent company" and "subsidiary company" in section 209A, read with section 201.	The requirement for a balance sheet of a parent company to be prepared has been retained in section 201(5). *Consultation question 48* *We would like to seek comments on whether the balance sheet of a parent company is still necessary or if it would be sufficient for a parent company to prepare only consolidated accounts for the consolidated entity.*
162	Recommendation 4.39 The requirements for alignment of the financial year-end of a parent company and its subsidiaries should be set in	Clause 135 Repeal section 200.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	accordance with the financial reporting standards.		
Revision of Defective Accounts			
163	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.	Clause 141 New section 202B.	Section 202B states that financial statements may be revised in response to an enquiry made by the Registrar. Revisions to financial statements where such an enquiry is made must be agreed on between the Registrar and the directors of the company. Where the directors do not give a satisfactory explanation or agree with the Registrar on the manner of revision, the Registrar may apply to court for a declaration that the financial statements do not comply with the Act and require the directors to revise the financial statements.
164	Recommendation 4.41 Provisions for the voluntary revisions of defective accounts should be introduced in Singapore.	Clause 141 New section 202A.	Section 202A states that financial statements may be revised where they do not comply with the requirements of the Act and consequential revisions may be made to the summary financial statements or the directors' statement. Details of the procedures and requirements for revision of documents will be prescribed in the regulations.

<u>Illustration on applicability of small company criteria</u>

– A company that is a small company in respect of a financial year (FY) shall be exempt from audit requirements for that FY.

– If the company belongs to a group of entities (i.e. a parent company or subsidiary company), the audit exemption will only apply to the company if it
  (i) is a small company; and
  (ii) belongs to a small group.*

**We have not included illustrations relating to the qualifying criteria for a small group in this set of illustrations.*

<u>Part I. Transitional provisions (for companies incorporated before the effective date of the small company criteria)</u>

– For companies that are incorporated before the effective date of the small company criteria, the applicability of the small company criteria will be determined by whether the company is a private company and meets the quantitative criteria <u>in the first or second FY commencing on or after the effective date of the small company criteria</u>.

– The company meets the quantitative criteria in a FY if it satisfies any 2 of the following 3 criteria in the FY:
  (i) The revenue of the company for a financial year does not exceed $10 million;
  (ii) The value of the company's gross assets at the end of a financial year does not exceed $10 million;
  (iii) It has at the end of the financial year not more than 50 employees.

– A company which has qualified as a small company in the first or second FY commencing on or after the effective date of the small company criteria is disqualified as a small company only if it:
  (a) ceases to be a private company at any time during the FY; or
  (b) does not meet the quantitative criteria for the immediate past two consecutive FYs.

Illustration 1A

Company is assumed to be a private company throughout the periods covered in the illustration

<table>
<tr><th></th><th>FY 2014</th><th>FY 2015</th><th>FY 2016</th><th>FY2017</th><th>FY2018</th><th>FY 2019</th></tr>
<tr><td>Meets quantitative criteria</td><td>√</td><td>X</td><td>√</td><td>X</td><td>X</td><td>√</td></tr>
<tr><td>Qualifies as a small company</td><td>√</td><td>√</td><td>√</td><td>√</td><td>√</td><td>X</td></tr>
<tr><td>Remarks</td><td>FY 2014 is the first FY after the effective date of the small company criteria. The company qualifies as a small company as the company is a private company and meets the quantitative criteria in FY 2014.</td><td>As the company has already qualified as a small company in FY 2014, it continues to be a small company despite not meeting the quantitative criteria in the current FY. It will only be disqualified when it fails to meet the quantitative criteria for the immediate past two consecutive FYs.</td><td>The company has already qualified as a small company in FY 2014 and, is not disqualified. The company is not disqualified as it has only failed to meet the quantitative criteria for one of the immediate past two consecutive FYs.</td><td colspan="2">As the company has already qualified as a small company in FY 2014, it continues to be a small company despite not meeting quantitative criteria in the current FY and for one of the immediate past two consecutive FYs.</td><td>The company is disqualified because it fails to meet the quantitative criteria for the immediate past two consecutive FYs (i.e. FY 2017 and FY 2018).</td></tr>
</table>

Illustration 1B

Company is assumed to be a private company throughout the periods covered in the illustration

	FY 2014	FY 2015	FY 2016	FY2017	FY2018	FY 2019
Meets quantitative criteria	X	√	√	X	X	√
Qualifies as a small company	X	√	√	√	√	X
Remarks	FY 2014 is the first FY after the effective date of the small company criteria. The company does not qualify as a small company as it does not meet the quantitative criteria in FY 2014.	FY 2015 is the second FY after the effective date of the small company criteria. The company qualifies as a small company as the company is a private company and meets the quantitative criteria in the current FY (i.e. FY 2014 is not taken into consideration).	The company continues to be a small company as it has qualified as a small company in FY 2015 and is not disqualified. The company is not disqualified as it has only failed to meet the quantitative criteria for one of the immediate past two consecutive FYs.	As the company has already qualified as a small company in FY 2015, it continues to be a small company despite not meeting quantitative criteria in the current FY. It will only be disqualified when it fails to meet the quantitative criteria for the immediate past two consecutive FYs.	As the company has already qualified as a small company in FY 2015, it continues to be a small company despite not meeting quantitative criteria in the current FY and for one of the immediate past two consecutive FYs.	The company is disqualified because it fails to meet the quantitative criteria for the immediate past two consecutive FYs (i.e. FY 2017 and FY 2018).

Part II. General applicability

– A company qualifies as a small company in a particular FY if the company is a private company and meets the quantitative criteria in the previous two consecutive FYs.

– The company meets the quantitative criteria in a FY if it satisfies any 2 of the following 3 criteria in the FY:
(i) The revenue of the company for a financial year does not exceed $10 million;
(ii) The value of the company's gross assets at the end of a financial year does not exceed $10 million;
(iii) It has at the end of the financial year not more than 50 employees.

– A company which has qualified as a small company is disqualified as a small company only if it:
(a) ceases to be a private company at any time during the FY; or
(b) does not meet the quantitative criteria for the immediate past two consecutive FYs.

Illustration 2A

Assumptions:
(i) Company is a private company throughout the periods covered in the illustration
(ii) Company meets the quantitative criteria in FY2014 and FY2015
(iii) Company is a small company in FY2015

	FY 2016	FY 2017	FY 2018	FY2019	FY2020	FY 2021
Meets quantitative criteria	√	X	√	X	X	√
Qualifies as a small company	√	√	√	√	√	X
Remarks	The company has already qualified as a small company and is not disqualified.	As the company has already qualified as a small company, it continues to be small company despite not meeting quantitative criteria in the current FY. It will only be disqualified when it fails to meet the quantitative criteria for the immediate past two consecutive FYs.	The company is not disqualified as it has only failed to meet the quantitative criteria for one of the immediate past two consecutive FYs.	Although the company does not meet the quantitative criteria in the current FY, the company continues to be a small company as it is not disqualified. The company is not disqualified as it has only failed to meet the quantitative criteria for one of the immediate past two consecutive FYs.		Company is disqualified because it fails to meet the quantitative criteria for the immediate past two consecutive FYs (i.e. FY 2019 and FY 2020).

Illustration 2B

Assumptions:
(i) Company is a private company throughout the periods covered in the illustration
(ii) Company does not meet the quantitative criteria in FY2014 and FY2015
(iii) Company is not a small company in FY2015

	FY 2016	FY 2017	FY 2018	FY2019	FY2020	FY 2021
Meets quantitative criteria	√	√	√	X	X	√
Qualifies as a small company	X	X	√	√	√	X
Remarks	As the company does not meet the quantitative criteria in the immediate past two consecutive FYs (i.e. FY 2014 and FY 2015), it does not qualify as a small company in FY 2016.	As the company only meets the quantitative criteria in one of the immediate past two consecutive FYs, it does not qualify as a small company in FY 2017.	The company qualifies as a small company as it meets the quantitative criteria in the immediate past two consecutive FYs (i.e. FY 2016 and FY 2017).	As the company has already qualified as a small company, it continues to be a small company despite not meeting quantitative criteria in the current FY. It will only be disqualified when it fails to meet the quantitative criteria for the immediate past two consecutive FYs.		The company is disqualified because it fails to meet the quantitative criteria for the immediate past two consecutive FYs (i.e. FY 2019 and FY 2020).

Illustration 2C

Assumptions:
(i) Company is a private company throughout the periods covered in the illustration
(ii) Company meets the quantitative criteria in FY2014 and FY2015
(iii) Company is a small company in FY2015

	FY 2016	FY 2017	FY 2018	FY2019	FY2020	FY 2021
Meets quantitative criteria	X	X	√	√	√	√
Qualifies as a small company	√	√	X	X	√	√
Remarks	As the company has already qualified as a small company, it continues to be small company despite not meeting quantitative criteria in the current FY. It will only be disqualified when it fails to meet the quantitative criteria for the immediate past two consecutive FYs.		The company is disqualified because it fails to meet the quantitative criteria for the immediate past two consecutive FYs (i.e. FY 2016 and FY 2017).	As the company has only met the quantitative criteria in one of the immediate past two consecutive FYs, it does not qualify as a small company in FY 2019.	The company qualifies as a small company as it meets the quantitative criteria in the in the immediate past two consecutive FYs (i.e. FY 2018 and FY 2019).	The company continues to be a small company as it has qualified as a small company in FY 2020 and is not disqualified.

Part III. Companies incorporated after the effective date of the small company criteria

– A company incorporated after the effective date of the small company criteria qualifies in its first or second FY after incorporation if the company is a private company and meets the quantitative criteria in the FY for which the financial statements are being prepared.

– The company meets the quantitative criteria in a FY if it satisfies any 2 of the following 3 criteria in the FY:
(i) The revenue of the company for a financial year does not exceed $10 million;
(ii) The value of the company's gross assets at the end of a financial year does not exceed $10 million;
(iii) It has at the end of the financial year not more than 50 employees.

– A company which has qualified as a small company in its first or second FY is disqualified as a small company if it:
(a) ceases to be a private company at any time during the FY; or
(b) does not meet the quantitative criteria for the immediate past two consecutive FYs.

Illustration 3A
Company is assumed to be a private company throughout the periods covered in the illustration

<table>
<tr><th></th><th>FY 2014</th><th>FY 2015</th><th>FY 2016</th><th>FY2017</th></tr>
<tr><td>Meets quantitative criteria</td><td>√</td><td>√</td><td>√</td><td>√</td></tr>
<tr><td>Qualifies as a small company</td><td>√</td><td>√</td><td>√</td><td>√</td></tr>
<tr><td>Remarks</td><td>FY 2014 is the first FY after incorporation. The company qualifies as a small company as the company is a private company and meets the quantitative criteria in FY 2014.</td><td colspan="3">As the company has qualified as a small company in FY 2014, it continues to be a small company until it is disqualified.</td></tr>
</table>

Illustration 3B

Company is assumed to be a private company throughout the periods covered in the illustration

	FY 2014	FY 2015	FY 2016	FY2017
Meets quantitative criteria	√	X	√	√
Qualifies as a small company	√	√	√	√
Remarks	FY 2014 is the first FY after incorporation. The company qualifies as a small company as the company is a private company and meets the quantitative criteria in FY 2014.	As the company has already qualified as a small company in FY 2014, it continues to be a small company despite not meeting quantitative criteria in the current FY. It will only be disqualified when it fails to meet the quantitative criteria for the immediate past two consecutive FYs.	The company continues to be a small company as it has qualified as a small company in FY 2014 and is not disqualified. The company is not disqualified as it has only failed to meet the quantitative criteria for one of the immediate past two consecutive FYs.	

Illustration 3C

Company is assumed to be a private company throughout the periods covered in the illustration

	FY 2014	FY 2015	FY 2016	FY2017
Meets quantitative criteria	X	√	√	√
Qualifies as a small company	X	√	√	√
Remarks	FY 2014 is the first FY after incorporation. The company does not qualify as a small company as the company does not meet the quantitative criteria in FY 2014.	FY 2015 is the second FY after incorporation. The company qualifies as a small company as the company is a private company and meets the quantitative criteria in FY 2015 (i.e. FY 2014 is not taken into consideration).	The company continues to be a small company as it has qualified as a small company in FY 2014 and is not disqualified. The company is not disqualified as it has only failed to meet the quantitative criteria for one of the immediate past two consecutive FYs.	The company continues to be a small company as it has qualified as a small company in FY 2014 and is not disqualified.

Illustration 3D

Company is assumed to be a private company throughout the periods covered in the illustration

	FY 2014	FY 2015	FY 2016	FY2017
Meets quantitative criteria	√	X	X	√
Qualifies as a small company	√	√	√	X
Remarks	FY 2014 is the first FY after incorporation. The company qualifies as a small company as the company is a private company and meets the quantitative criteria in FY 2014.	As the company has already qualified as a small company in FY 2014, it continues to be a small company despite not meeting quantitative criteria in the current FY. It will only be disqualified when it fails to meet the quantitative criteria for the immediate past two consecutive FYs.	The company continues to be a small company as it has qualified as a small company in FY 2014 and, is not disqualified. The company is not disqualified as it has only failed to meet the quantitative criteria for one of the immediate past two consecutive FYs.	The company is disqualified because it fails to meet the quantitative criteria for the immediate past two consecutive FYs (i.e. FY 2015 and FY 2016).

IMPLEMENTATION OF STEERING COMMITTEE'S RECOMMENDATIONS IN THE DRAFT COMPANIES (AMENDMENT) BILL 2013

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Registers			
165	<u>Recommendation 5.1</u> 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.	<u>Clauses 13, 57 and 125-131</u> Repeal and re-enact section 19(6). New section 19(6A). New section 189A and amendments to sections 190 to 193, and 196. New Division 4A of Part V (i.e. new sections 196A to 196D). Consequential amendment to section 76H.	• The current section 190(1) requires every company to enter into its register of members the share number if any of each share, or the share certificate number if any. We have removed this requirement due to feedback that share certificates may be redundant and outdated. • The current section 192(1) provides that a company may close its register of members or any class of members for one or more periods not exceeding 30 days in the aggregate in any calendar year. We are of the view that this provision will no longer be applicable to the definitive register of members kept by ACRA as this register will be accessible to the public throughout the year. • The current section 196(7) relating to branch registers applies to all companies incorporated in Singapore. As private companies will no longer need to keep registers of members under the new

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			Companies Act, we propose that section 196(7) will no longer be applicable to private companies. Public companies having a share capital may, however, choose to continue to keep their branch registers of members outside of Singapore. • New section 196A(3) (adapted from the current section 190(2)) provides that where a private company has converted any of its shares into stock, ACRA's register of members will reflect the information relating to the stocks instead of information relating to shares. New section 196B(4) (adapted from the current section 190(2A)) provides that changes in particulars of a company's stocks in the ACRA register of members must be given if the company purchases its stocks under section 76H, unless it cancels all the stocks immediately. *Consultation question 49* *We would like to seek comments on whether the current section 192(1) should apply to the definitive register of members kept by ACRA.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			<u>*Consultation question 50*</u> *We would like to seek comments on whether the current section 196(7) should also apply to private companies.* <u>*Consultation question 51*</u> *We would like to seek comments on whether sections 196A(3) and 196B(4) are relevant for the purpose of maintaining the ACRA definitive register of members.*
166	<u>Recommendation 5.2</u> Any person who is not notified as a member by the company to the Registrar is not a member of that company.	<u>Clauses 13 and 131</u> New sections 19(6A) and 196A(4).	-
167	<u>Recommendation 5.3</u> 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	<u>Clauses 38, 43, 47, 72 and 131</u> New section 196B, read with section 196A. New sections 63A, 71(1B) and 74A. Amendment to section 128A.	<u>New sections 63A, 71(1B) and 74A</u> The following provisions are introduced to update ACRA's definitive register of members: • New section 63A will require private companies to update any increase in the total amount paid up on any class of shares within 14 days. • New section 71(1B) will require private companies to file a notice with the Registrar relating to any relevant permitted alteration in share capital within 14 days.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	evidence of the change in interest in the shares of the company.		• New section 74A will require private companies to file a notice of conversion of shares from one class to another with the Registrar within 14 days. Amendment to section 128A The amendment introduces a new 14-day filing requirement for private companies to inform ACRA of any transfer of shares. Private companies may notify ACRA of share transfers after the execution of the transfers, regardless whether stamp duty has been paid. The instrument of transfer is not required to be produced or filed with ACRA. Private companies may indicate the effective date of transfer of shares when filing the prescribed form. *Consultation question 52* *We would like to seek comments on the new sections 63A, 71(1B) and 74A, and the amended section 128A.*
168	Recommendation 5.4 Companies should continue to maintain the register of directors' shareholdings.	Not applicable since there is no change.	-
169	Recommendation 5.5 (a) The definitive register for directors, secretaries and auditors should be kept by ACRA;	Clauses 3, 9, 103 and 105 Repeal and re-enact section 173. New sections 173A to	The recommendation has been modified during the drafting of the Bill. For clarity on the filing requirement and for

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	(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.	173H. Amendment to section 12 to provide for access to the definitive registers of private companies that are wholly owned by the Government. Amendment to section 4(1) to insert the definition of "chief executive officer" (CEO) and delete the definition of "manager". Amendment to section 171(1D) extends the definition of a secretary in section 171(1D) to the re-enacted section 173 and new sections 173A to 173H.	greater transparency, we propose to replace the current requirement on the register of managers with the register of CEOs. This means that ACRA will keep the definitive registers for directors, secretaries, auditors and CEOs. Definition of CEO The proposed definition of CEO is based on section 30AA(2) of the Monetary Authority of Singapore Act. However, it does not include the following limb that is present in section 32F(5) of the Telecommunications Act and the SGX-ST Listing Manual i.e. "includes any person for the time being performing all or any of the functions or duties of a chief executive officer". The proposed definition and amendments relating to CEO mean that a company will only be allowed to appoint one CEO. *Consultation question 53* *We would like to seek comments on whether the definition of CEO should include "any person for the time being performing all or any of the functions or duties of a chief executive officer".*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			<u>*Consultation question 54*</u> *We would like to seek comments on whether there will be any practical difficulties in allowing a company to appoint only one CEO.*
Memorandum and Articles of Association			
170	<u>Recommendation 5.6</u> The memorandum and articles of association should be merged as one document, to be known as the Constitution.	• Amendments to section 4(1) i.e. deletion of definitions of "articles" and "memorandum", insertion of new definition of "constitution", amendments to references in definitions. • Other provisions[2].	-

[2] To implement Recommendation 5.6, the draft Bill also amends the following provisions to the Companies Act: sections 4(12), 14(1), 17(1) and (7), 18(1), (2), (3) and (4), 19(1)(a), (2)(b), (2)(ii), (3), (4), (5) and (6), 20(1) and (2), 22(1) to (4) and heading, 23(1), (1A) and (1B), 24(2), 25A, new 25B, 26(1), new (1AA) and (1AB), (1A) to (3), (6) and (7) and heading, 26A(1), (3) and (4) and heading, 29(3), (4) and (7), 30(4)(a) and (b), 31(1) and (2), 32(2)(a), (2)(c) and (8), 33(1), (2) and (11) and heading, 34(1) and (2) and heading, re-enacted sections 35 to 37, 38(1) and (2) and heading, 39(1), (2) and (3) and heading, 40(1) and (2) and heading, 41(7), 62B(6), 63(6)(b) and (7), 64(1)(a) and (b), new 64A(2) and (3), 65(1), 70(1), 71(1), 72, new 73(9), 73A(1)(a) and (2), 74(1), (6) and (7), new 74A(1) and (2), 75(1) and heading, 76D(6)(b), 78(a), 78A(3), 93(4), 96(1)(a), 121, 124, 126(1) and (3), 128(2), 143(1), 145(4), new (4A) and (5), 146(2) and (3)(c), 147(1) and (2), new 149B, 150(5)(a), 152(1), new (1A) and (8), 156(3) and (9), 157A(2), 160(1), 161(1), new 172(3), 174(7) and (8), 176(1), 177(1), (2) and (4), 178(1) and heading, 179(1) and (6), re-enacted 180(1), (3), (4) and (5), new 181(1A) and 181(1B), 182, 183(6), 184(4)(a) and (b), (5) and (6), 184A(3)(b), (4)(b) and (5)(a)(ii), 184B(1)(b) and (1)(c), new 184DA(1), 185, 186(2), 201B(5)(b), 203A(1), 205B(3)(a), new 208A(1), 210(6), 215B(1)(e), 215C(1)(a) and (b), 215D(1)(b) and (2)(b), 215E(1)(c) and (2)(b), 216(4), 227G(2), (8) and (9), 250(3)(c), 254(1)(h), 290(1)(a), 292(1), 294(5), 300, 325(3), 344(6), 387A(1), (4) and (6), 387B(1), (3) and (5), new 387C(1), (2), (3)(a), (3)(b) and (3c) and heading, and items 18, 19, 82, 99 and 101 of the Second Schedule. Draft Bill also updates references in the new 81SC, 81SG(1), (2) and (3)(c), 81SJ(1), 81SM(2), 81SR(1)(i) and (1)(j) of the Securities and Futures Act.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
171	Recommendation 5.7 There should be two models of the Constitution: (a) for private companies – with variations for companies with only one director, and those with two directors or more; (b) for companies limited by guarantee.	Clause 31 Repeal and re-enact section 36.	-
172	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.	Not applicable since there is no change.	-
173	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.	Clause 31 Repeal and re-enact section 37.	Section 37(3) is drafted such that if a company adopts the whole model constitution, it will be deemed to have adopted the model constitution in force at the time of adoption or any subsequent amendments made to the relevant model constitutions by ACRA. We received feedback that if a company adopts the model constitution with any variation, it should be allowed to only file the variation with ACRA. However, we are of view that the company must file its entire

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			constitution (with the relevant variations) for ease of access by the public. The new section 37(4) is drafted to reflect the above. We also received another feedback that if a company adopts the model constitution prescribed for a single director company, but subsequently has to adopt the model constitution for a company with multiple directors, or vice versa, the company should be deemed to have automatically adopted the new model constitution. We are not in favour of an automatic deeming provision as we are of view that such a company should alter its constitution by adopting the suitable model constitution, and file the alteration documents with ACRA in accordance with the procedure under the amended section 26.
174	Recommendation 5.10 The Model Constitution should be made available on ACRA's webpage, instead of in legislation. Recommendation modified by MOF. To publish Model Constitution in subsidiary legislation and ACRA's webpage.	Clauses 31 and 192 Repeal section 36 and Fourth Schedule. Re-enact section 36.	The Bill provides for the model constitutions to be published in the subsidiary legislation. The model constitutions will eventually be published on ACRA's website.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Alternate Address Policy			
175	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.	Clauses 3 and 105 New sections 173 and 173F. Amendment to section 4(1) to include the definitions of "alternate address" and "residential address".	This recommendation has been modified during the drafting of the Bill. The Steering Committee had recommended that as a safeguard, only persons who are not registered under the National Registration Act will be required to report either a residential address, or an alternate address with a residential address that will be kept confidential. However, for operational ease, we are of the view that a person (whether or not he is registered under the National Registration Act) should be required to report to ACRA: (a) a residential address; or (b) an alternate address with a residential address that will be kept confidential.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Standardised Timelines for Updating of Company Records			
176	Recommendation 5.12 For purposes of non-insolvency matters, the notification periods for the ACRA registers should be standardised to 14 calendar days, with the exception of the following: (a) Charges, which will still be required to be registered within 30 days; and (b) Financial assistance and reduction of share capital for which there will be no change to the present timelines. Recommendation modified by MOF. To clarify that the filing period for annual returns remains unchanged.	Clauses 27, 78, 82, 110, 121 and 130 Amendments to sections 31(3A), 143(1), 148(4), 179(7), 186(1) and 196(2).	-
Different Levels of Penalties Accorded to Defaults			
177	Recommendation 5.13 There should be different levels of penalties accorded to default and non-compliance, depending on the severity of the default.	Not applicable since there is no change for now. Details will be announced once ACRA completes its review of the penalty regime.	-
178	Recommendation 5.14 ACRA should take into account the impact of the default on different groups of stakeholders when enforcing such penalties.		

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Company Records – Minutes, Minute Books, Etc.			
179	Recommendation 5.15 Amend section 395: (a) to clarify that any register, index, minute book or book of account may be kept in the form of electronic records (in addition to or as an alternative to physical records); (b) to provide for some definite form of authentication or verification of the electronic records; (c) to provide that directors be responsible for ensuring: (i) the authenticity of such electronic records; (ii) the proper maintenance of such electronic records.	Clause 186 Repeal and re-enact sections 395 and 396. New section 396A.	-
180	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.		-
181	Recommendation 5.17 The process for the verification of electronic records should be left to the	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	company. The CA should be facilitative not prescriptive.		
182	Recommendation 5.18 The current specified time of one month allowed for updating the minute book under section 188 of the CA should be maintained.	Not applicable since there is no change.	-
Striking Off Defunct Local Companies			
183	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	Not applicable as these will be placed in subsidiary legislation.	The enabling legal provision to allow ACRA to prescribe criteria for striking off has not been included in this Bill, as we are considering other amendments which may impact these criteria. We will consult on the enabling provision at a later date.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	charge register must also be cleared; (iv) the company must not have any outstanding penalties or offers of composition owing to the Registry; (v) the company must not have any outstanding tax liabilities with the Inland Revenue Authority of Singapore (IRAS); (vi) the company must not be indebted to other government departments; (B) criteria that ACRA should adopt for identifying and reviewing "defunct" companies for striking off. In this regard, a company is "defunct" if: (i) the last account lodged by that company with ACRA was more than 6 years ago; or (ii) the company has not filed any Annual Return for 6 years since its date of		

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	incorporation, and that company has not created any charge for the last 6 years.		
184	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.	Clause 178 Amendment to section 344(2).	-
185	Recommendation 5.21 Section 344(1) of the Companies Act should be expanded to include the requirement for ACRA to send the striking off notice to other relevant parties, namely, the company's officers (directors, secretary), shareholders (if different from the directors) and IRAS. Recommendation modified by MOF. To include CPF Board to the list of relevant parties who should receive the striking off notifications.	Clauses 178 and 179 Amendment to section 344(1). New sections 344(7) and 344A(7).	-
186	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	Clauses 178 and 179 New sections 344(7) and 344A(7).	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	available online (on the ACRA Home Page).		
187	Recommendation 5.23 There should be no requirement for ACRA to send notifications via registered post to the company concerned.	Clause 179 New section 344B(2)(a).	-
188	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.	Clauses 178 and 179 Amendment to section 344(5). New section 344D(4).	-
189	Recommendation 5.25 Section 344(5) should be amended to allow the Registrar to restore companies which have been struck-off as a result of a review conducted by ACRA. Recommendation modified by MOF. To specify that an appeal to the High Court will be allowed if the Registrar refuses to restore the company.	Clause 179 New sections 344D and 344E. New section 344F. New section 344G.	New sections 344D and 344E implement Recommendation 5.25. These provisions apply to ACRA-initiated striking off only. We have also included a new section 344F to allow the Registrar to restore a company if he is satisfied that its name has been struck off as a result of a mistake of the Registrar. This new provision will apply to both ACRA-initiated striking off and company initiated striking off. *Consultation question 55* *We would like to seek comments on whether the Registrar should be given powers to restore a company under the new section 344F.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
190	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.	Clause 179 New section 344C.	The criteria for the procedure of dealing with objections will be provided for in subsidiary legislation.
191	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.	Clause 179 New section 344C(3)(b).	The criteria that ACRA should consider in dealing with objections will be provided for in subsidiary legislation.
192	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;	Clause 179 New section 344B.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	and (c) that this information should be updated online (in the ACRA Home Page).		
193	Recommendation 5.29 The fees for striking off should be placed under subsidiary legislation rather than the parent Act.	Clauses 147, 179, 190 and 191 New section 344A(2)(b). Delete items 71 to 75 (i.e. prescribed fees relating to striking off) of the Second Schedule. Consequential amendments to sections 205B(3)(f) and 411.	-
194	Recommendation 5.30 The recommended new provisions on striking off should be in a separate set of subsidiary legislation (the Companies (Striking Off) Rules).	Clause 179 New section 344A.	The new section 344A is an enabling provision, and procedural details will be set out in the subsidiary legislation.
Companies Limited by Guarantee			
195	Recommendation 5.31 The status quo of companies limited by guarantee should be preserved.	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Regulation of Company Names			
196	Recommendation 5.32 Maintain the status quo of the role of the Registrar in approving names.	Not applicable since there is no change.	-
197	Recommendation 5.33 Maintain the status quo of the current criterion for refusal of name registration by the Registrar.	Not applicable since there is no change.	-
198	Recommendation 5.34 Maintain the status quo of the current regime for similar name registration.	Not applicable since there is no change.	-
199	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.	Not applicable since there is no change.	-
200	Recommendation 5.36 Maintain the status quo of the ambit of section 27 (Names of companies).	Not applicable since there is no change.	-
201	Recommendation 5.37 There should be no change to the	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	current time period of 12 months allowed by a complainant to lodge his complaint with the Registrar regarding registration of a similar name by another company under section 27(2A).		
202	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).	Clauses 23 and 24 New section 27(1A) and (1B). Consequential amendments to sections 27(2)(a), 27(12)(a), 28(1) and 28(3)(a).	-
203	Recommendation 5.39 There is no need for the formation of a panel of company name adjudicators (unlike the position in the UK).	Not applicable since there is no change.	-
204	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).	Clauses 23 and 24 New section 27(5) and (5AA) and new section 28(3D) and (3DA).	This recommendation has been modified during the drafting of the Bill. Recommendation 5.40 applies to the current section 27(2)(b) (i.e. where a name so nearly resembles another name as to be likely to be mistaken for it). We propose to extend the rights of appeal to all limbs under sections 27(2) and 28(3) for consistency.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			Section 27(2C) gives the Registrar the discretion to impose a fee on a company if the Registrar is satisfied that the company has registered its name in bad faith. As the applicant is not affected by the Registrar's decision under section 27(2C), the applicant does not have a legitimate interest to appeal against the Registrar's decision. Therefore, we propose not to extend the right of appeal under section 27(2C) to the applicant. Similarly, the right of appeal under section 28(3C) should not be extended to the applicant. The modification will not affect the aggrieved company, which will continue to have a right of appeal against such a decision.
Company Secretaries			
205	Recommendation 5.41 Maintain the status quo such that it remains mandatory for private companies to appoint a company secretary.	Not applicable since there is no change.	-
206	Recommendation 5.42 Company secretaries of private companies need not be physically present at the company's registered office.	Clause 103 New section 171(3A).	-
207	Recommendation 5.43 The current distinction in section 171(1AA) whereby secretaries of	Not applicable since there is no change.	-

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	public companies are required to possess certain qualifications, whilst secretaries of private companies are not so required, be maintained.		
208	Recommendation 5.44 Prior registration of secretaries before their appointment as secretaries of listed companies is an unnecessary measure to adopt.	Not applicable since there is no change.	-
Conceptual Issues in Registration of Charges			
209	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.	Clause 74 Amendment to section 131(3) to update the list of registrable charges. The new subsection (3AA) provides for transitional arrangement.	• The draft Bill deletes the phrase "or an assignment" (which was introduced in 1967) from section 131(3)(d) since the phrase is no longer in the companies legislation of other jurisdictions. • The draft Bill introduces the phrase "but not including charge for any rent or other periodical sum issuing out of land" under section 131(3)(e), for consistency with the provisions in the United Kingdom and Hong Kong. • The draft Bill updates section 131(3)(j) by including a licence to use a trademark, a registered design and a licence to use a registered design, which is consistent with the provision in the United Kingdom.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Operational Issues in Registration of Charges			
210	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.	Not applicable since there is no need for legislative change.	ACRA's electronic form will be reviewed so that a business entity can be reflected as a chargee (i.e. lender).
211	Recommendation 6.3 The current requirements for satisfaction of a charge should be maintained.	Not applicable since there is no change.	-
212	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.	Clause 76 Amendment to section 138(1).	-
213	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.	Clause 76 New section 138(1A).	-
214	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	Not applicable since there is no need for legislative change.	ACRA's electronic form will be reviewed such that there will not be any requirement for a chargee to confirm that the instrument is kept at the company's registered office.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	ACRA by the chargee) that the instrument is kept at the company's registered office.		
215	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.	Not applicable since there is no need for legislative change.	ACRA's e-notification confirming registration of a charge will be reviewed to include a reminder to chargors to keep a copy of the charge as his registered office address.
216	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.	Clause 77 Amendment to section 141.	-
217	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.	Clause 75 Amendment to section 132(1).	-