CHAPTER 5

GENERAL COMPANY ADMINISTRATION

I. INTRODUCTION

1 One of the primary aims of this review of the Companies Act is to streamline the administration of companies in order to reduce the burden of regulatory compliance. To this end, it is proposed that the legal requirement to maintain certain registers be eliminated in view of the availability of electronic records and registers online from the Accounting and Corporate Regulatory Authority (ACRA). Other reforms proposed include simplifying the Memorandum and Articles of Association and simplifying the striking-off process. Proposals were also received regarding the regime governing company names, the necessity for company secretaries and reform of the provisions governing companies limited by guarantee. It was considered that the status quo in these areas is generally satisfactory and should be maintained.

II. REGISTERS

2 Currently, the Companies Act requires all companies to maintain the following registers at their registered office:

(a) Register of members;

(b) Register of directors' shareholdings;

(c) Register of substantial shareholders for listed companies;

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

(e) Register of charges; and

(f) Register of debenture holders.

3 However, with the implementation of electronic filing it is possible to make ACRA's registers the definitive and authoritative registers in place of the registers maintained by companies (hereinafter referred to as "company registers"). As company records at ACRA are now easily accessible electronically via ACRA's Bizfile system, the maintenance of a similar set of company records by the company would amount to unnecessary duplication. In contrast to the past when ACRA's records were filed manually and information about companies was difficult to compile or gather, the advent of electronic filing has resulted in a more convenient and efficient manner of accessing such records. The only records that ACRA does not have are the minutes of company meetings.

4 At present, many directors do not seem to be aware of the need to keep, maintain and constantly update a separate set of records regarding changes in appointment of directors, auditors, share allotments, annual returns, changes in

addresses of registered offices, etc. Moreover, many auditors currently rely on ACRA's records as a means to identify any gaps in the records of private companies. In fact, there is an emerging trend, especially amongst banks in Singapore conducting due diligence searches on companies, in preferring to first check the relevant information about such companies, as lodged with ACRA, before verifying such information against the relevant registers and indexes of members maintained by the companies. Thus, third parties tend to rely on ACRA as an independent source of information to confirm information about companies' particulars. In view of this, the Steering Committee is of the view that the registers maintained by ACRA should be the main and authoritative register of members for all companies in Singapore and that the relevant legislation be amended accordingly to reflect this.

5 Making ACRA's database authoritative would mean that people would be able to check with ACRA and not with the company for such information. Furthermore, a small company which does not wish to keep its own register could rely on ACRA's register to record the names and other relevant particulars of its members. Members of the public would be able to buy extracts of information from the register. ACRA's register would help to ensure that there would be a master copy that could be updated.

6 The reliance on ACRA's records as the authoritative source of information would not impede the due diligence checks performed on companies as all records can be found in one form or another (for example, in microfiche for those documents lodged before 2003 and in electronic form after 2003). In order to conduct due diligence checks on companies (when a company is being audited), it would be necessary to ascertain the history of relevant transactional information by such companies.

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

7 The Steering Committee is of the view that the authorised register of members of private companies should be maintained by ACRA. In other words, section 190 (Register and index of members) would 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.

8 The majority of respondents to the consultation agreed with this recommendation. However substantial concerns were expressed relating to how mistakes in the ACRA register would be remedied. These will be addressed when drafting the relevant provisions. Some respondents suggested that in the completion of certain commercial transactions it is often assumed that the company secretary has control over the Register of Members; and since most other jurisdictions do not have online registers, commercial agreements may not contemplate such arrangements. However the Steering Committee is of the view that commercial agreements are not usually so specific that such concerns would arise.

9 The ACRA register should have these characteristics if they are to replace the company registers: (i) fees should not be chargeable for inspection of the ACRA Register of Members by the company; and (ii) the ACRA Register of Members

should be updated in real time. Detailed issues of implementation (e.g. the form of notification, notifying party, dispute resolution) will be addressed at the drafting stage.

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

10 However, the proposed amendment should not apply to listed public companies. Listed public companies tend to have a larger number of members and as such it would still be useful and convenient for the register of such companies to be maintained and kept at the registered office. That register should remain the authoritative register for public companies.

11 For unlisted public companies, it would not be mandatory to report any change in ownership or membership immediately. They will continue to update ACRA registers to reflect changes in ownerships as is the current practice. Changes in ownership are updated when filing the Annual Returns where the company has to provide the final listing of all shareholders (or the top 50 shareholders if there are more than 50 shareholders) or members.

12 Although some respondents to the consultation were in favour of expanding the recommendation to cover unlisted public companies, the Steering Committee does not recommend this. Such companies can have an unlimited number of shareholders and hence ACRA's database would have to cater for this possibility. This would have cost implications. Implementation for public unlisted companies can be considered at a later time.

Recommendation 5.1

Section 190 (Register and index of members) should no longer apply to private companies as the registers maintained by ACRA in electronic form and accessible by the public can be used as the main and authoritative register of members for private companies in Singapore.

(c) Status of members lodged in ACRA register

13 The Steering Committee reviewed the information required to be disclosed in the register of members and index of members for completeness and noted that under the current regime, notification of transfer of shares is not mandatory.

14 The Steering Committee has considered the possibility that doing away completely with the register of members may lead to a problem of authoritative proof regarding who is a member. Nevertheless, the Steering Committee is of the view that the law may be reformed to provide that a person becomes a member only when the Registrar has been duly notified.

15 The initial view of the Steering Committee was that the onus should be on new members to notify the Registrar. However, some of the respondents to the consultation pointed out that the status of a member of a private company should be

made by the company itself to ensure that the control of admission or removal of members remains with the company in accordance its Articles of Association. The Steering Committee therefore recommends that notification of a change in membership should be made by the company.

16 The determination of the status of members in the context of share allotments and transfers for private companies should be in the following manner:

(a) a 14-day period 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) that such filing shall be prima facie evidence of the change in interest in the shares of the company.

17 As a consequence of the proposals, it will be mandatory for private and unlisted public companies to report alterations in share capital to ACRA under section 71. Section 71 currently provides that the company may report the alteration without specifying the time frame required.

Recommendation 5.2

Any person who is not notified as a member by the company to the Registrar is not a member of that company.

Recommendation 5.3

The status of members in the context of share allotments and transfers for private companies should be determined in the following manner:

(a) a 14-day period should be given for the filing of information regarding the allotment or transfer of shares with ACRA;

(b) the effective date of notice of the allotment or transfer would be based on the date of filing with ACRA; and

(c) such filing shall be prima facie evidence of the change in interest in the shares of the company.

(d) Register of directors' shareholdings

18 The register of directors' shareholdings under section 164 of the Companies Act is relevant and important for both listed and unlisted companies as disclosure of such information in the register is in accordance with principles of good corporate governance which mandates transparency in the matter of the ownership of shares.

19 The Steering Committee has considered the positions adopted in the UK, Hong Kong, Australia and New Zealand, and noted that these other jurisdictions (with the exception of New Zealand)[1] have done away with the register of directors' shareholdings.

20 Notwithstanding the fact that the UK, Hong Kong and Australia have done away with the register, the Steering Committee recommends that the status quo be maintained in the interest of transparency and disclosure: viz, companies are required to maintain the register of directors' shareholdings (and other interests, etc specified in section 164(1)(a) to (d)). The information about directors' shareholdings would impact a director's position on the board if there was a conflict of interest. Also, a minority investor may wish to have information about such interests. The register enables a private company to be aware of its directors' shareholdings, and enables the parent company of a wholly-owned subsidiary to know similar details about its subsidiary. The register would also be useful for shareholders who may require such information when making decisions about the company.

21 Respondents to the consultation agreed with this recommendation.

Recommendation 5.4

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

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

22 All companies should still be required to maintain a register of directors and secretaries, but this register should be kept by ACRA. As long as there is a filing obligation on the part of companies, it need not be a statutory requirement for companies to keep the register.

23 The Steering Committee considered that the register of managers is no longer relevant. The term "manager" is vague and not well defined in the Companies Act. Managers could possibly be non-directors. Furthermore, most companies when filing documents with ACRA, leave the relevant slot for managers blank. Thus, the Steering Committee recommends that there is no need for the companies to maintain a register of managers.

24 The Steering Committee considered the need for the register of auditors and decided that such a register does not really serve a purpose. In Australia, the register reflects whether the auditor has had any disciplinary records, and the same approach could indeed be adopted in Singapore. However, even if Singapore were to include this information in the register, this would not affect a company's appointment of its auditor because it is the *auditing firm* (as opposed to individual auditors) that is appointed by the company.

[1] New Zealand has an interests register which is only open to inspection by directors; see New Zealand Companies Act 1993, section 140.

25 Thus, to be consistent with the other proposals, the register of auditors should be done away with as the information is also available from the ACRA's registers.

26 The majority of respondents to the consultation agreed with this recommendation.

Summary of proposals

Current	**Proposed reform**
Mandatory for **all** companies to keep such registers s. 173 CA	Not mandatory for any company to keep registers of directors, secretaries, auditors and managers. ➔ ACRA register will be the definitive register for **all** companies for: (i) Directors (ii) Secretaries (where applicable) (iii) Auditors ➔ No requirement for ACRA to keep register of managers.

Recommendation 5.5

(a) The definitive register for directors, secretaries and auditors should be kept by ACRA;

(b) it should not be mandatory for companies to keep a register of directors, secretaries, auditors and managers; and

(c) there is no requirement for ACRA to keep a register of managers.

III. MEMORANDUM AND ARTICLES OF ASSOCIATION

(a) Merging of Memorandum and Articles of Association

27 In 2002, the Company Legislation and Regulatory Framework Committee (CLRFC) recommended that Singapore adopt a model Constitution for private companies, in accordance with the approach of the UK. The recommendation was accepted by the Singapore Government. However, Singapore chose to wait until the UK had finalised the details of its model Articles before implementing the CLRFC recommendations. The UK's model Articles are found in the Companies (Model Articles) Regulations 2008.[2]

[2] https://www.legislation.gov.uk/uksi/2008/3229/contents/made. In force from 1 October 2009.

28 The UK's approach is to keep the Memorandum and Articles of Association separate, but the CLRFC had recommended that the Memorandum and Articles of Association for Singapore companies be merged as one document to be known as the Constitution.

29 The Steering Committee likewise agrees that there is no need for the Memorandum and Articles of Association to be separate documents.[3] In practice, the Memorandum and Articles of Association usually tend to be bound together, and hence it would be more practical to look at the Memorandum and Articles of Association as a single document. Furthermore, the Memorandum contains very minimal information. Hence, merging and renaming the Memorandum and Articles as the "Constitution" should not pose any practical problems for companies in this regard.

30 The Steering Committee is of the opinion that the Memorandum and Articles of Association should be merged as one document, to be known as the Constitution. Most respondents to the consultation agreed with this recommendation, although there was a suggestion that companies should have the option of retaining their current Memorandum and Articles or converting to a Constitution. However, the Steering Committee is of the view that a standard approach for all companies is preferable.

Recommendation 5.6

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

(b) Model Constitution

31 With regard to having a Model Constitution, the Steering Committee is of the view that there should be two models of the Constitution:

(a) for private companies – with variations for companies with only one director, and those with two directors or more; and

(b) for companies limited by guarantee.

This would be similar to the position adopted by the UK save that the UK also has a regime for private companies limited by guarantee.

[3] In Australia and New Zealand, companies adopt a single document known as the "Constitution". The Australia Corporations Act 2001 contains a set of "replaceable rules" for the governance of a company, which may be modified in a company's Constitution. The company's Constitution, and the replaceable rules as they apply to that company, are then given binding force by section 140, which still adopts a basically contractual approach to achieve that effect.
The New Zealand Companies Act 1993 begins with an essentially statutory structure, but allows "contractual" derogation from it. (The New Zealand approach is different from the Singapore, UK and Australian approaches which begin with a contractual structure and then give that structure statutory force.)

32 Most respondents to the consultation agreed with this recommendation, although some suggested that a Model Constitution for public companies would also be useful. However the Steering Committee is of the view that given the complexity of public companies having a standard Model Constitution for public companies was of limited use.

33 The Steering Committee has considered the possibility that if a Model Constitution were ever to be prescribed for public companies (other than companies limited by guarantee), it would be limited to unlisted public companies. However, the Steering Committee is of the opinion that (unlike the position in the UK[4]), there would be no prescribed Model Constitution for public companies whatsoever, and that instead, the provisions in the Constitution for such companies would be determined by the relevant industries concerned.

Recommendation 5.7

There should be two models of the Constitution:

(a) for private companies – with variations for companies with only one director, and those with two directors or more; and

(b) for companies limited by guarantee.

Recommendation 5.8

There should be no prescribed Model Constitution for public companies (other than companies limited by guarantee) as the provisions in the Constitution for such companies would be determined by the relevant industries concerned.

(c) Necessity of filing Model Constitution

34 When law firms prepare documents for the incorporation of companies for their clients, they tend to include a copy of the Articles of Association even though these Articles are in effect a replica of the current Table A at the Fourth Schedule of the Companies Act. Duplication of this sort is not necessary, in particular for cases where people opt to prepare the incorporation documents without engaging the services of a law firm. In particular, the inclusion of such documents for company incorporation rapidly uses up disc space in ACRA's computerised filing system and database.

35 Where a company elects to adopt the Model Constitution (through incorporation by reference), the Model Constitution need not be filed with ACRA.

[4] The Companies (Model Articles) Regulations 2008, Schedule 3 – Model Articles for Public Companies.

The public would have access to information on the relevant version of the Model Constitution on the ACRA website that the company has adopted.

36 In the event that there are amendments made to the provisions of the Model Constitution after it is posted on ACRA's webpage, the amended version would be archived and made available on ACRA's webpage. Relevant transitional provisions will be worked out in this regard.

37 Respondents to the consultation agreed with this recommendation.

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.

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

38 The Steering Committee considered whether it would be necessary for the Model Constitution to be part of the Companies Act, or whether it would be better to have it placed in subsidiary legislation, or if indeed it need be in any legislation at all. The Steering Committee is of the view that the Model Constitution should be placed on ACRA's webpage instead of being prescribed by the Companies Act.

39 Most respondents to the consultation agreed with this recommendation. However some suggested that the models of the Constitution should be in subsidiary legislation as well to ensure accessibility. The Steering Committee is of the view that putting the models of the Constitution on the ACRA webpage would be adequate but setting the models out in subsidiary legislation can also be considered.

Recommendation 5.10

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

IV. ALTERNATE ADDRESS POLICY

40 Currently, a person setting up a company or business in Singapore is required to provide his personal particulars to the Registrar, including his residential address. Such information is available to the public for a fee. Due to the increased security concerns with public disclosure of residential addresses, a policy review was conducted with a view to provide more protection to an individual's privacy. ACRA's view is that its duty is to provide information of business entities and their offices or places of businesses and to ensure that there is adequate disclosure for accessibility and accountability reasons. This objective would be achieved if the business owner, instead of providing his residential address, provides an alternate address where he can be located and for the purpose of effective service of the summonses and notices under legislation administered by ACRA or other legislation.

41 The Steering Committee therefore recommends that a person who is required to provide a residential address may choose instead to provide an alternate address at which he can be located. Singapore will be ahead of other comparable jurisdictions with regard to the disclosure of directors' residential addresses[5]. In a selective consultation, majority support was received for the above proposal.

42 To prevent abuse and fraudulent reporting, safeguards in law will be provided. If the person concerned cannot be located at the alternate address after due enquiry, ACRA shall be empowered to obtain a person's residential address from the National Registration Department for enforcement purposes and may publish the residential address on public records. As for persons who are exempted from registration under the National Registration Act (namely foreigners who hold passes to work in Singapore and persons who do not reside in Singapore), they would also be required to report their residential addresses to ACRA. ACRA will keep these confidential, if such persons want to use an alternate address where they can be located.

43 However, some concern was expressed that this will remove one of the primary sources for obtaining a party's residential address and consequently make it difficult for litigants to locate a defendant in order to effect personal service. This issue has been considered . The courts and Law Society have been kept informed of the proposed policies. They will consider the impact to the laws administered by them.

[5] In countries such as Australia, Hong Kong, New Zealand and the UK, it is compulsory for the persons concerned to disclose their residential address to the regulator. In Australia they allow the owners to seek approval from the regulator to maintain the confidentiality of their residential addresses. Hence Singapore would be more advanced than these jurisdictions as it would not even be mandatory to disclose one's residential address.

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.

V. STANDARDISED TIMELINES FOR UPDATING OF COMPANY RECORDS

44 Currently, there are different timelines for various types of lodgment with ACRA. The different timelines for lodgment may be confusing for users and it would be more convenient to have a uniform timeline for lodgment instead.

45 However, the determination of the relevant timeline would depend on whether the information would be relied upon by various stakeholders and other third parties. If there is such reliance on the ACRA register, then such information should be better lodged within a shorter time frame (14 days possibly being a suitable period).

46 The standardisation of timelines for notification in the ACRA registers was considered. It was recommended that the reference to "days" will be understood to mean *"calendar"* days (as opposed to "business" days). As it is the intention that ACRA's registers will form the authoritative record of a company, it would be important to standardise the reporting/notification timelines and to shorten (where appropriate) the timelines to ensure prompt notification. Shortening the timelines should not pose a problem as lodgments can be done at any time of the day or night online. In this regard, it was recommended that, for purposes of non-insolvency matters, the notification periods for the ACRA registers be standardised to 14 *calendar* days, with the exception of the following:

(a) Charges will still be required to be registered within 30 days; and

(b) There will be no change to the present timelines for financial assistance and reduction of share capital.

47 The timeline for lodgment of the notice of a reduction of share capital by special resolution as approved by the court under section 78G of the Companies Act may remain as 90 days as there are various proceedings that have to be accomplished

before the lodgment may be done, such as obtaining a court order approving the reduction in share capital, and preparing the notice containing the reduction information. Since no third party interests will be impacted by the long lodgment timeline, the timeline can be maintained to allow companies greater flexibility in this particular lodgment.

48 The lodgments for insolvency matters are out of the Steering Committee's purview and would be handled by the Insolvency & Public Trustee's Office (IPTO) instead, who are working on the omnibus Insolvency Bill.

49 Most of the respondents to the consultation agreed with this recommendation.

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.

VI. DIFFERENT LEVELS OF PENALTIES ACCORDED TO DEFAULTS

50 The Steering Committee has considered the penalties for default in compliance with updating of the various registers. The Steering Committee suggests that there should be different levels of penalties accorded to default and non-compliance, depending on the severity of the default and that ACRA should take into account the impact of the default on different groups of stakeholders when enforcing such penalties. (For example, the difference between a penalty for defrauding stakeholders, as opposed to mere lateness in updating particulars with ACRA.)

Recommendation 5.13

There should be different levels of penalties accorded to default and non-compliance, depending on the severity of the default.

Recommendation 5.14

ACRA should take into account the impact of the default on different groups of stakeholders when enforcing such penalties.

VII. COMPANY RECORDS – MINUTES, MINUTE BOOKS, ETC

(a) Electronic records

51 The Electronic Transactions Act clearly provides that electronic records are allowed, although section 395 of the Companies Act (regarding the form of registers) is vague. The language of section 395 provides that any records are allowed as long as they are in any permanent form. By contrast, the relevant provisions in the Companies Ordinance in Hong Kong[6] and the Australia Corporations Act 2001[7] explicitly allow for electronic form of records.

52 Whilst the provisions in Hong Kong and Australia seem to imply that the electronically stored data has to be located within the jurisdiction, the Steering Committee is of the view that the location of the data is not such an important factor. If data were kept on a server it does not matter in which jurisdiction the server is located. What matters is that the records are available and accessible to those who require the information, since the intent of the legislation is to ensure that the records are available.

53 Hence, the Steering Committee is of the view that section 395 be amended:

(a) to clarify that any register, index, minute book or book of account may be kept in the form of *electronic* records (in addition to or as an alternative to physical records);

(b) to provide for some definite form of authentication or verification of the electronic records; and

(c) to provide that directors be responsible for ensuring:

(i) the authenticity of such electronic records; and

(ii) the proper maintenance of such electronic records.

54 The Steering Committee has also discussed the methods a company can use to demarcate the definitive copy of minute books or any other records. The Steering Committee agrees that the *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.

55 With advances in technology, the Companies Act should allow for the use of electronic signatures to authenticate such records. The Companies Act should provide that electronic records should have some form of director's verification that the copy is the definitive copy.

56 The issue of whether the Companies Act should set out the rules relating to verification of electronic versions of minutes or resolutions was considered. The Steering Committee is of the view that the process for the verification should best be

[6] Section 95 of the Hong Kong Companies Ordinance.
[7] Section 1301 of the Australia Corporations Act 2001.

left to the company and section 395(2) provides sufficient guidance. The Companies Act should be facilitative rather than prescriptive and should not dictate the form of the verification of the written resolution as the statute cannot be expected to keep pace with all technological changes. Any formal requirements for time-stamps and water-marks as a form of verification will only increase the cost of administration of a company.

57 Most of the respondents to the consultation agreed with these recommendations.

Recommendation 5.15

Amend section 395:

(a) to clarify that any register, index, minute book or book of account may be kept in the form of electronic records (in addition to or as an alternative to physical records);

(b) to provide for some definite form of authentication or verification of the electronic records; and

(c) to provide that directors be responsible for ensuring:

(i) the authenticity of such electronic records; and

(ii) the proper maintenance of such electronic records.

Recommendation 5.16

Directors should be responsible for the most updated copy of the minutes and to make sure that it is verified to be the correct and definitive copy.

Recommendation 5.17

The process for the verification of electronic records should be left to the company. The Companies Act should be facilitative not prescriptive.

(b) Time for updating of minute books

58 The issue of whether there should be a limit on the timeline for the updating of minute books has been considered. Currently, under section 188 of the Companies Act, companies are given up to one month after every meeting to update the minute book. There is however no such timeline for the UK, Hong Kong and New Zealand.

59 The specification of a definite timeline for the updating of the minute book is important, as this ensures that the minute books are indeed kept up-to-date. This would be vital especially for recording information involving shareholder disputes or contractual disputes – as the minutes are a form of evidence of issues, decisions, etc,

that transpired during such company meetings. Hence, the Steering Committee is of the view that the current specified time of one month allowed for updating the minute book under section 188 be maintained. All the respondents to the consultation agreed with this recommendation.

Recommendation 5.18

The current specified time of one month allowed for updating the minute book under section 188 of the Companies Act should be maintained.

VIII. STRIKING OFF OF DEFUNCT LOCAL COMPANIES

(a) Specification of criteria for "defunct" company

60 Currently, the Companies Act only specifies that if the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may, upon complying with relevant conditions under section 344(1) of the Companies Act, strike off the company. However, in practice, where striking off applications are submitted by the directors of a company, ACRA would require them to declare either the date the company has ceased trading or that the company has not commenced business since the date of incorporation. The company also has to satisfy other criteria when submitting the striking off application, as follows:

(a) the company must have ceased trading;

(b) the company must not be involved in any court proceedings, whether inside or outside Singapore;

(c) the company must have no assets and liabilities when the application is made, and the company's charge register must also be cleared;

(d) the company must not have any outstanding penalties or offers of composition owing to the Registry;

(e) the company must not have any outstanding tax liabilities with the Inland Revenue Authority of Singapore (IRAS); and

(f) the company must not be indebted to other government departments.

61 Where ACRA reviews the relevant transactional details of the company and decides to initiate striking off action, ACRA has had to come up with its own criteria of how a company would be termed as "defunct". Currently, ACRA deems a company "defunct" when the last accounts lodged by that company with ACRA was more than 6 years ago or if the company has not filed any Annual Return for 6 years since its date of incorporation, and that the company has not created any charge for the last 6 years.

62 For the purposes of transparency, the following should be specified in legislation:

(a) criteria (as stated above) that the company should meet if their directors want to apply for striking off; and

(b) criteria (as stated above) that ACRA should adopt when identifying and reviewing companies for striking off.

63 This would ensure that ACRA's decision to accept or reject a striking off application is clear and transparent to applicants as well as all other users of the legislation.

64 A majority of the respondents to the consultation agreed with this recommendation.

Recommendation 5.19

The following should be stated in legislation:

(A) criteria that the company should meet if their directors want to apply for striking off, viz:

(i) the company must not have commenced business or must have ceased trading;

(ii) the company must not be involved in any court proceedings, whether inside or outside Singapore;

(iii) the company must have no assets and liabilities when the application is made, and the company's charge register must also be cleared;

(iv) the company must not have any outstanding penalties or offers of composition owing to the Registry;

(v) the company must not have any outstanding tax liabilities with the Inland Revenue Authority of Singapore (IRAS); and

(vi) the company must not be indebted to other government departments.

(B) criteria that ACRA should adopt for identifying and reviewing "defunct" companies for striking off. In this regard, a company is "defunct" if:

(i) the last accounts lodged by that company with ACRA was more than 6 years ago; or

(ii) the company has not filed any Annual Return for 6 years since its date of incorporation,

and that company has not created any charge for the last 6 years.

(b) Shortening of time for striking off process

65 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 instead. This is to reduce the overall time involved in the striking off process which can take as long as 5 or 6 months.

66 To confirm this proposal, relevant statistics on objections to striking off received over 8 months in 2008 were considered. A total of 382 companies received objections for their striking off applications during this period. About 95% of the objections were received within a month of the striking off notice. On average, only about 50 companies received their objections after the first gazette notification. Out of that, 34 objections came in within the first month, whilst 8 objections were received in the second and third month respectively.

67 Most of the objections came in the first month after the striking off notice. The most likely reason for objections to be received in the second and third month is simply because currently the Act generously allows for such a prolonged period. In other words, the third month is actually not necessary. (As it is, the objection period for income tax and property tax is only one month.) Thus, if the period for objections to striking off were reduced to 2 months, creditors would take note and lodge their objections according to the new shortened timeline. The shortened timeline would be a reasonable period, and would not unduly prejudice anyone. This would make the striking off process more expeditious (as the current process may take as long as 5 or 6 months).

68 Most of the respondents to the consultation agreed with this recommendation.

<u>Recommendation 5.20</u>

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.

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

69 Although section 344(1) of the Companies Act only requires that a striking off notification should be sent to the company, in practice ACRA also sends the striking off notice to other relevant parties, namely, the company's officers (directors, secretary), shareholders (if different from the directors) and IRAS. This is because striking off in essence involves the "closing down" of the company and all relevant parties should be sent the notice so that they will be kept informed about ACRA's striking off action.

70 In this regard, the Steering Committee is of the view that the administrative action above adopted by ACRA should be codified in the Companies Act. That is, the requirement for ACRA to send notification of striking off under section 344(1) should be extended to include not just the company but also the relevant parties of the company (such as directors, secretaries and shareholders).

71 The striking off regime should be consistent with the insolvency regime. Companies that undergo winding up proceedings have their names published in the Gazette, and that this should also be the case for companies that are to be struck off.

72 Nevertheless, the Steering Committee is of the view that, 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 have been struck off should be made available online (on the ACRA Home Page). This will make it easier for creditors to check on whether ACRA is planning to strike off the company and take immediate steps to lodge their objections online.

73 The respondents to the consultation unanimously agreed with these recommendations.

74 There would be no need for ACRA to send notifications via registered post to the company concerned. However, the removal of the requirement for the sending of the notification of the striking off by registered post should be limited to those who have applied to ACRA for striking off and not to cases where ACRA is striking off the company as part of an exercise. A majority of the respondents to the consultation agreed with this recommendation.

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 5.22

In addition to the requirement for publication of a notice in the Gazette under section 344(2), the list of companies to be struck off and which have been struck off should be made available online (on the ACRA Home Page).

Recommendation 5.23

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

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

75 Currently, under section 344(5) of the Companies Act, a company may be restored to the register within 15 years if the court is satisfied that the company had been carrying on business at the time of striking off.

76 The Steering Committee is of the view that the 15-year period before which a struck-off company may be restored to the register, should be reduced to 6 years instead. This would shorten the waiting time for any interested person to use an identical name of the struck-off company to register a new entity. The 6-year period would also be consistent with the 6-year limitation period allowed for creditors to recover their debts from the company.

77 A majority of the respondents to the consultation agreed with this recommendation.

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.

(e) Restoration of struck-off company

78 Currently, section 344(5) of the Companies Act provides that the power to restore a struck off company is vested in the High Court. This means that anyone who wants to restore the company has to engage the services of a lawyer and file an application with the court, which may be costly and time consuming[8].

79 Hence, the Steering Committee is of the view that 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.[9] This would complement the current requirement for restoration by the application to the court. Having to apply to the court for the restoration of a company is a form of deterrence for frivolous applications. Hence, to avoid abuse of the restoration process where restoration is

[8] There are very limited number of companies that have previously applied to be restored to the register. ACRA can only recall about 20 successful cases. 2 of the previously successful cases of restoration of companies to the register concerned companies which had outstanding share interests and outstanding interests in land.
Even for objections to the striking off of a company due to an outstanding interest in land, it would be possible to apply to the court to direct the correct disposal of the assets of a company that is struck off.

[9] In the UK, the Registrar has power to restore a struck off company under section 1024 of the Companies Act 2006 subject to certain conditions under section 1025 of that Act. In Australia, the Australian Securities and Investments Commission (ASIC) has the power to reinstate a company under section 601AH of the Corporations Act. In Hong Kong, the Registrar has the power under section 291AB of the Companies Ordinance (Cap. 32) to reinstate a company that it has deregistered under section 291AA of that Ordinance as a result of a mistake on the part of the Registrar. In New Zealand, the Registrar has power to restore a company under section 328 of the Companies Act 1993 on his or her own motion or upon application by a shareholder, director, or creditor of the company, or a liquidator, or a receiver of the property, of the company.

effected by application to the Registrar, this new process would be limited only to those cases where ACRA has initiated the action of striking off the company.

80 The respondents to the consultation unanimously agreed with this recommendation although the view was expressed that this discretion should be extended to cases where the striking off was not initiated by ACRA as well.

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.

(f) Objections to striking off

81 Currently, the Companies Act does not specify procedural details regarding objections to striking off under section 344. The current procedures are in the form of administrative guidelines.[10] A person may lodge his objection online (for a fee of $10). An ACRA officer generates a letter to inform the directors of the relevant company, and gives them 2 months to clear the objection. If the objection is cleared, the company is struck off. If not, the striking off application lapses. ACRA informs the directors that the application has lapsed.

82 For the purposes of clarity in procedures for objections to striking off, it should be specified in legislation:

(a) who may object to the striking-off;

(b) how the objection is to be submitted;

(c) relevant action to be taken by ACRA; and

(d) relevant fee payable to ACRA for processing the objection.

83 The respondents to the consultation unanimously agreed with this recommendation.

84 Documentary evidence may be required by ACRA in support of the objection to striking off action. However, ACRA is not in a position to decide whether such documentary evidence adduced by the parties is valid or relevant. It should be left to the courts to adjudicate in such matters.

[10] https://www.acra.gov.sg/how-to-guides/closing-a-company/closing-a-local-company.
In New Zealand, the details of objections to removal of a company from the register are found in section 321 (Objection to removal from register) and section 322 (Duties of Registrar if objection received) of the Companies Act 1993. However, there are no similar provisions in the relevant legislation of the UK, Australia and Hong Kong, although in the UK, the details are provided for administratively under the Companies House Guidance Notes (available at http://www.companieshouse.gov.uk/about/gbhtml/gbw2.shtml).

85 The majority of respondents to the consultation agreed with this recommendation. The Economic Development Board suggested that there should be a one-stop-shop solution instead of requiring costly court solutions.

Recommendation 5.26

For objections to the striking off of a company, it should be specified in legislation:

(a) who may object to the striking-off;

(b) how the objection is to be submitted;

(c) action to be taken by ACRA; and

(d) relevant fee payable to ACRA for processing the objection.

Recommendation 5.27

ACRA should not be required to determine the validity or relevance of documentary evidence used by aggrieved parties to support objections to striking off action, and this should instead be adjudicated by the courts.

(g) Withdrawal of striking off application

86 Currently, applications for striking off may be withdrawn any time before the company is struck off. There is a withdrawal fee of $30/-. ACRA will update the status of the application and send a letter to the company to inform it that the application for striking off has been withdrawn. However, these are administrative procedures adopted by ACRA and are not based on provisions of the Companies Act.

87 In this regard, the Steering Committee is of the view that the administrative provisions should be codified in the Companies Act, specifying:

(a) that an applicant may withdraw the striking off application at any time before the company is struck off;

(b) that ACRA must update the status of the application and send a notification to the company to inform it that the application for striking off has been withdrawn; and

(c) that this information should be updated online (in the ACRA Home Page).

88 The respondents to the consultation unanimously agreed with this recommendation.

Recommendation 5.28

It should be specified in legislation:

(a) that an applicant may withdraw the striking off application at any time before the company is struck off;

(b) that ACRA must update the status of the application and send a notification to the company to inform it that the application for striking off has been withdrawn; and

(c) that this information should be updated online (in the ACRA Home Page).

(h) Transfer of relevant provisions to subsidiary legislation

89 The fees for striking off which are currently found in the Second Schedule of the Companies Act should be placed under subsidiary legislation rather than the parent Act. The respondents to the consultation unanimously agreed with this recommendation.

90 The recommended new provisions on striking off could be in a separate set of subsidiary legislation (such as the Companies (Striking Off) Rules), as this would allow greater flexibility for administering the legislation. A majority of the respondents to the consultation agreed with this recommendation.

Recommendation 5.29

The fees for striking off should be placed under subsidiary legislation rather than the parent Act.

Recommendation 5.30

The recommended new provisions on striking off should be in a separate set of subsidiary legislation (the Companies (Striking Off) Rules).

IX. COMPANIES LIMITED BY GUARANTEE

91 Companies limited by guarantee (CLG) are vehicles used for non-profit driven organisations. Although CLGs may make profits, such profits have to be made for a cause. Currently, the CLG structure is used mainly as a vehicle for charities and religious organisations such as churches. Members of CLGs are not allowed to withdraw funds from the CLGs, and such funds may not be returned to the members if they left the CLG.

92 There are no compelling reasons to abolish CLGs. This is because:

(a) Presently Singapore is consistent with most leading jurisdictions in providing for CLGs; and

(b) The CLGs fulfill the needs of those who wish to set up vehicles for non-commercial reasons but wish to benefit from certain advantages of incorporating a company. There is no alternative if the CLGs are abolished.

93 The UK has introduced two new structures in recent years. They are the Charitable Incorporated Organisations ("CIO") and Community Interest Companies ("CICs"). The CIO concept was considered by Singapore sometime back and the decision then was to monitor this area of development, before venturing further. Presently, the Government has set up a separate committee (known as the Social Economy Study Team, led by the Ministry of Community Development, Youth and Sports) to look into the possibility of having a different type of vehicle for organisations carrying out social and community services, which is similar to CICs in the UK. Until a workable alternative or regime is formed, it would be best to retain CLGs for now.

94 A majority of the respondents to the consultation agreed with this recommendation.

Recommendation 5.31

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

X. REGULATION OF COMPANY NAMES

95 Section 27 of the Companies Act provides for the registration of company names subject to whether they are undesirable, identical to another name on the register or whether the name is a name of a kind that the Minister has directed the Registrar not to accept for registration[11].

96 Currently, the Companies Act allows for two avenues for a complainant to ask the Registrar to direct a change of name, including similar names:

(a) under section 27(2)(b), any business entity can make an application to the Registrar to direct a change in the company name already on the register if it "so nearly resembles the name of another" business entity "as to be likely to be mistaken for it"; or

(b) under section 27(2)(c), when the company's name is one where its use has been restrained by "an injunction granted under the Trade Marks Act (Cap. 332)".

[11] 'Temasek' is the only name left under this category.

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

97 The Steering Committee is of the view that the Registrar should continue to be responsible for preventing the registration of undesirable, identical or gazetted names of *business* entities registered with ACRA but should not be regarded as a "protector of names" *per se* as this should be handled by applications to the courts under the various other causes of actions such as passing off or trade mark infringement actions. Respondents to the consultation agreed with this recommendation.

Recommendation 5.32

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

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

98 The Steering Committee is of the view that there should be no change to the current criterion for refusal of name registration by the Registrar. The Steering Committee has noted that registration of a name with ACRA does not afford the applicant property in that name. Respondents to the consultation agreed with this recommendation.

Recommendation 5.33

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

(c) Registration of similar names

99 The current Bizfile system not only disallows registration of *identical* names (as per the requirements of the Companies Act) but also provides the applicant with a list of similar names, if any, which may not be exhaustive[12]. However, names which are *similar* can still be approved due to the changes in the law in 2003.

100 The reason that the Bizfile system is unable to exhaustively identify a list of similar names is due to the limitation of the programming engine's capability. In this regard, it can never fully replace the human eye and mind in determining what is similar. However, the Steering Committee has also noted that a company that is genuine about its intentions to carry on business will make the effort to select a name that is distinguishable from the name of an existing company.

101 The Steering Committee has considered whether the current system for allowing similar names should be reformed, and decided that the current regime of not checking for similar names need not be changed. The Steering Committee has noted

[12] The alert for similar names is only given to name applicants, and not to existing registered entities (to alert them of the possibility of someone registering a similar name).

that when lawyers act for clients, they already perform the checks to ensure that similar names are not used.

Recommendation 5.34

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

(d) Protection of "famous" names

102 The Steering Committee has considered the need for protection of "famous" names of companies. It is difficult to determine how "famous" a company name needs to be before it may be afforded complete protection under the Companies Act name "protection" regime. Also, a "famous" name in one country may not be "famous" in another. Hence, it should be up to the courts to decide the extent of protection afforded to a "famous" name.

103 In this regard, the Steering Committee agrees that ACRA should not be responsible for the protection of "famous" names by preventing the registration of "famous" names as it is not possible in the first place to crystallise a definitive list of "famous" names. Thus, for such cases involving the protection of "famous" names, the owner of the name can seek recourse under the current section 27(2)(c) of the Companies Act via an injunction under the Trade Marks Act (Cap. 332), following which the Registrar can direct a change of name.

104 Most respondents to the consultation agreed with this recommendation.

105 It is noted that the avenue of appeal by way of annulment by the Minister under section 27(2) of the Companies Act is particularly useful for small companies (which must have the same right of "protection" for their names as the bigger entities) as such small companies need not apply to the courts against the Registrar's direction for a name change, which will incur expensive legal fees that a small company may ill-afford.

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.

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

106 The Steering Committee is of the view that the ambit of section 27 should remain as it is, that is, it should continue to apply not only to locally-incorporated

companies and foreign companies registered with ACRA, but even to other overseas companies. In other words, an applicant cannot even use a name which is similar to a foreign company not registered here and such company may apply to the Registrar for a direction for change of name against a locally registered entity on grounds of similarity. Respondents to the consultation agreed with this recommendation.

Recommendation 5.36

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

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

107 Under section 28(3A) of the Companies Act, a person may make a complaint to the Registrar against registration of a name by a business entity within 12 months of the registration of that name. The complainant would have the option of:

(a) applying to the Registrar to give a direction against the infringing entity under the Act; or

(b) applying to court for other forms of remedy.

108 The Steering Committee has considered the reason as to why appeals to the Registrar are time-barred after 12 months of the registration of the competing business entity. This is meant to provide some certainty and to protect the new company from having to change its company name after having built up 12 month's worth of goodwill to its name. (In any case, if the goodwill of the incumbent company is threatened after the 12-month period, it can always seek redress through the courts.)

109 The Steering Committee is of the view that the 12-month time-bar for name complaint applications should be maintained. Thus, the Steering Committee is of the view that there should be no change to the current time period of 12 months allowed to a complainant to lodge his complaint with the Registrar regarding registration of a similar name by another company under section 27(2A). The Steering Committee agrees that 12 months is appropriate and adequate time allowed for the protection of company names without involving costly recourse to the courts. The 12-month time-bar does not eliminate any other avenues of recourse (for example, applications to court for passing-off).

110 Respondents to the consultation agreed with this recommendation.

Recommendation 5.37

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

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

111 The period for reuse of names of companies which are no longer in existence was considered. The name of a company that has been dissolved or struck off may be reused by another company or proposed company only after the following time periods have lapsed:

(a) After 2 years for companies which have been dissolved (based on section 343 of the Companies Act); and

(b) After 6 years for companies which have been struck off (based on section 344 of the Companies Act).

112 Most respondents to the consultation agreed with this recommendation.

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).

(h) No requirement for panel of company name adjudicators

113 The Steering Committee has considered the merits of having a panel of company name adjudicators to deal with disputes involving company names and the goodwill associated with those names (similar to the position in the UK under the Company Names Adjudicator Rules 2008).[13] This was also a suggestion from the Pro-Enterprise Panel (PEP).

[13] The UK has from October 2008 implemented a board to adjudicate on matters relating to the registration of company names. The set of rules for adjudication are similar to the rules of the court used in the laws of passing-off, but simplified. Unlike the UK, there is no similar panel of adjudicators in Australia, Hong Kong and New Zealand. Hong Kong, as part of its review of the Companies Ordinance, considered whether to follow the UK system but decided against it.

114 In the UK, prior to 1 October 08, brand owners had two main options in dealing with registration by third parties of company names in the UK incorporating their trademarks: they could either issue court proceedings for trade mark infringement and passing off, or object to the Secretary of State that a registered company name was the same as, or "too like" another registered company name. However, both alternatives had shortcomings.

115 Effective 1 October 2008, the UK Companies Act 2006 introduced a Company Names Tribunal comprising a panel of company names adjudicators to administer a new regime against opportunistic company name registrations[14]; i.e. those where the main purpose in registering the name was to obtain money or prevent the registration of the name by the person who had built up goodwill[15] in the name.

116 Whereas under the old regime, which still remains available, complainants needed to have a registered company name in order to make a complaint that a name was "too like", applicants to the Tribunal need only demonstrate goodwill in the company name.

117 Allowing recourse to persons other than registered companies was a major development in the UK regime. However, the Tribunal cannot deal with cases involving a company name that is too similar to another, but where there is no suspected opportunism behind the registration. Such complaints are still dealt with under the old regime by an order of the Secretary of State.

118 In the Singapore context name complaints deal almost exclusively with complaints under section 27(2)(b); i.e. where a name "so nearly resembles the name of another company or corporation or a business name as to be likely to be mistaken for it". These do not directly require consideration of goodwill issues and are therefore more straightforward than the complaints administered by the Tribunal in the UK. The UK equivalent of the type of company name complaints in Singapore are the complaints to the UK Secretary of State that a registered company name is "too like" another registered company name. Such "too like" complaints are not dealt with by the Tribunal in the UK.

119 The Steering Committee is of the view that the formation of such a panel is not likely to be a cost effective measure for Singapore to adopt. It would require ACRA to look for appropriately qualified people who are able to perform the functions required of such a panel. This would incur unnecessary time and costs and may slow down the appeal process.

120 Although it is apparent that the UK's names adjudicator board provides an additional avenue for name complaints when the goodwill of a company may be threatened, the Steering Committee is of the view that the current system of name adjudication by ACRA is working fine. Thus, the Steering Committee is of the view that the status quo of the current system in Singapore should be preserved.

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[14] Opportunistic company name registrations are similar to opportunistic Internet domain name registrations (called cyber squatting).

[15] An example of an opportunistic company name registration is when someone registers variations of the name of a well-known company in order to get the latter company to buy the registration(s).

121 Respondents to the consultation agreed with this recommendation. Some respondents said it would be useful to have an independent panel of name adjudicators, perhaps specifically to hear appeals. However, the Steering Committee is of the view that the low volume of appeals does not warrant the formation of a panel to hear appeals.

122 The Steering Committee also considered an alternative approach; i.e. providing in statute that the Minister will have recourse to the non-binding advice/opinion of a panel of experts in deciding on appeals. However the Steering Committee decided against this alternative approach. Amongst the factors considered was that an advisory panel is unlikely to be of benefit to the Minister as name complaints predominantly do not involve difficult issues where an advisory panel would be able to be of meaningful assistance. In exceptional cases where such advice would be useful, the Minister is not currently precluded from seeking the advice of appropriately qualified persons.

Recommendation 5.39

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

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

123 Currently, under section 27(5) of the Companies Act, a company has the right to appeal to the Minister:

(a) where the Registrar directs the company to change its name on the basis that it so nearly resembles the name of another (in accordance with section 27(2)(b)); or

(b) where the Registrar penalises the company for acting in bad faith in adopting a name which is similar to a registered entity (in accordance with section 27(2C)).

124 However, the Act is silent on whether a company or a complainant whose application for direction to change a name has a similar right of appeal to the Minister where the Registrar dismisses his complaint.

125 This is an anomaly in the law which should be reformed to allow both parties in a name complaint matter to have access to an appeal to the Minister vis-à-vis a Registrar's decision under section 27(2)(b) or 27(2C).

126 Respondents to the consultation agreed with this recommendation.

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).

XI. COMPANY SECRETARIES

127 The Steering Committee has considered the role of the company secretary in relation to private companies, with a focus on whether the law needs to mandate that such private companies be required to appoint company secretaries. Currently, section 171 (1AA) of the Companies Act mandates that public companies appoint a company secretary who has the requisite qualifications in accordance with that section. However, the Companies Act does not require this for private companies.

128 This begs the question of whether the Companies Act should even mandate that private companies need to appoint a company secretary. In this regard, the Steering Committee has questioned the relevance of the company secretary's role in the context of private companies.

129 There are concerns that standards in private company administration may decline if the requirement for private companies to appoint company secretaries is removed. However, the Steering Committee has also noted that even with the appointment of company secretaries in such companies, ACRA would not be in a position to monitor or observe their work vis-à-vis the maintenance of minute books, company registers, etc. which remains largely confined within the internal sphere of the private company. Moreover, the law already allows anyone (without a qualification) to be a company secretary for private companies. Therefore, removing the need of a company secretary will not result in a deterioration of present standards.

130 The Steering Committee has also noted that the Singapore Association of the Institute of Chartered Secretaries and Administrators (SAICSA) was intent on increasing the level of professionalism of company secretaries in corporate administration. However, SAICSA preferred to focus on public companies rather than private companies. SAICSA was of the opinion that there would be greater value-add in focusing on public companies as such companies had the potential tendency to develop and grow. And when they do eventually grow, the company secretary's role in such companies would become more evident in regard ensuring compliance with relevant legislation and overall timely and efficient company administration.

131 The Steering Committee received feedback that arose from a forum conducted by the Singapore Association of the Institute of Chartered Secretaries and Administrators (SAICSA), wherein another view arose regarding the criterion that should be imposed for the appointment of the company secretary for private companies. Some SAICSA members had suggested that the criterion for mandating audit be applied similarly for mandating the appointment of a company secretary.

132 However, the Steering Committee was of the view that it should not be mandatory for any private company to appoint a company secretary since the law already does not mandate company secretaries of private companies to be professionally qualified.

133 Most respondents to the consultation did not agree with the recommendation. It was noted that the requirement in law for a company secretary impresses on directors importance of company administration, provides a contact point and ensures that there is a person in charge of company administration matters and helps ensure compliance. Some respondents emphasized that the importance of a company secretary would be greater given the increasing importance of ACRA records.

134 In view of the feedback, the Steering Committee recommends that the status quo be maintained so that the appointment of a company secretary is mandatory for all companies, including private companies.

COMPANY SECRETARIES: PRIVATE COMPANIES

	SINGAPORE	**UNITED KINGDOM**	**HONG KONG**	**AUSTRALIA**	**NEW ZEALAND**	**CANADA**
Need for appointment	Mandatory s. 171 CA (Cap. 50)	Optional s. 270 UK CA 2006	Mandatory s. 154 CO (Cap. 32)	Optional s. 204A Corp. Act 2001	Not specified in CA 1993 (however, would have been in CA 1955)	Not specified
Professional qualifications	Optional s. 171 CA (Cap. 50)	Not specified	Not specified	Not specified	Not specified	Not specified

Recommendation 5.41

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

135 The Steering Committee is of the view that company secretaries of private companies need not be physically present at the company's registered office (unlike the current requirement under section 171(3) of the Companies Act).

Recommendation 5.42

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

136 The Steering Committee has considered the possibility of requiring that secretaries of listed companies be registered (in addition to being qualified), in order to ensure that only qualified secretaries are appointed as secretaries of listed companies. However, the Steering Committee concludes that this requirement would not be necessary as the existing sanctions should be sufficient to ensure compliance with section 171(1AA) of the Companies Act, and it would be unnecessary to create a new registration regime to achieve compliance.

137 The Steering Committee agrees to maintain the current distinction in section 171(1AA) whereby secretaries of public companies are required to possess certain qualifications, whilst secretaries of private companies are not so required.

138 Most of the respondents to the consultation agreed with this recommendation.

Recommendation 5.43

The current distinction in section 171(1AA) whereby secretaries of public companies are required to possess certain qualifications, whilst secretaries of private companies are not so required, be maintained.

Recommendation 5.44

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