Annex B

REPORT OF THE COMPANIES ACT WORKING GROUP

15 MAY 2019

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INTRODUCTION

The Companies Act Working Group was appointed by the Accounting and Corporate Regulatory Authority in January 2018 to undertake a focused review of the Companies Act[1] with the aim of promoting a more pro-business environment whilst upholding market confidence and safeguarding public interest. The review builds on the recent amendments to the CA in 2014 and 2017 that sought to ensure that Singapore's corporate regulatory regime continues to stay competitive.

2. The CAWG reviewed a total of 56 issues and recommended 36 legislative reforms. The CAWG's recommendations reflect the following broad considerations:

- The CA should keep pace with the continually evolving business environment, and in particular stay relevant in the light of developments in the use of technology by companies.

- The CA should strike a balance between an effective and efficient regulatory framework and the compliance burden on companies.

3. In conducting its review, the CAWG took into account companies legislation from Australia, Hong Kong, Malaysia, New Zealand and the United Kingdom where appropriate, as well as the reviews undertaken by the Company Legislation and Regulatory Framework Committee from 1999 to 2002 and the Steering Committee for Review of the Companies Act from 2007 to 2011.

4. The CAWG is chaired by Professor Tan Cheng Han, S.C. and comprises eight members drawn from relevant stakeholders in both the private and the public sector, and from varied backgrounds, including representatives from local and international law firms, industry associations and regulators. The composition of the CAWG and its secretariat is as follows:

Chairman:	Professor Tan Cheng Han, S.C.	Chairman, E.W. Barker Centre for Law and Business, National University of Singapore Chairman, SGX RegCo
Members:	Mr Willie Cheng	Immediate Past Chairman, Singapore Institute of Directors
	Mr Ho Meng Kit	Chief Executive Officer, Singapore Business Federation
	Ms Irene Khoo	Vice President (Communications), Association of Small & Medium Enterprises

[1] All references to statutory provisions in this Report are to the CA, unless otherwise indicated.

	Mr Ng Wai King	Managing Partner, WongPartnership
	Mr Andrew M. Lim	Co-Head, Corporate Mergers & Acquisitions Department, Allen & Gledhill
	Ms Lock Yin Mei	Partner, Allen & Overy
	Mr Tan Boon Gin	Chief Executive Officer, SGX RegCo
	Mr Paul Yuen	General Counsel, Monetary Authority of Singapore
Secretariat:	Ms Elena Yeo	Director, Legal Services Department, ACRA
	Mr Gilbert Low	Senior Legal Counsel, Legal Services Department, ACRA
	Mr Elgin Tay	Senior Legal Counsel, Legal Services Department, ACRA
	Ms Wang Yuxuan	Legal Counsel, Legal Services Department, ACRA
	Mr Vincent Guee	Assistant Director, Registry Services Department, ACRA

SUMMARY OF RECOMMENDATIONS

DIGITALISATION

DEMATERIALISATION OF PHYSICAL SHARE CERTIFICATES

Recommendation 1.1

The CA should be amended to introduce an enabling provision which states that companies are not required to have physical share certificates.

Recommendation 1.2

To facilitate dematerialisation of shares of non-listed companies, ACRA should consider keeping the register of members for non-listed public companies that wish to dematerialise their shares.

DIGITAL MEETINGS

Recommendation 1.3

The CA should be amended to introduce an enabling provision that clarifies that unless the constitution provides otherwise, a company may hold general meetings digitally and in more than one location. It may be necessary to amend certain specific provisions in the CA to address any ambiguity as to how shareholders' rights may apply to digital meetings.

Recommendation 1.4

The existing right under section 392(3) to apply to court to declare proceedings at a general meeting to be void should apply to general meetings held using digital means.

Recommendation 1.5

The CA should be amended to introduce an enabling provision which provides that nothing in the CA prohibits board meetings from being held digitally.

Recommendation 1.6

The CA should be amended to make it mandatory for all companies to accept proxy instructions given by electronic means instead of leaving this to be stipulated in the company's constitution.

APPLICATION OF DIGITALISATION PROVISIONS TO DOCUMENTS UNDER THE COMPANIES ACT

Recommendation 1.7

Sections 387B (relating to documents sent to members, officers or auditors) and 387C (relating to documents sent to members) should be amended to apply to all documents that the CA requires or permits companies or directors to send to members, officers or auditors.

Recommendation 1.8

Sections 395 and 396A (relating to keeping and inspection of company records) should be amended to apply to all documents that the CA requires companies and foreign companies to keep or make available for inspection.

Recommendation 1.9

The CA should be amended so that a document may be sent using a mode of electronic communication (including via publication on website) by (a) companies or directors to persons who are not members, officers or auditors of the company; (b) members, officers, or auditors to companies or directors; and (c) persons who are not members, officers, or auditors to companies or directors, where in each case there is an agreement between the parties for the document to be sent using that mode of electronic communication.

Recommendation 1.10

For the avoidance of doubt, an agreement may be constituted between the company and its members by a company's constitution such that if the constitution provides that all members may send a document to the company through a particular mode of electronic communications, the members may send a document using that mode of electronic communications to the company.

Recommendation 1.11

The current sections 387A to 387C in respect of the electronic transmission of notice and documents by a company or its directors to members, officers or auditors of the company should be retained.

OTHER AREAS CONCERNING DIGITALISATION

Recommendation 1.12

The CA should not be amended to address:

(a) whether and how court-ordered meetings under section 210 may be held digitally;

(b) digital common seals;

(c) certain things made by companies, directors, members, auditors or accounting entities (e.g. debentures; certificates; declarations; reports);

(d) the sending of documents between certain persons (e.g. transferees; auditors; officers; Minister); and

(e) the sending of documents by foreign companies using digital means.

Recommendation 1.13

Views via public consultation should be sought on whether requirements relating to the audit process or other company processes may hamper companies' digitalisation efforts.

TYPES OF COMPANIES AND FINANCIAL REPORTING

REVIEW OF EXISTING COMPANY TYPES

Recommendation 2.1

The current terms and criteria of public and private companies should be maintained.

Recommendation 2.2

The current term and criteria of companies limited by guarantee should be maintained.

Recommendation 2.3

The current term and criteria of exempt private companies should be maintained.

Recommendation 2.4

The current terms and criteria of listed companies and unlisted public companies should be maintained.

Recommendation 2.5

The current terms and criteria of dormant companies and dormant relevant companies should be maintained, except that a dormant non-listed public company should be exempted from the requirement to hold an annual general meeting if it sends its financial statement to it members within 5 months of the end of the financial year and no member has requested that an annual general meeting be held not later than 14 days before the last day of the 6^{th} month after the end of the financial year.

PUBLICLY ACCOUNTABLE COMPANIES

Recommendation 2.6

The concept of "publicly accountable company" for the purposes of financial reporting should be introduced into the CA. "Publicly accountable company" should be defined as:

(a) a company that is listed or is in the process of issuing its debt or equity instruments for trading on a securities exchange in Singapore;

(b) a company the securities of which are listed on a securities exchange outside Singapore;

(c) a financial institution; and

(d) a company limited by guarantee registered under the Charities Act (Cap. 37).

The concepts of publicly accountable company and non-publicly accountable company will replace the current concepts of public company and private company for the purposes of the financial reporting requirements in the CA.

Recommendation 2.7

The current terms and criteria of public interest company and non-public interest company in the CA should be replaced with the terms and criteria of publicly accountable and non-publicly accountable company.

REVIEW OF FINANCIAL REPORTING REQUIREMENTS

Recommendation 2.8

Micro non-publicly accountable companies should be allowed to prepare reduced/simplified financial statements (e.g. containing only the statement of comprehensive income, statement of financial position and specific key disclosures). A "micro" company should be defined as one which fulfils the requirements of total annual revenue and total assets each being not more than $500,000 for the previous two consecutive financial years.

Recommendation 2.9

All companies should audit their financial statements except dormant companies and small non-publicly accountable companies.

Recommendation 2.10

The small company audit exemption criteria should be refined by removing the criterion of number of employees from the current small company definition.

Recommendation 2.11

The "small group" concept in the current small company audit exemption should be removed for the purposes of the small company audit exemption. The criteria for the small company audit exemption should continue to apply on a consolidated basis to parent companies.

Recommendation 2.12

The criteria for the small non-publicly accountable company audit exemption and eligibility to prepare reduced/simplified financial statements should be applied on a "look-through" basis for companies which are trustee-managers of non-listed business trusts, such that the assets and revenue of both the trustee-manager and the business trust are taken into account in the assessment.

Recommendation 2.13

All companies should be required to file financial statements except (a) dormant relevant companies and (b) prescribed companies that meet the criteria in the regulations. The solvent exempt private company criteria should be prescribed in the regulations.

Recommendation 2.14

All filed financial statements should be made available to the public, except for filed documents relating to Gazetted exempt private companies which are wholly owned by the Government under section 12(2A).

Recommendation 2.15

The CA should be amended to separate the filing requirement of the annual return and financial statement of the company. The current time frames for the filing of the annual return and financial statement should be retained.

MATTERS RELATING TO DIRECTORS AND COMPANY SECRETARIES

Recommendation 3.1

The requirement for a company to have at least one locally resident director should be retained.

Recommendation 3.2

The prohibition against a sole director of a company appointing himself or herself as the company secretary should be removed.

Recommendation 3.3

Directors of public companies should continue to be required to appoint company secretaries that satisfy the prescribed statutory requirements.

Recommendation 3.4

A director of a company that is a wholly-owned subsidiary of a foreign holding company should be exempted from disclosing his or her interests in the foreign holding company pursuant to sections 164 and 165.

Recommendation 3.5

The decriminalisation of directors' offences in the CA should be reviewed holistically at the earliest opportunity.

SAFEGUARDING SHAREHOLDERS' INTERESTS

VARIATION OR ABROGATION OF CLASS RIGHTS

Recommendation 4.1

Section 74 should be amended to mandate that a variation or abrogation of class rights must be approved by at least 75% of the class-rights holders, unless the constitution of the company states otherwise.

Recommendation 4.2

The 5% threshold that applies to the right to apply to court to cancel a variation or abrogation of class rights pursuant to section 74(1) should be retained.

SHARE BUYBACKS

Recommendation 4.3

There is no need to amend the CA to clarify that sections 76B to 76G apply to shares with different voting rights issued pursuant to section 64A.

Recommendation 4.4

The distinction between redeemable and non-redeemable preference shares in sections 76B to 76E should be maintained.

Recommendation 4.5

Two tiers of approval by both the shareholders of the company and the shareholders of a class of shares should be required for selective buybacks within that class of shares under section 76D.

REVIEW OF COMPULSORY ACQUISITION OF SHARES THRESHOLD

Recommendation 4.6

Shares held or acquired by the following persons should also be excluded from the computation of the 90% threshold for compulsory acquisition under section 215:

(a) A person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the transferee in respect of the transferor company;

(b) A body corporate controlled by the transferee;

(c) A person who is, or is a nominee of, a party to a share acquisition agreement with the transferee;

(d) The transferee's close relatives (i.e. spouse; children, including adopted children and step-children; parents; and siblings);

(e) A person whose directions, instructions or wishes the transferee is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the transferor company; and

(f) A body corporate controlled by a person described in (e).

SHARE CAPITAL AND FINANCIAL ASSISTANCE

ALTERATION OF SHARE CAPITAL

Recommendation 5.1

Section 71 should be amended to allow the directors of a company to alter the share capital of the company by increasing its share capital or capitalising its profits, without issuing new shares, and without the need for an ordinary resolution approving the alteration**.**

Recommendation 5.2

The CA need not be amended to clarify that a company may reduce share capital and return such capital to its shareholders without cancelling issued shares. It is left open for ACRA's consideration whether a Registrar's Interpretation should be issued to clarify the position to practitioners.

REVIEW OF FINANCIAL ASSISTANCE PROHIBITION AND EXCEPTIONS

Recommendation 5.3

The scope of the financial assistance prohibition in the CA should be amended to remove the references to "in connection with" and align more closely to the definition in section 678(2) of the UK's Companies Act 2006.

Recommendation 5.4

Section 76(8)(ga) should be clarified so that expenses of initial public offerings would not constitute financial assistance, regardless of whether new securities or existing securities are being offered.

Recommendation 5.5

The CA should be amended to introduce an exception to the prohibition against financial assistance where a company takes any of the following actions to implement a take-over with the intention to take a company private: (a) seeking the consent or waiver of any person under or in connection with (or any amendment to) existing contractual arrangements to which the company is a party; or (b) making payment of any fees and expenses, incurred in good faith and in the ordinary course of commercial dealing, to third parties (including financial institutions).

Recommendation 5.6

The CA should be amended to introduce an exception to the prohibition against financial assistance which is confined to a restructuring situation where action was taken pursuant to the judicial manager's statement of proposal which has been approved by creditors under section 227N(1).

Recommendation 5.7

Debt refinancing should be an exception to the prohibition against financial assistance under section 76(1).

Recommendation 5.8

An express exception to the prohibition against financial assistance under section 76(1) in respect of the refinancing of an existing loan that had been previously "whitewashed" should not be introduced.

Recommendation 5.9

The CA should not be amended to address the issue of whether the exception to financial assistance under section 76(8)(k) extends to an allotment of shares pursuant to conversion of bonus convertible bonds/debentures.

EXCEPTION FOR SELECTIVE SHARE BUYBACKS OF ODD-LOT SHARES BY LISTED COMPANIES

Recommendation 5.10

An exception to the requirement under section 76D for a selective off-market purchase to be authorised by a special resolution of the company should be introduced for listed companies, whereby directors of the listed company may, without seeking shareholder's approval, acquire odd lots of up to 0.1% of the company's shares in any 12-month period.

OTHER RECOMMENDATIONS

Recommendation 6.1

The requirement to lodge a statement in lieu of prospectus under the circumstances prescribed in the CA should be abolished.

Recommendation 6.2

There is no need to amend the CA to remove the exclusion limb of high value short term promissory notes in the definition of "debenture" such that directors and chief executive officers are then required to disclose their holding of such promissory notes under sections 164 and 165.

Recommendation 6.3

The definition of a child under section 133(6) of the SFA should use a threshold of 18 years, in line with that used in section 164(15)(a)(ii) of the CA.

Recommendation 6.4

Form 45 of the Second Schedule to the Companies Regulations should be updated to include a statement that the director was qualified to act as a director.

REVIEW OF MATTERS RELATING TO THE CONSTITUTION

Recommendation 6.5

The constitution should continue to be a mandatory requirement, and the two model constitutions in the Companies (Model Constitutions) Regulations 2015 should be retained and updated.

Recommendation 6.6

The model constitution for a private company limited by shares should be amended to reproduce the requirements in section 18(1)(a)-(b).

Recommendation 6.7

The CA should not be amended to adopt a replaceable rules regime similar to that in Australia.

CHAPTER 1

DIGITALISATION

I. INTRODUCTION

1. Most of the provisions in the CA were drafted at a time before the widespread use of technology. Over the years, the CA has been amended to introduce digitalisation provisions that address the use of digital means to comply with certain obligations under the CA[2], but these digitalisation provisions are limited in scope and do not cover the entire breadth of the CA.

2. The CAWG reviewed the use of digital media and technology within the context of the CA, in particular to consider the following areas:

(a) dematerialisation of physical share certificates;

(b) digital meetings;

(c) acceptance of proxy instructions given by electronic means;

(d) application of existing digitalisation provisions to documents under the CA; and

(e) other areas concerning digitalisation (e.g. court-ordered meetings under section 210; common seals; certain things made by companies, directors, members, auditors or accounting entities).

3. In reviewing these areas, the CAWG recognised that facilitating the use of digital media and technology by companies, foreign companies and persons to comply with the CA's requirements contributes to Singapore's Smart Nation initiative, and may help them reduce compliance costs and more effectively comply with the CA. At the same time, the CAWG took the view that companies should generally be allowed to choose between using non-digital or digital means to carry out their functions, because mandating the use of digital means may impose unnecessary costs, particularly on small and medium enterprises. To be futureproof, the CA should generally be neutral with respect to the type of digital media or technology used[3].

II. DEMATERIALISATION OF PHYSICAL SHARE CERTIFICATES

4. The CAWG reviewed the current requirement under section 130AE which requires companies to issue physical share certificates to shareholders, within 30 days for transfer of shares, and 60 days for new allotment of shares. This requirement applies equally to both public and private companies. The rationale for such a requirement is to provide a degree of certainty to the title of shares in a company as expressed in section 123, which provides that share certificates are *prima facie* evidence of title to the shares.

[2] For example, sections 387A to 387C; 395; and 396A.
[3] For example, electronic mail; blockchain.

5. The Steering Committee in 2011 had considered the issue of dematerialising physical share certificates for both public and private companies, and made the following recommendations:

(a) shares of public companies should eventually be dematerialised but the law need not mandate such a requirement at that time because immobilisation had been achieved for listed companies vide The Central Depository (Pte) Limited ("CDP")[4]; and

(b) physical share certificates for private companies should be retained as they serve as evidence of ownership[5].

6. While the Steering Committee had paved the way for dematerialisation, they left open the timeframe within which shares of public companies should be dematerialised. The CAWG noted that share certificates of listed companies had been dematerialised in other jurisdictions as follows:

(a) in the case of Australia (in 2001)[6], Hong Kong (in 2015)[7], New Zealand (in 1993)[8] and the UK (in 2001)[9], the respective companies and securities legislation require all listed companies to dematerialise their shares; and

(b) in the case of Malaysia (in 2016)[10], the companies legislation specified that a company shall not be required to issue a share certificate unless upon request by a shareholder or as provided in the company's constitution.

In the light of the above, the CAWG decided to review this area to ensure that the position in Singapore is in line with international practice.

7. In the case of share certificates of listed public companies, the CAWG considered the proposal of mandatory dematerialisation for all SGX-listed companies (with certain exceptions[11]). In such a scenario, CDP could be designated as the centralised registrar for all SGX-listed companies where shareholdings in all SGX-listed companies are registered with CDP.

8. Mandatory and centralised dematerialisation of SGX-listed companies could have the following effects:

(a) <u>Increase the operational efficiency of the depository</u>: A depository under regulation 18 of the Securities and Futures (Central Depository System) Regulations 2015 must conduct a stock count of all share certificates held in custody by, or in the name of, the depository or its nominee company on a quarterly basis. The depository also performs manual checks on share certificates to ensure the accuracy of the issuer's name, share

[4] Recommendation 3.15 of the SC Report.

[5] Pages 3-11 to 3-12, paragraphs 49 to 51 of the SC Report. Both recommendations were agreed by MOF in MOF's Responses.

[6] See section 1071H(2)(a) of Australia's Corporations Act 2001.

[7] See section 143A of Hong Kong's Companies Ordinance and the Uncertificated Securities Market Rules.

[8] See section 95(2) of New Zealand's Companies Act 1993.

[9] See the UK's Uncertificated Securities Regulations 2001.

[10] See section 97 of Malaysia's Companies Act 2016. There is no express prohibition against the issuance of a share certificate in dematerialised form.

[11] The exceptions would include foreign incorporated SGX-listed issuers whose law of incorporation requires physical share certificates and dual-listed companies.

certificate number and quantity indicated on each share certificate. These manual processes of stock count, verification and other ancillary processes can be eliminated for dematerialised shares.

(b) Enhance market efficiency: Settlement of trades conducted on SGX takes place through CDP, and CDP is only able to settle shares that are in CDP's custody. Where shares are not already in CDP's custody, these shares would need to be deposited into the CDP system before settlement can take place, and it may take approximately 5 to 12 business days for CDP to reflect the corresponding credit in the depository register. If all shares of SGX-listed companies are dematerialised and shareholdings maintained with CDP, the speed and efficiency in the trading and settlement processes can be increased as all the processes can be conducted electronically with the CDP system.

(c) Align with global developments and international recommendations/objectives: The Committee on Payment and Settlement Systems ("CPSS") and the International Organization of Securities Commission ("IOSCO"), in their Principles for Financial Market Infrastructures released in 2012, provided, as one of the principles, that "a [central securities depository] should maintain securities in an immobilised or dematerialised form for their transfer by book entry". This followed from the CPSS-IOSCO's Recommendations for Securities Settlement Systems in 2001 which indicated that for safety and efficiency reasons, "securities should be immobilised or dematerialised and transferred by book entry in [central securities depositories] to the greatest extent possible".

(d) Enhance efficiency in trading and settlement: As shares need to be deposited with CDP in order for trading and settlement of trades on SGX to be conducted, designating CDP as the centralised registrar for all dematerialised shares of SGX-listed companies would allow shareholders to trade more efficiently and for trades on SGX to be settled without disruption.

(e) Centralise holdings for shareholders: Designating CDP as the centralised registrar for all dematerialised shares of SGX-listed companies would also allow shareholders to hold shares in different SGX-listed companies consolidated within the CDP system. This would allow shareholders to review their portfolio with ease.

(f) Provide greater regulatory oversight: In the light that all SGX-listed shares held by a single holder would be centralised in one system under CDP, this would increase shareholder transparency through CDP, in particular, in respect of monitoring shareholding changes in the detection of fraud or to ensure compliance with any freezing orders that may be imposed.

9. In the case of non-listed companies[12] which are either private or public, the CAWG considered whether dematerialisation for all companies would lead to practical difficulties as non-listed companies may not have CDP's operational infrastructure. While the CAWG is supportive of the proposal for an enabling provision in the CA to allow for dematerialisation of shares of non-listed companies, the CAWG noted the lack of a readily-available system for non-listed public companies that wish to dematerialise their shares to administer and record

[12] All references in this Report to a "non-listed company" are to a company that has not been admitted to the official list of an approved exchange in Singapore or has been removed from that official list.

share transactions. The CAWG noted that ACRA already maintains the register of members for private companies, and suggests that ACRA considers extending this function to include non-listed public companies.

10. On balance, rather than the CA mandating that the share certificates for all types of companies be dematerialised, the CAWG is in favour of an enabling provision stating that companies are not required to have physical certificates. This would allow flexibility and time to work out potential implementation issues such as the creation of securities over dematerialised shares, and the need to convert previously allotted shares with physical certificates. Companies which have the infrastructure and ability to dematerialise their shares would be able to do so without undue restriction of the law. SGX may consider if dematerialisation of share certificates should be made mandatory for all SGX-listed companies by way of the SGX Listing Rules or CDP terms and conditions.

11. Accordingly, taking into account all the factors relating to dematerialisation, the CAWG recommends that the CA should be amended to introduce an enabling provision which states that companies are not required to have physical share certificates in order to show evidence of ownership. A dematerialised version of the share certificate or an entry in the register of members should suffice to show evidence of ownership.

Recommendation 1.1

The CA should be amended to introduce an enabling provision which states that companies are not required to have physical share certificates.

Recommendation 1.2

To facilitate dematerialisation of shares of non-listed companies, ACRA should consider keeping the register of members for non-listed public companies that wish to dematerialise their shares.

III. DIGITAL MEETINGS

(a) Digital general meetings

12. The CA provides for general meetings[13] to be held but does not directly address the manner in which general meetings are held. There are however some provisions which lean more towards the holding of general meetings in a physical venue and with the attendees being physically present. Examples of such provisions include:

(a) Rules on presence

(i) 2 members must be "personally present" to form a quorum[14].

[13] Including annual general meetings; extraordinary general meetings; and statutory meetings.
[14] Section 179(1)(a).

(ii) Any member elected by the members "present at a meeting" may be chairman[15].

(b) Voting rules

(i) "On a show of hands", each member who is "personally present" shall have one vote[16].

(ii) Special resolutions are passed by members who "vote in person" or "by proxy present"[17].

(iii) Resolutions to dispense with holding annual general meetings ("AGMs") must be passed by all members that "vote in person" or "by proxy present at the meeting"[18].

(c) Rights to attend; discuss; speak; be heard; and have auditor's report read

(i) Every member has a right to "attend" and to "speak" on any resolution before a meeting[19]. Proxies have similar rights to attend, speak and vote[20].

(ii) Directors of public companies have the right to be "heard orally" at a general meeting on a resolution to remove them[21].

(iii) Auditors have the right to (a) "attend" general meetings and "be heard" on audit matters[22]; and (b) be "heard orally" and require his representations be "read out" at a meeting where a resolution to remove him from office is moved[23].

(iv) The auditor's report on the financial statements shall be "read before the company in general meeting" if any member so requires[24].

(v) Members "present" at statutory meetings are "at liberty to discuss"[25].

(d) Requirement to "lay" certain documents at general meetings

(i) Financial statements[26];

(ii) Revised financial statements[27];

[15] Section 179(1)(b).
[16] Section 179(1)(c)(i).
[17] Section 184(1).
[18] Section 175A(2).
[19] Section 180(1).
[20] Sections 181(1); 181(1C); and 181(1D).
[21] Sections 152(2) and 152(3).
[22] Section 207(8).
[23] Section 205(6).
[24] Section 207(7).
[25] Section 174(7).
[26] Section 201(1).
[27] Regulation 7(1)(c) of the Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2018.

(iii) Statement on directors' emoluments[28]; and

(iv) Statement on auditor's emoluments[29].

(e) Requirement to produce" certain things at general meetings

(i) Register of directors' and chief executive officers' shareholdings[30]; and

(ii) List showing the names and addresses of the members and the number of shares held by them, at statutory meetings[31].

13. To give companies the flexibility to hold digital general meetings, the CAWG recommends that the CA should be amended to expressly clarify that digital meetings can be held. The provision setting this out should be neutral with respect to the type of technology that is used to hold the meetings, and allow companies to decide whether and how to hold digital general meetings, by providing specifically for this in the constitution. For example, companies should be left to decide whether their chosen mode of technology (e.g. audio and/or visual) allows for the satisfactory identification of attendees and speakers at their digital general meetings. The provision should also allow a digital general meeting to be held in multiple locations.

14. CAWG's recommendation is therefore that an enabling provision be introduced into the CA which clarifies that general meetings can be held digitally using any technology and in more than one location, unless the company's constitution otherwise provides. The CAWG noted that Australia[32], Hong Kong[33], Malaysia[34], New Zealand[35] and the UK[36] all have express provisions in their companies legislation that address digital general meetings, so the recommendation would put Singapore in line with these jurisdictions. In view of the provisions identified in paragraph 12, the CAWG also recommends that it may be necessary to amend certain provisions to address any ambiguity as to how shareholders' rights may apply to digital meetings. With respect to the holding of digital general meetings by listed companies, SGX should decide whether and what other rules should be prescribed under the SGX Listing Rules.

15. The CAWG noted that the rights of members with respect to digital general meetings should be safeguarded, and that members should have an avenue for redress where the meetings did not adequately provide for their rights, but the safeguard would need to be appropriately scoped so as to avoid abuse by members. For example, a member may challenge that a digital general meeting was not validly held on the grounds that the broadcast of the meeting was incomplete due to patchy video streaming, ineffective audio quality or a system glitch during electronic voting. In these examples, a company may find it challenging to rebut allegations made against it by members.

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[28] Section 164A(1).
[29] Section 206(1).
[30] Section 164(11).
[31] Section 174(6).
[32] Section 249S of the Corporations Act 2001.
[33] Section 584 of the Companies Ordinance.
[34] Section 327 of the Companies Act 2016.
[35] Paragraph 3 of Schedule 1 to the Companies Act 1993.
[36] Section 360A of the Companies Act 2006.

16. In this regard, the CAWG noted that section 392(3) currently already allows members to apply to the Court to invalidate a proceeding (including a general meeting[37]), and this safeguard should continue to apply to digital general meetings. Section 392(2) provides that a proceeding is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid. In determining whether there was substantial injustice, it has been held that the Court would apply these principles: (a) there must be a direct link between the procedural irregularity and the injustice suffered; (b) the injustice must be "substantial" in that it was real rather than theoretical or fanciful; and (c) the aggrieved party must show that there may or could have been a different result, if not for the occurrence of the procedural irregularity[38].

17. The CAWG observed that the threshold for invalidation under section 392 that is applied by the Court is a high one. This addresses potential cases of abuse where shareholders make unmeritorious applications under section 392 to invalidate a digital general meeting, provides greater certainty to companies that intend to hold digital general meetings, and strikes a balance between the right of a company to hold digital general meetings and safeguarding the rights of shareholders.

Recommendation 1.3

The CA should be amended to introduce an enabling provision that clarifies that unless the constitution provides otherwise, a company may hold general meetings digitally and in more than one location. It may be necessary to amend certain specific provisions in the CA to address any ambiguity as to how shareholders' rights may apply to digital meetings.

Recommendation 1.4

The existing right under section 392(3) to apply to court to declare proceedings at a general meeting to be void should apply to general meetings held using digital means.

(b) Digital board meetings

18. The CA does not regulate the conduct of board meetings and does not address the medium that can be used to hold board meetings.

19. The CAWG observed that Singapore's approach of not regulating the conduct of board meetings is aligned with that in Hong Kong and the UK. In contrast, Australia[39], Malaysia[40] and New Zealand[41] regulate board meetings and have rules regulating how digital board meetings are to be held. To avoid doubts over whether the CA allows board meetings to be

[37] *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 at [55].
[38] *Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 at [75].
[39] Part 2G.1 of the Corporations Act 2001.
[40] Section 212 and the Third Schedule to the Companies Act 2016.
[41] Section 160 and Schedule 3 to the Companies Act 1993.

held digitally, the CAWG recommends introducing an enabling provision which clarifies that nothing in the CA prohibits board meetings from being held digitally.

> **<u>Recommendation 1.5</u>**
>
> The CA should be amended to introduce an enabling provision which clarifies that nothing in the CA prohibits board meetings from being held digitally.

(c) Mandatory acceptance of proxy instructions given by electronic means

20. Section 181, which applies to the appointment of proxies, does not prescribe how the instrument for appointing a proxy should be submitted to the company. In practice, this is left to be stipulated by the company in its constitution. The CAWG noted that with the current provision for proxy forms being left to be stipulated by the company in its constitution, the default position often required shareholders to deposit physical proxy forms at the company's registered office. This practice tends to discourage shareholder engagement, as it makes it less convenient for shareholders to appoint proxies. In line with the initiative to enable companies to use technology to hold digital meetings, and to make it easier for shareholders to appoint proxies to exercise their votes, the CAWG recommends that it should be mandatory for all companies to accept proxy appointments given by electronic means, and that the CA should provide for this rather than leaving this matter to be stipulated in the constitution.

21. The CAWG also considered whether the CA should be amended to include provisions relating to measures that companies should put in place to ensure the authenticity of the proxy forms. The CAWG took the view that this issue should be left to the company to address so as to avoid making the CA too prescriptive.

> **<u>Recommendation 1.6</u>**
>
> The CA should be amended to make it mandatory for all companies to accept proxy instructions given by electronic means instead of leaving this to be stipulated in the company's constitution.

IV. APPLICATION OF EXISTING DIGITALISATION PROVISIONS TO DOCUMENTS UNDER THE COMPANIES ACT

(a) Documents sent by companies or directors to members, officers or auditors and the keeping and inspection of company records

22. The CA presently contains provisions that address the use of digital means with respect to (a) documents sent by companies or directors to members, officers or auditors, and (b) the keeping and inspection of company records.

23. For such documents, section 387B provides that companies and directors may use electronic communications to give, send or serve to the current address of members, officers

or auditors of the company "any accounts, balance-sheet, financial statements, report or other document[42]" required or permitted to be "given, sent or served" under the CA or the company's constitution by the company or the directors to these persons. The same document is treated as sent by electronic communications where it is published on a website and, *inter alia*, the company and the person have agreed in writing to the person having access to documents on the website and the person is notified of the website address[43]. Section 387C provides that companies and directors may send the same documents[44] to members using electronic communications with the express, implied or deemed consent of the member in accordance with the company's constitution.

24. With respect to company records, companies and foreign companies may keep in electronic form (under section 395) and make available for inspection (under section 396A) "company records", defined as "any register, index, minute book, accounting record, minute or other document[45] required by [the CA] to be kept" by the company/foreign company.

25. The CAWG noted that as presently drafted, sections 387B, 387C, 395 and 396A may not apply to (a) all documents that the CA requires or permits companies or directors to send to members, officers or auditors; and (b) all company records that the CA requires companies to keep and make available for inspection. For sections 387B and 387C, the wording used to define the documents that may be sent pursuant to these sections may not be wide enough as these sections use the term "given, sent or served", while the other provisions in the CA may use different terms (e.g. "issue")[46] when referring to the transmission of documents. For sections 395 and 396A, the definition of "company records" may not cover all documents that the CA requires companies and foreign companies to keep or make available for inspection[47].

26. The CAWG therefore recommends amending sections 387B, 387C, 395 and 396A to apply to (a) all documents that the CA requires or permits companies or directors to send to members, officers or auditors[48] and (b) all documents that the CA requires companies and foreign companies to keep or make available for inspection. To effect this recommendation, specific provisions of the CA may need to be consequentially amended[49].

[42] Section 4(1) defines "document" as: "includes summons, order and other legal process, and notice and register".
[43] Section 387B(2).
[44] Except any notice or document relating to (a) any take-over offer of the company; or (b) any rights issue by the company: regulation 89D of the Companies Regulations.
[45] Section 4(1) defines "document" as: "includes summons, order and other legal process, and notice and register".
[46] Examples of documents that section 387B and 387C may not apply to include: (a) copies of documents (sections 186(2); 189(2); 203(3); 206(1); and 215C(5)); (b) notifications (section 184E(1)); (c) requests (sections 173B(3); and 211(4)); (d) statements (section 215(2)); and (e) statutory reports (section 174(2)).
[47] Examples of documents that may not be covered include: (a) auditor's reports (section 207(7)); (b) certified translations (section 397(2)); (c) copies of documents (sections 22(4); 76D(7); 76DA(4); 76DA(6); 78B(4); 78C(4); 138(1); 138(3); 173C; 201AA(1); 215C(5); and 368(3)); (d) documentary evidence (section 173C); (e) instruments (sections 138(1) and 138(3)); (f) lists of share certificates or debentures (sections 128(6) and 130AA(5)); (g) reports (section 210(8)); (h) solvency statements (sections 87B(4) and 78C(4)); (i) statements (section 173C); and (j) written memorandums (section 76D(7)).
[48] For avoidance of doubt, the current exclusion of any notice or document relating to (a) any take-over offer of the company; or (b) any rights issue by the company from the ambit of section 387C should continue to be retained.
[49] For example, the references to "printed cards or forms" under regulations 3(1)(f) and 4(3) of the Companies (Summary Financial Statement) Regulations may be read to mean that such documents cannot be sent using electronic communications or websites, and will need to be amended accordingly to permit digital versions to be sent.

Recommendation 1.7

Sections 387B (relating to documents sent to members, officers or auditors) and 387C (relating to documents sent to members) should be amended to apply to all documents that the CA requires or permits companies or directors to send to members, officers or auditors.

Recommendation 1.8

Sections 395 and 396A (relating to keeping and inspection of company records) should be amended to apply to all documents that the CA requires companies and foreign companies to keep or make available for inspection.

(b) Documents sent between companies or directors and other parties

27. The CA requires or permits –

(a) companies or directors to send certain documents or debentures to persons who are not members, officers or auditors[50]; and

(b) persons (including members, officers or auditors) to send certain documents or debentures to companies or directors[51],

[50] Examples include: (a) certificates (section 364(1)); (b) consents (section 195(2)); (c) copies of documents (sections 76(10)(c) and (f); 76(10)(d) and (g); 93(6); 138(3A); 196(4); 203(3); 205(12); 211(3); and 215C(5); and regulation 4(3) of the Companies (Summary Financial Statement) Regulations); (d) copies of register (sections 88(3); 93(5); 164(9); and 192(3)); (e) notices (sections 33(3); 76(10)(c) and (f); 76(10)(d) and (g); 76A(2); 128(3); 129(1); 129(2); 129(3); 130AA(2); 130AB(1); 130AB(2); 211(1); 215D(3); 386AG; 386AH; and 386AI; and regulation 4(3) of the Companies (Summary Financial Statement) Regulations); (f) notifications (section 183(4B)); (g) printed cards or forms (regulations 3(1)(f) and 4(3) of the Companies (Summary Financial Statement) Regulations); (h) requests (section 211(4)); (i) requirements (section 125(2)); (j) revised financial statements (regulations 7(1)(a) and 7(1)(b) of the Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2018); (k) statements (section 211(1)); and (l) summary financial statements (regulation 3(1)(f) of the Companies (Summary Financial Statement) Regulations). The CA also requires companies to have ready for delivery debentures that are allotted or transferred (sections 130AE(1); and 130AE(2)), and to issue duplicate certificates or documents in lieu of the certificate or other document of title to debentures where these are lost or destroyed (section 125(1)).

[51] Examples include: (a) applications (sections 125(1); 129(3); 130AB(2); and 138(3A)); (b) certificates (section 209(1)); (c) copies of documents (sections 183(4) and 215(4)); (d) demands (section 215(2)); (e) documents (sections 184A(5); and 209(1)); (f) elections (regulations 4(1) and 5(3) of the Companies (Summary Financial Statement) Regulations); (g) information (sections 173B(1); 173B(2); 173B(4); and 386AL); (h) instruments of transfer (sections 128(3); 130AA(2); and 215(4)); (i) financial statements (section 209(1)); (j) notices (sections 82(1); 83(1); 84(1); 130AE(4); 145(4A); 156(1); 156(6); 164A(1); 165(1); 184D(1); 185; 201A(3); 203(4); 203(4A); 205(12); 205AA(1); 205AB(1); 205AC(3)(b); 205B(6); 206(1); 211(4); 216A(3)(a); 364(4); 386AJ(1); and 386AK(1)); (k) notifications (sections 173E(1); 205AB(1); 386AJ(1); and 386AK(1); and regulations 3(1)(e), 3(1)(f), 4(1), 4(3) and 5(1)(b) of the Companies (Summary Financial Statement) Regulations); (l) proper instruments of transfer (sections 126(1); 127; and 130(1)); (m) reports (sections 207(1A); 209(2); and 210(8); and regulation 10(4) of the Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2018); (n) representations in writing (sections 152(3); and 205(5)); (o) requests (sections 88(3); 93(5); 93(6); 128(1); 128(3); 130AA(1); 130AA(2); 164(9); 186(2); 189(2); 192(3); 195(3); 201B(7); 203(3); 205(5); and 215C(5); and regulation 7(1)(b) of the Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2018); (p) requirements (sections 40; and 207(5)); (q) requisitions (sections 176(2); 183(1); and 183(4A)); (r) statutory

but does not address the use of electronic communications to send these documents or debentures[52].

28. The CAWG observed that in the fast moving space of electronic communications, it would be preferable for the CA not to be too prescriptive in this area, especially since in practice electronic communications are already being used to send documents. The CAWG noted that the current rules in sections 387A to 387C are very specific (e.g. distinguishing between express, implicit and deemed consent) and took the view that a similar application of these rules to the circumstances described in paragraphs 27(a)-(b) may make the new rules unnecessarily complex. The CAWG took the view that as compared to the case where a company was sending documents to its members, officers or auditors using electronic communications (which is regulated by sections 387A to 387C), there was no need to be as prescriptive on the rules regulating how documents may be sent using electronic communications to other persons. In the case of sending documents or debentures to persons who are not members, officers or auditors, these persons do not share a close nexus to the company, and communications with them tend to be more ad hoc. In the case of the company receiving certain documents or debentures from individuals, the company could decide and indicate to the sender in each case whether it wanted to receive documents from persons electronically or physically, so there was no need for this to be provided for in the CA.

29. The CAWG therefore took the view that in both cases, there was no need for prescriptive rules to be provided in respect of using electronic communications and recommends that a document may be sent using a mode of electronic communication (including via publication on website) in the circumstances described in paragraphs 27(a)-(b), so long as there is an agreement, whether express or implied, between the parties for the document to be sent using that mode of electronic communication[53]. For example, where a company's constitution provides that members may send documents to the company using a specific mode of electronic communications, the provision in the constitution would constitute an agreement between the company and the members on the use of that mode of electronic communication by the members to send documents to the company, because the constitution constituted an agreement between the company and the members *inter se*[54]. An example of an implied agreement is where one party (e.g. the company) provides an electronic address to the other party for the purpose of receiving a document from the other party, or where there is an established course of dealing between the parties to send and receive documents via electronic mail. This recommendation to base the rules on an agreement between the parties will bring Singapore's position in line with that in Hong Kong[55] and the UK[56], where the provisions in

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declarations (section 125(1)); (s) undertakings in writing (section 125(1)); and (t) written statements(section 205AB(1)). The CA also requires companies to, upon the request of the transferor of a debenture, require the person having the possession, custody or control of the debenture to deliver or produce it to the office of the company (sections 128(3); and 130AA(2)).

[52] Sections 387B and 387C do not apply with respect to persons who are not members, officers or auditors. The CA only addresses the service of documents by leaving at the relevant address or by post/registered post on (a) companies (section 387); (b) directors, chief executive officers and secretaries (section 173(14)); and (c) auditors (section 173(15)); and the addressing of communications and notices to the registered offices of companies (section 142(1)).

[53] To effect the recommendation, certain provisions may need to be consequentially amended. For example, regulations 3(1)(f) and 4(3) of the Companies (Summary Financial Statement) Regulations uses the words "any postage necessary for its return" and "marking a box" and section 209(2) use the words "by post", which suggest that only non-digital means are allowed to send the relevant documents.

[54] See section 39(1).

[55] Sections 828 and 831 of Hong Kong's Companies Ordinance.

[56] Part 3 of Schedule 4 and Parts 3 and 4 of Schedule 5 to the UK's Companies Act 2006.

these jurisdictions that address the sending of documents in electronic form are premised on an agreement between the relevant parties.

30. As to whether the existing rules under sections 387A to 387C should be amended to adopt a similar approach such that the provision of an electronic mail address by the recipient and the sending of a document to that electronic mail address by the sender could be taken as agreement to that mode of sending, the CAWG took the view that the situation of a company or director sending out documents to a member, officer or auditor was much more complex than the reverse situation. For instance, while a company that received a document sent by a person to an electronic address provided by the company to the person for that purpose must have agreed to being sent the document at the electronic address, in the reverse scenario where a company sought to send a document using electronic communications to a member, officer or auditor, there was a need to ensure that the person could choose whether he or she wanted to receive the document electronically or physically from the company, so more prescriptive rules were appropriate for such a scenario. In this regard, the CAWG observed that consistent with this view, the Steering Committee had recommended several safeguards in its recommendation which were implemented in section 387C[57]. For example, any document relating to any take-over offer of the company or any rights issue by the company are not allowed to be sent by the company to members, officers or auditors using electronic communications under section 387C because such documents contained important procedural instructions and forms or acceptance letters that needed to be completed by the members and it might be necessary for companies to send physical copies of such documents to the members[58]. The CAWG therefore recommends that the current sections 387A to 387C in respect of the electric transmission of notice and documents by a company or its directors to members, officers or auditors of the company should be retained.

[57] See Recommendation 2.20 and page 2-25, paragraph 102(c) of the SC Report.
[58] Page 2-24, paragraph 100 of the SC Report.

Recommendation 1.9

The CA should be amended so that a document may be sent using a mode of electronic communication (including via publication on website) by (a) companies or directors to persons who are not members, officers or auditors of the company; (b) members, officers, or auditors to companies or directors; and (c) persons who are not members, officers, or auditors to companies or directors, where in each case there is an agreement between the parties for the document to be sent using that mode of electronic communication.

Recommendation 1.10

For the avoidance of doubt, an agreement may be constituted between the company and its members by a company's constitution such that if the constitution provides that all members may send a document to the company through a particular mode of electronic communications, the members may send a document using that mode of electronic communications to the company.

Recommendation 1.11

The current sections 387A to 387C in respect of the electronic transmission of notice and documents by a company or its directors to members, officers or auditors of the company should be retained.

V. OTHER AREAS CONCERNING DIGITALISATION

31. The CAWG also considered other areas in the CA in respect of digitalisation, namely:

(a) court-ordered meetings under section 210;

(b) common seals;

(c) certain things made by companies, directors, members, auditors or accounting entities (e.g. debentures; certificates; declarations; reports);

(d) the sending of documents between certain persons (e.g. transferees; auditors; officers; Minister); and

(e) the sending of documents by foreign companies using digital means.

32. For paragraph 31(a), the CA provides that where a compromise or arrangement is proposed, the Court may, upon application by, *inter alios*, the company, its creditors or members, order a meeting of creditors, members or holders of units of shares to be summoned in such manner as the court directs[59]. The CA does not directly address the medium that can be used to hold such meetings, but some provisions may be interpreted to require physical

[59] Section 210(1).

meetings[60]. The CAWG observed that it is the Court that orders such meetings to be summoned in such manner as the Court directs, and such a meeting may lead to adjustment of rights and liabilities between the company and members, creditors and/or holders of units of shares. The CAWG also noted that the companies legislation of Australia, Hong Kong, Malaysia, New Zealand and the UK do not address whether the equivalent meetings in these jurisdictions may be held using digital means.

33. For paragraph 31(b), the CA contains numerous provisions on the seals of companies and foreign companies[61], but does not address whether the seal can take a digital form. The CAWG noted that the recent Companies (Amendment) Act 2017 amended the CA to remove the requirement for a company to use a company seal and allow companies to execute documents by having them signed by authorised persons. A survey of the companies legislation of Australia, Hong Kong, Malaysia, New Zealand and the UK revealed that these jurisdictions do not address whether the company seal can take a digital form. The CAWG has not come across the concept of a digital seal and noted that the concern in practice is mainly with respect to electronic signatures. Even if the concept of a digital seal is possible, the CAWG took the view that the proliferation of seals in digital form should not be encouraged.

34. For paragraph 31(c), the CA allows or requires certain things (e.g. debentures; certificates; declarations; reports) to be made by companies, directors, members, auditors or accounting entities[62], but do not address whether these things can be made in digital form. The CAWG took the view that the CA already allows these things to be made in digital form and the digital forms of such things are already accepted as a matter of practice.

35. For paragraph 31(d), the CA allows or requires certain documents to be sent between persons (e.g. transferees; auditors; officers; Minister)[63], but does not address the sending of such documents using digital means. The CAWG noted that the CA's provisions in this area are ad hoc and eclectic with no direct connection to the company, and the provisions addressing

[60] For example, creditors or members "present and voting either in person or by proxy at the meeting" may make the compromise or arrangement binding (section 210(3AB)) or adjourn the meeting (section 210(3)), and on the day of the meeting but before the meeting, the chairman of the meeting must provide a "physical copy" of an updated list of creditors to every creditor whose proof of debt is admitted for the purposes of voting at the meeting and who is "present (whether in person or by proxy) at the venue of the meeting"(regulation 7(1) of the Companies (Proofs of Debt in Schemes of Arrangement) Regulations 2017).

[61] Sections 41(3); 41(4); 41(5); 41(7); 41(8); 41A; 41B; 123(1); 123(2); 124; 179(5); and 382. For example, section 41(3) provides that contracts may be made on behalf of a corporation in writing under the common seal of the corporation, while section 123(2) provides that every share certificate shall be under the common seal of the company.

[62] For example, companies may make advertisements (section 201(17)); amalgamation proposals (section 215B); certificates (sections 135(1); 179(5); and 364(1)); certifications (section 130AD(1)); consents (section 195(2)); copies of notice (section 135(1)); debentures (section 135(1)); documents (section 201(17)); and statements (sections 135(1); 164A(1); and 206(1)). Directors may make certificates (section 76A(6)); declarations (sections 215C(3) and 215D(6)); revised financial statements (section 202A); and solvency statements (sections 7A; 215I(2); and 215J(1)). Members may make agreements (section 39(3)); appointments (section 74(3)); and consents (section 195(2)). Auditors may make reports (sections 7A(2)(b) and 215I(2CA; and regulation 10(1) of the Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2018). Accounting entities may make agreements (regulation 10(2)(b) of the Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2018); and consents (sections 10(3)-(4)).

[63] Examples of such documents include: elections (section 215(1A)); explanations (sections 207(5); and 207(6)); forms of appointment (section 181(4)); information (sections 207(5); 207(6); and 244(1)); lists (section 181(4)); notices (sections 86(1); 205AC(3)(b); and 215(3)(b)); reports (section 207(9A)); requests (section 181(4)); and requirements (sections 207(5)-(6)).

the use of digital means to send documents in jurisdictions such as Australia, Hong Kong, Malaysia, New Zealand and the UK only address the sending of documents to and from the company.

36. For paragraph 31(e), the CA contains several provisions relating to documents sent in relation to foreign companies[64], but does not address the sending of such documents using digital means[65]. The CAWG noted that foreign companies are governed primarily by the law of their incorporating jurisdictions such that any proposed amendment to address the sending of documents in relation to foreign companies using digital means may potentially contradict foreign law, and the provisions addressing the use of digital means to send documents in jurisdictions such as Australia, Hong Kong, Malaysia, New Zealand and the UK only address their domestic companies and not their equivalents of foreign companies.

37. For the forgoing reasons, the CAWG recommends that the CA should not be amended to address the other areas concerning digitalisation identified in paragraph 31.

38. However, the CAWG suggests that views via public consultation be sought on whether there are any processes peripheral to the company's own transactions which could hamper companies' digitalisation efforts, such as the audit process, which may require a company to keep certain records in non-electronic form.

[64] For example, the CA requires foreign companies to send certain information to directors or authorised representatives (sections 368A(1); 368A(2); and 368A(3)). The CA permits foreign companies to send certain requests to its director or authorised representative (sections 368A(3) and 368A(4)). The CA permits a sole authorised representative to send certain notices and written requests to the foreign company (section 377(10)). The CA also requires (a) auditors of a borrowing corporation that is a foreign company to send "any financial statements or any report, certificate or other document" (section 209(1)) and a report in writing (section 209(2)) to the foreign company; and (b) foreign companies to send notices to persons (sections 386AG; 386AH; and 386AI), and registrable controllers to notify foreign companies (sections 386AJ(1) and 386AK(1)), in respect of the register of controllers.

[65] The CA only addresses (a) the service of documents required by the CA on a director or an authorised representative of a foreign company by leaving at or by post to the residential/alternate address (section 368(2)); (b) the service of documents on a foreign company by leaving at or by post to the registered office or the address of an authorised representative (section 376); and (c) the addressing of communications and notices to the registered offices of foreign companies (section 370(1)).

Recommendation 1.12

The CA should not be amended to address:

(a) whether and how court-ordered meetings under section 210 may be held digitally;

(b) digital common seals;

(c) certain things made by companies, directors, members, auditors or accounting entities (e.g. debentures; certificates; declarations; reports);

(d) the sending of documents between certain persons (e.g. transferees; auditors; officers; Minister); and

(e) the sending of documents by foreign companies using digital means.

Recommendation 1.13

Views via public consultation should be sought on whether requirements relating to the audit process or other company processes may hamper companies' digitalisation efforts.

CHAPTER 2

TYPES OF COMPANIES AND FINANCIAL REPORTING

I. INTRODUCTION

1. The CA sets out different types of statutory obligations for different types of companies. Over the years, more types of companies were added, with correspondingly varied sets of statutory obligations (including financial reporting obligations). There has been feedback that the numerous permutations of company types and corresponding obligations can cause confusion and may be difficult to understand or grasp, as well as feedback to review the distinction between public and private companies.

2. In the light of this feedback, the CAWG undertook a review of the existing company types generally and in particular, in respect of the financial reporting requirements in the CA. The objective of the review was to consider if the types of companies need to be updated and whether certain company types could be streamlined.

II. REVIEW OF EXISTING COMPANY TYPES

(a) Public and private companies

3. Presently, the CA defines a public company as a company other than a private company[66], and a private company is a company limited by shares which constitution (a) restricts the right to transfer its shares; and (b) limits to not more than 50 the number of its members[67]. Public companies are subject to stricter obligations compared to private companies under the CA. For example:

(a) Public companies are required to keep their own registers of members[68].

(b) The company secretary of a public company must be physically present at the company's registered office[69].

(c) Members of a public company may remove its directors by ordinary resolution, regardless of the constitution[70].

(d) Directors of public companies must appoint qualified company secretaries[71].

(e) Public companies must pass special resolutions to issue shares with different voting rights[72].

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66 Section 4(1).
67 Section 18(1).
68 Section 190. ACRA maintains the register of members for private companies: section 196A.
69 Section 171(3).
70 Section 152(1).
71 Section 171(1AA).
72 Section 64A.

(f) Public companies are prohibited from giving financial assistance for dealings in its shares[73].

4. The public/private company distinction has existed since the CA was first introduced in 1967[74]. Back then, a private company was defined as a company having a share capital which memorandum or articles (a) restricts the right to transfer its shares; (b) limits to not more than fifty the number of its members; (c) prohibits any invitation to the public to subscribe for any shares in or debentures of the company; and (d) prohibits any invitation to the public to deposit money with the company[75]. A public company was defined as a company other than a private company[76], which includes a company limited by guarantee and a company limited by shares that does not qualify as a private company. This position is essentially taken from that under the English Companies Act 1948[77] and the Victoria (Australia) Companies Act 1961[78].

5. Since 1967, the criteria for public and private companies have only been amended once. In 2004, criteria (c) and (d) were deleted[79] to implement Recommendation 1.5 of the CLRFC Report. The intention was to remove the prohibition against private companies raising capital from the public without converting to public companies, so long as these private companies fulfil the disclosure requirements under the SFA[80]. With the removal of these criteria, and with the regulation of raising capital being moved to the SFA, a question that arises is whether the distinction between private and public companies is still significant, and if it should continue to be based on the current criteria of the number of its members and a restriction on the right to transfer shares. ACRA has received public feedback on this issue.

6. The CAWG observed that the current terms and criteria of public and private companies are well-established and understood by the public and businesses, as well as entrenched in Singapore's legislation. Any amendment may generate confusion, affect other legislation which refer to public and/or private companies, and therefore require extensive transitional arrangements.

7. The CAWG considered the companies legislation of jurisdictions such as Australia[81], Hong Kong[82], Malaysia[83] and the UK[84] and observed that these jurisdictions retain some version of the public/private company distinction. With respect to the current criteria in the CA which uses the number of shareholders as the key distinction between public and private companies, it is in line with the positions in Australia, Hong Kong and Malaysia. For private companies, like Singapore, both Malaysia and Hong Kong have the criteria of (a) restricting

[73] Section 76.
[74] The provisions of the CA were drafted based on those in the English Companies Act 1948 and the Victoria (Australia) Companies Act 1961: paragraph 01.017 of Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015).
[75] Section 15(1) of the Companies Act 1967.
[76] Section 4(1) of the Companies Act 1967.
[77] See sections 28 of the UK's Companies Act 1948.
[78] See sections 5 and 15 of the Victoria (Australia) Companies Act 1961.
[79] Section 6 of the Companies (Amendment) Act 2004.
[80] *Singapore Parliamentary Reports, Official Reports* (6 Feb 2004) vol 77 at col 377 (Lim Hng Kiang, Second Minister for Finance).
[81] Australia's Corporations Act 2001 distinguishes between proprietary companies and public companies.
[82] Hong Kong's Companies Ordinance distinguishes between public companies, companies limited by guarantee, and private companies.
[83] Malaysia's Companies Act 2016 distinguishes between public and private companies.
[84] The UK's Companies Act 2006 distinguishes between public and private companies.

the right to transfer shares and (b) limiting the number of members to not more than 50. Australia has criterion (b), and the criterion of (c) not offering securities to the public, which Hong Kong and the UK both also have[85].

8. On whether any of the obligations that apply to public or private companies needs to be changed to address concerns that certain public/private companies should be subject to less/more rigorous obligations (e.g. non-listed public companies), the CAWG took the view that this would be better addressed based on feedback on each specific obligation. In this regard, the CAWG noted that adaptations have already been made in the CA to provide for less stringent requirements for certain groups of public companies where appropriate. For example, unlisted public companies are allowed to pass any resolution by written means similar to private companies[86], and non-listed public companies are subject to the same timelines for holding AGMs and filing annual returns ("ARs") as private companies[87].

9. Based on the foregoing, the CAWG recommends maintaining the status quo for public and private companies.

Recommendation 2.1

The current terms and criteria of public and private companies should be maintained.

(b) Companies limited by guarantee

10. A company limited by guarantee ("CLG") is defined as a company formed on the principle of having the liability of its members limited by the constitution to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up[88]. CLGs are a subset of the public company type, so they are subject to the same obligations that apply to public companies.

11. The CAWG noted that the current number of CLGs in Singapore is about 3,000, which is small, especially when compared to the total number of companies in Singapore which is about 300,000[89]. The CAWG surveyed the approaches towards CLGs in jurisdictions such as Australia, Hong Kong, Malaysia and the UK, and observed that Singapore's current position of treating all CLGs as public companies is similar to that in Australia and Malaysia. CLGs are treated as private companies in the UK, while in Hong Kong, CLGs are a third type of company separate from private and public companies. The CAWG took the view that adopting Hong Kong's approach of a separate category of CLGs may create confusion. The CAWG also did not recommend adopting the UK's approach, which would require a review of each specific obligation in the CA to determine how that obligation should apply to CLGs. There had not been any specific feedback received that such a review was necessary.

[85] Singapore used to have criterion (c); in 2004, the prohibition against a private company making any invitation to the public to subscribe for its shares or debentures was removed for the expressed policy objective of allowing private companies to make such invitations without having to convert into public companies.
[86] Section 184A(1).
[87] Sections 175(1)(b) and 197(1)(b).
[88] Section 4(1).
[89] ACRA's webpage on entity count: < https://www.acra.gov.sg/training-and-resources/facts-and-figures/entity-count-in-2018-and-2019>

12. Given that there is no compelling reason for any change to the current term and criteria of CLGs, the CAWG recommends maintaining the status quo for CLGs.

<u>Recommendation 2.2</u>

The current term and criteria of companies limited by guarantee should be maintained.

(c) Exempt private companies

13. An exempt private company ("EPC") is defined as (a) a private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members; or (b) any private company, being a private company that is wholly owned by the Government, which the Minister, in the national interest, declares by notification in the Gazette to be an EPC[90].

14. An EPC is a subset of the private company type. An EPC is subject to the same obligations as a private company, except that it:

(a) is not required to file financial statements with ACRA, if it is solvent[91];

(b) may make certain restricted transactions (e.g. loans to directors) without being required to fulfil the relevant conditions[92];

(c) may make loans and quasi-loans to, and enter into credit transactions for the benefit of, persons connected with directors of the company, etc, without prior approval of the general meeting[93]; and

(d) may take part in an arrangement under which a third party receives a benefit from the company which would have been caught under (c) had the third party entered into the transaction with the company, without prior approval of the general meeting[94].

15. The CAWG observed that the EPC type has existed since the introduction of the CA in 1967 and a substantial number of companies are EPCs. The CAWG noted the various advantages that EPCs benefit from, and that in practice, EPCs do avail themselves of the exemptions. One observation was that the removal of the current exemptions from the general prohibitions on certain conflicted transactions may improve these EPCs' corporate governance, especially given that EPCs in today's context may include not only closely-held family-run companies.

[90] Section 4(1).
[91] Regulation 36(1)(c)(i) of the Companies (Filing of Documents) Regulations.
[92] Section 162(2).
[93] Section 163(1).
[94] Section 163(3A).

16. The CAWG also noted that the UK, which previously had a similar concept of an EPC[95], had long since abolished this company type[96], although Malaysia continues to retain the EPC type[97]. Given the local context where the EPC type is well-entrenched, removing the EPC type will result in the EPC vehicle no longer being available for use by businesses and the CAWG was mindful of the potential impact of any such change on the business community. There were concerns that abolishing the EPC type would constitute a significant change in practice, and may make the use of the Singapore company vehicle restrictive and unattractive. There has also been no feedback that the EPC type has resulted in governance challenges.

17. On balance, the CAWG took the view that there are no compelling reasons for abolishing the EPC type and therefore recommends retaining the status quo on EPCs.

Recommendation 2.3

The current term and criteria of exempt private companies should be maintained.

(d) Listed companies and unlisted public companies

18. The CA contains numerous references to the concept of being listed on an exchange. For the purpose of this section of the Report and its accompanying recommendation, the term "listed company" is used to encompass all references to companies in the CA that use the concept, namely:

(a) a company that has been admitted to the official list of an approved exchange in Singapore and has not been removed from that official list[98];

(b) a public company that has been admitted to the official list of an approved exchange in Singapore and has not been removed from that official list[99];

(c) a company listed on a securities exchange in Singapore or any securities exchange outside Singapore[100];

(d) a public company which shares are listed on a securities exchange in Singapore or any securities exchange outside Singapore[101]; and

(e) a company which shares are listed on a securities exchange in a country or territory outside Singapore[102].

[95] Section 129(2) of and the Seventh Schedule to the UK's Companies Act 1948.
[96] Section 2 of the UK's Companies Act 1967.
[97] Section 2(1) of Malaysia's Companies Act 2016.
[98] Sections 76(10)(b)(i); 165(10); 197(1)(a); 201A(5)(a)(i); 201B; and 386AC(c)(iv).
[99] Section 175(1)(a) and paragraph 1(a) of the Fourteenth Schedule.
[100] Sections 76(8)(m); 76C; 76D(1); and 76DA(1).
[101] Section 63(2).
[102] Paragraph 1(f) of the Fourteenth Schedule.

19. Additionally, section 184A(1) uses the term "unlisted public company", which refers to a public company the securities of which are not listed for quotation or quoted on a securities exchange in Singapore or any securities exchange outside Singapore[103].

20. The CAWG observed that the current term and criteria of a listed company continue to be relevant in the CA. For instance:

(a) Companies admitted to the official list of an approved exchange in Singapore are subject to more stringent timelines for AGMs and ARs and cannot be exempted from preparing financial statements, because their shares are publicly listed and traded. This reflects a greater public interest in their information as well as their accountability to shareholders and other stakeholders that deal with these companies. The requirements in the CA for such companies also complements SGX's Listing Rules and MAS's Code of Corporate Governance[104].

(b) Public companies that have been admitted to the official list of an approved exchange in Singapore are not required to keep a register of controllers because they are already keeping a register of substantial shareholders under Part VII of the SFA[105]. Companies whose shares are listed on a securities exchange in a country or territory outside Singapore are not required to keep a register of controllers if they are subject to adequate disclosure requirements on beneficial ownership which are similar to that with respect to the register of controllers[106].

(c) The CA's share buyback provisions on off-market acquisitions, selective off-market acquisitions and contingent purchase contracts allow all companies to engage in such buybacks and refer to a company listed on a securities exchange in Singapore or any securities exchange outside Singapore in order to make it clear that such companies may also engage in such buybacks[107].

21. With respect to the current term and criteria of an unlisted public company, the current position in sections 184A to 184F of allowing unlisted public companies to pass any resolution

[103] Section 184A(1). Section 184A addresses the passing of resolutions by written means.
[104] For example, Rule 707 of the SGX Listing Rules adopts the same 4-month timeline for AGMs and bases the timeline for issuing annual reports on the AGM timeline. Another example is the audit committee: the CA contains the statutory requirement for companies listed on SGX to appoint such a committee, and Rule 210(5)(e) of the SGX Listing Rules (Mainboard) and Rule 406(3)(e) of the SGX Listing Rules (Catalist) similarly requires SGX-listed companies to establish a committee to perform the functions of an audit committee. Principle 10, and provisions 10.1 to 10.5 of MAS's Code of Corporate Governance also require the establishment of an audit committee and sets out the duties and composition of an audit committee, respectively.
[105] See page 2 of Ministry of Finance, *Annex 3 – Key clauses in the draft Companies (Amendment) Bill and consultation questions* (27 December 2016).
[106] See paragraph 24 of Ministry of Finance, *Annex 1 – Summary of feedback and MOF/ACRA's responses on proposed amendments for companies and limited liability partnerships (LLPs) to maintain registers of controllers, and other FATF-related amendments* (24 February 2017).
[107] For example, section 76C(1) on off-market acquisitions states: "A company, whether or not it is listed on an approved exchange in Singapore or any securities exchange outside Singapore, may make a purchase or acquisition of its own shares otherwise than on an approved exchange in Singapore or any securities exchange outside Singapore (referred to in this section as an off-market purchase) if the purchase or acquisition is made in accordance with an equal access scheme authorised in advance by the company in general meeting."

by written means implements Recommendation 2.9 of the SC Report[108]. This was only recently introduced in January 2016.

22. The CAWG therefore recommends to maintain the status quo for listed companies and unlisted public companies.

<u>Recommendation 2.4</u>
The current terms and criteria of listed companies and unlisted public companies should be maintained.

(e) Dormant and dormant relevant companies

23. Under the CA, a dormant company is a company that has no accounting transaction[109] from the time of formation or since the end of the previous financial year[110].

24. Dormant relevant companies ("DRCs") are a subset of the dormant company type: a DRC is a company that (a) has no accounting transaction from the time of formation or since the end of the previous financial year[111]; (b) have lodged with the Registrar together with the AR a statement by the directors that, *inter alia*, the company is dormant[112]; and (c) is not listed and whose total assets during the financial year in question do not exceed $500,000[113].

25. The CA treats dormant companies like any other company and imposes the same obligations on such companies, in most respects. There are two exceptions, both relating to financial reporting: (a) dormant companies are not required to audit[114] their financial statements; and (b) DRCs are not required to prepare[115] financial statements.

[108] Page 2-9, paragraphs 41 to 45 of the SC Report. The Steering Committee recommended that unlisted public companies should be allowed to pass resolutions by written means because (a) many unlisted public companies operated like private companies and the only difference between them was that the former had more than 50 shareholders; (b) unlisted public companies could make use of the process for passing resolutions by written means to make decisions more expeditiously and conveniently and solve the problem of the difficulty in getting members to attend meetings; and (c) the existing safeguards in sections 184A to 184F that apply to the process of passing resolutions by written means already ensure proper corporate governance (e.g. the requirement for directors to send the resolution to all members; the right of members with 5% of voting rights to require a general meeting to be convened for the resolution).

[109] An accounting transaction means a transaction the accounting or other record of which is required to be kept under section 199(1): see section 205B(8). Section 199(1) requires every company to cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements to be prepared. Certain transactions are disregarded, e.g. (a) taking of shares in the company by a subscriber to the constitution; (b) appointment of a secretary or auditor; (c) maintenance of registered office; (d) keeping of registers and books; (e) payment of any fee, charge or composition amount payable under law; and (f) payment or receipt by the company of such nominal sum not exceeding $5,000: see section 205B(3).

[110] Section 205B(1).

[111] Section 201A(2)(a) read with sections 201A(5)(b) and 205B(2)-(3).

[112] Sections 201A(2)(b)-(c).

[113] Section 201A(5).

[114] Section 205B.

[115] Section 201A.

26. The CAWG considered whether the compliance burden on dormant companies could be reduced through exemptions from the following requirements in the CA:

(a) requirement to file AR;

(b) requirement to appoint a company secretary;

(c) requirement to keep a register of controllers; and

(d) requirements on the process of dispensing with AGMs.

27. With respect to paragraph 26(a), the CAWG observed that filing AR ensures annual updating of information on ACRA's register. This is important even for companies with no accounting transactions, because the public and other interested parties use the data on ACRA's register relating to that company (e.g. names of directors; registered office address), which should be kept accurate. Australia[116], Malaysia[117], New Zealand[118] and the UK[119] require all their companies to file their AR-equivalents. The CAWG also noted that preparation of financial statements is required for all companies except for DRCs, to ensure accountability to the shareholders of a company and any third parties which may have agreements or dealings with the company. A dormant company should not find financial statements difficult to prepare if it does not have any accounting transactions. It is also exempted from the audit requirement, which is not necessary if there are no accounting transactions for the year. The additional step of filing the financial statements together with the AR is not unduly onerous once the financial statements have already been prepared. If the company is a solvent EPC, there is no need to file financial statements together with the AR.

28. On paragraph 26(b), the CAWG took the view that there is a public interest in the accuracy of ACRA's registers and filings and the proper maintenance of corporate records[120]. To reduce business costs, CAWG has recommended to remove the current prohibition in the CA against a sole director being appointed as the company secretary[121]. Dormant companies with only one director can therefore save on costs by having the director also concurrently act as a company secretary. Jurisdictions such as Australia[122], Hong Kong[123], Malaysia[124] and the UK[125] do not specifically exempt dormant companies from the requirement of appointing a company secretary.

29. With respect to paragraph 26(c), the CAWG observed that Hong Kong[126] and the UK[127] do not exempt their dormant companies from their corresponding requirements. If dormant

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[116] Section 346A of Australia's Corporations Act 2001.
[117] Section 68 of Malaysia's Companies Act 2016.
[118] Section 214 of New Zealand's Companies Act 1993.
[119] Section 853A of the UK's Companies Act 2006.
[120] In 2002, the CLRFC affirmed this point in its report and recommended that all companies continue to be required by law to appoint company secretaries: see Recommendation 1.15 and paragraph 6.62 of the CLRFC Report.
[121] See Recommendation 3.2.
[122] Sections 204A(1)-(2) of Australia's Corporations Act 2001.
[123] Section 474 of Hong Kong's Companies Ordinance.
[124] Section 235 of Malaysia's Companies Act 2016.
[125] Sections 270 and 271 of the UK's Companies Act 2006.
[126] Sections 653A and 653H of Hong Kong's Companies Ordinance.
[127] Section 790B(1) of the UK's Companies Act 2006 and regulation 3 of The Register of People with Significant Control Regulations 2016.

companies are exempted, these companies will not keep their beneficial ownership information in Singapore, which is likely to affect Singapore's compliance with the standards of the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information.

30. On paragraph 26(d), section 175A presently allows a private company to be exempted from the requirement to hold an AGM where the company (a) passes an unanimous resolution to dispense with the AGM[128] or (b) sends copies of its financial statements to members within the requisite timeline[129], and provided that no member has required the company to hold an AGM[130]. The CAWG considered whether and how the requirements under section 175A may apply to dormant private and/or public companies.

31. The CAWG took the view that since a dormant company (other than a DRC) is required to prepare (but need not audit) financial statements, a dormant company seeking to be exempted from the requirement to hold AGMs should be required to send copies of financial statements to its members. In this regard, section 175A currently already allows a dormant private company (other than a DRC) to be exempted from the requirement to hold an AGM if it sends its financial statement to its members within 5 months of the end of the financial year[131] and no member has requested that an AGM be held not later than 14 days before the last day of the 6th month after the end of the financial year[132].

32. With regard to dormant public companies, the CAWG observed that a distinction could be drawn between dormant listed public companies and dormant non-listed public companies, and took the view that while there would be less concerns with extending the exemption from holding AGMs to dormant non-listed public companies, dormant listed public companies should not be exempted from the requirement to hold AGMs, in view of the accountability that listed companies have to their shareholders and other stakeholders. A similar safeguard of allowing a member to request for an AGM to be held should apply to dormant non-listed public companies.

33. The CAWG therefore recommends retaining the status quo for dormant companies and DRCs, except that dormant non-listed public companies should be exempted from the requirement to hold AGMs if they send their financial statements to members within the same timeline and no member has requested that an AGM be held not later than 14 days before the last day of the 6th month after the end of the financial year.

[128] Sections 175A(1)(a) and 175(2).
[129] Section 175A(1)(b).
[130] Section 175A(4).
[131] Section 175A(1)(b).
[132] Section 175A(4).

Recommendation 2.5

The current terms and criteria of dormant companies and dormant relevant companies should be maintained, except that a dormant non-listed public company should be exempted from the requirement to hold an annual general meeting if it sends its financial statement to it members within 5 months of the end of the financial year and no member has requested that an annual general meeting be held not later than 14 days before the last day of the 6th month after the end of the financial year.

III. PUBLICLY ACCOUNTABLE COMPANIES

34. The CAWG considered whether a new concept of "publicly accountable company", in particular for the purpose of financial reporting, should be introduced into the CA. Such a concept would tailor the applicability of the financial reporting obligations in the CA based on the public interest/accountability of companies to a broader group of stakeholders (e.g. shareholders, creditors). This concept could be more appropriate for the purposes of financial reporting instead of the current distinction between public and private companies, given that the distinction between public and private companies is no longer based on the ability to raise public funds.

35. The CAWG considered that the definition of "publicly accountable company" could draw upon existing definitions in the law, specifically the definition of "public interest entities" used in the Code of Professional Conduct and Ethics for Public Accountants and Accounting Entities in the Fourth Schedule to the Accountants (Public Accountants) Rules (Cap. 2, R 1) ("PA Rules"). The definition of public interest entities encompasses the following entities:

(a) any entity that is listed or is in the process of issuing its debt or equity instruments for trading on a securities exchange in Singapore;

(b) any entity that is incorporated in Singapore and the securities of which are listed on a securities exchange outside Singapore;

(c) any financial institution; and

(d) any entity that is a large charity[133] or large institution of public character[134].

36. On paragraphs 35(a)-(b), the CAWG took the view that a company which securities are listed on a securities exchange in Singapore or overseas should be considered a publicly accountable company, in view of the accountability that they have to their shareholders and other stakeholders.

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[133] A large charity means a charity with gross annual receipts in each financial year of not less than $10 million in the 2 financial years immediately preceding the current financial year of the charity: regulation 2 of the Charities (Large Charities) Regulations (Cap. 37, Rg 9).
[134] A large institution of a public character means an institution of a public character with gross annual receipts in each financial year of not less than $10 million in the 2 financial years immediately preceding the current financial year of the institution of a public character: regulation 20(6) of the Charities (Institutions of A Public Character Regulations) (Cap. 37, Rg 5).

37. With regard to paragraph 35(c), financial institutions are currently defined in the Fourth Schedule to the PA Rules as:

(a) entities that are part of the banking and payment systems, namely:

(i) banks;

(ii) financial institutions approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186);

(iii) operators of designated payments systems;

(iv) holders of widely-accepted multi-purpose stored value facilities (including all holders of multi-purpose stored value facilities in excess of $30 million, whether approved or exempted); and

(v) remittance agents and finance companies.

(b) insurers and insurance brokers;

(c) capital market infrastructure providers, namely:

(i) approved holding companies under the SFA;

(ii) approved exchanges;

(iii) local market operators; and

(iv) designated clearing houses.

(d) capital markets intermediaries, namely:

(i) holders of capital market services licence;

(ii) licensed financial advisers;

(iii) registered fund management companies;

(iv) licensed trust companies; and

(v) approved trustee for collective investment scheme.

38. As financial institutions are key industry players which may pose a systemic risk to Singapore's financial sector, the CAWG took the view that they should be included in the definition of publicly accountable company. This is in line with their inclusion in the PA Rules in respect of the more stringent requirements for the application of the Code of Professional

Conduct and Ethics for Public Accountants and Accounting Entities[135]. The definition of financial institutions should be updated in tandem with any review of the scope of financial institutions by MAS[136]. In this regard, the CAWG noted that MAS had introduced new legislation to regulate entities not currently captured within the definition[137]. The definition should also be amended to facilitate more seamless alignment between the scope of financial institutions in the CA and the scope identified by MAS[138]. Companies which are trustee-managers of listed business trusts[139] should also be included in the definition of financial institutions, because an analogy may be drawn between such companies and listed companies as business trusts are not separate legal entities and while separate financial statements are prepared by business trusts, the trustee-manager has legal ownership of the assets of the business trust. The business trust actively undertakes business operations and is an alternative business structure to a company in that it is allowed to pay dividends out of operating cash flows. Similar to investing in shares of a listed company, investors of a business trust invest in the underlying business by subscribing for the business trust's units.

39. On paragraph 35(d), the CAWG noted that CLGs may be incorporated to undertake charitable or for-profit activities, and if there was a blanket inclusion of all CLGs as being publicly accountable companies, it may drive some companies to set up as companies limited by shares to avoid the additional requirements imposed on CLGs. The CAWG therefore took the view that only CLGs that undertake charitable activities should be considered for inclusion as publicly accountable companies, and preferred this as the test instead of relying on a test based on size used in the PA Rules. The CAWG observed that CLGs which undertake charitable activities must be registered under the Charities Act, regardless of the size of the CLG's gross annual receipts, and such CLGs enjoy automatic income tax exemption and are accountable to donors and taxpayers. Additionally, including such CLGs as public accountable companies would be consistent with the reporting and audit requirements for CLGs registered

[135] For example, paragraph 290.149 of the Code of Professional Conduct and Ethics for Public Accountants and Accounting Entities provides that in respect of an audit of a public interest entity, an individual shall not act in certain roles (e.g. the engagement partner; the individual appointed as responsible for the engagement quality control review) for a period of more than seven cumulative years (the "time-on" period), and after the time-on period, the individual shall serve a "cooling-off" period.

[136] For example, the local market operator regime has been replaced by the recognised market operator regime while the designated clearing house regime has been replaced by the approved clearing house regime and the recognised clearing house regime.

[137] For example, the Payment Services Act 2019 has been passed and will regulate, *inter alia*, standard payment institutions and major payment institutions, which should be included in the definition of financial institutions. As remittance agents will be regulated as either standard payment institutions and major payment institutions, the reference to remittance agents should be removed from the definition of financial institutions. Another example is financial holding companies. They are currently approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186) and are currently captured under the scope of "public interest entities". However, once the Financial Holding Companies Act commences, these companies will be designated as designated financial holding companies and regulated under the Act.

[138] Examples include licensed trade repositories, authorised and exempt benchmark administrators and licensed credit bureaus. The licensing regimes in relation to these entities were introduced recently (the licensing regime for credit bureaus will take effect only after the commencement of the Credit Bureau Act 2016). As MAS requires such entities to submit audited financial statements or appoint auditors to audit their annual accounts, these entities should be included in the definition of financial institutions to avoid misalignment between the requirements in the CA and MAS's requirements.

[139] Under the Business Trusts Act (Cap. 31A), only a company incorporated pursuant to the CA may act as a trustee-manager of a registered business trust, whose business shall be managed and operated solely by the trustee-manager. In addition, the trustee-manager is not allowed to carry on any business other than the management and operation of the registered business trust.

as charities under the Charities Act. The CAWG therefore took the view that the definition of publicly accountable company should be limited to CLGs registered under the Charities Act.

40. The CAWG therefore recommends that the concept of "publicly accountable company" for the purposes of financial reporting should be introduced into the CA, and "publicly accountable company" should be defined as:

(a) a company that is listed or is in the process of issuing its debt or equity instruments for trading on a securities exchange in Singapore;

(b) a company the securities of which are listed on a securities exchange outside Singapore;

(c) a financial institution[140]; and

(d) a CLG registered under the Charities Act.

41. The CAWG also noted that there was a similar concept already existing under the CA, which is that of a "public interest company" for the purposes of sections 205AA and 205AB. A public interest company is defined as a company which is: (a) listed or in the process of issuing its debt or equity instruments for trading on a securities exchange in Singapore; (b) listed or in the process of issuing its debt or equity instruments for trading on a securities exchange outside Singapore; (c) a relevant financial institution[141]; or (d) a charitable company

[140] "Financial institution" is defined as:
(a) entities that are part of the banking and payment systems (namely, licensed banks, financial institutions approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186), operators of payment systems designated under section 42 of the Payment Services Act 2019 (Act 2 of 2019), settlement institutions of payment systems designated under section 42 of the Payment Services Act 2019, persons that have in force a standard payment institution licence granted under section 6 of the Payment Services Act 2019, persons that have in force a major payment institution licence granted or deemed to have been granted under section 6 of the Payment Services Act 2019, and licensed finance companies);
(b) licensed insurers, foreign insurers under Lloyd's Asia Scheme, and registered insurance brokers;
(c) capital market infrastructure providers (namely, approved holding companies, approved exchanges, recognised market operators, approved clearing houses and recognised clearing houses under the Securities and Futures Act (Cap. 289));
(d) capital markets intermediaries (namely, holders of capital market services licence, licensed financial advisers, registered fund management companies, licensed trust companies and approved trustee for collective investment scheme);
(e) licensed trade repositories, authorised and exempt benchmark administrators under the Securities and Futures Act (Cap. 289);
(f) operator of the Central Depository System under the Securities and Futures Act (Cap. 289);
(g) trustee-managers of listed registered business trusts;
(h) designated financial holding companies under the Financial Holding Companies Act 2013 (No. 13 of 2013) (this category is applicable once the Act commences); and
(i) licensed credit bureaus under the Credit Bureau Act 2016 (No. 27 of 2016) (this category is applicable once the Act commences).

[141] "Relevant financial institution" means: (a) a bank licensed under the Banking Act (Cap. 19); (b) a finance company licensed under the Finance Companies Act (Cap. 108); (c) a holder of a financial adviser's licence granted under the Financial Advisers Act (Cap. 110); (d) an insurance broker registered under the Insurance Act (Cap. 142); (e) an insurer licensed under the Insurance Act (Cap. 142); (f) a financial institution approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186); (g) a holder of a remittance licence under the Money-changing and Remittance Businesses Act (Cap. 187); (h) an operator of a designated payment system, as designated under section 7 of the Payment Systems (Oversight) Act (Cap. 222A); (i) an approved holder of a widely accepted stored value facility within the meaning of section 2(1) of the Payment Systems (Oversight) Act

or an institution of public character within the meaning of the Charities Act and has gross annual receipts in each of the immediately preceding two financial years of not less than $10 million[142].

42. The public interest/non-public interest company distinction was introduced via the Companies (Amendment) Act 2014 to implement Recommendations 4.23 and 4.24 of the SC Report. These recommendations proposed that, *inter alia*, (a) 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; and (b) the auditor of a public-interest company should be required to seek the consent of ACRA before he can resign[143]. Before the Companies (Amendment) Act 2014, an auditor of a company may resign only if he is not the sole auditor of the company or at a general meeting of the company[144].

43. The CAWG recommends replacing the current terms and criteria of public interest company and non-public interest company in the CA with the terms and criteria of publicly accountable and non-publicly accountable company. This would align the terms and criteria used for premature auditor resignation with that used for financial reporting, and enable a single term and criteria of publicly accountable company to be applied across the board to (a) financial reporting and (b) premature auditor resignation under the CA. Additionally, it may be considered whether the concept of "public interest entity" used in the Code of Professional Conduct and Ethics for Public Accountants and Accounting Entities in the Fourth Schedule to the PA Rules and ACRA's Practice Monitoring Programme may similarly be aligned with the terms and criteria of publicly accountable and non-publicly accountable company in the CA.

(Cap. 222A); (j) a licensed trade repository within the meaning of section 2(1) of the SFA; (k) a corporation approved as an approved exchange under section 8(1) of the SFA; (l) a corporation that is recognised as a recognised market operator under section 8(2) of the SFA; (m) a corporation approved as an approved clearing house under section 51(1)(a) of the SFA; (n) a corporation that is recognised as a recognised clearing house under section 51(1)(b) or (2) of the SFA; (o) a corporation approved as an approved holding company under section 81W of the SFA; (p) a holder of a capital markets services licence granted under section 86 of the SFA; (q) a public company approved to act as a trustee for collective investment schemes under section 289 of the SFA; (r) a Registered Fund Management Company within the meaning of regulation 2 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10); or (s) a licensed trust company within the meaning of section 2 of the Trust Companies Act (Cap. 336).

[142] Section 205AA(4) and regulation 89A of the Companies Regulations.

[143] The Steering Committee's reasons may be summarised as follows: (a) in most instances, an auditor would be appointed from one AGM to the next and that it would only be in unusual situations that the auditor would resign mid-term; (b) ACRA would be interested in the reasons for the auditors' premature resignation and an approval mechanism would allow ACRA to stop the resignation where such resignation is not appropriate; (c) the approach of requiring such auditors to seek the Registrar's consent is similar in approach to that in Australia. See pages 4-15 to 4-17, paragraphs 71 to 79 of the SC Report.

[144] The then section 205(14).

Recommendation 2.6

The concept of "publicly accountable company" for the purposes of financial reporting should be introduced into the CA. "Publicly accountable company" should be defined as:

(a) a company that is listed or is in the process of issuing its debt or equity instruments for trading on a securities exchange in Singapore;

(b) a company the securities of which are listed on a securities exchange outside Singapore;

(c) a financial institution; and

(d) a company limited by guarantee registered under the Charities Act (Cap. 37).

The concepts of publicly accountable company and non-publicly accountable company will replace the current concepts of public company and private company for the purposes of the financial reporting requirements in the CA.

Recommendation 2.7

The current terms and criteria of public interest company and non-public interest company in the CA should be replaced with the terms and criteria of publicly accountable and non-publicly accountable company.

IV. REVIEW OF FINANCIAL REPORTING REQUIREMENTS

44. The CA provides for three main obligations relating to financial reporting, namely preparation of financial statements, audit of financial statements, and filing of financial statements with ACRA. Currently, there are different criteria determining each of these different obligations. For example:

(a) all companies must prepare financial statements unless it is a DRC;

(b) all companies must have their financial statements audited, unless it is a small company[145] or a dormant company; and

(c) all companies must file financial statements with ACRA unless it is a solvent EPC or DRC.

45. CAWG reviewed the three main obligations with a view to consider whether any of the obligations needed to be updated or refined, and whether the types of companies to which the obligations applied should be revised.

[145] A small company is a private company which meets two out of the following three requirements for the immediate past two financial years: (a) total annual revenue not exceeding $10 million; (b) total assets not exceeding $10 million; (c) number of employees not more than 50. In the case of a company which is part of a group, the company must qualify as a small company and the entire group to which it belongs must also be a small group (based on similar criteria on a group basis). See section 205C(5) and the Thirteenth Schedule.

(a) Preparation of reduced/simplified financial statements for micro non-publicly accountable companies

46. Presently, all companies (except DRCs) must prepare full sets of financial statements.

47. To reduce business costs for very small companies, the CAWG considered whether smaller non-publicly accountable companies should be allowed to prepare reduced/simplified financial statements (e.g. only the statement of comprehensive income, statement of financial position and specific key disclosures). For this purpose, the CAWG suggests the concept of a "micro" company, which may be defined as a company which fulfils the requirements of total annual revenue and total assets each being not more than $500,000. Only micro companies that are non-publicly accountable should be allowed to prepare reduced/simplified financial statements because of the degree of public interest/accountability of publicly accountable companies to stakeholders.

48. The CAWG was cognisant that allowing micro non-publicly accountable companies to prepare and file reduced financial statements may result in ACRA's register not containing and the public not having access to full financial information of such companies, and members of such companies may also be provided with less financial information on their companies. However, the CAWG noted that (a) the statement of comprehensive income and statement of financial position are the two key components of the financial statements, and will provide members with sufficient information relating to the financial position of the company; and (b) there would generally be a lower demand for the information of smaller companies compared to that of larger companies.

49. To avoid the situation where a company qualifies to prepare reduced/simplified financial statements but is required to audit them, the CAWG took the view that a non-publicly accountable company should be allowed to prepare reduced/simplified financial statements where it meets the $500,000 threshold for the previous two consecutive financial years, which follows the same approach used for the current small company audit exemption criteria[146]. The market would be familiar with the approach based on previous two consecutive financial years. The CAWG also observed that this approach also creates more certainty for companies seeking to qualify to prepare reduced/simplified financial statements, as they would rely on previous financial years' financial figures instead of e.g. estimating the figures for the current financial year.

50. The CAWG therefore recommends that micro non-publicly accountable companies should be allowed to prepare reduced/simplified financial statements and a "micro" company should be defined as one which fulfils the requirements of total annual revenue and total assets each are not more than $500,000 for the previous two consecutive financial years.

[146] Small companies are exempted under section 205C from the requirement to audit financial statements and a small company is defined as a private company which meets two out of the following three requirements for the immediate past two financial years: (a) total annual revenue not exceeding $10 million; (b) total assets not exceeding $10 million; (c) number of employees not more than 50: see the Thirteenth Schedule.

Recommendation 2.8

Micro non-publicly accountable companies should be allowed to prepare reduced/simplified financial statements (e.g. containing only the statement of comprehensive income, statement of financial position and specific key disclosures). A "micro" company should be defined as one which fulfils the requirements of total annual revenue and total assets each are not more than $500,000 for the previous two consecutive financial years.

(b) Exemption from audit of financial statements for dormant companies and small non-publicly accountable companies

51. Presently, dormant companies[147] and small companies[148] are exempted from the requirement to audit financial statements. A small company is defined as a private company which meets the relevant financial criteria. Consistent with Recommendations 2.6 and 2.8, the CAWG recommends to narrow the scope of the current small company audit exemption so that it applies only to small companies that are also non-publicly accountable.

Recommendation 2.9

All companies should audit their financial statements except dormant companies and small non-publicly accountable companies.

(c) Revision of criteria for audit exemption for small non-publicly accountable companies

(i) Removing the criterion of number of employees

52. Presently, a small company is exempted from the requirement to audit financial statements[149] and is defined as a private company which meets two out of the following three requirements for the immediate past two financial years: (a) total annual revenue not exceeding $10 million; (b) total assets not exceeding $10 million; (c) number of employees not more than 50[150].

53. The CAWG noted that although employees could be considered one of the stakeholders in a company, the number of employees is not a good determinant of whether a company has public interest, especially given that companies may outsource work and large business operations may be automated with few employees. The CAWG also observed that it is difficult to determine or verify the number of employees as this is not required to be reported in the financial statements and are accordingly not audited.

54. The CAWG therefore recommends refining the small company audit exemption criteria by removing the criterion of number of employees, such that a small company would be a

[147] Section 205B.
[148] Section 205C.
[149] Section 205C.
[150] Thirteenth Schedule.

company which meets both of the following requirements for the immediate past two financial years: (a) total annual revenue not exceeding $10 million; and (b) total assets not exceeding $10 million.

Recommendation 2.10

The small company audit exemption criteria should be refined by removing the criterion of number of employees from the current small company definition.

(ii) Removing the "small group" concept

55. Presently, the "small group" concept applies such that a company that is part of a group (whether as a parent company or a subsidiary company) is exempted from the requirement to audit its financial statements if it qualifies as a small company and the entire group to which it belongs is a small group[151].

56. The CAWG observed that the current requirement that a subsidiary could only qualify for audit exemption if the entire group to which it belongs qualifies as a small group was introduced to take into account that if the parent company is required to prepare consolidated financial statements, it would be difficult for companies to do so if its subsidiaries were exempt from audit[152]. Furthermore, this approach would provide companies with certainty as to their audit obligations, as opposed to leaving the assessment to the auditing standards and the group auditors. However, feedback was received that the provision is particularly complex in cases involving multiple layers of shareholding, where a company can both be a subsidiary and a holding company. The CAWG noted that even if the small group concept for audit exemption is removed, auditors of a holding company (who are responsible for the audit of the consolidated financial statements of the group) would typically determine the scope of audit of the subsidiaries, taking into account materiality holistically after considering quantitative and qualitative factors. Accordingly, if a parent company is required to have its consolidated financial statements audited because it does not meet the criteria for the audit exemption, its auditors will determine which, if any, of the subsidiaries will also need to be audited. As a result, the CAWG took the view that the potential for abuse by a company structuring itself in the form of multiple small companies to avoid audit would be mitigated by the requirement to consider the parent company's audit exemption based on the figures in the consolidated financial statements.

57. The CAWG therefore recommends to remove the "small group" concept for the purposes of the small company audit exemption, and to clarify that for a parent company, the criteria for the small company audit exemption applies on a consolidated basis. The CAWG notes that with the removal of the small group concept, there may be uncertainty as to how the small company concept would apply to parent companies. The CAWG recommends that the current criteria in respect of parent companies be retained, i.e. the figures in the consolidated financial statements of a parent company are used in applying the small company audit exemption to a parent company.

[151] Sections 205C(3)-(4).
[152] Page 4-2, paragraph 7 of the SC Report.

Recommendation 2.11

The "small group" concept in the current small company audit exemption should be removed for the purposes of the small company audit exemption. The criteria for the small company audit exemption should continue to apply on a consolidated basis to parent companies.

(d) "Look-through" basis for application of thresholds for audit exemption and eligibility to prepare reduced/simplified financial statements to companies which are trustee-managers of non-listed business trusts

58. Under the Business Trusts Act (Cap. 31A), only a company incorporated pursuant to the CA may act as a trustee-manager of a registered business trust, whose business shall be managed and operated solely by the trustee-manager. In addition, the trustee-manager is not allowed to carry on any business other than the management and operation of the registered business trust.

59. Pursuant to Recommendations 2.6, 2.8 and 2.9, a company which is a trustee-manager of a non-listed business trust can benefit from the small non-publicly accountable company audit exemption and eligibility to prepare reduced/simplified financial statements as a micro non-publicly accountable company, if it meets the relevant criteria, which are based on total revenue and total assets.

60. The CAWG noted that if the criteria assessment as a small or micro company is based on the trustee-manager's stand-alone assets and revenue only, this could result in a trustee-manager being exempted from complying with the relevant financial reporting obligation even if it is managing a business trust which has assets and revenue above the thresholds. In order to assess the size of a trustee-manager and its business trust holistically and avoid a situation where a "small" trustee-manager of a "large" non-listed business trust is exempted from the relevant financial reporting requirement, the CAWG recommends that the criteria should be applied on a "look-through" basis, such that the assets and revenue of both the trustee-manager and the business trust are taken into account in determining whether the trustee-manager qualifies for any exemption.

Recommendation 2.12

The criteria for the small non-publicly accountable company audit exemption and eligibility to prepare reduced/simplified financial statements should be applied on a "look-through" basis for companies which are trustee-managers of non-listed business trusts, such that the assets and revenue of both the trustee-manager and the business trust are taken into account in the assessment.

(e) Requirement to file financial statements

(i) Prescribing in regulations the criteria for exemption from filing financial statements

61. Presently, DRCs[153] and solvent exempt private companies[154] are exempted from the requirement to file financial statements with ACRA.

62. The CAWG was cognisant that the public (including businesses) buy and use financial information from ACRA for various reasons (e.g. market research; due diligence). Data lodged by companies would also be valuable to the Government for policy formulation. In general, filing of financial statements should not pose a significant further regulatory burden for companies that have already prepared their financial statements. However, at the same time, certain companies may want their financial information to be kept confidential (e.g. family investment companies; companies which financial statements contain commercially sensitive information). Any proposal to change the current balance between transparency and confidentiality (i.e. to remove or reduce the current scope of the filing exemption) would require cogent reasons.

63. In this regard, the CAWG noted that in the previous review of the CA in 2011, the Steering Committee had proposed (a) abolishing the EPC company type; (b) requiring "small companies" to file basic financial information, subject to certain exceptions; and (c) requiring all other companies to file full financial statements[155]. The categories of companies which would be exempted from filing financial statements were solvent private companies which were:

(a) wholly-owned by the Government, which the Minister, in the national interest, declared by notification in the Gazette to be exempt;

(b) part of a class of companies prescribed by the Minister as being a specific class to which the filing requirements does not apply (these would include specific industries where confidentiality was critical and public interest in the company's accounts were low e.g. private family investment companies); or

(c) exempted by the Registrar upon application on a case-by-case basis and published in the Gazette.

64. Following the public consultation on the Steering Committee's recommendations, MOF decided not to accept these recommendations[156]. MOF noted the feedback received that financial information confidentiality was important to certain companies (e.g. companies where their financial statements contain commercially sensitive information), and that some companies had chosen to incorporate in Singapore as an EPC so as to benefit from the confidentiality afforded by the exemption from filing financial information. Abolishing the solvent EPC filing exemption could therefore negatively impact Singapore's competitiveness.

65. In the light of the foregoing, the CAWG therefore recognised that there is a need for an exemption for certain groups of companies from the requirement to file financial information. To provide greater flexibility, the CAWG recommends that the class of exempted companies should be prescribed in regulations rather than set out in the CA, and that for continuity, solvent

[153] Regulation 36(1)(c) of the Companies (Filing of Documents) Regulations. DRCs are not required to prepare financial statements in the first place.
[154] Regulation 36(1)(c)(i) of the Companies (Filing of Documents) Regulations.
[155] Recommendations 4.4 and 4.5 of the SC Report.
[156] Pages 75 to 77 of MOF's Responses.

EPCs should be prescribed as a class of companies which would be exempted from filing financial information.

Recommendation 2.13

All companies should be required to file financial statements except (a) dormant relevant companies and (b) prescribed companies that meet the criteria in the regulations. The solvent exempt private company criteria should be prescribed in the regulations.

(ii) Making all filed financial statements publicly available

66. The CAWG considered the further issue of whether the current position where all financial statements that are filed with ACRA are made publicly available except for filed documents relating to Gazetted EPCs which are wholly owned by the Government under section 12(2A), should be changed.

67. The CAWG observed that as one of ACRA's functions is to establish and administer a repository of documents of business entities for public access[157], it would be difficult to establish a premise by which ACRA collects information but does not give the public access to the information. The CAWG also noted that while the requirements on preparation and filing of financial statements vary across jurisdictions such as Australia, Malaysia, New Zealand and the UK, one common feature was that financial information filed by companies is made publicly available (i.e. no jurisdiction requires financial information to be filed and restricts public access to the filed information).

68. The CAWG therefore recommends that the status quo remain, i.e. all filed financial statements should be made available to the public, except for filed documents relating to Gazetted EPCs which are wholly owned by the Government under section 12(2A).

Recommendation 2.14

All filed financial statements should be made available to the public, except for filed documents relating to Gazetted exempt private companies which are wholly owned by the Government under section 12(2A).

(f) Delinking of filing of financial statements from filing of the annual return of a company

69. Section 197(1) requires the AR of a company (other than one that has a share capital and keeps its branch register outside Singapore) to be lodged (a) in the case of a listed company, within 5 months after the end of its financial year; and (b) in any other case, within 7 months after the end of the company's financial year. In the case of a company that has a share capital and keeps its branch register outside Singapore, section 197(1A) requires that the AR must be lodged (a) in the case of a listed company, within 6 months after the end of its financial year; and (b) in any other case, within 8 months after the end of the company's financial year. Section

[157] Section 6(1)(c) of the Accounting and Corporate Regulatory Authority Act (Cap. 2A).

197(2) requires the AR to be in such form, contain such particulars and information, and be accompanied by such documents, as may be prescribed under regulation 36 of the Companies (Filing of Documents) Regulations. Except for an EPC that is able to meet its liabilities as and when they fall due or a DRC, regulation 36(2) in turn requires the AR of the company to be accompanied by the statement of directors, financial statements and auditors' report on the financial statements (collectively referred to in this section of the Report as the "financial statements").

70. The CAWG reviewed this requirement to consider whether the AR and the financial statements of a company necessarily had to be filed together. The CAWG noted that the AR is a yearly update on the general information about the company, including details of directors and company secretary, the registered office, share capital and shareholdings etc. It serves as a prompt for companies to review their information and to make changes where applicable, over and above the ad hoc updates that companies are already required to make to the company's register. Companies which have no changes to their information can also confirm that their information continues to be accurate in the AR filing. It is therefore not difficult for companies to comply with a statutory obligation to file AR.

71. Directors who are unable to comply with the filing of the AR currently are more likely to be unable to do so because they do not have the information needed to prepare and file the financial statements expeditiously (for example, the records are overseas with a foreign shareholder or director). For such companies, the requirement to confirm that the company information is updated in the AR could be complied with, but for the obstacles in relation to the filing of the financial statements. Having a separate filing requirement for the AR and financial statements would therefore benefit those companies that are in a position to file the AR (which particulars will then be updated promptly in ACRA's register) but may require more time to file the financial statements.

72. The CAWG noted that jurisdictions such as the UK[158], Hong Kong[159], Australia[160], New Zealand[161] and Malaysia[162] have all delinked the obligations for filing of AR and financial statements, and have different time periods for filing of the AR and for filing of the financial statements. However, the CAWG was of the view that there should not be any changes to the existing filing timelines for AR and financial statements, since these timelines are already well-established and companies are familiar with them. With the delinking, companies have the option of filing the AR and financial statements together or separately, and there would be no change to the process for companies that are able to file both their AR and financial statements together. The delinking of the AR and financial statements filing therefore would not in substance pose any additional filing burden on companies.

73. Based on the foregoing, the CAWG recommends that the CA should be amended to separate the filing requirement of the AR and financial statements of the company, and the current time frames for the filing of the AR and financial statements should be retained.

[158] See section 855 of the UK's Companies Act 2006 on the contents of the annual return which excludes the FS.
[159] See paragraph 1 of the Schedule 6 to Hong Kong's Companies Ordinance.
[160] See section 348D of Australia's Corporations Act 2001.
[161] See section 214 of New Zealand's Companies Act 1993, as well as Schedule 4 on "Information to be contained in annual return".
[162] See section 68 of Malaysia's Companies Act 2016.

Recommendation 2.15

The CA should be amended to separate the filing requirement of the annual return and financial statements of the company. The current time frames for the filing of the annual return and financial statements should be retained.

CHAPTER 3

MATTERS RELATING TO DIRECTORS AND COMPANY SECRETARIES

I. INTRODUCTION

1. The CA requires every company to have at least one locally resident director[163] as well as one locally resident company secretary[164]. Where the company has only one director, that director cannot also act or be appointed as the company secretary[165]. Directors of public companies must appoint qualified company secretaries[166].

2. These requirements were last reviewed by the CLRFC[167] in 1999 to 2002. The CLRFC recommended that private companies be required to have at least one locally resident director[168], and to retain the then requirement for public companies to have at least two directors, one of whom must be locally resident[169]. The eventual amendments to the CA in 2004 reduced the requirement on directors to only one locally resident director for both private and public companies[170]. The CLFRC also took the view that in line with the UK's approach[171], the sole director of a company should not concurrently be its company secretary[172]. With respect to company secretaries, the CLRFC recommended that the CA should continue to require all companies to appoint company secretaries, although private companies should be exempted from the requirement to appoint qualified company secretaries[173], and this remains the current law.

3. The CAWG reviewed the preceding requirements in the context of determining whether Singapore's company incorporation requirements can be made less restrictive so as to increase Singapore's competitiveness as a hub for incorporation, while ensuring that companies remain accountable and comply with statutory requirements.

4. In particular, the CAWG considered whether (a) every company should continue to be required to have at least one locally resident director; (b) a sole director of a company should be prohibited from acting or appointing himself or herself as the company secretary; and (c) directors of public companies should be required to appoint qualified company secretaries.

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[163] Section 145(1).
[164] Section 171(1). The secretary's principal or only place of residence must be in Singapore.
[165] Section 171(1E).
[166] Section 171(1AA)(b). A "qualified company secretary" is a person who satisfies any of the requirements relating to experience, professional and academic requirements and membership of professional associations as prescribed in Regulation 89 of the Companies Regulations.
[167] Chapter 1, paragraphs 6.2.1 to 6.2.4 of the CLRFC Report.
[168] Recommendation 1.11 of the CLRFC Report.
[169] Chapter 1, paragraph 6.2.2 of the CLRFC Report.
[170] Section 29 of the Companies (Amendment) Act 2004. See *Singapore Parliamentary Reports, Official Reports* (6 Feb 2004) vol 77 at col 376 (Lim Hng Kiang, Second Minister for Finance).
[171] The now-repealed section 283(2) of the UK's Companies Act 1985 states: "A sole director shall not also be a secretary."
[172] Chapter 1, paragraph 6.2.2 of the CLRFC Report.
[173] Recommendation 1.15 of the CLRFC Report.

5. With regard to the duties and obligations of directors, the CAWG also considered (a) whether a director of a company that is a wholly-owned subsidiary of a foreign holding company should be exempted from disclosing his interests in the foreign holding company pursuant to sections 164 and 165; and (b) the possibility of decriminalising certain directors' offences in the CA.

II. REQUIREMENT FOR LOCALLY RESIDENT DIRECTOR

6. The rationale underlying the CA's requirement for a locally resident director is to preserve the accountability of companies[174]. However, the CAWG observed that the requirement is sometimes met in practice by companies appointing private individuals or individuals from corporate service provider firms which have no direct connection to the company as their locally resident directors for expediency, especially where the individuals setting up the company are not local residents. The CAWG therefore considered whether the requirement for a locally resident director should be removed to make it easier for companies to be incorporated in Singapore, and to reduce the compliance costs involved in setting up a company.

7. The CAWG considered that without the requirement, there may be challenges in enforcing statutory requirements in the CA against companies, in particular, against a director residing overseas for CA breaches committed in Singapore. Both ACRA and shareholders would face difficulties in seeking redress for any wrongdoings by the directors under the CA (e.g. failure to prepare financial statements; breach of directors' duties). The CAWG also observed the increasing emphasis on corporate governance in recent years and noted that retaining the requirement preserves access to accountability of companies through a local individual for each company, and gives regulators access to a person in Singapore from whom information may be obtained. With the increasing focus on corporate governance and transparency, and the intensified scrutiny on money-laundering and financing of terrorism in recent years, the ability to have quick access to company information is also becoming increasingly important. Having a locally resident director allows regulators to get in touch with the director quickly, and conduct face-to-face interviews if necessary. In this regard, the CAWG noted that New Zealand introduced a similar requirement for companies to have a locally-resident director in 2015[175], for the purpose of ensuring that someone accessible to enforcement agencies is legally liable for the actions of the company[176]. Malaysia continues to retain the requirement for the minimum number of directors under its legislation to be ordinarily resident in Malaysia because it is an important mechanism for Malaysia's regulatory

[174] *Singapore Parliamentary Reports, Official Reports* (6 February 2004) vol 77 at col 376 (Lim Hng Kiang, Second Minister for Finance).
[175] Section 10(d) of New Zealand's Companies Act 1993, introduced by section 9 of the Companies Amendment Act 2014.
[176] See Ministry of Business, Innovation & Employment, "2014 changes to the Companies Act and Limited Partnerships Act", online: <https://www.mbie.govt.nz/business-and-employment/business/regulating-entities/historic-reform-of-corporate-law/2014-changes-to-the-companies-act-and-limited-partnerships-act/> and Cabinet Paper: Misuse of Companies and Limited Partnerships (accessible at: <https://www.mbie.govt.nz/assets/be173d0c00/misuse-of-nz-companies-and-limited-partnerships.pdf>).

authorities in enforcing compliance with the law[177]. Australia has similarly retained the residency requirement for the minimum number of directors under its legislation[178].

8. Accordingly, the CAWG took the view that the requirement continues to be relevant and recommends that a company should continue to be required to appoint at least one locally resident director.

> **<u>Recommendation 3.1</u>**
>
> The requirement for a company to have at least one locally resident director should be retained.

III. PROHIBITION AGAINST APPOINTMENT OF SOLE DIRECTOR AS COMPANY SECRETARY

9. The CAWG reviewed the CA's prohibition against a sole director acting or being appointed as the company secretary, in the context of determining whether the compliance costs associated with a sole-director company having to hire another individual to be its company secretary may be reduced. It was observed that there may be some sole-director companies that have to hire a corporate service provider to be its company secretary, solely to avoid breaching the prohibition. The costs of doing so may be significant, especially for smaller businesses.

10. In reviewing the prohibition, the CAWG observed that many companies rely on their company secretaries to comply with their statutory obligations, and was mindful that the CLRFC had previously recommended retaining the requirement for every company to have at least one company secretary. The CLRFC had stated that it would be good for each company to continue to have an appointed person whose responsibility is to ensure that the statutory registers and records are properly maintained[179].

11. The CAWG therefore had to consider whether a sole director could competently perform the company secretary role. The CAWG observed that in recent years, law reforms have been implemented which led to more information being kept by ACRA rather than by the companies themselves, so company secretaries may be subject to fewer responsibilities in this respect. For example, with effect from 3 January 2016, the keeping of the register of members

[177] Section 196(4)(a) of Malaysia's Companies Act 2016, which retains the position in section 122(1) of the repealed Companies Act 1965. Malaysia's Corporate Law Reform Committee recommended that the residency qualification imposed on directors should be retained and observed that whilst the residency qualification imposed on directors can be a cost barrier for foreign investment, the residency qualification is an important mechanism for the regulatory authorities in enforcing compliance with the law: see paragraph 1.14 of Corporate Law Reform Committee, *A Consultative Document On Clarifying and Reformulating the Directors' Role and Duties* (August 2006).

[178] Section 114(2) of the now-repealed Victoria (Australia) Companies Act 1961) provided that in the case of a public company at least two directors shall be natural persons who ordinarily reside within the Commonwealth and in the case of a proprietary company at least one director shall be a natural person who ordinarily so resides. Sections 201A(1) and (2) of Australia's Corporations Act 2001 respectively provide that a proprietary company must have at least 1 director and that director must ordinarily reside in Australia, and a public company must have at least 3 directors and at least 2 directors must ordinarily reside in Australia.

[179] Recommendation 1.15 and chapter 1, paragraph 6.6.4 of the CLRFC Report.

for private companies, and the register of directors, chief executive officers ("CEOs"), secretaries and auditors for all companies is undertaken by ACRA, although companies are still required to furnish the relevant information to ACRA[180].

12. The CAWG also noted that the CA expressly subjects company secretaries to very few obligations[181]. Accordingly, a sole director would not have to take on many additional statutory obligations if he or she were also appointed as the company's secretary.

13. On balance, the CAWG took the view that that a sole director could competently act both as a director and a company secretary, and that removing the prohibition would not necessarily compromise the proper maintenance of statutory registers and records. The CAWG also considered that although the CLRFC had recommended introducing the prohibition in order to align Singapore's regime with the UK's approach under section 283(2) of the Companies Act 1985[182], the UK subsequently repealed that provision without replacement in the Companies Act 2006. The current position in the UK is that only a public company is required to have a company secretary and at least two directors, one of which is allowed to concurrently act as company secretary. A UK private company is not required to have a company secretary, and hence a sole director is not required to appoint or act as company secretary.

14. The CAWG therefore recommends removing the prohibition against a sole director of a company acting or appointing himself or herself as the company secretary.

Recommendation 3.2

The prohibition against a sole director of a company appointing himself or herself as the company secretary should be removed.

IV. REQUIREMENT FOR DIRECTORS OF PUBLIC COMPANIES TO APPOINT QUALIFIED COMPANY SECRETARIES

15. The CA provides that it shall be the duty of the directors of a public company to take all reasonable steps to secure that each company secretary is a person who satisfies the prescribed requirements relating to experience, professional membership and academic requirements and membership of professional associations[183].

16. Prior to 2003, all company secretaries had to satisfy similar prescribed statutory requirements[184]. The CLRFC reviewed the requirement for all companies to appoint company

[180] Sections 173; 173A; and 196A.
[181] For example, section 156(11) provides that the secretary of the company shall record every declaration under section 156 in the minutes of the meeting and keep records of every written resolution duly signed under section 156. Another example is section 171(3), which provides that the secretary is to be present at the registered office of the company on the days and at the hours during which the registered office is to be accessible to the public.
[182] Chapter 1, paragraph 6.2.2 of the CLRFC Report.
[183] Section 171(1AA)(b). The details of the requirements are set out in Regulation 89 of the Companies Regulations.
[184] These requirements are set out in the previous section 171(1A) CA which was in force prior to 13 Jan 2003 and replaced by the current section 171(1A) under section 22 of the Companies (Amendment) Act 2003. The

secretaries that satisfy the prescribed statutory requirements and recommended to only exempt directors of private companies from the requirement to appoint company secretaries that satisfy the prescribed statutory requirements, in order to reduce the maintenance costs for small businesses as employees or directors of private companies would be able to perform company secretarial functions[185]. The CLRFC's recommendation was implemented under the Companies (Amendment) Act 2003[186].

17. The CAWG reviewed the requirement for directors of public companies to appoint qualified company secretaries in the context of determining whether maintenance costs could be similarly reduced for public companies. In reviewing the requirement, the CAWG had to consider whether a person that does not satisfy the prescribed statutory requirements can competently perform company secretarial functions for a public company.

18. In this regard, the CAWG noted that compared to private companies, public companies have more shareholders and usually have more substantial businesses, assets and liabilities, and some public companies may also have their shares listed on a stock exchange (e.g. SGX). The CAWG also observed that public companies are subject to more stringent requirements under the CA as compared to private companies. For example, public companies are required to keep registers of members[187] and hold AGMs[188], while ACRA keeps the registers of members of private companies[189] and private companies are generally not required to hold AGMs, subject to certain safeguards[190]. The CAWG also considered that given the size of public companies and the correspondingly greater stakeholder interest in such companies, there is a greater public interest in filings made by public companies with ACRA and the accuracy of ACRA's register with respect to public companies.

19. Given that public companies are of greater public interest due to their larger size and are also subject to more stringent requirements as compared to private companies, the CAWG took the view that in contrast to the case of private companies, a person who does not satisfy the prescribed statutory requirements is unlikely to be able to competently perform company secretarial functions for a public company.

20. Accordingly, the CAWG took the view that company secretaries of public companies continue to play an important role by helping public companies comply with the CA's requirements, and thus should be suitably qualified to perform this important role. The CAWG therefore recommends retaining the requirement for directors of public companies to appoint company secretaries that satisfy the prescribed statutory requirements.

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requirements generally pertain to experience in holding the office of secretary of a company, being a qualified lawyer or registered public accountant, being a member of a professional association, or having academic or professional qualifications.

[185] Recommendation 1.15 and chapter 1, paragraph 6.6.7 of the CLRFC Report.

[186] See section 22 of the Companies (Amendment) Act 2003.

[187] Section 190.

[188] Section 175.

[189] Section 196A.

[190] See section 175A.

Recommendation 3.3

Directors of public companies should continue to be required to appoint company secretaries that satisfy the prescribed statutory requirements.

V. EXEMPTION OF DIRECTOR OF WHOLLY-OWNED SUBSIDIARY OF FOREIGN ULTIMATE HOLDING COMPANY FROM DISCLOSING INTEREST PURSUANT TO SECTIONS 164 AND 165

21. Presently, sections 165(1)(a)-(b) read with section 164(1) require a director of a company to give to the company notice in writing of the particulars (and any changes thereof) of the shares of a related corporation[191] that the director is a registered holder of, or has an interest in, and the nature and extent of that interest. A director of a wholly-owned subsidiary[192] of a foreign ultimate holding company who holds, or has an interest in, the shares of the foreign ultimate holding company[193] will have to disclose the relevant particulars to the wholly-owned subsidiary. The legislative intent underlying section 165 is to ensure that directors, by reason of their position in a company, do not take advantage of confidential knowledge of the affairs of the company by buying or selling shares of their companies for their own profit or for other persons' profit and to the disadvantage of shareholders or investors generally, and that directors make full disclosure of their shareholdings. Under section 165, directors owe a duty to make a general disclosure of their shareholdings so that the investing public are aware of what the directors are doing with their shares in the company[194].

22. The CAWG noted that in practice, directors (especially foreign directors) of companies which are wholly-owned subsidiaries of foreign ultimate holding companies have found it difficult to disclose their interests in the foreign ultimate holding company. An example was where the directors may be participants in retirement savings plans administered in a foreign country by the foreign ultimate holding company, under which shares in the foreign ultimate holding company are purchased from time to time on behalf of the directors. These directors are often reluctant to disclose their interests in the foreign ultimate holding company (which may include shares as well as stock options granted to them as employees) because the disclosure may compromise the confidentiality of their remuneration packages. In addition, these directors also face difficulties in complying with the disclosure timeline of two business

[191] Section 6 provides that where a corporation (a) is the holding company of another corporation; (b) is a subsidiary of another corporation; or (c) is a subsidiary of the holding company of another corporation, that first-mentioned corporation and that other corporation shall for the purposes of the CA be deemed to be related to each other. Section 5(1) CA provides that a corporation shall be deemed to be a subsidiary of another corporation if (a) that other corporation (i) controls the composition of the board of directors of the first-mentioned corporation; or (ii) controls more than half the voting power of the first-mentioned corporation; or (b) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

[192] Section 5B provides that a corporation is a wholly owned subsidiary of another corporation if none of the members of the first-mentioned corporation is a person other than (a) that other corporation; (b) a nominee of that other corporation; (c) a subsidiary of that other corporation being a subsidiary none of the members of which is a person other than that other corporation or a nominee of that other corporation; or (d) a nominee of such subsidiary.

[193] Section 5A provides that a corporation is the ultimate holding company of another corporation if (a) the other corporation is a subsidiary of the first-mentioned corporation; and (b) the first-mentioned corporation is not itself a subsidiary of any corporation.

[194] *Singapore Parliamentary Reports, Official Reports* (28 August 1973) vol 32 at cols 1290-1291 (Hon Sui Sen, Minister for Finance).

days after the date on which the interest in the shares was acquired, because they typically receive the statement of such purchases at certain periodic intervals, which often fall after the end of the disclosure timeline.

23. The CAWG noted that exempting directors of companies which are wholly-owned subsidiaries of foreign ultimate holding companies from disclosing their interests in shares under sections 165(1)(a)-(b) would not be contrary to the legislative intent underlying section 165. Concerns about insider trading and directors' share dealings are unlikely to apply to companies which are wholly-owned subsidiaries of foreign ultimate holding companies, because the directors of such a wholly-owned subsidiary do not hold shares directly in the wholly-owned subsidiary, and so any share interest recorded in the subsidiary's register of directors' shareholdings would be an interest in shares of a related corporation.

24. Accordingly, the CAWG recommends that a director of a company that is a wholly-owned subsidiary of a foreign holding company should be exempted from disclosing his or her interests in the foreign holding company pursuant to sections 164 and 165.

Recommendation 3.4

A director of a company that is a wholly-owned subsidiary of a foreign holding company should be exempted from disclosing his or her interests in the foreign holding company pursuant to sections 164 and 165.

VI. DECRIMINALISATION OF DIRECTORS' OFFENCES IN THE CA

25. Section 156 provides for the duty of directors to disclose their interest in a transaction or proposed transaction with the company, or any conflict where the director holds any office or possess any property whereby, whether directly or indirectly, any duty or interest might be created in conflict with their duties or interests as director. Failure to do so results in a criminal offence. Section 157 provides that a director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office, a breach of which renders a director liable to both civil and criminal consequences.

26. The CAWG considered whether to maintain the criminal offence as the penalty for the breach of such statutory director duties. On section 156, the CAWG took the view that due to the nature of the obligation of disclosure, it would be difficult for breaches of these duties to be detected and that directors would be under strict duties of loyalty as fiduciaries to the company. The retention of the criminal sanction would therefore ensure directors disclose conflicts of interest and deter such breaches.

27. On section 157, however, the CAWG was of the view that for failing to act diligently, civil penalties and compensatory remedies could suffice, and that this was an issue that should be reviewed.

28. At the same time, the CAWG also noted that sections 156 and 157 could not be reviewed in isolation, as there were other director's offences under the CA which should similarly be re-considered to determine if the criminal penalty was too harsh and therefore they

should be decriminalised. The review of directors' offences in the CA should therefore be done holistically and not in a piecemeal fashion. The review also would need to consider alternative remedies to criminalisation, to ensure that there was proper accountability and remedies for breaches of obligations placed on directors.

29. Due to the limited time for completing the current CA review and the magnitude of a holistic review of this area, the CAWG acknowledged that this could not be undertaken during the time frame of the current review of the CA. The CAWG, however, noted that the suggestion for reviewing the criminal sanction for section 157 had previously also been considered by the Steering Committee in 2011[195]. At that time, the Steering Committee had suggested that the breach of section 157 should continue to be a criminal offence, pending ACRA's further review on whether to introduce civil penalties in the CA. The CAWG therefore recommends that ACRA should carry out a review of directors' offences holistically as part of the next review of the CA, so that the current regulatory regime does not stifle innovation or business enterprise.

Recommendation 3.5

The decriminalisation of directors' offences should be reviewed holistically at the earliest opportunity.

[195] See Recommendation 1.23 and pages 1-28 to 1-29, paragraphs 121 to 125 of the SC Report.

CHAPTER 4

SAFEGUARDING SHAREHOLDERS' INTERESTS

I. INTRODUCTION

1. The CAWG considered various aspects of the CA relating to class rights, share buybacks and the threshold for compulsory acquisition, with a view as to whether improvements needed to be made in respect of the provisions to safeguard shareholders' interests.

II. VARIATION OR ABROGATION OF CLASS RIGHTS

2. The CAWG reviewed the following aspects of section 74 on the variation and abrogation of class rights:

(a) whether the variation or abrogation of class rights should be made subject to a specified proportion of the class-rights holders set out in the CA, instead of being left to be prescribed in the company's constitution; and

(b) whether the current safeguard, which allows shareholders of a class holding 5% of the class shares to apply to the Court to abrogate the proposed variation of the class rights, should be retained.

3. Section 74(1) states that if, in the case of a company with different classes of shares, provision is made by the constitution for authorising the variation or abrogation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of that provision, the rights attached to any such class of shares are at any time varied or abrogated, the holders of not less in the aggregate than 5% of the total number of issued shares of that class may apply to the Court to have the variation or abrogation cancelled.

4. The CAWG noted that section 74(1) is currently silent on a specific proportion of shareholders whose consent is required for the variation or abrogation of class rights. This leaves it open to the company to determine any threshold that it wishes for the variation or abrogation of rights. Furthermore, even if the constitution of a company prescribes for the non-variation of class rights without the consent of a majority (or specified majority) of the class of shareholders, section 74(1) allows a small bloc of shareholders of a class holding 5% of the class shares to apply to the Court to abrogate the proposed variation of the class rights. The issue relates to why 5% of the class should wield such a power to overturn the wishes of the majority, and whether this safeguard should be abolished.

5. As regards the issue on the need to specify in the CA the proportion of consenting shareholders, the CAWG observed that in practice, companies would obtain the agreement to a variation in class rights from 75% of the company as well as from 75% of the class of shareholders. The CAWG therefore took the view that to provide for greater clarity of shareholders' rights, and to avoid any potential disputes as to what should be the appropriate

threshold of approval for the variation or abrogation of class rights, the CA should specify that the appropriate proportion of approval should be 75% of the class of shareholders whose rights are being affected.

6. The CAWG however noted that the company's constitution in any case would often have provisions detailing the variation of class rights[196] which would best suit the company's business operations and structures, and companies should have the flexibility to decide the appropriate threshold at which certain class rights can be varied. In particular, in the light of the rapid emergence of new types of corporate structures in the economy today, there should be a carve-out which allows the constitution to provide for the appropriate threshold of approval for variation of rights, notwithstanding the threshold set in the law.

7. Based on the foregoing, the CAWG recommends that section 74 should be amended to mandate that a variation or abrogation of class rights must be approved by at least 75% of the class-rights holders, unless the constitution of the company states otherwise.

8. The CAWG also considered whether the provision which allows shareholders holding 5% of the class shares to apply to the Court to object to the proposed variation or abrogation of the class rights should be retained, given that it could be seen as a backdoor to challenge the decision by the majority. The CAWG noted that the right to take action against oppression of the majority shareholders already existed at common law, and even a single shareholder could bring an action to Court against oppression. In the light of this, the ability of the minority to set aside a decision by the majority would exist, regardless of whether there was an express provision. The 5% threshold however would provide clarity, and was consistent with the percentage to determine a substantial shareholding[197], and therefore would be an appropriate threshold at which an objection could be brought to Court.

9. Hence, on balance, the CAWG is of the view that the 5% threshold that applies to the right to apply to court to cancel a variation or abrogation of class rights pursuant to section 74(1) should be retained.

Recommendation 4.1

Section 74 should be amended to mandate that a variation or abrogation of class rights must be approved by at least 75% of the class-rights holders, unless the constitution of the company states otherwise.

Recommendation 4.2

The 5% threshold that applies to the right to apply to court to cancel a variation or abrogation of class rights pursuant to section 74(1) should be retained.

[196] For instance, Regulation 8(1)(a) of the model constitution for a private company limited by shares in the First Schedule of the Companies (Model Constitutions) Regulations 2015 provides that the variation of class rights must obtain the consent in writing of the holders of 75% of the issued shares of that class.
[197] See section 81(1)(b).

III. SHARE BUYBACKS

10. Sections 76B to 76G address the circumstances under which a company may buy back its own shares.

11. The CAWG reviewed these provisions, in particular to consider the following issues:

(a) whether sections 76B to 76G apply to shares with different voting rights issued pursuant to section 64A;

(b) whether the distinction between redeemable and non-redeemable preference shares in sections 76B to 76E should be maintained; and

(c) whether two tiers of approval by both the shareholders of the company and the shareholders of a class of shares should be required for selective buybacks within that class of shares under section 76D.

(a) Applicability of sections 76B to 76G to shares with different voting rights issued pursuant to section 64A

12. The provisions in sections 76B to 76G refer to "ordinary shares" and "preference shares". For example:

(a) Section 76B(2) provides that sections 76B to 76G "shall apply to ordinary shares, stocks and preference shares."

(b) Sections 76B(3) and (3B) set out the share buyback limits for "ordinary shares" and "preference shares".

(c) Sections 76C(2)(a) (which sets out the requirements for off-market acquisitions on equal access schemes) and 76E(2)(a) (which sets out the requirements for market acquisitions) provide that the notice specifying the intention to propose the resolution to authorise an off-market purchase on equal access scheme or a market purchase (as the case may be) must specify the maximum number of shares or the "maximum percentage of ordinary shares" authorised to be purchased or acquired.

13. The CAWG considered whether it was clear how sections 76B to 76G apply to shares with different voting rights issued pursuant to section 64A[198]. The CAWG noted that shares with different voting rights should be treated as ordinary shares rather than preference shares if they carry the right to vote and the holders of such shares are, like ordinary shareholders, entitled to dividends. The CAWG took the view that shares with different voting rights issued pursuant to section 64A would be treated as ordinary shares under sections 76B to 76G, and no amendments to the CA were needed in this regard.

[198] Under section 64A, (a) a public company may issue shares of different classes if, *inter alia*, the issue of the classes of shares and the rights attached to the classes of shares are provided for in the constitution and the issuance of shares is approved by the members of the public company by special resolution; and (b) a private company may, subject to its constitution, issue shares of different classes.

Recommendation 4.3

There is no need to amend the CA to clarify that sections 76B to 76G apply to shares with different voting rights issued pursuant to section 64A.

(b) The distinction between redeemable and non-redeemable preference shares in sections 76B to 76E

14. Section 76B(3B) provides that a company cannot buyback more than 20% of the total number of non-redeemable preference shares of the company in that class, ascertained as at the date of any resolution passed pursuant to section 76C, 76D, 76DA or 76E, unless (a) the company has at any time during the relevant period reduced its share capital by a special resolution under section 78B or 78C, or (b) the Court has at any time during the relevant period made an order under section 87I confirming the reduction of share capital of the company. Where a company has reduced its share capital by a special resolution under section 78B or 78C, or the Court has made an order under section 78I, notwithstanding (a) and (b), the total number of non-redeemable preference shares of the company in any class shall be taken to be the total number of non-redeemable preference shares of the company in that class as altered by the special resolution of the company or the order of the Court[199].

15. In contrast, section 76B(3D) provides that a company can buyback any number of redeemable preference shares in a share buyback under section 76C, 76D, 76DA or 76E.

16. This distinction between redeemable and non-redeemable preference shares was introduced by section 13 of the Companies (Amendment) Act 2000, which also extended the applicability of the share buyback provisions (i.e. sections 76B to 76G) from ordinary shares only to both ordinary shares and preference shares.

17. The rationale underlying the distinction is that[200]:

(a) a volume limit is not placed on buybacks of redeemable preference shares because such shares are not part of a company's permanent capital; and

(b) a volume limit is placed on buybacks of non-redeemable preference shares because such shares are part of a company's permanent capital, so there is a need to protect creditors.

18. In considering whether the distinction should be maintained, the CAWG observed that back in 2001, the CA provided that redeemable preference shares shall not be redeemed except out of profits that would otherwise be available for dividends and unless they are fully paid up[201], and this position was changed by section 19 of the Companies (Amendment) Act 2005, which implemented Recommendation 2.22 of the CLRFC Report. Recommendation 2.22 stated that share buybacks should be funded out of distributable profits or where supported by a declaration of solvency. The intention underlying the amendment was to provide greater

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[199] Section 76B(3C).
[200] See *Singapore Parliamentary Reports, Official Reports* (13 Nov 2000) vol 72 at cols 1027 to 1028 (Lim Hng Kiang, Second Minister for Finance).
[201] Old section 70(3).

flexibility to companies[202]. Presently, the CA provides that redeemable preference shares shall not be redeemed unless they are fully paid up[203], and shall not be redeemed out of the capital of the company unless all the directors have made a solvency statement in relation to such redemption and the company has lodged a copy of the solvency statement with the Registrar[204].

19. In this regard, the CAWG noted that the introduction of the avenue for redeemable preference shares to be redeemed out of capital by making a solvency statement, further highlights the temporary nature of the capital contributed by redeemable preference shares to the company's capital. On the other hand, nothing in the CA has changed since 2001 with respect to non-redeemable preference shares and its contribution to the capital of the company. The CAWG therefore took the view that the rationale underlying the distinction may apply with greater force today, and recommends to maintain the distinction.

Recommendation 4.4

The distinction between redeemable and non-redeemable preference shares in sections 76B to 76E should be maintained.

(c) Two tiers of approval for selective buybacks within a class of share under section 76D

20. Section 76D provides that a company may make a selective off-market purchase (i.e. a purchase or acquisition of its own shares otherwise than on a securities exchange and not in accordance with an equal access scheme), if the purchase or acquisition is made in accordance with an agreement authorised in advance by a special resolution of the company, with no votes being cast by any person whose shares are proposed to be purchased or acquired or by his or her associated persons.

21. The CAWG considered the scenario where a company seeks to make a selective off-market purchase of only some of the shares within a class of the company's shares. For example, a company that has two classes of shares, Classes A and B, may seek to make a selective off-market purchase of only some Class A shares. In such a scenario, there could be unfairness towards the Class A shareholders that are not the target of the selective off-market purchase, because the company could have but chose not to make a selective off-market purchase of all Class A shares, notwithstanding that these Class A shareholders could vote on the special resolution to authorise the purchase.

22. To better protect the rights of the shareholders within a class of shares, the CAWG recommended amending section 76D so that for a selective off-market purchase within a class of shares, two tiers of approval are required: by (a) the shareholders of the company; and (b) the shareholders of the class of shares. For both tiers of approval, no votes should be cast by the shareholders whose shares are proposed to be purchased or acquired and their associated persons. The percentage threshold for both tiers of approval should be 75%, which is the same as that for the special resolution currently required under section 76D.

[202] See *Singapore Parliamentary Reports, Official Reports* (16 May 2005) vol 80 at cols 700 and 702 (Raymond Lim Siang Keat, Second Minister for Finance).
[203] Section 70(3).
[204] Section 70(4).

Recommendation 4.5

Two tiers of approval by both the shareholders of the company and the shareholders of a class of shares should be required for selective buybacks within that class of shares under section 76D.

IV. REVIEW OF COMPULSORY ACQUISITION OF SHARES THRESHOLD

23. Section 215 provides for the right of a person (the "transferee") to compulsorily acquire the shares of any dissenting shareholder where a scheme or contract involving the transfer of all the shares or all of the shares in any particular class in a company (the "transferor company") to the transferee has been approved as to the shares or as to each class of shares whose transfer is involved by the holders of not less than 90% of the total number of those shares or of the shares of that class[205]. Section 215(9) provides that shares held or acquired by (a) a nominee on behalf of the transferee; or (b) a related corporation of the transferee or a nominee of that related corporation, shall be treated as held or acquired by the transferee, so these shares are excluded from the computation of the 90% threshold for compulsory acquisition under section 215.

24. The CAWG reviewed the computation of the 90% threshold for compulsory acquisition under section 215, in particular to consider whether there were further circumstances under which certain shares should be excluded from the computation.

25. The CAWG observed that in recent years, there have been instances where transferees who already hold substantial stakes in transferor companies have taken advantage of the limited scope of the exclusions in section 215(9) to more easily satisfy the 90% threshold under section 215. For example, an individual who is a controlling shareholder of a listed company may set up a special purpose vehicle to make an offer for the shares of the company, as the shares held by the controlling shareholder could be counted towards the computation of the threshold[206], even though he or she controls the special purpose vehicle. The controlling shareholder may also control other body corporates which hold shares in the listed company, and these shares would also be counted towards the computation of the threshold. In contrast, if the controlling shareholder makes the offer in his or her own capacity, the shares held by the controlling shareholder would not be counted towards the computation of the threshold, which makes it more difficult for the controlling shareholder to satisfy the threshold. The CAWG noted that there has been feedback from academia and the industry (e.g. lawyers; financial advisers; and business journalists) that this issue should be addressed because such ability to circumvent the computation of the 90% threshold dilutes an important protection for minority shareholders, and creates a discrepancy between the rules that apply to offers made by individuals and body corporates.

[205] Other than shares already held at the date of the offer by the transferee, and excluding any shares in the transferor company held as treasury shares.
[206] Shares held by the controlling shareholder does not fall within existing exclusions from computation of the 90% threshold.

26. In its review in 2011, the Steering Committee noted that the rationale for the exclusions under section 215(9) is that the offer should be accepted by 90% of the shareholders who are unaffiliated with the offeror before the rights under section 215 are activated, and recommended that the UK's definition of "associate" used for the equivalent provision on compulsory acquisition in the Companies Act 2006 should be adopted for parties whose shares are to be excluded in computing the 90% threshold under section 215[207]. MOF did not agree with the recommendation, and explained that "[a]lthough it is conceptually sound to exclude parties not independent of the offeror in calculating the 90% acceptances, the present provisions have not given rise to any particular concerns. Thus, there is no compelling reason to change the position at this time. Moreover, [the recommendation] will make it more difficult for an offeror to obtain full ownership, especially if the offeror already has a substantial shareholding when the offer is made. For a healthy functioning financial market, it is important to ensure that our requirements are not overly stringent or make it difficult for companies to restructure. In case of unfairness, dissenting minority shareholders can apply to court under section 215."[208]

27. The CAWG agreed with the Steering Committee's view on the rationale for the exclusion under section 215(9) and recommends to expand the existing exclusions under section 215(9) to exclude the shares held by persons associated with the transferee from the computation of the threshold for compulsory acquisition under section 215. The CAWG took the view that excluding the shares held by persons associated with the transferee is a measure that protects minority shareholders, but the limited scope of the exclusions in section 215(9) undermines the degree of protection afforded to minority shareholders, and the numerous instances in recent years where the limited scope of the exclusions in section 215(9) has been taken advantage of reinforces the case for expanding the scope of the exclusions. While it is acknowledged that in a healthy functioning market, requirements should not make it difficult for companies to restructure, the CAWG opined that the current state of the law poses a contradiction where different rules appear to apply depending on whether the transferee is a body corporate or an individual. In addition, while section 215 does allow dissenting minority shareholders to apply to court in the case of unfairness, the CAWG noted that most retail shareholders may feel that it would not be worth incurring the costs and risks of commencing legal action given that their individual holdings are likely to be relatively small.

28. Taking reference from the exclusions covered by the term "associate" used in section 667 of Hong Kong's Companies Ordinance and section 988 of the UK's Companies Act 2006, the CAWG recommends to expand the existing exclusions under section 215(9), by excluding the shares held or acquired by the following persons from the computation of the 90% threshold for compulsory acquisition under section 215[209]:

(a) a person who is accustomed or is under an obligation whether formal or informal to act accordance with the directions, instructions or wishes of the transferee in respect of the transferor company;

(b) a body corporate controlled by the transferee;

[207] Page 3-43, paragraphs 175 to 177 and Recommendation 3.49 of the SC Report.
[208] Page 66, paragraph 153 of MOF's Responses.
[209] These recommended exclusions are in addition to the existing exclusion of shares held by a nominee on behalf of the transferee or a related corporation of the transferee or a nominee of that related corporation.

(c) a person who is, or is a nominee of, a party to a share acquisition agreement with the transferee;

(d) the transferee's close relatives (i.e. spouse; children, including adopted children and step-children; parents; and siblings);

(e) a person whose directions, instructions or wishes the transferee is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the transferor company; and

(f) a body corporate controlled by a person described in (e).

<u>(a) Persons controlled by the transferee</u>

29. Shares held or acquired by a person where the person is accustomed or under an obligation whether former or informal to act in accordance with the directions, instructions or wishes of the transferee would be excluded from the computation of the 90% threshold. This rule is consistent with section 7(5)(b).

<u>(b) Body corporate controlled by the transferee</u>

30. Shares held or acquired by a body corporate where (a) the body corporate is, or a majority of its directors are, accustomed or under an obligation whether former or informal to act in accordance with the directions, instructions or wishes of the transferee; or (b) the transferee is entitled to exercise or control the exercise of not less than 30% of the voting power in the body corporate, would be excluded from the computation of the 90% threshold. These rules take reference from section 667(3) of Hong Kong's Companies Ordinance and section 988(3) of the UK's Companies Act 2006 and are consistent with sections 7(4A) and 7(5)(c). The proposed 30% threshold is on par with the 30% threshold used in Hong Kong's section 667(3) and the one-third threshold used in the UK's section 988(3), and is also used in the Singapore Code on Take-overs and Mergers to indicate effective control[210].

<u>(c) Party to a share acquisition agreement with the transferee</u>

31. Shares held or acquired by a person who is, or is a nominee of, a party to a share acquisition agreement with the transferee, would be excluded from the computation of the 90% threshold. This limb takes reference from section 667(1)(a)(vii) of Hong Kong's Companies Ordinance and section 988(1)(d) of the UK's Companies Act 2006.

32. The principle underlying this limb is to exclude, from the computation of the threshold for compulsory acquisition, shares which are the subject of an agreement or arrangement and have not been tendered into an offer. This limb does not exclude (a) non-concert parties; (b) irrevocables; (c) undertakings to tender into the offer; (d) agreements entered into that give rise to the general offer; and (e) shares bought by the transferee in the market.

<u>(d) Transferee's close relatives</u>

33. Shares held or acquired by the transferee's close relatives (i.e. spouse; children; parents; and siblings) would be excluded from the computation of the 90% threshold. This limb takes

[210] See the definition of "effective control" at page 12 of the Singapore Code on Take-overs and Mergers.

reference from section 667(1)(a)(i)-(v) of Hong Kong's Companies Ordinance, section 988(1)(e) of the UK's Companies Act 2006, and sections 25D(2)(a), 156(13) and 163(5)(b). While sibling relationships are not captured in all the preceding provisions, the CAWG observed that in the Asian context, familial ties and sibling relationships are strong, and took the view that sibling relationships should be included in this limb because the purpose of section 215(9)(e) was minority protection.

<u>(e)-(f) Controllers of the transferee and body corporates controlled by such controllers</u>

34. Shares held or acquired by a person whose directions, instructions or wishes the transferee is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the transferor company, would be excluded from the computation of the 90% threshold. Shares held or acquired by a body corporate controlled by such a person would similarly be excluded. The rules for determining control would be similar to that used for limb (b).

35. As limbs (a)-(d) capture related parties who are in one way or another controlled by the transferee, the CAWG took the view that it is important to also introduce limbs that address the reverse situation where the related party controls the transferee, in order to protect dissenting minority shareholders in such situations. An example would be that described in paragraph 25, where a person sets up a special purpose vehicle to make an offer for the shares of a company while controlling body corporates which hold shares of the company, such that the shares held by the person and these body corporates would be counted towards the computation of the 90% threshold, even though he or she controls the special purpose vehicle and these body corporates. Limb (e)-(f) are intended to apply to the facts of each case to determine if actual control and influence is exercised, and does not automatically exclude, for example, shares held by parent or sister companies of the transferee from the computation of the threshold.

Recommendation 4.6

Shares held or acquired by the following persons should also be excluded from the computation of the 90% threshold for compulsory acquisition under section 215:

(a) A person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of the transferee in respect of the transferor company;

(b) A body corporate controlled by the transferee;

(c) A person who is, or is a nominee of, a party to a share acquisition agreement with the transferee;

(d) The transferee's close relatives (i.e. spouse; children, including adopted children and step-children; parents; and siblings);

(e) A person whose directions, instructions or wishes the transferee is accustomed or is under an obligation whether formal or informal to act in accordance with, in respect of the transferor company; and

(f) A body corporate controlled by a person described in (e).

CHAPTER 5

SHARE CAPITAL AND FINANCIAL ASSISTANCE

I. INTRODUCTION

1. The CAWG considered clarifications to the existing provisions in the CA relating to alteration of share capital and the prohibition against financial assistance, to address areas of uncertainty that have arisen in practice over the interpretation of these provisions. The CAWG also reviewed whether any further exceptions to the prohibition against financial assistance should be introduced, and whether a *de minimis* exception to the requirement under section 76D for a selective off-market purchase to be authorised by a special resolution of the company should be introduced for listed companies.

II. ALTERATION OF SHARE CAPITAL

2. The CA contains provisions addressing the alteration of a company's share capital, such as sections 71 and 78 which respectively address the powers of a company to alter its share capital and to pay interest out of capital in certain cases. The CAWG reviewed these two sections to address specific feedback received on ambiguity in the interpretation and application of these two sections.

(a) Increasing share capital or capitalising profits without issuing new shares

3. Section 71 provides that a company, if so authorised by its constitution, may in general meeting alter its share capital in any one or more of the ways stated in subsections (1)(b)-(e)[211].

4. The CAWG noted that section 71 as presently drafted does not address, and hence it was not clear, whether a company can receive further consideration from an existing subscriber of its shares or capitalise its profits, both without the need to allot and issue additional new shares. To address this, the CAWG reviewed section 71, in particular to consider whether section 71 should be amended to allow a company, if so authorised by its constitution, to alter its share capital by increasing its share capital or capitalising its profits without issuing new shares, and whether there was a need for an ordinary resolution approving the alteration.

5. The CAWG observed that presently, an existing shareholder of a company who wants to contribute more capital must subscribe for more shares or make a loan to the company, which may involve tax and administrative costs. In this regard, allowing companies to receive further consideration from subscribers of their shares without the need to allot new shares increases the flexibility given to companies to raise capital, and possibly at a lower cost. It may also

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[211] Section 71(1) states: "Subject to subsections (1B) and (1C), a company, if so authorised by its constitution, may in general meeting alter its share capital in any one or more of the following ways: (a) [*Deleted by Act 21 of 2005*] (b) consolidate and divide all or any of its share capital; (c) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares; (d) subdivide its shares or any of them, so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; (e) cancel the number of shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the number of the shares so cancelled."

increase the attractiveness of the Singapore company vehicle to venture capital funds and international institutional investors. The CAWG noted that there may be international institutional investors who want to subscribe to and fully pay for a company's shares, with a formula that the investor may need to commit additional paid-in capital if the company's financial performance exceeds certain targets. Joint-venture companies in particular may want to increase their paid-up capital without issuing new shares because the shareholding structure of the company is carefully negotiated and would be disturbed by a requirement for shares to be issued. With the rise of venture capitalism and the uncertainty in the market on whether additional funding in excess of fully-paid up shares could be taken as part of a company's share capital, the CAWG took the view that there is a need to address this issue.

6. The CAWG also noted that unlike capital withdrawal, allowing companies to receive further consideration from subscribers of their shares without the need to allot new shares does not attract the concern of creditor abuse and the need to protect creditors, because the shareholder in question is committing more capital to the company.

7. The CAWG also considered that allowing companies to receive further consideration from subscribers of their shares without the need to allot new shares is consistent with the concept of non-par value shares. Singapore abolished the par value regime for shares with the Companies (Amendment) Act 2005. Under the old par value regime, it was not possible to capitalise profits (i.e. to use a company's profits to increase the amount of share capital contributed to the company instead of distributing them as dividends) without issuing shares[212]. It has been suggested that with the removal of the concept of par value, companies should be able to capitalise profits without issuing shares, but it would be prudent for an express provision to be made for this in the CA[213]. In a similar vein, companies should be able to take in additional consideration as capital without issuing shares, but an express provision should be made for this. A precedent for reference is Hong Kong. When Hong Kong introduced a regime of no-par shares to the Companies Ordinance[214], it concurrently amended its equivalent provision to Singapore's section 71, section 170 of the Companies Ordinance, to introduce new sections 170(2)(b) and 170(2)(c), which expressly allow companies to respectively increase share capital and capitalise profits, both without the need to allot and issue additional shares. The rationale for introducing these sections appears to be for consistency with Hong Kong's new no-par environment and to allow companies to capitalise their profits without issuing new shares[215].

[212] The profits are used to pay up the new shares which are issued to existing shareholders: *Gower and Davies' Principles of Modern Company Law* (8th ed, 2008) at page 282.

[213] Lucien Wong, Maisie Ooi and Margaret Chew, "The Companies (Amendment) Act 2005" in *Developments in Singapore Law between 2001 and 2005* (KS Teo ed) (Singapore Academy of Law, 2006) at paragraph 92.

[214] See paragraphs 4 to 9 of *New Companies Ordinance Briefing Notes on Part 4 Share Capital* (accessible at <https://www.cr.gov.hk/en/companies_ordinance/docs/briefingnotes_part04-e.pdf>)

[215] Paragraph 7 of *New Companies Ordinance Briefing Notes on Part 4 Share Capital* states: "Section 170, modified from section 53 of Cap. 32, empowers a company to alter its share capital in a number of ways under a no-par environment, e.g. to allow a company to capitalize its profits without issuing new shares and to allot and issue bonus shares without increasing share capital." Page 61 of *Consultation Paper Draft Companies Bill Second Phase Consultation* (7 May 2010) states: "Clause 4.38 empowers a company, by resolution in general meeting, to alter its share capital in a number of ways set out in sub-clause (2). The clause is a modified version of existing section 53 of the CO. In addition to the alterations allowed under section 53, the new provision allows a company to capitalise its profits without issuing new shares and to allot and issue bonus shares without increasing share capital. This is one of the advantages of no-par shares." These two documents are accessible at <https://www.cr.gov.hk/en/companies_ordinance/docs/briefingnotes_part04-e.pdf> and <https://www.cr.gov.hk/en/publications/docs/052010_DraftConsultation_full-e.pdf respectively>.

8. With respect to whether an ordinary resolution should be required for a company to increase its share capital or capitalise its profits without issuing new shares, the CAWG noted that section 170 of Hong Kong's Companies Ordinance provides that a company is not required to pass a resolution to approve increases of share capital or capitalisation of profits if no new shares are allotted and issued, so the directors of a company may cause the company to undertake such alterations of share capital.

9. The CAWG took the view that shareholders' interests are not prejudiced by not requiring an ordinary resolution to be passed in order for a company to undertake such alterations of its share capital. Firstly, such alterations of share capital neither affect any shareholders' existing voting rights nor dilute shareholders' voting rights in respect of their shares because there are no new shares issued and no change in the voting rights attached to existing shares. Secondly, the current requirement under section 71 that an alteration of share capital must be authorised by the constitution of the company will also apply to the new way of altering share capital by increasing share capital or capitalising profits without issuing new shares. The constitution would therefore determine whether the directors of a company may cause the company to increase share capital or capitalise profits without issuing new shares. For existing companies which do not have such a provision in their constitution, companies that intend to increase share capital or capitalise profits without issuing new shares will have to amend its constitution by special resolution[216] to include the new provision. This would give the shareholders of the company the opportunity to vote on whether to allow such alterations of share capital. Future shareholders may pass a special resolution to remove the authorisation from the constitution.

10. The CAWG also noted that not introducing a requirement to pass an ordinary resolution would mean that a company may avoid incurring the cost of passing an ordinary resolution in order to increase share capital or capitalise profits without issuing new shares. This cost may be substantial where, for example, the company has many shareholders and/or is unable to pass resolutions by written means because it is not a private company or an unlisted public company[217]. The CAWG took the view that not introducing the requirement makes it easier and cheaper for a company to increase share capital or capitalise its profits without issuing new shares, which may promote the attractiveness of the Singapore company vehicle to venture capital funds and international institutional investors, as well as enhance creditor protection given that a company can more easily make more capital available to its creditors.

11. Based on the foregoing, the CAWG recommends to amend section 71 to allow a company, if so authorised by its constitution, to alter its share capital by increasing its share capital or capitalising its profits without issuing new shares, and without the need for an ordinary resolution approving the alteration.

[216] Section 26.

[217] An unlisted public company is a public company the securities of which are not listed for quotation or quoted on an approved exchange in Singapore or any securities exchange outside Singapore: section 184A(9).

Recommendation 5.1

Section 71 should be amended to allow the directors of a company to alter the share capital of the company by increasing its share capital or capitalising its profits, without issuing new shares, and without the need for an ordinary resolution approving the alteration.

(b) Reduction of share capital without cancelling any issued shares

12. The CAWG reviewed section 78A, in particular to consider if the provision should be amended to expressly clarify that a company may undertake a reduction of its share capital under Division 3A of Part IV, and return such capital to its shareholders, without cancelling any issued shares.

13. A company may wish to undertake a capital reduction under Division 3A of Part IV, and return such capital to its shareholders, without cancelling any shares. For example, a company may wish to undertake such a capital reduction as an efficient and simple way of ensuring that post-reduction shareholding proportions remain unaffected, as opposed to cancelling each shareholder's shares *pro rata*. The ability to undertake a capital reduction without cancelling any shares would also reduce the company's administrative burden, as the company will not have to cancel and reissue new share certificates or have to deal with the problem of fractions of shares resulting from a percentage-based capital reduction.

14. While section 78A is framed in very general terms, some practitioners have given feedback that there is ambiguity as to whether a company may reduce its share capital, and return such capital to its shareholders, without cancelling any issued shares. The industry practice in this area differs, with some companies proceeding with a reduction in share capital without any corresponding change in the number of shares. Accordingly, the CAWG considered whether the section should be amended to expressly permit companies to undertake such capital reductions in order to eliminate this ambiguity, and provide certainty for companies and investors.

15. The CAWG observed that there is no meaningful purpose to have a restriction such that shares have to be cancelled to reduce share capital, given that there is no direct correlation between number of shares and the company's dollar capital. Even before the amendments to the CA in 2005 to abolish the concept of par value, the share premium account of a company which had to be maintained by a company was subject to largely the same capital maintenance rules as the share capital account, but could be used additionally, *inter alia*, to pay up unissued shares to be issued to members as bonus shares and to pay dividends if such dividends were satisfied by the issue of shares to members[218]. These additional ways in which the share premium account could be used were not available in respect of the share capital account. This suggests that the share premium account could be reduced without a corresponding reduction in the share capital account, i.e. without a change in the number of shares. Article 42 of Table A in the Fourth Schedule, as was then in force, provided that a company could, subject to any consent required by law, by special resolution reduce either its share capital or share premium account in any manner. The use of the disjunctive "or" in Article 42 suggested that the share premium account could be reduced without a corresponding reduction in the share capital

[218] Section 69(2) in force before 2005.

account and/or the number of shares. With the abolition of par value, the share premium account has been incorporated into the share capital account. By extension therefore, under the present regime, a company should be able to similarly undertake a reduction in share capital without a corresponding change in the number of shares.

16. The CAWG noted that the drafting of section 78A is similar to the corresponding statutory provisions in the UK and Australia, to the extent that the said provisions similarly do not stipulate that a company may undertake a capital reduction, and return such capital to its shareholders, without cancelling any issued shares. However, in both these jurisdictions, the provisions of the statute lend weight to the interpretation that companies may reduce share capital without having to cancel its shares[219].

17. Similarly, the express exceptions in section 78A(1) also do not necessarily require that a company must cancel its share when it reduces its share capital. The exceptions are as follows[220]:

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) cancel any paid-up share capital which is lost or unrepresented by available assets; and

(c) return to shareholders any paid-up share capital which is more than the company needs.

18. On balance, the CAWG takes the view that:

(a) the position in section 78A does allow the reduction of share capital and return of such capital to its shareholders without cancelling issued shares; and

(b) there was no need to amend the CA to further clarify this position.

However, the CAWG leaves open for ACRA's consideration whether a Registrar's Interpretation should be issued to clarify the position to practitioners.

[219] Section 641(4) of the UK's Companies Act 2006 provides non-exhaustive examples of methods by which a capital reduction may be achieved: (a) by extinguishing or reducing the liability of shareholders in respect of unpaid capital (see section 641(4)(a) of the Companies Act 2006), (b) by cancelling any paid-up share capital that is lost or unrepresented by available assets (see section 641(4)(b)(i) of the Companies Act 2006) or (c) by repaying any paid-up share capital in excess of the company's wants (see section 641(4)(b)(ii) of the Companies Act 2006). These examples of capital reductions do not necessarily involve any cancellation of shares. Section 258F of the Australia's Corporations Act 2001 provides that a company may not reduce its share capital by cancelling any paid-up share capital lost or not represented by available assets, if such a reduction in capital additionally involves the cancellation of the company's shares. The effect of Section 258F of the Corporations Act 2001 is therefore that any reduction in paid-up share capital lost or not represented by available assets must not involve any cancellation of shares. Section 256C(2) of the Corporations Act 2001, which provides that selective capital reductions must be approved by a special resolution of certain independent shareholders or a resolution of all ordinary shareholders, additionally provides that if the reduction involves a cancellation of shares, the reduction must also be approved by a special resolution passed at a meeting of the shareholders whose shares are to be cancelled. This implies that a selective capital reduction under Section 256C of the Corporations Act 2001 need not involve any cancellation of shares.

[220] Section 78A(1).

Recommendation 5.2

The CA need not be amended to clarify that a company may reduce share capital and return such capital to its shareholders without cancelling issued shares. It is left open for ACRA's consideration whether a Registrar's Interpretation should be issued to clarify the position to practitioners.

III. REVIEW OF FINANCIAL ASSISTANCE PROHIBITION AND EXCEPTIONS

19. Sections 76 prohibits a public company and a subsidiary of a public company from providing financial assistance to a person who is acquiring its shares, or shares of its holding company or its ultimate holding company, subject to a list of express exceptions[221]. The objective of the CA's financial assistance provisions is to preserve the company's capital and prevent the misuse and improper depletion of a company's assets, which protects the interest of creditors[222].

20. In 2002, the CLRFC reviewed the financial assistance provisions and recommended providing more exceptions to the financial assistance provisions (but not abolishing the financial assistance prohibition)[223]. The recommended exceptions included[224]:

(a) where the financial assistance involves less than 10% of the company's paid-up capital;

(b) where the financial assistance is approved by a unanimous resolution of shareholders; and

(c) representations, warranties and indemnities by an issuer or a vendor in the context of a public offering.

21. These recommendations were implemented via the Companies (Amendment) Act 2005 and took effect in 2006.

22. In 2011, the Steering Committee also reviewed the financial assistance provisions and was initially in favour of abolishing the financial assistance prohibition for all companies (including public companies)[225]. MAS, however, took the view that the financial assistance provisions can be abolished for private companies but it would be imprudent to abolish the provisions for public companies[226]. On balance, the Steering Committee then recommended to

[221] For example, the exceptions listed under section 76(8).

[222] *Woon's Corporation Law* at [1501]; see also *Wu Yang Construction Group Ltd v Mao Yong Hui and another* [2008] 2 SLR(R) 350 at [45]. During the Second Reading of the Companies (Amendment) Bill 1986 which repealed and re-enacted the financial assistance provisions, the Minister of Finance also stated that the rationale was to preserve the capital of the company: see *Singapore Parliamentary Reports, Official Reports* (5 May 1986) vol 48 at col 39 (Dr Hu Tsu Tau, Minister for Finance).

[223] Chapter 1, paragraphs 3.4.1 to 3.4.8 of the CLRFC Report.

[224] Chapter 1, paragraph 3.4.7 of the CLRFC Report.

[225] Page 3-21, paragraph 91 of the SC Report.

[226] Page 3-22, paragraph 93 of the SC Report.

abolish the financial assistance provisions for private companies (excluding subsidiaries of public companies) because[227]:

(a) shareholders of private companies have greater control over companies' decisions on financial assistance;

(b) creditors have recourse through provisions on fraudulent/wrongful trading and breach of directors' duties;

(c) cost of seeking legal advice is relatively higher for private companies; and

(d) the recommendation is consistent with the positions in the UK and Hong Kong[228].

23. The Steering Committee also recommended the addition of a new exception for public companies which allows a public company or its subsidiary to assist a person to acquire shares in the company or holding company of the company if the giving of the assistance does not materially prejudice the interest of the company and its shareholders or the company's ability to pay its creditors[229].

24. MOF accepted the Steering Committee's recommendations. The CA was amended in 2014 to abolish the financial assistance prohibition for private companies (excluding subsidiaries of public companies) and to introduce a new exception for public companies. The amendments took effect in 2015.

25. Following the extensive reviews in 2002 and 2011, CAWG undertook a more targeted review of section 76 to consider (a) whether the scope of the financial assistance prohibition should be refined; and (b) whether any further exceptions to the prohibition against financial assistance should be introduced. In undertaking its review and making its recommendations, the CAWG considered feedback from practitioners and the business community, particularly with respect to the ease of interpreting and applying section 76.

(a) Refining the scope of the financial assistance prohibition

26. Section 76(1) provides that "a public company ... shall not, whether directly or indirectly, give any financial assistance for the purpose of, or in connection with", *inter alia,* the acquisition or proposed acquisition by any person of shares in the company. The phrase "for the purpose of, or in connection with" is explained further in sections 76(3)-(4). Section 76(3) provides that a company shall be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in section 76(1) (referred to as "the relevant purpose") if the company gave the financial assistance for the purposes that included the relevant purpose and the relevant purpose was a substantial purpose of the giving of the financial assistance. Section 76(4) provides that a company shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in section 76(1) if, when the financial assistance was given by the person, the company was aware

[227] Page 3-23, paragraphs 95 to 96 of the SC Report.

[228] Page 3-23, paragraph 95 of the SC Report notes that "in HK, the intended abolition for private companies in the long run is supported in principle, but would not be included in the pending HK Companies Bill." The current position in Hong Kong on the financial assistance prohibition does not make a distinction between public and private companies.

[229] Page 3-24, paragraph 97 of the SC Report.

that the financial assistance would financially assist (a) the acquisition by a person of shares or units of shares in the company; or (b) where shares in the company had already been acquired — the payment by a person of any unpaid amount of the subscription payable for the shares, or the payment of any calls on the shares.

27. The CAWG noted that there is uncertainty in determining whether a transaction falls within the ambit of the financial assistance prohibition under section 76 because of the phrase "for the purpose of, or in connection with" as defined by the Singapore court in *Wu Yang Construction Group Ltd v Mao Yong Hui and another*. The court in that case held that "the fact that a transaction … is in the interests of the target company did not, by itself, lead to the conclusion that the transaction therefore cannot offend s 76 of the CA."[230] In this regard, the CAWG considered adopting the wordings of the corresponding provisions in the UK's Companies Act 2006, in particular section 678(2), on the basis that it would be more helpful to the business community in forming a view on the limits of the financial assistance prohibition as it connoted that the financial assistance was to facilitate another transaction. Section 678(2) provides that the UK's prohibition against financial assistance does not prohibit a company from giving financial assistance for the acquisition of shares in the company if (a) the company's principal purpose in giving the assistance was not to give it for the purpose of any such acquisition, or (b) the giving of the assistance for that purpose is only an incidental part of some larger purpose of the company, and the assistance was given in good faith in the interests of the company.

28. The CAWG took the view that replacing the references to "in connection with" in section 76 with the wordings of section 678(2) of the UK's Companies Act 2006 would make the ambit of section 76 clearer for practitioners and the business community, both in terms of the definition of financial assistance and the scope of the exceptions which contain references to "in connection with". The CAWG also noted that the financial assistance provisions in Australia, Hong Kong, Malaysia, and New Zealand do not utilise the phrase "in connection with" or similar phrases. Therefore, the CAWG recommended to amend section 76 to delete the references to "in connection with" and to align it more closely to the definition in section 678(2) of the UK's Companies Act 2006 by, *inter alia*, replacing sections 76(3)-(4) with the wordings of section 678(2).

<u>Recommendation 5.3</u>

The scope of the financial assistance prohibition in the CA should be amended to remove the references to "in connection with" and align more closely to the definition in section 678(2) of the UK's Companies Act 2006.

(b) Exceptions to the prohibition against financial assistance

29. Sections 76(8)-(9BA) and 76(10) contain the existing exceptions to the prohibition against financial assistance. In addition to the definition of financial assistance, the CAWG also considered, notwithstanding the clarifications proposed to the definition of financial assistance under Recommendation 5.3, whether new exceptions to the prohibition against

[230] [2008] 2 SLR(R) 350 at [58].

financial assistance should be introduced, in particular to address situations in practice where companies found it difficult to engage in legitimate transactions because these transactions did not clearly fall under an express exception.

(i) Expenses of initial public offerings

30. The CAWG received feedback that in the context of initial public offerings ("IPOs"), while there was already an exception for representations, warranties and indemnities under section 76(8)(ga), there has been some differences in views as to whether a company involved in an IPO may bear the expenses of the transaction without breaching the prohibition against financial assistance. For example, the expenses of the IPO may be apportioned between the vendor and the company with the company being expected to bear a higher proportion of the expenses (i.e. not proportionate to the number of new shares and vendor shares that are offered as part of the IPO), such as where no new shares were being issued as part of the IPO.

31. The CAWG took the view that in the case of a company that is issuing new shares, the company bearing the expenses in relation to the IPO should not be considered to constitute financial assistance, given that an IPO achieves a listing status for a company and benefits all stakeholders in the company. The company can, however, sometimes be expected to bear the expenses of the IPO even where no new shares were being issued as part of the IPO. In such a case, the initial money put into the company by the existing shareholders can be considered as having allowed the company to grow to its existing state, and an analogy may be drawn with the case where a company was issuing new shares whereby the shareholders of the newly-issued shares should not have to bear the IPO expenses. The CAWG therefore recommends that it should be clarified that expenses of IPOs would not constitute financial assistance, regardless of whether new securities or existing securities are being offered.

Recommendation 5.4

Section 76(8)(ga) should be clarified so that expenses of initial public offerings would not constitute financial assistance, regardless of whether new securities or existing securities are being offered.

(ii) Implementation of a take-over with the intention to take the company private

32. The CAWG also noted that there was uncertainty over whether the prohibition against financial assistance would be breached where a company was being privatised under a take-over but had issued outstanding bonds or loans with covenants to the effect that the company must remain listed on SGX, and the company undertook actions to facilitate the take-over and privatisation by dealing with the bondholders or lenders (e.g. buying back the bonds; engaging in consent solicitation for bonds issues; amending the bond documents; refinancing the debt; engaging and paying for the services of financial institutions to assist with the take-over). Uncertainty over this issue causes delays to take-overs, even though such actions were not necessarily detrimental to the market.

33. The CAWG observed that in such cases, the bondholders or lenders may not have direct contractual relations with the offeror, which may require the company to intervene to facilitate the take-over. To provide clarity on the issue to the industry and the investing community

(particularly private equity buyers), the CAWG recommends introducing an exception to the prohibition against financial assistance where it relates to a company taking actions to implement a take-over with the intention to take a company private. The exception could be drafted to provide that any of the following actions taken by a company to implement a take-over (as defined in the SFA) that is announced in accordance with the Singapore Code on Take-overs and Mergers, where the offeror has indicated its intention to take the company private, would not constitute financial assistance: (a) seeking the consent or waiver of any person under or in connection with (or any amendment to) existing contractual arrangements to which the company is a party; or (b) making payment of any fees and expenses, incurred in good faith and in the ordinary course of commercial dealing, to third parties (including financial institutions).

<u>Recommendation 5.5</u>

The CA should be amended to introduce an exception to the prohibition against financial assistance where a company takes any of the following actions to implement a take-over with the intention to take a company private: (a) seeking the consent or waiver of any person under or in connection with (or any amendment to) existing contractual arrangements to which the company is a party; or (b) making payment of any fees and expenses, incurred in good faith and in the ordinary course of commercial dealing, to third parties (including financial institutions).

<u>(iii) Restructuring situation where action is taken pursuant to the judicial manager's statement of proposal</u>

34. The CAWG noted that the current exceptions to financial assistance for restructuring purposes under sections 76(8)(d)-(f) are not wide enough to cover the "interim" restructuring process of judicial management and there appears to be no express exception under section 76(8) which can be relied upon by judicial managers. In particular, the current exceptions do not cover scenarios where steps may be taken by judicial managers in relation to disposals prior to a final court order under section 210 (even if the steps were for the benefit of the creditors). This stood in contrast to a scheme of arrangement whereby the board of directors are still in control of the company and anything done in pursuance of a court order made under section 210 is an express exception to the prohibition against financial assistance pursuant to section 76(8)(d).

35. The CAWG took the view that introducing an express exception for judicial managers would assist in the restructuring process for companies and encourage the judicial manager regime, and therefore recommends introducing such an exception. As the judicial manager is obliged under section 227M to submit a proposal to creditors within a period of 60 days or such longer period as the court may allow, any approval by the creditors to such proposal in accordance with section 227N will dictate the restructuring plan that the judicial manager has to implement. The exception should be introduced to provide that anything done in pursuance of the judicial manager's proposals which have been approved by a meeting of creditors (with

such modifications as consented to by the judicial manager) in accordance with section 227N, would not constitute financial assistance[231].

Recommendation 5.6

The CA should be amended to introduce an exception to the prohibition against financial assistance which is confined to a restructuring situation where action was taken pursuant to the judicial manager's statement of proposal which has been approved by creditors under section 227N(1).

(iv) Debt refinancing

36. The CAWG considered the situation where a company is required to obtain refinancing in connection with the acquisition of itself. For example, in a take-over scenario, the company may have no choice but to obtain refinancing as a result of an impending acquisition (e.g. where existing financing becomes due and payable due to a change in control). By taking up new loans for the purpose of refinancing the company's existing financing, the company may fall foul of the prohibition against financial assistance because the existing financing would not have become due but for the acquisition. Additionally, the company may often provide security over its assets for the purpose of the refinancing, which would also fall foul of the prohibition.

37. The CAWG observed that most bond transactions are drafted without the ability for the company to call on the bond, and in the case where the buyer did not wish for the bond to be outstanding, the company may pay for the refinancing. The CAWG therefore recommends that debt refinancing should be an exception to the prohibition against financial assistance. The exception could be drafted to provide that the refinancing or repayment of any existing debt owed by the company (including the refinancing or redemption of the company's debt securities) where such existing debt has become due and payable as a consequence of the acquisition of shares in that company by any person, would not constitute financial assistance.

Recommendation 5.7

Debt refinancing should be an exception to the prohibition against financial assistance under section 76(1).

(v) Refinancing of an existing loan that had been previously "whitewashed"

38. Presently, sections 76(9A)-(9BA) and 76(10) require a company to obtain approval from either its shareholders or directors (a "whitewash") in order to carry out an act which would otherwise fall foul of the prohibition against financial assistance. The CAWG noted that it was not clear whether refinancing an existing loan which has already been approved by the relevant whitewash process would have to be whitewashed again.

[231] Once commenced, the Insolvency, Restructuring and Dissolution Act 2018 (No. 40 of 2018) will repeal and replace section 227N CA with section 108 of the Act. If the Act has been commenced, Recommendation 5.6's reference to section 227N(1) should be read as a reference to section 108(1) of the Act.

39. The CAWG observed that a concern with allowing an express exception for such a situation was whether there is prejudice to the company at the point of the refinancing, and in this regard a blanket exception to the effect that no subsequent whitewash was required for the refinancing of an existing loan that had been previously whitewashed would be too broad. The CAWG considered the alternative of imposing conditions for the exception, such as requiring the quantum of refinancing to not exceed that of the loan which has already been whitewashed, restricting the security package/credit support for the refinancing to be on terms that are not better than that of the original loan that has been whitewashed, or considering the financial circumstances of the borrower/security provider at the time of the refinancing.

40. On balance, the CAWG noted that since time would have elapsed between the first whitewash and the refinancing, circumstances might have changed in between. The CAWG therefore recommends not to introduce an express exception to the prohibition against financial assistance in respect of the refinancing of an existing loan that had been previously whitewashed. For the avoidance of doubt, the CAWG does not take the view that a refinancing of a loan that had previously been whitewashed would in all instances necessarily be construed as financial assistance. Whether such a refinancing constituted financial assistance would depend on the facts of the case.

Recommendation 5.8

An express exception to the prohibition against financial assistance under section 76(1) in respect of the refinancing of an existing loan that had been previously "whitewashed" should not be introduced.

(vi) Allotment of shares pursuant to conversion of bonus convertible bonds/debentures

41. Section 76(8)(k) presently provides that "an allotment of bonus shares" is an exception to the prohibition against financial assistance. The CAWG received feedback that there may be uncertainty over whether the exception under section 76(8)(k) extends to an allotment of shares pursuant to conversion of bonus convertible bonds or debentures.

42. The CAWG noted that bonus convertible bonds and debentures were not common in practice, and observed that it was unclear whether bonus convertible bonds or debentures were allotted to existing shareholders and if they were allotted *pro rata* to all shareholders. This was unlike in the case of bonus shares which had to be issued *pro rata* to all shareholders and would not pose a problem in respect of financial assistance because no capital was taken out of the company. With this uncertainty, the issuance of convertible bonds or debentures could potentially give rise to other issues apart from concerns about financial assistance (e.g. dilution of existing shares; concerns with solvency; oppression of minority shareholders).

43. Based on the forgoing reasons, the CAWG takes the view that the CA should not be amended to address the issue of whether section 76(8)(k) extends to an allotment of shares pursuant to conversion of bonus convertible bonds or debentures. For the avoidance of doubt, the CAWG does not take the view that an allotment of shares pursuant to conversion of bonus convertible bonds or debentures would in all instances necessarily be construed as financial

assistance. Whether such an allotment constituted financial assistance would depend on the facts of the case.

> **<u>Recommendation 5.9</u>**
>
> The CA should not be amended to address the issue of whether the exception to financial assistance under section 76(8)(k) extends to an allotment of shares pursuant to conversion of bonus convertible bonds/debentures.

IV. EXCEPTION FOR SELECTIVE SHARE BUYBACKS OF ODD-LOT SHARES BY LISTED COMPANIES

44. Section 76D provides that a company may make a selective off-market purchase (i.e. a purchase or acquisition of its own shares otherwise than on a securities exchange and not in accordance with an equal access scheme), if the purchase or acquisition is made in accordance with an agreement authorised in advance by a special resolution of the company.

45. The CAWG reviewed section 76D, in particular to consider whether a *de minimis* exception to the requirement under section 76D for a selective off-market purchase to be authorised by a special resolution of the company should be introduced for listed companies.

46. The repurchase of odd-lot shares through a discriminatory offer by a listed company was last reviewed by the Steering Committee in 2011, which observed that odd-lot holdings[232] may be disproportionately costly for a listed company to administer due to, *inter alia*, costs associated with securing compliance with the CA as well as applicable rules of the securities exchange, including dispatching notices of general meeting and annual reports to odd-lot shareholders. Shareholders may also be discouraged from attempting to dispose of their small shareholdings given the relatively high transaction costs[233].

47. The Steering Committee therefore recommended that the CA be amended to provide for an additional exception to the share acquisition prohibition, which was that listed companies be allowed to make discriminatory repurchase offers to odd-lot shareholders[234]. MOF adopted the Steering Committee's recommendation, with modifications[235]; in particular, instead of amending the CA to expressly provide for such an exception, the CA was amended, pursuant to the Companies (Amendment) Act 2014, to generally remove the then-existing restriction[236] of selective off-market purchase for companies listed on a securities exchange. Accordingly, following the Companies (Amendment) Act 2014, listed companies are permitted to undertake selective off-market purchases, subject to the requirements specified in the CA. In this connection, the CA was also amended to clarify that sponsoring an odd-lot program does not amount to financial assistance for the purposes of section 76[237].

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[232] In the case of securities listed on SGX, odd-lot holdings are shareholdings of less than the standard board lot size of 100 units of shares.
[233] Page 3-18, paragraph 81 of the SC Report.
[234] Recommendation 3.25 of the SC Report.
[235] Page 54, paragraph 109 of MOF's Responses.
[236] The deleted section 76D(1)(b).
[237] Section 76(8)(m).

48. The CAWG noted that as the shareholder base of a listed company is dynamic, it is not practically possible for a listed company to, at the outset when seeking shareholders' approval under section 76D(1) for authority to undertake a selective off-market purchase, exhaustively identify all shareholders who will hold odd-lot shares during the entirety of the duration of the mandate for which authority is sought. Furthermore, whilst the listed company may be able to identify its existing odd-lot shareholders at the time of seeking shareholders' approval, there may potentially be a lengthy abstention list. This is also compounded by the additional requirement in section 76D(1) that associated persons of existing odd-lot shareholders abstain from voting on the resolution; "associated person" is defined broadly to mean the person's spouse, child or step-child, or the person's associate[238]. Given the potentially extensive list, the listed company is unlikely to be able to identify these associated persons with certainty. Consequentially, the listed company may not be able to ensure that the resolution (if passed) is in compliance with section 76D(1) because, for example, an associated person of the odd-lot shareholder may not have abstained from voting on the resolution.

49. The CAWG noted that in Australia, the buyback of a "minimum holding"[239] does not require any resolution to be approved by shareholders[240]. The Australia's Companies and Securities Law Review Committee had proposed that a *de minimis* exception be allowed for odd-lot transactions for listed companies whereby directors of the listed company may, without seeking shareholder's approval, acquire odd lots of up to 0.1% of the company's shares in any 12-month period by selective share buybacks[241]. It was also noted that in New Zealand**,** a selective off-market purchase may be made if it is expressly permitted by the company's constitution, and the board has resolved that (a) the acquisition is of benefit to the remaining shareholders; and (b) the terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders[242].

50. The CAWG considered that the approach of permitting the buyback of a minimum holding of shares without any restrictions could lead to potential abuse. The CAWG also considered the position in New Zealand which allowed a selective off-market purchase if it is expressly permitted by the company's constitution and approved by the board of directors, and took the view that the condition that the consideration offered must be fair and reasonable to the remaining shareholders may give rise to uncertainty.

51. Accordingly, the CAWG recommends that an exception to the requirement for a special resolution under section 76D for a selective off-market purchase should be introduced, whereby directors of the listed company may, without seeking shareholder's approval, acquire odd lots of up to 0.1% of the company's shares in any 12-month period. The parameters for the limits

[238] Section 76D(14).
[239] A minimum holding buy-back is defined in section 9 of Australia's Corporations Act 2001 as a "buy-back of all of a holder's shares in a listed corporation if the shares are less than a marketable parcel within the meaning of the rules of the relevant financial market". Under the ASX Operating Rules Procedures, a "marketable parcel" in relation to equity securities refers to a parcel of securities of not less than $500 based on certain criteria.
[240] Section 257B of Australia's Corporations Act 2001.
[241] Paragraph 54 of *Companies and Securities Law Review Committee Report to The Ministerial Council A Company's Purchase of its Own Shares* (Sep 1987) (accessible at: <http://www.takeovers.gov.au/content/Resources/cslrc/cslrc_report_no_6.aspx>). This exception is not a current requirement in Australia's Corporations Act 2001.
[242] Section 60, read with section 61, of New Zealand's Companies Act 1993.

and restrictions mirror those suggested by Australia's Companies and Securities Law Review Committee.

Recommendation 5.10

An exception to the requirement under section 76D for a selective off-market purchase to be authorised by a special resolution of the company should be introduced for listed companies, whereby directors of the listed company may, without seeking shareholder's approval, acquire odd lots of up to 0.1% of the company's shares in any 12-month period.

CHAPTER 6

OTHER RECOMMENDATIONS

I. INTRODUCTION

1. The CAWG also reviewed and made recommendations on other areas of the CA. The recommendations aim to update outdated legislative provisions, reduce compliance costs and better align certain provisions of the CA with other legislation.

II. ABOLITION OF STATEMENT IN LIEU OF PROSPECTUS

2. Under the CA, a statement in lieu of prospectus is required to be filed with the Registrar in the following circumstances[243]:

(a) Upon conversion from private to public company: A private company converting to a public company is required to lodge a statement in lieu of prospectus with the Registrar in accordance with section 31(2)(b);

(b) Upon ceasing to be a private company: Where the High Court or the Registrar determines that a company has ceased to be a private company, the company is required to lodge a statement in lieu of prospectus within 14 days of the order or notice, in accordance with section 32(3)(c)(i);

(c) Prior to first allotment of shares or debentures: A public company that does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless, at least 3 days before the first allotment of shares or debentures, it lodges with the Registrar a statement in lieu of prospectus, in accordance with section 59(1); and

(d) Prior to commencing any business or exercising any borrowing power: A public company that has not issued a prospectus inviting the public to subscribe for its shares shall not commence any business or exercise any borrowing power unless it lodges with the Registrar a statement in lieu of prospectus, in accordance with section 61(2)(a).

[243] The provisions in the CA relating to statements in lieu of prospectus are very similar to the equivalent provisions in the Australia Companies Act 1961 (Victoria No. 6839 of 1961). According to the Company Law Advisory Committee to the Standing Committee of State and Commonwealth Attorneys-General (the "Eggleston Committee"), "the statement in lieu of prospectus was originally invented to provide a safeguard for investors in cases in which a company, instead of offering its shares to the public, allotted them to a person or company who in turn disposed of them to public. It was apparently thought that by requiring the directors to file in the office of the Registrar a statement containing the material which would have had to be included in a prospectus, the directors would be discouraged from putting forward an unsound proposition". See paragraph 84 of *Fifth Interim Report of the Company Law Advisory Committee to the Standing Committee of State and Commonwealth Attorneys-General* (October 1970) (the "Eggleston Committee Report") (accessible at: <https://www.takeovers.gov.au/content/Resources/eggleston_committee/5th_interim_report_fundraising.aspx>).

3. The requirements as to the form and content for statements in lieu of prospectus are set out in section 60(1), which includes the matters specified in the Sixth Schedule.

4. The CAWG considered whether companies should continue to be required to issue and file with the Registrar a statement in lieu of prospectus in the circumstances prescribed in the CA. The CAWG noted that the requirement in the CA for a company to issue and file a statement in lieu of prospectus increases the compliance costs and administrative burden for a company. For instance, a company seeking to list on the SGX-ST would convert from a private to a public company, or incorporate as a public company, shortly before lodgement of its prospectus with MAS. In the case of a company that is converting into a public company, the company would be required to lodge a statement in lieu of prospectus in compliance with section 31(2)(b). In the case of a company that is incorporated as a public company and did not issue a prospectus on or with reference to its formation, the company would be required to lodge a statement in lieu of prospectus prior to any allotment of shares or debentures in compliance with section 59(1). These requirements for a statement in lieu of prospectus are compulsory notwithstanding that the relevant company would have to issue and lodge a prospectus under section 240 of the SFA because it intends to make an offer of its securities to the public in Singapore.

5. In this regard, the CAWG observed that the information required in a statement in lieu of prospectus is generally already covered by the more extensive prospectus requirements under the SFA. However, in relation to financial statements and reports, the requirements under the CA for a statement in lieu of prospectus is more onerous than the prospectus disclosure requirements of the SFA[244]. The CAWG also noted that the SFA has a list of circumstances under which an offer of securities is exempted from the prospectus requirements (e.g. the small offers and the private placement exemptions in sections 272A and 272B of the SFA respectively). The convenience and effectiveness of the prospectus exemptions would be negated to an extent if a company is required to issue and file a statement in lieu of prospectus under the CA. Additionally, a company undertaking a public offering that lodges a statement in lieu of prospectus with the Registrar also risks public disclosure of sensitive commercial and financial information prior to the lodgement of its prospectus with MAS. The CAWG was of the view that there were no other circumstances, other than those already covered by the prospectus requirement or exemptions under the SFA, which may warrant disclosures in the form of a statement in lieu of prospectus being lodged with the Registrar.

6. Based on the foregoing, the CAWG took the view that the requirement to lodge a statement in lieu of prospectus under the circumstances prescribed in the CA should be abolished. The amendment would not adversely affect investors' rights, since the prospectus regime under the SFA and related exemptions provide the requisite protection for investors by prescribing the circumstances under which a prospectus is required. Additionally, the

[244] A company that proposes to acquire a business, limited liability partnership or shares in a corporation such that the corporation will become a subsidiary of the public company ("proposed subsidiary"), is required by Part II of the Sixth Schedule CA to include an auditor's report on the profits and losses, and assets and liabilities, of the target business, limited liability partnership or proposed subsidiary (as the case may be), for the three financial years before the statement in lieu of prospectus is lodged with the Registrar. In contrast, the prospectus requirements under the SFA only require an auditor's report on the pro forma financial statements of the target business or entity to be acquired as if it is part of the group seeking an offer to the public, provided certain materiality thresholds relating to the size of the target business or entity relative to the group seeking an offer to the public, are met, and only for the most recent completed financial year and any applicable interim period. See paragraph 23 of Part IX (Financial Information) in the Fifth Schedule of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005.

amendment would also serve to streamline and enhance the process by which applicants seek a listing of a company on the SGX-ST, as well as remove an anomaly where a company seeking to allot and issue shares or to offer securities to the public would need to file a statement in lieu of prospectus, whereas a foreign corporation allotting and issuing or offering shares to the public in Singapore does not.

7. The amendment would also bring Singapore's position in line with that in Australia and the UK, both of which previously had a requirement for a statement in lieu of prospectus similar to that in Singapore, but where such requirement has since been completely abolished[245].

Recommendation 6.1

The requirement to lodge a statement in lieu of prospectus under the circumstances prescribed in the CA should be abolished.

III. DEFINITION OF "DEBENTURE" IN THE CONTEXT OF SECTIONS 164 AND 165

8. The CAWG reviewed the definition of "debenture" under section 4(1), in particular to consider if the definition should be amended to remove the exclusion in limb (b) of "a promissory note having a face value of not less than $100,000 and having a maturity period of not more than 12 months" (referred to as "high value short term promissory notes") in the context of sections 164 and 165. By virtue of this exclusion in section 4(1)'s definition of "debenture", high value short term promissory notes are excluded from the debenture disclosure requirements of directors and CEOs under sections 164 and 165.

9. The CAWG observed that in the case of listed corporations, section 133(1)(b) of the SFA requires every director and CEO to disclose the particulars of debentures of the corporation and that of a related corporation held by him, or in which he has an interest and the nature and extent of that interest. The definition of "debenture" under section 2(1) of the SFA does not have an exemption for high value short term promissory notes. Therefore, for the purpose of disclosure under section 133 of the SFA, a high value short term promissory note held by a director or CEO in a listed corporation must be disclosed. There is therefore a lack of consistency between the position in the SFA and the position in the CA.

10. The high value short term promissory notes exclusion in the CA was introduced in 1987 as part of a list of exclusions to the definition of "debenture". At that time, the issuance of debentures required the issuance of a prospectus under the then sections 43 and 44. The underlying intention for this particular exclusion was to exclude short-term money market

[245] In paragraph 84 of Australia's Eggleston Committee Report and paragraph 247 of the UK's *Report of the Company Law Committee presented to Parliament by the President of the Board of Trade by Command of Her Majesty* (June 1962) (the "Jenkins Committee Report"), the respective committees in the two jurisdictions had proposed that existing provisions in the legislation would address the regulatory gap which the statement in lieu of prospectus is intended to address, rendering the statement in lieu of prospectus redundant. The Singapore SFA has a similar provision to address the regulatory gap which the statement in lieu of prospectus is intended to address in the form of section 257 of the SFA. The Jenkins Committee Report is accessible at: <https://www.takeovers.gov.au/content/Resources/other_resources/downloads/jenkins_committee_v2.pdf>.

instruments from the definition of "debenture"[246] and in turn to abrogate the need to issue a prospectus for the issuance of such short-term money market instruments[247]. The provisions relating to the issuance of prospectus have since been removed from the CA, with the requirements relating to prospectus requirements being set out in the SFA instead.

11. The CAWG also noted that the definition of "debenture" in the corresponding statutory provisions in the Australia, Hong Kong, Malaysia and the UK do not provide for an exclusion for high value short term promissory notes. Accordingly, in the context of maintaining a register of debentures and/or the disclosure of a director's interest in the company's debentures, these countries require high value short term promissory notes issued by the company which are held by directors to be disclosed.

12. While the CAWG observed that the definition of "debentures" under the CA and SFA were not consistent in respect of the requirement for directors and CEOs to disclose high value short term promissory notes held, the CAWG acknowledged that the more stringent disclosure requirement which required the disclosure of such promissory notes in the SFA could be justified for listed companies, given the greater public interest in respect of those companies. Furthermore, there have not been any specific concerns encountered about excluding disclosure of high value short term promissory notes under the said provisions.

13. Accordingly, on balance, the CAWG recommends that there is no need to amend the CA to remove the exclusion limb of high value short term promissory notes in the definition of "debenture" such that directors and CEOs are then required to disclose their holding of such promissory notes under sections 164 and 165.

Recommendation 6.2

There is no need to amend the CA to remove the exclusion limb of high value short term promissory notes in the definition of "debenture" such that directors and chief executive officers are then required to disclose their holding of such promissory notes under sections 164 and 165.

IV. DEFINITION OF "CHILD" UNDER SECTION 133(6) OF THE SFA

14. Section 165 requires a director or a CEO to disclose to his or her company the particulars of his or her interest in shares, debentures, participatory interests, rights, options and contracts for the purpose of the company's compliance with the requirement to keep a register of directors' and CEO's shareholdings under section 164. Section 133(1) of the SFA requires a director or a CEO to make similar disclosures to his or her corporation.

15. The CAWG noted that, although both the regimes under the CA and SFA require a director or a CEO to disclose, *inter alia*, the interests of his or her family members (including his or her children), section 164(15)(a)(ii) extends the disclosure requirements in the CA to a

[246] Page D3 of *Report of the Select Committee on the Companies (Amendment) Bill [Bill No. 9/86]* (presented to Parliament on 12 March 1987).
[247] Paragraphs 1.6 and 6.2 of the Law Society of Singapore's report at pages A41 and A42 of *Report of the Select Committee on the Companies (Amendment) Bill [Bill No. 9/86]* (presented to Parliament on 12 March 1987).

son, step-son, adopted son, daughter, step-daughter and adopted daughter of "less than 18 years of age" of a director or a CEO, while section 133(6) of the SFA extends the disclosure requirements in the SFA to a son, adopted son, step-son, daughter, adopted daughter or step-daughter "below the age of 21 years" of a director or a CEO.

16. To align the disclosure requirements of interests in securities of directors and CEOs in the SFA with that in the CA, the CAWG recommends that the definition of a child under section 133(6) of the SFA should be amended to use a threshold of 18 years, in line with that used in section 164(15)(a)(ii) of the CA, as the CA provision is the more recently updated section.

Recommendation 6.3

The definition of a child under section 133(6) of the SFA should use a threshold of 18 years, in line with that used in section 164(15)(a)(ii) of the CA.

V. AMENDING FORM 45 OF THE SECOND SCHEDULE TO THE COMPANIES REGULATIONS

17. Section 146(1) provides that a person shall not be named as a director or proposed director in (a) any document filed or lodged with or submitted to the Registrar for the purposes of the incorporation of a company; or (b) the register of directors, CEOs and secretaries of a company, unless, before (i) the incorporation of the company; or (ii) the filing of any return in the prescribed form containing the particulars required to be specified in the register of directors, CEOs and secretaries, as the case may be, the person has complied with the conditions set out in section 146(1A).

18. One of the conditions under section 146(1A)(a) requires the person to, by himself or herself or through a registered qualified individual authorised by him or her, file with the Registrar: (a) a declaration that he or she has consented to act as a director; (b) a statement in the prescribed form that he or she is not disqualified from acting as a director under the CA; and (c) a statement in the prescribed form that he or she is not debarred under section 155B from acting as a director.

19. The CAWG noted that Form 45 of the Second Schedule to the Companies Regulations (consent to act as director and statement of non-disqualification to act as director) does not provide for the statements described in (b)-(c) and therefore recommends that Form 45 be updated accordingly. This could be implemented through an amendment to the Companies Regulations.

Recommendation 6.4

Form 45 of the Second Schedule to the Companies Regulations should be updated to include a statement that the director was qualified to act as a director.

VI. REVIEW OF MATTERS RELATING TO THE CONSTITUTION

(a) Requirement for companies to have a constitution

20. The CA requires that at the point of incorporation, the constitution of the intended company must be lodged and registered with the Registrar. The constitution contains the requisite information on the company's name, type and members, and once registered, binds the company and its members. The CAWG considered whether to retain the requirement for a company to have a constitution or if the constitution could be made optional, to cut down on the processes and documents required for the company registration process.

21. The Companies (Model Constitutions) Regulations 2015 contains two model constitutions for private companies and CLGs respectively. The introduction of the model constitutions aids newly incorporated companies in creating a constitution at no cost, and helps to reduce business costs involved in incorporating a company.

22. The CAWG observed that jurisdictions such as Australia, Malaysia and New Zealand have a concept of optional constitution (i.e. there is no legal requirement for companies in these jurisdictions to have a constitution or to have it lodged with the company registry). A company registered in any of these jurisdictions can choose not to have a constitution and instead rely on the rights, powers, duties and obligations as set out in the respective companies legislation.

23. The CAWG noted that if the constitution were made optional, companies that choose not to have any constitution may need to seek legal advice to clarify the statutory obligations that apply to the company, resulting in an increase in compliance costs. There would also be a risk that shareholders and directors may be confused as to their rights and obligations under the CA. Accordingly, the CAWG recommends that the constitution should continue to be a mandatory requirement and that the two model constitutions in the Companies (Model Constitutions) Regulations 2015 should be retained.

24. The CAWG, however, noted feedback that some provisions in the model constitutions are outdated and recommends that these be updated. Some of the areas that were identified as requiring updating are the absence of provision for electronic meetings, and the references to use of common seals notwithstanding the recent changes in the law to provide alternatives to executing documents by way of common seal[248]. As the updating of the model constitutions do not require an amendment to the CA, the CAWG left this issue to be taken up separately by ACRA.

Recommendation 6.5

The constitution should continue to be a mandatory requirement, and the two model constitutions in the Companies (Model Constitutions) Regulations 2015 should be retained and updated.

[248] See sections 41A, 41B and 41C.

(b) Reproducing the requirements under sections 18(1)(a)-(b) in the model constitution for private companies limited by shares

25. Section 18(1) provides that a company having a share capital may be incorporated as a private company if its constitution (a) restricts the right to transfer its shares[249]; and (b) limits to not more than 50 the number of its members[250]. A private company may adopt the whole or any part of the model constitution in the First Schedule to the Companies (Model Constitutions) Regulations 2015[251]. The CAWG observed that the current prescribed model constitution for private companies, however, does not expressly provide for the restrictions in section 18(1)(a) and (b).

26. To make it easier for private companies to adopt the model constitution, the CAWG recommends to amend the model constitution to reproduce the requirements in sections 18(1)(a)-(b). This could be implemented through an amendment to the Companies (Model Constitutions) Regulations 2015.

<u>**Recommendation 6.6**</u>

The model constitution for a private company limited by shares should be amended to reproduce the requirements in section 18(1)(a)-(b).

(c) Review on replaceable rules

27. The CAWG noted that in Australia, the Corporations Act 2001 provides an extensive list of statutory provisions known as "replaceable rules" that companies can opt out of or modify via its constitution or otherwise. Replaceable rules are prefaced in the legislation with the phrase "Unless otherwise provided by the constitution" or "Subject to any provision to the contrary in the constitution", which allows the provision in the Act to be varied or omitted by way of a provision in the company's constitution. A regime which provides for replaceable rules gives companies greater flexibility, as they are able to modify the relevant obligations in the legislation by way of provisions in their constitutions. The CAWG noted that while Singapore does provide in the CA for certain provisions to be subject to contrary provisions in the constitution, the regime is not as extensive or flexible as that in Australia[252].

28. In Australia's Corporations Act 2001, there are 42 replaceable rules covering provisions on areas such as the appointment, remuneration and termination of officers and employees; inspection of books; directors' meetings; members' meetings; shares; and transfer of shares. These are listed discretely for ease of reference within the legislation[253]. By contrast, the CA

[249] Section 18(1)(a).
[250] Section 18(1)(b).
[251] Sections 36(1)(a) and 37(1).
[252] Some examples of provision in the CA for which companies may provide for alternative provisions in the constitution include sections 147(2), 149B, 152(9), 181(1A), 184(5), 184(6), 184A(5)(a)(ii) and 184DA(1).
[253] See sections 194, 198A, 198B, 198C, 201G, 201H, 201J, 201K, 202A, 203A, 203C, 203F, 204F, 247D, 248A, 248C, 248E, 248F, 248G, 249C, 249J(2), 249J(4), 249J(5), 249M, 249T, 249U, 249W(2), 249X, 250C(2), 250E, 250F, 250G, 250J, 250M, 254D, 254U, 254W(2), 1072A, 1072B, 1072D, 1072F and 1072G of the Australian Corporations Act 2001.

has 8 replaceable rules, which relate to the qualification[254], appointment[255] and removal[256] of directors; provision for proxies[257]; computation of majority for special resolutions poll[258]; notice of meeting for special resolution[259]; method of indicating members' agreement to resolution[260]; and the period for agreeing to written resolution[261]. The positions in Hong Kong and the UK are similar to that in Singapore.

29. The CAWG noted that the CA already provides for rules that can be modified by provisions of the constitution, and took the view that the current balance between mandatory and replaceable rules in the CA is adequate. Moreover, while the position in Australia provides more flexibility to companies, the CAWG was of the view it could be unduly complex to have many different replaceable rules across various aspects of the CA. Accordingly, the CAWG recommends not to adopt a replaceable rules regime similar to that in Australia.

Recommendation 6.7

The CA should not be amended to adopt a replaceable rules regime similar to that in Australia.

[254] Section 147(2).
[255] Section 149B.
[256] Section 152(9).
[257] Section 181.
[258] Section 184(5).
[259] Section 184(6).
[260] Section 184A(5)(a)(ii).
[261] Section 184DA(1).

GLOSSARY OF TERMS

Term	Definition
ACRA	The Accounting and Corporate Regulatory Authority
CA	Companies Act (Cap. 50)
CAWG	Companies Act Working Group
Charities Act	Charities Act (Cap. 37)
CLFRC	Company Legislation and Regulatory Framework Committee appointed by the Ministry of Finance, the Attorney-General's Chambers and the Monetary Authority of Singapore in December 1999.
CLFRC Report	*Report of the Company Legislation and Regulatory Framework Committee* (October 2002)
Companies (Filing of Documents) Regulations	Companies (Filing of Documents) Regulations (Cap. 50, Rg 7)
Companies Regulations	Companies Regulations (Cap. 50, Rg 1)
Companies (Summary Financial Statement) Regulations	Companies (Summary Financial Statement) Regulations (Cap. 50, Rg 4)
MAS	The Monetary Authority of Singapore
MOF	The Ministry of Finance
MOF's Responses	*Ministry of Finance's Responses to the Report of the Steering Committee for Review of the Companies Act* (3 October 2012)
SC Report	*Report of the Steering Committee for Review of the Companies Act* (April 2011)
SFA	Securities and Futures Act (Cap. 289)
SGX	Singapore Exchange
Steering Committee	Steering Committee for Review of the Companies Act appointed by the Ministry of Finance in October 2007
UK	United Kingdom