Annex 3

SUMMARY OF FEEDBACK RECEIVED ON PART TWO OF THE COMPANIES (AMENDMENT) BILL[1]

INTERESTS IN SHARES

Narrow the scope of the deemed interest provision by excluding holding company and fellow subsidiaries from the definition of associates under section 7(5)

Summary of Feedback Received

1. There were no objections to the proposed amendment.

MOF's Response

2. MOF retains the position in the Bill.

RECTIFICATION OF REGISTER

Clarify "prescribed circumstances" where no notices will be sent

Summary of Feedback Received

3. One respondent sought clarification on the prescribed circumstances under which no notices of rectification would be sent out.

MOF's Response

4. The proposed "prescribed circumstances", which will be set out in the subsidiary legislation, will include situations where ACRA has obtained reliable information from other government agencies and changes are made to large numbers of entities or persons. Notices of rectification will not be sent out as the administrative costs of notification to all entities and persons outweigh the risk of error or inaccuracies arising from the Registrar's rectification.

[1] Details of the public consultation are at http://app.mof.gov.sg/pc_coact_2013_2.aspx.

SHARES MAY BE ISSUED FOR NO CONSIDERATION

Introduce section 67 to clarify that a company may issue shares for no consideration, if its constitution permits

Summary of Feedback Received

5. One respondent highlighted that companies could already issue shares for no consideration, although their articles might have been silent on whether this was permitted. The respondent was of the view that the new section 67 would introduce a new requirement for companies to amend their constitution before they could issue shares for no consideration.

MOF's Response

6. MOF will delete the words *"if so authorised by its constitution"* from the new section 67, since the provision is intended for clarity and not to introduce a new requirement.

RIGHTS OF HOLDERS OF CLASSES OF SHARES

Replace "issued shares" in section 74(1) with "total number of issued shares". Replace "issued share capital" in section 74(1A) with "issued shares" as a consequential amendment

Summary of Feedback Received

7. There were no objections to the proposed amendments. One respondent highlighted that following the abolition of the concepts of par value and authorised share capital, the number of treasury shares changes as a result of the subdivision or consolidation of any treasury share, and not the value. The respondent proposed replacing "smaller amount" with "greater or smaller number" in section 76J(5)(b).

MOF's Response

8. MOF agrees with the suggested amendment to section 76J(5)(b).

DISQUALIFICATION OF DIRECTOR OF STRUCK-OFF COMPANY

Applicability to all directors

Summary of Feedback Received

9. One respondent commented that it would be unfair to disqualify independent directors or non-executive directors who were not in control of the affairs of the company. The respondent indicated that the provision should only apply to directors who were majority, substantial or controlling shareholders of the company.

MOF's Response

10. MOF retains the applicability of the provision to all directors. Directors, by virtue of their position, are responsible for managing the affairs of the company. The statutory obligations under the Companies Act are applicable to all directors.

Opportunity to be heard before disqualification

Summary of Feedback Received

11. One respondent suggested that a director be given an opportunity to be heard before he was disqualified for companies that were struck off.

MOF's Response

12. MOF retains the position in the Bill for consistency with the current regime under section 155 of the Companies Act. Currently, directors who are automatically disqualified for persistent default can apply for leave of the Court to act as a director. Thus, MOF will adopt a similar approach for the proposed section 155A.

NEW DEBARMENT REGIME FOR DIRECTORS AND COMPANY SECRETARIES

(a) Whether there should be an avenue for a debarred person to apply to the Registrar for leave to act upon satisfaction of certain conditions, for example providing a security bond for a certain sum which may be forfeited upon any subsequent default. (consultation question 1)

(b) Whether the Registrar should be empowered to debar:

- ***a person who has been a director or company secretary for at least 3 months, as specified under section 155B(4)(a); or***

- ***any director or company secretary of a company even if the person was newly appointed or in office for less than 3 months, as long as the company has been in default for at least 3 months. (consultation question 2)***

Summary of Feedback Received

13. There was support for the proposal to debar directors. However, some respondents disagreed with the proposal to debar company secretaries. These respondents indicated that company secretaries primarily undertook administrative roles in prompting and assisting companies with filing. Thus, it would be unfair to penalise company secretaries who relied on companies to provide information on a timely manner and had no control over delinquent companies. There were also concerns that company secretaries would need to spend much time explaining to ACRA why they should not be debarred.

MOF's Response

14. MOF retains the position in the Bill as company secretaries are officers of the company and have duties as officers under the Companies Act. Under the new regime, the Registrar will have the power to debar any director or secretary of a company in default[2] from taking on new appointment as a director or company secretary, and to lift the debarment. Furthermore, the Registrar may only debar a person who has been director or company secretary for at least 3 months. This allows newly appointed persons 3 months to rectify any outstanding default. The new powers are intended to allow the Registrar to weed out irresponsible company secretaries who fail to discharge their duties for multiple companies, and not those who genuinely face problems getting client companies to comply with filing requirements.

Defer the implementation of the new debarment regime

Summary of Feedback Received

15. One respondent suggested deferring the implementation of the new debarment regime to financial years commencing on or after the amendments in relation to the small company audit exemption in the Companies Act take effect. With the new criteria for audit exemption, the respondent envisaged that more companies would qualify for audit exemption and could file their financial statements on time.

MOF's Response

16. MOF is of the view that there are no compelling reasons to delay the implementation of the debarment regime. Furthermore, the upcoming amendments will reduce rather than increase the regulatory burden for smaller companies.

[2] A company is in default if it fails to file any documents for a continuous period of at least three months after the prescribed deadline in the Companies Act.

DECLARATION OF DIRECTOR'S INTEREST UNDER SECTION 156(1)

Repeal and re-enact section 156 to allow the declaration to be recorded in writing, instead of at a directors' meeting

Summary of Feedback Received

17. One respondent suggested amending the timeline for making written disclosure from "within 2 business days" to "as soon as practicable". There was another suggestion to adopt a similar timeline for the company to send the written disclosure to the directors.

MOF's Response

18. MOF agrees with the suggested amendments. This is consistent with the timeline for declaration at a meeting and by written notice. This is also in line with the approach in the UK.

CLARIFY MAKING OF LOANS TO DIRECTORS UNDER SECTION 162

Repeal and re-enact section 162 by clarifying that if a loan is made to a person at the time when he is not yet a director, it must be recalled when he becomes a director later

Summary of Feedback Received

19. Respondents did not see the need for clarification. One respondent was of the view that a loan that was granted to a director before he became a director should not be recalled when he becomes a director as he had no control over the company and was not able to assert any influence over the company's decision at the time the loan was granted. Another respondent cautioned that the proposed amendment might result in unforeseen and unintended circumstances, and preferred to maintain status quo. Moreover, other leading jurisdictions studied did not have equivalent provisions.

MOF's Response

20. MOF agrees to drop the proposed amendments, which were originally included for clarity.

UPDATE GENERAL DUTY TO MAKE DISCLOSURE UNDER SECTION 165

Amend section 164 so that directors are required to disclose interests in shares, debentures, etc. in the company, or parent company and subsidiaries

Summary of Feedback Received

21. All the respondents agreed with the proposed amendment.

MOF's Response

22. MOF retains the current reporting requirements for directors under section 164 of the Companies Act, for consistency with the regime under the Securities and Futures Act. Please refer to paragraph 182 of Annex 2.

COMPANY SECRETARY

Move the reference to the Singapore Association of the Institute of Chartered Secretaries and Administrators (SAICSA) to the regulations

Summary of Feedback Received

23. Respondents disagreed with the proposal to remove reference to SAICSA in section 171(1AA)(c) and to instead prescribe it as a "professional association" in the regulations. They were concerned that the amendments would not give due recognition to SAICSA members and might give the wrong impression that SAICSA members were no longer qualified to be company secretaries.

24. One respondent commented that there was an overlap between qualifying as a public accountant and qualifying as a member of the Institute of Singapore Chartered Accountants, the Association of International Accountants (Singapore Branch) and/or the Institute of Company Accountants, Singapore. Two respondents suggested adopting a provision similar to that in the UK Companies Act, whereby membership of professional bodies specified in the Act would qualify a person to be a secretary of a public company. There was also a suggestion to introduce separate legislation to regulate company secretaries, similar to that in India.

MOF's Response

25. MOF will amend section 171(1AA) such that all the qualifications (not just those relating to SAICSA) for a company secretary of a public company are prescribed in regulations. This will put all qualifications on equal footing and provide flexibility for the list to be updated in the future. The overlap between the category of "public accountant" and members of the accountancy associations is noted and does

not cause ambiguity as a person can qualify under more than one limb. A regulatory framework to oversee corporate service providers has already been introduced in the ACRA Act. The new framework will take effect in end 2014.

REGISTERS OF DIRECTORS, MANAGERS, SECRETARIES AND AUDITORS

Whether it is necessary in practice to allow a company secretary to notify the Registrar of his removal or retirement from office, other than his resignation, if he has reasonable cause to believe that the company will not do so. Propose to align the scope of self notification by directors with the proposed self notification provision for company secretaries (consultation question 3)

Summary of Feedback Received

26. All the respondents supported the proposal that the scope of self-notification of resignation by company secretaries should follow that of directors. One respondent sought clarification on what would constitute "reasonable cause" to believe that the company would not notify the Registrar of the change in appointment.

MOF's Response

27. MOF retains the position in the draft Bill. What constitutes a reasonable cause would depend on the facts and it is not possible to spell out these factors in the Companies Act.

POWER OF REGISTRAR TO STRIKE A DEFUNCT COMPANY OFF REGISTER

Clarify circumstances for striking off

Summary of Feedback Received

28. One respondent sought clarification on the types of correspondence for which the failure to respond would allow the Registrar to strike off a company[3]. The respondent suggested limiting the type of correspondence to notices from the Registrar to rectify any mistakes or defects.

[3] One of the circumstances for the Registrar to determine whether a company is not carrying on business is that "the company has filed to respond to correspondence sent by the Registrar beyond a specified period.

MOF's Response

29. MOF retains the position in the Bill. The failure to respond to correspondence sent by the Registrar is only indicative that the company is no longer carrying on business. The company can still object to the commencement of the striking off action upon receiving notification from ACRA.

APPLICABILITY OF PART XI, DIVISION 2 TO ALL FOREIGN COMPANIES

Interpretation of the obligation to register

Summary of Feedback Received

30. One respondent commented that there was uncertainty about when the intention to establish or commence business in Singapore would trigger a requirement to register or to comply with any other requirement under the Act.

MOF's Response

31. MOF retains the position that for a foreign company which intends to establish a place of business or carry on business in Singapore, registration must be the first step before carrying on business. There does not appear to be room for misinterpretation.

CHANGES IN FILED DOCUMENTS FOR FOREIGN COMPANIES

Fees for extension of time for lodgement of documents

Summary of Feedback Received

32. One respondent suggested that the fee for the application of an extension of time for notification of changes in particulars filed with the Registrar or liquidation for foreign companies should be aligned with that of local companies. A similar comment was also received in respect of the application for extension of time to file branch accounts.

MOF's Response

33. MOF noted the feedback and will take them into account as part of an overall review of fees imposed under the Companies Act.

REQUIREMENTS TO FILE FINANCIAL STATEMENTS

Introduce specific liability and penalty on directors and authorised representatives for failure to comply with the requirements to file the foreign company's financial statements.

Summary of Feedback Received

34. One respondent commented that it would be unreasonable to make the authorised representative responsible for the foreign company's failure to comply with the requirements relating to filing of the branch accounts and its foreign company's financial statements as these matters were beyond his control.

MOF's Response

35. MOF retains the position that specific liability and penalty for failure to file accounts should be introduced for directors and authorised representatives. As the authorised representatives are responsible for the foreign companies' compliance with the regulatory requirement in Singapore, they should be held accountable for the lodgement of accounts. This will better ensure that persons in Singapore dealing with foreign companies have access to relevant financial information of the foreign companies. Moreover, an authorised representative who knowingly and wilfully permits the default made by a foreign company in complying with any provision in the Companies Act is currently already liable for the default.

Audit exemption for foreign companies that are dormant in Singapore

Summary of Feedback Received

36. One respondent commented that there could be confusion between a foreign company that was dormant in Singapore and one that had ceased business in Singapore.

MOF's Response

37. MOF retains the position in the Bill. The new section 373(19) has provided a definition for a foreign company that is dormant in Singapore.

REQUIREMENTS TO STATE NAME OF FOREIGN COMPANY

Whether the 12-month transition period provided for in section 375(4) is suitable. (consultation question 4)

Summary of Feedback Received

38. There were no objections to the proposed transition period.

MOF's Response

39. MOF retains the 12-month transition period.

EXPAND THE GROUNDS FOR STRIKING-OFF FOREIGN COMPANIES

Whether provisions for restoration of foreign companies which have been struck off should be introduced or whether it is adequate that foreign companies which have been struck off can apply to be registered again. (consultation question 5)

Summary of Feedback Received

40. There were no objections to the provisions for the restoration of foreign companies which have been struck off.

MOF's Response

41. MOF retains the position in the Bill.

RESTRICTION ON NAMES OF FOREIGN COMPANIES

Whether it is appropriate that the powers of the Registrar to direct a change of name for foreign companies should apply to situations only where the name is undesirable, identical to a registered or reserved name or a name that the Minister had directed should not be used. (consultation question 6)

Summary of Feedback Received

42. One respondent commented that extending the powers of the Registrar to include a power to direct a change of name of the foreign company might potentially give rise to extra territorial issues. It was suggested that any change of name should be left to the company to decide and that the Registrar should only be empowered to reject an application for a change of name.

MOF's Response

43. MOF retains the position of allowing the Registrar to direct a change of names. The Registrar will only direct a change of names registered under the Companies Act for the purpose of the foreign company's operations in Singapore. There will not be extra-territorial issues.

STANDARDISE TIMELINES FOR LODGEMENT OF DOCUMENTS

Lag time between failure to appoint replacement authorised representative and striking off

Summary of Feedback Received

44. One respondent highlighted that the Registrar might strike the name of a foreign company off the register if the company had failed to appoint an authorised representative within 6 months after the date of the death of its sole authorised representative, while a replacement authorised representative must be appointed within 21 days of the death of its sole authorised representative. When read together, the two provisions would mean that in the event that a foreign company failed to appoint a new authorised representative within 21 days of the death of its sole authorised representative, the Registrar could only strike the foreign company off the register after another 5 months.

MOF's Response

45. MOF retains the position in the Bill. As an authorised representative is responsible for ensuring that the foreign company complies with the regulatory requirements in Singapore, the foreign company should not be left without an authorised representative for an extended period of time. However, we also recognise that striking off the foreign company prematurely may prejudice those dealing with the foreign company in Singapore. Penalties will apply to a foreign company that has failed to appoint an authorised representative within 21 days.

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