

---

# ACCOUNTS AND AUDIT

---

## PREAMBLE

1. In Chapter 4 of the *Report of the Steering Committee for Review of the Companies Act*, the SC had reviewed the following issues relating to accounts and audit:

- financial reporting for small companies;
- financial reporting for dormant companies;
- summary financial statements;
- the directors' report;
- obligations relating to audit;
- resignation of auditors;
- auditor's independence;
- limitation of auditor's liability
- indemnity for auditors under section 172 of Companies Act;
- audit committee provisions;
- accounting records and systems of control;
- components of statutory accounts;
- presentation of the accounts;
- framework for consolidation of accounts; and
- revision of defective accounts.

## SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

### I. FINANCIAL REPORTING FOR SMALL COMPANIES

#### (a) *Audit exemption for small companies*

##### Recommendation 4.1

Small company criteria should be introduced to determine whether a company is required to be audited. Small companies would be exempted from the statutory requirement for audit. The following are the criteria for determining a "small company":

(a) the company is a private company; and

(b) it fulfils two of the following criteria:

<b>Criterion One</b>	<b>Criterion Two</b>	<b>Criterion Three</b>
<b>Total annual revenue of not more than S\$10 million.</b>	<b>Total gross assets of not more than S\$10 million.</b>	<b>Number of employees not more than 50.</b>

## Summary of Feedback Received

2. A majority of the respondents agreed with this recommendation. Some respondents who disagreed indicated that the thresholds were too high, resulting in many companies being exempt from audit. One respondent cautioned that stakeholders like creditors would lose a source of independent assurance on a company's financial standing which an audit would give. Some respondents also sought clarity on the timeframe within which a company must satisfy the criteria.

## MOF's Response

3. **MOF accepts Recommendation 4.1.** The SC had noted that the "small company" criteria would recognise a broader group of stakeholders (e.g. creditors, employees, customers) other than just shareholders and that similar criteria were already used to determine differentiated financial reporting requirements in other jurisdictions such as UK and Australia. MOF agrees with the SC's view and notes that this recommendation will reduce business and compliance cost for companies who will otherwise not qualify under the current exemption criteria<sup>1</sup>. The proposed criteria are also consistent with those used in the Singapore Financial Reporting Standard for Small Entities<sup>2</sup> ("SFRS for Small Entities"). The criteria for a small company will be assessed on a two-year timeframe, consistent with the approach to assess the eligibility to apply the SFRS for Small Entities.

### Recommendation 4.2

Where a parent company prepares consolidated accounts, a parent should qualify as a "small company" if the criteria in Recommendation 4.1 are met on a consolidated basis.

## Summary of Feedback Received

4. All respondents agreed with this recommendation.

---

<sup>1</sup> Currently, an exempt private company with annual revenue of S\$5m or less is exempt from audit requirements. Exempt private companies are defined as private companies with not more than 20 members and having no corporate shareholders.

<sup>2</sup> The Singapore Accounting Standards Council (ASC) adopted the International Financial Reporting Standard for Small and Medium-sized Entities ("IFRS for SMEs") as the Singapore Financial Reporting Standard for Small Entities ("SFRS for Small Entities") for financial reporting periods beginning on or after 1 Jan 2011. The SFRS for Small Entities requires a lower level and extent of disclosure compared to the Singapore Financial Reporting Standards (SFRS) and aims to reduce the compliance burden for companies, which meet the following criteria:

- (a) It is not publicly accountable
- (b) It publishes general purpose financial statements for external users; and
- (c) It is a small entity.

An entity qualifies as a small entity if it meets at least two of the three following criteria:

- (a) Total annual revenue of not more than \$10m;
- (b) Total gross assets of not more than \$10m;
- (c) Total number of employees of not more than 50.

## MOF's Response

5. **MOF accepts Recommendation 4.2.** MOF agrees with the SC's recommendation that a parent should qualify as a "small company" if the criteria in Recommendation 4.1 are met on a consolidated basis. This approach is consistent with that adopted in the UK.

### Recommendation 4.3

A subsidiary which is a member of a group of companies may be exempt from audit as a "small company" only if the entire group to which it belongs qualifies on a consolidated basis for audit exemption under the "small company" criteria.

## Summary of Feedback Received

6. A majority of respondents agreed with this recommendation. Respondents who disagreed indicated that the recommendation was not consistent with auditing standards, which determine whether a subsidiary should be audited based on its materiality relative to the group. Clarification was also sought on whether overseas companies within a group should be included in determining if a group qualified as a small company on a consolidated basis, and whether this requirement would also apply to a group headed by an overseas parent company.

## MOF's Response

7. **MOF accepts Recommendation 4.3.** The SC had noted that if the parent company was required to prepare audited consolidated accounts, it would be difficult for it to do so if the companies it held were exempt from audit. MOF agrees with the SC's views and notes that the typical business practice is to consider the business of a group of companies as a whole. This is consistent with the proposed approach to consider the application of audit exemption based on the group of companies as a whole. This approach will also provide companies with certainty to their audit obligations, as opposed to leaving the assessment to the auditing standards and the group auditors. When the small company criteria are assessed on a consolidated basis, the group will include all local and foreign-incorporated companies within the group. To achieve parity of treatment of subsidiaries of local parent and foreign parent companies, this recommendation will apply regardless of whether the parent company is incorporated in Singapore or otherwise.

### ***(b) Exempt private companies and filing obligations***

### Recommendation 4.4

The current status of "exempt private company" should be abolished.

## Summary of Feedback Received

8. Most respondents agreed with this recommendation. The respondents who disagreed commented that abolition of the exempt private company (EPC) regime would result in the loss of Singapore's attractiveness to certain groups of companies (e.g. family investment companies). Such 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.

## MOF's Response

9. **MOF does not accept Recommendation 4.4.** The SC had noted that the lack of transparency might prejudice persons dealing with solvent EPCs, as they were unable to verify the financial position of these companies. In addition, confidentiality of certain companies could still be protected through exemptions granted on a case-by-case basis as proposed in Recommendation 4.5. MOF agrees in-principle with the SC's views but notes that the EPC concept has worked well in practice and is not inconsistent with the introduction of the small company criteria for the audit exemption. Feedback was also received which indicated that financial information confidentiality was important to certain companies (e.g. family investment companies and companies where their financial statements contain commercially-sensitive information), which if disclosed to the public, would be detrimental to the interests of the company. Case-by-case exemptions may introduce significant uncertainty for such companies. New business vehicles, such as the Limited Liability Partnership and Limited Partnership, may not be suitable alternatives to the EPC regime due to tax implications. Abolishing the EPC regime may thus negatively impact Singapore's competitiveness. On balance, MOF will keep the status quo, and retain the concept of the EPC and the exemption from filing for solvent EPCs.

### Recommendation 4.5

Companies which qualify under the proposed "small company" criteria should file basic financial information, but with the following exceptions where such companies are solvent:

- (a) private companies wholly-owned by the Government, which the Minister, in the national interest, declares by notification in the Gazette to be exempt;
- (b) private companies falling within a specific class prescribed by the Minister as being exempt (e.g. specific industries where confidentiality of information is critical and public interest in the accounts is low); and
- (c) private companies exempted by the Registrar upon application on a case-by-case basis and published in the Gazette.

## Summary of Feedback Received

10. A majority of respondents agreed with this recommendation. Some respondents disagreed on the same grounds as their disagreement to Recommendation 4.4. One respondent suggested that all companies should file similar information based on the applicable financial reporting standards, rather than to require small companies to file basic financial information.

## MOF's Response

11. **MOF does not accept Recommendation 4.5.** This recommendation is consequential to the decision not to accept Recommendation 4.4.

## **II. FINANCIAL REPORTING FOR DORMANT COMPANIES**

### Recommendation 4.6

Dormant non-listed companies (other than subsidiaries of listed companies) should be exempt from financial reporting requirements, subject to certain safeguards.

## Summary of Feedback Received

12. All respondents agreed with this recommendation. One respondent suggested that the exemption be extended to subsidiaries of listed companies.

## MOF's Response

13. **MOF accepts Recommendation 4.6.** Currently, although dormant companies are exempt from audit, they are still required to prepare accounts. The SC had considered lightening the regulatory burden for dormant companies by allowing non-listed dormant companies, other than subsidiaries of listed companies, to be exempt from the preparation of accounts as the cost of preparing accounts would outweigh the benefits. However, a dormant subsidiary of a listed company should continue to prepare accounts to facilitate consolidation of accounts by the group. MOF agrees with the SC's views.

### Recommendation 4.7

To benefit from the dormant company exemption, the following proposed safeguards must be complied with:

- (a) Annual declaration of dormancy by the directors of a dormant company.
- (b) The company must be dormant for the entire financial year in question.
- (c) Shareholders and ACRA will be empowered to direct a dormant company to prepare its accounts, and to lodge them unless exempted under any other exemption.

### Summary of Feedback Received

14. All respondents agreed with this recommendation.

### MOF's Response

15. **MOF accepts Recommendation 4.7.** MOF agrees with SC's views that safeguards are necessary to provide assurance that a company is indeed dormant.

### Recommendation 4.8

Dormant listed companies should continue to prepare accounts but be exempted from statutory audit requirements (status quo).

### Summary of Feedback Received

16. Most respondents agreed with this recommendation. Some respondents who disagreed suggested that dormant listed companies should seek to de-list, and that if they did not do so, they should be audited as such companies had a large group of stakeholders.

### MOF's Response

17. **MOF accepts Recommendation 4.8.** MOF agrees with the SC's views that if the company is dormant for the financial year in question, shareholders and other stakeholders are not likely to be unduly prejudiced if the accounts are not audited, even in the case of a listed company.

### Recommendation 4.9

A dormant company which is a subsidiary of a listed company should continue to prepare accounts but be exempt from audit, similar to a dormant listed company.

### Summary of Feedback Received

18. Most respondents agreed with this recommendation. One respondent suggested that dormant non-listed subsidiaries of listed companies should not be treated differently from other non-listed companies.

### MOF's Response

19. **MOF accepts Recommendation 4.9.** MOF agrees with the SC that dormant companies, which are subsidiaries of listed companies, should continue to prepare accounts, since listed companies will need to incorporate the financial information from their subsidiaries for the purposes of consolidation of accounts.

*(a) Disregarded transactions*

Recommendation 4.10

The list of disregarded transactions in determining whether a company is dormant should be extended to include statutory fees/fines under any Act and nominal payments/receipts.

Summary of Feedback Received

20. Most respondents agreed with this recommendation. One respondent disagreed and suggested that a principles-based approach should be used to avoid the need for a list of disregarded transactions.

MOF's Response

21. **MOF accepts Recommendation 4.10.** MOF agrees with the SC's views that statutory fees/fines and nominal payments/receipts can be disregarded for the purposes of determining whether a company is dormant. Such transactions do not constitute active trading and should not be taken to prejudice the determination of a company's dormant status. MOF does not see a strong need to change the current approach of determining dormancy and notes that a principles-based approach may create uncertainty on whether a company qualifies as being dormant.

*(b) Substantial assets threshold*

Recommendation 4.11

A total assets threshold test of S\$500,000 (which may be varied by the Minister for Finance by way of regulations) should be introduced for dormant companies.

Summary of Feedback Received

22. Most respondents agreed with this recommendation. However, one respondent was of the view that setting an asset threshold was not effective in preserving the assets of a dormant company as the assets could be sold off by the time the accounts were made available.

MOF's Response

23. **MOF accepts Recommendation 4.11.** MOF agrees with the SC's view that a total assets threshold test will provide accountability in respect of preservation of the assets, and notes that even if the asset is sold off within the year, the requirement for accounts to be prepared will ensure accountability in respect of that transaction.

### III. SUMMARY FINANCIAL STATEMENTS

#### Recommendation 4.12

The use of summary financial statements should be extended to all companies.

#### Summary of Feedback Received

24. All respondents agreed with this recommendation.

#### MOF's Response

25. **MOF accepts Recommendation 4.12.** MOF agrees with the SC's view that the option to use summary financial statements should be extended to all companies for consistency. This is in line with the practices of the UK, Australia and New Zealand.

### IV. THE DIRECTORS' REPORT

#### *(a) Disclosure of directors' benefits*

#### Recommendation 4.13

Section 201(8) of the Companies Act which requires disclosure of directors' benefits in the directors' report should be repealed.

#### Summary of Feedback Received

26. Most respondents agreed with this recommendation. The respondents who disagreed pointed out that disclosures required under the Singapore Financial Reporting Standards (SFRS) were different and did not cover certain types of benefits.

#### MOF's Response

27. **MOF accepts Recommendation 4.13.** The SC was of the view that the disclosure of directors' benefits was adequately addressed as the SFRS required key personnel compensation to be disclosed. Therefore, it was not necessary to have a separate disclosure requirement in section 201(8) to list directors' benefits in the directors' report. MOF agrees with the SC's views.



*(b) Inclusion of business review*

Recommendation 4.14

There is no need to require all companies to prepare a statement of business review and future developments in the accounts or directors' report under the Companies Act.

Summary of Feedback Received

28. Most respondents agreed with this recommendation. Respondents who disagreed felt that the director's report should contain information such as how companies were dealing with risk and future uncertainties, and the developments in the companies' operations for future financial years.

MOF's Response

29. **MOF accepts Recommendation 4.14.** The SC had noted that while listed companies usually prepared business reviews, this was not necessary for all companies. MOF agrees with the SC's views and notes that while such a statement may be useful, it is not necessary to be mandatory for all companies.

*(c) Requirement for directors' report*

Recommendation 4.15

The requirement for a separate directors' report should be abolished.

Summary of Feedback Received

30. Most respondents agreed with this recommendation. A few respondents who disagreed felt that the directors' report was important for accountability and should be developed into a more meaningful and informative statement instead. One respondent asked if the disclosure requirements currently in the directors' report<sup>3</sup> would be extended to the Chief Executive Officer (CEO) given that there was a recommendation to extend other disclosure requirements relating to directors to CEOs (i.e. Recommendation 1.25).

MOF's Response

31. **MOF accepts Recommendation 4.15.** The SC had noted that the disclosures in the directors' report could be made elsewhere, e.g. in the accounts, notes to the accounts, or the statement by the directors as required under section 201(15) of the Act, and there was little value in having a separate document for these disclosures.

<sup>3</sup> Disclosures made in the directors' report includes names of directors in office at the date of the report, directors' interest in the shares, options and debentures of the company and/or related companies.

MOF agrees with the SC's views. The statement by the directors can be enhanced to include the mandatory disclosures currently required under the directors' report. MOF will consider the extension of these mandatory disclosures under the directors' report to CEOs together with the implementation of Recommendation 1.25 on the extension of disclosure requirements under sections 156 and 165 to the CEO.

#### Recommendation 4.16

Section 201(15) of the Companies Act should be clarified to require that the full list of directors of companies appear in the statement by the directors.

#### Summary of Feedback Received

32. A majority of respondents agreed with this recommendation. One respondent who disagreed did so on the same basis as for Recommendation 4.15, i.e. that the directors' report should not be abolished.

#### MOF's Response

33. **MOF accepts Recommendation 4.16.** Currently, sections 201(6)(a) and (6A)(a) require the full list of directors to be disclosed in the directors' report. The SC had noted that should Recommendation 4.15 be accepted, section 201(15) of the Act should be clarified to require that the full list of directors of companies appear in the statement by the directors. MOF agrees with the SC's views.

## **V. OBLIGATIONS RELATING TO AUDIT**

### ***(a) Imposition of statutory duty on directors to ensure that auditors are aware of all relevant audit information***

#### Recommendation 4.17

The UK approach of requiring the directors to ensure that the company auditors are aware of all relevant audit information need not be adopted.

#### Summary of Feedback Received

34. A majority of respondents agreed with this recommendation. Some respondents who disagreed were of the view that an approach similar to that in the UK would make audits more effective and result in better-informed directors. One respondent also suggested that directors be required to provide critical or material information that affected the going concern of their company or that related to significant breaches in internal controls.

## MOF's Response

35. **MOF accepts Recommendation 4.17.** The SC had noted that section 207 of the Act already gave the auditors a right of access at all times to the accounting and other records of the company, and allowed the auditors to request from any officer, including a director of the company, such information and explanations as might be required for the audit. The SC took the view that this provision would achieve adequate information flow and communication between the directors and the auditors. MOF notes the concerns of the respondents, but takes the view that similar declarations by directors are already made in the management representation letter, which the auditors require the management of a company to sign. Thus, MOF agrees with SC's views that the status quo represents the appropriate balance of the obligations between the auditor and the directors in the audit process.

### *(b) Mandating auditing standards*

#### Recommendation 4.18

There is no need to legislatively mandate compliance with auditing standards, but the existing requirements in section 207(3) of the Companies Act, which set out a list of duties of auditors, should be streamlined.

### Summary of Feedback Received

36. Most respondents agreed with this recommendation. Respondents who disagreed indicated that giving force of law to the auditing standards would add clarity and highlight the importance of the auditing standards. Clarification was also sought on how the list of duties of auditors would be streamlined.

## MOF's Response

37. **MOF accepts Recommendation 4.18.** MOF agrees with the SC's view that it is not necessary to mandate compliance with auditing standards in the Act. Compliance with the auditing standards by public accountants can be adequately regulated through ACRA's Practice Monitoring Programme under the Accountants Act. The streamlining of the duties of auditors will be presented in the draft Bill which will be available for public consultation.

### *(c) Requirement to report on record-keeping*

#### Recommendation 4.19

Section 207(3)(b) of the Companies Act, which requires an auditor to form an opinion on whether proper accounting and other records (excluding registers) have been kept by the company, should be retained, but the drafting of that section should be

clarified.

#### Summary of Feedback Received

38. Most respondents agreed with this recommendation. One respondent who disagreed stated that section 207(3)(b) need not be retained as proper accounting and other records would already be required to enable auditors to express their audit opinion on a company's financial statements.

#### MOF's Response

39. **MOF accepts Recommendation 4.19.** MOF agrees with the SC's view that section 207(3)(b) of the Act sets out an important obligation that should be retained. The phrase "accounting and other records" will be clarified to refer to section 199 of the Act<sup>4</sup>. This will be addressed in the draft Bill which will be available for public consultation.

#### *(d) Requirement to comment on consolidation procedures*

#### Recommendation 4.20

The requirement for an auditor to form an opinion on the procedures and methods of consolidation in section 207(3)(d) of the Companies Act should be repealed.

#### Summary of Feedback Received

40. Most respondents agreed with this recommendation. The respondents who disagreed commented that the opinion of the auditor on these matters was important to the investing public, and therefore should not be repealed.

#### MOF's Response

41. **MOF accepts Recommendation 4.20.** The SC took the view that the requirement was unnecessary as the auditors' opinion on whether the accounts complied with the accounting standards and were true and fair would already give sufficient assurance in respect of the consolidation procedures. MOF agrees with the SC's views.

#### *(e) Requirement to report on fraud*

#### Recommendation 4.21

Section 207(9A) should not be extended to include a requirement for an auditor to report on instances of suspected accounting fraud.

<sup>4</sup> Section 199(1) states that "...accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance-sheets and any documents required to be attached thereto to be prepared from time to time..."

### Summary of Feedback Received

42. Most respondents agreed with this recommendation. Respondents who disagreed highlighted that the consequences of accounting fraud were serious and that auditors could use their professional judgment to assess if there was an instance of suspected accounting fraud, which should be reported to the Minister for Finance.

### MOF's Response

43. **MOF accepts Recommendation 4.21.** The SC had noted that it might be difficult in practice for an auditor to determine from the circumstances of a misstatement whether there was case of accounting fraud or if it was just an honest mistake. In any case, auditors already dealt with material misstatements detected in accounts by: (i) raising these to the company and having suspicious transactions reflected in the accounts; or (ii) qualifying their opinion where necessary. In either of these instances, the risk that readers of the accounts would be misled would be limited. MOF agrees with the SC's views that it is not necessary to extend section 207(9A) to include a requirement for an auditor to report on instances of suspected accounting fraud.

### Recommendation 4.22

The amount stated in section 207(9D)(b) used as the threshold to define a "serious offence involving fraud or dishonesty", should be raised from \$20,000 to \$250,000.

### Summary of Feedback Received

44. Most respondents agreed with this recommendation. One respondent suggested keeping the status quo, as an act of fraud or dishonestly would be significant irrespective of the amount involved. Another respondent highlighted that a low threshold would be good from a risk reduction perspective as companies would be encouraged to put in place procedures to prevent offences involving fraud and dishonesty. Other respondents suggested that there should be clearer articulation on the objective of reporting and sought clarity on the types of offences that would be included.

### MOF's Response

45. **MOF accepts Recommendation 4.22 with modification.** The SC had noted that the current threshold amount had been set in 1989 and proposed that the threshold level be raised to \$250,000 as the appropriate amount to be considered a serious offence in current times. MOF agrees with the SC's intent to keep the threshold current and relevant. However, MOF will modify the recommendation to increase the threshold from \$20,000 to \$100,000 instead. This will be a substantial increase, while at the same time retain the strong signal that cases of fraud and dishonesty should be

taken seriously. MOF notes that section 207(9D) is intended to be broad and serve as a general guideline. It is also intended to be facilitative in giving an auditor discretion in what to report, while protecting the auditor from breach of duty where he does so in good faith.

## VI. RESIGNATION OF AUDITORS

### Recommendation 4.23

The auditor of a non-public-interest company (other than a subsidiary of a public-interest company) should be allowed to resign upon giving notice to the company.

The status quo should be retained for the auditor of a non-public-interest company which is a subsidiary of a public interest company, viz, such a company's auditor may only resign if he is not the sole auditor or at a general meeting, and where a replacement auditor is appointed.

### Summary of Feedback Received

46. Most respondents agreed with this recommendation. One respondent suggested that the focus be on appointment of the auditor rather than resignation.

### MOF's Response

47. **MOF accepts Recommendation 4.23 with modifications.** The SC had noted that the current provisions in the Act would make it difficult for auditors to resign in a situation where the company refused to hold a general meeting or appoint a new auditor. MOF agrees with the SC's recommendation to make it easier for an auditor of a non-public-interest company, other than a subsidiary of a public company, to resign. However, maintaining status quo will make it onerous for an auditor of a non-public-interest company, which is the subsidiary of a public-interest company, to resign. MOF notes that there can be greater public interest on the resignation of an auditor of a subsidiary of a public-interest company. Thus, MOF will modify the recommendation to require an auditor of such a company to seek ACRA's consent to resign. This will make the requirement for resignation of an auditor of a non-public-interest company, which is the subsidiary of a public-interest company, consistent with that for an auditor of a public interest company.

### Recommendation 4.24

The auditor of a public-interest company should be required to seek the consent of ACRA before he can resign.

### Summary of Feedback Received

48. Most respondents agreed with this recommendation. One respondent who disagreed highlighted that this might involve ACRA in disputes between the company and the auditors and that it was not clear how ACRA would exercise its discretion in this role. Another indicated that ACRA's consent should not be required as there were already requirements relating to auditors' resignation under the listing rules. It was also suggested that the auditor of a public-interest company, which is a charity, should also require the consent of the Commissioner of Charities before he can resign.

### MOF's Response

49. **MOF accepts Recommendation 4.24.** The SC had noted that ACRA would take an interest in the resignation of auditors of "public-interest entities" where the departure took place prematurely before the end of the term for which the auditor was appointed. A requirement for ACRA's approval would allow ACRA to stop the resignation in the public interest where such resignation was not appropriate. MOF agrees with SC's views as ACRA's involvement in the resignation of the auditor of a public-interest company will also protect such companies from being unfairly left in the lurch and at the same time, alert ACRA to any potential breaches by the company under the Act. ACRA will raise any issues of concern to other regulatory bodies (e.g. the Commissioner of Charities) where appropriate, before deciding whether to grant consent. Such concerns will not be adequately addressed under the current listing rules, which only relate to disclosures of the circumstances for the resignation of auditors.

### Recommendation 4.25

There is no need for an express requirement for an auditor to disclose to the shareholders of the company that appointed it the reasons for his resignation.

### Summary of Feedback Received

50. Respondents were split in their opinion on whether there was a need for an express requirement for an auditor to disclose to the shareholders the reasons for his resignation. Some respondents who disagreed with the recommendation cited the importance of the disclosure for transparency and good corporate governance, and that shareholders had a right to know if there were exceptional circumstances connected with the auditor's resignation. One respondent added that disclosure obligations under legislation were preferred to requirements in the listing rules, as breaches of legislation would incur more severe sanctions.

### MOF's Response

51. **MOF accepts Recommendation 4.25 with modifications.** The SC had considered concerns raised by auditors of the risks of defamation if auditors were required to disclose the reasons for resignation. The SC also noted that the shareholders could request the information from the company where necessary. MOF notes these considerations, but is of the view that auditors resign before the end of their term of appointment only in rare circumstances. Reasons for such resignation should be disclosed to promote good corporate governance. MOF's modification is therefore to require an auditor of a public interest company or a subsidiary of a public interest company to give the company that appointed him reasons for his resignation, and any such reasons should be circulated by the company to the shareholders. However, MOF agrees with the SC that there is no need for auditors of non-public interest companies to make such disclosures as the impact on public interest is low. Shareholders will have the opportunity to enquire on the previous auditor's resignation at the meeting where the replacement auditor is appointed. As part of the drafting process, MOF will be put in place necessary safeguards to address concerns relating to defamation.

## VII. AUDITOR'S INDEPENDENCE

### Recommendation 4.26

The provisions relating to auditor independence in section 10 of the Companies Act should be consolidated under the Accountants Act.

### Summary of Feedback Received

52. All respondents agreed with this recommendation.

### MOF's Response

53. **MOF accepts Recommendation 4.26.** MOF agrees with the SC's view that all the provisions relating to independence of auditors should be consolidated in the rules under the Accountants Act, to reduce duplication of legislation.

## VIII. LIMITATION OF AUDITOR'S LIABILITY

### Recommendation 4.27

There is no need to introduce statutory provisions on the limitation of liability of auditors at this time, but the issue will be monitored by ACRA.

### Summary of Feedback Received



54. Most respondents agreed with this recommendation. Some respondents disagreed, citing concerns of increased liability exposure due to the increasing size of companies, and that unlimited liability would threaten the long-term sustainability of the audit function. Some respondents also suggested that introducing limitation of liability of auditors would promote a competitive and innovative market for audit firms.

#### MOF's Response

55. **MOF accepts Recommendation 4.27.** The SC had noted that the UK allowed auditors to limit their liability through contractual agreements. However, the SC had felt there was no pressing need to statutorily provide for a limitation of auditor's liability at the moment. MOF agrees with the SC's views and notes that there is professional indemnity insurance available for auditors to manage their exposure.

### **IX. INDEMNITY FOR AUDITORS UNDER SECTION 172 OF COMPANIES ACT**

#### Recommendation 4.28

A company should not be expressly allowed to indemnify auditors for claims brought by third parties.

#### Summary of Feedback Received

56. Most respondents agreed with this recommendation. Some respondents who disagreed suggested that auditors be expressly allowed to be indemnified, but subject to certain conditions.

#### MOF's Response

57. **MOF accepts Recommendation 4.28.** The SC felt that an auditor should not be treated in the same way as a director, given that he was not an officer or employee of the company. On this basis, the SC was unwilling to extend the scope of protection for directors in respect of indemnification for claims brought by third parties to auditors. MOF agrees with the SC's views.

#### Recommendation 4.29

The drafting of section 172(2)(b) of the Companies Act should be amended to clarify that a company is allowed to indemnify its auditors against potential liability.

#### Summary of Feedback Received

58. All respondents agreed with this recommendation.

## MOF's Response

59. **MOF accepts Recommendation 4.29.** MOF agrees with the SC's recommendation to clarify that the indemnity in respect of auditors in section 172(2)(b) of the Act can be extended to liabilities that are to be incurred.

## **X. AUDIT COMMITTEE PROVISIONS**

### Recommendation 4.30

The provisions relating to audit committees should be moved to the Securities and Futures Act.

### Summary of Feedback Received

60. Most respondents agreed with this recommendation. One respondent disagreed and cited that some public companies which were not listed also had audit committees.

## MOF's Response

61. **MOF does not accept Recommendation 4.30.** The SC had proposed to move the provisions relating to audit committees out of the Act so that the Act contains only core company law. However, MAS had indicated that the migration of the provision to the SFA would not be appropriate as SFA relates more to market conduct. MOF considered whether the requirements relating to audit committees could be moved to the Code of Corporate Governance or the listing rules, but concluded that it was important for the audit committee to remain as a statutory committee. MOF will therefore retain the provisions relating to audit committees in the Act.

## **XI. ACCOUNTING RECORDS AND SYSTEMS OF CONTROL**

### *(a) Keeping of accounting records*

### Recommendation 4.31

The directors' duty to keep accounting and other records in section 199(1) does not require amendment.

### Summary of Feedback Received

62. All respondents agreed with this recommendation.

#### MOF's Response

63. **MOF accepts Recommendation 4.31.** The SC had noted that it would not be possible or desirable to provide a comprehensive list of the type of accounting records that were to be kept and that the current requirement was sufficient. MOF agrees with the SC's views.

#### *(b) Devising and maintaining system of internal controls*

##### Recommendation 4.32

The requirement under section 199(2A) for a public company to devise and maintain a system of internal controls need not be extended to private companies.

##### Recommendation 4.33

Any misconception that private companies currently do not require internal controls should be corrected through non-statutory guidance.

#### Summary of Feedback Received

64. A majority of respondents agreed with these recommendations. Some respondents suggested extending the requirement to larger private companies. Another respondent highlighted that ensuring that there were sufficient internal accounting controls to facilitate the preparation of proper accounts would already be part of a director's duty under section 157 of the Act, and that a specific express obligation to devise and maintain a system of internal controls would therefore not lead to increased compliance costs.

#### MOF's Response

65. **MOF accepts Recommendations 4.32 and 4.33.** The SC had taken the view that it might amount to over-regulation to impose a mandatory requirement on private companies for which failure to comply would constitute an offence. The SC had noted that using a size test to determine the mandatory requirement to maintain internal controls would not be practical, as the size of the company might vary within short periods of time. It would also present difficulties in enforcement as it would be difficult to determine at what point in time the obligation was mandatory and whether a breach had occurred. While the overarching directors' duty under section 157 of the Act would include ensuring sufficient internal accounting controls, the SC was concerned that the introduction of an express provision might be perceived as a stricter duty, resulting in increased compliance costs. The SC recognised that it was nonetheless important for directors of private companies to be aware of the need for

internal accounting controls, and proposed promotion of awareness through non-statutory guidance. MOF agrees with the SC's views.

#### Recommendation 4.34

The requirement under section 199(2A) for a public company and its subsidiaries to devise and maintain a system of internal controls need not be extended to the associated companies and related companies of a public company.

#### Summary of Feedback Received

66. Most respondents agreed with this recommendation. One respondent who disagreed suggested that where a company had control over associated companies, it should also arguably be accountable for the internal controls of those associated companies.

#### MOF's Response

67. **MOF accepts Recommendation 4.34.** MOF agrees with the SC's views that the directors of a public company will not have direct control over its associated companies and related parties, and that it will be too onerous to extend the scope of the legal requirement for public companies to devise and maintain internal controls to their associated companies and related parties.

## **XII. COMPONENTS OF STATUTORY ACCOUNTS**

#### Recommendation 4.35

The components of the accounts in the relevant provisions in the Companies Act should be clarified by referring to the definition of "accounts" contained in the SFRS.

#### Summary of Feedback Received

68. All respondents agreed with this recommendation. One respondent highlighted that it would be difficult for a company that adopted the Charities Accounting Standards to comply with the SFRS.

#### MOF's Response

69. **MOF accepts Recommendation 4.35.** The SC had proposed that the components of the accounts be set out in the SFRS to better align the requirements in the SFRS and those in the Act. In addition, if there were changes to the components in the SFRS, it would not be necessary to make amendments to the Act. MOF agrees with SC's views. It is not intended for a company, which is required to comply with

the Charities Accounting Standards, to have to comply with SFRS because of this recommendation. This will be reflected accordingly in the drafting of the provision.

### **XIII. PRESENTATION OF THE ACCOUNTS**

#### Recommendation 4.36

The directors' duties in section 201 to lay the financial statements before the company at every annual general meeting and to ensure that the financial statements are audited do not require amendment.

#### Summary of Feedback Received

70. All respondents agreed with this recommendation.

#### MOF's Response

71. **MOF accepts Recommendation 4.36.** The SC had noted that the directors' duties in section 201 included laying the financial statements before the company at every annual general meeting and ensuring that the financial statements were audited. SC had felt that the duties were still relevant and no change was necessary. MOF agrees with the SC's views.

#### Recommendation 4.37

The directors' duty in section 203(1) to send to all persons entitled to receive notice of general meetings a copy of the company's profit and loss account and balance-sheet does not require amendment.

#### Summary of Feedback Received

72. Most respondents agreed with this recommendation. One respondent disagreed and suggested that the section be amended to allow the accounts to be sent less than 14 days before the date of the annual general meeting (AGM), where all persons entitled to receive notice of AGM consented to a shorter period.

#### MOF's Response

73. **MOF accepts Recommendation 4.37 with modifications.** MOF agrees with the SC's views that the current requirement for all persons entitled to receive notice of general meetings, and a copy of the company's profit and loss account and balance-sheet is still relevant. However, MOF notes the concerns that directors will be considered in breach of the Act if accounts are sent less than 14 days before the date of the AGM, even where all persons who are entitled to receive notice of the AGM have agreed to a shorter notice of the meeting and to receive the accounts within the

shorter period. MOF will therefore modify Recommendation 4.37 to expressly allow accounts to be sent less than 14 days before the date of the AGM, subject to agreement by all persons entitled to receive notice of the meeting. This will provide clarity and certainty, and bring the position in line with the requirements in jurisdictions such as Hong Kong and the UK.

#### **XIV. FRAMEWORK FOR CONSOLIDATION OF ACCOUNTS**

##### ***(a) Determination of which entity needs to prepare consolidated accounts***

###### Recommendation 4.38

The determination of whether a company should prepare consolidated accounts should be set by only the financial reporting standards and not the Companies Act.

###### Summary of Feedback Received

74. All respondents agreed with this recommendation.

###### MOF's Response

75. **MOF accepts Recommendation 4.38.** The SC had recommended that the requirement for preparation of consolidated accounts be set solely by the SFRS. This would align the provisions in the Act and the financial reporting standards, and minimise any future alignment issues if and when the definitions in the accounting standards changed. MOF agrees with the SC's views.

##### ***(b) Alignment of financial year-end of subsidiary and parent***

###### Recommendation 4.39

The requirements for alignment of the financial year-end of a parent company and its subsidiaries should be set in accordance with the financial reporting standards.

###### Summary of Feedback Received

76. All respondents agreed with this recommendation.

###### MOF's Response

77. **MOF accepts Recommendation 4.39.** The SC had recommended that the alignment of the financial year-end of a parent company and its subsidiaries be determined by the SFRS to align the provisions in the Act and the financial reporting standards. MOF agrees with the SC's views.

## XV. REVISION OF DEFECTIVE ACCOUNTS

### Recommendation 4.40

A regulatory framework similar to that in the UK should be adopted for the purposes of requiring the revisions of defective accounts, i.e. the determination of whether an order for revision of defective accounts is made is decided by the courts.

### Summary of Feedback Received

78. Most respondents agreed with this recommendation. One respondent disagreed and indicated that it was not clear how ACRA would exercise its role and that ACRA might get involved in disputes between the company and the auditors. Another respondent suggested that a whistle-blowing mechanism might be useful to facilitate reporting of defective accounts to ACRA.

### MOF's Response

79. **MOF accepts Recommendation 4.40.** Currently, the only enforcement action available for defective accounts is to prosecute the directors under section 204 of the Act. The SC had recommended an express procedure to allow ACRA to require a company to revise its defective accounts where such defects had been detected as a complementary enforcement action. MOF agrees with the SC's views. ACRA's role will be to bring proceedings for adjudication by the Court under the appropriate circumstances. MOF is of the view that no specific whistle-blowing mechanism is necessary as any person can already write to ACRA to inform ACRA of defective accounts of companies.

### Recommendation 4.41

Provisions for the voluntary revisions of defective accounts should be introduced in Singapore.

### Summary of Feedback Received

80. All respondents agreed with this recommendation. Some respondents however sought clarification on the mechanisms for voluntary revisions of defective accounts and the potential impact on offences by directors for misstatements in the accounts.

### MOF's Response

81. **MOF accepts Recommendation 4.41.** MOF agrees with the SC's views that a provision for voluntary revision of accounts will allow diligent directors of a company

to revise the accounts of the company on their own accord before the accounts in respect of the next financial period are prepared. The details of the mechanism for revision of accounts will be provided in subsidiary legislation. While voluntary revision of accounts can operate as mitigation to a breach of the Act for defective accounts, if a breach has already occurred, the directors will still be potentially liable regardless of whether they revise the accounts.

## **CONCLUSION**

82. The following table summarises MOF's decision on the recommendations in Chapter 4 of the *Report of the Steering Committee for Review of the Companies Act*.

<b>Classification</b>	<b>No. of Recommendations</b>	<b>Recommendation Reference</b>
Accepted by MOF	34	-
Modified by MOF	4	Recommendations 4.22, 4.23, 4.25 & 4.37
Not accepted by MOF	3	Recommendations 4.4, 4.5 & 4.30
Total	41	