
NEW ISSUES

PREAMBLE

1. MOF also received feedback on new issues that were not covered by the SC in its report. This chapter presents a summary of the feedback received and MOF's responses to the feedback. As some of the feedback received will require further study and review, MOF and ACRA will consider whether to, and if so, how to, incorporate these suggestions when the Act is re-written.

SUMMARY OF FEEDBACK RECEIVED AND MOF'S RESPONSES

I. DIRECTORS

(a) New Issue 1: Appointment of directors

2. *Feedback.* It was suggested that measures be put in place to avoid situations where vulnerable persons might be exploited by being installed as the sole director but with no real control of the company. Measures proposed were to impose minimum shareholding or salary requirements for directors or even to impose some responsibility on majority shareholders who are not formally appointed as directors.

3. *MOF's Response.* MOF is of the view that it will be inappropriate to impose minimum shareholding or salary requirements for directors as there are legitimate reasons for companies to have flexibility in these matters. Other jurisdictions do not impose such requirements. Moreover, shareholders with whose instructions any director is accustomed to act will fall within the definition of 'director' under section 4 of the Act.

(b) New Issue 2: Waive the requirement for a locally resident director

4. *Feedback.* It was suggested that incorporation without a locally resident director should be allowed if a monetary bond of a suitable quantum is provided to ensure that companies will fulfill their legal obligations of filing etc. Alternatively, the requirement for a locally resident director should be waived altogether.

5. *MOF's Response.* MOF is of the view that it is not appropriate to waive the requirement as it will be difficult to hold directors and/or the company accountable if there is no locally resident director.

(c) *New Issue 3: Directors' remuneration*

6. *Feedback.* It was suggested that perquisites granted to top level executives and directors should be subject to shareholders' approval. There was also a suggestion to bar certain shareholders (e.g. who have a right to nominate directors) from voting on directors' remuneration.

7. *MOF's Response.* Section 169 already requires that directors' emolument (which has a broad inclusive definition) be approved by a resolution of the shareholders. Compensation for loss of office also requires shareholder approval in certain circumstances. (Recommendation 1.15 proposes a refinement in this regard.) Furthermore, approval by the Board of Directors of any unwarranted benefits may be a breach of directors' duties. MOF is of the view that it is not appropriate to restrict certain shareholders from voting on directors' remuneration. As shareholders are owners of the company, they should have the right to vote on such matters. On the issue of remuneration of executives, it is generally a contractual matter between the company and the executives.

II. SHAREHOLDERS' RIGHTS AND MEETINGS

(a) *New Issue 4: Lowering the threshold for calling extraordinary general meetings*

8. *Feedback.* It was suggested that section 176 of the Act (relating to the calling of extraordinary general meetings) be amended to lower the threshold at which members of a company may requisition a meeting from 10% of the total voting rights to 5% of the total voting rights.

9. *MOF's Response.* MOF notes this feedback and will consider this issue at a later stage when the Act is re-written.

(b) *New Issue 5: Guidelines on ordinary and special resolutions*

10. *Feedback.* There was feedback that it was unclear as to when ordinary or special resolutions should be used.

11. *MOF's Response.* MOF is of the view that there is sufficient clarity on this as the Act already specifies the situations where special resolutions are necessary. Where the Act does not specify that a special resolution is needed, an ordinary resolution would be sufficient. It would not be possible to provide an exhaustive list of decisions to be made by way of ordinary resolutions.

(c) New Issue 6: Power to entrench provisions of memorandum and articles of company and class rights

12. Feedback. It was suggested that section 26A of the Act relating to the inclusion of entrenching provisions in the constitutional documents gave rise to interpretation issues and was unnecessary in Singapore's context.

13. MOF's Response. MOF had introduced section 26A in 2004 at the recommendation of the Company Legislation and Regulatory Framework Committee (CLRFC) in 2002. MOF's view is that there is no compelling reason to substantially review section 26A at this time. This can be further reviewed during the rewrite of the Act.

(d) New Issue 7: Electronic communications by the Central Depository (CDP)

14. Feedback. It was suggested that provisions relating to electronic communication by the CDP should also be considered along the lines of Recommendations 2.18 to 2.21 in relation to electronic communications by companies.

15. MOF's Response. The Monetary Authority of Singapore (MAS) is the appropriate party overseeing CDP matters. This suggestion has been forwarded to MAS for its review and consideration.

(e) New issue 8: Appointment of corporate representative

16. Feedback. It was suggested to revise section 179(3) of the Act to allow the appointment of a corporate representative, not just by resolution of its directors or governing body but by other means so long as it can be shown that the appointment was duly authorised by a corporate member in accordance with the laws of its incorporation.

17. MOF's Response. The introduction of a provision which allows the appointment of corporate representatives by other means, while providing more flexibility, could give rise to some operational difficulties. MOF observes that this does not appear to be an issue which will concern all companies in general. Therefore, MOF intends to maintain status quo.

(f) New issue 9: Procedure for alteration of objects in memorandum

18. Feedback. There was a suggestion to revise section 33(2) of the Act and to adopt a more practical procedure that allows a company to amend its objects clause first, and then allow members and debenture holders to file and object subsequently.

19. *MOF's Response.* MOF notes that in respect of section 33, the SC had not recommended any revisions to the procedures. In view of the feedback received, MOF will consider this further when the Act is re-written.

III. SHARES, DEBENTURES, CAPITAL MAINTENANCE, SCHEMES, COMPULSORY ACQUISITIONS AND AMALGAMATIONS

(a) New Issue 10: Redemption of Preference Shares

20. *Feedback.* In January 2006, the Act was amended such that shares could not be redeemed using the capital of a company unless all the directors had made a solvency statement in relation to such redemption and lodged a copy of the statement with ACRA. There was feedback that it was unclear whether using the proceeds from a fresh issue of shares for the purposes of share redemption would now require a solvency statement to be made (when it was previously not required under section 70¹ of the Act). If this was required, it would not be business friendly.

21. *MOF's Response.* MOF notes the feedback, and will review if section 70 needs to be clarified when drafting the bill.

(b) New Issue 11: Inconsistency between sections 192 and 130D(2)(a) of the Act

22. *Feedback.* There was feedback that section 130D(2)(a) (which does not require a listed company to continually update its hard copy register of members) is inconsistent with section 192 (which requires all companies to keep a register of members and allow inspection of such register).

23. *MOF's Response.* The rationale of section 130D(2) is to avoid a situation where a company has the obligation to continually update its share register to reflect changes to its members, especially for listed companies whose shares are traded at high volume and frequency. Section 192 provides that any person may ask the company to provide him with a copy of the register of members. The purpose of section 130D(2)(a) is not to prevent shareholders from requesting and obtaining a list of the members of a listed company, and therefore there is no inconsistency between the two sections. Nevertheless, MAS will consider the feedback as part of its review of the Central Depository provisions.

(c) New Issue 12: Share Capital

24. *Feedback.* The following suggestions were received: (a) all provisions relating to shares and share capital should be grouped together in the same part in the Act; (b) section 71(1)(a) should be clarified such that an issue of new shares constitutes an alteration of share capital; (c) Article 40(a) of Table A of the Act should be reconciled

¹ Section 70 relates to the redemption of preference shares by companies.

with section 160; and (d) a new part should be introduced in the Act to cover the issuance of different classes of shares and class rights.

25. *MOF's Response.* MOF will address (a), (b) and (c) during the drafting of the bill. For (d), MOF is of the view that instead of introducing a new section in the Act, it will be sufficient to amend the Act to introduce a new reporting requirement when shares are converted from one class to another so as to ensure that the share registers are more updated.

(d) *New Issue 13: Section 7(4A) of the Companies Act*

26. *Feedback.* The following suggestions were received: (a) “voting share” in section 7(4A) of the Act should be amended as it is not broad enough to require a limited partnership with no voting shares but has substantial shareholding in a company to disclose its deemed interests in shares of the company; and (b) the reference to “subsection 4” in section 7(5)(b) should be amended to read “subsection 4A”.

27. *MOF's Response.* For (a), we agree with the intent of the suggestion. This can be addressed through the proposal to amend the concept of “voting share” to “voting power”. The position in jurisdictions such as Australia, UK Hong Kong and New Zealand is to adopt the “voting power” approach. MOF will clarify (b) during the drafting of the Bill to adopt the recommendations of the SC.

(e) *New Issue 14: Notification requirements of substantial shareholders*

28. *Feedback.* It was suggested that a knowledge element should be introduced into sections 82 and 84 of the Act, which relate to reporting of substantial shareholdings.

29. *MOF's Response.* The notification requirements for substantial shareholders of listed companies will be migrated to the Securities Futures Act (SFA) which will come into effect on 19 November 2012. Under the SFA, the notification requirement is triggered upon the substantial shareholder becoming aware of the event e.g. becoming or ceasing to be a substantial shareholder.

IV. ACCOUNTS AND AUDIT

(a) *New issue 15: Audit requirements for groups with overseas subsidiaries*

30. *Feedback.* There was feedback that the requirement for Singapore-incorporated companies having overseas subsidiaries to have their group financial statements audited by the group auditors in Singapore gives rise to high costs.

31. *MOF's Response.* The Act does not mandate whether overseas subsidiaries of Singapore-incorporated companies are required to be audited by the group auditors in

Singapore. There may be cases where the group auditors are of the view that certain audits of the overseas subsidiaries need to be conducted to ensure that the consolidated financial statements for the group are true and fair. Such decisions would be taken by the company in consultation with their auditors. The change to the Act to introduce audit exemption for small companies may help to address some of the issues regarding costs of auditing if the entire group is small and is exempted from audit.

(b) *New issue 16: Appointment of auditor of audit-exempt company*

32. Feedback. It was suggested that a “small company” or “dormant company” which was exempt from statutory audit should not be required to appoint an auditor until such time when the audit exemption no longer applied.

33. MOF’s Response. MOF notes that currently, section 205A of the Act exempts the appointment of an auditor for companies which are exempt from audit as a small exempt private company or dormant company. Similar provisions will be in the bill.

(c) *New issue 17: Disclosure of audit/ non-audit fees*

34. Feedback. It was suggested that the Act mandate the disclosure of audit and non-audit fees paid to the auditors within the financial statements, so as to improve shareholders’ ability to assess the auditor’s independence and audit quality.

35. MOF’s Response. MOF notes the feedback but is of the view that there is no compelling need to mandate disclosure of audit and non-audit fees in the financial statements at this juncture. The level of audit and/or non-audit fees is determined by commercial considerations and would not be an accurate gauge of the auditor’s independence or quality. MOF is of the view that the concerns of audit quality can be addressed through other ways, e.g. ACRA’s work in inspecting the work of auditors and promoting better understanding of audit among the audit committees and investors.

(d) *New issue 18: Filing in Extensible Business Reporting Language (XBRL) format*

36. Feedback. There was feedback that the requirement to file in XBRL format creates difficulties and that it is also difficult to file a Notice of Error in respect of financial statements.

37. MOF’s Response. MOF and ACRA have noted the feedback. These issues will be considered separately as part of the ongoing review of ACRA’s XBRL filing system.

V. GENERAL COMPANY ADMINISTRATION

(a) New Issue 19: Listed Corporations Act

38. *Feedback.* It was suggested that there should be a separate piece of legislation for all listed companies and separate provisions for private and public companies.

39. *MOF's Response.* MOF agrees with the SC that the Act should contain core company law that is applicable to all companies. Provisions relating to the Central Depository will be moved out of the Companies Act. After the migration of the provisions on Central Depository, the Companies Act will contain very few provisions that apply only to listed companies. Thus, MOF is of the view that there is no need for a separate piece of legislation specifically for listed companies at this point.

(b) New Issue 20: Verification upon incorporation

40. *Feedback.* It was suggested that the regulator should verify particulars such as address for authenticity.

41. *MOF's Response.* There are existing safeguards in place, e.g. directors' addresses are verified against the National Registration Office's records where applicable and a congratulatory letter is sent to all directors at their official addresses upon incorporation, which will alert the persons if their identities have been used by others. False declaration of information to ACRA will also result in prosecution.

VI. REGISTRATION OF CHARGES

(c) New Issue 21: Registration of Charges

42. *Feedback.* It was suggested that there should be a specific exclusion for the need for a Licensed Trust Company ("LTC") to register charges over assets if the entity is acting as a trustee and has no beneficial interest in the assets.

43. *MOF's Response.* MOF is of the view that such a specific exclusion is not necessary as the Singapore position is currently in line with other major jurisdictions. Although a LTC may have no beneficial interest in the assets, it is still the legal owner.

VII. OTHER ISSUES

(a) New Issue 22: Protected Cell Companies

44. *Feedback.* It was suggested that a new entity structure akin to the Protected Cell Company in other jurisdictions be introduced as such a structure is relevant to the fund management industry.

45. *MOF's Response.* As the fund management industry is regulated by MAS, the issue was referred to MAS for consideration. MAS is of the view that there is no pressing need for such structures presently, but may review the position in future if necessary.

(b) *New Issue 23: Judicial Managers*

46. *Feedback.* It was suggested that an approved liquidator be allowed to act as a judicial manager.

47. *MOF's Response.* This suggestion will be considered by the Ministry of Law as part of its ongoing review of the insolvency regime.