Annex E

New Areas under Review

Current Requirement	Area Under Review	Consultation Questions
Issue 1: Review of share buyback limit		
Section 76B of the Companies Act (CA) allows a company to buy back ordinary shares and preference shares if the buyback is permitted by its articles and approved by shareholders, amongst other requirements. With effect from 1 October 2013, the share buyback limit is 20% over a period between consecutive annual general meetings.	Background Section 76B was introduced in 1998 with a 10% limit. The limit was intended to minimise potential negative effects (e.g. manipulation of market and benchmarks such as earnings per share, price earnings ratio and debt equity ratio), allow limited capital reduction and protect creditors' interests. MOF raised the limit from 10% to 20% on 1 October 2013. This is to allow Singapore incorporated companies to have greater flexibility in buying back their shares. SGX-listed companies continue to be subject to the existing 10% limit, which is now stipulated in SGX's listing rules. Positions in other jurisdictions United States (US), United Kingdom (UK), Australia, New Zealand and Hong Kong do not impose a share buyback limit in their company laws. Limits, if any, are usually imposed through the listing rules. Some jurisdictions allow shareholders to approve buybacks that exceed limits (i.e. soft limits) that are specified in legislation: • In US, a company listed on Nasdaq is subject to a volume condition, which limits the amount of shares that a company may buyback in a single trading day	Consultation question 1 We would like to seek comments on the four proposed options. Please give reasons for your preferred option and if possible, information on what percentage of shares your company has bought back. Consultation question 2 We would like to seek comments on whether additional safeguards should be imposed in the CA if the share buyback limit is removed from the CA. If so, please elaborate on the suggested safeguards.

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	to 25%. • In UK, a listed company can buyback up to 15% in a year with general shareholder mandate. There is no limit for specific mandate for share buyback. • In Hong Kong, the listing rules impose a 10% limit in a year. • In Australia, shareholders' approval is needed if the company intends to exceed the 10% limit in a 12-month period. Shareholders' approval is not required otherwise. • In New Zealand, shareholders' approval is not required if a company intends to buyback its shares from the stock exchange and the buyback does not exceed 5% in a 12-month period. The listing rules impose a 15% limit in a 12-month period. <u>Existing safeguards to protect shareholders and creditors</u> There is a due process before companies can buy back their shares. Existing safeguards include meeting the solvency test, obtaining shareholders' approval and providing adequate disclosure to shareholders. <u>Proposals being considered</u> We are studying whether the share buyback limit in the Companies Act should be further liberalised or removed. Feedback is sought on the following proposals:	

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	(a) Option 1: Retain the latest 20% limit in the CA. Shareholders' approval will still be required for share buybacks within the prescribed limit i.e. status quo; (b) Option 2: Increase the share buyback limit to a new limit (i.e. more than 20%) via a gazette notification. Shareholders' approval will still be required for share buybacks within the prescribed limit; (c) Option 3: Remove the share buyback limit from the CA via an amendment to the CA. Shareholders' approval will still be required for share buybacks. This is similar to the positions in UK and Hong Kong, which do not impose any limit on share buyback in their company laws; and (d) Option 4: Amend the CA to only require shareholders' approval for share buybacks that exceed 20%. Shareholders' approval is not required for buybacks that are not more than 20%. This is similar to the position in Australia.	
Issue 2: Clarification of section 156(9)		
Section 156 deals with disclosure by a director to a company of interests in transactions, property, officers, etc. Section 156(9) states that section 156(9) is in addition to and not in derogation of the operation of any rule of law or	As noted in *Woon's Corporations Law*, section 156(9) preserves the rules of common law and equity such that presumably a declaration to the board will not amount to a waiver of a breach of duty. It was considered whether there is a need to amend section 156(9) to make this clearer but this does not appear necessary.	Consultation question 3 We would like to seek comments on whether there is a need to amend section 156(9).

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any provision in the articles restricting a director from having any interest in transactions with the company or from holding offices or possessing properties involving duties or interest in conflict with his duties or interests as a director.		
Issue 3: Review of the cap on preferential payment to an employee of an insolvent company		
Section 328 of the CA sets out the order of priority of payment when a company becomes insolvent. Employees are entitled to be paid their wages and salaries, followed by retrenchment benefits and ex-gratia payments, in priority of other unsecured creditors of the company. Section 328(2) sets out a cap on how much priority payment can be made to employees when a company is insolvent. The current cap is fixed at "*five months' salary or $7,500, whichever is lower*". Section 328(2A) further empowers the Minister to vary the monetary	We are studying whether the salary cap for priority payment to an employee of an insolvent company should be updated. <u>Positions in other jurisdictions</u> • In Australia, employees are entitled to unpaid wages and superannuation contributions, although there is a distinction between payments to employees and excluded employees (i.e. company officers and their relatives). Employee entitlements are to be paid in full whereas excluded employees can claim up to A$2,000 for wages. • In Hong Kong, preferential payment of wages and salary to any clerk, servant, labourer or workman is capped at HK$3,000 and payment of severance payment is capped at HK$6,000.	<u>Consultation question 4</u> We would like to seek comments on whether the proposed cap of "*five months' salary or five times the prevailing salary cap for non-workmen referred to in Part IV of the Employment Act, whichever is lower*" is appropriate. If alternative caps are suggested, please provide reasons.

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figure of $7,500 by order published in the Gazette. The intent of the cap is to strike a balance between the rights of employees and creditors of the company. It also serves to ensure that managers and executives do not receive in priority, disproportionate sums of retrenchment compensation relative to workers. The current cap of $7,500 is based on the monthly salary cap of $1,500 under the Employment Act[1] (EA) in 1993.	• In UK, employees are treated as preferential creditors in respect of unpaid wages owed in the four months before the date of the insolvency order and payment is capped at £800. <u>Proposal being considered</u> • To specify a cap of "*five months' salary or five times the prevailing salary cap for non-workmen referred to in Part IV of the Employment Act, whichever is lower*". This will allow the cap to be automatically adjusted based on new salary caps in the EA. Based on the current salary cap of $2,000 for non-workmen in the EA, the new cap will be $10,000 (i.e. $2,000*5). • To allow future adjustments of the salary cap through gazette notifications. This will provide greater flexibility for the Minister to adjust the salary cap in the future.	
Issue 4: Review of the ranking of priority payments to an employee of an insolvent company		
Currently, employees of an insolvent company are entitled to be paid their wages/ salaries, followed by retrenchment benefits. The order of priority	Singapore, like Australia, ranks wages ahead of retrenchment benefits, whereas jurisdictions such as US, UK and Hong Kong rank wages/ salaries equally with retrenchment benefits.	<u>Consultation question 5</u> We would like to seek comments on whether the priority ranking between wages/ salaries and

[1] The EA uses salary ceilings to define who should receive priority payment of salary under Part III of the EA. The same salary ceilings are used to define who should benefit from conditions of service and priority payment of retirement benefits under Part IV of the EA. The current salary ceilings in the EA are $2,000 for employees who are not workmen and $4,500 for workmen. A workman is an employee whose work involves manual labour. An example of an employee who is not a workman is a general administrative staff. For details, please refer to the definition of workman in the EA.

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payments is set out under section 328 of the CA.	There are views that wages/salaries should rank ahead of retrenchment benefits because of the relative importance. Employees have earned the wages/salaries as payment for work actually done and employees are likely dependent on the payment for their livelihood. In the event that there are insufficient funds left in an insolvent company, it appears correct in principle that wages/salaries should be paid off first ahead of retrenchment benefits (which are additional contractual benefits). Ranking wages and retrenchment benefits equally may also result in situations where certain employees are paid a proportion of both their wages and retrenchment benefits, at the expense of a proportion of the wages of other employees. On the other hand, there are views that retrenchment benefits are an important protection for employees in the context of a liberal hire-and-fire regime and hence, should be ranked equally with wages/salaries.	retrenchment benefits under section 328 should be retained or reordered.
Issue 5: Phasing out of outstanding share warrants		
Since 29 December 1967, section 66 of the CA has prohibited the issuance of share warrants stating that the bearer of the warrant is entitled to the shares therein specified and which enables the shares to be transferred by delivery of the warrant. Bearers of share warrants issued before 29	Singapore's longstanding policy is to disallow the issuance of bearer equity instruments. The share warrants described under section 66 have been prohibited since 29 December 1967, with a transitional arrangement in place for bearers of share warrants to convert these shares to registered shares. Given that more than 40 years have passed since this transitional arrangement was put in place, it is timely for us to review whether this transitional arrangement is	<u>Consultation question 6</u> We invite companies to inform us of any share warrants issued by them before 29 December 1967 which remain outstanding, and to provide us with as much further information on these as possible, such as the number of shares for which share warrants

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December 1967 have the right to surrender their share warrants for cancellation and have their names entered in the register of members.	still relevant, and whether there are other appropriate methods to phase out any outstanding share warrants that remain unconverted today. If there are currently no outstanding share warrants in issue, then the transitional arrangement serves no purpose and should be deleted. Thus, we invite responses on whether there are any share warrants still in issue.	were issued and whether there is any record on whom the share warrants were issued to or who the current bearers of the share warrants are. We also invite companies to inform us of any reasons for retaining share warrants that have been issued before 29 December 1967. <u>Consultation question 7</u> We invite bearers of share warrants issued before 29 December 1967 to inform us if they presently still hold share warrants and provide us with as much further information on these as possible, such as which company issued those share warrants and the number of shares to which the share warrants relate. <u>Consultation question 8</u> We would like to seek suggestions on appropriate methods for phasing out any outstanding unconverted share warrants.

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		<u>Consultation question 9</u> We would like to seek views on what should be a reasonable period allowed for bearers to convert their share warrants into registered shares before phasing out outstanding share warrants.