Annex 2

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

VACATION OF OFFICE AND REMOVAL OF DIRECTORS (R1.10 – R1.13)

Deposit notice of resignation at the registered office

Summary of Feedback Received

1. One respondent suggested amending the Companies Act to allow the notice of resignation to be deposited at a company's registered office.

MOF's Response

2. MOF retains the position in the Bill. Companies can already specify this in their constitutions, hence there is no need to amend the Act.

Whether the right to remove any director should be subject not only to the constitution but also to any agreement between the director and the company (consultation question 1)

Summary of Feedback Received

3. The majority of respondents agreed that the right to remove any director should be subject only to the constitution and not any agreement between the director and the company. The respondents cited the need for greater transparency as the constitution, unlike private agreements, could be inspected by the public. Moreover, the right of shareholders to remove a director should not be taken away by any agreement with a director. This would also minimise contractual disputes and avoid self-dealing. Some respondents who thought otherwise indicated that the company should be bound to any agreement it had made with the director.

MOF's Response

4. MOF retains the position in the Bill. MOF agrees with the views from the majority of respondents. Not subjecting the right to remove directors to agreements between directors and the company is also consistent with Australia's position.

[1] Details of the public consultation are at http://app.mof.gov.sg/pc_coact_2013.aspx.

Whether private companies should also be subject to a similar condition as specified in section 152(1) so that removal of any director of a private company appointed to represent the interests of any particular class of shareholders or debenture holders shall not be effective until his successor has been appointed (consultation question 2)

Summary of Feedback Received

5. Most respondents agreed that private companies should not be subject to a similar condition as specified in section 152(1)[2], which currently applies to public companies. The respondents indicated that private companies should be given greater flexibility and private companies could include any desired conditions in the constitution or shareholders' agreement. Respondents who disagreed suggested that such board representation might be important in joint ventures or for minority shareholder protection.

MOF's Response

6. MOF retains the position in the Bill. If board representation is important for joint ventures or any particular class of shareholders of debenture holders, the constitution of a private company can provide for it.

Whether the requirement for special notice and the provisions granting the director the right to make representations under section 152(2)-(4) should also apply to private companies (consultation question 3)

Summary of Feedback Received

7. Most respondents supported amending the Companies Act to clarify that the requirements under section 152(2)-(4) would not apply to private companies. Given the smaller shareholder base, private companies should be given more flexibility on the procedures to remove directors. It should be left to private companies to specify these in their constitutions.

MOF's Response

8. MOF agrees to amend section 152(2)-(4) for clarity, in accordance with the feedback from the majority of respondents. This is similar to the position in Australia.

[2] Section 152(1) currently provides that a public company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in the company's memorandum or articles or in any agreement between the company and the director.

PAYMENT OF COMPENSATION TO DIRECTORS FOR LOSS OF OFFICE (R1.14 – R1.15)

Whether the new exception (to obviate the need for shareholders' approval where payment of compensation to an executive director for termination of employment is of an amount not exceeding his base salary for 1 year immediately preceding his termination of employment) should only apply to payments made pursuant to an agreement made between the company and the director as specified in the proposed section 168(1A) (consultation question 4)

Summary of Feedback Received

9. Most respondents agreed that the new exception should apply only to payments made pursuant to an agreement. They indicated that the new exception should be kept conservative. However, some respondents disagreed and commented that the proposed one-year emoluments cap and existing duties of directors would be sufficient safeguards.

MOF's Response

10. MOF retains the position in the Bill, which applies the exception to payments made pursuant to an agreement between the company and the director. Currently, payment of compensation to an executive director for termination of employment must be disclosed and approved by shareholders. The new exception in the Bill will already give the Board some discretion for such payment. This is also consistent with the position in jurisdictions like the UK, Australia and Hong Kong.

Mode of disclosure

Summary of Feedback Received

11. Some respondents suggested prescribing how disclosure should be done. One respondent asked whether the disclosure should be by the company or the director.

MOF's Response

12. MOF retains the position in the Bill. The company will be required to disclose the payment to shareholders, upon or prior to the payment. The method for disclosure will be left to the company to determine and will not be prescribed in the Companies Act.

Definition of emoluments

Summary of Feedback Received

13. Some respondents indicated that the proposed definition of 'emoluments', which was based on an existing definition under section 169(2), did not include salary.

MOF's Response

14. MOF agrees with the feedback and will adopt the existing definition of emolument under section 4, which includes salary. The definition will also apply to the existing section 168(5)(d).

Whether the new exception should provide in similar terms as the existing section 168(1) that if there has been no disclosure to shareholders, the amount received by the director shall be deemed to have been received by him in trust for the company (consultation question 5)

Summary of Feedback Received

15. Most respondents agreed that a trust should be imposed if there was no disclosure to shareholders. Some respondents disagreed as doing so would be draconian and penalise the outgoing director. One respondent cited that the existing exceptions under section 168(5) did not impose a trust. Another respondent suggested allowing an opportunity to rectify the defect.

MOF's Response

16. For clarity, the Bill will specify that if the payment is not disclosed to shareholders, the compensation amount received by the director will be deemed to have been received in trust by him for the company, based on the current position in the Companies Act for unlawful payment made to directors. This is also consistent with the views of the majority of respondents. As section 168(5) provides for types of payments that are not prohibited, the issue of a trust does not arise. Moreover, section 168(5) does not impose a disclosure obligation that may result in a trust. The new section 168(1A) will not provide for rectification of the defect, in line with the existing section 168(1).

LOANS TO DIRECTORS AND CONNECTED COMPANIES (R1.16-R1.18)

Whether besides the interested director, members of his family should abstain from voting in the new exception to give a loan, guarantee or security if there is prior shareholders' approval and with the interested director abstaining from voting (consultation question 6)

Summary of Feedback Received

17. All respondents, except for one, agreed that family members should abstain from voting. The reasons include safeguarding shareholder interests and ensuring that shareholders' approvals for transactions are independent from any influence from the interested director, and for consistency with sections 156(8) and 163(5) of the Companies Act. Some respondents pointed to impracticability if a director and his family members, who held all shares, had to abstain from voting. To address such a scenario, there was a suggestion to require the approval of all shareholders. One respondent, who disagreed that family members should abstain from voting, suggested that the issue be addressed in the constitution of a non-listed company.

MOF's Response

18. MOF agrees with the feedback to retain the position in the Bill. The interested director and his family members will be required to abstain from voting for greater independence[3]. MOF also agrees with the suggestion to allow the giving of a loan, guarantee or security if it is approved by all shareholders. The change is relevant to family-owned companies.

Whether ratification should be allowed for the new exception such that the approval may be obtained after the transaction, or whether ratification should be expressly disallowed (consultation question 7)

Summary of Feedback Received

19. Most respondents agreed that ratification should not be allowed in view of the difficulties in undoing the transactions if shareholders did not eventually ratify these transactions; the possibility of abuse of the regime, (for example, where the contravention could have occurred at a time when shareholders approval would not have been forthcoming, but subsequently ratified by a differently constituted general meeting); to protect the interests of minority shareholders; the lack of clarity as to what would be the available remedy if the ratification cannot be obtained; and the need for safeguards to cater for such instances. Respondents who supported

[3] Section 163 currently prohibits a company (lending company) from giving a loan, guarantee or security to another company (borrowing company), if the directors of the lending company have an interest in 20% or more of the shares of the borrowing company. An interest of a director's family member is also treated as the director's interest. The new exception to section 163 will allow a loan, guarantee or security to be given if there is prior shareholders' approval.

ratification said it would allow flexibility and would be similar to the existing section 163(1) and section 162(2) which allow for loans to be repaid within 6 months under section 162(1)(b) if prior approval for the loan was not given by the company.

MOF's Response

20. MOF agrees with the majority of the respondents not to allow ratification and will retain this position in the Bill. Although section 162(2) allows for ratification for loans under section 162(1)(a)/(b), these relate to loans for limited purposes. Section 163 on the other hand, relates to certain transactions with another company whereby the directors have an interest in. To protect the interests of the company, prior approval should be sought.

Extend existing prohibition under section 163) and new exception to bodies corporate

Summary of Feedback Received

21. One respondent suggested amending section 163 such that the existing prohibition under section 163 also applies to a limited liability partnership (LLP) i.e. it will prohibit a company from giving a loan, guarantee or security to another company or LLP if the directors of the lending company own or control 20% or more of the total voting power or interest of the borrowing company or LLP.

MOF's Response

22. MOF agrees to close the loophole by extending the prohibition in section 163 to an LLP. This is consistent with the approach in the UK, where the prohibition applies to bodies corporate. MOF will extend the new exception to an LLP.

POWER OF DIRECTORS TO BIND THE COMPANY (R1.20)

Whether the proposed approach of leaving the interpretation of words such as "dealing with", "good faith" and "limitation", to the court, is appropriate (consultation question 8)

Summary of Feedback Received

23. Most respondents agreed not to define the terms, unlike sections 40 to 42 of the UK Companies Act 2006. Interpretation could be left to the courts as introducing the definitions might affect the usage of similar phrases elsewhere in the Companies Act. However, some respondents suggested adopting parts of the relevant UK definitions. Two respondents suggested extending the application of the proposed section 25B to any limitations contained in documents which are generally not accessible to the public. One respondent suggested adapting section 41 of the UK Companies Act to

prevent directors of a company and connected persons from taking advantage of the new section 25B.

MOF's Response

24. MOF agrees with the feedback to adapt the UK provisions. The Bill will include an equivalent of sections 40(3) and 41 of the UK Companies Act. New provisions based on the UK sections 40(2)(b)(i)/(ii), 40(3) and 41 have been inserted. Relevant portions of the UK provisions will be adopted, with appropriate modifications.

IMPOSITION OF LIABILITY ON OTHER OFFICERS (R1.25)

Scope of CEO disclosures

Summary of Feedback Received

25. One respondent indicated that CEOs of listed companies have fewer disclosure obligations under the Securities and Futures Act (SFA) than those proposed in the Bill for CEOs of non-listed companies. The respondent suggested aligning the proposed requirements under the Companies Act with those under the SFA.

MOF's Response

26. MOF agrees that the proposed disclosure requirements for CEOs of non-listed companies should not be more onerous than existing requirements for CEOs of listed companies. The Bill will be revised by not requiring CEO of a non-listed company to disclose interests in securities of related corporations, as well as participatory interests made available by the non-listed company or its related corporations. The revised disclosure requirement will be a subset of the original position in the Bill.

INDEMNITY FOR DIRECTORS (R1.28 – R1.29)

Whether the proposed exceptions in section 172B in which circumstances third party indemnity provisions will be void are appropriate (consultation question 9)

Summary of Feedback Received

27. Most respondents agreed that the proposed exceptions in section 172B are appropriate. There were suggestions that section 172B(1)(a)(ii), which would disallow indemnity of penalties, should not apply to the following situations: (i) penalties paid for technical breaches (e.g. ACRA fines); (ii) if there was no dishonest intent; or (iii) if the penalty was paid without admission of liability.

MOF's Response

28. MOF retains the proposed exceptions in the Bill. Allowing indemnity for penalties will undermine the deterrent effect. It will also be difficult to determine what constitutes technical breaches.

Extension of the new regime to include officers who are not directors (consultation question 10)

Summary of Feedback Received

29. All respondents agreed that the new regime, which will allow a company to provide indemnity against liability incurred by its directors to third parties, should be extended to officers who are not directors. There was a suggestion that section 172 should not apply to approved liquidators who should have their rights and entitlements governed under general law.

MOF's Response

30. MOF retains the proposed provisions in the Bill, which will extend the new regime to officers who are not directors. The comment on whether to exclude approved liquidators from section 172 has been forwarded to the Insolvency and Public Trustee's Office for consideration.

Consistency with sections 163A (Exception for expenditure on defending proceedings, etc.) and 163B (Exception for expenditure in connection with regulatory action or investigation)

Summary of Feedback Received

31. One respondent suggested aligning the ambit of section 172B (on when provisions to indemnify against third party liability are allowed) with section 163A (on when loans to defend third party liability are allowed), by extending section 172B to a "related company".

MOF's Response

32. MOF agrees that the scope of section 172B should be consistent with section 163A. As a prudent approach, the new sections 163A and 163B will be aligned with the existing scope of section 172B.

Whether the proposed approach to allow a company to indemnify its directors against potential liability is appropriate (consultation question 11)

Summary of Feedback Received

33. All respondents agreed with the proposed approach. There were suggestions that any loans made under the proposed sections 163A and 163B should be subject to the Board's or shareholders' approval. Some respondents noted that a director would be required to repay the loan in certain circumstances under subsection 163A(2), but not under section 163B. Thus, they suggested aligning the two provisions. One respondent suggested amending section 163B by including legal costs for an application made under the proposed section 202B(8).

MOF's Response

34. MOF retains the position in the draft sections 163A and 163B not to require the Board's or shareholders' approval. There are sufficient safeguards under this provision to ensure that the loans are repaid to the company under prescribed circumstances[4]. This is also consistent with the UK approach. The proposed section 202B deals with *Registrar's application to Court in respect of defective financial statements, or consolidated financial statements and balance-sheet*. Under section 202B(8), the Court may order the directors to bear the costs for the application to Court and expenses incurred in revising the financial statements. This will allow the Registrar or the company to recover costs or expenses, where the directors are at fault. Thus, it will not be appropriate for section 163B to override this.

Whether there are any concerns on the different regimes for loans, as compared to quasi-loans, credit transactions and related arrangements, in relation to indemnifying directors (consultation question 12)

Summary of Feedback Received

35. Three respondents agreed that the new exceptions in sections 163A and 163B should apply only to loans. One of the reasons cited was that sections 163A and 163B contemplate loans for the purposes of defraying the costs of defence proceedings. It would be unusual for a director to seek more complex structures such as quasi-loans and other credit transactions to finance such costs, instead of seeking a straightforward loan. Besides, this would minimise the risk of non-compliance with the protection set out in section 163A and compel the company's management to give more thought to the merits/ propriety of extending the loan. One respondent however suggested extending the exceptions to quasi-loans, credit transactions and related arrangements since the underlying nature and substance of these transactions are substantially similar.

[4] Briefly, the new section 163A provides that the loan may be given on the premise that it must be repaid within 14 days to the company if the director is convicted in legal proceedings, or judgement is given against the director, or the Court refuses to grant the director relief on the application.

MOF's Response

36. MOF retains the position in the Bill, which will apply the new exception to loans and not quasi-loans, credit transactions and related arrangement. As these are new exceptions, we prefer to adopt a more conservative approach of only applying these exceptions to loans for now. This approach is also consistent with the position in the UK.

VOTING (R2.1 – R2.2)

Whether section 178(1)(b)(iii) should be amended to reduce the percentage threshold to 5% (consultation question 13)

Summary of Feedback Received

37. Almost all the respondents supported amending section 178(1)(b)(iii) to lower the percentage threshold for eligibility to demand a poll from 10% to 5%. One respondent disagreed and commented that it might lead to abuse by minority shareholders and result in companies incurring unnecessary costs in holding meetings by poll.

38. Some respondents asked whether members of existing companies, which retain the current 10% threshold in their articles after the amendments take effect, could rely on the new 5% threshold. Some respondents suggested including the revised threshold in the new Model Constitution.

MOF's Response

39. MOF retains the position that the threshold to demand a poll under section 178(1)(b)(iii) will be lowered to 5%. This is consistent with the threshold used in section 178(1)(b)(ii). The rationale for using the 5% threshold in section 178(1)(b)(ii) is set out in the *"Ministry of Finance's Responses to the Report of the Steering Committee for Review of the Companies Act"*[5]. To address the issue of existing companies retaining the current 10% threshold in their constitution even after the revised threshold is effective, MOF will include a provision which will allow members of existing companies whose constitutions set a threshold higher than 5% to effectively demand a poll in accordance with the thresholds under the revised sections 178(1)(b)(ii) and (iii). MOF agrees with the suggestion to include the revised thresholds under section 178(1)(b)(ii) and (iii) in the new Model Constitution.

[5] The report is available at http://app.mof.gov.sg/data/cmsresource/SC_RCA_Final/AnnexA_SC_RCA.pdf.

ENFRANCHISING INDIRECT INVESTORS (R2.10 – R2.15)

Categories of shareholders who qualify to appoint multiple proxies

Summary of Feedback Received

40. A respondent suggested amending the definition of "relevant intermediary" to extend to situations where the Central Provident Fund (CPF) Board holds shares in the capacity of a nominee or intermediary.

MOF's Response

41. MOF agrees with the suggestion and will amend the definition of "relevant intermediary" to extend the multiple proxy regime to situations where the CPF Board holds shares in the capacity of a nominee or intermediary in accordance with regulations made under the Central Provident Fund Act.

Whether multiple proxies regime should be subject to contrary provision in the company's constitution

Summary of Feedback Received

42. One respondent suggested that the multiple proxies regime be made mandatory for all companies, rather than allowing it to be subject to contrary provisions in the company's constitution. If companies were allowed to choose whether or not to adopt the multiple proxies regime, it would not achieve the objective of enfranchising indirect investors and there would be differing practices among companies.

MOF's Response

43. MOF agrees with the feedback to remove the qualification that the multiple proxies regime will be "subject to contrary provision in the company's articles". This will be more in line with the intent of enfranchising indirect shareholders. Companies are also not allowed to opt out of the multiple proxies regime in the UK and Hong Kong. To give companies more time to prepare for the new procedures for proxy appointments and potentially larger numbers of attendees at their meetings, a 6-month transitional period will be provided.

Whether multiple proxies should be given the right to vote on a show of hands

Summary of Feedback Received

44. One respondent suggested that there should be no distinction between a proxy appointed by a member who is a relevant intermediary and a proxy appointed by a member who is not a relevant intermediary, in relation to their right to vote on a show of hands.

MOF's Response

45. MOF retains the position that the right to vote on a show of hands should be limited to proxies appointed by relevant intermediaries only and not all proxies. Allowing for a vote by a show of hands is to give effect to the true intention behind the multiple proxies regime, i.e. to allow indirect investors to exercise their shareholders' rights. Proxies not appointed by the relevant intermediaries may not be indirect investors.

Whether to extend the increase in the cut off time (for filing of proxies) from 48 hours to 72 hours for all companies and all proxies regardless whether multiple proxies are appointed (consultation question 14)

Summary of Feedback Received

46. The majority of respondents supported the extension of the cut-off time to 72 hours for all companies and all proxies. One respondent supported the extension of time for public or public-listed companies only as these companies typically had more shareholders. They would require more time to process the increased number of proxy forms with the implementation of the multiple proxies regime.

47. Some respondents suggested that the cut-off time be calculated in terms of "business days" instead of "hours" to cater for weekends and public holidays. One respondent suggested including a provision that would deem a company's constitution as being amended to extend the time period from 48 hours to 72 hours even if the company did not amend its constitution. One respondent suggested that the provision in the Act should be drafted such that it would override the provisions in the company's articles. One respondent commented it should be made clear that the period for closure of the membership register maintained by the Central Depository in relation to the scripless shares would also be extended from 48 hours to 72 hours.

MOF's Response

48. MOF retains the position that the extension of cut-off time will be for all companies and all proxies. Given that the multiple proxies regime is applicable to all companies, a private company may also need to process a larger number of proxy forms. Extending the cut-off time across all companies will ensure a consistent treatment.

49. We do not see a strong need to specify the cut-off time in business days. Using a reference to "business days" will make the calculation of the time period more complicated. Moreover, in some circumstances, such as where there are weekend or public holidays, calculating the cut-off time in terms of "business days" may further shorten the time that members or investors have to respond. Other jurisdictions that use number of hours instead of business days include UK, Hong Kong and Australia.

50. A provision will be introduced such that if the constitution of an existing company has not been amended to reflect a 72-hour period, the 72-hour cut-off time will still apply to the company. The revised cut-off time will be included in the Model Constitution. The 48-hour closure period for the membership register under the new section 81SJ(4) of the Securities and Futures Act (which replaces the current section 130D(3) of the Companies Act) will also be extended to 72 hours for consistency.

CORPORATE REPRESENTATIVES (R2.16 – R2.17)

Summary of Feedback Received

51. One respondent commented that there could be conflicts of interest if a company's director or auditor was also appointed as a corporate representative at a meeting.

MOF's Response

52. MOF retains the position that a director or auditor can be appointed as a corporate representative, as long as he is not attending the meeting in the capacity of a member, proxy or as a corporate representative of another member. A director or auditor will need to make a choice as to the capacity in which he attends the meeting.

ELECTRONIC TRANSMISSION OF NOTICES AND DOCUMENTS (R2.18 – R2.22)

Electronic methods for passing resolutions

Summary of Feedback Received

53. One respondent suggested that the Companies Act should provide for the passing of resolutions by email for all companies.

MOF's Response

54. MOF retains the position in the Bill. The amended sections 184A to 184F will allow private companies and unlisted public companies to pass resolutions by written means, and the provisions are wide enough to allow such written resolutions to be passed via email. It would not be practical for listed companies to pass members' resolutions via written means or email due to the large number of members.

Timing of service by electronic communications

Summary of Feedback Received

55. One respondent suggested that the proposed Model Constitution should address when the service of a notice of meeting that is given by electronic communication takes effect. The proposed clause could be equivalent to the current Article 108 of the Fourth Schedule, which sets out when a notice given by a company to a member by post is deemed to be effected.

MOF's Response

56. MOF agrees with the suggestion and will insert a clause in the Model Constitution to state when the service of a notice of meeting that is given by electronic communication is effected as this will give clarity and certainty.

Whether electronic communications should be made applicable as the default mode of communication unless prohibited in constitution

Summary of Feedback Received

57. One respondent suggested that the Companies Act should expressly provide for the use of electronic communications, unless otherwise prohibited in the company's constitution, to encourage the use of electronic communications and to save companies the administrative effort of having to amend their constitutions.

MOF's Response

58. MOF retains the position that there is no need to mandate the use of electronic communications for all companies. Companies should be given the choice of whether they wish to make use of electronic communications, depending on the needs and circumstances of each company.

Implied consent and deemed consent

Summary of Feedback Received

59. One respondent commented that the safeguards for deemed consent impose an onerous burden on companies, as every new shareholder must be notified in writing on at least one occasion of his ability to elect to receive a physical copy of company notices and documents. One respondent suggested that the right to withdraw consent for deemed consent should be set out in the main Act rather than in the subsidiary legislation, to make the availability of this option clearer.

MOF's Response

60. MOF retains the position in relation to the safeguards to ensure that shareholders are adequately informed when information is sent to them via electronic communications. The safeguards are being prescribed in subsidiary legislation to allow greater flexibility. However, MOF notes the concern and will amend section 387C such that it is expressly subject to the prescribed safeguards, including the right of a member to change his elected mode to receive communications.

MINORITY SHAREHOLDER RIGHTS (R2.25 – R2.32)

Court-ordered buy-out

Summary of Feedback Received

61. One respondent disagreed with the proposal that the Court be empowered to order interests in shares of one or more members to be purchased by the company or by one or more other members when the Court hears a winding up application. This was because it would amount to giving a minority shareholder the right to seek a buy-out under the guise of applying to wind up the company. It was argued that this would allow minority shareholders to override negotiated buy-out rights in a shareholders' agreement, and hold the majority shareholders to ransom.

62. One respondent highlighted that more powers could be given to the Court under section 254(2A), similar to those under the discretion and remedies for oppression or unfair prejudice in section 216(2) of the Companies Act[6]. This would provide more flexibility for the Court and relevant parties.

MOF's Response

63. MOF retains the position that the Court be empowered to order a buy-out when hearing a winding up application. As the Court will have control over the situations under which a buy-out order will be made, and there are legal costs involved in bringing the application to Court, it will help safeguard against abuse.

64. The additional power introduced in draft section 254(2A) is intended as a limited remedy in lieu of a more extensive minority buy-out right. We did not have the

[6] Section 216(2) provides that in the cases of oppression or injustice, the Court may issue an order that:
(a) direct or prohibit any act or cancel or vary any transaction or resolution;
(b) regulate the conduct of the affairs of the company in future;
(c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;
(d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;
(e) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or
(f) provide that the company be wound up.

intention to widen the scope section 254 to include more extensive remedies which may overlap with those existing under section 216 as this may result in uncertainty as to what should be the more appropriate section to seek redress for shareholders.

Buy-out order involving capital reduction or share buyback

Summary of Feedback Received

65. One respondent asked whether the legal requirements in the Companies Act relating to capital reduction and share buybacks would apply to the Court order made under draft sections 254(2A) and 254(2B). It was highlighted that if the legal requirements relating to capital reduction or share buybacks were applicable, a Court order for a share buyback might be ineffective due to an inability to satisfy any one or more of the requirements.

MOF's Response

66. Section 76(1) of the Companies Act, which relates to the restrictions on a company buying back its own shares, are worded such that it is subject to any other express provision in the Act. We are therefore of the view that in cases where the Court orders a share buyback under draft section 254(2A), it will not be subject to the prohibition or restrictions in section 76(1).

67. MOF will delete draft section 254(2B) which had specifically provided that the Court order may provide for the reduction in capital. Section 78A(2) states that a company may not reduce its share capital in any way except by a procedure provided for it by the provisions of Part IV Division 3A. On further consideration, we are of the view that a separate regime for reduction in share capital under the circumstances of Court-ordered buy-outs is not necessary. A company that has bought back its shares can hold or cancel them as treasury shares accordingly in according with the existing provisions in the Act.

MEMBERSHIP OF HOLDING COMPANY (R2.33 – R2.34)

68. The summary of feedback and MOF's response for consultation questions 15 – 19 have been compiled with those for consultation questions 23 – 27.

PREFERENCE AND EQUITY SHARES (R3.1 – R3.5)

Whether the proposed amendments to section 163 to use 'voting power' like in section 5(1)(a)(ii), is appropriate and broad enough to factor in multiple vote share (consultation question 20)

Summary of Feedback Received

69. Most of the respondents agreed with the proposed amendments. Two respondents suggested including a definition for "voting power". One respondent suggested using "voting interest" instead.

MOF's Response

70. MOF retains the position in the Bill. The term "voting power" will be used and will not be defined in view of the precedent in section 5(1)(a)(ii). The interpretation can be left to the Court. The UK Companies Act also does not define the term.

Shareholders' approval for the issue of shares that confer special, limited, conditional or no voting rights

Summary of Feedback Received

71. One respondent suggested requiring public companies to seek shareholders' approval for the issuance of shares that confer special, limited, conditional or no voting rights by ordinary resolution instead of special resolution, since changes to their constitutions (to provide for classes of shares) already require special resolution. This would also standardise the requirement for shareholders to approve the issue of shares by ordinary resolution under section 161.

MOF's Response

72. MOF retains the position in the Bill. As the issue of shares with special voting rights is an important matter, a higher approval threshold by shareholders should be imposed.

Specify classes of shares in the notice of general meetings

Summary of Feedback Received

73. One respondent commented that the proposed requirement to specify the types of voting rights of each class of shares in the notice of general meetings would be cumbersome and unwieldy. The respondent suggested doing away with the requirement since the company's constitution would already set out the rights for each class of shares.

MOF's Response

74. MOF retains the position in the Bill. The proposed requirement to specify the types of voting rights of each class of shares in the notice of general meetings will inform shareholders of their voting rights at these meetings.

Request comments on the modified implementation approach under section 64A i.e. non-voting shares should have at least one vote on any resolution to wind up or vary rights (consultation question 21)

Summary of Feedback Received

75. All the respondents agreed with the approach.

MOF's Response

76. MOF retains the position in the Bill.

Whether the safeguard under section 64(1) (i.e. allowing the issue of different classes of shares in a public company only if provided for in the constitution) should apply to all different classes of shares or only those with special, limited, conditional or no voting right (consultation question 22)

Summary of Feedback Received

77. All the respondents agreed that the safeguard should apply to all different classes of shares.

MOF's Response

78. MOF retains the position in the Bill.

HOLDING AND SUBSIDIARY COMPANIES (R3.6 – R3.8)

Subsidiary holding shares of its holding company

(a) Request comments on the implementation approach for R2.34, R3.7 and R3.8 (consultation questions 23 and 15)

(b) Request comments on the approach to subject shares held by the subsidiary under section 21 to section 76J(2) i.e. the subsidiary would not be able to exercise any right in respect of such shares and any purported exercise of such a right would be void (consultation questions 24 and 16)

(c) Whether the subsidiary should be able to exercise certain rights, and if so what rights those should be (consultation questions 25 and 17)

(d) Request comments on the proposed section 21(6D)(d), which provides that a wholly owned subsidiary will not be entitled to distributions for shares held under section 21 (consultation questions 26 and 18)

Summary of Feedback Received

79. Most respondents agreed with the implementation approach for R2.34, R3.7 and R3.8. The majority of respondents agreed that a subsidiary should not be able to exercise any rights for shares of its holding company held under section 21. Some respondents suggested alternatives[7] on the rights for such shares.

MOF's Response

80. MOF retains the position in the Bill:

- give subsidiary 12 months or such longer period as the Court may allow to dispose of holding company shares held;
- after the 12 months or such longer period, the subsidiary can continue holding such shares provided that the aggregated number of such shares held by all the subsidiaries of the holding company and by the holding company (as treasury shares) does not exceed 10% of the shares issued for that class of shares;
- such shares held by a subsidiary will be under the control of the holding company, much like treasury shares; and
- distribution rights of such shares held by the subsidiary, except for wholly owned subsidiaries, will not be suspended. This is to avoid prejudicing minority shareholders of the subsidiary, which does not apply to wholly owned subsidiaries.

Whether the list of provisions in section 21(6F) is complete and whether the exclusion of sections 76B(9)(d) and 403(1B)/(1C) is appropriate (consultation questions 27 and 19)

Summary of Feedback Received

81. All respondents agreed with the exclusion of sections 76B(9)(d) and 403(1B)/(1C). One respondent suggested that the Bill provide that a holding company might reduce its shareholding in its subsidiary such that the latter ceased to be a subsidiary of that holding company. Another respondent asked whether a company could continue to acquire shares of its holding company (up to the limit of 10%), after becoming its subsidiary.

[7] The alternatives include: (a) giving minority shareholders of subsidiaries (except for wholly owned subsidiaries) the right to call for a capital reduction by distribution of shares to shareholders; (b) suspending only voting rights and not other rights; (c) giving all subsidiaries (including wholly owned subsidiaries) the right to receive dividend income.

MOF's Response

82. MOF retains the position in the Bill. We also agree with the respondent's suggestion and will revise the Bill to clarify that the shares of holding company that are held by the subsidiary will not count towards the 10% limit once the latter ceases to be a subsidiary of that holding company. A company cannot continue to acquire shares of its holding company after becoming its subsidiary.

SOLVENCY STATEMENTS (R3.18 – R3.21)

Whether it would be useful to have prescribed forms for solvency statements (consultation question 28)

Summary of Feedback Received

83. Some respondents indicated that it was not necessary to have prescribed forms for solvency statements since requirements on solvency were clear. They preferred the flexibility of the current regime and the absence of a prescribed form had not caused any difficulty in practice. However, the majority of respondents were in favour of introducing prescribed forms for solvency statements, as this would promote standardisation and uncertainty, and avoid qualifications that might undermine the purpose of the declaration.

MOF's Response

84. MOF retains the position in the Bill and will not issue prescribed forms for solvency statement, so as to retain business flexibility for companies.

SHARE BUYBACKS AND TREASURY SHARES (R3.22 – R3.26)

Whether the 'relevant period' for share buybacks should commence from the date of the relevant resolution (consultation question 29)

Summary of Feedback Received

85. The majority of respondents agreed that the 'relevant period' should commence from the date of the relevant resolution.

MOF's Response

86. MOF retains the position in the Bill.

Whether to amend 'the relevant period' to 'a relevant period' in section 76B (consultation question 30)

Summary of Feedback Received

87. The majority of respondents agreed that the 'the relevant period' should not be amended to 'a relevant period'.

MOF's Response

88. MOF retains the position in the Bill.

FINANCIAL ASSISTANCE FOR THE ACQUISITION OF SHARES (R3.27 – R3.29)

Whether the new exception to financial assistance under section 76(9BA) should require approval by the Board and whether there should be any other requirements (consultation question 31)

Summary of Feedback Received

89. The majority of respondents agreed that the new exception should require approval by the Board. Some respondents suggested alternatives of seeking shareholders' approval or doing away with the need for approval. One respondent suggested deleting the reference to "fair value" to avoid creating uncertainty. Another respondent suggested clarifying that only public companies and their Singapore incorporated subsidiaries would be subject to the financial assistance prohibition.

MOF's Response

90. MOF retains the position in the Bill, which will require the Board's approval for the new exception to financial assistance. MOF agrees with the two suggestions to delete the reference to 'fair value' and to clarify that section 76(1) is applicable to a company whose holding or ultimate holding company is a public company.

Request comments on the amended exceptions under section 76(8)(a) and new exceptions under section 76(8)(aa), (k) and (l) (consultation question 32)

Summary of Feedback Received

91. All respondents agreed with the draft amendments.

MOF's Response

92. MOF retains the position in the Bill.

OTHER ISSUES PERTAINING TO CAPITAL MAINTENANCE (R3.35 – R3.38)

Whether expenses, brokerage or commissions incurred in a buyback of shares should be treated in a similar manner as the cost of the shares bought back (consultation question 33)

Summary of feedback received

93. All respondents agreed with the draft amendments.

MOF's response

94. MOF retains the position in the Bill.

SCHEMES OF ARRANGEMENT (R3.39 – R3.45)

Whether each member should be allowed only one proxy for schemes of arrangement under section 210, unless the Court orders otherwise (consultation question 34)

Summary of Feedback Received

95. The majority of respondents have agreed that each member should be allowed only one proxy for schemes of arrangement under section 210 unless the Court orders otherwise. One respondent thought otherwise and indicated that the implementation of poll voting for listed companies would address the practical difficulties in aggregating and counting the votes of multiple proxies.

MOF's Response

96. MOF retains the position in the Bill. This avoids the complications of implementing the new multiple proxies regime on schemes of arrangements. Besides, the Bill will empower the Court to allow more than one proxy for schemes of arrangement.

COMPULSORY ACQUISITION (R3.46 – R3.56)

Whether the proposed section 215(1C) should exclude shares that cease to be held as treasury shares after the date of offer (consultation question 35)

Summary of Feedback Received

97. Most respondents indicated that besides excluding shares allotted after the date of offer, the proposed section 215(1C) should also exclude shares that cease to be held as treasury shares after the date of offer.

MOF's Response

98. MOF agrees with respondents' suggestion and will modify the Bill.

Whether the periods of 1 month and 14 days specified in the proposed section 215(1A) are appropriate (consultation question 36)

Summary of Feedback Received

99. Most of the respondents agreed that the periods of 1 month and 14 days were appropriate. One respondent suggested specifying a 45-day period.

MOF's response

100. MOF retains the position in the Bill.

AMALGAMATIONS (R3.57 – R3.60)

Short-form amalgamation of holding company with wholly-owned subsidiary

Summary of Feedback Received

101. Some respondents suggested revising the Bill to address a scenario where the surviving entity is an amalgamated subsidiary company and there is more than one shareholder at the holding amalgamating company-level. There should be a mechanism whereby the shareholding structure at the holding amalgamating company-level should be re-created at the amalgamated subsidiary company.

MOF's Response

102. MOF agrees with the respondents' comments and will revise the Bill.

FINANCIAL REPORTING FOR SMALL COMPANIES (R4.1 – R4.3)

Whether a private company should be able to qualify as a small company[8] if it fulfils any 2 out of 3 of the proposed criteria or if it fulfils the revenue threshold and one other criterion (consultation question 37)

Summary of Feedback Received

103. The majority of respondents supported the proposal that a company should qualify if it fulfilled any two of the three criteria. However, some respondents supported the proposal that the revenue criterion (i.e. total annual revenue of not more than S$10 million) should be made compulsory.

MOF's Response

104. MOF retains the position that a private company will qualify as a small company if it fulfils any two out of the three criteria. This is primarily for consistency with the differentiated financial reporting requirements in other jurisdictions and the criteria used in the Singapore Financial Reporting Standards for Small Entities ("SFRS for Small Entities"). It will also accord greater flexibility for companies. We will monitor the implementation closely and adjust the criteria if needed.

Criteria for small companies

Summary of Feedback Received

105. One respondent highlighted that, in relation to the substantial assets threshold for determining whether a dormant non-listed company might be exempted from financial reporting requirements, the criterion referred to was "total assets", while the asset criterion for determining small companies referred to "total gross assets". The respondent suggested that the references should be aligned for consistency. One respondent sought guidance on the approach for determining the number of employees for the purpose of the employee criterion. One respondent sought clarification on whether companies could switch criteria every financial year or if they had to keep to the same 2 criteria in order to continue to qualify.

MOF's Response

106. MOF agrees with the suggestion to refer to "total assets" instead of "total gross assets" for both the substantial assets threshold for dormant companies and the asset

[8] 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
  i. Total annual revenue of not more than S$10 million;
  ii. Total gross assets of not more than S$10 million;
  iii. Number of employees not more than 50.

criterion for determining small company as it will provide greater clarity and certainty. This is also consistent with the positions in other jurisdictions.

107. The number of employees will be determined in the same manner as that for the SFRS for Small Entities, i.e. based on the number of full-time employees employed by the reporting entity at the end of the financial reporting period. In addition, companies do not have to keep to the same two criteria in order to continue to qualify for subsequent years.

Whether the transitional provisions for application of criteria to new companies are appropriate and adequate (consultation question 38)

Summary of Feedback Received

108. Most respondent supported the transitional provisions. One respondent disagreed and was of the view that a company should qualify as a small company for the first financial year commencing on or after the effective date of the small company criteria, if it met the quantitative criteria in the immediately preceding financial year. From the second financial year commencing on or after the effective date, a company should qualify as a small company if it met the quantitative criteria in the immediate past two consecutive two financial years. This approach was suggested to facilitate audit planning.

MOF's Response

109. MOF retains the position that the applicability of the small company criteria for a company incorporated before the effective date of the criteria will be determined by whether the company meets the quantitative criteria in the first or second financial year commencing on or after the effective date. We are of the view that a company should not be allowed to rely on the financial positions of the company prior to the effective date of the small company criteria to ensure a fairer application of the new requirement.

Whether a parent company should be able to qualify as long as it is a private company and belongs to a small group, regardless of whether the parent company itself qualifies as a small company (consultation question 39)

Summary of Feedback Received

110. Some respondents supported the view that a parent company should be able to qualify as a small company as long as it was a private company and belonged to a small group, regardless of whether the parent itself qualified as a small company. The consolidated financial statements would give a true and fair view of the parent and its subsidiaries, and therefore it was not necessary to consider whether the parent company itself was a small company. On the other hand, not having the additional

requirement that the group must qualify on a consolidated basis might lead to possible manipulation and abuse.

MOF's Response

111. MOF retains the position that a parent qualifies as a small company only if it is a small company and it is part of a small group. This approach recognises the parent company as a separate legal entity from the group to which it belongs. It will also be consistent with the treatment for subsidiaries, and the approach in the UK.

Whether the approach for determining the thresholds on a group basis is appropriate (consultation question 40)

Summary of Feedback Received

112. There was general support for the approach set out in the draft Bill. One respondent suggested that the SFRS should be used in all cases for the computation of the thresholds on a group basis.

MOF's Response

113. MOF retains the approach for the determination of the thresholds on a group basis. The threshold on the group basis will be assessed by including all local and foreign-incorporated companies held by the ultimate parent, regardless of whether the ultimate parent is local or foreign. As the ultimate parent of the group may not be a local company, the computation of the threshold on a group basis will be in accordance with applicable accounting standards relevant to the ultimate parent.

Whether a subsidiary company should be able to qualify as long as it is a private company and belongs to a small group, regardless of whether the subsidiary company itself qualifies as a small company (consultation question 41)

Summary of Feedback Received

114. Some respondents supported the view that the subsidiary should be able to qualify as long as the group was small, regardless of whether the subsidiary was small. Others felt that the subsidiary should be treated as a standalone company and that the group should be disregarded as it was more practical and consistent with the application of SFRS for Small Entities.

115. Some respondents supported the view that a subsidiary should qualify only when both the subsidiary and the group were small as this would prevent manipulation in order to qualify for the audit exemption. One respondent asked if the group-level threshold could be assessed at the intermediate parent level if the ultimate parent does not prepare consolidated financial statements.

MOF's Response

116. MOF retains the position that a subsidiary company qualifies as a small company only if it is a small company and it is part of a small group. This is intended to prevent the situation where a business is structured into multiple small companies in order to avoid the requirements for audit. The threshold on the group basis will be assessed by including all local and foreign-incorporated companies held by the ultimate parent. If the ultimate parent does not prepare consolidated financial statements for the group, the threshold on the group basis will be computed based on aggregation.

Whether the transitional provisions for application of criteria to groups are appropriate and adequate (consultation question 42)

Summary of Feedback Received

117. All respondents supported the transitional provisions in the Thirteenth Schedule for groups which have been formed before the effective date of change in law.

MOF's Response

118. MOF retains the position in relation to the transitional provisions.

EXEMPT PRIVATE COMPANIES (R4.4 – R4.5)

Retention of "exempt private companies"

Summary of Feedback Received

119. One respondent sought clarification on the applicability of the new audit exemption criteria (i.e. small company criteria) to exempt private companies. Another respondent suggested amending the definition of an exempt private company to eliminate the restriction on corporate shareholders and to increase the maximum number of shareholders to 100. A broader definition of exempt private company would encourage an entrepreneurial economy where start-ups could flourish and would not be competitively disadvantaged.

MOF's Response

120. MOF retains the position that the exempt private company concept will remain for the purposes of determining the need for a company to file accounts. The requirement for audit would be determined based on the new small company criteria. We note the feedback relating to the definition of an exempt private company. However, as any changes to the definition of exempt private company will have a

significant impact on Singapore's corporate regulatory regime, we do not propose to amend the definition at this stage. We will conduct a review in relation to the feedback and engage relevant stakeholders in due course.

FINANCIAL REPORTING FOR DORMANT COMPANIES (R4.6 – R4.11)

Whether the proposed definition of "relevant company" for the purpose of the exemption in relation to dormant companies is appropriate (consultation question 43)

Summary of Feedback Received

121. One respondent sought clarification on whether the following types of companies could be exempted from the financial reporting requirements:

(a) a dormant subsidiary company whose parent company was incorporated in Singapore, but was listed elsewhere; and
(b) a dormant subsidiary company whose parent was not incorporated in Singapore.

MOF's Response

122. MOF retains the proposed definition of "relevant company". This means that a dormant company whose parent is incorporated in Singapore but listed in other jurisdictions, or whose parent is a not local, will be exempted from preparation of accounts. The rationale of requiring dormant subsidiary of Singapore listed companies to prepare accounts is mainly to facilitate the preparation of consolidation financial statements by the parent company. Parents listed or incorporated in other jurisdictions may not be required to prepare consolidated financial statements.

Retention of requirement to maintain proper accounting records

Summary of Feedback Received

123. One respondent suggested that exempted companies should still maintain proper accounts to allow past transactions to be properly accounted for should it become active in the future. It would also allow its parent to prepare consolidated accounts should the parent not be exempted from preparation of consolidated financial statements.

MOF's Response

124. MOF agrees that exempted companies should still maintain proper accounts. Other than retaining the existing requirement to keep proper accounting records under section 199, we will introduce a new safeguard such that the directors of exempted companies will be required to make a statement in the annual return that section 199

has been complied with in respect of the financial year in question, even where no financial statements are prepared.

Reference for the threshold criteria for a "relevant person"

Summary of Feedback Received

125. It was highlighted that in determining who would be a "relevant person" for the purposes of the new section 201A(4), the reference was made to "number of issued shares" and "number of members". It was suggested that the term "voting power" could be used for consistency within the Companies Act.

MOF's Response

126. MOF proposes no change as the references to "number of issued shares" and "number of members" are consistent with the existing wording in section 205B(6).

Whether the transitional provisions provided for the applicability of dormant company exemption are appropriate and adequate (consultation question 44)

Summary of Feedback Received

127. All respondents supported the transitional provisions as drafted in the new section 201A(6) and (7).

MOF's Response

128. MOF retains the transitional provisions in section 201A(6) and (7) such that the dormant company exemption would not be applicable for companies for financial years which ended before the effective date of the amendment to the Companies Act.

List of disregarded transactions

Summary of Feedback Received

129. One respondent suggested that the list of disregarded transactions should also include professional fees such as accounting fees and secretarial fees etc. One respondent commented that the definition of dormant companies was very narrow and could be refined such that companies which were commercially dormant but hired book-keepers and company secretaries to prepare and file company statements could be exempted.

MOF's Response

130. MOF retains the position of allowing nominal transactions below a prescribed amount to be disregarded for the purposes of determining dormancy. Professional fees can be disregarded if they fall below the prescribed amount.

Other additional requirements

131. Upon further review, MOF will implement the following additional requirements relating to the exemptions from financial reporting requirements for dormant companies:

(a) In addition to the declaration of dormancy, the directors will also be required to lodge a statement, together with the annual return, that no notice has been received from the shareholders or ACRA requesting that the company prepare financial statements for that financial year.

(b) For a parent company which is not itself a subsidiary company, the threshold to qualify for an exemption from financial reporting should be met both at a group level and an individual company level. This will more accurately reflect the concerns with accountability of assets in respect of parent companies which prepare consolidated accounts.

THE DIRECTORS' REPORT (R4.13 – R4.16)

Abolition of directors' report

Summary of Feedback Received

132. Some respondents commented that the abolition of the directors' report was in form rather than substance since most of the contents would be required in the directors' statement.

MOF's Response

133. MOF retains the position in relation to the disclosures required under the new Twelfth Schedule. The intention of the abolition of a separate director's report is to streamline the number of documents which are required to accompany a set of financial statements.

Director's statement

Summary of Feedback Received

134. One respondent suggested that directors should be required to disclose their "participatory interests" in the company or its related corporation in the directors' statement. Another respondent suggested that the relevant provision should expressly provide for the signature by a sole director of the company in the case of single director company.

MOF's Response

135. MOF retains the position in relation the statement of directors. The current section 164(1)(b) already requires that the company keep a record of "participatory interests" and these are not disclosed in the existing directors' report. We do not see a need to extend this disclosure to the directors' statements in the future. MOF is of the view that it is not necessary to expressly provide for the situation of a single-director company as section 4(11) already states that a reference in the Companies Act to the doing of any act by two or more directors of a company shall, in the case of a company which has only one director, be construed as the doing of that act by that director.

Whether the transitional provisions for the abolition of the directors' report are appropriate and adequate (consultation question 45)

Summary of Feedback Received

136. All respondents supported the transitional provisions drafted.

MOF's Response

137. MOF retains the position in relation to the transitional provisions for the directors' report.

References to "subsidiary" and "subsidiary company"

Summary of Feedback Received

138. One respondent highlighted that, with the proposed amendments, there would be two definitions in relation to subsidiaries i.e. one definition in section 5 that would apply generally and another determined by the Accounting Standards for the purpose of consolidation of accounts. A corporation might, therefore, be deemed to be a subsidiary of a company in the presentation of consolidated accounts, but not as a related corporation of the company for the purpose of applying a provision of the Companies Act, and vice-versa. This could result in practical difficulties in relation the disclosure of directors' interests in related corporations.

139. However, the respondent acknowledged that the definition of subsidiary company under the Accounting Standards was based on the concept of "control" and the application was dependent on the facts of each case. The definition under section 5 for the purposes of disclosure should continue to apply as it provided more certainty.

140. One respondent commented that the reference to "subsidiary company" in section 207D(9A) would scope out the requirement to report fraud committed in the operation of subsidiaries incorporated outside Singapore. The respondent sought clarification on whether this was the intention.

MOF's Response

141. MOF has aligned and adopted the appropriate definition in accordance with the underlying intention of the provisions. For example, as the primary obligation for the directors' disclosure of interests under the new Twelfth Schedule derives from section 164, the Twelfth Schedule will refer to the definition of "subsidiary" in section 5. For those obligations relating to preparation of accounts, the definition will be in accordance with the Accounting Standards. The reference to "subsidiary company" in section 207D(9A) will be replaced with "subsidiary corporation" which will be defined to take into account subsidiaries not incorporated in Singapore. Similar changes will be made to the relevant references in Part VI of the Companies Act.

RESIGNATION OF AUDITORS (R4.23 – R4.25)

Whether the proposed scope of the provision for the resignation of auditors of subsidiary companies of public-interest companies is appropriate (consultation question 46)

142. Some respondents disagreed that the Registrar's consent should be required for auditors of a subsidiary of a public-interest company. The reasons cited were that it would result in unnecessary red-tape and interference with commercial arrangements and that it lacked flexibility. One suggestion was that the Registrar's consent should not be required for resignation of auditors of dormant or insignificant subsidiary companies. Significant subsidiaries could be determined using a materiality test. One respondent commented that in most cases, the auditor of the parent company would be the same as that of its key subsidiaries. The reason for resignation would be similar for that of the parent company (the public-interest company) and its subsidiaries. There was no need for an additional requirement on the auditors of the subsidiaries to seek the Registrar's consent.

MOF's Response

143. MOF retains the position that the Registrar's consent should be required for the resignation of auditors of subsidiaries of public-interest companies. We note that 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. Given the greater public interest in subsidiaries of public interest companies compared to non-public interest companies, the Registrar's consent should be required instead of just a notice of resignation to the company. As a dormant company is exempted from statutory audit, the issue of auditor resignation is not likely to be a significant issue for such companies. Introducing a materiality test will also introduce uncertainty. ACRA will consider streamlining the approval process if the resigning auditor is the same for the multiple companies within a group to alleviate concerns of unnecessary regulatory burden.

Definition of public interest company

Summary of Feedback Received

144. One respondent commented that certain financial institutions such as registered fund management companies, licensed financial advisers, insurance brokers and captive insurance companies should not be defined as public interest companies as they did not have access to funds from retail investors or did not administer public funds.

MOF's Response

145. MOF retains the position that the definition of "public-interest companies" will be aligned to that being considered under the Accountants Act review. This will ensure consistency across ACRA-administered legislation. While the current definition only includes companies which are listed or are in the process of getting listed, the definition will be aligned by way of subsidiary legislation with that in the Accountants Act upon the conclusion of the Accountants Act review.

Registrar's decision on application by auditor

Summary of Feedback Received

146. One respondent sought clarification on whether reasons for and recourse against the Registrar's decision would be made available to the auditor, within stipulated timelines, if his application to resign was rejected by the Registrar. The respondent suggested that should the Registrar reject the resignation despite the auditor's expression of inability to continue performing the audit, the auditor should be protected from prosecution or disciplinary action for failing to conduct a proper audit.

MOF's Response

147. MOF retains the position relating to the Registrar's decision on the application by the auditor to resign. A separate appeal mechanism against the Registrar's decision on the resignation of the auditors is not necessary as there is already a general

provision allowing appeal to the Court against any decision of the Registrar[9] under the Companies Act. Instead of expressly specifying that the Registrar should provide reasons for his decision, guidelines will be issued on what the Registrar will consider as valid circumstances under which resignations will be accepted. The guidelines would alleviate concerns relating to the transparency of the Registrar's decision.

148. There is no strong reason for protecting the auditor from prosecution or disciplinary action. Even if the application to the Registrar is rejected, the auditor should carry out the audit in a professional manner and in accordance with the relevant standards. If the auditor is unable to conduct a proper audit due to the lack of co-operation by the company, this should be duly disclosed in the auditor's report.

Whether the period of 3 months is appropriate for the appointment of a replacement auditor (consultation question 47)

Summary of Feedback Received

149. Most of the respondents supported the proposed 3-month period for the appointment of a replacement auditor. Respondents who disagreed were of the view that the period should be determined by market forces and that the period of 3 months may be too short for listed companies.

MOF's Response

150. MOF retains the position that a replacement auditor should be appointed not more than 3 months from the date of the auditor's resignation. A maximum period will ensure that a replacement auditor be appointed within a reasonable time. The 3-month period is consistent with the period within which the directors of a company must appoint an auditor upon incorporation.

Appointment of replacement auditor

Summary of Feedback Received

151. One respondent sought clarification on whether the Registrar was obliged to appoint a replacement auditor where the company or its directors fail to do so and the consequences should no replacement auditor was appointed. The respondent also suggested indemnifying the newly appointed auditors against prosecution, action or suit arising from the audit engagement.

MOF's Response

152. The power of the Registrar to appoint a replacement is discretionary. The company will be in breach of its obligation to have its financial statements audited under section 201(8) if it does not appoint a replacement auditor. MOF is of the view

[9] Section 12(6) which will be re-enacted as section 409C in the amended Companies Act

that indemnification of the replacement auditor is not necessary. The auditor should carry out the audit in a professional manner and in accordance with the relevant standards and there should be no reason why doing so would give rise to prosecution, action or a suit.

Auditor's statement on the reason for resignation

Summary of Feedback Received

153. One respondent suggested that instead of requiring the company to notify every member, website notification and electronic transmission of resignations, or announcements by the company should be allowed.

154. Another respondent highlighted that under the proposed section 205AC, the Court was required to decide on the defamatory nature of the statement within 14 days. The Court was unlikely to be able to do so. The respondent suggested that alternatively, there should not be a need to require a Court order to prevent the circulation of the auditor's statement of reasons as it would be costly and time-consuming. The board of directors could, in good faith, exercise its discretion to refrain from publication if they believe that there is a reasonable risk of defamation.

155. One respondent sought clarification regarding the rationale for allowing disclosures made by the auditor to be used in disciplinary proceedings against the auditor under the Accountants Act. The respondent was of the view that this negated the proposal that the statement made by the auditor may not be made the ground of a prosecution, action or suit against the auditor.

MOF's Response

156. The drafting of the requirement for companies to send the statement from auditors on its reason for resignation to the shareholders does not preclude the statement being sent by electronic transmission. While dissemination by an announcement will suffice for the purpose of notifying the shareholders of listed companies, this may not be applicable for companies which are not listed. A company will have the flexibility to choose the mode of notification that best suits its circumstances.

157. MOF agrees that the Court may not be able to reach a decision within 14 days on whether the statement from the auditor can be circulated. The relevant provision has been amended to clarify that the application to stop the dissemination of the statement must be made within 14 days instead. We are also of the view that the application should be made to the Court as the determination of whether the statement is being used to seek needless publicity for a defamatory matter should be determined by an independent third party rather than the Board to prevent conflict of interest.

158. MOF retains the position that an auditor's statement on its reason for resignation should be allowed to be used in disciplinary proceedings under the Accountants Act. The relevant provision is intended to allow ACRA to take disciplinary action against an errant auditor who would have otherwise avoided all disciplinary actions by simply applying to resign and disclosing its misdeeds in that statement. However, the statement will not be allowed to be used in prosecution or legal suit to be taken against the auditor.

APPOINTMENT OF AUDITOR

Appointment of accounting limited liability partnership as auditor

Summary of Feedback Received

159. One respondent suggested that for the appointment of an accounting limited liability partnership as an auditor, the partners should only be deemed to be appointed as auditors if they are practicing as public accountants. This would also apply to the directors of an accounting corporation.

MOF's Response

160. MOF has reviewed the position and will delete the proposed provisions which deem that appointing an accounting limited liability partnership as auditor would have the effect of appointing the partners and employees as auditors. This is because the accounting limited liability partnership is a separate legal entity and can provide public accountancy services in its own right. However, we will consider if the existing provisions with respect to accounting corporations should similarly be removed after further consultation on its impact.

FRAMEWORK FOR CONSOLIDATION OF ACCOUNTS (R4.38 – R4.39)

Whether the balance sheet of a parent company is still necessary or if it would be sufficient for a parent company to prepare only consolidated accounts for the consolidated entity (consultation question 48)

Summary of Feedback Received

161. The majority of respondents supported the retention of the requirement for the parent company to prepare a balance sheet, in addition to the consolidated financial statements. They felt that the balance sheet of the parent company was still useful and relevant in certain situations (e.g. for the purpose of determining the amount of distributable reserves for the payment of dividends). Respondents who disagreed were of the view that the parent company's balance sheet was not useful as it only portrayed the financial position of the entity at the end of reporting period and did not

provide all the information that users may need to make economic decisions. Removing the requirement for a parent company balance sheet would align our requirements with those under the International Financial Reporting Standards, and it should be left to the SFRS and the Accounting Standards Council to determine what accounts should be prepared. One respondent sought clarification on the principles and standards which would apply to the preparation of the balance sheet of the parent company, given that it is not a document which is required under the SFRS.

MOF's Response

162. MOF retains the requirement for the parent company to prepare a separate balance sheet. The consolidated financial statements provide financial information of the group, but not the parent company which is a separate legal entity. The requirement for the parent company to prepare a separate balance sheet is not inconsistent with the International Financial Reporting Standards and the SFRS as they do not mandate if a company should or should not produce a separate balance sheet in addition to the consolidated financial statements. The balance sheet of the parent company should be prepared in accordance with the SFRS which is consistent with the current requirement.

REVISION OF DEFECTIVE ACCOUNTS (R4.40 – R4.41)

Registrar's notice as to query on compliance

Summary of Feedback Received

163. One respondent suggested that a deadline to reply to the Registrar's notice should be imposed on directors who were asked to justify whether they have complied with the financial reporting obligations under the Companies Act.

MOF's Response

164. MOF retains the position that it is not necessary to specify a minimum response period. The deadline for response will be indicated in the notice but the directors may ask for more time which may be granted by the Registrar on a case-by-case basis. This is consistent with other similar procedures under the Companies Act, and will allow for greater flexibility.

OTHER DRAFTING COMMENTS

Audit exemption granted to insurers

Summary of Feedback Received

165. Under section 201(18) of the Companies Act, an insurer is deemed to have complied with the audit requirement and certain disclosures in the directors' report and statement by directors, to the extent that it is required by MAS to prepare balance sheets, revenue accounts and profit and loss accounts in the form prescribed by the Insurance Act (Cap. 142). One respondent is of the view that this provision should be deleted. An insurer's financial statements lodged with ACRA are separate and distinct from the returns required by MAS and should thus be prepared in full compliance with the Companies Act and the SFRS.

MOF's Response

166. MOF, in consultation with MAS, agrees to delete section 201(18).

REGISTERS (R5.1 – R5.5)

Register of Members - Registration of share ownerships and relevant changes

Summary of Feedback Received

167. Some respondents commented that as the electronic register of members of private companies kept by ACRA (ACRA Register of Members) would serve as prima facie evidence of members' legal title to shares, it should reflect registered share ownership at any point in time. Therefore, updates to the information in the ACRA Register of Members should be done on a real-time basis instead of within a 14-day period as proposed in the draft Bill. However, some respondents wanted more time to update the ACRA Register of Members. Some respondents also highlighted that a transfer of shares could only be registered into the register of members currently after it had been stamped in accordance with tax laws and executed in accordance with the articles.

MOF's Response

168. MOF agrees with the feedback and will introduce the requirement for share ownership (e.g. allotment, transfers, holding shares in treasury or cancellation) and changes in share ownerships of private companies to be registered with ACRA. MOF also agrees to remove the 14-day reporting period for private companies to report legal ownership and changes in legal ownership of shares. The filing date will be taken as the effective date of entry of a person into the register as a member or the cessation of a person as a member. Thus, transactions shall not take effect until the

ACRA Register of Members has been updated. This is no different from what exists today – companies are currently obliged to keep register of members that is up-to-date with immediate effect. Operationally, ACRA will update the ACRA Register of Members immediately upon the registration of the share ownerships and changes. This will provide accuracy and certainty to the ACRA Register of Members. For ease of registration, companies may prepare such filings in ACRA's filing system in advance.

Contents of ACRA Register of Members

Summary of Feedback Received

169. One respondent suggested that the ACRA Register of Members include historical information of ownership changes so that private companies need not keep their current registers of members.

MOF's Response

170. MOF retains the position that private companies continue to keep their current registers of members up to the time ACRA maintains the ACRA Register of Members. Historical information filed with ACRA from the time of implementation will be available.

Whether the current section 192(1) should continue to apply to the ACRA Register of Members (consultation question 49)

Summary of Feedback Received

171. There were mixed views. Respondents who supported retention of section 192(1), which provides the right for a company to close its register of members for a period not exceeding 30 days in a calendar year, explained that there are commercial reasons for a company to want to close the ACRA Register of Members. Respondents who objected indicated that such a rule was not essential as the ACRA Register of Members could be updated immediately unlike a physical register.

MOF's Response

172. MOF agrees that section 192(1) should not continue to apply to the ACRA Register of Members. The intent of section 192(1) is to prohibit entry into the register so that a company can conclusively determine membership during the closure periods for important events, such as distribution of dividends. There are alternative ways to determine membership without having to close the ACRA Register of Members[10]. It is also more business friendly to keep the ACRA Register of Members open at all times.

[10] For example, there is and will be a model article to allow directors to suspend registration of transfers for a duration not exceeding 30 days in a year. Companies may also prescribe membership rights at particular points in time in their own constitutions.

Whether the current section 196(7) should continue to apply to private companies (consultation question 50)

Summary of Feedback Received

173. Some respondents commented that section 196(7), which currently allows all companies to keep their branch registers outside Singapore, should continue to apply to private companies as they may have reasons for wanting to keep branch registers outside of Singapore. However, most respondents were of the view that the provision should not apply to private companies.

MOF's Response

174. MOF agrees with the majority of respondents that there is no need to continue applying section 196(7) to private companies, since the ACRA Register of Members will be available online and at all times.

Whether the new sections 196A(3) and 196B(4) should continue to apply to the ACRA Register of Members (consultation question 51)

Summary of Feedback Received

175. All the respondents indicated that these provisions, which relate to the reporting of information on stock and stock units, should continue to apply to the ACRA Register of Members.

MOF's Response

176. MOF agrees to retain the provisions for now, as they may still be relevant. However, we understand that it is no longer common for Singapore companies to have stocks or stock units to which these provisions are applicable. Thus, we may consider phasing out the reporting of information on stock and stock units in the future.

Whether there are any comments on the new sections 63A, 71(1B), 74A and the amended section 128A (consultation question 52)

Summary of Feedback Received

177. Some respondents indicated that these provisions were relevant and appropriate for the purpose of the ACRA Register of Members. However, one respondent was of the view that section 63A could be interpreted to cover increase in accounting capital.

MOF's Response

178. MOF agrees to retain these provisions for the purpose of the ACRA Register of Members. For greater clarity, the new section 63A will be revised to require reporting

of an increase in the total amount paid up on any class of shares, in respect of shares which have been partly paid up. There is no need to report any increase in accounting share capital.

Whether the new section 74A should be amended for consistency with the new section 64

Summary of Feedback Received

179. One respondent suggested adopting a similar approach for both issuance and conversion of shares, such that: (a) shares of one class can only be converted into another class if the constitution provides for it; and (b) the rights of that other class are also set out in the constitution. The respondent also suggested amending the new section 74A to prohibit the conversion of a share into a redeemable preference share.

MOF's Response

180. MOF accepts the feedback and will amend the provisions accordingly.

Register of directors' shareholdings

Summary of Feedback Received

181. One respondent commented that it would be onerous to require directors to report interests in overseas holding companies and their fellow subsidiaries.

MOF's Response

182. MOF is of the view that the disclosure of interests is important and useful for shareholders and minority investors. Under section 133 of the Securities and Futures Act, a director of a company is also required to disclose such interests. Thus, MOF retains the current reporting requirements for directors under section 164 of the Companies Act.

Register of Chief Executive Officers

(a) Whether the definition of "chief executive officer" (CEO) should include "any person for the time being performing all or any of the functions or duties of a CEO" (consultation question 53)

(b) Whether there are any practical difficulties in allowing a company to appoint only one CEO (consultation question 54)

Summary of Feedback Received

183. Most respondents indicated that the definition of CEO should not be expanded to include the appointment of interim CEOs since the latter are temporary appointees. However, some respondents commented that a wider definition would provide wider

coverage and improve corporate governance. Most respondents also indicated that companies should be allowed to appoint more than one CEO for commercial flexibility. However, some respondents commented that allowing the appointment of multiple CEOs might make it difficult to establish who was ultimately responsible for the management of a company. Moreover, any practical difficulties in appointing only one CEO could be mitigated by allowing the appointment of assistant, deputy or acting CEOs.

MOF's Response

184. MOF agrees that the definition should not apply to interim CEOs as it will be difficult to distinguish between temporary appointees or persons delegated to act on behalf of the CEO. MOF also agrees to clarify the drafting to allow a company to appoint more than one CEO. The current term "manager" will also be replaced with the term "CEO". This change is meant to be one of nomenclature and not substance. The law will also automatically deem managers to be CEOs unless otherwise notified by the companies concerned.

Contents of the registers of directors, secretaries, CEOs and auditors to be kept by ACRA

Summary of Feedback Received

185. One respondent suggested that these registers show historical information.

MOF's Response

186. MOF thinks there is no need to keep historical information concerning appointments and particulars in these registers. There is currently no legal requirement for such historical information to be included in these registers kept by companies. Moreover, such information is available from the lodgements made to ACRA.

Retention period of the registers of directors, secretaries, managers and auditors kept by the company

Summary of Feedback Received

187. One respondent suggested that a company should retain its current registers for a period of 5 years after ACRA starts to maintain them. The 5-year period is consistent with the timelines for keeping financial records.

MOF's Response

188. MOF is of the view that companies should keep in perpetuity the consents to act as directors, documentary evidence of directors' former names, and the consents to act as secretaries, until these persons cease to be directors or secretaries.

MEMORANDUM AND ARTICLES OF ASSOCIATION (R5.6 – R5.10)

Model constitution

Summary of Feedback Received

189. One respondent suggested that if a company adopted the Model Constitution, it should not be required to file its constitution with ACRA.

MOF's Response

190. MOF agrees with the suggestion not to require a company to file its constitution with ACRA if it adopts the whole Model Constitution. Section 37 is also drafted such that if a company adopts the whole Model Constitution, it will be deemed to have adopted the Model Constitution in force at the time of adoption or any subsequent amendments made to the relevant Model Constitution.

Include the company as a covenator

Summary of Feedback Received

191. One respondent suggested adding the company as a specified covenantor (i.e. party to an agreement) in the amended section 39, similar to section 33(1) of the UK Companies Act 2006.

MOF's Response

192. MOF retains the current position in the draft Bill, as the amended section 39 makes it clear that the constitution binds both the company and its members when the constitution is registered.

COMPANY RECORDS – MINUTES, MINUTE BOOKS, OTHERS (R5.15 – R5.18)

Whether records kept in electronic form must be available for inspection at the registered office of a company

Summary of Feedback Received

193. One respondent suggested allowing inspection of electronic records at places other than the company's registered office as such electronic records may be kept at places other than the registered office.

MOF's Response

194. MOF agrees with the comment and will incorporate it under the new section 396A.

STRIKING OFF DEFUNCT LOCAL COMPANIES (R5.19 – R5.30)

Whether the Registrar should be given powers to restore a struck off company under the new section 344F (consultation question 55)

Summary of Feedback Received

195. All the respondents agreed that the Registrar should be given powers to restore a company if he is satisfied that its name has been struck off as a result of a mistake of the Registrar. This applies to both ACRA-initiated striking off and company initiated striking off. One respondent commented that the new section 344F, which set out the new power, might be too open ended and suggested specifying the situations for the exercise of the power.

MOF's Response

196. MOF retains the position in the Bill, which is based on a similar provision in the UK.

Date of restoration of a struck off company

Summary of Feedback Received

197. One respondent asked for greater clarity on the effective date of restoration of a struck-off company. Currently, only the Court may restore struck off companies and the company is deemed to have continued in existence as if its name has not been struck off.

MOF's Response

198. MOF confirms that if a struck-off company is restored to the register, it will be regarded as having continued in existence as if it has not been struck off the register.

CONCEPTUAL ISSUES IN REGISTRATION OF CHARGES

Rectification of register of charges

Summary of Feedback Received

199. One respondent suggested giving the Registrar power to rectify errors in a register of charges or statement of satisfaction of charges if such errors do not affect third party rights or are minor or technical in nature. This will cut costs for companies, which are currently required to apply to the Court under section 137 to rectify an error in the register of charges or statement of satisfaction of charges.

MOF's response

200. There are existing legal provisions relating to the correction of typographical or technical errors[11]. The Companies Act will also be amended to widen the scope of errors which the Registrar may rectify upon receiving an application by a company.

OPERATIONAL ISSUES IN REGISTRATION OF CHARGES (R6.9)

Refinements to the "Statement Containing Particulars of Charge" form

Summary of Feedback Received

201. One respondent suggested refining the "Statement Containing Particulars of Charge" form by making the "Amount secured" field optional (since it may be difficult to provide accurate information on the amount secured for certain types of charges) or allowing the insertion of more information.

MOF's Response

202. MOF agrees with the feedback and will update the applicable form in due course[12].

[11] Rule 33 of the Companies (Filing of Documents) Regulations provides where a typographical or clerical error relates to particulars of a charge or the share capital, the company may apply to the Registrar for leave to lodge a notice to rectify an error if it is contained in the form. Rule 40 also provides that a chargor may lodge a form with the Registrar to report any variation of the particulars of the charge or the charge amount of a charge.

[12] The form can only be updated after ACRA's new electronic transaction system has been launched.

Refinements to the "Statement of Satisfaction of Registered Charge" form

Summary of Feedback Received

203. One respondent suggested allowing lodgers to amend the "*Statement of Satisfaction of Registered Charge*" form. Currently, information on the charge instrument in the "*Statement of Satisfaction of Registered Charge*" form is automatically extracted from the same information entered into the "*Statement Containing Particulars of Charge*" form. The lodger is not permitted to amend the information in the "*Statement of Satisfaction of Registered Charge*" form.

MOF's Response

204. MOF retains the current arrangement. The purpose of the "*Statement of Satisfaction of Registered Charge*" form is for the lodger to inform ACRA that a charge has been satisfied either partially or fully. Allowing lodgers to amend the "*Statement of Satisfaction of Registered Charge*" form could lead to inconsistencies in the information reported in both forms.

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