
SUMMARY OF FEEDBACK RECEIVED ON NEW AREAS DURING SECOND PUBLIC CONSULTATION¹

1. REVIEW OF SHARE BUYBACK LIMIT

- (a) Request for comments on the following four proposed options and information on the percentage of shares bought back by respondents' companies (consultation question 1):
- Option 1: Retain the latest 20% limit in the Companies Act. Shareholders' approval will still be required for share buybacks within the prescribed limit i.e. status quo;
 - Option 2: Increase the share buyback limit to a new limit (i.e. more than 20%) via a gazette notification. Shareholders' approval will still be required for share buybacks within the prescribed limit;
 - Option 3: Remove the share buyback limit from the Companies Act via an amendment to the Companies Act. Shareholders' approval will still be required for share buybacks. This is similar to the positions in UK and Hong Kong, which do not impose any limit on share buyback in their company laws; and
 - Option 4: Amend the Companies Act to only require shareholders' approval for share buybacks that exceed 20%. Shareholders' approval is not required for buybacks that are not more than 20%. This is similar to the position in Australia.
- (b) Whether additional safeguards should be imposed in the Companies Act if the share buyback limit is removed from the Companies Act (consultation question 2)

Summary of Feedback Received

1. Most of the respondents supported option 3 for consistency with the positions in UK and Hong Kong and the capital reduction regime. One respondent preferred to maintain status quo under option 1. Another respondent suggested raising the threshold to 25% under option 2. A third respondent chose option 4, since option 1 was restrictive for companies and option 3 might prejudice minority shareholders.

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

Most of the respondents who commented on consultation question 2 agreed that existing safeguards were adequate.

MOF's Response

2. MOF will maintain status quo for now. Although there was general support for Option 3, the respondents did not indicate an urgent need for further liberalisation. Moreover, the buyback limit was recently increased from 10% to 20% on 1 October 2013. Furthermore, as the Companies Act already allows the limit to be adjusted via a gazette notification, there is thus flexibility in the legislation to update the limit in the future.

2. CLARIFICATION OF SECTION 156(9)

Whether there is a need to amend section 156(9)² (consultation question 3)

Summary of Feedback Received

3. All the respondents agreed that there was no need to amend section 156(9).

MOF's Response

4. MOF will maintain status quo.

REVIEW OF THE CAP ON PREFERENTIAL PAYMENT TO AN EMPLOYEE OF AN INSOLVENT COMPANY

Whether the proposed cap of “five months’ salary or five times the prevailing salary cap for non-workmen referred to in Part IV of the Employment Act, whichever is lower” is appropriate. If alternative caps are suggested, please provide reasons. (consultation question 4)

Summary of Feedback Received

5. All the respondents supported the proposal to update the cap through gazette notifications. One respondent suggested adopting a higher cap of “five months’ salary or five times the prevailing median gross monthly income of the resident workforce, whichever is lower”, to give greater protection to employees. Another respondent preferred having smaller increases (e.g. \$10,000 for a few years and \$12,500

² Section 156 relates to a director’s disclosure of interests in transactions, property, officers, etc. Section 156(9) states that section 156 is “in addition to and not in derogation of the operation of any rule of law or any provision in the articles restricting a director from having any interest in transactions with the company or from holding offices or possessing properties involving duties or interest in conflict with his duties or interests as a director”.

subsequently) to minimise impact on employers. The respondent also suggested introducing another maximum payment limit, in case the salary cap in the Employment Act was removed in the future. A third respondent disagreed with automatic adjustment.

MOF's Response

6. MOF retains the proposed change. The new cap on preferential payment³ will be “*five months' salary or five times the prevailing salary cap for non-workmen referred to in Part IV of the Employment Act, whichever is lower*”. Based on the current salary cap of \$2,500 for non-workmen referred to in Part IV of the Employment Act, the new cap will be \$12,500 (i.e. \$2,500*5). This will replace the current cap of \$7,500, which is based on the monthly salary cap of \$1,500 under the Employment Act in 1993.

7. MOF is not in favour of using median wage as it fluctuates every year. In comparison, the salary threshold in the Employment Act provides greater certainty and allows liquidators to make adequate provision for preferential employee liabilities (without the need to recalculate this provision every year) and distribution to unsecured creditors. As the Minister will be given powers to update the maximum payment limit through gazette notifications, there is no need to prescribe a maximum limit in the Companies Act.

REVIEW OF THE RANKING OF PRIORITY PAYMENTS TO AN EMPLOYEE OF AN INSOLVENT COMPANY

Whether the priority ranking between wages/ salaries and retrenchment benefits under section 328 should be retained or reordered (consultation question 5)

Summary of Feedback Received

8. All the respondents agreed to retain the current order of priority payment, which recognises the importance of salaries owed for work that has been done.

MOF's Response

9. MOF agrees to retain the current order of priority payment whereby salaries rank before retrenchment benefits.

³ Refers to the amount employees are entitled to be paid ahead of other debts owed by an insolvent company

PHASE OUT OUTSTANDING SHARE WARRANTS UNDER SECTION 66 OF THE COMPANIES ACT

- (a) *Request for information from companies on outstanding share warrants issued before 29 December 1967 (consultation question 6)*
- (b) *Request for information from bearers on outstanding share warrants issued before 29 December 1967 (consultation question 7)*
- (c) *Request for suggestions on appropriate methods for phasing out any outstanding unconverted share warrants (consultation question 8)*
- (d) *Request for views on a reasonable period allowed for bearers to convert their share warrants into registered shares before phasing out outstanding share warrants (consultation question 9)*

Summary of Feedback Received

10. No respondents provided information on any previous issuance of share warrants. All respondents either supported or did not object to the proposal to phase out outstanding share warrants, with one respondent indicating that the change was unnecessary. Some respondents suggested a time period of between two weeks to five years to phase out the outstanding share warrants. One respondent also suggested informing existing bearers of share warrant through letters and notices in the local newspapers, and cancelling unconverted share warrants after the transitional period. No substantial feedback was received on the appropriate methods for phasing out outstanding share warrants.

MOF's Response

11. MOF will implement the proposal to phase out outstanding share warrants. It is the government's policy to disallow the issuance of bearer equity instruments (which include share warrants) due to their risks in facilitating untracked transfer of financial assets. Given that more than 40 years have passed, it is timely to end the transitional arrangement and abolish outstanding share warrants completely. Thus, MOF will give an additional two-year period for bearers of share warrants to surrender the warrants for cancellation and have their names entered in the register of members, and for affected companies to cancel any outstanding share warrants. Any other outstanding share warrants will be invalidated after the two year period. MOF will publish a general notice in the major newspapers and on MOF's and ACRA's websites to inform the public of this change.

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