Annex 5

SUMMARY OF FEEDBACK RECEIVED ON NEW ISSUES TO BE CONSIDERED IN FUTURE REVIEWS

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1. The following new issues were raised by respondents during the public consultation. MOF and ACRA will consider these issues in future reviews of the Companies Act.

ISSUES RAISED DURING THE FIRST ROUND OF PUBLIC CONSULTATION

Issues relating to directors

2. There were suggestions to:

- replace references to "passed at a general meeting" with the words "by ordinary resolution" across the Act and define "ordinary resolution";
- amend section 154(8) to clarify whether a Magistrates Court may impose disqualification;
- amend the threshold in section 163 so that it is based on economic interest instead of control;
- make the scope of "member of a director's family" under in sections 156(8) and 163(5) exhaustive, or use the definition of "associate" in the Singapore Exchange Listing Manual;
- introduce an exception to sections 162 and 163 for minor transactions;
- align the Companies Act disclosure requirements of shareholdings of directors and CEOs with the Securities and Futures Act regime;
- amend section 172B(1) such that section 172(2) shall not apply "to the extent" that the third party indemnity provision does not provide any indemnity against the prescribed disallowed categories, to avoid invalidating the entire indemnity provision; and
- introduce an exception to section 172 for officers who are employees and not directors.

Issues relating to shareholders' rights and meetings

3. There were suggestions to:

- amend the reference to "voting rights" in section 178(1)(b)(ii) to "voting power";

- align the thresholds in sections 74(1), 176(1) and 177(1) with those in section 178, and reconcile the underlying concepts such as “paid-up capital”, “total number of issued shares” and “issued shares” in these sections;
- delete section 178(1)(b)(iii) as the sum paid up on shares should not be relevant to the right to demand for a poll; and
- include wordings similar to section 184A(8) in section 184G to make it clear that a resolution passed under section 184G will satisfy the requirement for approval at a general meeting. This is because a sole individual shareholder cannot conduct a meeting on his own and will rely on section 184G to pass a member’s resolution. This is pertinent as the current Companies Act contains various provisions prohibiting certain things from being done unless “approved by the company in general meeting”.

Issues relating to shares, debentures, capital maintenance, schemes, compulsory acquisitions and amalgamations

4. There were suggestions to:

- amend section 70 so that it applies to redeemable shares generally and not just to “redeemable preference shares”;
- delete section 75 or amend the section to apply to any class of shares and not just to preference shares;
- decriminalise non-compliance with section 75(1), such that section 75(1) is permissive rather than mandatory;
- decriminalise section 75 and provide that the additional rights of preference shares which are not set out in the articles are unenforceable;
- amend section 75 to clarify whether the section is complied with in the event that the rights relating to the shares as specified in the constitution are expressed to be subject to the discretion of the board of directors or any other person, entity or body of persons;
- refer to “the rights of the holders of those shares” in section 75, instead of prescribing the class rights;
- migrate section 74(6) to section 64A such that the latter governs all class rights and delete “the terms of issue” so that all the rights of the preference shareholders are set out in the constitution;
- use the concept of “economic interest” to determine if the company is “connected” to the director;
- accord legislative protection to any class of share that has less than one-vote-for-one-share, and not to just the class that has no voting rights;
- limit the right to attend and speak at general meetings to members who have a right to vote. A member who holds non-voting shares should not be enfranchised to attend a general meeting and speak on any resolution which he is not permitted to vote on;
- delete section 74 and rely on sections 64 and 64A for statutory protection;
- delete section 76B(5A) to allow preference shares to be held as treasury shares;

- amend section 210 to allow schemes to directly bind indirect creditors and beneficiaries of a trust;
- define the term "member" based on section 112(1) and (2) of the UK Companies Act 2006;
- add the word "transferor" to section 215(2);
- amend section 76 to provide for one single test of "best interests of the company" to be applied;
- require shareholders' approval for the provision of certain types of financial assistance, to prevent possible abuse and safeguard the interests of members. In obtaining shareholders' approval, the Board should be required to demonstrate to shareholders why and how giving the assistance will not materially prejudice the interests of the company or its shareholders or the company's ability to pay its creditors;
- rationalise and streamline the financial assistance exceptions; and
- replace "controlling interest" with "voting power" in section 7(4)(b).

<u>Issues relating to financial statements and audit</u>

5. There were suggestions to:

- align the use of accounting terminology or any reference to accounting in the Companies Act with the SFRS for consistency and to avoid confusion;
- require the person responsible for the financial affairs of the company (e.g. the Chief Financial Officer or Finance Director) to sign a statutory declaration stating that the accounts were true and correct. This will ensure that those charged with governance over the financial affairs of the company take responsibility for the accuracy of the accounts presented to the auditors for verification; and
- allow a company to indemnify the auditor where a third party loss is due to fault of the company, its directors or officers (in relation to Recommendations 4.28 and 4.29 on indemnity of auditors). To also amend section 172(2)(b) to include indemnifying the auditor against potential liability that is caused or contributed by the company, its directors or its officers.

<u>Issues relating to general company administration</u>

6. There were suggestions to:

- extend the restriction of access to the register of members to all exempt private companies instead of only gazetted exempt private companies;
- clarify whether section 148(1) is applicable to directors and chief executive directors; and
- reflect partial (instead of full) NRIC numbers of officeholders in ACRA's public records for greater privacy.

Issues relating to registration of charges

7. There were suggestions to:

- remove the list of registrable charges in section 131, similar to the approach in the UK. Singapore-incorporated companies are increasingly entering into foreign law security documents that may not fall neatly into the prescribed list;
- do away with the requirement for foreign companies registered in Singapore to register charges, similar to the regime for unregistered foreign companies. This will simplify the filing requirements for foreign companies;
- combine the electronic forms for both secured debentures and secured loans as the same security may be used to secure both debentures and loans in a single financing transaction;
- delete section 131(5) as it is similar to 131(1). This will clarify the registration requirements in a situation where there is a charge document that is shared as security as both a bond issue and a bank loan;
- remove the requirement for an endorsement of certificate of registration on debentures under section 135. As debentures as usually deposited with a clearing system, the only certificates are the global certificates deposited in the clearing system and no individual bondholder will hold the certificates;
- update section 137 by clarifying that "a person interested" means any person interested in the charge, and by providing that if the court orders that a registration period be extended and any omission or misstatement in a charge is rectified within that extended time, and any criminal offence ceases; and
- remove the criminal penalty for non-registration of charges in section 132.

Other issues[1]

8. There were suggestions to:

- review the current cap of 50 shareholders as the limit for the definition of a private company, for example increasing to 200 shareholders;
- allow private companies not to file financial statements with ACRA;
- introduce a new public company structure with a minimum member of 10 persons;
- refine provisions relating to the alteration of objects in the company's constitution;
- review whether any two members may form a quorum at a meeting, even if one of them does not hold voting shares;
- provide a mechanism to allow the directors of a company or the Registrar to appoint an auditor if shareholders of the company fail to do so at the annual general meeting;
- review issues relating to the review of auditor's fees for the purposes of assessing an auditor's independence; and

[1] Feedback on issues not related to the Companies Act reform have been conveyed to relevant agencies.

- review the definition of “debenture”.

ISSUES RAISED DURING THE SECOND ROUND OF PUBLIC CONSULTATION

9. There were suggestions to:

- modify the requirements for return of capital to shareholders under section 78, to encourage growth of locally registered funds;
- introduce an equivalent of Australia’s section 601CDA which provides for limited disclosure if the place of origin is a prescribed country. This will ease regulatory burden for companies from the prescribed country;
- clarify whether section 377(3) on insolvency ring-fencing will continue to apply to foreign companies that are struck off under the proposed section 377(8);
- adapt provisions relating to the reporting of cessation of business and financial reporting in the Australian Corporations Act;
- require foreign companies to register as private companies after certain period; and.
- align all the fees to be paid by foreign companies with that of local companies.

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