

# **Companies (Amendment) Bill**

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**Bill No. /2013 .**

*Read the first time on*            *2013.*

A BILL

*i n t i t u l e d*

An Act to amend the Companies Act (Chapter 50 of the 2006 Revised Edition), and to make consequential amendments to certain other written laws.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

### Short title and commencement

1. This Act may be cited as the Companies (Amendment) Act 2013 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

#### 5 **Amendment of section 3**

2. Section 3(3) of the Companies Act is amended by inserting, immediately after the words “Table A in the Fourth Schedule”, the words “in force immediately before the date of commencement of section [192] of the Companies (Amendment) Act 2013”.

#### 10 **Amendment of section 4**

3. Section 4 of the Companies Act is amended —

(a) by inserting, immediately before the definition of “accounting records” in subsection (1), the following definitions:

15 ““accounting corporation” means a company approved or deemed to be approved as an accounting corporation under the Accountants Act (Cap. 2);

20 “accounting entity” means a public accountant, an accounting corporation, an accounting firm or an accounting limited liability partnership;

“accounting firm” means a firm approved or deemed to be approved as an accounting firm under the Accountants Act;

25 “accounting limited liability partnership” means a limited liability partnership approved as an accounting limited liability partnership under the Accountants Act;”;

30 (b) by inserting, immediately after the definition of “Act” in subsection (1), the following definitions:

““alternate address” has the same meaning as in section 173(12)(d);

(c) by deleting the definition of “annual return” in subsection (1) and substituting the following definition:

5 ““annual return” means the return required to be lodged under section 197(1);”;

(d) by deleting the definition of “articles” in subsection (1);

(e) by inserting, immediately after the definition of “Authority” in subsection (1), the following definition:

10 ““Authority’s website” means the Authority’s internet website;”;

(f) by inserting, immediately after the definition of “banking corporation” in subsection (1), the following definition:

15 ““book-entry securities” has the same meaning as in section 81SC of the Securities and Futures Act (Cap. 289);”;

(g) by inserting, immediately after the definition of “charge” in subsection (1), the following definition:

20 ““chief executive officer”, in relation to a company, means any person, by whatever name described, who —

(a) is in direct employment of, or acting for or by arrangement with, the company; and

25 (b) is principally responsible for the management and conduct of the business of the company;”;

Note 1: Source: Section 30AA(2) of the Monetary Authority of Singapore Act (Cap. 186)

30 (h) by deleting the word “memorandum” in the definitions of “company limited by guarantee” and “company limited by shares” in subsection (1) and substituting in each case the word “constitution”;

- (i) by inserting, immediately after the definition of “company limited by shares” in subsection (1), the following definition:

5                   ““constitution” means the constitution of the company which is registered with the Registrar under section 19, as may be amended from time to time and, in the case of a company incorporated before the date of commencement of this section, refers to the memorandum of  
10                   association of the company, the articles of association of the company, or both, in force immediately before that date;”;

- (j) by inserting, immediately after the definition of “default penalty” in subsection (1), the following definition:

15                   ““Depository” has the same meaning as in section 81SC of the Securities and Futures Act;”;

- (k) by inserting, immediately after the words “the directors” in the definition of “director” in subsection (1), the words “or the majority of the directors”;

20                   Note 2: Source: Section 2 of the HK Companies Ordinance 2012

- (l) by deleting the definition of “equity share” in subsection (1);

- (m) by deleting the definition of “financial year” in subsection (1) and substituting the following definition:

25                   ““financial year”, in relation to any corporation, means the period in respect of which the financial statements of the corporation is made up, whether that period is a year or not;”;

- (n) by deleting the definition of “listed corporation” in  
30                   subsection (1) and substituting the following definition:

                  ““listed” in relation to a company or corporation, means a company or corporation that has been admitted to the official list of a securities

exchange in Singapore and has not been removed from that official list;

- (o) by deleting the definition of “manager” in subsection (1);
- (p) by deleting the definition of “memorandum” in subsection (1);
- (q) by deleting the definition of “preference share” in subsection (1);
- (r) by inserting, immediately after the definition of “repealed written laws” in subsection (1), the following definition:

““residential address” means —

(a) in the case of a person registered under the National Registration Act (Cap. 201), the place of residence of that person as registered under that Act; or

(b) in the case of a person not registered under the National Registration Act, the usual residential address of that person;”;

- (s) by inserting, immediately after the definition of “Rules” in subsection (1), the following definition:

““securities exchange in Singapore” means a securities exchange as defined in section 2(1) of the Securities and Futures Act;”;

- (t) by inserting, immediately after the definition of “statutory report” in subsection (1), the following definition:

““summary financial statement” means a summary financial statement referred to in section 203A;”;

- (u) by deleting subsection (2) and substituting the following subsection:

**“Directors**

(2) For the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions the directors or the majority of the

directors of a corporation are accustomed to act by reason only that the directors or the majority of the directors act on advice given by him in a professional capacity.”; and

5 (v) by inserting, immediately after subsection (11), the following subsection:

“(12) With effect from the date of commencement of section [3] of the Companies (Amendment) Act 2013 —

10 (a) the memorandum of association and the articles of association of a company that are in force for the company immediately before the date of commencement of this subsection —

15 (i) shall collectively be deemed to constitute, and shall have effect as, that company’s constitution; and

(ii) may be amended by the company from time to time in the same manner as the constitution of a company; and

20 (b) any reference in any written law and in any contract or other document having legal effect to the memorandum of association, or the articles of association, or both, of a company shall be deemed to refer to the company’s constitution.”.

#### **Amendment of section 5**

25 **4.** Section 5 of the Companies Act is amended —

(a) by inserting the word “or” at the end of subsection (1)(a)(i);

(b) by deleting sub-paragraph (iii) of subsection (1)(a); and

(c) by deleting subsection (5) and substituting the following subsection:

30 “(5) For the purposes of this Act, the Depository shall not be regarded as a holding company of a corporation by reason only of the shares it holds in that corporation as a bare trustee.”.

## Amendment of section 7

### 5. Section 7 of the Companies Act is amended —

- (a) by inserting, immediately after subsection (1), the following subsections:

5           “(1A) Subject to this section, a person has an interest in shares if he has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those shares.

10           (1B) For the purposes of subsection (1A), it is immaterial that the authority of a person to dispose of, or to exercise control over the disposal of, particular shares is, or is capable of being made, subject to restraint or restriction.”;

15           Note 3: Source: Section 4(1) and (2) of the Securities and Futures Act (Cap. 289)

- (b) by deleting subsection (2) and substituting the following subsection:

20           “(2) Where any property held in trust consists of or includes shares and a person knows, or has reasonable grounds for believing, that he has an interest under the trust, he shall be deemed to have an interest in those shares.”;

- (c) by deleting the words “20% of the votes attached to the voting shares” in subsection (4A) and substituting the words “20% of the voting power”;
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- (d) by inserting, immediately after subsection (6), the following subsection:

30           “(6A) For the purposes of Division 4 of Part IV, sections 163 to 165 and section 244, a book-entry security shall be treated as if it were an interest in a share.”;

- (e) by deleting subsection (7) and substituting the following subsection:

“(7) A person shall be deemed to have an interest in a share if that share is held jointly with another person.”;

(f) by inserting, immediately after the words “interest in a share” in subsection (9)(b), the words “if the interest is that”;

(g) by deleting the words “being an interest” in subsection (9)(c) and substituting the words “if that interest is an interest”; and

(h) by deleting the word “being” in subsection (9)(ca) and substituting the words “if that interest is”.

#### **Amendment of section 7A**

**6.** Section 7A of the Companies Act is amended —

(a) by inserting, immediately after the words “by the directors of the company” in subsection (1), the words “that they have formed the opinion”;

(b) by deleting the words “that they have formed the opinion,” in subsection (1)(a);

(c) by deleting paragraph (b) of subsection (1) and substituting the following paragraph:

“(b) where —

(i) it is intended to commence winding up of the company within the period of 12 months immediately after the date of the statement, that the company will be able to pay its debts in full within the period of 12 months after the date of commencement of the winding up; or

(ii) it is not intended so to commence winding up, that the company will be able to pay its debts as they fall due during the period of 12 months immediately after the date of the statement; and”;



- (d) by deleting the words “that they have formed the opinion” in subsection (1)(c);
- (e) by deleting the words “statutory declaration” in subsection (2)(a) and (b) and substituting in each case the words “declaration in writing signed by every director”; and
- (f) by deleting the words “section 201(1A), (3) and (3A)” in subsection (4)(a)(i) and substituting the words “section 201(2) and (5)”.

### **Amendment of section 8**

7. Section 8 of the Companies Act is amended by deleting subsection (7) and substituting the following subsection:

“(7) The Minister may by notification in the *Gazette* add to, vary or amend —

- (a) the Twelfth Schedule in relation to the contents of the directors’ statement which is required to accompany the financial statements under section 201(16); and
- (b) the Thirteenth Schedule in relation to the criteria for determining whether a private company is a small company for the purposes of section 205C.”.

### **Repeal and re-enactment of section 10**

8. Section 10 of the Companies Act is repealed and the following section substituted therefor:

#### **“Company auditors**

**10.**—(1) No person other than an accounting entity shall —

- (a) knowingly consent to be appointed as auditor for a company; or
- (b) knowingly act as an auditor for a company.

(2) Without prejudice to the generality of subsection (1)(b), a person acts as an auditor for a company if the person prepares any report required by this Act to be prepared by an auditor of the company.

(3) No company or person shall appoint an accounting entity as an auditor of a company without obtaining the accounting entity's prior consent.

(4) For the purposes of subsection (3), the consent —

- 5           (a) of a public accountant shall be in writing signed by the public accountant;
- (b) of an accounting firm or an accounting limited liability partnership, shall be in writing signed by at least one partner of the firm or limited liability partnership; and
- 10           (c) of an accounting corporation, shall be in writing signed by at least one director of the corporation.

(5) Where an accounting firm is appointed as auditor of the company in the name of the accounting firm, the appointment shall take effect and operate as if the partners of the firm at the time of the appointment, who are public accountants at that time, are appointed as auditors of the company.

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(6) Where an accounting limited liability partnership is appointed as auditor of the company in the name of the limited liability partnership, the appointment shall take effect and operate as if —

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- (a) the partners of the limited liability partnership (whether partners at the time the limited liability partnership was appointed as auditor or later); and
- (b) employees of the limited liability partnership who are practising as public accountants in that limited liability partnership (whether employed at the time the limited liability partnership was appointed as auditor or later),
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are appointed as auditors of the company.

(7) Where an accounting corporation is appointed as auditor of the company in the name of the corporation, the appointment shall take effect and operate as if —

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(a) the directors of the corporation (whether directors at the time the accounting corporation was appointed as auditor or later); and

5 (b) the employees of the corporation who are practising as public accountants in the corporation (whether employed at the time the accounting corporation was appointed as auditor or later),

are appointed as auditors of the company.”.

### **Amendment of section 12**

10 **9.** Section 12 of the Companies Act is amended —

(a) by deleting the words “Subsection (2)” in subsection (2A) and substituting the words “Subject to subsection (2C), subsection (2)”;

15 (b) by deleting the words “Notwithstanding” in subsection (2B) and substituting the words “Subject to subsection (2C), notwithstanding”; and

(c) by inserting, immediately after subsection (2B), the following subsection:

20 “(2C) Subsections (2A) and (2B) shall not apply with respect to the register of directors, register of chief executive officers, register of secretaries and register of auditors.”.

### **Amendment of section 14**

25 **10.** Section 14(1) of the Companies Act is amended by deleting the words “memorandum or articles” and substituting the word “constitution”.

### **Amendment of section 17**

**11.** Section 17 of the Companies Act is amended —

30 (a) by deleting the word “memorandum” in subsection (1) and substituting the word “constitution”; and

- (b) by deleting the words “memorandum and articles of association” and “memorandum and articles” in subsection (7) and substituting in each case the word “constitution”.

### **Amendment of section 18**

5 **12.** Section 18 of the Companies Act is amended —

- (a) by deleting the words “memorandum or articles” in subsection (1) and substituting the word “constitution”;
- (b) by deleting subsections (2) and (3) and substituting the following subsections:

10 “(2) Where, on 29th December 1967, the constitution of a company that is a private company by virtue of paragraph (a) of the definition of “private company” in section 4(1) does not contain the restrictions and limitations required by subsection (1) to be included in  
15 the constitution of a company that may be incorporated as a private company, the constitution of the company shall be deemed to include each such restriction or limitation that is not so included and a restriction on the right to transfer its shares that is so deemed to be  
20 included in its constitution shall be deemed to be a restriction that prohibits the transfer of share except to a person approved by the directors of the company.

25 (3) Where a restriction or limitation deemed to be included in the constitution of a company under subsection (2) is inconsistent with any provision already included in the constitution of the company, that restriction or limitation shall, to the extent of the inconsistency, prevail.”; and

30 (c) by deleting subsection (4) and substituting the following subsection:

“(4) A private company may, by special resolution, alter any restriction on the right to transfer its shares included, or deemed to be included, in its constitution or any limitation on the number of its members included, or

deemed to be included, in its constitution, but not so that the constitution of the company ceases to include the limitation required by subsection (1)(b) to be included in the constitution of a company that may be incorporated as a private company.”.

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### **Amendment of section 19**

**13.** Section 19 of the Companies Act is amended —

- (a) by deleting the words “memorandum and articles” in subsection (1)(a) and substituting the word “constitution”;
- 10 (b) by deleting the word “articles” in subsection (2)(b) and substituting the word “constitution”;
- (c) by deleting the words “memorandum, and of the persons named in the memorandum or articles” in subsection (2)(ii) and substituting the words “constitution, and of the persons named in the constitution”;
- 15 (d) by deleting the words “memorandum and articles” in subsection (3) and substituting the word “constitution”;
- (e) by deleting the word “memorandum” wherever it appears in subsections (4) and (5) and substituting in each case the word “constitution”; and
- 20 (f) by deleting subsection (6) and substituting the following subsections:
  - 25 “(6) The subscribers to the constitution shall be deemed to have agreed to become members of the company and on the incorporation of the company shall be entered as members —
    - (a) in the case of a public company, in the register of members kept by the public company under section 190; or
    - 30 (b) in the case of a private company, in the electronic register of members kept by the Registrar under section 196A.

(6A) Apart from a person referred to in subsection (6), every other person who agrees to become a member of a company and whose name is entered —

5           (a) in the case of a public company, in the register of members kept by the public company under section 190; or

          (b) in the case of a private company, in the electronic register of members kept by the Registrar under section 196A,  
10           is a member of the company.”.

#### **Amendment of section 20**

**14.** Section 20 of the Companies Act is amended by deleting the word “memorandum” wherever it appears in subsections (1) and (2) and substituting in each case the word “constitution”.

#### **15. Amendment of section 21**

**15.** Section 21 of the Companies Act is amended —

(a) by inserting, immediately after subsection (1), the following subsection:

20           “(1A) Subsection (1), insofar as it provides that any transfer of shares in contravention of it is void, shall not apply to a disposition of book-entry securities, but a Court, on being satisfied that a disposition of book-entry securities would in the absence of this subsection be void may, on the application of the Registrar or any other  
25           person, order the transfer of the shares acquired in contravention of subsection (1).”;

(b) by deleting paragraph (b) of subsection (4) and substituting the following paragraph:

30           “(b) subject to subsection (4A), the subsidiary shall, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of its holding company, dispose of all of its shares in the holding company.”;

(c) by inserting, immediately after subsection (4), the following subsections:

“(4A) Any shares in the holding company that are not disposed of in accordance with subsection (4)(b) may, subject to subsections (4B) and (6D), be held or continued to be held by the subsidiary.

(4B) With respect to any share referred to in subsection (4A) —

(a) subject to this subsection and subsection (6D), sections 76J(1), (2), (3), (5) and (6) and 76K shall apply with the necessary modifications, including the following modifications:

(i) a reference to treasury shares shall be read as a reference to shares referred to in subsection (4A);

(ii) a reference to a company holding treasury shares shall be read as a reference to a subsidiary holding shares referred to in subsection (4A); and

(iii) the reference in section 76J(6) to “as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied” shall be read as a reference to “as if they were already held by the subsidiary at the time they were allotted, in circumstances in which section 21(4) applied”; and

(b) the holding company shall within 14 days after any change in the number of shares in the holding company which are held by any of its subsidiaries under subsection (4A), lodge with the Registrar a notice in the prescribed form.”;

(d) by deleting the words “subsections (1), (3) and (4)” in subsection (5) and substituting the words “subsections (1), (3), (4), (4A), (6A) and (6B)”;

(e) by inserting, immediately after subsection (6), the following subsections:

“(6A) This section shall not operate to prevent the transfer of shares in a holding company to a subsidiary by way of a distribution in specie, amalgamation or scheme of arrangement but —

(a) subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof; and

(b) subject to subsection (6B), the subsidiary shall, within the period of 12 months or such longer period as the Court may allow after the transfer to the subsidiary of the shares in the holding company, dispose of all of the shares in the holding company.

(6B) Any shares in the holding company that are not disposed of in accordance with subsection (6A)(b) may, subject to subsections (6C) and (6D), be held or continued to be held by the subsidiary.

(6C) With respect to any share referred to in subsection (6B) —

(a) subject to this subsection and subsection (6D), sections 76J(1), (2), (3), (5) and (6) and 76K shall apply with the necessary modifications, including the following modifications:

(i) a reference to treasury shares shall be read as a reference to shares referred to in subsection (6B);

(ii) a reference to a company holding treasury shares shall be read as a reference to a subsidiary holding shares referred to in subsection (6B); and

(iii) the reference in section 76J(6) to “as if they were purchased by the company at the time



they were allotted, in circumstances in which section 76H applied” shall be read as a reference to “as if they were transferred to the subsidiary at the time they were allotted, in circumstances in which section 21(6A) applied”; and

(b) the holding company shall within 14 days after any change in the number of shares in the holding company which are held by any of its subsidiaries under subsection (6B), lodge with the Registrar a notice in the prescribed form.

(6D) With respect to any share referred to in subsection (4A) or (6B) —

(a) where the holding company has shares of only one class, the aggregate number of shares held by all the subsidiaries of the holding company under subsection (4A) or (6B) or by the holding company as treasury shares, shall not at any time exceed 10% of the total number of shares of the holding company at that time;

(b) where the share capital of the holding company is divided into shares of different classes, the aggregate number of the shares of any class held by all the subsidiaries of the holding company under subsection (4A) or (6B) or by the holding company as treasury shares, shall not at any time exceed 10% of the total number of the shares in that class of the holding company at that time;

(c) where paragraph (a) or (b) is contravened, the holding company shall dispose of or cancel the excess shares, or procure the disposal of the excess shares by its subsidiary, in accordance with section 76K before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow;

- 5           (d) where the subsidiary is a wholly-owned subsidiary of the holding company, no dividend may be paid, and no other distribution (whether in cash or otherwise) of the holding company's assets (including any distribution of assets to members on a winding up) may be made, to the subsidiary in respect of the shares referred to in subsection (4A) or (6B); and
- 10           (e) where the subsidiary is not a wholly-owned subsidiary of the holding company, a dividend may be paid and other distribution (whether in cash or otherwise) of the holding company's assets (including any distribution of assets to members on a winding up) may be made, to the subsidiary in respect of the shares referred to in subsection (4A) or (6B);

20           (6E) In subsection (6D), “the excess shares” means such number of the shares, held by any subsidiary under subsection (4A) or (6B) or by the holding company as treasury shares at the time in question, as resulted in the limit referred to in subsection (6D)(a) or (b) being exceeded.

25           (6F) In sections 7(9)(ca), 33(5A), 63(1)(d), 74(1A), 76B(3E), 78, 81(4), 163(1) and (2), 164A(1), 176(1A), 177(1), 179(8), 184(4)(b)(i), 201A(4), 205B(6), 206(1)(b), 215(1) and (3), 232(1)(a) and 268(4) —

- 30           (a) a reference to “treasury shares” shall be read as including a reference to shares held by a subsidiary under subsection (4A) or (6B); and
- (b) a reference to a company being registered as a member of itself shall be read as including a reference to a subsidiary being registered as a member of its holding company.”.

### **Amendment of section 22**

35           **16.** Section 22 of the Companies Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

“(1) The constitution of every company shall comply with such requirements as may be prescribed, shall be dated and shall state, in addition to other requirements —

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(a) the name of the company;

(b) if the company is a company limited by shares, that the liability of the members is limited;

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(c) if the company is a company limited by guarantee, that the liability of the members is limited and that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount;

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(d) if the company is an unlimited company, that the liability of the members is unlimited;

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(e) if the company is an unlimited company or a company limited by guarantee, the number of members with which the company is applying to be registered;

Note 4: Source: Section 35(4) of the Companies Act (Cap. 50)

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(f) the full names, addresses and occupations of the subscribers to the constitution of the company; and

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(g) that such subscribers are desirous of being formed into a company in pursuance of the constitution and (where the company is to have a share capital) respectively agree to take the

number of shares in the capital of the company set out opposite their respective names.

5 (1AA) Where a company to which subsection (1)(e) applies changes the number of its members with which it is registered, the company shall, within 14 days after the occurrence of such change lodge with the Registrar a notice of the change in the prescribed form.

Note 5: Source: Section 35(5) of the Companies Act (Cap. 50)

10 (1AB) If default is made by a company in complying with subsection (1AA), the company and every officer of the company who is in default shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and also to a default penalty.”;

Note 6: Source: Section 35(6) of the Companies Act (Cap. 50)

15 (b) by deleting the word “memorandum” in subsections (1A) to (4) and substituting in each case the word “constitution”;

(c) by deleting the word “memorandum” in the section heading and substituting the word “constitution”.

### **Amendment of section 23**

20 **17.** Section 23 of the Companies Act is amended —

(a) by deleting the words “memorandum or articles of association” in subsections (1) and (1B) and substituting in each case the word “constitution”; and

25 (b) by deleting the word “memorandum” in subsection (1A) and substituting the word “constitution”.

### **Amendment of section 24**

**18.** Section 24(2) of the Companies Act is amended by deleting the words “memorandum or articles” and substituting the word “constitution”.

### **Amendment of section 25A**

30 **19.** Section 25A of the Companies Act is amended —

(a) by deleting the words “memorandum or articles” wherever they appear and substituting in each case the word “constitution”; and

5 (b) by deleting the words “memorandum, articles” in paragraphs (a) and (b) and substituting in each case the word “constitution”.

### **New section 25B**

20. The Companies Act is amended by inserting, immediately after section 25A, the following section:

#### 10 **“Power of directors to bind company**

**25B.** A person dealing with a company in good faith shall not be affected by any limitation in the company’s constitution relating to the powers of the directors to bind the company.

### **Amendment of section 26**

15 **21.** Section 26 of the Companies Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

20 “(1) Unless otherwise provided in this Act, the constitution of a company may be altered or added to by special resolution.

(1AA) Any alteration or addition made to the constitution under subsection (1) shall, subject to this Act, be deemed to form part of the original constitution on and from the date of the special resolution or such later date as is specified in the resolution.

25 (1AB) A special resolution adopting the whole or any part of the model constitution prescribed under section 36 for the description to which the company belongs may do so by reference to the title of the model constitution, or to the numbers of the particular regulations of the model constitution and need not set out

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the text of the whole or part of the model constitution to be adopted.”;

- 5 (b) by deleting the words “memorandum as altered” in subsection (2) and substituting the words “constitution as adopted or altered, as the case may be,”;
- (c) by deleting the word “memorandum” wherever it appears in subsections (1A), (1B), (3), (6) and (7) and substituting in each case the word “constitution”; and
- 10 (d) by deleting the word “memorandum” in the section heading and substituting the word “constitution”.

#### **Amendment of section 26A**

**22.** Section 26A of the Companies Act is amended —

- 15 (a) by deleting the words “memorandum or articles” wherever they appear in subsections (1), (3) and (4) and substituting in each case the word “constitution”; and
- (b) by deleting the words “memorandum and articles” in the section heading and substituting the word “constitution”.

#### **Amendment of section 27**

**23.** Section 27 of the Companies Act is amended —

- 20 (a) by inserting, immediately after subsection (1), the following subsections:

“(1A) In addition to subsection (1), the Registrar shall not on or after the date of commencement of section [23] of the Companies (Amendment) Act 2013, except with the consent of the Minister, register a company by a name that is identical to the name of a company that has been dissolved unless such time referred to in subsection (1B) has elapsed since the second-mentioned company has been dissolved.

- 30 (1B) The time referred to in subsection (1A) shall be —

- (a) in the case where the company is dissolved pursuant its winding up under Part X, 2 years; or
- (b) in the case where the company is dissolved pursuant to its name being struck off the register under section 344 or section 344A, 6 years.”;
- (b) by inserting, immediately after the words “subsection (1)” in subsection (2)(a), the words “or (1A)”;
- (c) by deleting subsection (5) and substituting the following subsections:
- “(5) An appeal to the Minister against the following decisions of the Registrar that are made on or after the date of commencement of this subsection may be made by the following persons within the following times:
- (a) in the case of the Registrar’s decision under subsection (2) or (2C), by the company aggrieved by the decision within 30 days after the decision; and
- (b) in the case of the Registrar’s refusal to give a direction to a company under subsection (2) pursuant to an application under subsection (2A), by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.
- (5AA) The decision of the Minister on an appeal made under subsection (5) shall be final.”; and
- (d) by inserting, immediately after the words “subsection (1)” in subsection (12)(a), the words “or subsection (1A)”.

### **Amendment of section 28**

**24.** Section 28 of the Companies Act is amended —

- (a) by inserting, immediately after the words “section 27(1)” in subsection (1), the words “or (1A)”;
- (b) by inserting, immediately after the words “section 27(1)” in subsection (3)(a), the words “or (1A)”;

(c) by deleting subsection (3D) and substituting the following subsections:

“(3D) An appeal to the Minister against the following decisions of the Registrar that are made on or after the date of commencement of this subsection may be made by the following persons within the following times:

(a) in the case of the Registrar’s decision under subsection (3) or (3C), by the company aggrieved by the decision within 30 days after the decision; and

(b) in the case of the Registrar’s refusal to give a direction to a company under subsection (3) pursuant to an application under subsection (3A), by the applicant aggrieved by the refusal within 30 days after being informed of the refusal.

(3DA) The decision of the Minister on an appeal made under subsection (3D) shall be final.”.

#### **Amendment of section 29**

**25.** Section 29 of the Companies Act is amended by deleting the words “memorandum or articles” wherever they appear in subsections (3), (4) and (7) and substituting in each case the word “constitution”.

#### **Amendment of section 30**

**26.** Section 30 of the Companies Act is amended —

(a) by deleting the word “memorandum” wherever it appears in subsection (4)(a)(ii) and substituting in each case the word “constitution”;

(b) by deleting sub-paragraphs (iii) and (iv) of subsection (4)(a); and

(c) by deleting paragraph (b) of subsection (4) and substituting the following paragraph:



“(b) where, by a special resolution referred to in paragraph (a), the constitution of the company is altered or added to — a copy of the constitution as altered; and”.

5 **Amendment of section 31**

**27.** Section 31 of the Companies Act is amended —

(a) by deleting the words “memorandum or articles” wherever they appear in subsections (1) and (2) and substituting in each case the word “constitution”; and

10 (b) by deleting the words “one month of” in subsection (3A) and substituting the words “14 days after”.

**Amendment of section 32**

**28.** Section 32 of the Companies Act is amended by deleting the words “memorandum or articles” in subsections (2)(a) and (c) and  
15 (8) and substituting in each case the word “constitution”.

**Amendment of section 33**

**29.** Section 33 of the Companies Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

20 “(2) Where a company proposes to alter its constitution, with respect to the objects of the company, it shall give 21 days’ written notice by post or by electronic communications in accordance with section 387A or 387C, specifying the intention to  
25 propose the resolution as a special resolution and to submit it for passing at a meeting of the company to be held on a day specified in the notice.”; and

(b) by deleting the word “memorandum” in subsections (1) and (11) and the section heading and substituting in each case  
30 the word “constitution”.

### **Amendment of section 34**

**30.** Section 34 of the Companies Act is amended —

- 5 (a) by deleting the word “memorandum” wherever it appears in subsections (1) and (2)(b) and substituting in each case the word “constitution”;
- (b) by deleting the words “be special resolution” in subsection (1) and substituting the words “by special resolution”;
- 10 (c) by deleting the words “memorandum of a company contains a provision to the effect that its memorandum or articles of association” in subsection (2) and substituting the words “constitution of a company contains a provision to the effect that its constitution”; and
- 15 (d) by deleting the word “memorandum” in the section heading and substituting the word “constitution”.

### **Repeal and re-enactment of sections 35, 36 and 37**

**31.** Sections 35, 36 and 37 of the Companies Act are repealed and the following sections substituted therefor:

#### **“Regulations for company**

- 20 **35.**—(1) Subject to this section, a company’s constitution shall contain the regulations for the company.
- (2) Subsection (1) does not apply to a company limited by shares that was incorporated before the date of commencement of section [31] of the Companies (Amendment) Act 2013.
- 25 (3) Notwithstanding subsection (2), where immediately before the date of commencement of section [31] of the Companies (Amendment) Act 2013, regulations were in force for a company, whether the regulations were prescribed in the company’s registered articles, or were applicable in lieu of or in
- 30 addition to the company’s registered articles by virtue of section 36(2) in force before that date, such regulations shall be deemed to be the regulations for the company contained in the company’s constitution for the purposes of subsection (1) until

such time as the constitution of the company is amended to replace or amend those regulations.

Note 7: Source: Section 75 of the HK Companies Ordinance 2012 and section 18 of the UK Companies Act 2006 and

5       **Model constitution**

**36.**—(1) The Minister may by regulations prescribe model constitutions for —

- (a) private companies; and
- (b) companies limited by guarantee,

10       (referred to in this section and section 37 as specified companies).

(2) Different model constitutions may be prescribed for different descriptions of specified companies.

15       Note 8: Source: Section 78 of the HK Companies Ordinance 2012 and section 19 of the UK Companies Act 2006.

**Adoption of model constitution**

**37.**—(1) A specified company may adopt as its constitution the whole or any part of the model constitution prescribed under section 36(1) for the type of company to which it belongs.

(2) A specified company may in its constitution adopt the whole model constitution for the type of company to which it belongs by reference to the title of the model constitution.

(3) Where a specified company adopts the whole model constitution for the type of company to which it belongs, the specified company may choose —

- (a) to adopt the model constitution as in force at the time of adoption; or
- (b) to adopt the model constitution as may be in force from time to time, in which case the model constitution for the type of company to which the specified company belongs that are for the time being

30

in force shall, so far as applicable, be the constitution for that specified company.

- 5 (4) Where a specified company adopts only part of the model constitution for the type of company to which it belongs, or includes object clauses as part of its constitution, a copy of its constitution shall be submitted to the Registrar in accordance with section 19(1) at its incorporation.”

Note 9: Source: Section 79 of the HK Companies Ordinance 2012.

### **Amendment of section 38**

10 **32.** Section 38 of the Companies act is amended —

- (a) by deleting the words “memorandum or articles” in subsection (1) and substituting the word “constitution”;
- 15 (b) by deleting the words “memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles” in subsection (2) and substituting the words “constitution of a company limited by guarantee and of this section, every provision in the constitution”; and
- (c) by deleting the words “memorandum and articles” in the section heading and substituting the word “constitution”.

### **Amendment of section 39**

20 **33.** Section 39 of the Companies Act is amended —

- (a) by deleting subsection (1) and substituting the following subsection:
- 25 “(1) Subject to this Act, the constitution of a company shall when registered bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the constitution.”;
- 30 (b) by deleting the words “memorandum or articles” wherever they appear in subsections (2) and (3) and substituting in each case the word “constitution”; and

- (c) by deleting the words “memorandum and articles” in the section heading and substituting the word “constitution”.

#### **Amendment of section 40**

**34.** Section 40 of the Companies Act is amended —

- 5 (a) by deleting the words “memorandum and of the articles” in subsection (1) and substituting the word “constitution”;
- (b) by deleting the words “memorandum or articles” wherever they appear in subsection (2) and substituting in each case the word “constitution”;
- 10 (c) by deleting the words “or articles affected” in subsection (2)(b) and substituting the word “affected”; and
- (d) by deleting the words “memorandum and articles” in the section heading and substituting the word “constitution”.

#### **Amendment of section 41**

- 15 **35.** Section 41(7) of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

#### **Amendment of section 62B**

- 36.** Section 62B(6) of the Companies Act is amended by deleting the words “memorandum and articles” and substituting the word “constitution”.
- 20

#### **Amendment of section 63**

**37.** Section 63 of the Companies Act is amended —

- (a) by deleting the words “stock exchange in Singapore” in subsection (1A) and substituting the words “securities exchange in Singapore or elsewhere”;
- 25 (b) by deleting the words “memorandum or articles” in subsection (6)(b) and substituting the word “constitution”; and
- (c) by deleting the word “memorandum” in subsection (7) and substituting the word “constitution”.
- 30

### **New section 63A**

**38.** The Companies Act is amended by inserting, immediately after section 63, the following section:

**“Notice of increase in total amount paid up on shares**

5       **63A.** Where there is any increase in the total amount paid up on any class of shares issued by a private company, the company shall, within 14 days after the increase, lodge with the Registrar a notice of the increase in the prescribed form.”;

### **Repeal and re-enactment of section 64 and new section 64A**

10       **39.** Section 64 of the Companies Act is repealed and the following sections substituted therefor:

**“Issue of shares with different voting rights by public company**

15       **64.—**(1) Different classes of shares in a public company may be issued only if —

- (a) the issue of the class or classes of shares is provided for in the constitution of the public company; and
- (b) the constitution of the public company sets out in respect of each class of shares the rights attached to that class of shares.

(2) Without limiting subsection (1) but subject to the conditions of subsection (1)(a) and (b), shares in a public company may —

- (a) confer special, limited, or conditional voting rights; or
- (b) not confer voting rights.

**Note 10: Source: Section 37 of the New Zealand Companies Act 1993**

(3) Notwithstanding anything in subsection (1) or (2), any of the following may not be undertaken by a public company unless it is approved by the members of the public company by special resolution —

(a) any issuance of shares in the public company that confers special, limited or conditional voting rights, or that confers no voting rights;

5 (b) the negation, alteration, or addition of any voting rights of any issued share of the public company.

(4) Where a public company has one or more classes of shares that confer special, limited or conditional voting rights, or that confer no voting rights, the notice of any general meeting required to be given to a person entitled to receive  
10 notice of the meeting must specify the special, limited or conditional voting rights, or the absence of voting rights, in respect of each such class of shares.

### **Rights and powers attaching shares**

15 **64A.**—(1) Subject to subsections (2) and (3), sections 21 and 76J, and any written law to the contrary, a share in a company confers on the holder of the share the right to one vote on a poll at a meeting of the company on any resolution.

20 (2) A company's constitution may provide that a member shall not be entitled to vote unless all calls or other sums personally payable by him in respect of shares in the company have been paid.

(3) Subject to subsection (4) and section 64, a right specified in subsection (1) may be negated, altered, or added to by the constitution of the company or in accordance with the terms on  
25 which the share was issued.

**Note 11: Source: Section 36 of the New Zealand Companies Act 1993**

(4) Notwithstanding subsection (3), the right of a holder of a specified share of a company to at least one vote on a poll at a meeting of the company on the following resolutions may not  
30 be negated or altered —

(a) a resolution to wind up the company voluntarily under section 290; or

(b) a resolution to vary any right attached to a specified share and conferred on the holder.

(5) For the purpose of subsection (4), a “specified share” means a share in the company, by whatever name called, which does not entitled the holder thereof to the right to vote at a general meeting of the company.

5 **Amendment of section 65**

**40.** Section 65(1) of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

**New section 67**

10 **41.** The Companies Act is amended by inserting, immediately after section 66, the following section:

**“Use of share capital to pay expenses incurred in an issue of new shares**

15 **67.** A company may use its share capital to pay any expenses (including brokerage or commission) incurred directly in the issue of new shares.”.

**Amendment of section 70**

**42.** Section 70(1) of the Companies Act is amended by deleting the word “articles” wherever it appears and substituting in each case the word “constitution”.

20 **Amendment of section 71**

**43.** Section 71 of the Companies Act is amended —

- (a) by deleting the word “articles” in subsection (1) and substituting the word “constitution”;
- (b) by deleting the words “The company” in subsection (1A) and substituting the words “A public company”; and
- 25 (c) by inserting, immediately after subsection (1A), the following subsection:

(1B) A private company shall, within 14 days after any alteration referred to in subsection (1)(b), (c), (d) or (e),



lodge with the Registrar a notice of the alteration in the prescribed form.”.

### **Amendment of section 72**

5 **44.** Section 72 of the Companies Act is amended by deleting the words “memorandum or articles” and substituting the word “constitution”.

### **New section 73, 73A and 73B**

**45.** The Companies Act is amended by inserting, immediately after section 72, the following sections:

#### 10 **“Redenomination of shares**

**73.—(1)** A company having a share capital may by resolution convert its share capital or any class of shares from one currency to another currency.

*Note 12: Source: Section 172(1) of the HK Companies Ordinance 2012*

15 (2) A resolution under this section may authorise a company having a share capital to redenominate its share capital —

(a) on more than one occasion; and

(b) at a specified time or under specified circumstances.

*Note 13: Source: Section 172(2) of the HK Companies Ordinance 2012*

20 (3) The redenomination must be made at an appropriate spot rate of exchange specified in the resolution.

(4) The rate must be either —

(a) a rate prevailing on a day specified in the resolution,  
or

25 (b) a rate determined by taking the average of rates prevailing on each consecutive day of a period specified in the resolution.

30 (5) The day or period specified for the purposes of subsection (4) must be within the period of 28 days ending on the day before the resolution is passed.

(6) A resolution under this section may specify conditions which must be met before the redenomination takes effect.

(7) Redenomination in accordance with a resolution under this section takes effect —

- 5           (a) on the day on which the resolution is passed, or  
              (b) on such later day as may be determined in accordance with the resolution.

10           (8) A resolution under this section lapses if the redenomination for which it provides has not taken effect at the end of the period of 28 days beginning on the date on which it is passed.

(9) A company's constitution may exclude or restrict the exercise of a power conferred by this section.

Note 14: Source: Section 622(2) to (8) of the UK Companies Act 2006

15           (10) In this section and in section 73A, "redenomination" means the conversion of share capital or any class of shares from one currency to another.

### **Effect of redenomination**

**73A.**—(1) A redenomination of shares shall not affect —

- 20           (a) any rights or obligations of members under the company's constitution or any restrictions affecting members under the company's constitution; or  
              (b) any entitlement to dividends (including any entitlement to dividends in a particular currency),  
 25           voting rights and liability in respect of amounts remaining unpaid on shares (including liability in a particular currency).

30           (2) For the purposes of subsection (1), the reference to a company's constitution includes the terms on which any shares of the company are allotted or held.

Note 15: Source: Section 172(4) and (5) of the HK Companies Ordinance 2012 and section 624 of the UK Companies Act 2006

**Notice of redenomination**

5 **73B.**—(1) Within 14 days after passing a resolution under section 73, a company must deliver a notice in the specified form to the Registrar for registration in relation to the redenomination.

(2) The notice must include the following information with respect to the company's share capital as redenominated by the resolution:

- 10 (a) the total number of issued shares in the company;
- (b) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid on the total number of issued shares in the company;
- (c) the total amount of the company's issued share capital; and
- 15 (d) for each class of shares —
  - (i) the particulars specified in subsection (3);
  - (ii) the total number of issued shares in the class;
  - (iii) the amount paid up or regarded as paid up and the amount (if any) remaining unpaid on the total number of issued shares in the class; and
  - 20 (iv) the total amount of issued share capital of the class.

(3) The particulars referred to in subsection (2)(d)(i) are —

- 25 (a) particulars of any voting rights attached to shares in the class, including rights that arise only in certain circumstances;
- (b) particulars of any rights attached to shares in the class, as respects dividends, to participate in a distribution;
- 30 (c) particulars of any rights attached to shares in the class, as respects capital, to participate in a distribution (including on a winding up of the company); and

(d) whether or not shares in the class are redeemable shares.

(4) If default is made in complying with this section, every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and to a default penalty of \$250.”

Note 16: Source: Section 173(1) and section 201(2) and (3) of the HK Companies Ordinance 2012 and section 63(8) of the Companies Act (Cap. 50)

#### **Amendment of section 74**

46. Section 74 of the Companies Act is amended —

(a) by deleting the word “articles” in subsection (6) and substituting the word “constitution”; and

(b) by deleting the words “memorandum or articles” in subsections (1) and (7) and substituting the word “constitution”.

#### **New section 74A**

47. The Companies Act is amended by inserting, immediately after section 74, the following section:

##### **“Conversion of shares**

74A.—(1) Subject to sections 64 and 75, a company the share capital of which is divided into different classes of shares may make provision in its constitution to authorise the conversion of one class of shares into another class of shares.

(2) Where a company does not make provision in its constitution to authorise the conversion of one class of shares into another class of shares, it may nevertheless convert one class of shares into another class of shares by special resolution.

(3) A private company which converts one class of shares into another class of shares shall, within 14 days after the conversion, lodge with the Registrar, notice of the conversion in the prescribed form.

(4) Section 74 shall apply where a conversion of shares undertaken by a company involves a variation or an abrogation of the rights attached to any class of shares in the company.”.

#### **Amendment of section 75**

5 **48.** Section 75 of the Companies Act is amended by deleting the words “memorandum or articles” in subsection (1) and the section heading and substituting the word “constitution”.

#### **Amendment of section 76**

**49.** Section 76 of the Companies Act is amended —

10 (a) by deleting subsection (1) and substituting the following subsections:

“(1) Except as otherwise expressly provided by this Act, a public company or its subsidiary shall not, whether directly or indirectly, give any financial assistance for the purpose of, or in connection with —

(a) the acquisition by any person, whether before or at the same time as the giving of financial assistance, of —

(i) shares or units of shares in the company; or

20 (ii) shares or units of shares in a holding company of the company; or

(b) the proposed acquisition by any person of —

(i) shares or units of shares in the company; or

25 (ii) shares or units of shares in a holding company of the company.

(1A) Except as otherwise expressly provided by this Act, a company shall not —

(a) whether directly or indirectly, in any way —

30 (i) acquire shares or units of shares in the company; or

- (ii) purport to acquire shares or units of shares in a holding company of the company; or
- (b) whether directly or indirectly, in any way, lend money on the security of —
- 5 (i) shares or units of shares in the company; or
- (ii) shares or units of shares in a holding company of the company.”;
- (b) by deleting the words “subsection (1)(a)” in subsections (3) and (4) and substituting in each case the words
- 10 “subsection (1)”;
- (c) by deleting paragraph (a) of subsection (8) and substituting the following paragraphs:
- “(a) a distribution of a company’s assets by way of dividends lawfully made;
- 15 (aa) a distribution in the course of a company’s winding up;”;
- (d) by deleting the word “or” at the end of paragraph (i) of subsection (8); and
- (e) by deleting the comma at the end of paragraph (j) of
- 20 subsection (8) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:
- “(k) an allotment of bonus shares;
- (l) a redemption of redeemable shares of a company in accordance with the company’s constitution;
- 25 or
- (m) the payment of some or all of the costs by a company listed on any securities exchange in Singapore or elsewhere associated with a scheme, an arrangement or a plan under which
- 30 any shareholder of the company may purchase or sell shares for the sole purpose of rounding off any odd-lots which he owns,”;

(f) by deleting the words “subsection (1)” wherever they appear in subsections (5), (8) and (9) and substituting in each case the words “subsection (1) or (1A)”;

(g) by inserting, immediately after subsection (8), the following subsection:

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“(8A) For the purpose of subsection (8)(m) —

(a) an “odd-lot” means any amount of shares in the company which is less than the amount of shares constituting a board lot;

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(b) a “board lot” means a standard unit of trading of the securities exchange on which the company is listed; and

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(c) the reference to “rounding off any odd-lots” includes an act by a shareholder, who owns only odd-lots in a company, disposing all such odd-lots.”.

(h) by inserting, immediately after subsection (9B), the following subsection:

20

“(9BA) Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company if —

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(a) giving the assistance does not materially prejudice:

(i) the interests of the company or its shareholders; or

(ii) the company’s ability to pay its creditors;

30

(b) the company receives fair value in connection with the financial assistance;

(c) the board of directors of the company passes a resolution that —

(i) the company should give the assistance;

- (ii) giving the assistance is in the best interest of the company; and
- (iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;
- (d) the resolution sets out in full the grounds for the directors' conclusions; and
- (e) the company lodges with the Registrar a copy of the resolution referred to in paragraph (c).";
- (i) by inserting, immediately after subsection (9C), the following subsection:
- “(9CA) A company shall not give financial assistance under subsection (9BA) if before the assistance is given any of the directors who voted in favour of the resolution under subsection (9BA)(c) —
- (a) ceases to be satisfied that the giving of the assistance is in the best interests of the company; or
- (b) ceases to be satisfied that the terms and conditions under which the assistance is proposed are fair and reasonable to the company.”; and
- (j) by deleting the words “subsection (9A)” in subsection (9D)(a) and substituting the words “subsection (9A) or (9BA)”.

Note 17: Source: Section 260A of the Australian Corporations Act 2001

### **Amendment of section 76A**

**50.** Section 76A of the Companies Act is amended —

- (a) by inserting, immediately after subsection (1), the following subsection:
- “(1A) Subsection (1) shall not apply to a disposition of book-entry securities, but a Court, on being satisfied that a disposition of book-entry securities would in the



absence of this subsection be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of subsection (1);

- 5 (b) by deleting the words “section 76(9A), (9B) or (10) (as the case may be) in subsections (6), (7), (11) and (12) and substituting in each case the words “section 76(9A), (9B), (9BA) or (10) (as the case may be)”;
- 10 (c) by deleting the words “gives financial assistance as mentioned in section 76(1)(a) or lends money as mentioned in section 76(1)(c)” in subsection (14) and substituting the words “gives financial assistance as mentioned in section 76(1) or lends money as mentioned in section 76(1A)(b)”.

#### **Amendment of section 76B**

15 **51.** Section 76B of the Companies Act is amended —

- (a) by deleting subsection (3) and substituting the following subsection:

20 “(3) The total number of ordinary shares and stocks in any class that may be purchased or acquired by a company during the relevant period shall not exceed 10% (or such other percentage as the Minister may by notification prescribe) of the total number of ordinary shares and stocks of the company in that class ascertained as at the date of any resolution passed pursuant to section 76C, 76D, 76DA or 76E unless —

- 25 (a) the company has, at any time during the relevant period, reduced its share capital by a special resolution under section 78B or 78C; or
- 30 (b) the Court has, at any time during the relevant period, made an order under section 78I confirming the reduction of share capital of the company.”;

- (b) by deleting subsection (3B) and substituting the following subsection:

“(3B) The total number of preference shares in any class which are not redeemable under section 70 that may be purchased or acquired by a company during the relevant period shall not exceed 10% (or such other percentage as the Minister may by notification prescribe) of the total number of non-redeemable preference shares of the company in that class ascertained as at the date of any resolution passed pursuant to section 76C, 76D, 76DA or 76E, unless —

- 5
- 10           (a) the company has, at any time during the relevant period, reduced its share capital by a special resolution under section 78B or 78C; or
- (b) the Court has, at any time during the relevant period, made an order under section 78I
- 15           confirming the reduction of share capital of the company.”; and

(c) by deleting subsection (4) and substituting the following subsection:

- 20           “(4) In subsection (3), “relevant period” means the period —
- (a) commencing from the date of a resolution passed pursuant to section 76C, 76D, 76DA or 76E (as the case may be); and
- (b) expiring on the date the next annual general meeting is or is required by law to be held, whichever is the earlier”.
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### **Amendment of section 76C**

52. Section 76C(1) of the Companies Act is amended by inserting, immediately after the words “securities exchange”, the words “in Singapore or elsewhere”.

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### **Amendment of section 76D**

53. Section 76D of the Companies Act is amended —

- (a) by deleting paragraph (b) of subsection (1); and

(b) by deleting the word “articles” in subsection (6)(b) and substituting the word “constitution”.

#### **Amendment of section 76DA**

5 **54.** Section 76DA(1) of the Companies Act is amended by inserting, immediately after the words “securities exchange”, the words “in Singapore or elsewhere”.

#### **Amendment of section 76F**

**55.** Section 76F of the Companies Act is amended —

10 (a) by inserting, immediately after subsection (1), the following subsection:

“(1A) A payment referred to in subsection (1)(a) shall include any expenses (including brokerage or commission) incurred directly in the purchase or acquisition by the company of its own shares.”;

15 (b) by deleting the word “manager” in subsection (3) and substituting the words “chief executive officer”; and

(c) by deleting subsections (4) to (6) and substituting the following subsections:

20 “(4) For the purposes of this section, a company is solvent if paragraphs (a) to (c) of section 7A(1) are satisfied.

25 “(5) For the purpose of subsection (4), the reference to “proposed redemption, giving of financial assistance or reduction (as the case may be)” in section 7A(1)(c) shall be modified to refer to “proposed payment under section 76F(1).”.

#### **Amendment of section 76G**

30 **56.** Section 76G of the Companies Act is amended by renumbering the existing section as subsection (1), and by inserting immediately thereafter the following subsection:

5 “(2) For the purpose of subsection (1), the total amount of the purchase price referred to in subsection (1) shall include any expenses (including brokerage or commission) incurred directly in the purchase or acquisition of the shares of a company which is paid out of the company’s capital or profits under section 76F(1).”.

#### **Amendment of section 76H**

10 **57.** Section 76H(2) of the Companies Act is amended by inserting, immediately after the words “section 190 (Register and index of members), the words “and section 196A (Electronic register of members)”.

#### **Amendment of section 76K**

15 **58.** Section 76K(1) of the Companies Act is amended by deleting the words “an employees’ share scheme” in paragraph (b) and substituting the words “any share scheme, whether for employees, directors or other persons”.

#### **Amendment of section 78**

20 **59.** Section 78 of the Companies Act is amended by deleting the word “articles” in paragraph (a) and substituting the word “constitution”.

#### **Amendment of section 78A**

**60.** Section 78A(3) of the Companies Act is amended by deleting the words “memorandum or articles” and substituting the word “constitution”.

#### **Amendment of section 78B**

**61.** Section 78B of the Companies Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

30 “(2) Notwithstanding subsection (1), the company need not meet the solvency requirements if the reduction of share capital does not involve any of the following:

- (a) a reduction or distribution of cash or other assets by the company;
  - (b) a release of any liability owed to the company.”; and
- 5 (b) by deleting the words “15 days” in subsection (3)(b)(ii) and substituting the words “20 days”.

#### **Amendment of section 78C**

**62.** Section 78C of the Companies Act is amended —

- 10 (a) by deleting subsection (2) and substituting the following subsection:
- “(2) Notwithstanding subsection (1), the company need not meet the solvency requirements if the reduction of share capital does not involve any of the following:
- 15 (a) a reduction or distribution of cash or other assets by the company;
  - (b) a release of any liability owed to the company.”; and
- (b) by deleting the words “22 days” in subsection (3)(b)(ii) and substituting the words “30 days”.

#### 20 **Amendment of section 86**

**63.** Section 86 of the Companies Act is amended by inserting, immediately after subsection (2), the following subsection:

“(2A) This section shall not apply to the Depository as the registered holder of a company’s shares.”.

#### 25 **Amendment of section 93**

**64.** Section 93(4) of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

### **Amendment of section 96**

**65.** Section 96(1) of the Companies Act is amended by deleting the word “articles” in paragraph (a) and substituting the word “constitution”.

### **5 Amendment of section 121**

**66.** Section 121 of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

### **Amendment of section 123**

**67.** Section 123(2) of the Companies Act is amended by deleting  
10 paragraph (c) and substituting the following paragraph:

“(c) the class of the shares, whether the shares are fully or partly paid up and the amount (if any) unpaid on the shares.”.

### **Amendment of section 124**

**68.** Section 124 of the Companies Act is amended by deleting the  
15 word “articles” and substituting the word “constitution”.

### **Amendment to section 125**

**69.** Section 125 of the Companies Act is amended by inserting,  
immediately after subsection (3), the following subsections:

**20** “(4) For the purposes of this section in relation to a book-entry security, a reference to an owner therein shall be construed as a reference to the Depository.

(5) Subsection (2) shall not apply to documents evidencing title in relation to listed securities which have been deposited  
25 with the Depository and registered in its name or its nominee’s name.”.

### **Amendment of section 126**

**70.** Section 126 of the Companies Act is amended by deleting the  
30 word “articles” in subsections (1) and (3) and substituting in each case the word “constitution”.

### **Amendment of section 128**

**71.** Section 128 of the Companies Act is amended by deleting the word “articles” in subsection (2) and substituting the word “constitution”.

### 5 **Amendment of section 128A**

**72.** Section 128A of the Companies Act is amended by deleting subsection (1) and substituting the following subsections:

10 “(1) Where there has been a transfer of shares in a private company, the private company shall, within 14 days after the date of the transfer of shares, lodge with the Registrar notice of the transfer of shares in the prescribed form.

15 (1A) Where there has been a transfer of shares in a company, other than a private company, the company may lodge with the Registrar notice of the transfer of shares in the prescribed form.”.

### **Repeal of Division 7A of Part IV**

**73.** Division 7A of Part IV of the Companies Act is repealed.

### **Amendment of section 131**

**74.** Section 131 of the Companies Act is amended —

20 (a) by deleting the words “The charges to which this section applies are” in subsection (3) and substituting the words “This section applies to the following charges that are created on or after the date of commencement of section [74] of the Companies (Amendment) Act 2013”;

25 (b) by deleting the words “or an assignment” in subsection (3)(d);

30 (c) by inserting, immediately after the words “any interest therein” in subsection (3)(e), the words “but not including any charge for any rent or other periodical sum issuing out of land”;

(d) by deleting paragraph (j) of subsection (3) and substituting the following paragraph:

5 “(j) a charge on goodwill, on a patent or licence under a patent, on a trade mark or a licence to use a trademark, or on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design.”; and

(e) by inserting, immediately after subsection (3), the following subsection:

10 “(3AA) This section also applies to any charge that —

(a) was a charge to which this section applied under section 131(3) in force immediately before the date of commencement of section [74] of the Companies (Amendment) Act 2013; and

15 (b) was created before that date.”.

### **Amendment of section 132**

75. Section 132(1) of the Companies Act is amended by inserting, immediately after the words “may be lodged for registration”, the words “in the prescribed manner”.

### 20 **Amendment of section 138**

76. Section 138 of the Companies Act is amended —

(a) by inserting, immediately after the words “registered office of the company” in subsection (1), the words “for as long as the charge to which the instrument relates remains in force,”; and

25

(b) by inserting, immediately after subsection (1), the following subsection:

30 “(1A) An instrument creating any charge or a copy thereof, or a copy of the series of debentures, as the case may be, that is required to be kept under subsection (1) —



- (a) shall be deemed to form part of the records that are required to be kept under section 199(1); and
- (b) for the purposes of section 199(2), shall be retained by the company for a period of 5 years after, as the case may be —
- 5
- (i) the date the debt for which the charge was given was paid or satisfied in whole; or
- (ii) the date the property or undertaking charged was released or ceased to form part of the company's property or undertaking.”.
- 10

#### **Amendment of section 141**

77. Section 141 of the Companies Act is amended by inserting, immediately after the words “a foreign company” the words “if, and only if, it is”.

15

#### **Amendment of section 143**

78. Section 143(1) of the Companies Act is amended —

(a) by deleting the words “memorandum and its articles, if any” and substituting the word “constitution”; and

20 (b) by deleting the words “14 days of” and substituting the words “14 days after”.

#### **Amendment of section 145**

79. Section 145 of the Companies Act is amended —

(a) by inserting, immediately after subsection (4), the following subsections:

25

“(4A) Subject to subsection (5), unless the constitution otherwise provides, a director of a company may resign by giving the company notice in writing of his resignation.

(4B) Subject to subsection (5), the resignation of a director shall not be conditional upon the company's acceptance of his resignation.”;

5 (b) by deleting the words “memorandum or articles” in subsections (4) and (5) and substituting in each case the word “constitution”; and

(c) by deleting the words “or 155” in subsection (6) and substituting the words “,155 or 155A”.

#### **Amendment of section 146**

10 **80.** Section 146 of the Companies Act is amended —

(a) by deleting the word “managers” in subsection (1)(b) and (b)(ii) and substituting in each case the words “chief executive officers”;

15 (b) by deleting the word “memorandum” in subsection (2) and substituting the word “constitution”; and

(c) by deleting the word “articles” in subsection (3)(c) and substituting the words “a constitution”.

#### **Amendment of section 147**

20 **81.** Section 147 of the Companies Act is amended by deleting the word “articles” in subsections (1) and (2) and substituting in each case the word “constitution”.

#### **Amendment of section 148**

**82.** Section 148(4) of the Companies Act is amended —

25 (a) by deleting the words “one month” and substituting the words “14 days”; and

(b) by deleting the word “manager” in the section heading and substituting the words “chief executive officer”.

### **Amendment of section 149**

**83.** Section 149(6)(a)(iii) of the Companies Act is amended by deleting the words “197, 199 and 201” and substituting the words “196B, 197, 199 and 201”.

### **5 New section 149B**

**84.** The Companies Act is amended by inserting, immediately after section 149A, the following section:

#### **“Appointment of directors by ordinary resolution**

**149B.** Unless the constitution otherwise provides, a company  
 10 may appoint a director by ordinary resolution passed at a  
 general meeting.”

Note 18: Source: Section 201G of the Australian Corporations Act 2001 and  
 section 153(2) of the New Zealand Companies Act 1993

### **Amendment of section 150**

**15 85.** Section 150(5) of the Companies Act is amended by deleting  
 the word “articles” in paragraph (a) and substituting the word  
 “constitution”.

### **Amendment of section 151**

**20 86.** Section 151 of the Companies Act is amended by deleting the  
 word “manager” and substituting the word “chief executive officer”.

### **Amendment of section 152**

**87.** Section 152 of the Companies Act is amended —

(a) by deleting the words “memorandum or articles” in  
 subsection (1) and substituting the word “constitution”;

**25 (b)** by inserting, immediately after subsection (1), the following  
 subsection:

“(1A) Subject to any provision to the contrary in the  
 constitution, a private company may by ordinary  
 resolution remove a director before the expiration of his  
 30 period of office.”; and

- (c) by deleting the word “articles” in subsection (8) and substituting the word “constitution”.

### **Repeal of section 153**

**88.** Section 153 of the Companies Act is repealed.

### **Amendment of section 154**

**89.** Section 154 of the Companies Act is amended —

- (a) by deleting subsection (2) and substituting the following subsections:

“(2) Where a person is convicted in Singapore of —

- 10           (a) any offence in connection with the formation or management of a corporation;
- (b) any offence under section 157 or 339; or
- (c) any offence under Part XII of the Securities and Futures Act (Cap. 289),

15           the court may make a disqualification order against the person in addition to any other sentence imposed.

              (2A) Where a civil penalty has been imposed on a person under section 232 of the Securities and Futures Act, the court may, on the application of the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186), make a disqualification order against the person in addition to the civil penalty imposed.”;

20

- (b) by deleting subsections (3) and (4)(a) and (b) and substituting the following subsections:
- 25

              “(3) Subject to any leave which the Court may give pursuant to an application under subsection (6), a person who —

- (a) is disqualified under subsection (1); or
- 30           (b) has had a disqualification order made against him under subsection (2) or (2A),

shall not act as a director, or take part (whether directly or indirectly) in the management of a company, or of a foreign company to which Division 2 of Part XI applies, during the period of the disqualification or disqualification order.

(4) The disqualifications in subsection (3) shall —

(a) in a case where the disqualified person has been convicted of any offence referred to in subsection (1) or (2) but has not been sentenced to imprisonment, take effect upon conviction and continue for a period of 5 years or for such shorter period as the court may order under subsection (2);

(b) in a case where the disqualified person has been convicted of any offence referred to in subsection (1) or (2) and has been sentenced to imprisonment, take effect upon conviction and continue for a period of 5 years after his release from prison; or

(c) in a case where a disqualification order has been made against the disqualified person under subsection (2A), take effect from the date of the disqualification order and continue for a period of 5 years or for such shorter period as the court may order under subsection (2A),”;

(c) by deleting the words “acts in contravention of a disqualification under this section” in subsection (5) and substituting the words “contravenes subsection (3)”;

(d) by deleting subsection (6) and substituting the following subsection:

“(6) A person who —

(a) is disqualified under subsection (1); or

(b) has had a disqualification order made against him under subsection (2) or (2A),

5 may apply to the Court for leave to act as a director, or to take part (whether directly or indirectly) in the management of a company, or of a foreign company to which Division 2 of Part XI applies, during the period of the disqualification or disqualification order, upon giving the Minister not less than 14 days' notice of his intention to apply for such leave.”; and

(e) by deleting the words “this section” in subsection (7) and substituting the words “subsection (6)”.

10 **Amendment of section 156**

**90.** Section 156 of the Companies Act is amended —

(a) by deleting subsections (1), (2) and (3) and substituting the following subsections:

15 “(1) Subject to this section, every director and chief executive officer of a company who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction with the company shall as soon as practicable after the relevant facts have come to their knowledge declare the nature of their interest at a meeting of the directors of the company.

20 (2) The requirements of subsection (1) shall not apply in any case where the interest of the director or chief executive officer (as the case may be) consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction with the first-mentioned company if the interest of the director or chief executive officer (as the case may be) may properly be regarded as not being a material interest.

25 (3) A director or the chief executive officer of a company shall not be deemed to be interested or to have been at any time interested in any transaction or proposed transaction by reason only —

30 (a) in the case where the transaction or proposed transaction relates to any loan to the company —

that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

- 5 (b) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 6 is deemed to be related to the company — that he is a director or the chief executive officer (as the case may be) of that corporation,
- 10

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other law, but shall not affect the operation of any provision in the constitution of the company.”;

- 15 (b) by inserting, immediately after the words “a director” in subsection (4), the words “or the chief executive officer”;
- (c) by inserting, immediately after the words “the director” in paragraph (c) of subsection (4), the words “or chief executive officer (as the case may be)”;
- 20 (d) by deleting subsection (5) and substituting the following subsection:
- “ (5) Every director and the chief executive officer of a company who hold any office or possess any property whereby whether directly or indirectly any duty or interest might be created in conflict with their duties or interests as director or chief executive officer (as the case may be) shall declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.”;
- 25
- 30 (e) by inserting, immediately after the words “a director” in subsection (6)(a), the words “or the chief executive officer (as the case may be)”;
- (f) by deleting subsections (8) and (9) and substituting the following subsections:

“(8) For the purposes of this section —

(a) an interest of a member of a director’s family shall be treated as an interest of the director and the words “member of a director’s family” shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter; and

(b) an interest of a member of the chief executive officer’s family shall be treated as an interest of the chief executive officer and the words “member of the chief executive officer’s family” shall include his spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter;”;

(9) Subject to subsection (3), this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the constitution restricting a director or the chief executive officer from having any interest in transactions with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director or the chief executive officer (as the case may be).”; and

(g) by inserting, immediately after the word “director” in subsection (10), the words “or chief executive officer”.

#### **Amendment of section 157**

**91.** Section 157(2) of the Companies Act is amended by inserting, immediately after the words “make improper use of”, the words “his position as an officer or agent of the company or”.

*Note 19: Source: Section 183 of the Australian Corporations Act 2001*

#### **Amendment of section 157A**

**92.** Section 157A of the Companies Act is amended —



(a) by deleting the words “managed by or under the direction of” in subsection (1) and substituting the words “managed by, or under the direction or supervision of,”; and

5 (b) by deleting the words “memorandum and articles of the company require” in subsection (2) and substituting the words “constitution of the company requires”.

Note 20: Source: Section 128 of the New Zealand Companies Act 1993

### **Amendment of section 158**

**93.** Section 158 of the Companies Act is amended —

10 (a) by deleting the words “if the conditions specified in subsection (3) are met” in subsection (1) and substituting the words “if such disclosure is not likely to prejudice the company and is made with the authorisation of the board of directors; and

15 (b) by deleting subsections (3) and (4) and substituting the following subsection:

“(3) The authorisation referred to in subsection (1) may be conferred in respect of disclosure of —

(a) all or any class of information; or

20 (b) only such information as may be specified in the authorisation.”.

### **Amendment of section 160**

**94.** Section 160(1) of the Companies Act is amended by deleting the words “memorandum or articles” and substituting the word  
25 “constitution”.

### **Amendment of section 161**

**95.** Section 161(1) of the Companies Act is amended by deleting the words “memorandum or articles” and substituting the word  
“constitution”.

### **Amendment of section 162**

30 **96.** Section 162 of the Companies is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsections:

“(1) Subject to subsections (1A) and (2), a company (other than an exempt private company) shall not —

- 5           (a) make a loan or quasi-loan to a director of the company or of a company which by virtue of section 6 is deemed to be related to that company (referred to in this section as relevant director);
- 10           (b) enter into any guarantee or provide any security in connection with a loan or quasi-loan made to a relevant director by any other person;
- (c) enter into a credit transaction as creditor for the benefit of a relevant director;
- 15           (d) enter into any guarantee or provide any security in connection with a credit transaction entered into by any person for the benefit of a relevant director;
- (e) take part in an arrangement under which —
- 20                 (i) another person enters into a transaction that, if it had been entered into by the company, would have been prohibited under this subsection; and
- (ii) that person, in pursuance of the arrangement, obtains a benefit from the company or a related company; or
- 25           (f) arrange the assignment to the company, or assumption by the company, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company,
- 30                 would have been prohibited under this subsection,

(referred to in this section as restricted transaction).

(1A) Subject to subsection (2), nothing in this section shall apply to any transaction which would otherwise be a restricted transaction —

- 5
- (a) made to or for the benefit of a relevant director to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
- 10
- (b) made to or for the benefit of a relevant director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to the company, as the case may be, for the purpose of purchasing or otherwise acquiring a home occupied or to be occupied by the director, except that not more than one such restricted transaction may be outstanding at any time;
- 15
- (c) made to or for the benefit of a relevant director who is engaged in the full-time employment of the company or of a corporation that is deemed to be related to that company, as the case may be, where the company has at a general meeting approved of a scheme for the making of such transaction to or for the benefit of employees of the company and the restricted transaction is in accordance with that scheme; or
- 20
- (d) made to or for the benefit of a relevant director in the ordinary course of business of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans, quasi-loans or credit transactions made or entered into by other persons if the activities of that company are regulated by any written law relating to banking, finance
- 25
- 30
- 35
- companies or insurance or are subject to

supervision by the Monetary Authority of Singapore.”;

(2) Subsection (1A)(a) or (b) shall not authorise the making of or entering into any restricted transaction, except —

5

(a) with the approval of the company given at a general meeting at which the purposes of the expenditure and the amount or extent of the restricted transaction are disclosed; or

10

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the amount of or liability under the restricted transaction shall be repaid or discharged, as the case may be, within 6 months from the conclusion of that meeting.”;

15

(b) by deleting the words “the making of the loan or the entering into the guarantee or the provision of the security” in subsection (3) and substituting the words “the making or entering into of the restricted transaction”;

20

(c) by deleting the words “the making of any loan, the entering into of any guarantee or the providing of any security” in subsection (4) and substituting the words “the making of any loan or quasi-loan, the entering into of any credit transaction, the entering into of any guarantee, the providing of any security or the entering into of any arrangement”;

25

(d) by inserting, immediately after the word “loan” in subsection (5), the words “, quasi-loan, credit transaction or arrangement”;

30

(e) by inserting, immediately after the word “director” in subsection (6), the words “or relevant director”;

(f) by inserting, immediately after subsection (6), the following subsections:

“(7) In determining for the purposes of this section whether a transaction is one that would have been prohibited under subsection (1)(e), the transaction shall be treated as having been entered into on the date of the arrangement.

5

(8) In this section and section 163 —

“conditional sale agreement” has the same meaning as in section 2 of the Hire-Purchase Act (Cap. 125);

10

“credit transaction” is a transaction under which one party (referred to in this section and section 163 as the creditor) —

(a) supplies any goods under a hire-purchase agreement or a conditional sale agreement;

15

(b) leases or hires any immovable property or goods in return for periodic payments; or

20

(c) otherwise disposes of immovable property or supplies goods or services on the understanding that payment (whether in a lump sum or instalments or by way of periodic payments or otherwise) is to be deferred;

25

“quasi-loan” means a transaction under which one party (referred to in this section and section 163 as the creditor) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (referred to in this section as the borrower) or agrees to reimburse, or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (referred to in this section and section 163 as the borrower) —

30

(a) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or

(b) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

“services” means any thing other than goods or immovable property.

5 (9) For the purposes of subsection (8) —

(a) a reference to the person to whom a quasi-loan is made is a reference to the borrower;

10 (b) the liabilities of the borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower; and

15 (c) a reference to the person for whose benefit a credit transaction is entered into is a reference to the person to whom goods, immovable property or services are supplied, sold, leased, hired or otherwise disposed of under the transaction.”; and

(g) by deleting the section heading and substituting the following section heading:

20 **“Loans and quasi-loans to directors, credit transactions and related arrangements”.**

Note 21: Source: Sections 199 to 293 of the UK Companies Act 2006

### **Amendment of section 163**

**97.** Section 163 of the Companies Act is amended —

25 (a) by deleting subsections (1) and (2) and substituting the following subsections:

“(1) Subject to this section, it shall not be lawful for a company (other than an exempt private company) —

(a) to make a loan or quasi-loan to another company;

30 (b) to enter into any guarantee or provide any security in connection with a loan or quasi-loan

made to another company by a person other than the first-mentioned company;

(c) to enter into a credit transaction as creditor for the benefit of another company; or

5 (d) to enter into any guarantee or provide any security in connection with a credit transaction entered into by any person for the benefit of another company,

10 if a director or directors of the first-mentioned company is or together are interested in 20% or more of the total voting power in the other company (excluding treasury shares), unless there is approval by the company in general meeting for the making of or entering into of the loan, quasi-loan, credit transaction, guarantee or security  
15 (as the case may be) at which the interested director or directors and his or their family members abstained from voting.

(2) Subsection (1) shall extend to apply to —

20 (a) a loan or quasi-loan made by a company (other than an exempt private company) to another company;

(b) a credit transaction made by a company (other than an exempt private company) for the benefit of another company; and

25 (c) a guarantee entered into or security provided by a company (other than an exempt private company) in connection with a loan or quasi-loan made to another company by a person other than the first-mentioned company or with a credit  
30 transaction made for the benefit of another company entered into by a person other than the first-mentioned company,

35 where such other company is incorporated outside Singapore, if a director or directors of the first-mentioned company —

(i) is or together are interested in 20% or more of the total voting power in the other company (excluding treasury shares); or

5 (ii) in a case where the other company does not have a share capital, exercises or together exercise control over the other company whether by reason of having the power to appoint directors or otherwise.

10 (2A) Subject to this section, a company (other than an exempt private company) shall not —

(a) take part in an arrangement under which —

15 (i) another person enters into a transaction that, if it had been entered into by the company, would have required approval under this section; and

(ii) that person, in pursuance of the arrangement, obtains a benefit from the company or a related company; or

20 (b) arrange the assignment to it, or assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have required such approval,

25 unless there is approval by the company in general meeting for taking part in such an arrangement or for arranging the assignment or assumption of rights, obligations or liabilities under such a transaction.

30 (2B) In determining for the purposes of subsection (2A) whether a transaction is one that would have required approval under this section if it had been entered into by the company, the transaction shall be treated as having been entered into on the date of the arrangement.”;

(b) by deleting the words “where a company makes a loan to another company or gives a guarantee or provides security



in connection with a loan made to another company” in subsection (3)(a) and substituting the words “where a company makes a loan or quasi-loan to another company, enters into a credit transaction for the benefit of another company, gives a guarantee or provides security in connection with a loan, quasi-loan or credit transaction made to or entered into for the benefit of another company, or enters into an arrangement referred to in subsection (2A)”;

(c) by deleting the words “recovery of any loan” in subsection (6) and substituting the words “recovery of the amount of any loan, quasi-loan, credit transaction or arrangement”;

(d) by deleting the words “the making of any loan, the entering into of any guarantee or the providing of any security” in subsection (7) and substituting the words “the making of any loan or quasi-loan, the entering into of any credit transaction, the entering into of any guarantee, the providing of any security or the entering into of any arrangement”; and

(e) by deleting the section heading and substituting the following section heading:

**“Approval of company required for loans and quasi-loans to, and credit transactions for benefit of, persons connected with directors of lending company, etc.”.**

Note 22: Source: Sections 199 to 293 of the UK Companies Act 2006

### **New sections 163A and 163B**

**98.** The Companies Act is amended by inserting, immediately after section 163, the following sections:

**“Exception for expenditure on defending proceedings, etc.**

**163A.**—(1) Sections 162 and 163 shall not apply to anything done by a company —

- 5 (a) to provide a director of the company or of a company which by virtue of section 6 is deemed to be related to that company (referred to in this section as related company) with funds to meet expenditure incurred or to be incurred by him —
- (i) in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or a related company; or
- 10 (ii) in connection with an application for relief; or
- (b) to enable any such director to avoid incurring such expenditure,

if it is done on the terms provided in subsection (2).

(2) The terms referred to in subsection (1) are —

- 15 (a) that the loan is to be repaid, or (as the case may be) any liability of the company incurred under any transaction connected with the thing done is to be discharged, in the event of —
- (i) the director being convicted in the proceedings;
- 20 (ii) judgment being given against him in the proceedings; or
- (iii) the court refusing to grant him relief on the application; and
- (b) that it is to be repaid or discharged not later than —
- 25 (i) the date when the conviction becomes final;
- (ii) the date when the judgment becomes final; or
- (iii) the date when the refusal of relief becomes final.

(3) For the purposes of this section, a conviction, judgment or refusal of relief becomes final —

- 30 (a) if it is not appealed against, at the end of the period for bringing an appeal; or

(b) if it is appealed against, when the appeal (or any further appeal) is disposed of.

(4) The reference in this section to an application for relief is to an application for relief under section 76A(13) or 391.

5 **Exception for expenditure in connection with regulatory action or investigation**

**163B.** Sections 162 and 163 shall not apply to anything done by a company —

10 (a) to provide a director of the company or of a company which by virtue of section 6 is deemed to be related to that company (referred to in this section as related company) with funds to meet expenditure incurred or to be incurred by him in defending himself —

(i) in an investigation by a regulatory authority; or

15 (ii) against any action proposed to be taken by a regulatory authority,

in connection with any alleged negligence, default, breach of duty or breach of trust by him in relation to the company or a related company; or

20 (b) to enable any such director to avoid incurring such expenditure.”.

**Amendment of section 164**

**99.** Section 164 of the Companies Act is amended —

25 (a) by deleting subsection (1) and substituting the following subsection:

“(1) A company shall keep a register showing with respect to each director and the chief executive officer of the company particulars of —

30 (a) shares in that company or in a related corporation, being shares of which the director and the chief executive officer are registered

holders or in which they have an interest and the nature and extent of that interest;

5 (b) debentures of or participatory interests made available by the company or a related corporation which are held by the director and the chief executive officer or in which they have an interest and the nature and extent of that interest;

10 (c) rights or options of the director and the chief executive officer or of the director or the chief executive officer and another person or other persons in respect of the acquisition or disposal of shares in the company or a related corporation; and

15 (d) contracts to which the director or the chief executive officer is a party or under which they are entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the company or in a related corporation.”;

20 (b) by inserting, immediately after the words “its register with respect to a director” in subsection (2), the words “and its register with respect to the chief executive officer”;

(c) by deleting subsection (3) and substituting the following subsection:

25 “(3) A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director and in relation to the chief executive officer who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director and the chief executive officer are shown in the register of the second-mentioned company.”;

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35 (d) by deleting subsection (5) and substituting the following subsection:

5 “(5) A company shall, within 3 days after receiving notice from a director or from the chief executive officer under section 165(1)(a) of this Act or section 133(1)(a), (b), (c), (d) or (e) of the Securities and Futures Act (Cap. 289), enter in its register in relation to the director or the chief executive officer (as the case may be) the particulars referred to in subsection (1) including the number and description of shares, debentures, participatory interests, rights, options and contracts to which the notice relates in respect of shares, debentures, participatory interests, rights or options acquired or contracts entered into after he became a director or after he became the chief executive officer (as the case may be) —

15 (a) the price or other consideration for the transaction, if any, by reason of which an entry is required to be made under this section; and

(b) the date of —

20 (i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.”;

25 (e) by inserting, immediately after the words “a director” in subsection (6), the words “or the chief executive officer (as the case may be)”;

(f) by deleting subsection (12) and substituting the following subsection:

30 “(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director or the chief executive officer if the defendant proves that the failure was due to the failure of the director or the chief executive officer to comply with section 165 of this Act or (as the case may

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be) section 133 of the Securities and Futures Act (Cap. 289) with respect to those particulars.”;

(g) by deleting subsection (15) and substituting the following subsection:

5 “(15) For the purposes of the application of this section —

10 (a) a director or the chief executive officer of a company shall be deemed to hold or have an interest or a right in or over any shares or debentures if a wife or husband of the director or the chief executive officer (as the case may be) (not being herself or himself a director thereof) holds or has an interest or a right in or over any shares or debentures or an infant son or infant daughter of that director or the chief executive officer (as the case may be) (not being himself or herself a director) holds or has an interest in shares or debentures; and

20 (b) any contract, assignment or right of subscription exercised or made by or grant made to the wife or husband of a director or the chief executive officer of a company (not being herself or himself a director thereof) shall be deemed to have been entered into or exercised or made or, as the case may be, as having been made to the director or the chief executive officer (as the case may be), and so shall a contract, assignment or right of subscription entered into, exercised or made by or grant made to an infant son or infant daughter of a director or the chief executive officer of a company (not being himself or herself a director thereof).”; and

30 (h) by inserting, immediately after the word “director’s” in the section heading, the words “and chief executive officer’s”.

### **Amendment of section 165**

**100.** Section 165 of the Companies Act is amended —

- 5 (a) by deleting the words “A director” in subsection (1) and substituting the words “Every director and the chief executive officer”;
- (b) by inserting the word “and” at the end of paragraph (b) of subsection (1);
- (c) by deleting the words “section 173” in subsection (1)(c) and substituting the words “section 173A”;
- 10 (d) by deleting the semi-colon and the word “and” at the end of paragraph (c) of subsection (1) and substituting a full-stop;
- (e) by deleting subsection (1)(d);
- (f) by inserting, immediately after the word “a director” in subsection (2)(a)(i), the words “or the chief executive officer was appointed the chief executive officer, as the case may be”;
- 15 (g) by inserting, immediately after the word “director” in subsection (2)(a)(ii), the words “or the chief executive officer, as the case may be,”;
- 20 (h) by inserting the word “and” at the end of paragraph (a) of subsection (2);
- (i) by deleting the semi-colon and the word “and” at the end of paragraph (b) of subsection (2) and substituting a full-stop;
- (j) by deleting subsection (2)(c);
- 25 (k) by inserting, immediately after the word “directors” in subsection (3), the words “and, where the notice is not given by the chief executive officer, to the chief executive officer”;
- (l) by inserting, immediately after the word “director” in subsection (9), the words “or chief executive officer”; and
- 30 (m) by deleting the words “a director of a company all or any of the shares of which are listed for quotation on the official

list of a securities exchange as defined in the Securities and Futures Act (Cap. 289)” in subsection 10(a) and substituting the words “a director or the chief executive officer of a listed company.”.

5 **Amendment of section 168**

**101.** Section 168 of the Companies Act is amended —

(a) by inserting, immediately after subsection (1), the following subsections:

10 “(1A) The requirement for approval by the company in subsection (1) shall not apply in respect of any payment to a director holding a salaried employment or office in the company by way of compensation for termination of employment pursuant to an existing legal obligation arising from an agreement made between the company and the director if —

15 (a) the amount of the payment does not exceed the total emoluments of the director for the year immediately preceding his termination of employment; and

20 (b) the particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company prior to the payment.

25 (1B) For the purposes of subsection (1A), an existing legal obligation is an obligation of the company, or any corporation which is by virtue of section 6 deemed to be related to the company, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office.”; and

30 **Note 23: Source: Section 220(2) of the UK Companies Act 2006**

(b) by deleting subsection (7) and substituting the following subsection:

“(7) In this section —



“director” includes any person who has at any time been a director of the company or of a corporation which is by virtue of section 6 deemed to be related to the company;

5 “emoluments”, in relation to a director, includes fees and percentages, any sums paid by way of expenses allowance in so far as those sums are charged to income tax in Singapore, any contribution paid in respect of a director under  
10 any pension scheme and any benefits received by him otherwise than in cash in respect of his services as director.”.

### **Repeal of section 170**

**102.** Section 170 of the Companies Act is repealed.

### **Amendment of section 171**

**103.** Section 171 of the Companies Act is amended —

(a) by inserting, immediately after subsection (3), the following subsection:

20 “(3A) Notwithstanding subsection (3), a secretary, his agent or clerk of a private company need not be physically present at the registered office during the times specified in subsection (3) if a secretary, his agent or clerk of the private company is readily contactable by a person at the registered office by telephone or other  
25 means of instantaneous communication during those times.”; and

(b) by deleting the words “section 173” in subsection (1D) and substituting the words “sections 173 to 173H”.

### **Deletion and substitution of section 172 and new sections 172A and 172B**

**104.** The Companies Act is amended by deleting section 172 and substituting the following sections:

### “Provision protecting officers from liability

5 **172.**—(1) Any provision that purports to exempt an officer of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

10 (2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for an officer of the company against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is an officer is void, except as permitted by section 172A or 172B.

15 (3) This section shall apply to any provision, whether contained in a company's constitution or in any contract with the company or otherwise.

Note 24: Source: Section 232 of the UK Companies Act 2006

### Provision of insurance

20 **172A.** Section 172(2) shall not prevent a company from purchasing and maintaining for an officer of the company insurance against any such liability referred to in that subsection.

Note 25: Source: Section 233 of the UK Companies Act 2006

### Third party indemnity

25 **172B.**—(1) Section 172(2) shall not apply to any third party indemnity provision, provided that the third party indemnity provision does not provide any indemnity against —

- (a) any liability of the officer to pay —
    - (i) a fine in criminal proceedings; or
    - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or
  - (b) any liability incurred by the officer —
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- (i) in defending criminal proceedings in which he is convicted;
- (ii) in defending civil proceedings brought by the company or a related company in which judgment is given against him; or
- (iii) in connection with an application for relief referred to in subsection (4) in which the court refuses to grant him relief.

(2) The references in subsection (1)(b) to a conviction, judgment or refusal of relief are references to the final decision in the proceedings.

(3) For the purposes of subsection (2) —

(a) a conviction, judgment or refusal of relief becomes final —

- (i) if not appealed against, at the end of the period for bringing an appeal; or
- (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of; and

(b) an appeal is disposed of —

- (i) if it is determined and the period for bringing any further appeal has ended; or
- (ii) if it is abandoned or otherwise ceases to have effect.

(4) The reference in subsection (1)(b)(iii) to an application for relief is to an application for relief under section 76A(13) or 391.

(5) In this section, “third party indemnity provision” means provision for indemnity against liability incurred by the officer to a person other than the company.”.

Note 26: Source: Section 234 of the UK Companies Act 2006

**Repeal and re-enactment of section 173 and new sections 173A to 173H**

**105.** Section 173 of the Companies Act is repealed and the following sections substituted therefor:

5       **“Registers of directors, chief executive officers, secretaries and auditors**

**173.**—(1) The Registrar shall, in respect of each company, keep a register of the company’s —

- (a) directors,
- 10       (b) chief executive officer;
- (c) secretaries; and
- (d) auditors (if any).

      (2) The register of directors, register of chief executive officers, register of secretaries and register of auditors in respect of each company shall be kept in such form as the Registrar may determine.

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      (3) Subject to subsection (4), the register of a company’s directors shall contain the following information in respect of each director of the company —

- 20       (a) full name and any former name;
- (b) residential address or alternate address, as determined by the director;
- (c) nationality;
- (d) identification number;
- 25       (e) date of appointment;
- (f) the number of other companies in which the director is also a director; and
- (g) date of cessation of appointment.

      (4) The Registrar shall only keep any former name of a director in the register of the company for a period of 7 years

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from the date on which the name was furnished to the Registrar.

(5) The register of a company's chief executive officers shall contain the following information in respect of the chief executive officer of the company —

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- (a) full name;
- (b) residential address or alternate address, as determined by the chief executive officer;
- (c) nationality;
- (d) identification number;
- (e) date of appointment; and
- (f) date of cessation of appointment.

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(6) The register of a company's secretaries shall contain the following information in respect of each secretary of the company —

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- (a) full name;
- (b) residential address or alternate address, as determined by the secretary;
- (c) identification number;
- (d) date of appointment; and
- (e) date of cessation of appointment.

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(7) The register of a company's auditors shall contain the following information in respect of each auditor of the company —

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- (a) full name;
- (b) an address at which the auditors may be contacted;
- (c) identification number, if any;
- (d) date of appointment; and
- (e) date of cessation of appointment.

(8) Notwithstanding section 12(2), a director, chief executive officer, secretary, auditor or a member of any company may, without charge —

- 5 (a) inspect the register of directors, register of chief executive officers, register of secretaries and register of auditors kept by the Registrar [online] in respect of the company; or
- 10 (b) obtain from the Registrar a copy of or an extract from the register of directors, register of chief executive officers, register of secretaries and register of auditors kept by the Registrar [online] in respect of the company.

15 (9) An entry in the register of directors, register of chief executive officers, register of secretaries and register of auditors required to be kept by the Registrar under this section, is prima facie evidence of the truth of any matters which are by this Act directed or authorised to be entered or inserted in the respective register.

20 **Note 27: Source: Section 60(2) of the repealed NSW Veterinary Surgeons Act 1986 and section 127 of the UK Companies Act 2006.**

25 (10) A certificate of the Registrar setting out any of the particulars required to be entered or inserted in the register of directors, register of chief executive officers, register of secretaries or register of auditors required to be kept by the Registrar under this section shall in all courts and before all persons and bodies authorised by law to receive evidence be received as prima facie evidence of the entry of such particulars in the respective register.

30 (11) A certificate of the Registrar stating that, at the time specified in the certificate, a person was named as director, chief executive officer, secretary or auditor of the company in the register of directors, register of chief executive officers, register of secretaries or register of auditors, as the case may be, shall in all courts and before all persons and bodies authorised  
35 by law to receive evidence as prima facie evidence of the fact that such a person was a director, chief executive officer,

secretary or auditor, as the case may be, until by a notification of change given to the Registrar it appears that he has ceased to be or becomes disqualified to act as such a director, chief executive officer, secretary or auditor.

5 **Note 28: Source: Section 173(8) of the Companies Act (Cap. 50)**

(12) For the purposes of this section —

(a) a person's name —

10 (i) in the case of a person registered under the National Registration Act (Cap. 201), means the name as it appears in the latest identity card issued to that person under section 7 of that Act; or

15 (ii) in the case of a person not registered under the National Registration Act, means the name as it appears in the latest passport issued to that person under the law of the person's country of nationality or on such other document of identity issued by a Governmental authority as the Registrar may accept;

20 (b) a person's identification number —

25 (i) in the case of a person registered under the National Registration Act, means the identification number as appears in the latest identity card issued to that person under section 7 of that Act; or

30 (ii) in the case of a person not registered under the National Registration Act, means the name as it appears in the latest passport issued to that person under the law of the person's country of nationality or on such other document of identity issued by a Governmental authority as the Registrar may accept;

(c) a director includes an alternate, a substitute or a local director; and

(d) a person may only have one alternate address which —

(i) shall be an address at which the person can be located and which must not be a post office box number;

(ii) shall be an address other than the person's residential address; and

(iii) shall be an address located within the same jurisdiction as the person's residential address.

(13) A person shall ensure that he can be located at his alternate address contained in the register of directors, register of chief executive officers or register of secretaries.

(14) Any document required to be served under this Act on any person referred to in subsection (3), (5) or (6) shall be sufficiently served if addressed to the person and left at or sent by post to his residential address or alternate address, as the case may be, which is entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under this section.

(15) Any document required to be served under this Act on any person referred to in subsection (7) shall be sufficiently served if addressed to the person and left at or sent by post to the address which is entered in the register of auditors kept by the Registrar under this section.

Note 29: Source Section 205D of the Australian Corporations Act 2001 and section 650(4) of the HK Companies Ordinance 2012

### **Duty of company to provide information on directors, the chief executive officer, secretaries and auditors**

**173A.**—(1) It is the duty of each company to furnish —

(a) the information referred to in section 173(3), (5), (6) and (7) of this Act to the Registrar; and

(b) any changes to the information, including, in the case of the register of directors, any change resulting from



a person ceasing to be a director because of he is disqualified from so acting.

(2) In the case of a company incorporated on or after the date of commencement of section [105] of the Companies (Amendment) Act 2013 —

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(a) a person named as director in the documents submitted to the Registrar for the purposes of the incorporation of the company and who satisfies the applicable conditions under section 146, shall be taken to be a director of that company from the date of incorporation of the company and his name and particulars shall be entered in the company's register of directors kept by the Registrar under section 173 until notification of any change in name or particulars is received by the Registrar; and

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(b) a person named as the chief executive officer, a secretary or an auditor in the documents submitted to the Registrar for the purposes of the incorporation of the company shall be taken to be the chief executive officer, a secretary or an auditor, as the case may be, of that company from the date of incorporation of the company and his name and particulars shall be entered in the company's register of chief executive officers, register of secretaries or register of auditors, as the case may be, kept by the Registrar under section 173 until notification of any change in name or particulars is received by the Registrar.

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(3) A company shall, with a period of 14 days after the occurrence of any of the following:

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- (a) a person becoming a director;
- (b) a person ceasing to be a director —
  - (i) by virtue of being disqualified from acting as such by virtue of this Act or under any other written law; or

- (ii) by virtue of resignation, removal, death or any other cause;
- (c) a person becoming or ceasing to be the chief executive officer;
- 5 (d) a person becoming or ceasing to be a secretary;
- (e) a person becoming or ceasing to be an auditor;
- (f) any change in the particulars contained in the register of directors, register of chief executive officers, register of secretaries and register of auditors referred to in section 173,

10 give notice to the Registrar of the change and of the date on which it occurred.

(4) Notice of a person having become a director, the chief executive officer, a secretary or an auditor of the company shall contain the particulars of the new director, chief executive officer, secretary or auditor, as the case may be, that are required to be included in the respective register of directors, register of chief executive officers, register of secretaries or register of auditors under section 173.

20 **Note 30: Source: Section 167(1) and (2) of the UK Companies Act 2006.**

- (5) A prescribed fee shall be payable by the company —
  - (a) for every alternate address which it furnishes to the Registrar under subsection (1)(a); and
  - (b) for every change to any alternate address which it furnishes to the Registrar under subsection (1)(b).

(6) The information to be furnished to the Registrar under subsection (1) shall be given in a notice in such form as may be prescribed or, if not prescribed, in such form as the Registrar may determine.

### 30 **Duty of company to keep consents of directors and secretaries**

**173B.** Every company shall keep at its registered office —

- (a) in respect of each director —
- (i) a signed copy of his consent to act as director;
  - (ii) a statement that he is not disqualified to act as director under this Act or under any other written law; and
  - (iii) documentary evidence (if any) of any change in his name; and
- (b) in respect of a secretary, a signed copy of his consent to act as secretary.

**Savings and transitional provisions for existing particulars of directors, the chief executive officer, secretaries and auditors**

**173C.**—(1) In the case of a company incorporated before the date of commencement of section [105] of the Companies (Amendment) Act 2013 —

- (a) the name and particulars of the persons who were lodged with the Registrar as a director, secretary or auditor of the company under section 173 in force immediately before that date, shall be entered in the company's register of directors, register of secretaries or register of auditors, whichever may be applicable, referred to in section 173, until a notification of any change in name or particulars is received by the Registrar;
- (b) the company may, within 2 months after the first-mentioned date, furnish the information referred to in section 173(5) on its chief executive officer to the Registrar.

(2) Where a company referred to in subsection (1) has only lodged the name and particulars of one manager with the Registrar as a manager of the company under section 173 in force immediately prior to the date of commencement of section [105] of the Companies (Amendment) Act 2013, and the company does not furnish the information on its chief

executive officer to the Registrar under subsection (1), the name and particulars of the manager shall be entered in the company's register of chief executive officer referred to in section 173, until a notification of any change in name or particulars is received by the Registrar.

(3) Where a company referred to in subsection (1) has lodged the name and particulars of more than one manager with the Registrar as managers of the company under section 173 in force immediately prior to the date of commencement of section [105] of the Companies (Amendment) Act 2013, and the company does not furnish the information on its chief executive officer to the Registrar under subsection (1), the company shall be deemed to have not appointed any chief executive officer from that date until a notification of the appointment of a chief executive officer under section 173A(1)(a) is received by the Registrar.

(4) For the purposes of subsections (1)(a) and (2) —

(a) the address lodged with the Registrar in respect of any director, manager or secretary under section 173 in force immediately before the date of commencement of section [105] of the Companies (Amendment) Act 2013 shall be entered as his residential address; and

(b) the address lodged with the Registrar in respect of any auditor under section 173 in force immediately before the date of commencement of section [105] of the Companies (Amendment) Act 2013, shall be entered as his address.

### **Self-notification in certain circumstances**

**173D.**—(1) A director who becomes disqualified from acting as such by virtue of section 148 or 155 —

(a) shall, without prejudice to section 165(1)(c), notify the company of his disqualification as soon as practicable but not later than 14 days after the disqualification; and

(b) may give the notice referred to in section 173A(3)(b)(i) to the Registrar if he has reasonable cause to believe that the company will not do so.

5 (2) A director who resigns from office and who has given notice of his resignation to the company, or a director who is removed from office may give the notice referred to in section 173A(3)(b)(ii) to the Registrar if he has reasonable cause to believe that the company will not do so.

10 (3) A director, chief executive officer or secretary who has changed his residential address or alternate address, as the case may be, which is entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under section 173, or an auditor who has changed his address which is entered in the register of auditors kept by the  
15 Registrar under section 173 —

(a) shall notify the company of the change as soon as practicable but not later than 14 days after the change; and

20 (b) may give the notice referred to in section 173A(3)(f) to the Registrar if he has reasonable cause to believe that the company will not do so.

### **Amendment of register by Registrar**

25 **173E.**—(1) Where the Registrar has reasonable cause to believe that a director of a company —

(a) is no longer qualified to act as such by virtue of section 148 or 155; or

(b) is dead,

30 the Registrar may on his own initiative amend the register of directors of the company kept by the Registrar under section 173 to indicate that the person has ceased to be a director by virtue of that fact.

5 (2) Where the Registrar has reasonable cause to believe that the chief executive officer of a company is dead, the Registrar may on his own initiative amend the register of chief executive officers of the company kept by the Registrar under section 173 to indicate that the person has ceased to be the chief executive officer of the company by virtue of that fact.

10 (3) Where the Registrar has reasonable cause to believe that a secretary of a company is dead, the Registrar may on his own initiative amend the register of secretaries of the company kept by the Registrar under section 173 to indicate that the person has ceased to be a secretary of the company by virtue of that fact.

(4) Where the Registrar has reasonable cause to believe that the auditor of a company —

15 (a) has had its registration as an accounting entity suspended or removed; or

(b) being an individual is dead;

20 the Registrar may on his own initiative amend the register of auditors of the company kept by the Registrar under section 173 to indicate that the person has ceased to be an auditor of the company by virtue of that fact.

### **Provision and use of residential address**

25 **173F.**—(1) Subject to this section, a director, the chief executive officer and a secretary of a company that is incorporated on or after the date of commencement of section [105] of the Companies (Amendment) Act 2013 is required to give notice to the Registrar of the following —

30 (a) at incorporation or within 14 days after the date of his appointment, as the case may be, his residential address; and

(b) if there is any change to his residential address, the particulars of the change within 14 days after the change.

5 (2) In the case of a company incorporated before the date of commencement of section [105] of the Companies (Amendment) Act 2013, a director, the chief executive officer and a secretary of the company shall give notice to the Registrar of any change in his residential address that was lodged with the Registrar under section 173 in force before that date within 14 days after the change.

10 (3) Where the residential address of a person has been entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under section 173, he shall be deemed to have notified the Registrar of his residential address in compliance with subsection (1)(a).

15 (4) Where any change to the residential address of a person has been entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under section 173, he shall be deemed to have notified the Registrar of the change in compliance with subsection (1)(b) or (2), whichever subsection is applicable.

20 (5) Where a director, the chief executive officer or a secretary of a company has made a report of a change of his residential address under section 8 of the National Registration Act (Cap. 201), he shall be deemed to have notified the Registrar of the change in compliance with subsection (1)(b) or (2), whichever subsection is applicable.

25 (6) Notwithstanding section 12 or 12A, where on or after the date of commencement of section [105] of the Companies (Amendment) Act 2013, the residential address of a person is notified to the Registrar under subsection (1) or (2), or is transmitted to the Registrar by the Commissioner of National Registration under section 8A of the National Registration Act, the residential address of the person is protected from disclosure and is not available for public inspection or access except as provided for under this section or where the person's residential address is entered in the register of directors, register of chief executive officers or register of secretaries kept by the Registrar under section 173.

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(7) Where —

- 5 (a) the alternate address of a director, the chief executive officer or a secretary is entered in the register of directors, register of chief executive officers or register of secretaries, as the case may be, that is kept by the Registrar under section 173(1)(a), (b) or (c) respectively; and
- (b) the circumstances set out in subsection (8) apply,
- 10 the Registrar may enter the residential address of the director, chief executive officer or secretary in the respective register of directors, register of chief executive officers or register of secretaries, as the case may be.

(8) Subsection (7) applies where —

- 15 (a) communications sent by the Registrar to the director, chief executive officer or secretary, as the case may be, at his alternate address and requiring a response within a specified period remain unanswered, or
- (b) there is evidence to show that service of documents at the alternate address is not effective to bring them to notice of the director, chief executive officer or secretary, as the case may be.
- 20

Note 31: Source: Section 245(1) of the UK Companies Act 2006

- (9) Before proceeding under subsection (7) the Registrar shall give notice to the director, chief executive officer or secretary affected, and to every company of which the Registrar has been notified that the person is a director, the chief executive officer or a secretary, as the case may be.
- 25

Note 32: Source: Section 245(2) of the UK Companies Act 2006

(10) The notice referred to in subsection (9) shall —

- 30 (a) state the grounds on which it is proposed to enter the person's residential address in the register of directors, register of chief executive officers or register of secretaries, as the case may be; and



(b) specify a period within which representations may be made before that is done.

Note 33: Source: Section 245(3) of the UK Companies Act 2006

5 (11) The Registrar shall take account of any representations received within the specified period.

Note 34: Source: Section 245(5) of the UK Companies Act 2006

10 (12) Where the Registrar enters the residential address in the register of directors, register of chief executive officers or register of secretaries under subsection (7), the Registrar shall give notice of that fact to the director, chief executive officer or secretary affected, and to every company of which the Registrar has been notified that the person is a director, the chief executive officer or a secretary, as the case may be.

Note 35: Source: Section 246(2) of the UK Companies Act 2006

15 (13) A notice to a director, chief executive officer or secretary under subsection (9) or (12) shall be sent to the director, chief executive officer or secretary, as the case may be, at his residential address unless it appears to the Registrar that service at that address may be ineffective to bring it to the person's notice, in which case it may be sent to any other last known address of that person.

Note 36: Source: Section 245(4) of the UK Companies Act 2006

25 (14) Where the Registrar enters a person's residential address in the register of directors, register of chief executive officers or register of secretaries under subsection (7) —

(a) the residential address ceases to be protected under subsection (6) from disclosure or from public inspection or access; and

30 (b) that person shall not, for a period of 3 years from the date on which the residential address was entered in the register of directors, register of chief executive officers or register of secretaries, furnish an alternate address to the company under section 173D(3)(a).

Note 37: Source: Section 246(7) of the UK Companies Act 2006

35 (15) Nothing in this section applies to any information lodged with the Registrar under section 173 in force immediately

before the date of commencement of section [105] of the Companies (Amendment) Act 2013 or prevents such information from being disclosed or from being available for public inspection or access.

5 (16) Nothing in this section prevents the residential address of a person that is notified to the Registrar under subsection (1) or (2), or is transmitted to the Registrar by the Commissioner of National Registration under section 8A of the National Registration Act from —

10 (a) being used by the Registrar for the purposes of any communication with the director, chief executive officer or secretary, as the case may be;

15 (b) being disclosed for the purposes of issuing any summons or other legal process against the director, chief executive officer or secretary, as the case may be, for the purposes of this Act or any other written law;

(c) disclosure in compliance with the requirement of any court or the provisions of any written law;

20 (d) disclosure for the purpose of assisting any public officer or officer of any other statutory board in the investigation or prosecution of any offence under any written law; or

25 (e) disclosure in such other circumstances as may be prescribed.

Note 38: Source: Section 243 of the UK Companies Act 2006

### **Penalty for breach under sections 173, 173A, 173B, 173D and 173F**

30 **173G.**—(1) If default is made by a company in section 173A(1) or 173B, the company and every officer of the company who is in default shall each be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

(2) Any person who is bound to comply with a requirement under section 173D(3)(a) or 173F(1) or (2) and fails to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

5 (3) Any person who fails to comply with section 173(13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 24 months or to both.

10 **Transitional provisions for old registers of directors, managers, secretaries and auditors**

15 **173H.**—(1) Subject to subsections (2), a company shall continue to keep the register of directors, register of managers, register of secretaries and register of auditors under section 173 in force immediately before the date of commencement of section [105] of the Companies (Amendment) Act 2013 for a period of 3 years from that date.

20 (2) A company is not required to update the register of directors, register of managers, register of secretaries or register of auditors required to be kept under subsection (1) with any changes in the particulars therein that occurred on or after the date of commencement of section [105] of the Companies (Amendment) Act 2013.

25 (3) Until the expiry of the period for which the register of directors, register of managers, register of secretaries and register of auditors are required to be kept under subsection (1), section 173(5) in force immediately before the date of commencement of section [105] of the Companies (Amendment) Act 2013 shall continue to apply to the register of directors, register of managers, register of secretaries or register of auditors which is required to be kept under subsection (1) but subject to subsection (2).

30 (4) Section 173(8) in force immediately before the date of commencement of section [105] of the Companies (Amendment) Act 2013 shall continue to apply in respect of

any information lodged with the Registrar under section 173 in force immediately before that date.”.

#### **Amendment of section 174**

**106.** Section 174 of the Companies Act is amended —

- 5 (a) by deleting the word “managers” in subsection (3)(d) and substituting the words “the chief executive officer”; and
- (b) by deleting the word “articles” in subsections (7) and (8) and substituting in each case the word “constitution”.

#### **Amendment of section 176**

10 **107.** Section 176(1) of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

#### **Amendment of section 177**

**108.** Section 177 of the Companies Act is amended —

- 15 (a) by deleting the word “articles” in subsections (1) and (2) and substituting in each case the word “constitution”; and
- (b) by deleting subsection (4) and substituting the following subsection:

20 “(4) So far as the constitution does not make other provision in that behalf, notice of every meeting shall be served on every member having a right to attend thereat in the manner in which notices are required to be served by the model constitution prescribed under section 36(1) for the type of company to which the company belongs, if any.”.

#### **Amendment of section 178**

**109.** Section 178 of the Companies Act is amended —

- (a) by deleting the word “articles” in subsection (1) and substituting the word “constitution”;
- 30 (b) by deleting “10%” in subsection (1)(b)(ii) and (iii) and substituting in each case “5%”;

(c) by deleting the words “48 hours” in subsection (1)(c) and substituting the words “72 hours”; and

(d) by deleting the section heading and substituting the following section heading:

5                   **“Right to demand a poll”.**

### **Amendment of section 179**

**110.** Section 179 of the Companies Act is amended —

10           (a) by deleting the words “ So far as the articles do not make other provision in that behalf and subject to section 64” in subsection (1) and substituting the words “So far as the constitution does not make other provision in that behalf and subject to sections 64 and 64A”;

15           (b) by inserting immediately after the word “meeting” in subsection (4)(b), the words “as a member or proxy or as a corporate representative of another member”;

(c) by deleting the words “memorandum or articles” in subsection (6) and substituting the word “constitution”; and

(d) by deleting the words “one month” in subsection (7) and substituting the words “14 days”.

### 20   **Repeal and re-enactment of section 180**

**111.** Section 180 of the Companies Act is repealed and the following section substituted therefor:

#### **“As to member’s rights at meetings**

25           **180.**—(1) A member shall, notwithstanding any provision in the constitution of the company, have a right to attend any general meeting of the company and to speak on any resolution before the meeting.

30           (2) In the case of a company limited by shares, the holder of a share may vote on a resolution before a general meeting of the company if, in accordance with the provisions of section 64A, the share confers on the holder a right to vote on that resolution.

(3) In the case of a company other than a company limited by shares, a member may vote on a resolution before a general meeting of the company if the right to vote on that resolution is conferred on the member under the constitution of the company.

(4) Notwithstanding subsection (2), a preference share issued after 15th August 1984 but before the date of commencement of this section shall, in addition to any other right conferred by this Act, carry the right in a poll at any general meeting to at least one vote in respect of each such share held during such period as the preferential dividend or any part thereof remains in arrears and unpaid, such period starting from a date not more than 12 months, or such lesser period as the constitution may provide, after the due date of the dividend.

(5) For the purpose of subsection (4) —

(a) “preference share” has the same meaning as in section 4(1) of this Act in force immediately before the date of commencement of section [3] of the Companies (Amendment) Act 2013.”; and

(b) a dividend shall be deemed to be due on the date appointed in the constitution for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period and whether or not such dividend shall have been earned or declared.

### **Amendment of section 181**

**112.** Section 181 of the Companies Act is amended —

(a) by deleting subsection (1) and substituting the following subsections:

“(1) Subject to subsections (1A), (1B) and (1C), a member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint

another person or persons, whether a member or not, as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting.

(1A) Unless the constitution otherwise provides —

(a) a proxy shall not be entitled to vote except on a poll;

(b) a member shall not be entitled to appoint more than 2 proxies to attend and vote at the same meeting; and

(c) where a member appoints 2 proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

(1B) Notwithstanding subsection (1A) and unless the constitution otherwise provides, in the case of a company having a share capital, a member who is a relevant intermediary may appoint more than two proxies in relation to a meeting to exercise all or any of his rights to attend and to speak and vote at the meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him (which number and class of shares shall be specified), and each proxy so appointed to attend and vote instead of the member shall have the right to vote on a show of hands.

(1C) Notwithstanding subsections (1A) and (1B), unless the Court orders otherwise, a member of a company entitled to attend and vote at a meeting of the company held pursuant to an order of the court under section 210(1) or at any adjourned meeting under section 210(3) shall not be entitled to appoint more than one proxy to attend and vote at the same meeting.”;

(b) by deleting the word “proxies” in subsection (2) and substituting the words “a proxy or proxies”; and

(c) by inserting, immediately after subsection (5), the following subsection:

“(6) In this section, “relevant intermediary” means —

- 5 (a) a banking corporation licensed under the Banking Act (Cap. 19) or a wholly-owned subsidiary of such a banking corporation, whose business includes the provision of nominee services and who holds shares in that capacity;
- 10 (b) a person holding a capital markets services licence to provide custodial services for securities under the Securities and Futures Act (Cap. 289); or
- 15 (c) the Central Provident Fund Board, in respect of shares purchased under Part IV of the Central Provident Fund (Investment Schemes) Regulations (Cap. 36, Rg 9).”.

#### **Amendment of section 182**

**113.** Section 182 of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

#### **Amendment of section 183**

**114.** Section 183(6) of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

#### **Amendment of section 184**

25 **115.** Section 184 of the Companies Act is amended by deleting the word “articles” wherever it appears in subsections (4)(a) and (b), (5) and (6) and substituting in each case the word “constitution”.

#### **Amendment of section 184A**

**116.** Section 184A of the Companies Act is amended —

- 30 (a) by inserting, immediately after the words “private company” in subsection (1), the words “or an unlisted public company”;



- (b) by deleting the words “memorandum or articles of the company require” in subsections (3)(b) and (4)(b) and substituting in each case the words “constitution of the company requires”;
- 5 (c) by inserting, immediately after the word “resolution” in subsection (5)(a)(ii), the words “by way of the member’s signature (or his proxy’s signature if that is allowed), or such other method as the constitution may provide”; and
- (d) by inserting, immediately after subsection (8), the following  
10 subsection:
- “(9) In sections 184A to 184F, “an unlisted public company” means a public company the securities of which are not listed for quotation or quoted on a securities market in Singapore or elsewhere.”.

15 **Amendment of section 184B**

**117.** Section 184B of the Companies Act is amended —

- (a) by inserting, immediately after the words “private company” in subsection (1), the words “or an unlisted public company”;
- 20 (b) by deleting the words “memorandum and articles of the company do not” in subsection (1)(b) and substituting the words “constitution of the company does not”; and
- (c) by deleting the words “memorandum and articles” in subsection (1)(c) and substituting the word “constitution”.

25 **Amendment of sections 184C to 184F**

**118.** Sections 184C(1), 184D(1), 184E(1) and 184F(1) of the Companies Act are amended by inserting, immediately after the words “private company” in each case, the words “or an unlisted public company”.

30 **New section 184DA**

**119.** The Companies Act is amended by inserting, immediately after section 184D, the following section:

**“Period for agreeing to written resolution**

5 **184DA.**—(1) Unless the constitution otherwise provides, a resolution proposed to be passed by written means lapses if it is not passed before the end of the period of 28 days beginning with the circulation date.

(2) The agreement to a resolution is ineffective if indicated after the expiry of that period.”.

**Amendment of section 185**

10 **120.** Section 185 of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

**Amendment of section 186**

**121.** Section 186 of the Companies Act is amended —

(a) by deleting the words “one month” in subsection (1) and substituting the words “14 days”; and

15 (b) by deleting the words “articles have” in subsection (2) and substituting the words “the constitution of a company has”.

**Amendment of section 188**

**122.** Section 188(1) of the Companies Act is amended by deleting the words “and of its managers”.

20 **Amendment of section 189**

**123.** Section 189(2A) of the Companies Act is amended by deleting the words “and of its managers”.

**Amendment of heading of Division 4 in Part V**

25 **124.** Part V of the Companies Act is amended by inserting, immediately after the word “members” in the heading of Division 4, the words “kept by public company”.

**New section 189A**

**125.** The Companies Act is amended by inserting, immediately before section 190 in Division 4, the following section:

**“Application and interpretation of Division**

**189A.**—(1) This Division shall apply only in relation to a public company.

5 (2) In this Division, a reference to the “register” means the register of members required to be kept by a public company under section 190(1).”.

**Amendment of section 190**

**126.** Section 190 of the Companies Act is amended —

10 (a) by deleting the word “company” wherever it appears in subsection (1) and substituting in each case the words “public company”; and

15 (b) by deleting the word “company” where it appears for the first time in subsections (2), (2A), (3) and (5) and in the heading to subsection (5) and substituting in each case the words “public company”.

**Amendment of section 191**

**127.** Section 191 of the Companies Act is amended —

20 (a) by deleting the words “company” where it appears for the first time in subsection (1) and substituting the words “public company”; and

(b) by deleting the words “company” in subsection (2) and substituting the words “public company.”

**Amendment of section 192**

**128.** Section 192 of the Companies Act is amended —

25 (a) by deleting the word “company” in subsections (1) and (2) and substituting in each case the words “public company”; and

30 (b) by deleting the word “company” where it appears for the first time in subsection (3) and substituting the words “public company”.

### **Amendment of section 193**

**129.** Section 193 of the Companies Act is amended by deleting the word “company” and substituting the words “public company”.

### **Amendment of section 196**

5 **130.** Section 196 of the Companies Act is amended —

- (a) by deleting the word “company” in subsections (1), (2) and (4) and substituting in each case the words “public company”;
- 10 (b) by deleting the words “one month” in subsection (2) and substituting the words “14 days”;
- (c) by deleting the word “company” where it appears for the first time in subsection (6) and substituting the words “public company”; and
- 15 (d) by deleting the word “companies” in subsection (7) and substituting the words “public companies”.

### **New Division 4A of Part V**

**131.** The Companies Act is amended by inserting, immediately after section 196, the following Division:

20 *“Division 4A — Electronic register of members kept by Registrar*

#### **Electronic register of members**

**196A.—**(1) The Registrar shall, in respect of every private company, keep and maintain an electronic register of members of that company.

25 (2) The electronic register of members in respect of every private company shall be kept in such form as the Registrar may determine and shall contain the following information:

- (a) the names of the members;
- (b) the addresses of the members;
- 30 (c) in the case of a company having a share capital —

- (i) a statement of the shares held by each member of the amount paid or agreed to be considered as paid on the shares of each member; and
  - (ii) the date of every allotment of shares to members (including any deemed allotment as defined in section 63(7)) and the number of shares comprised in each allotment;
- (d) the date at which the name of each person was entered in the register as a member;
- (e) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and
- (f) the information referred to in section 196B(2), where applicable.
- (3) Where the company has converted any of its shares into stock and the company notifies the Registrar of this fact, the register shall show the amount of stock or number of stock units held by each member instead of the number of shares and the particulars relating to shares specified in subsection (2)(c).
- (4) It shall be presumed, unless evidence to the contrary is adduced, that the register of members is prima facie proof of any matters that are by this Act required or authorised to be contained in the register of members.
- Note 39: Source: Section 19(2) of the Electronic Transaction Act (Cap. 88)**
- (5) Notwithstanding section 12(2), a director, chief executive officer, secretary, auditor or member of any company may, without charge —
- (a) inspect the register of members kept by the Registrar [online] in respect of the company; or
  - (b) obtain a copy of or extract from the register of members kept by the Registrar [online] in respect of the company.

### **Duty to provide information and timelines**

5 **196B.**—(1) In the case of a private company which is converted from a public company, under this Act on or after the date of commencement of section [131] of the Companies (Amendment) Act 2013, the company shall furnish to the Registrar such information and in such manner as may be prescribed within 14 days after the date of the conversion.

10 (2) In the case of a private company which was incorporated, or which was converted from a public company, under this Act before the date of commencement of section [131] of the Companies (Amendment) Act 2013, the company shall furnish to the Registrar —

15 (a) such information and in such manner as may be prescribed not later than the earlier of the following dates —

(i) 6 months after the date of commencement of section [131] of the Companies (Amendment) Act 2013; or

20 (ii) the date on which the first return referred to in section 197 after the date of commencement of section [131] of the Companies (Amendment) Act 2013 is required to be lodged with the Registrar under that section; and

25 (b) particulars of any change to any information referred to in paragraph (a) of which notice had been previously furnished to the Registrar under this section within 14 days after the date of the change.

30 (3) Unless a company referred to in subsection (2) has provided the information required therein, the Registrar may for the purposes of the electronic register of members maintained by the Registrar adopt, as the information referred to in section 196A(2)(f), such information as appears in the register of members kept by the company under section 190 in force immediately before the date of commencement of section [131]  
35 of the Companies (Amendment) Act 2013.

(4) Particulars of any change in the information referred to in section 196A(2) shall be given to the Registrar where the company purchases one or more of its shares or stocks in circumstances in which section 76H applies unless the company cancels all of the shares or stocks immediately after the purchase in accordance with section 76K(1).

Note 40: Source: Section 190(2A) of the Companies Act (Cap. 50)

(5) The Registrar may extend the time for furnishing the information under subsection (2) if the Registrar considers it fair and reasonable to do so in the circumstances of the case.

### **Application of sections 194 and 195**

**196C.**—(1) Section 194 shall apply in respect of the electronic register of members of a private company required to be kept by the Registrar under section 196A as if a reference to a register under section 194 referred to the electronic register of members of the private company in question.

(2) Section 195 shall apply in respect of the electronic register of members of a private company required to be kept by the Registrar under section 196A but with the following modifications:

- (a) a reference to a register under section 194 refers to the electronic register of members of the private company in question;
- (b) the reference to any “branch” register were omitted; and
- (c) the company is required to notify the Registrar of any request made by a trustee under section 195(3) for the relevant shares to be marked in the electronic register of members as to identify the shares being held in respect of a trust within 14 days after the request.

### **Maintenance of old register of members**

**196D.**—(1) Subject to subsections (2) and (3), a private company incorporated, or which was converted to a private

company before the date of commencement of section [131] of the Companies (Amendment) Act 2013 shall —

- 5 (a) continue to keep any branch register of members under section 196, in force immediately before the date of commencement of section [131] of the Companies (Amendment) Act 2013; and
- (b) keep the information referred to in section 196A(2) of any person who has since the date of commencement of section [131] of the Companies (Amendment) Act 10 2013 ceased to be a member of the private company,

for a period of 3 years from the date of commencement of section [131] of the Companies (Amendment) Act 2013.

- (2) A private company is not required to update the branch register or the specified information required to be kept under 15 subsection (1) with any changes in the particulars therein that occurred on or after the date on which the company furnishes the information required to be furnished to the Registrar under section 196B(2)(a).

- (3) Until the expiry of the period for which any branch register and specified information is required to be kept under 20 subsection (1) but subject to subsection (2) —

- (a) sections 190, 191, 192(2) to (4), and 194 to 196, in force before the date of commencement of section [131] of the Companies (Amendment) Act 25 2013 shall, with the necessary modifications, continue to apply in relation to the branch register and specified information required to be kept under subsection (1); and
- (b) any non-compliance with the sections referred to in paragraph (a) may be dealt with and punished in 30 accordance with those provisions.”.

### **Amendment of section 197**

**132.** Section 197 of the Companies Act is amended by deleting subsections (1) to (5) and substituting the following subsections:



“(1) Every company shall lodge a return with the Registrar —

(a) in the case of a company having a share capital and keeping a branch register in any place outside Singapore, within 2 months after the annual general meeting; and

(b) in any other case, within one month after the annual general meeting.

(2) The return referred to in subsection (1) —

(a) shall be in such form;

(b) shall contain such particulars; and

(c) may be accompanied by such documents,

as may be prescribed.

(3) Without prejudice to the generality of subsection (2), the particulars to be contained in, and the documents that are to accompany, the return may differ according to the class or description of company.”.

#### **Amendment of Division heading**

**133.** The heading to Division 1 of Part VI of the Companies is deleted and the following heading is substituted therefor:

*“Financial statements”.*

#### **Amendment of section 199**

**134.** Section 199 of the Companies Act is amended —

(a) by deleting the word “managers” in subsection (1) and substituting the words “the chief executive officer”;

(b) by deleting the words “profit and loss accounts and balance-sheets” in subsections (1), (2A)(b) and (4) and substituting in each case the words “financial statements”; and

(c) by deleting the word “subsidiary” in subsection (2A) and substituting the words “subsidiary company”.

### Repeal of section 200

135. Section 200 of the Companies Act is repealed.

### Repeal and re-enactment of section 201

5 136. Section 201 of the Companies Act is repealed and the following section substituted therefor:

#### “Financial statements and consolidated financial statements

10 201.—(1) The directors of every company shall, at a date not later than 18 months after the incorporation of the company and subsequently at least once in every calendar year at intervals of not more than 15 months, lay before the company at its annual general meeting the financial statements for the period since the preceding financial statements (or in the case of the first financial statements, since the incorporation of the company) made up to a date —

- 15 (a) in the case of a public company that is listed, not more than 4 months before the date of the meeting;
- (b) in the case of any other company, not more than 6 months before the date of the meeting.

20 (2) Subject to subsections (12) to (15), the financial statements referred to in subsection (1) shall comply with the requirements of the Accounting Standards and give a true and fair view of the financial position and performance of the company.

Note 41: Source: Section 297 of the Australian Corporations Act 2001

25 (3) The Minister may, by order published in the *Gazette*, specify such other period in substitution of the period referred to in subsection (1)(a) or (b).

30 (4) Notwithstanding subsection (1), the Registrar on application by the company, if for any special reason he thinks fit to do so, may extend the periods of 18 months and 15 months referred to in that subsection and with respect to any year extend the period referred to in subsection (1)(a) or (b),

notwithstanding that that period is so extended beyond the calendar year.

(5) Subject to subsections (12) to (15), the directors of a company that is a parent company at the end of its financial year need not comply with subsection (1) but must cause to be made out and laid before the company at its annual general meeting —

(a) consolidated financial statements dealing with the financial position and performance of the consolidated entity for the period beginning from the date the preceding financial statements were made up to (or, in the case of first financial statements, since the incorporation of the company) and ending on a date —

(i) in a case where the parent company is a public company that is listed, not more than 4 months before the date of the meeting; or

(ii) in any other case, not more than 6 months before the date of the meeting; and

(b) a balance-sheet dealing with the state of affairs of the parent company at the end of its financial year,

each of which complies with the requirements of the Accounting Standards and gives a true and fair view of the matters referred to in paragraph (a) or (b), as the case may be, so far as it concerns members of the parent company.

(6) Subsections (3) and (4) shall, with the necessary modifications, apply to the periods referred to in subsection (5)(a)(i) and (ii) as they apply to the periods referred to in subsection (1)(a) and (b).

(7) The directors shall (before the financial statements referred to in subsection (1) and the balance-sheet referred to in subsection (5)(b) are made out) take reasonable steps —

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known

bad debts to be written off and adequate provision to be made for doubtful debts;

5 (b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the company and, if so, to cause —

(i) those assets to be written down to an amount which they might be expected so to realise; or

10 (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and

15 (c) to ascertain whether any non-current asset is shown in the books of the company at an amount which, having regard to its value to the company as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause  
20 to be included in the financial statements such information and explanations as will prevent the financial statements from being misleading by reason of the overstatement of the amount of that asset.

25 (8) The financial statements shall be duly audited before they are laid before the company at its annual general meeting as required by this section, and the auditor's report required by section 207 shall be attached to or endorsed upon those financial statements.

30 (9) The directors of the company shall take reasonable steps to ensure that the financial statements are audited as required by this Part not less than 14 days before the annual general meeting of the company and shall cause to be attached to those financial statements the auditor's report that is furnished to the directors under section 207(1A).

(10) For purposes of subsections (8) and (9), a reference to “financial statements”, in relation to a company, means —

- 5           (a) in the case where the company is not a parent company, the financial statements required to be laid before the company at its annual general meeting under subsection (1); or
- 10           (b) in the case where the company is a parent company, the consolidated financial statements of the consolidated entity and the balance-sheet of the parent company required to be laid before at its annual general meeting under subsection (5).

15           (11) Where at the end of a financial year a company is the subsidiary company of another corporation, the directors of the company shall state in, or in a note as a statement annexed to, the financial statements laid before the company at its annual general meeting the name of the corporation which is its ultimate parent corporation.

20           (12) The financial statements or consolidated financial statements of a company need not comply with any requirement of the Accounting Standards for the purposes of subsection (1) or (5), if the company has obtained the approval of the Registrar to such non-compliance.

25           (13) Where financial statements or consolidated financial statements prepared in accordance with any requirement of the Accounting Standards for the purposes of subsection (1) or (5), would not give a true and fair view of any matter required by this section to be dealt with in the financial statements or consolidated financial statements, the financial statements or consolidated financial statements need not comply with that requirement to the extent that this is necessary for them to give a true and fair view of the matter.

30           (14) In the event of any non-compliance with a requirement of the Accounting Standards referred to in subsection (13), there shall be included in the financial statements or consolidated financial statements, as the case may be —

35

- 5
- (a) a statement by the auditor of the company that he agrees that such non-compliance is necessary for the financial statements or consolidated financial statements, as the case may be, to give a true and fair view of the matter concerned;
  - (b) particulars of the departure, the reason therefor and its effect, if any; and
  - (c) such further information and explanations as will give a true and fair view of that matter.

10 (15) The Minister may, by order published in the *Gazette*, in respect of companies of a specified class or description, substitute other accounting standards for the Accounting Standards, and the provisions of this section and sections 207 and 209A shall apply accordingly in respect of such companies.

15 (16) The financial statements laid before a company in general meeting (including any consolidated financial statements annexed to the balance-sheet of a parent company) shall be accompanied, before the auditor reports on the financial statements under this Part, by a statement signed on  
20 behalf of the directors by 2 directors of the company containing the information set out in the Twelfth Schedule.

(17) Any document (other than any financial statements or a balance-sheet prepared in accordance with this Act) or advertisement published, issued or circulated by or on behalf of  
25 a company (other than a banking corporation) shall not contain any direct or indirect representation that the company has any reserve unless the representation is accompanied —

- 30
- (a) if the reserve is invested outside the business of the company — by a statement showing the manner in which and the security upon which it is invested; or
  - (b) if the reserve is being used in the business of the company — by a statement to the effect that the reserve is being so used.

35 (18) To the extent that any company registered under the Insurance Act (Cap. 142) is required to prepare financial

statements in the form prescribed by that Act, the company shall be deemed to have complied with the requirements of this section (other than subsections (1) to (7)) if its financial statements or (if it is a parent company) consolidated financial statements are prepared in accordance with that Act.

(19) The provisions of this Act relating to the form and content of the statement of directors and the annual financial statements shall apply to a banking corporation with such modifications and exceptions as are determined either generally or in any particular case by the Monetary Authority of Singapore established under section 3 of the Monetary Authority of Singapore Act (Cap. 186).

(20) In respect of a company that is registered as a charity or approved as an institution of a public character under the Charities Act (Cap. 37), the requirements of this section as to the form and content of a company's financial statements or consolidated financial statements being in compliance with the Accounting Standards shall apply subject to any modification prescribed under section 13(1)(f) of that Act in respect of such a company.

(21) For the purposes of subsections (1) and (5), a reference to the preceding financial statements includes the profit and loss account, balance-sheet and consolidated accounts required to be laid before the company at its annual general meeting under section 201 in force before the date of commencement of section [136] of the Companies (Amendment) Act 2013.

(22) For the purposes of subsections (1) and (5), a reference to the requirement to lay financial statements before a company includes the laying of the profit and loss account, balance-sheet and consolidated accounts prepared in accordance with section 201 in force immediately before the date of commencement of section [136] of the Companies (Amendment) Act 2013, where such profit and loss account, balance-sheet and consolidated accounts have been prepared in respect of a financial year which ended before the date of

commencement of section [136] of the Companies (Amendment) Act 2013.

5 (23) Subsection (16) shall not apply to any company in respect of any financial year which ended before the date of commencement of section [136] of the Companies (Amendment) Act 2013; and section 201(5) to (8), (11), (12) and (15) in force immediately before that date shall continue to apply to such company for that financial year.

10 (24) Without prejudice to the generality of section 197(2), a company referred to in subsection (23) shall, when lodging a return with the Registrar under section 197, attach a copy of the report prepared in accordance with section 201(5) of the Act in force immediately before the date of commencement of section [136] of the Companies (Amendment) Act 2013.”.

15 **New section 201A**

**137.** The Companies Act is amended by inserting, immediately after section 201, the following section:

**“Certain dormant companies exempted from duty to prepare financial statements**

20 **201A.**—(1) Subject to subsection (3), the directors of a dormant relevant company are exempt from the requirements of section 201 if the requirements set out in subsection (2) are satisfied.

(2) The requirements referred to in subsection (1) are —

- 25 (a) the relevant company has been dormant —
- (i) from the time of its formation; or
  - (ii) since the end of the previous financial year;
- (b) the board of directors of the relevant company have declared that the company has been dormant for the period set out in paragraph (a)(i) or (ii), as the case may be; and
- 30



(c) the declaration referred to in paragraph (b) has been lodged with the Registrar at the same time that the annual return is required to be lodged under section 197(1).

5 (3) A relevant person may by notice in writing require the directors of a dormant relevant company to comply with any or all of the requirements of section 201 in respect of a financial year but the notice in writing must be issued to the directors not less than 3 months before the end of the financial year.

10 (4) In subsection (3), “relevant person” means —

(a) the Registrar;

(b) one or more members holding not less than 5% of the total number of issued shares of the company (excluding treasury shares); or

15 (c) not less than 5% of the total number of members of the company (excluding the company itself if it is registered as a member).

(5) For the purposes of this section —

20 (a) the term “relevant company” means a company which is not a listed company or a subsidiary company of a listed company, and whose total assets during the financial year in question does not exceed —

(i) \$500,000 in value; or

25 (ii) such other amount as may be prescribed by the Minister; and

(b) section 205B(2) and (3) shall apply in determining whether a relevant company is dormant.

30 (6) This provision shall not apply to the directors of any company in respect of a financial year which ended before the date of commencement of section [137] of the Companies (Amendment) Act 2013 and the directors of such company shall prepare the accounts or consolidated accounts for that financial year and lay the accounts or consolidated accounts of

the company at its annual general meeting for that financial year, in accordance with Part VI of the Act in force immediately before that date.

- 5 (7) Without prejudice to the generality of section 197(2), a company referred to in subsection (6) shall, when lodging a return with the Registrar under section 197, attach a copy of the accounts or consolidated accounts so prepared.”.

### **Amendment of section 201B**

**138.** Section 201B of the Companies Act is amended —

- 10 (a) by deleting sub-paragraph (vi) of subsection (5)(a) and substituting the following sub-paragraph:

15 “(vi) the financial statements of the company and, if it is a parent company, the consolidated financial statements, submitted to it by the company or the parent company, and thereafter to submit them to the directors of the company or parent company; and”;

- 20 (b) by deleting the word “articles” in subsection (5)(b) and substituting the word “constitution”;

- (c) by deleting subsection (9) and substituting the following subsection:

25 “(9) Where the directors of a company or of a parent company are required to make a statement under section 201(16) and the company is a listed company, the directors shall describe in the statement the nature and extent of the functions performed by the audit committee pursuant to subsection (5).”; and

- (d) by deleting subsection (10).

### **Amendment of section 201C**

**139.** Section 201C of the Companies Act is amended —

- (a) by deleting the words “accounts or consolidated accounts” in paragraph (a) and substituting the words “financial statements or consolidated financial statements”;
- 5 (b) by deleting the word “accounts” in paragraph (b) and substituting the words “financial statements”; and
- (c) by deleting the word “accounts” in the section heading and substituting the words “financial statements”.

### **Amendment of section 202**

**140.** Section 202 of the Companies Act is amended —

- 10 (a) by deleting the words “accounts or consolidated accounts (other than a requirement of the Accounting Standards) or to the form and content of the report required by section 201(6) and (6A)” in subsections (1) and (2) and substituting in each case the words “financial statements or consolidated financial statements (other than a requirement of the Accounting Standards) or to the form and content of the statement required by section 201(16)”;
- 15 (b) by deleting the words “accounts or consolidated accounts or report” in subsections (1), (2) and (3) and substituting in each case the words “financial statements or consolidated financial statements or directors’ statement”; and
- 20 (c) by deleting the words “accounts and reports” in the section heading and substituting the words “financial statements and directors’ statement”.

### **25 New sections 202A and 202B**

**141.** The Companies Act is amended by inserting, immediately after section 202, the following sections:

**“Voluntary revision of defective financial statements, or consolidated financial statements or balance-sheet**

- 30 **202A.**—(1) Subject to subsection (3), this section applies at any time —

5 (a) in the case where the holding of annual general meetings is dispensed with under section 175A, after the financial statements or, in the case of a parent company, consolidated financial statements and balance-sheet are sent to the members of the company under section 203; or

10 (b) in any other case, after the financial statements or, in the case of a parent company, consolidated financial statements and balance-sheet of the company are laid before the company at an annual general meeting.

15 (2) Where this section applies, if it appears to the directors of the company that the financial statements or, in the case of a parent company, consolidated financial statements or balance-sheet of the company do not comply with the requirements of this Act, the directors may cause the financial statements, or consolidated financial statements or balance-sheet, as the case may be, to be revised and make necessary consequential revisions to the summary financial statement or directors' statement.

20 (3) The revision of the financial statements, or consolidated financial statements or balance-sheet, as the case may be, under subsection (2) shall be confined to —

25 (a) those aspects in which the financial statements, or consolidated financial statements or balance-sheet, as the case may be, did not comply with this Act (including compliance with the Accounting Standards); and

(b) the making of any necessary consequential revisions.

30 (4) Where the Registrar has given the directors of the company a notice under section 202B(1), the directors may not cause the financial statements, or consolidated financial statements or balance-sheet, as the case may be, to be revised unless the Registrar agrees with the directors on the manner in which to revise the financial statements, or consolidated

financial statements or balance-sheet, as the case may be, referred to in section 202B(2)(b).

(5) The Minister may make regulations in respect of the revision of financial statements, consolidated financial statements, balance-sheet, directors' statement or summary financial statement, including but not limited to the following:

(a) the manner of revision of financial statements, consolidated financial statements, balance-sheet, directors' statement or summary financial statement;

(b) the application of any provision of this Act to such financial statements, consolidated financial statements, balance-sheet, directors' statement or summary financial statement subject to such additions, exceptions and modifications as may be specified in the regulations;

(c) the taking of steps by the directors to bring any revision of the financial statements, consolidated financial statements, balance-sheet, directors' statement or summary financial statement to the notice of persons likely to rely on the previous financial statements, consolidated financial statements, balance-sheet, directors' statement or summary financial statement; and

(d) the requirement to lodge the revised financial statements, consolidated financial statements, balance-sheet, directors' statement or summary financial statement with the Registrar and the payment of any filing fee pursuant to such lodgement.

Note 42: Source: Section 454 of the UK Companies Act 2006

### **Registrar's application to court in respect of defective financial statements, or consolidated financial statements and balance-sheet**

**202B.**—(1) If it appears to the Registrar that there is, or may be, a question whether the financial statements or, in the case of a parent company, consolidated financial statements and

balance-sheet of a company comply with the requirements of this Act, the Registrar may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise, and specify the period within which the directors must respond.

Note 43: Source: Section 455(1) and (2) of the UK Companies Act 2006

(2) The directors of the company to whom notice under subsection (1) is given must at the end of the period referred in subsection (1), or such longer period as the Registrar may allow —

(a) give the Registrar an explanation of the financial statements, or consolidated financial statements and balance-sheet, as the case may be, if the directors do not propose to revise the financial statements, or consolidated financial statements or balance-sheet, as the case may be; or

(b) inform the Registrar how the directors propose to revise the financial statements, or consolidated financial statements or balance-sheet, as the case may be, to address the questions in respect of which the Registrar has given notice.

(3) If the Registrar is satisfied with the explanation of the financial statements, or consolidated financial statements and balance-sheet, as the case may be, referred to in subsection (2)(a), no further action need be taken by the directors in respect of the notice under subsection (1).

(4) If the Registrar agrees with the directors on the manner in which to revise the financial statements, or consolidated financial statements or balance-sheet, as the case may be, referred to in subsection (2)(b), the directors may cause the financial statements, or consolidated financial statements or balance-sheet, as the case may be, to be revised in the manner provided in section 202A.

(5) The Registrar may apply to court under subsection (6) if

- (a) the Registrar does not receive a response from the directors after giving the notice referred to in subsection (1);
- 5 (b) the Registrar is not satisfied with the explanation of the financial statements, or consolidated financial statements and balance-sheet, as the case may be, referred to in subsection (2)(a); or
- 10 (c) the Registrar does not agree with the directors on the manner in which the financial statements, or consolidated financial statements or balance-sheet, as the case may be, referred to in subsection (2)(b) are to be revised.
- (6) An application to court referred to in subsections (5) may be for —
- 15 (a) a declaration that the financial statements, or consolidated financial statements or balance-sheet, as the case may be, do not comply with the requirements of this Act; and
- 20 (b) an order requiring the directors of the company to cause the financial statements, or consolidated financial statements or balance-sheet, as the case may be, to be revised.
- (7) Where the Court orders the preparation of revised financial statements, or consolidated financial statements or balance-sheet, under subsection (6), it may give directions as to —
- 25 (a) the auditing of the financial statements, or consolidated financial statements or balance-sheet, as the case may be;
- 30 (b) the making of revisions to the financial statements, consolidated financial statements, balance-sheet, directors' statement or summary financial statement in such manner as the court considers necessary within a specified period;

- (c) where the Court has given directions under subparagraph (b) to make revisions to the summary financial statement, the review by the auditors of the revised summary financial statement;
- 5 (d) the making of necessary consequential revisions to any other document;
- (e) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous financial statements, consolidated financial statements, balance-sheet, directors' statement or summary financial statement; and
- 10 (f) such other matters as the Court thinks fit.

(8) If the Court finds that the financial statements, or consolidated financial statements or balance-sheet, as the case may be, did not comply with the requirements of this Act (including the Accounting Standards), it may order that all or part of —

- (a) the costs of or incidental to the application; and
- (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised financial statements, or consolidated financial statements or balance-sheet, as the case may be,
- 20

shall be borne by any or all the directors who were directors of the company as at the date of the directors' statement which accompanied the defective financial statements, or consolidated financial statements and balance-sheet, as the case may be.

(9) The provisions of this section apply equally to revised financial statements, or consolidated financial statements or balance-sheet, as the case may be, in which case they have effect as if the references to revised financial statements or, consolidated financial statements or balance-sheet, as the case may be, were references to further revised financial statements, or consolidated financial statements or balance-sheet, as the case may be.”.



Note 44: Source: Section 456 of the UK Companies Act 2006

### **Amendment of section 203**

**142.** Section 203 of the Companies Act is amended —

5 (a) by deleting subsections (1) and (2) and substituting the following subsections:

10 “(1) A copy of the financial statements or, in the case of a parent company, a copy of the consolidated financial statements and balance-sheet (including every document required by law to be attached thereto), which is duly audited and which (or which but for section 201C) is to be laid before the company in general meeting accompanied by a copy of the auditor’s report thereon shall be sent to all persons entitled to receive notice of general meetings of the company —

15 (a) unless subsection (1A) applies, not less than 14 days before the date of the meeting; or

(b) if a resolution under section 175A is in force, not less than 28 days before the end of the period allowed for the laying of those documents.

20 (1A) The financial statements, or consolidated financial statements and balance-sheet referred to in subsection (1) may be sent less than 14 days before the date of the meeting as required under subsection (1)(a) if all the persons entitled to receive notice of general meetings of the company so agree.

30 (2) Any member of a company (whether he is or is not entitled to have sent to him copies of the financial statements, or consolidated financial statements and balance-sheet) to whom copies have not been sent and any holder of a debenture shall, on a request being made by him to the company, be furnished by the company without charge with a copy of the last financial statements, or consolidated financial statements and balance-sheet (including every document required by this

Act to be attached thereto) together with a copy of the auditor's report thereon.”;

(b) by deleting the words “accounts or consolidated accounts” in subsection (3) and substituting the words “financial statements, or consolidated financial statements and balance-sheet”; and

(c) by deleting the word “balance-sheet” in the section heading and substituting the words “financial statements”.

### **Amendment of section 203A**

**143.** Section 203A of the Companies Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) Notwithstanding section 203 and anything in its constitution, a company may, in such cases as may be specified by regulations and provided all the conditions so specified are complied with, send a summary financial statement instead of copies of the documents referred to in section 203(1) to members of the company.”;

(b) by deleting the words “public company” in subsection (2) and substituting the word “company”;

(c) by deleting the words “annual accounts and the directors’ report” in subsections (5) and (6)(a) and substituting in each case the words “annual financial statements and directors’ statement”;

(d) by deleting paragraph (b) of subsection (6) and substituting the following paragraph:

“(b) contain a statement by the company’s auditors, if any, of their opinion as to whether the summary financial statement is consistent with the financial statements or consolidated financial statements, and the directors’ statement and complies with the requirements of this section

and any regulations made under subsection (9);”;  
and

(e) by deleting subsection (8).

#### **Amendment of section 204**

5 **144.** Section 204 of the Companies act is amended —

(a) by deleting the words “section 201(1A), (3), (3A) or (15)”  
in subsection (1) and substituting the words “section 201(2),  
(5) or (16)”;

10 (b) by deleting the words “section 201(1A), (3), (3A) and (15)”  
in subsection (1A)(a) and substituting the words the words  
“section 201(2), (5) or (16)”;

(c) by deleting subsection (2) and substituting the following  
subsection:

15 “(2) In any proceedings against a person for failure to  
take all reasonable steps to comply with, or to secure  
compliance with, the preceding provisions of this  
Division relating to the form and content of the financial  
statements of a company or consolidated financial  
20 statements of a parent company by reason of an omission  
from the financial statements or consolidated financial  
statements, it is a defence to prove that the omission was  
not intentional and that the information omitted was  
immaterial and did not affect the giving of a true and fair  
25 view of the matters required by section 201 to be dealt  
with in the financial statements or consolidated financial  
statements.”.

#### **Amendment of section 205**

**145.** Section 205 of the Companies Act is amended —

30 (a) by deleting the words “a person or persons” in  
subsections (1) and (2) and substituting in each case the  
words “an accounting entity or accounting entities”;

- (b) by deleting the words “a public accountant” in subsection (3) and substituting the words “an accounting entity”;
- 5 (c) by deleting the words “another person” in subsection 7(a) and (b) and substituting the words “another accounting entity”; and
- (d) by deleting the words “a person” in subsection (7)(b) and substituting the words “an accounting entity”;
- 10 (e) by deleting the words “the Registrar shall” in subsection (8) and substituting the words “the Registrar may”;
- (f) by deleting subsection (11) and substituting the following subsection:
- 15 “(11) Subject to subsection (7), an accounting entity shall not be capable of being appointed auditor of a company at an annual general meeting unless it held office as auditor of the company immediately before the meeting or notice of its nomination as auditor was given to the company by a member of the company not less than 21 days before the meeting.”;
- 20 (g) by deleting the words “a person” in subsections (12) and (13) and substituting the words “an accounting entity”;
- (h) by deleting the words “the person” in subsection (12) and (13) and substituting the words “the accounting entity”;
- (i) by deleting subsections (14) and (15); and
- 25 (j) by inserting, immediately after the word “Registrar” where it first appears in subsection (16)(b), the words “under this section or under section 205AF”.

#### **New sections 205AA to 205AF**

- 30 **146.** The Companies Act is amended by inserting, immediately after section 205, the following sections:

### **“Resignation of non-public interest company auditors**

5 **205AA.**—(1) An auditor of a non-public interest company (other than a company which is a subsidiary company of a public interest company) may resign before the end of the term of office for which he was appointed by giving the company a notice of resignation in writing.

(2) Where a notice of resignation is given under subsection (1), the auditor’s term of office expires —

10 (a) at the end of the day on which notice is given to the company; or

(b) if the notice specifies a time on a later day for the purpose, at that time.

15 (3) Within 14 days beginning on the date on which a company receives a notice of resignation under subsection (1), the company must lodge with the Registrar a notification of that fact in such form as the Registrar may require.

(4) In this section, sections 205AB and 205AC —

“non-public interest company” means a company other than a public interest company;

20 “public interest company” means a company which is listed or in the process of issuing its debt or equity instruments for trading on a securities exchange in Singapore, or such other company as the Minister may prescribe.

25 **Note 45: Source: Section 417 of the HK Companies Ordinance 2012 and section 205(10) of the Companies Act (Cap. 50)**

### **Resignation of auditor of public interest company or subsidiary company of public interest company**

30 **205AB.**—(1) An auditor of a public interest company, or a subsidiary company of a public interest company, may by giving the company a notice of resignation in writing, resign before the end of the term of office for which he was appointed, if —

5 (a) the auditor has applied for consent from the Registrar to the resignation and provided a written statement of his reasons for his resignation and, at or about the same time as the application, notified the company in writing of the application to the Registrar and provided the company with the written statement of his reasons for his resignation; and

(b) the consent of the Registrar has been given.

10 (2) The Registrar shall, as soon as practicable after receiving the application from an auditor under subsection (1), notify the auditor and the company whether it consents to the resignation of the auditor.

15 (3) A statement made by an auditor in an application to the Registrar under subsection (1) or in answer to an inquiry by the Registrar relating to the reasons for the application —

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(b) subject to subsection (4), may not be made the ground of a prosecution, action or suit against the auditor,

20 and a certificate by the Registrar that the statement was made in the application or in the answer to the inquiry by the Registrar is conclusive evidence that the statement was so made.

25 (4) Notwithstanding subsection (3), the statement referred to therein may be used in any disciplinary proceedings commenced under the Accountants Act (Cap. 2) against the auditor.

(5) The resignation of an auditor of a public interest company, or subsidiary company of a public interest company, takes effect —

30 (a) on the day (if any) specified for the purpose in the notice of resignation;

(b) on the day on which the Registrar notifies the auditor and the company of his consent to the resignation; or

(c) on the day (if any) fixed by the Registrar for the purpose,

whichever last occurs.

Note 46: Source: Section 329(5) to (8) of the Australian Corporations Act 2001

5 **Written statement to be disseminated unless application to court made**

10 **205AC.**—(1) Where an auditor of a public interest company, or a subsidiary company of a public interest company, gives the company a notice of resignation under section 205AB, the company must within 14 days of receiving the notice of resignation and the written statement of the auditor's reasons for his resignation (referred to in this section, sections 205AD and 205AE as the written statement) send a copy of the written statement to every member of the company.

15 (2) Copies of the written statement need not be sent out if, within 14 days beginning on the date on which the company received the written statement, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the auditor is using the provisions of this section to secure needless publicity for defamatory matter.

20 Note 47: Source: Section 518(9) of the UK Companies Act 2006

(3) In the case where an application is made under subsection (2) by —

25 (a) the company, the company must give notice of the application to the auditor of the company; or

(b) any other person, that person must give notice of the application to the company and the auditor of the company.

30 (4) If default is made in complying with subsection (1), the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Note 48: Source: Section 426(1) to (4) of the HK Companies Ordinance 2012

### **Court may order written statement not to be sent out**

**205AD.**—(1) This section applies if an application has been made under section 205AC(2) in relation to a written statement given by an auditor.

5 (2) If the Court is satisfied that the auditor has abused the use of the written statement or is using the written statement to secure needless publicity for any defamatory matter, the Court —

10 (a) must direct that copies of the written statement are not to be sent under section 205AC(1); and

(b) may order the auditor, though not a party to the application, to pay the applicant's costs on the application in whole or in part.

15 (3) If the Court gives directions under subsection (2)(a), the company must, within 14 days beginning on the date on which the directions are given send a notice setting out the effect of the directions to —

(a) every member of the company; and

20 (b) unless already named as a party to the proceedings, the auditor who gave the written statement.

(4) If the Court decides not to grant the application, the company must, within 14 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reasons —

25 (a) give notice of the decision to the auditor who has given the written statement; and

(b) send a copy of the written statement to every member of the company and to that auditor.

30 (5) If default is made in complying with subsection (3) or (4), the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Note 49: Source: Section 427(1) to (4) of the HK Companies Ordinance 2012



### **Privilege against defamation**

**205AE.** A person is not liable to any action for defamation at the suit of any person —

- 5           (a) in the absence of malice, in respect of the publication of the written statement to the member of the company pursuant to section 205AC(1); or
- (b) in respect of the publication of the written statement to the member of the company pursuant to section 205AD(4)(b).

10 **Note 50: Source: Section 410(1) of the HK Companies Ordinance 2012**

### **Appointment of new auditor in place of resigning auditor**

**205AF.**—(1) Subject to subsection (3), if —

- 15           (a) an auditor of a non-public interest company (other than a subsidiary company of a public interest company) gives notice of resignation under section 205AA(1); or
- (b) the Registrar approves the resignation of the auditor of a public interest company, or a subsidiary company of a public interest company, under section 205AB(2),

20 the directors of the company in question —

- (i) shall call a general meeting of the company as soon as is practicable, and in any case not more than 3 months from the date of the auditor's resignation, for the purpose of appointing an auditor in place of the auditor who desires to resign or has resigned; and
- 25           (ii) upon appointment of the new auditor, shall lodge with the Registrar a notification of such appointment within 14 days of the appointment.

30 (2) If the directors of a company fails to appoint an auditor in place of the auditor who desires to resign or has resigned, the Registrar may, on the application in writing of any member of the company, make the appointment.

(3) Subsections (1) and (2) shall not apply if the financial statements of the company are not required to be audited under this Act.

5 (4) An auditor appointed pursuant to subsection (1) or (2) shall, unless he is removed or resigns, hold office until the conclusion of the next annual general meeting of the company.

(5) If default is made in complying with subsection (1), the company and every director of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.”

Note 51: Source: Section 205(17) of the Companies Act (Cap. 50)

### **Amendment of section 205B**

**147.** Section 205B of the Companies Act is amended —

15 (a) by deleting the word “memorandum” wherever it appears in subsection (3)(a) and substituting in each case the word “constitution”;

(b) by deleting paragraph (f) of subsection (3) and substituting the following paragraphs:

20 “(f) the payment of any fee or charge, (including any fee, penalty or interest for late payment) payable under any written law;

(fa) the payment of —

25 (i) any fine or default penalty paid to the Registrar under section 409(4) or any other written law; or

(ii) any sum paid by way of composition for any offence under any other written law;

30 (fb) the payment or receipt by the company of such nominal sum not exceeding such amount as may be prescribed;” and

(c) by deleting the words “profit and loss accounts and balance-sheet, or consolidated accounts and balance-sheet” in

subsection (4)(a) and substituting the words “financial statements or consolidated financial statements”.

### **Repeal and re-enactment of section 205C**

5 **148.** Section 205C of the Companies Act is repealed and the following section substituted therefor:

#### **“Small company exempt from audit requirements**

**205C.**—(1) Subject to subsections (3), (4) and (6), a company that is a small company in respect of a financial year shall be exempt from audit requirements for that financial year.

10 (2) Section 205B(4), (6) and (7) shall apply, with the necessary modifications, to a small company so exempt.

(3) Subsection (1) shall not apply to a parent company unless the parent company —

(a) is a small company; and

15 (b) is a member of a small group.

(4) Subsection (1) does not apply to a subsidiary company unless the subsidiary company —

(a) is a small company; and

(b) is a member of a small group.

20 (5) For the purposes of this section —

(a) a small company is one which satisfies the conditions in paragraph 1, 2 or 3 of the Thirteenth Schedule;

(b) a small group is a group of entities which satisfies the conditions in paragraph 6, 7 or 8 of the Thirteenth Schedule.

25 (6) This section shall not apply to a company with respect to its financial statements for a financial year commencing before the date of commencement of section [148] of the Companies (Amendment) Act 2013 and such a company shall prepare its accounts or consolidated accounts and its directors shall lay them at its annual general meeting in accordance with Part VI

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of the Act in force immediately before the date of commencement of section [148] of the Companies (Amendment) Act 2013.

5 (7) Without prejudice to the generality of section 197(2), a company referred to in subsection (6) shall, when lodging a return with the Registrar under section 197 attach a copy of the accounts or consolidated accounts so prepared.”.

#### **Amendment of section 205D**

10 **149.** Section 205D of the Companies Act is amended by deleting the word “accounts” in paragraphs (a) and (b) and in the section heading and substituting in each case the words “financial statements”.

#### **Amendment of section 206**

15 **150.** Section 206 of the Companies Act is amended by deleting the word “subsidiary” in subsection (1) and substituting the words “subsidiary company”.

#### **Amendment of section 207**

**151.** Section 207 of the Companies Act is amended —

20 (a) by deleting subsection (1) and substituting the following subsection:

“(1) An auditor of a company shall report to the members —

25 (a) on the financial statements required to be laid before the company in general meeting and on the company’s accounting and other records relating to those financial statements; and

30 (b) where the company is a parent company for which consolidated financial statements are prepared, on the consolidated financial statements.”;

(b) by deleting the word “accounts” wherever it appears in subsection (1A) and substituting in each case the words “financial statements”;

5 (c) by deleting paragraph (a) of subsection (2) and substituting the following paragraph:

“(a) whether the financial statements and, if the company is a parent company for which consolidated financial statements are prepared, the consolidated financial statements are in his opinion —

10 (i) in compliance with the requirements of the Accounting Standards; and

(ii) give a true and fair view of —

15 (A) the financial position and performance of the company, and

(B) if consolidated financial statements are required, the financial position and performance of the consolidated entity;”;

20 (d) by deleting paragraph (b) of subsection (2) and substituting the following paragraph:

“(b) whether the accounting and other records required by this Act to be kept by the company and, if it is a parent company, by the subsidiary companies other than those of which he has not acted as auditor have been, in his opinion, properly kept in accordance with this Act;”;

25 (e) by deleting the words “accounts or consolidated accounts” wherever they appear in subsection (2)(aa) and (d) and substituting in each case the words “financial statements or consolidated financial statements”;

30 (f) by inserting, immediately after the words “, excluding registers,” in subsection (3)(b), the words “required to be kept under section 199(1)”;

- (g) by deleting paragraph (d) of subsection (3);
- (h) by deleting the words “consolidated accounts” wherever they appear in subsection (3)(e) and substituting in each case the words “consolidated financial statements”;
- 5 (i) by deleting the word “subsidiaries (which are not incorporated in Singapore) of a Singapore holding company” in subsection (4) and substituting the words “subsidiary companies (which are not incorporated in Singapore) of a Singapore parent company”;
- 10 (j) by deleting subsection (6) and substituting the following subsection:
- “(6) An auditor of a parent company for which consolidated financial statements are required has a right of access at all times to the accounting and other records, including registers, of any subsidiary company, and is entitled to require from any officer or auditor of any subsidiary company, at the expense of the parent company, such information and explanations in relation to the affairs of the subsidiary company as he requires for the purpose of reporting on the consolidated financial statements.”;
- 15
- (k) by deleting the word “accounts” wherever it appears in subsection (7) and substituting in each case the words “financial statements”;
- 20
- (l) by deleting paragraph (b) of subsection (9) and substituting the following paragraph:
- “(b) the circumstances are such that in his opinion the matter has not been or will not be adequately dealt with by comment in his report on the financial statements or consolidated financial statements or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary company, of the directors of the parent company.”;
- 25
- 30

- (m) by deleting the word “subsidiary” in subsection (9A) and substituting the words “subsidiary company”;
- (n) by deleting “\$20,000” in subsection (9D)(b) and substituting “\$100,000”;
- 5 (o) by deleting the words “holding company” in subsection (10) and substituting the words “parent company”; and
- (p) by deleting the word “accounts” in the section heading and substituting in the words “financial statements”.

**New section 208A**

- 10 **152.** The Companies Act is amended by inserting, immediately after section 208, the following section:

**“Provisions indemnifying auditors**

15 **208A.**—(1) Any provision, whether in the constitution or in any contract with a company or otherwise, for exempting any auditor of the company from, or indemnifying him or it against, any liability which by law would otherwise attach to him or it in respect of any negligence, default, breach of duty or breach of trust of which he or it may be guilty in relation to the company shall be void.

20 (2) This section shall not prevent a company from indemnifying such auditor against any liability incurred or that will be incurred by him or it —

- 25 (a) in defending any proceedings (whether civil or criminal) in which judgment is given in his or its favour or in which he or it is acquitted; or
- (b) in connection with any application under section 76A(13) or 391 or any other provision of this Act, in which relief is granted to him or it by the court.”.

### **Amendment of section 209**

**153.** Section 209(1) of the Companies Act is amended by deleting the words “balance-sheet or profit and loss account” and substituting the words “financial statements”.

### **5 Repeal and re-enactment of section 209A**

**154.** Section 209A of the Companies Act is repealed and the following section substituted therefor:

#### **“Interpretation**

**209A.** In this Part, unless the contrary intention appears —

10 “balance-sheet”, in relation to a company, means the balance-sheet, by whatever name called, prepared in accordance with the Accounting Standards;

15 “consolidated entity” means a company together with all the entities it is required by the Accounting Standards to include in consolidated financial statements;

“consolidated financial statements” means the financial statements in relation to a consolidated entity that are required to be prepared by the Accounting Standards;

20 “directors’ statement” means the statement of the directors referred to in section 201(16);

“entity” means an entity that is referred to in the Accounting Standards in relation to the preparation of financial statements and the requirements therefor;

25 “financial statements” means the financial statements of a company required to be prepared by the Accounting Standards;”; and

**Note 52: Source: Section 295 of the Australian Corporations Act 2001**

30 “parent company” means a company that is required under the Accounting Standards to prepare financial statements in relation to a consolidated entity;

“subsidiary company” means a company that is a subsidiary as defined in the Accounting Standards;



“ultimate parent corporation” means a corporation which is a parent but is not a subsidiary, within the meaning of the Accounting Standards.”.

**Amendment of section 210**

5 **155.** Section 210 of the Companies Act is amended —

(a) by deleting subsections (1), (2) and (3) and substituting the following subsections:

“(1) Where a compromise or arrangement is proposed between—

- 10 (a) a company and its creditors or any class of them;  
 (b) a company and its members or any class of them;  
 or  
 (c) a company and holders of units of shares of the company or any class of them,

15 the Court may, on the application in a summary way of any person referred to in subsection (2), order a meeting of the creditors, the members of the company, the holders of units of shares of the company, or a class of such persons, to be summoned in such manner as the  
 20 Court directs.

(2) The persons referred to in subsection (1) are —

- (a) in the case of a company being wound up, the liquidator; and  
 (b) in any other case —  
 25 (i) the company; or  
 (ii) any creditor, member or holder of units of shares of the company.

(3) A meeting held pursuant to an order made under subsection (1) may be adjourned from time to time if the  
 30 resolution for the adjournment is approved by a majority in number representing three-fourths in value of —

- (a) the creditors or class of creditors;
- (b) the members or class of members; or
- (c) the holders of units of shares or class of holders of units of shares,

5 present and voting either in person or by proxy at the meeting.

(3AA) If the conditions referred to in subsection (3AB) are satisfied, a compromise or arrangement shall be binding —

- 10 (a) in the case of a company in the course of being wound up, on the liquidator and contributories of the company; or
- (b) in the case of any other company, on the company and on all —
  - 15 (i) the creditors or class of creditors;
  - (ii) the members or class of members; or
  - (iii) the holders of units of shares or class of holders of units of shares,

as the case may be.

20 (3AB) The conditions referred to in subsection (3AA) are as follows:

- (a) unless the Court orders otherwise, a majority in number of —
  - 25 (i) the creditors or class of creditors,
  - (ii) the members or class of members; or
  - (iii) the holders of units of shares or class of holders of units of shares,

30 present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to the compromise or arrangement;

(b) the majority in number referred to, or such number as the Court may order under, paragraph (a) represents three-fourths in value of —

(i) the creditors or class of creditors,

5 (ii) the members or class of members; or

(iii) the holders of units of shares or class of holders of units of shares,

as the case may be; and

10 (c) the compromise or arrangement is approved by order of the Court.”.

Note 53: Source: Section 411(4)(ii)(A) of the Australian Corporations Act 2001

(b) by deleting the words “subsection (3)” in subsection (5) and substituting the words “subsection (3AB)(c).”;

15 (c) by deleting subsection (6) and substituting the following subsection:

“(6) Subject to subsection (7), a copy of every order made under subsection (3AB)(c) shall be annexed to every copy of the constitution of the company issued after the order has been made.”;

20 (d) by deleting the words “shareholders and creditors of the company” in subsection (8)(b) and substituting the words “shareholders, creditors and holders of units of shares of the company”;

25 (e) by deleting the words “member or creditor” in subsection (10) and substituting the words “member, creditor or holder of units of shares”;

(f) by inserting, immediately after subsection (10), the following subsections:

30 “(10A) Where the terms of any compromise or arrangement approved under this section provides for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or

other consideration may, after the expiration of 2 years and shall before the expiration of 10 years from the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

(10B) The Official Receiver shall —

(a) deal with any moneys received under subsection (10A) as if the moneys were paid to him under section 322; and

(b) sell or dispose of any other consideration received under subsection (10A) in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him under section 322.”;

(g) by deleting the words “or society” in the definition of “company” in subsection (11);

(h) by deleting the full-stop at the end of the definition of “company” in subsection (11) and substituting a semi-colon, and by inserting immediately thereafter the following definitions:

““holder of units of shares” does not include a person who holds units of shares only beneficially;

“units of shares” means securities of a company that are convertible into or entitle the holder to subscribe for, one share in the company.”; and

(i) by deleting the section heading and substituting the following section heading:

**“Power to compromise with creditors, members and holders of units of shares”.**

### **Amendment of section 211**

**156.** Section 211 of the Companies Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) Where a meeting is summoned under section 210, there shall —

5           (a) with every notice summoning the meeting which is sent to a creditor, member or holder of units of shares of the company, be sent also a statement explaining the effect of the compromise or arrangement and in particular stating any  
10           material interests of the directors, whether as directors or as members, creditors or holders of units of shares of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the  
15           effect on the like interests of other persons; and

             (b) in every notice summoning the meeting which is given by advertisement, be included either such a statement or a notification of the place at which and the manner in which creditors, members or  
20           holders of units of shares of the company entitled to attend the meeting may obtain copies of such a statement.”;

(b) by deleting the words “creditor or member” in subsection (3) and substituting the words “creditor, member or holder of units of shares of the company”; and  
25

(c) by deleting the section heading and substituting the following section heading:

**“Information as to compromise with creditors, members and holders of units of shares of company”.**

30   **Amendment of section 212**

**157.** Section 212 of the Companies Act is amended by deleting subsection (6) and substituting the following subsection:

“(6) In this section, “company” means any corporation liable to be wound up under this Act”.

### **Amendment of section 215**

**158.** Section 215 of the Companies Act is amended —

- 5 (a) by deleting the words “another company or corporation (referred to in this section as the transferee company)” in subsection (1) and substituting the words “a person (referred to in this section as the transferee)”;
- 10 (b) by deleting the words “transferee company” wherever they appear in subsections (1) to (4) and (8) to (11) and substituting in each case the word “transferee”;
- (c) by inserting, immediately after subsection (1), the following subsections:

15 “(1A) Where alternative terms were offered to the approving shareholders, the dissenting shareholder is entitled to elect not later than the end of one month after the date on which the notice is given under subsection (1) or 14 days after a statement is supplied under subsection (2), whichever is the later, which of those

20 terms the dissenting shareholder prefers.

(1B) In offering alternative terms to the shareholders, the transferee shall state which of those terms is to apply to the acquisition of the shares of a dissenting shareholder where the dissenting shareholder fails to

25 make the election within the time allowed under subsection (1A).

*Note 54: Source: Section 414(4) of the Australian Corporations Act 2001*

(1C) For the purpose of determining whether the scheme or contract has been approved by the holders of

30 the requisite number of shares, or shares of any particular class, under section 215(1), shares that are issued after the date of the offer shall not be included.”;

*Note 55: Source: Section 979(5) of the UK Companies Act 2006*

- (d) by deleting the words “another company or its nominee” in subsection (3) and substituting the words “a transferee or its nominee”;
- 5 (e) by deleting the words “(excluding treasury shares)” in subsection (3) and substituting the words “(including treasury shares)”;
- (f) by deleting the words “that company is entitled to acquire” in subsection (4) and substitute the words “that person is entitled to acquire”;
- 10 (g) by deleting subsections (6) and (7) and substituting the following subsections:
- “(6) Where any money or other consideration is held in trust by a company for any person under this section, the company holding the money or other consideration may, after the expiration of 2 years and shall before the expiration of 10 years from the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.
- 15
- (7) The Official Receiver shall —
- (a) deal with any moneys received under subsection (6) as if the moneys were paid to him under section 322; and
- (b) sell or dispose of any other consideration received under subsection (6) in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him under section 322.”;
- 20
- 25
- (h) by inserting, immediately after subsection (8), the following subsections:
- 30
- “(8A) In this section —
- (a) “shares” shall include units of shares;

(b) “shareholders” includes holders of units of shares but does not include a person who holds units of shares only beneficially;

5 (c) “register of members” includes any records kept by the company of the names and addresses of holders of units of shares;

(d) “units of shares” means securities of a company that are convertible into or entitle the holder to subscribe for one share in the company.

10 (8B) Subsection (8A)(a) shall not be read as requiring any securities to be treated —

(a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or

15 (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.”.

### **New sections 215AA and 215AB**

20 **159.** The Companies Act is amended by inserting, immediately after section 215, the following sections:

#### **“Joint offers**

25 **215AA.**—(1) In the case of a scheme involving an offer to acquire all of the shares in a company, or all of the shares in any particular class in a company, by 2 or more persons jointly (referred to in this section as the joint transferees), section 215 shall be read subject to this section.

(2) The conditions for the exercise of the rights conferred by section 215(1) are satisfied —

30 (a) in the case of acquisitions of shares by virtue of acceptances of the offer, by the joint transferees acquiring or unconditionally contracting to acquire the necessary shares jointly; or



(b) in other cases, by the joint transferees acquiring or unconditionally contracting to acquire the necessary shares either jointly or separately.

(3) The conditions for the exercise of the rights conferred by section 215(3) are satisfied —

(a) in the case of acquisitions of shares by virtue of acceptances of the offer, by the joint transferees acquiring or unconditionally contracting to acquire the necessary shares jointly; or

(b) in other cases, by the joint transferees acquiring or contracting (whether unconditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.

(4) Subject to this section, the rights and obligations of the transferee under section 215 are respectively joint rights and joint and several obligations of the joint transferees.

(5) Subject to subsection (6), any notice or other document given or sent by or to the joint transferees under section 215 is complied with if the notice or document is given or sent by or to any of them.

(6) The notice required to be given by the joint transferees under section 215(1) and (3) shall be made by all of the joint transferees and, where one or more of them is a company, signed by a director of that company.

Note 56: Source: Section 987 of the UK Companies Ordinance 2006

### **Effect of impossibility etc of communicating or accepting offer made under scheme or contract**

**215AB.**—(1) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being an offer made under a scheme or contract for the purposes of section 215 if —

(a) those shareholders have no registered address in Singapore,

- (b) the offer was not communicated to those shareholders —
- (i) in order not to contravene the law of a country or territory outside Singapore; or
  - 5 (ii) because communication to those shareholders would in the circumstances be unduly onerous; and
- (c) either—
- (i) the offer is published in the *Gazette*, or
  - 10 (ii) the offer can be inspected, or a copy of it obtained, at a place in Singapore or on a website, and a notice is published in the *Gazette* specifying the address of that place or website.
- (2) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside Singapore, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being made under a scheme or contract for the purposes of section 215.
- 15 (3) It is not to be inferred —
- (a) that an offer which is not communicated to every holder of shares in the company cannot be an offer made under a scheme or contract for the purposes of section 215 unless the requirements of paragraphs (a), (b) and (c) of subsection (1) are met, or
  - 25 (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be an offer made under a scheme or contract for those purposes unless the reason for the impossibility or difficulty is the reason mentioned in subsection (2).”.
  - 30

Note 57: Source: Section 978 of the UK Companies Act 2006

### **Amendment of section 215B**

**160.** Section 215B(1) of the Companies Act is amended —

(a) by deleting paragraph (c) and substituting the following paragraphs:

“(c) the full name of every director of the amalgamated company;

5 (ca) the residential address or alternate address, as the case may be, of every director of the amalgamated company which is entered in the register of directors kept by the Registrar under section 173(1)(a) in respect of the company;”;  
10 and

(b) by deleting the word “memorandum” in paragraph (e) and substituting the word “constitution”.

#### **Amendment of section 215C**

15 **161.** Section 215C(1) of the Companies Act is amended by deleting the word “memorandum” in paragraphs (a) and (b) and substituting in each case the word “constitution”.

#### **Amendment of section 215D**

**162.** Section 215D of the Companies Act is amended —

20 (a) by inserting, immediately after the words “being the amalgamated holding company” in subsection (1), the words “or the amalgamated subsidiary company”;

(b) by deleting paragraphs (a) to (d) of subsection (1) and substituting the following paragraphs:

25 “(a) the shares of all but one of the amalgamating companies will be cancelled without any payment or any other consideration;

(b) the constitution of the amalgamated company will be the same as the constitution of the amalgamating company whose shares are not cancelled;

30

(c) the directors of the amalgamating holding company and every amalgamating subsidiary

company are satisfied that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to become effective; and

- 5                   (d) the person or persons named as director or directors in the resolution of each amalgamating company will be the director or directors of the amalgamated company.”;
- 10                   (c) by deleting the word “memorandum” wherever it appears in subsection (2)(b) and substituting in each case the word “constitution”;
- (d) by deleting the words “during the period of 12 months immediately after” in subsection (2)(c) and substituting the words “as at”;
- 15                   (e) by deleting the words “the resolution will be the director or directors, respectively,” in subsection (2)(d) and substituting the words “each resolution will be the director or directors”; and
- 20                   (f) by deleting the words “the date of the general meeting” in subsection (5) and substituting the words “the commencement of the general meeting”.

### **Amendment of section 215E**

**163.** Section 215E of the Companies Act is amended —

- 25                   (a) by inserting, immediately after paragraph (a) of subsection (1), the following paragraph:
- “(aa) any solvency statement made under section 215C(2) or 215D(5), as the case may be;”;
- 30                   (b) by deleting the words “215C or 215D” in subsection (1)(b) and substituting the words “215C(3) and 215D(6)”;
- (c) by deleting the word “memorandum” in subsection (1)(c) and substituting the word “constitution”; and

(d) by deleting the word “articles” in subsection (2)(b) and substituting the word “constitution”.

#### **Amendment of section 215I**

5 **164.** Section 215I(2) of the Companies Act is amended by deleting the words “statutory declaration” in paragraphs (a) and (b) and substituting in each case the words “declaration in writing”.

#### **Amendment of section 215J**

**165.** Section 215J(1) of the Companies Act is amended —

10 (a) by deleting the words “statutory declaration” and substituting the words “declaration in writing”; and

(b) by deleting the words “during the period of 12 months immediately after” in paragraph (a) and substituting the words “as at”.

#### **New section 215K**

15 **166.** The Companies Act is amended by inserting, immediately after section 215J, the following section:

#### **“Transfer of money or other consideration paid under terms of amalgamation to Official Receiver**

20 **215K.**—(1) Where the terms of any amalgamation proposal that is approved under section 215C, or is deemed to be approved under section 215D, provides for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or other consideration may, after the  
25 expiration of 2 years and shall before the expiration of 10 years from the date on which, the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

(2) The Official Receiver shall —

30 (a) deal with any moneys received under subsection (1) as if the moneys were paid to him under section 322; and

- (b) sell or dispose of any other consideration received under subsection (1) in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him under section 322.”

5

Note 58: Source: Section 215(6) and (7) of the Companies Act (Cap 50)

### **Amendment of section 216**

- 167.** Section 216(4) of the Companies Act is amended by deleting the words “memorandum or articles” wherever they appear and substituting in each case the word “constitution”.

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### **Amendment of section 216A**

**168.** Section 216A of the Companies Act is amended —

- (a) by deleting the definition of “company” in subsection (1);
- (b) by inserting, immediately after the word “action” wherever it appears in subsections (2) and (3), the words “or arbitration”;
- (c) by inserting, immediately after the word “action” in subsection (5)(a) and (c), the words “or arbitration”; and
- (d) by inserting, immediately after the word “action” in subsection (5)(b), the words “or arbitration by the person so authorised”.

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### **Amendment of section 227G**

**169.** Section 227G of the Companies Act is amended —

- (a) by deleting the words “memorandum or articles of association” in subsection (2) and substituting the word “constitution”; and
- (b) by deleting the words “memorandum or articles” wherever they appear in subsections (8) and (9) and substituting in each case the word “constitution.”

25

### **Amendment of section 227X**

**170.** Section 227X of the Companies Act is amended by deleting the words “subsections (1) and (3)” in paragraph (a) and substituting the words “subsections (1), (2), (3AA) and (3AB)”.

### **5 Amendment of section 250**

**171.** Section 250(3) of the Companies Act is amended by deleting the word “articles” in paragraph (c) and substituting the word “constitution”.

### **Amendment of section 254**

**10 172.** Section 254 of the Companies Act is amended —

(a) by deleting paragraph (h) of subsection (1) and substituting the following paragraph:

15 “(h) when the period, if any, fixed for the duration of the company by the constitution expires or the event, if any, happens on the occurrence of which the constitution provides that the company is to be dissolved;”;

(b) by inserting, immediately after subsection (2), the following subsections:

20 “(2A) On an application for winding up on the ground specified in subsection (1)(f) or (i), instead of making an order for the winding up, the Court may if it is in the opinion that it is just and equitable to do so, make an order for the interests in shares of one or more members to be purchased by the company or one or more other members on terms to the satisfaction of the Court.

25 (2B) An order of the Court made under subsection (2A) for the purchase by the company of the interest in shares in the company may provide for a reduction accordingly of the company’s capital.”; and

**30 Note 59: Source: Section 216(2)(e) of the Companies Act (Cap. 50)**

(c) by deleting the word “manager” in subsection (4)(a) and substituting the words “chief executive officer”.

**Amendment of section 290**

173. Section 290(1) of the Companies Act is amended by deleting the words “memorandum or articles expires or the event, if any, happens, on the occurrence of which the memorandum or articles provide” in paragraph (a) and substituting the words “constitution expires or the event, if any, happens, on the occurrence of which the constitution provides”.

**Amendment of section 292**

174. Section 292(1) of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

**Amendment of section 294**

175. Section 294(5) of the Companies Act is amended by deleting the word “articles” and substituting the word “constitution”.

**Amendment of section 300**

176. Section 300 of the Companies Act is amended by deleting the words “the articles otherwise provide” and substituting the words “the constitution otherwise provides”.

**Amendment of section 325**

177. Section 325(3) is amended by deleting the word “articles” and substituting the word “constitution”.

**Amendment of section 344**

178. Section 344 of the Companies Act is amended —

- (a) by deleting the words “by post” in subsection (1) and substituting the words “, its directors, secretaries and members by registered post,”;
- (b) by deleting the words “3 months” in subsection (2) and substituting the words “2 months”;
- (c) by deleting the words “15 years” in subsection (5) and substituting the words “6 years”;



(d) by deleting the word “memorandum” wherever it appears in subsection (6) and substituting in each case the word “constitution”; and

(e) by inserting, immediately after subsection (6), the following subsection:

“(7) The Registrar shall ensure that —

(a) the letter to be sent to the company, its directors, secretaries and members referred to in subsection (1) is sent to —

(i) the Inland Revenue Authority of Singapore established by the Inland Revenue Authority of Singapore Act (Cap. 138A); and

(ii) the Central Provident Fund Board established by the Central Provident Fund Act (Cap. 36); and

(b) the notice to be published in the *Gazette* referred to in subsections (2), (3) and (4) is also published on the Authority’s website.”.

**New sections 344A to 344F**

**179.** The Companies Act is amended by inserting, immediately after section 344, the following sections:

**“Striking off application by company**

**344A.**—(1) Subject to such conditions as may be prescribed, the Registrar may, on the application by a company, strike the company’s name off the register.

(2) An application under subsection (1) —

(a) shall be made on the company’s behalf by its directors or by a majority of them; and

(b) must contain the prescribed information and be accompanied by the prescribed fee.

(3) The Registrar may not strike a company's name off the register under this section until after the expiration of 2 months from the publication by the Registrar in the *Gazette* of a notice —

- 5           (a) stating that the Registrar intends to exercise the power under this section in relation to the company; and
- (b) inviting any person to show cause why that should not be done within such period as may be prescribed.

10           (4) The Registrar shall publish notice in the *Gazette* of the company's name having been struck off.

             (5) On the publication of the notice in the *Gazette*, the company is dissolved.

             (6) Notwithstanding the dissolution of the company under subsection (5) —

- 15           (a) the liability, if any, of every officer and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this section shall affect the power of the Court to wind up a company the name of which has
- 20           been struck off the register.

Note 60: Source: section 344(4) of the Companies Act (Cap. 50) and section 1003(6) of the UK Companies Act 2006

             (7) The Registrar shall ensure that a notice to be published in the *Gazette* referred to in subsections (3) and (4) is also —

- 25           (a) published on the Authority' website; and
- (b) sent to —
- (i) the Inland Revenue Authority of Singapore established by the Inland Revenue Authority of Singapore Act (Cap. 138A); and
- 30           (ii) the Central Provident Fund Board established by the Central Provident Fund Act (Cap. 36).

(8) The Registrar may, for the purposes of this section, send notices to the company by ordinary post or in such other prescribed manner.

### **Withdrawal of application**

5       **344B.**—(1) An application to strike a company’s name off the register under section 344A may be withdrawn by the applicant or applicants —

(a) at any time before the name of the company is struck off the register; and

10       (b) by written notice to the Registrar.

(2) Upon receipt of the notice referred to in subsection (1)(b), the Registrar shall —

(a) send to the company by ordinary post a notice that the application to strike the company’s name off the register has been withdrawn; and

15       (b) publish a notice in the *Gazette* and on the Authority’s website that the application to strike the company’s name off the register has been withdrawn.

### **Objections to striking off**

20       **344C.**—(1) Where a notice is given or published by the Registrar under section 344(2) or 344A(3) of the Registrar’s intention to strike the company’s name off the register, any person may deliver, not later than the date specified in the notice, an objection to the striking off of the name of the company from the register on the ground that there is reasonable cause as to why the company should not be struck off, including that the company does not satisfy any of the prescribed grounds for striking off referred to in section 344(1A) or 344A(1).

25       (2) An objection to the striking off of the name of the company off the register referred to in subsection (1) shall —

30       (a) be given to the Registrar by notice in the prescribed form and manner; and

(b) be accompanied by the prescribed fee.

(3) Upon receipt of a notice of objection within the time referred to in subsection (1) and in the prescribed form and manner, the Registrar —

- 5 (a) shall, where applicable, give the applicant or applicants for striking the name of the company off the register notice of the objection; and
- (b) shall, in deciding whether to allow the objection, take into account such considerations as may be prescribed.

10 **Note 61: Source: Section 321 of the NZ Companies Act 1993 and section 322(2) of the NZ Companies Act 1993**

### **Application for administrative restoration to register**

15 **344D.**—(1) Subject to such conditions as may be prescribed, an application may be made to the Registrar to restore to the register a company whose name has been struck off the register by the Register under section 344, if no application has been or is being made to the Court to restore the name of the company to the register under section 344(5).

20 (2) An application under this section may be made whether or not the company has in consequence been dissolved.

(3) An application under this section may only be made by a former director or former member of the company.

25 (4) An application under this section may not be made after the end of the period of 6 years from the date of the dissolution of the company.

(5) For the purpose of subsection (4), an application is made when it is received by the registrar.

**Note 62: Section 1024 of the UK Companies Act 2006**

### **Registrar's decision on application for administrative restoration**

30 **344E.**—(1) The Registrar shall give notice to the applicant of the decision on an application under section 344D.

(2) If the Registrar's decision is that the company should be restored to the register —

(a) the restoration takes effect as from the date that notice is sent; and

5 (b) the Registrar shall —

(i) enter on the register a note of the date as from which the company's restoration to the register takes effect; and

10 (ii) cause notice of the restoration to be published in the *Gazette* and on the Authority's website.

(3) The notice under subsection (2)(b)(ii) shall state—

(a) the name of the company or, if the company is restored to the register under a different name, that name and its former name;

15 (b) the company's registration number; and

(c) the date as from which the restoration of the company to the register takes effect.

20 (4) If the Registrar's decision is that the company should not be restored to the register, the person who made the application under section 344D or any other person aggrieved with the decision of the Registrar may appeal to the Court.

(5) On an appeal made under subsection (4), the Court may —

(a) confirm the Registrar's decision; or

25 (b) restore the company to the register and give such directions and make such orders as the Court is empowered to give and make under section 344G(3).

Note 63: Source: Section 1027 of the UK Companies Act 2006

### **Registrar may restore company deregistered by mistake**

30 **344F.**—(1) The Registrar may, on his own initiative, restore a company to the register if he is satisfied that the name of the company has been struck off the register and the company is

dissolved under section 344 or 344A as a result of a mistake of the Registrar.

5 (2) In subsection (1), a reference to a mistake of the Registrar excludes a mistake that is made on the basis of wrong, false or misleading information given by the applicant in connection with the application for striking the name of the company off the register.

10 (3) The Registrar may restore a company to the register by publishing in the *Gazette* and on the Authority's website a notice declaring the restoration, and the restoration takes effect on the date of publication of the notice.

Note 64: Source: Section 763 of the HK Companies Ordinance 2012

### Effect of restoration

15 **344G.**—(1) If a company is restored to the register under section 344E(2) or 344F, or on appeal to the Court under section 344E(5), the company is to be regarded as having continued in existence as if it had not been struck off the register.

20 (2) The company and its directors are not liable to a penalty under section 204 for a financial year in relation to which the period for filing its financial statements and other related statements ended —

(a) after the date of dissolution or striking off, and

(b) before the restoration of the company to the register.

25 (3) On the application by any person, the Court may give directions and make orders, as seem just for placing the company and all other persons in the same position (as nearly as may be) as if the company had not been dissolved or struck off the register.

30 (4) An application to the court for such directions or orders may be made any time within three years after the date of restoration of the company to the register.”

Note 65: Section 764(1) to (3) of the HK Companies Ordinance 2012 and section 1028 of the UK Companies Act 2006

**Amendment of section 351**

5 **180.** Section 351(2)(a) and (b) of the Companies Act is amended by deleting the word “, manager or principal officer of the company” and substituting in each case the words “or the chief executive officer”.

**Amendment of section 368**

**181.** Section 368 of the Companies Act is amended by deleting the word “managers” in subsection (1)(c) and substituting the words “chief executive officers”.

10 **New section 386A**

**182.** The Companies Act is amended by inserting, immediately before section 387, the following section:

**“Interpretation**

15 **386A.** For the purposes of this section and sections 387B, 387C, 397 and 401, unless the contrary intention appears —

“consolidated financial statements” and “parent company” have the same meaning as in section 209A;

20 “financial statements” means the financial statements of a company required to be prepared by the Accounting Standards and, in the case of a parent company, means the consolidated financial statements.”.

**Amendment of section 387A**

25 **183.** Section 387A of the Companies Act is amended by deleting the words “memorandum or articles” in subsections (1), (4) and (6) and substituting in each case the word “constitution”.

**Amendment of section 387B**

**184.** Section 387B of the Companies Act is amended —

(a) by deleting subsection (1) and substituting the following subsection:

“(1) Where any accounts, balance-sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to —

(a) a member of the company; or

(b) an officer or auditor of the company,

that document may be given, sent or served using electronic communications to the current address of that person.”;

(b) by deleting the words “memorandum or articles” in subsection (3) and substituting in each case the word “constitution”; and

(c) by deleting the word “articles” in subsection (5) and substituting the word “constitution”.

### **New section 387C**

**185.** The Companies Act is amended by inserting, immediately after section 387B, the following section:

#### **“Electronic transmission in accordance with constitution, etc.**

**387C.**—(1) Notwithstanding sections 387A and 387B, where a notice of meeting or any accounts, balance-sheet, financial statements, report or other document is required or permitted to be given, sent or served under this Act or under the constitution of a company by the company or the directors of the company to a member of the company, that notice or document may be given, sent or served using electronic communications with the express, implied or deemed consent of the member in accordance with the constitution of the company.

(2) For the purposes of this section, a member has given implied consent if the constitution of the company —

(a) provides for the use of electronic communications;



(b) specifies the manner in which electronic communications is to be used; and

(c) provides that the member shall agree to receive such notice or document by way of such electronic communications and shall not have a right to elect to receive a physical copy of such notice or document.

(3) For the purposes of this section, a member is deemed to have consented if —

(a) the constitution of the company provides for the use of electronic communications;

(b) the constitution of the company specifies the manner in which electronic communications is to be used;

(c) the constitution of the company specifies that the member will be given an opportunity to elect within a specified period of time, whether to receive such notice or document by way of electronic communications or as a physical copy; and

(d) the member was given an opportunity to elect whether to receive such notice or document by way of such electronic communications or as a physical copy, and he failed to make an election within the specified period of time.

(4) The Minister may make regulations to provide for safeguards for the use of electronic communications under this section.”.

### **Repeal of section 395 and 396 and new sections 395, 396 and 396A**

**186.** Sections 395 and 396 of the Companies Act are repealed and the following sections substituted therefor:

#### **“Form of company records**

**395.**—(1) A company shall adequately record for future reference the information required to be contained in any company records.

(2) Subject to subsection (1), company records may be —

- (a) kept in hard copy form or in electronic form; and
- (b) arranged in the manner that the directors of the company thinks fit.

5 (3) If company records are kept in electronic form, the company shall ensure that they are capable of being reproduced in hard copy form.

(4) In this section and sections 396 and 396A —

10 “company” includes a corporation which is required to keep company records under this Act;

“company records” means any register, index, minute book, accounting records, minutes or other document required by this Act to be kept by a company;

15 “in electronic form” means in the form of an electronic record as defined in section 2(1) of the Electronic Transactions Act (Cap. 88);

“in hard copy form” means in a paper form or similar form capable of being read.

20 **Note 66:** Source: Section 395(1) of the Companies Act (Cap. 50), section 655 of the Hong Kong Companies Ordinance 2012 and 1134 and 1135(1) and (2) of the UK Companies Act 2006

### **Duty to take precautions against falsification**

**396.**—(1) Where company records are kept otherwise than in hard copy form, reasonable precautions shall be taken for —

- 25 (a) ensuring the proper maintenance and authenticity of the company records;
- (b) guarding against falsification; and
- (c) facilitating the discovery of any falsifications.

30 (2) In the case where company records are kept in electronic form, the company shall provide for the manner by which it is to be authenticated and verified.

(3) Where default is made in complying with subsection (1) or (2), the company and every officer of the company in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.

5 **Note 67: Source: Section 656 of the HK Companies Ordinance 2012**

### **Inspection of records**

10 **396A.**—(1) Any company records which is by this Act required to be available for inspection shall, subject to and in accordance with this Act, be available for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the company is accessible to the public.

15 (2) If company records are kept by the company by recording the information in question in electronic form, any duty imposed on the company under this Act to allow inspection of the company records is to be regarded as a duty to allow inspection of —

- (a) a reproduction of the recording, or the relevant part of the recording, in hard copy form; or
- 20 (b) if requested by the person inspecting the recording, the recording, or the relevant part of the recording, by electronic means.

(3) Any person permitted by this Act to inspect any company records may make copies of or take extracts from it.

25 (4) Where company records are kept by the company by recording the information in question in electronic form, the company shall ensure that proper facilities shall be provided to enable the company records to be inspected, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and also to a default penalty.”.

30 **Note 68: Source: Section 396 of the Companies Act (Cap. 50) and section 655(4) of the HK Companies Ordinance 2012**

**Amendment of section 397**

**187.** Section 397(3) of the Companies Act is amended by inserting, immediately after the word “accounts,” where it first appears, the words “financial statements,”.

5 **Amendment of section 401**

**188.** Section 401(2) of the Companies Act is amended by inserting, immediately after the word “balance-sheet”, the words “, financial statements”.

**Amendment of section 403**

10 **189.** Section 403 of the Companies Act is amended —

- (a) by deleting the word “manager” in subsection (2) and substituting the words “chief executive officer”; and
- (b) by deleting the word “manager” in subsection (3) and substituting the word “chief executive officer”.

15 **Amendment of section 411**

**190.** Section 411 of the Companies Act is amended —

- (a) by inserting, immediately after paragraph (e), the following paragraph:

20 “(ea) prescribing the fees and other charges for the purposes of sections 343 to 344G and 377(6).”;  
and

- (b) by renumbering the existing section as subsection (1), and inserting immediately thereafter the following subsection:

25 “(2) The regulations may provide that a contravention of a specified provision of the regulations is an offence.”.

*Note 69: Source: Section 450(3) of the Hong Kong Companies Ordinance 2012*

**Amendment of Second Schedule**

**191.** The Second Schedule to the Companies Act is amended —

- (a) by deleting the word “memorandum” in items 18, 19 and 30 101 and substituting in each case the word “constitution;

(b) by deleting item 34 and substituting the following item:

“34. 173A(1) and (3) Lodgement of notice of \$10”;  
 appointment, cessation of  
 appointment or change of  
 particulars of a  
 company’s director, chief  
 executive officer,  
 secretary or auditor

(c) by deleting items 71 to 75;

(d) by deleting the words “memorandum or articles” in item 82  
 and substituting the word “constitution”; and

5 (e) by deleting the words “memorandum and articles” in item  
 99 and substituting the word “constitution”.

### **Repeal of Fourth Schedule**

**192.** The Fourth Schedule to the Companies Act is repealed.

### **Amendment of Sixth Schedule**

10 **193.** The Sixth Schedule to the Companies Act is amended by  
 deleting the words “Names, descriptions, and addresses of directors  
 or proposed directors” and substituting the words “Names and  
 descriptions and residential addresses or alternate addresses of  
 15 directors (as entered in the register of directors kept by the Registrar  
 under section 173(1)(a) in respect of the company) or proposed  
 directors”.

### **Repeal of Eighth Schedule**

**194.** The Eighth Schedule of the Companies Act is repealed.

### **New Twelfth and Thirteenth Schedules**

20 **195.** The Companies Act is amended by inserting, immediately  
 after the Eleventh Schedule, the following Schedules:

## “TWELFTH SCHEDULE

Sections 8(7) and 201(16)

## CONTENTS OF DIRECTORS' STATEMENT

1. A statement as to whether in the opinion of the directors —
- 5           (a) the financial statements and, where applicable, the consolidated financial statements are drawn up so as to give a true and fair view of the financial position and performance of the company and, if applicable, of the financial position and performance of the consolidated entity for the period covered by the financial statements or consolidated financial statements; and
- 10           (b) at the date of the statement there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.
2. Where any option has been granted by a company, other than a parent company for which consolidated financial statements are required, during the period covered by the financial statements to take up unissued shares of a company —
- 15           (a) the number and class of shares in respect of which the option has been granted;
- 20           (b) the date of expiration of the option;
- (c) the basis upon which the option may be exercised; and
- (d) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share issue of any other company.
- 25           3. Where any of the particulars required by paragraph 2 have been stated in a previous directors' statement, they may be stated by reference to that statement.
4. Where a parent company or any of its subsidiary companies has at any time granted to a person an option to have shares issued to him in the company or subsidiary company, the directors' statement of the parent company must state the name of the corporation in respect of the shares in which the option was granted and the other particulars required under paragraphs 2, 5 and 6.
- 30           5. The particulars of shares issued during the period to which the statement relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period.
- 35

6. The number and class of unissued shares of the company under option as at the end of the period to which the statement relates, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights, if any, of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other company.

7. The names of the persons who are the directors in office at the date of the statement.

8. Whether at the end of the financial year to which the financial statements or, where the company is a parent company, consolidated financial statements relate —

(a) there subsist arrangements to which the company is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate; or

(b) there have, at any time in that year, subsisted such arrangements as aforesaid to which the company was a party,

and if so, a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements.

9. As respects each person who, at the end of the financial year, was a director of the company —

(a) whether or not (according to the register kept by the company for the purposes of section 164 relating to the obligation of a director of a company to notify it of his interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary company or parent company or a subsidiary company of the company's parent company) he was, at the end of that year, interested in shares in, or debentures of, the company or any other such body corporate; and

(b) if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested and whether or not, according to that register, he was, at the beginning of that year (or, if he was not then a director, when he became a director), interested in shares in, or debentures of, the company or any other such body corporate and, if he was, the number and amount of shares in, and debentures of, each body (specifying it) in which, according

to that register, he was interested at the beginning of that year or, as the case may be, when he became a director.

## THIRTEENTH SCHEDULE

Sections 8(7) and 205C

### 5 CRITERIA FOR SMALL COMPANY

1. For the purposes of section 205C, a company is a small company from a financial year if —

- (a) it is a private company throughout the financial year; and
- (b) it satisfies any 2 of the following criteria for each of the 2  
10 financial years immediately preceding the financial year:
  - (i) the revenue of the company for a financial year does not exceed \$10 million;
  - (ii) the value of the company's gross assets at the end of a financial year does not exceed \$10 million;
  - (iii) it has at the end of a financial year not more than 50  
15 employees.

2. Notwithstanding paragraph 1, a company is a small company —

- (a) from its first financial year if —
  - (i) it is a private company throughout the first financial year;  
20 and
  - (ii) it satisfies any 2 of the criteria set out in paragraph 1(b) for the first financial year; or
- (b) from its second financial year if —
  - (i) it is a private company throughout the second financial  
25 year; and
  - (ii) it satisfies any 2 of the criteria set out in paragraph 1(b) for the second financial year.

3. Notwithstanding paragraph 1, a company which was incorporated before the date of commencement of section [148] of the Companies  
30 (Amendment) Act 2013 is a small company —

- (a) from the first financial year commencing on or after the above-mentioned date if —



- (i) it is a private company throughout the financial year; and
  - (ii) it satisfies any 2 of the criteria set out in paragraph 1(b) for the financial year; or
- (b) from the subsequent financial year if —
  - 5 (i) it is a private company throughout the subsequent financial year; and
  - (ii) it satisfies any of 2 of the criteria set out in paragraph 1(b) for the subsequent financial year.
- 4. A small company shall cease to be one from a financial year if —
  - 10 (a) it ceases to be a private company at any time during the financial year; or
  - (b) it does not satisfy any 2 of the criteria set out in paragraph 1(b) for 2 financial years immediately preceding the financial year.
- 5. A company which ceases to be a small company under paragraph 4 shall not be prevented from qualifying as a small company under paragraph 1 from a future financial year.
- 6. For the purposes of section 205C, a group of entities is a small group from a financial year if the group of entities satisfies any 2 of the following criteria for each of the 2 financial years immediately preceding the financial year:
  - 20 (a) the consolidated revenue of the group of entities for a financial year does not exceed \$10 million;
  - (b) the value of the consolidated gross assets of the group of entities at the end of a financial year does not exceed \$10 million;
  - 25 (c) the group of entities has at the end of a financial year an aggregate number of employees of not more than 50.
- 7. Notwithstanding paragraph 6, a group of entities is a small group —
  - (a) from the first financial year after it is formed if it satisfies any 2 of the criteria set out in paragraph 6 for the financial year; or
  - 30 (b) from the subsequent financial year if it satisfies any 2 of the criteria set out in paragraph 6 for the subsequent financial year.
- 8. Notwithstanding paragraph 6, a group of entities which is formed before the date of commencement of section [148] of the Companies (Amendment) Act 2013 is a small group —
  - 35 (a) from the first financial year, commencing on or after the above-mentioned date, if it satisfies any 2 of the criteria set out in paragraph 6 for the financial year; or

(b) from the subsequent financial year if it satisfies any 2 of the criteria set out in paragraph 6 for the subsequent financial year.

9. A small group shall cease to be one from a financial year if it does not satisfy any 2 of the criteria set out in paragraph 6 for 2 financial years immediately preceding the financial year.

10. A group of entities which ceases to be small group under paragraph 9 shall not be prevented from qualifying as a small group under paragraph 6 from a future financial year.

11. For the purposes of paragraphs 6 to 10 —

(a) the question whether an entity is part of a group of entities is to be decided in accordance with the Accounting Standards;

(b) in the case —

(i) where the parent of a group of entities is required to prepare consolidated financial statements, the “consolidated gross assets” and “consolidated revenue” of the group of entities shall be determined in accordance with the accounting standards applicable to the group of entities; or

(ii) where the parent of a group of entities is not required to prepare consolidated financial statements —

(A) “consolidated gross assets” means the aggregate gross assets of all the members of the group of entities; and

(B) “consolidated revenue” means the aggregate revenue of all the members of the group of entities; and

(c) “parent” has the same meaning as in the Accounting Standards, but does not include any entity which is a subsidiary of any other entity within the meaning of the Accounting Standards.”.

12. For the purposes of this Schedule —

(a) a reference to a company being a small company from a financial year means that the company is a small company for that financial year and every subsequent financial year until it ceases to be a small company under paragraph 4;

(b) a reference to a small company ceasing to be one from a financial year means that the small company ceases to be one for that financial year and every subsequent financial year until it qualifies as a small company under paragraph 1;

- (c) a reference to a group of entities being a small group from a financial year means that the group of entities is a small group for that financial year and every subsequent financial year until it ceases to be a small group under paragraph 9; and
- 5 (d) a reference to a small group ceasing to be one from a financial year means that the small group ceases to be one for that financial year and every subsequent financial year until it qualifies as a small group under paragraph 6.

### **Related amendments to Securities and Futures Act**

- 10 **196.** The Securities and Futures Act (Cap. 289) is amended by inserting, immediately after section 81SB, the following Part:  
 Note 70: Source: Sections 130A to 130P of the Companies Act (Cap. 50)

#### **“PART IIIAA**

#### **THE CENTRAL DEPOSITORY SYSTEM**

#### 15 **Interpretation**

**81SC.** In this Part, unless the contrary intention appears —

“account holder” means a person who has an account directly with the Depository and not through a depository agent;

20 “bare trustee” means a trustee who has no beneficial interest in the subject-matter of the trust;

“book-entry securities”, in relation to the Depository, means securities —

25 (a) the documents evidencing title to which are deposited by a depositor with the Depository and are registered in the name of the Depository or its nominee; and

30 (b) which are transferable by way of book-entry in the Depository Register and not by way of an instrument of transfer;

“Central Depository System” means the Central Depository System established by the repealed section 130C of the Companies Act (Cap. 50) on 12 November 1993;

“constitution” means —

- 5           (a) the constitution; or  
          (b) the memorandum of association, the articles of association, or both,

of a corporation;

“Court” means the High Court or a judge thereof;

10 “debenture” has the same meaning as in section 4(1) of the Companies Act;

“depositor” means an account holder or a depository agent but does not include a sub-account holder;

15 “Depository” means The Central Depository (Pte) Limited or any other corporation approved by the Authority as a depository company or corporation for the purposes of this Act, which operates the Central Depository System for the holding and transfer of book-entry securities;

20 “depository agent” means a member of the SGX-ST, a trust company (licensed under the Trust Companies Act (Cap. 336)), a bank licensed under the Banking Act (Cap. 19), any merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186) or any other person or body approved by  
25 the Depository who or which —

- (a) performs services as a depository agent for sub-account holders in accordance with the terms of a depository agent agreement entered into between the Depository and the depository agent;
- 30           (b) deposits book-entry securities with the Depository on behalf of the sub-holders; and
- (c) establishes an account in its name with the Depository;

“Depository Register” means a register maintained by the Depository in respect of book-entry securities;

5 “depository rules” means the rules made by the Depository in relation to the operation of the Central Depository System and includes the Central Depository Rules and Procedures made by the Depository pursuant to its constitution (as the same may be amended from time to time) and any rule made by the Depository with regard to payment of fees to the Depository;

10 “derivative instruments”, in relation to debentures, stocks and shares, includes warrants, transferable subscription rights, options to subscribe for stocks or shares, convertibles, depository receipts and such other instruments as the Authority may prescribe by regulations for the purposes of the definition;

15 “documents evidencing title” means —

(a) in the case of stocks, shares, debentures or any derivative instruments related thereto of a company or debentures or any derivative instruments related thereto of the Government — the stock certificates, share certificates, debenture certificates or certificates representing the derivative instrument, as the case may be; and

25 (b) in the case of stocks, shares, debentures or any derivative instruments related thereto of a foreign company or debentures or any derivative instruments related thereto of a foreign government or of an international body, or any other securities — such documents or other evidence of title thereto, as the Depository may require;

30 “instrument” includes a deed or any other instrument in writing;

35 “international body” means the Asian Development Bank, the International Bank for Reconstruction and

Development, the International Monetary Fund, the European Bank for Reconstruction and Development and such other international bodies as the Authority may prescribe by regulations;

5 “lodged” means lodged under this Act, the Companies Act or any corresponding previous written law;

“securities” has the same meaning as in section 2(1), but includes derivative instruments;

10 “SGX-ST” means the Singapore Exchange Securities Trading Limited;

“sub-account holder” means a holder of an account maintained with a depository agent.

### **Application of this Part**

**81SD.**—(1) This Part shall apply only to —

- 15 (a) book-entry securities; and  
 (b) designated securities, as if a reference to “book-entry securities” includes a reference to designated securities.

20 (2) The application of this Part to designated securities under subsection (1)(b) shall be subject to such modifications as the Authority may prescribe by regulations, and different modifications may be prescribed for different classes of designated securities.

25 (3) In this section, “designated securities” means such securities as may be accepted or designated by the Depository or its nominee for deposit, custody, clearing or book-entry settlement.

### **Central Depository System**

30 **81SE.** The following shall be carried out using the computerised Central Depository System in accordance with the depository rules —

- 5 (a) the deposit of documents evidencing title in respect of securities (with where applicable, in the case of shares or registered debentures, proper instruments of transfer duly executed) with the Depository and registration of such documents in the name of the Depository or its nominee;
- (b) maintenance of accounts by the Depository in the names of the depositors so as to reflect the title of the depositors to the book-entry securities; and
- 10 (c) effecting transfers of the book-entry securities electronically, and not by any other means, by the Depository and making an appropriate entry in the Depository Register of the book-entry securities that have been transferred.

15 **Depository or nominee deemed to be bare trustee**

**81SF.**—(1) The Depository or its nominee shall be deemed to hold the book-entry securities deposited with it as a bare trustee for the collective benefit of depositors.

20 (2) Subject to subsections (3) and (4), a depositor shall not have any right to specific book-entry securities deposited with the Depository or its nominee but shall be entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts in the name of the depositor.

25 (3) A depository agent shall be deemed to hold book-entry securities deposited in its name with the Depository or its nominee, on behalf of any sub-account holder, as a bare trustee.

30 (4) A sub-account holder shall not have any right to specific book-entry securities deposited with the Depository or its nominee but shall be entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts maintained by the sub-account holder with a depository agent.

**Depository not a member of a company and  
depositors deemed to be members**

5 **81SG.**—(1) Notwithstanding anything in the Companies Act (Cap. 50) or any other written law or rule of law or in any instrument or in the constitution of a corporation, where book-entry securities of the corporation are deposited with the Depository or its nominee —

10 (a) the Depository or its nominee (as the case may be) shall be deemed not to be a member of the corporation; and

(b) the persons named as the depositors in a Depository Register shall, for such period as the book-entry securities are entered against their names in the Depository Register, be deemed to be —

15 (i) members of the corporation in respect of the amount of book-entry securities (relating to the stocks or shares issued by the corporation) entered against their respective names in the Depository Register; or

20 (ii) holders of the amount of the book-entry securities (relating to the debentures or any derivative instrument) entered against their respective names in the Depository Register.

25 (2) Notwithstanding anything in the Companies Act or any other written law or rule of law or in any instrument or in the constitution of a corporation, where book-entry securities relating to units in any collective investment scheme (whether or not constituted as a corporation) are deposited with the Depository or its nominee —

30 (a) the Depository or its nominee (as the case may be) shall be deemed not to be a holder of the book-entry securities; and

35 (b) the persons named as the depositors in a Depository Register shall, for such period as the book-entry securities are entered against their names in the



Depository Register, be deemed to be holders of the amount of the book-entry securities entered against their respective names in the Depository Register.

(3) Nothing in this Part shall be construed as affecting —

- 5           (a) the obligation of a company to keep —
- (i) a register of its members under section 190 of the Companies Act and allow inspection of the register under section 192 of the Companies Act; and
- 10           (ii) a register of holders of debentures issued by the company under section 93 of the Companies Act and allow inspection of the register under that section,
- except that the company shall not be obliged to enter
- 15           in such registers the names and particulars of persons who are deemed members or holders of debentures under subsection (1)(b);
- (b) the right of a depositor to withdraw his documents evidencing title in respect of securities from
- 20           the Depository at any time in accordance with the rules of the Depository and to register them in his or any other name; or
- (c) the enjoyment of any right, power or privilege conferred by, or the imposition of any liability, duty or
- 25           obligation under the Companies Act, any rule of law or under any instrument or under the constitution of a corporation upon a depositor, as a member of a corporation or as a holder of debentures or any derivative instruments except to the extent
- 30           provided for in this Part or prescribed by regulations made thereunder.

(4) Notwithstanding any provision in the Companies Act, a depositor shall not be regarded as a member of a company entitled to attend any general meeting of the company

and to speak and vote thereat unless his name appears on the Depository Register 72 hours before the general meeting.

5 (5) The payment by a corporation to the Depository of any dividend payable to a depositor shall, to the extent of the payment made, discharge the corporation from any liability in respect of that payment.

**Depository to certify names of depositors to corporation upon request**

10 **81SH.** The Depository shall certify the names of persons on the Depository Register to a corporation in accordance with the rules of the Depository upon a written request being made to it by the corporation.

**Maintenance of accounts**

15 **81SI.** The Depository shall maintain accounts of book-entry securities on behalf of depositors in accordance with the rules of the Depository.

**Transfers effected by Depository under book-entry clearing system**

20 **81SJ.**—(1) Subject to this Part, a transfer of book-entry securities between depositors shall be effected, notwithstanding anything in the Companies Act (Cap. 50) or any other written law or rule of law or in any instrument or in a corporation's constitution to the contrary, by the Depository making an appropriate entry in its Depository Register.

25 (2) A transfer of securities by the Depository by way of book-entry to a depositor under this Part shall be valid and shall not be challenged in any Court on the ground that the transfer is not accompanied by a proper instrument of transfer or that otherwise the transfer is not made in writing.

**Depository to be discharged from liability if acting on instructions**

5           **81SK.**—(1) Subject to the regulations, the Depository, if acting in good faith and without negligence, shall not be liable for conversion or for any breach of trust or duty where the Depository has, in respect of book-entries in accounts maintained by it, made entries regarding the book-entry securities, or transferred or delivered the book-entry securities, according to the instructions of a depositor notwithstanding that the depositor had no right to dispose of or take any other action in respect of the book-entry securities.

10           (2) The Depository or a depository agent, if acting in good faith and without negligence, shall be fully discharged of its obligations to the account holder or sub-account holder by the transfer or delivery of book-entry securities upon the instructions of the account holder or sub-account holder, as the case may be.

15           (3) The Depository, if acting in good faith and without negligence, shall be fully discharged of its obligations to a depository agent by the transfer or delivery of book-entry securities upon the instructions of the depository agent.

20           (4) For the purposes of this section, the Depository or a depository agent is not to be treated as having been negligent by reason only of its failure to concern itself with whether or not the depositor or sub-account holder, as the case may be, has a right to dispose of or take any other action in respect of the book-entry securities or to issue the instructions.

**Confirmation of transaction**

25           **81SL.** The Depository shall, in accordance with the depository rules, issue to each account holder and to each sub-account holder through his depository agent, following upon any transaction affecting book-entry securities maintained for such account holder by the Depository and maintained for such sub-account holder by his depository agent under this Part, a confirmation note which shall specify the amount and

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35

description of the book-entry securities and any other relevant transaction information.

### **No rectification of Depository Register**

5 **81SM.**—(1) Notwithstanding anything in the Companies Act (Cap. 50) or any written law or rule of law, no order shall be made by the Court for rectification of the Depository Register; subject to that where the Court is satisfied that —

(a) a depositor did not consent to a transfer of the book-entry securities; or

10 (b) a depositor should not have been registered in the Depository Register as having title to the book-entry securities,

the Court may award damages to the first-mentioned depositor or to any person who would have been entitled to have been  
15 registered in the Depository Register as having title to the book-entry securities, as the case may be, on such terms as the Court thinks to be equitable or make such other order as the Court thinks fit including an order for the transfer of book-entry securities to such depositor or person.

20 (2) Where provisions exist in the constitution of a corporation that entitle a corporation to refuse registration of a transfer of book-entry securities, the corporation may in relation to any transfer to which it objects, notify the Depository in writing of its refusal before the transfer takes place and furnish the  
25 Depository with the facts upon which such refusal is considered to be justified.

(3) Where the Depository has had prior notice of the corporation's refusal under subsection (2) (but not otherwise), the Depository shall refuse to effect the transfer and to enter the  
30 name of the transferee in the Depository Register and thereupon convey the facts upon which such refusal is considered to be justified to the transferee.

(4) Section 128 of the Companies Act shall not apply to any refusal to register a transfer under subsections (2) and (3).

**Trustee, executor or administrator of deceased depositor named as depositor**

5       **81SN.**—(1) Any trustee, executor or administrator of the estate of a deceased depositor whose name was entered in the Depository Register as owner or as having an interest in book-entry securities may open an account with the Depository and have his name entered in the Depository Register so as to reflect the interest of the trustee, executor or administrator in the book-entry securities.

10       (2) Subject to this section, no notice of any trust expressed, implied or constructive shall be entered on the Depository Register and no liabilities shall be affected by anything done in pursuance of subsection (1) or pursuant to the law of any other place which corresponds to this section and the Depository and  
15       the issuer of the book-entry securities shall not be affected with notice of any trust by anything so done.

**Non-application of certain provisions in bankruptcy and company liquidation law**

20       **81SO.** Where by virtue of the provisions of any written law in relation to bankruptcy or company liquidation it is provided that —

- (a) any disposition of the property of a company after commencement of a winding up shall be void, unless the Court orders otherwise; or
- 25       (b) any disposition of the property of a person who is adjudged bankrupt after the making of an application for a bankruptcy order and before vesting of the bankrupt's estate in a trustee shall be void unless done with the consent or ratification of the  
30       Court,

those provisions shall not apply to any disposition of book-entry securities; but where a Court is satisfied that a party to the disposition, being a party other than the Depository, had notice that an application has been made for the winding up or  
35       bankruptcy of the other party to the disposition, it may

award damages against that party on such terms as it thinks equitable or make such other order as the Court thinks fit, including an order for the transfer of book-entry securities by that party but not an order for the rectification of the Depository Register.

### Security interest

**81SP.**—(1) Except as provided in this section or any other written law or any regulations made under section 81SR, no security interest may be created in book-entry securities.

(2) A security interest in book-entry securities to secure the payment of a debt or liability may be created in favour of any depositor in the following manner:

(a) by way of assignment, by an instrument of assignment in the prescribed form executed by the assignor; or

(b) by way of charge, by an instrument of charge in the prescribed form executed by the chargor,

if no security interest in any book-entry securities subsequent to any assignment or charge thereof may be created by the assignor or the chargor, as the case may be, in favour of any other person and any such assignment or charge shall be void.

(3) Upon receipt of the instrument of assignment, the Depository shall immediately, by way of an off-market transaction, transfer the book-entry securities to the assignee and thereafter notify the assignor and the assignee of the transfer in the prescribed manner.

(4) Upon receipt of the instrument of charge, the Depository shall immediately register the instrument in a register of charges maintained by the Depository and thereafter notify the chargor and the chargee in the prescribed manner.

(5) The register of charges shall not be open to inspection to any person other than the chargor or the chargee or their authorised representatives and except for the purpose of the performance of its duties or the exercise of its functions or when required to do by any court or under the provisions of

any written law, the Depository shall not disclose to any unauthorised person any information contained in the register of charges.

5 (6) An assignment or a charge made in accordance with the provisions of this section, but not otherwise, shall have effect upon the Depository transferring the book-entry securities or endorsing the charge in the register of charges except that the instrument of assignment or charge shall not have any effect if on the date of receipt of such instrument, the number of book-  
10 entry securities in the account of the assignor or chargor is less than the number of book-entry securities specified in such instrument.

15 (7) The provisions of section 81SG(1), (2) and (3) shall apply to an assignment of book-entry securities made under this section.

(8) An assignee or a registered chargee of book-entry securities shall have the following powers:

20 (a) a power, when the loan or liability has become due and payable, to sell the book-entry securities or any part thereof and in the case of a chargee he shall have the power to sell the book-entry securities or any part thereof in the name of and for and on behalf of the chargor; and

25 (b) any other power which may be granted to him in writing by the assignor or chargor in relation to the book-entry securities provided that the Depository shall not be concerned with or affected by the exercise of any such power.

30 (9) Nothing in subsection (8) shall be construed as imposing on the Depository a duty to ascertain whether the power of sale has become exercisable or has been lawfully exercised by the assignee or chargee.

35 (10) No book-entry securities assigned by way of security or charged in accordance with the provisions of this section may be —

- (a) transferred by way of an off-market transaction to the assignor save upon the production of a duly executed re-assignment in the prescribed form; or
- (b) transferred by the chargor, by way of sale or otherwise, save upon the production of a duly executed discharge or charge in the prescribed form.

5  
10 (11) Upon the sale by the assignee or the chargee in exercise of his power of sale of any book-entry securities assigned or charged in accordance with the provisions of this section, the assignee or the chargee shall immediately notify the Depository of the sale and the particulars of the book-entry securities sold by him, and the Depository shall —

- (a) in the case of the sale by the assignee, notify the assignor of the sale; and
- 15 (b) in the case of the sale by the chargee, effect a transfer of the book-entry securities to the buyer in accordance with section 81SJ and notify the chargor of the transfer.

20 The provisions of sections 81SL, 81SM and 81SO shall apply, with the necessary modifications, to a transfer effected pursuant to this section.

25 (12) Upon fulfilling his obligations under an assignment by way of security or a charge, the assignor or the chargor shall be entitled to obtain from the assignee or chargee a re-assignment or a discharge of charge, as the case may be, of the whole or part of the book-entry securities.

30 (13) A re-assignment or discharge of charge shall be effected by the Depository by transferring the book-entry securities to the assignor or cancelling the endorsement of charge in the register of charges and in the account of the chargor, as the case may be.

35 (14) Book-entry securities may be assigned by way of security by an assignee or charged in the prescribed form by a chargee to secure the payment of any debt or liability of the assignee or the chargee, as the case may be, in accordance



with the provisions of this section provided that no book-entry security may be charged by a chargee subsequent to any sub-charge.

5 (15) All acts, powers and rights which might previously have been done or exercised by the chargee thereunder in relation to the book-entry securities may thereafter be done or exercised by the sub-chargee, and, except with the consent of the sub-chargee, shall not be done or exercised by the chargee thereunder during the currency of the sub-charge.

10 (16) Upon the sale by the sub-chargee in exercise of his power of sale of any book-entry securities in accordance with the provisions of this section, the provisions of subsection (11), in respect of a sale by a chargee, shall apply with the necessary modifications to the sale by the sub-chargee.

15 (17) Nothing in subsection (14) shall affect the rights or liabilities of the original assignor or chargor of the book-entry securities under subsections (12) and (13) and he shall be entitled to a re-assignment or discharge of charge from the assignee or chargee free from all subsequent security interests created without his consent upon satisfying his indebtedness or liability to the assignee or the chargee.

20 (18) The provisions of section 81SK shall apply to relieve the Depository and its servants or agents of any liability in respect of any act done or omission made under this section as if references to “depositor” include references to “assignee”, “chargee” or “sub-chargee”, as the case may be.

25 (19) Nothing in this section shall affect the validity and operation of floating charges on book-entry securities created under the common law before or after 12th November  
30 1993, but that the Depository shall not be required to recognise, even when having notice thereof, any equitable interest in any book-entry securities under a floating charge except the power of the chargee, upon the crystallisation of the floating charge, to sell the book-entry securities in the name of the chargor in  
35 accordance with the provisions of this section.

(20) Nothing in subsection (19) shall be construed as imposing on the Depository a duty to ascertain whether the power of sale pursuant to a floating charge has become exercisable or has been lawfully exercised.

5 (21) A member of SGX-ST shall have a lien over the unpaid book-entry securities purchased for the account of its customer which shall be enforceable by sale in accordance with and subject to the provisions of this section as if the same had been charged to him under this section except that the member  
10 shall not be obliged to notify the Depository of the sale or the particulars of the book-entry securities sold by him.

(22) Any security interest on book-entry securities created before 12th November 1993 and subsisting or in force on that date shall continue to have effect as if the Companies Act  
15 (Cap. 50) and this Act had not been enacted.

(23) In this section, “off-market transaction” means a transaction effected outside the SGX-ST.

**Depository rules to be regarded as rules of a securities exchange that are subject to this Act**

20 **81SQ.**—(1) Depository rules in relation to the operation of the Central Depository System, including any amendments made thereto from time to time, shall be regarded as having the same force and effect as if made by a securities exchange and shall likewise be subject to the provisions of this Act.

25 (2) Without prejudice to the generality of subsection (1), sections 23 and 25 shall apply to the depository rules under subsection (1) as they apply to rules made by a securities exchange.

**Power of the Authority to make regulations**

30 **81SR.**—(1) Without prejudice to section 341, the Authority may make regulations for the purposes of this Part, including regulations relating to —

- (a) rights and obligations of persons in relation to securities dealt with under the Central Depository System;
- 5 (b) procedures for the deposit and custody of securities and the transfer of title to book-entry securities and the regulation of persons concerned in that operation;
- (c) matters relating to security interest in book-entry securities;
- 10 (d) keeping of depositors' accounts by the Depository and sub-accounts by the depository agents;
- (e) keeping of the Depository Register and of records generally;
- 15 (f) safeguards for depositors including the maintenance of insurance and the establishment and maintenance of compensation funds by the Depository for the purpose of settling claims by depositors;
- 20 (g) matters relating to linkages between the Depository and other securities depositories (by whatever name called) established and maintained outside Singapore;
- (h) any requirement for fees charged by the Depository to be approved by the Authority;
- 25 (i) the modification or exclusion of any provision of any written law, rule of law, any instrument or constitution;
- (j) the application, with such modifications as may be required, of the provisions of any written law, instrument or constitution; and
- 30 (k) such supplementary, incidental, saving or transitional provisions as may be necessary or expedient.

(2) Regulations made under this section may provide —

- (a) that the Authority may require the Depository to furnish it with such information or documents as the Authority considers necessary for such approval; and
- (b) that any contravention of any specified provision in the regulations shall be an offence punishable with a fine not exceeding \$150,000 and, in the case of a continuing offence, with a further fine not exceeding 10% of the maximum fine prescribed for that offence for every day or part thereof during which the offence continues after conviction.

### **Power of Authority to issue written directions**

**81SS.**—(1) The Authority may, if it thinks it necessary or expedient in the public interest or for the protection of investors, issue written directions, either of a general or specific nature, to the Depository or the depository agent, to comply with such requirements as the Authority may specify in the written direction.

(2) Without prejudice to the generality of subsection (1), any written direction may be issued with respect to the discharge of the duties or functions of the Depository or depository agent.

(3) The Depository and the depository agent shall comply with any direction made under subsection (1).

(4) Before giving directions under subsection (1), the Authority may consult the Depository or the depository agent and afford it an opportunity to make representations.

(5) It shall not be necessary to publish any direction given under subsection (1) in the *Gazette*.”.

Note 71: Source: Regulation 6 of the Companies (Central Depository System) Regulations

### **Consequential amendments to other written laws**

**197.** The provisions of the Acts specified in the first column of the Schedule are amended in the manner set out in the second column thereof.

### **Savings and transitional provisions**

5 **198.** The Minister may, in relation to any provision of this Act, for a period of 2 years after the date of commencement of that provision, prescribe by regulations published in the *Gazette* such provisions of a saving or transitional nature consequent on the enactment of that provision as he considers necessary or expedient.

## **THE SCHEDULE**

Section [197]

### 10 **CONSEQUENTIAL AMENDMENTS TO OTHER WRITTEN LAWS**

*First column*

*Second column*

[Note: Consequential amendments to other Acts will be considered and drafted after the main provisions have been finalised.]

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### **EXPLANATORY STATEMENT**

This Bill seeks to amend the Companies Act (Cap. 50).

### **EXPENDITURE OF PUBLIC MONEY**

This Bill will not involve the Government in any extra financial expenditure.

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Note 72: HD 1.1/Jaime/Companies (Amendment) Bill(v16)(Jaime 020513)