THE LAW SOCIETY OF SINGAPORE

The Law Society of Singapore
39 South Bridge Road S(058673)

t: +65 6538 2500 f: + 65 6533 5700
www.lawsociety.org.sg

Sender's Fax: 6533 5700
Sender's DID: 6530 0206
Sender's Email: represent@lawsoc.org.sg

Our Ref: LS/10/RLR/CON(11)/2013/COR2/ISP2/BAR/MWC/JF/sr
Your Ref: To be advised

13 June 2013

Ministry of Finance
Economic Programmes Directorate
100 High Street
#10-01, The Treasury
Singapore 179464

BY POST & EMAIL
[mof_pccompaniesact@mof.gov.sg]

Dear Sir/Madam

MOF AND ACRA INVITE FEEDBACK ON THE DRAFT COMPANIES (AMENDMENT) BILL 2013

We refer to your email dated 2 May 2013 inviting the Law Society to provide feedback on the Draft Companies (Amendment) Bill 2013.

2 The invitation for feedback was referred to the bar and the following practice committees:

a) Insolvency Practice Committee
b) Corporate Practice Committee

3 Please find the views of the Insolvency Practice Committee and Corporate Practice Committee attached in Annex A and B respectively for your consideration .

4 The wider bar had no comments on this matter.

5 The Council of the Law Society has considered the feedback given by both practice committees and shares their views.

6 We thank you for inviting the Law Society to provide feedback and would be grateful for an update on this matter when MOF and ACRA have considered the feedback provided.

Yours faithfully,

Michelle Woodworth Cordeiro
Director, Representation & Law Reform Department

ANNEX A

INSOLVENCY PRACTICE COMMITTEE

Views of the Insolvency Practice Committee on the Draft Companies (Amendment) Bill 2013

i) Recommendation 1.28 (Question 10)
Section 4(1) of the Companies Act includes in the definition of an "officer": (a) receivers and managers appointed under an instrument, and (b) a liquidator appointed by members in a voluntary winding up. Consideration should be given to disapplying section 172 to "approved liquidators" who are not disqualified from holding such positions by criteria such as those under sections 11 and 217 of the Companies Act and who are appointed to such positions. Where approved liquidators who are qualified are appointed to such positions, they should have their rights and entitlements governed under general law (rather than the more restrictive section 172) as in the case of appointments of liquidators and other insolvency practitioners appointed in situations where section 172 (read with the definition of "officer" in section 4(1)) does not apply. Take an example, in a creditors voluntary winding up, the creditors may be happy with liquidators appointed by the members and take no steps to vote to change or to confirm the liquidator. Under such circumstances, by virtue of section 297(1), the shareholders' appointee as liquidator stands. Such a liquidator will be subject to section 172 (read with the definition of "officer" in section 4(1)). If on the other hand, the creditors vote to confirm the same liquidator, there is the question of whether section 172 should still apply given that the appointment would then be by both the shareholders as well as the creditors. Even if section 172 were to disapply in such a situation, a question should be raised as to why the act of confirmation vote by creditors and a non-challenge of the appointment by creditors (and hence no vote is taken) should be determinative of whether section 172 applies or not.

ii) Recommendation 3.20 (Question 28)
There is merit in providing prescribed forms so that the declarant would better understand the extent of what the declaration is and in respect of which a declaration is made. Making declarations should not be entirely new concept for directors, as for instance, directors would have made declarations as their ability to be appointed as directors at the time they were seeking appointment..

iii) Recommendation 3.39
In the case of enabling schemes to bind holders of "units" of shares, consideration should be given to enabling schemes to directly bind creditors who are collectively claiming against the company through another, e.g. a trustee. This would enable a scheme by a company to bind bondholders where otherwise the direct claimant against the company is the bonds trustee. This should not derogate from no actions clause or provisions preventing the individual bondholders from having direct recourse against the company (in the same way that holders of "units" of shares do not necessarily have direct recourse), but as in the case of holders of units, it would be helpful to enable schemes to bind bondholders directly. It should, however, be a condition of the court when approving any scheme with indirect collective creditors that the direct creditor should be bound either by agreement or otherwise to the scheme (in the same way that the registered shareholder should be bound in the case of a scheme with holders of units).

Separately, there is doubt in Singapore whether a scheme between the company as trustee and its beneficiaries would come within the purview of section 210. In some instances, there could be the remedies of equitable compensation which may place the beneficiaries in a position akin to that of creditors under section 210. What if however the question involves division of limited trust property to different sets of beneficiaries and there is simply not enough to go around? Can the scheme mechanism be utilised? It is suggested that any matter that could result in liability to the company, including trust related obligations should be subject to section 210. In this respect, it is worth noting that in the case of insolvent company winding up, claims relating to breach of trust are provable in bankruptcy (section 87(1) of the Bankruptcy Act read with section 327(2) of the Companies Act).

If claims in relation to breaches of trust could be the subject matter of what is provable, then in principle it should be subject to the schemes procedure under section 210 so as to facilitate compromise and arrangements. The decision of the English Court of Appeal in *Re Lehman Brothers International (Europe) (in administration)* [2010] EWCA Civ 917 suggests that there may be difficulties in effecting a scheme with beneficiaries (there were no statements in the

later Supreme Court decision of Re *Lehman Brothers International (Europe) (a company) (in administration) and another* [2012] UKSC 6 that detracts from this).

The Committee had no comments on the other recommendations.

ANNEX B

CORPORATE PRACTICE COMMITTEE

IMPLEMENTATION OF STEERING COMMITTEE'S RECOMMENDATIONS IN THE DRAFT COMPANIES (AMENDMENT) BILL 2013

[Please note that the serial number in this draft tracks the original serial number in Annex A to facilitate referencing]

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Vacation of Office and Removal of Directors			
13	Recommendation 1.13 The Companies Act should expressly provide that a private company may by ordinary resolution remove any director, subject to contrary provision in the articles.	Clause 87 New section 152(1A).	*Consultation question 1* *We would like to seek comments on whether the right to remove any director should be subject not only to the constitution but also to any agreement between the director and the company.* Committee's view: The Committee is of the view that new section 152(1A) is satisfactory and the right to remove any director should be subject only to the constitution. *Consultation question 2* *We would like to seek comments on whether private companies should also be subject to a similar condition as specified in section 152(1) so that removal of any director of a private company appointed to represent the interests of any particular class of shareholders or debenture holders shall not be effective until his successor has been appointed.* Committee's view: It is the Committee's opinion that the new section 152 is satisfactory and there is no necessity for any change in this

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			regard. *Consultation question 3* *We would like to seek comments on whether the requirement for special notice and the provisions granting the director the right to make representations under section 152(2)-(4) should also apply to private companies.* Committee's view: It is the Committee's opinion that the said requirement and provisions under section 152(2)-(4) should not apply to private companies and there is no necessity for change to new section 152 in this regard.
Payment of Compensation to Directors for Loss of Office			
15	Recommendation 1.15 A new exception should be introduced in the Companies Act to obviate the need for shareholders' approval where the payment of compensation to an executive director for termination of employment is of an amount not exceeding his base salary for the **3 years** immediately preceding his termination of employment.	Clause 101 New subsections 168(1A) and (1B). Repeal and re-enact section 168(7).	*Consultation question 4* *We would like to seek comments on whether this new exception should only apply to payments made pursuant to an agreement made between the company and the director as specified in the proposed section 168(1A).* Committee's view: The Committee is of the view that the following phrase "pursuant to an existing legal obligation arising from an agreement made between the company and the director" should be deleted from new section 168(1A). Accordingly, new section 168(1B) should be deleted as well. *Consultation question 5*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	For such payment, disclosure to shareholders would still be necessary. Recommendation modified by MOF. To adopt a payment limit of total emoluments for the past one year.		*We would like to seek comments on whether the new exception should provide in similar terms as the existing section 168(1) that if there has been no disclosure to shareholders, the amount received by the director shall be deemed to have been received by him in trust for the company.* Committee's view: The Committee proposes leaving the existing law to decide on this instead of prescribing it in statute.
Loans to Directors and Connected Companies			
17	Recommendation 1.17 **The following two new exceptions to the prohibition in section 163 should be introduced:** **(a) to allow for loans or security/guarantee to be given to the extent of the proportionate equity shareholding held in the borrower by the directors of the lender/security provider;**	Clause 97 Amendment to section 163(1).	*Consultation question 6* *We would like to seek comments on whether besides the interested director, members of his family should abstain from voting as provided in the proposed section.* Committee's view: The Committee agrees with this approach. The Committee would also like to suggest that the meaning of the words "members of a director's family" referred to in section 163(5) should be clarified. *Consultation question 7*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	(b) where there is prior shareholders' approval (with the interested director abstaining from voting) for the loan, guarantee or security to be given. <u>Recommendation modified by MOF</u>. To only introduce the exception under Recommendation 1.17(b), not that under Recommendation 1.17(a).		*We would like to seek comments on whether ratification should be allowed for the new exception such that the approval may be obtained after the transaction, or whether ratification should be expressly disallowed.* Committee's view: The Committee is of the view that ratifications should be allowed and express words introduced to make it clear that ratifications should be allowed.
Power of Directors to Bind the Company			
20	<u>Recommendation 1.20</u> The Companies Act should provide that a person dealing with the company in good faith should not be affected by any limitation in the company's articles.	<u>Clause 20</u> New section 25B.	Unlike section 40 of the UK Companies Act, the proposed section 25B does not elaborate on terms used, including "dealing with", "good faith" and "limitation". We propose to leave these for the courts to interpret based on the facts of each case. For similar reasons, the exceptions in the UK sections 41 and 42 have

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			not been adopted. *Consultation question 8* *We would like to seek comments on whether the above approach is appropriate.* Committee's view: The Committee is of the view that the current approach is adequate.
Indemnity for Directors			
28	Recommendation 1.28 Section 172 of the Companies Act should be amended to expressly allow a company to provide indemnity against liability incurred by its directors to third parties. Recommendation modified by MOF. To allow a company to provide indemnity subject to appropriate qualifications.	Clause 104 Repeal section 172 and substitute with new sections 172, 172A and 172B.	This recommendation has been modified during the drafting. Recommendation 1.28 proposed that section 172 should be amended to expressly allow a company to provide indemnity against liability incurred by its directors to third parties but did not explicitly address the position for officers who are not directors. The implementation approach involves applying the new regime (which is based on the UK regime applicable only to directors) not only to directors but to all officers for consistency. *Consultation question 9* *We would like to seek comments on whether the proposed exceptions in section 172B in which circumstances third party indemnity provisions will be void are appropriate.* Committee's view: The Committee is of the view that the proposed exceptions in new section 172B are appropriate. *Consultation question 10*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			We would like to seek comments on the extension of the new regime to include officers who are not directors. Committee's view: The Committee is agreeable to this approach. The Committee is also of the view that where a penalty is paid on the basis of non-admission of liability, the company should be allowed to provide indemnity.
29	Recommendation 1.29 The Companies Act should be amended to clarify that a company is allowed to indemnify its directors against potential liability.	Clause 98 New sections 163A and 163B.	With the repeal of section 172 (i.e. Provisions indemnifying directors or officers) in relation to Recommendation 1.28, the implementation of this recommendation introduces new exceptions to sections 162 and 163, which prohibit loans to directors and related persons. These new exceptions, which are similar to those in the UK Companies Act, will be limited to loans and will not extend to quasi-loans, credit transactions and related arrangements. *Consultation question 11* *We would like to seek comments on whether the proposed approach to allow a company to indemnify its directors against potential liability is appropriate.* Committee's view: The Committee is agreeable to this proposed approach. The Committee would also like to add that this should take the form of an advance given to the directors rather than an indemnity. *Consultation question 12*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			We would like to seek comments on whether there are any concerns on the different regimes for loans as compared to quasi-loans, credit transactions and related arrangements, in relation to indemnifying directors. Committee's view: The Committee is supportive of the new exceptions to prohibition of loans to directors and related persons. The Committee is also of the view that the indemnity provision should be worded to cover situations of settlement of claims in addition to loans.

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S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Voting			
31	Recommendation 2.2 Section 178(1)(b)(ii) should be amended to lower the threshold of 10% of total voting rights for eligibility to demand a poll to 5% of total voting rights.	Clause 109 Amendments to section 178(1)(b)(ii) and (iii).	We have also provided for the percentage threshold in section 178(1)(b)(iii) to be reduced from 10% to 5% for consistency with the amendment to section 178(1)(b)(ii), as the concepts under both of the limbs are similar. *Consultation question 13* *We would like to seek comments on whether section 178(1)(b)(iii) should be amended to reduce the percentage threshold to 5% as well.* Committee's view: The Committee is agreeable to reducing the threshold to 5% for section 178(1)(b)(iii). Further, the Committee is of the view that a deeming provision should be included in this section such that the existing constitution of the company would be deemed to be amended accordingly, obviating the need for express amendment to the constitution of the company in this regard.
Enfranchising Indirect Investors			
41	Recommendation 2.12	Clause 109	The increase in cut-off time from 48 hours to 72 hours applies to all companies and all proxies.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	The Companies Act should be amended to bring earlier the cut-off timeline for the filing of proxies from 48 hours prior to the shareholders' meeting, to 72 hours prior to the shareholders' meeting.	Amendment to section 178(1)(c).	We note that it would be impractical to increase the cut-off time only where multiple proxies are appointed, as it would not be possible to ascertain beforehand whether a company has shareholders who are relevant intermediaries or if multiple proxies will in fact be appointed for a meeting. *Consultation question 14* *We would like to seek comments on whether it is appropriate to extend the increase in the cut off time from 48 hours to 72 hours for all companies and all proxies regardless whether multiple proxies are appointed.* Committee's view: The Committee was generally not in favour of extending the cut off time beyond 48 hours. The Committee was similarly of the view that a deeming provision should be included in this section such that the existing constitution of the company would be deemed to be amended accordingly, obviating the need for express amendment to the constitution of the company in this regard.
Membership of Holding Company			
63	Recommendation 2.34 Section 21(6) should be amended to allow a subsidiary to receive a transfer of shares in its holding company that are transferred by way of	Clause 15 New section 21(6A), (6B), (6C), (6D), (6E) and (6F). New section 21(6B), (6C). (6D) and (6E) allow the subsidiary to retain shares in	This recommendation has been modified during the drafting. As the concepts are similar to those for Recommendations 3.7 and 3.8, the proposed implementation of this recommendation follows the modified implementation approach for Recommendations 3.7 and 3.8. The proposed approach under section 21(6A)(b) gives a subsidiary

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	distribution in specie, amalgamation or scheme of arrangement: (a) provided that the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof, and the subsidiary shall, within the period of 12 months or such longer period as the court may allow after the transfer, dispose of all of its shares in the holding company; and (b) any such shares in the holding company that remain undisposed after the period of 12 months or such longer period as the court may allow after the transfer: (i) shall be deemed treasury shares or	its holding company, subject to: a. 10% cap; b. reporting requirements relating to shares held by subsidiaries; and c. suspension of rights (other than the right to distribution of non-wholly owned subsidiaries) attached to shares held by the subsidiary. New section 21(6F) to specify that various references to 'treasury shares' shall include shares held under section 21.	12 months or such longer period as the court may allow to dispose of the holding company shares held. After the 12 months or such longer period, the subsidiary can continue holding such shares provided that the aggregated number of such shares held by all the subsidiaries of the holding company and by the holding company (as treasury shares) does not exceed 10% of the shares issued for that class of shares. Shares held by a subsidiary would be under the control of the holding company, much like treasury shares. A number of provisions in the Act exclude treasury shares when calculating percentages etc. and it may be appropriate to similarly exclude holding company shares held by a subsidiary. We have listed such provisions, except for the following provisions, in section 21(6F): • section 76B(9)(d) – this relates to the reporting requirements for treasury shares. As shares held under section 21 will have their own reporting requirements, this provision is not included in section 21(6F). • section 403(1B)/(1C) – these relate specifically to dealings of a company in its own shares. Thus, it is not necessary to include the provision in section 21(6F). The proposed approach under section 21(6D) does not suspend the right to distribution of such shares held by the subsidiary, except for wholly owned subsidiaries. This is to avoid prejudicing minority shareholders of the subsidiary. However, the proposed approach is different from the current section 76J(4), which suspends distribution rights of treasury shares. Holding companies will also be required under section 21(6C) to

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	shall be transferred to the holding company and held as treasury shares, and subject to a maximum aggregate limit of 10% of shares in the holding company being held as treasury shares or deemed treasury shares; and (ii) provided that the subsidiary/ holding company shall within 6 months divest its holding of the shares in the holding company in excess of the aggregate limit of 10%.		report the number of shares held under section 21 by their subsidiaries and any changes in such numbers. <u>*Consultation question 15*</u> *We would like to seek comments on the implementation approach for Recommendation 2.34.* Committee's view: The Committee would like to highlight that the consequences of failure should be expressly included in the statute. <u>*Consultation question 16*</u> *We would like to seek comments on the approach to subject shares held by the subsidiary under section 21 to section 76J(2) i.e. the subsidiary would not be able to exercise any right in respect of such shares and any purported exercise of such a right would be void.* The Committee is agreeable to the proposed approach, i.e. the subsidiary would not be able to exercise any right in respect of such shares and any purported exercise of such a right would be void. <u>*Consultation question 17*</u> *We would like to seek comments on whether the subsidiary should be able to exercise certain rights, and if so what rights those should be.* The Committee is of the view that subsidiary should not be able to exercise such rights.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			Consultation question 18 *We would like to seek comments on the proposed section 21 (6D)(d), which provides that a wholly owned subsidiary will not be entitled to distributions for shares held under section 21.* Committee's view: The Committee is of the view that there should be no distinction between wholly and partially owned subsidiaries and the approach for both types of subsidiaries should be the same. *Consultation question 19* *We would like to seek comments on whether the list of provisions in section 21(6F) is complete and whether the exclusion of sections 76B(9)(d) and 403(1B)/(1C) is appropriate.* Committee's view: The Committee has no comments in this regard as long as the draft reflects the cross-referencing accurately.

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S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Preference and Equity Shares			
66	Recommendation 3.3 The definition of "equity share" be removed and	Clauses 3 and 97 Amendments to:	*Consultation question 20* *We would like to seek comments on whether the proposed amendments to section 163 to use 'voting power' like in section 5(1)(a)(ii), is appropriate and broad enough to factor in multiple*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	"equity share" be amended to "share" or some other appropriate term wherever it appears in the Companies Act.	• section 4(1) by deleting the definition of "equity share"; and • section 163(1) and (2)(i) to amend 'number of equity shares' to "voting power".	*vote shares.* Committee's view: The Committee is of the view that a definition of 'voting power' would be useful. Currently, it is unclear if voting power involves number of votes or one vote per share.
67	Recommendation 3.4 Companies should be allowed to issue non-voting shares and shares with multiple votes.	Clauses 39 and 111 Repeal and re-enact section 64 to allow public companies to issue shares with differing voting rights subject to safeguards. New section 64A to provide for alteration of rights attached to shares including safeguards applicable to non-voting shares of all companies. Repeal and re-enact section 180 to remove the right to vote from section 180(1) since non-voting shares will only be allowed to vote for two types of resolutions	New section 64A In paragraph 72 of MOF response report[1], it was stated that holders of non-voting shares should have equal rights on resolutions to wind up the company or on those that vary the rights of non-voting shares. We propose to modify the implementation by requiring holders of non-voting shares to have at least one vote for the two types of resolutions instead. This is for consistency with the current regime for private companies under the existing section 180(2). *Consultation question 21* *We would like to seek comments on the modified implementation approach under section 64A i.e. non-voting shares should have at least one vote on any resolution to wind up or vary rights.* Committee's view: The Committee agreed with this approach.
68	Recommendation 3.5 Section 64 should be deleted.		

[1] A copy of MOF's responses to the Report of the Steering Committee for Review of the Companies Act is at http://app.mof.gov.sg/data/cmsresource/SC_RCA_Final/AnnexA_SC_RCA.pdf.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
		under new section 64A.	*Consultation question 22* *We would like to seek comments on whether the safeguard under section 64(1) (i.e. allowing the issue of different classes of shares in a public company only if provided for in the constitution) should apply to all different classes of shares or only those with special, limited, conditional or no voting rights.* Committee's view: The Committee agreed that the safeguard under section 64(1) for different classes of shares should be provided for in the constitution.
Holding and Subsidiary Companies			
70	Recommendation 3.7 The current 12-month time-frame for a subsidiary to dispose of shares in its holding company should be retained. Such shares will be converted to treasury shares thereafter. Once these shares are converted to treasury shares, they would be regulated in accordance with the rules	Clause 15 Amendment to section 21(4)(b) to allow for the new section 21(4A), (4B), (6D) and (6E). New section 21(4A), (4B), (6D) and (6E) allow the subsidiary to retain shares in its holding company, subject to: • 10% cap; • reporting requirements relating to shares held by	This recommendation has been modified during the drafting of the Bill. The proposed approach under section 21(4)(b) gives a subsidiary 12 months or such longer period as the court may allow to dispose of the holding company shares held. After the 12 months or such longer period, the subsidiary can continue holding such shares provided that the aggregated number of such shares held by all the subsidiaries of the holding company and by the holding company (as treasury shares) does not exceed 10% of the shares issued for that class of shares. Shares held by a subsidiary would be under the control of the holding company, much like treasury shares. A number of provisions in the Act exclude treasury shares when calculating percentages etc. and it may be appropriate to similarly

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	governing treasury shares.	subsidiaries; and • suspension of rights (other than the right to distribution of non-wholly owned subsidiaries) attached to shares held by the subsidiary. New section 21(6F) to specify that various references to 'treasury shares' shall include shares held under section 21.	exclude holding company shares held by a subsidiary. We have listed such provisions, except for the following provisions, in section 21(6F): • section 76B(9)(d) – this relates to the reporting requirements for treasury shares. As shares held under section 21 will have their own reporting requirements, this provision is not included in section 21(6F). • section 403(1B)/(1C) – these relate specifically to dealings of a company in its own shares. Thus, it is not necessary to include the provision in section 21(6F). The proposed approach under section 21(6D) does not suspend the right to distribution of such shares held by the subsidiary, except for wholly owned subsidiaries. This is to avoid prejudicing minority shareholders of the subsidiary. However, the proposed approach is different from the current section 76J(4), which suspends distribution rights of treasury shares. Holding companies will also be required under section 21(4B) to report the number of shares held under section 21 by their subsidiaries and any changes in such numbers. *Consultation question 23* *We would like to seek comments on the implementation approach for Recommendations 3.7 and 3.8.* The Committee has no comments in this regard.
71	Recommendation 3.8 Section 21(4) should be amended to allow retention of up to an aggregate 10% of such treasury shares, taking into account shares held both by the company as well as its subsidiaries.		

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			Consultation question 24 *We would like to seek comments on the approach to subject shares held by the subsidiary under section 21 to section 76J(2) i.e. the subsidiary would not be able to exercise any right in respect of such shares and any purported exercise of such a right would be void.* Committee's view: The Committee is of the view that the restriction on the exercise of 'any right in respect of such shares' is expressed too widely and there is a need to clarify the scope of this restriction. However, if the proposed amendments are confined, for instance, to voting power or dividends then the Committee has no objections. *Consultation question 25* *We would like to seek comments on whether the subsidiary should be able to exercise certain rights, and if so what rights those should be.* The Committee proposed no further changes in this regard. *Consultation question 26* *We would like to seek comments on the proposed section 21(6D)(d), which provides that a wholly owned subsidiary will not be entitled to distributions for shares held under section 21.* Committee's view: The Committee agreed that a wholly owned subsidiary should not be entitled to dividends; otherwise, it would result in circular payments. On the other hand, if the subsidiary is less than wholly owned, for instance, 90% owned subsidiary, payment of dividend payments can be allowed, so as not to prohibit the minority shareholder from receiving the dividend payments. The Committee also proposed that the definition of "wholly owned

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			subsidiary" in section 5B be revisited in light of the changes. A Committee member is of the view that the term "member" should be expressly defined in the Companies Act in line with section 112(1) and (2) of the UK Companies Act 2006. <u>*Consultation question 27*</u> *We would like to seek comments on whether the list of provisions in section 21(6F) is complete and whether the exclusion of sections 76B(9)(d) and 403(1B)/(1C) is appropriate.* Committee's view: The Committee has nothing to add to the list of provisions in section 21 (6F) and has no comments on the exclusion of sections 76B(9)(d) and 403(1B)/(1C).
Solvency Statements			
83	<u>Recommendation 3.20</u> Solvency statements under sections 7A(2), 215I(2) and 215J(1) should be by way of declaration rather than statutory declaration.	<u>Clauses 6, 164 and 165</u> Amendments to sections 7A(2), 215I(2) and 215J(1) to amend 'statutory declaration' to 'declaration in writing'.	Currently, there are no prescribed forms for solvency statements. This allows companies some degree of flexibility to frame the solvency statements as long as statutory requirements are met. <u>*Consultation question 28*</u> *We would like to seek comments on whether it would be useful to have prescribed forms for solvency statements.* Committee's view: The Committee agreed that it would be useful to have prescribed forms for solvency statements. The Committee wishes to be consulted on the draft prescribed forms.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Share Buybacks and Treasury Shares			
85	Recommendation 3.22 The definition of the "relevant period" for share buybacks in section 76B(4) should be amended to be from "the date an AGM was held, or if no such meeting was held as required by law, then the date it should have been held and expiring on the date the next AGM after that is or is required by law to be held, whichever is earlier".	Clause 51 Repeal and re-enact section 76B(4) in line with the modified implementation approach.	These recommendations have been modified during the drafting of the Bill. Recommendation 3.22 was intended to address potential difficulties arising from the current definition of the 'relevant period' beginning from the date of the last AGM. However, amending this to 'the date an AGM was held' would not address the difficulties since such date would have to refer to a past AGM. Thus, the implementation of Recommendation 3.22 is modified such that the 'relevant period' begins from the date of the relevant resolution. Since Recommendation 3.22 will be implemented by using "date of resolution" as the commencement date for the relevant period and there is no intention to allow more than one possible relevant period, the consequential amendment under Recommendation 3.24 is not necessary. *Consultation question 29* *We would like to seek comments on whether the 'relevant period' should commence from the date of the relevant resolution.* Committee's view: The Committee agreed that the 'relevant period' should commence from the date of the relevant resolution. *Consultation question 30* *We would like to seek comments on whether to amend 'the relevant period' to 'a relevant period'.* Committee's view: The Committee is of the view that the proposed amendment is not necessary.
86	Recommendation 3.23 The reference to "the last AGM ... held before any resolution passed ..." in sections 76B(3)(a) and 76B(3B)(a) should be replaced with "the beginning of the relevant period".	Clause 51 Repeal and re-enact section 76B(3) and (3B), in line with the modified implementation approach for Recommendation 3.22.	
87	Recommendation 3.24 Also wherever "the relevant period" appears in section 76B, it should be replaced with "a relevant period".	Not applicable since there is no change, in line with the modified implementation approach for Recommendation 3.22.	

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Financial Assistance for the Acquisition of Shares			
90	Recommendation 3.27 Section 76(1)(a) and associated provisions relating to financial assistance should be abolished for private companies, but continue to apply to public companies and their subsidiary companies. A new exception should be introduced to allow a public company or its subsidiary to assist a person to acquire shares (or units of shares) in the company or a holding company of the company if giving the assistance does not materially prejudice the interests of the company or its shareholders or the company's ability to pay its creditors.	Clauses 49 and 50 Repeal and re-enact section 76(1) and introduce a new section 76(1A) to restrict the financial assistance prohibition to public companies. Consequential amendments to section 76(3) and (4) to update references. New section 76(9BA) and (9CA) to introduce new exception to the financial assistance prohibition if there is no material prejudice. Consequential amendments to section 76(9D)(a) and section 76A.	Unlike the existing exceptions under subsections (9A) and (9B), the new exception under subsection (9BA) does not require a solvency statement, notice or approval by members but requires a board resolution. *Consultation question 31* *We would like to seek comments on whether the new exception should require approval by the Board and whether there should be any other requirements.* Committee's view: The Committee would like to propose that the words "or its shareholders" be removed from the new section 76(9BA)(a)(i). The Committee also referred to s76(9BA)(b) and was of the view that the term 'fair value' may be too onerous. One member was also of the view that prejudice should be looked at from the perspective of the minority shareholders rather than all shareholders (including majority shareholders) in general.
91	Recommendation 3.28 Section 76(8) and (9) should be reviewed against the list of excepted financial	Clause 49 Amendments to existing exception under section	*Consultation question 32* *We would like to seek comments on the amended and new exceptions.*

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	assistance transactions in the UK to determine if they should be updated.	76(8)(a). New exceptions under section 76(8)(aa), (k) and (l).	Committee's view: The Committee is of the view that representations and warranties should be dealt with more generally and thus proposed that the phrase "... in relation to an offer to the public ..." in s76(8)(ga) be replaced with the phrase "...in relation to subscription of shares in the company."
Other Issues Pertaining to Capital Maintenance			
98	Recommendation 3.35 Provisions should be made in law to allow a company to use its share capital to pay for expenses, brokerage or commissions incurred in an issue or buyback of shares.	Clauses 41, 55 and 56 New section 67 to allow the use of share capital for share issue expenses. New section 76F(1A) to apply the provision on solvency statement to include share buyback expenses. New section 76G(2) to include share buyback expenses as part of the share buyback purchase costs.	Existing section 76G allows for a reduction of capital or profits or both on cancellation of repurchased shares. The new section 76G(2) will apply the same rule to expenses in a buyback of shares i.e. expenses, brokerage or commissions incurred in a buyback of shares will be treated similarly to the cost of the shares bought back. Similarly, provision on solvency statement will apply to such expenses. *Consultation question 33* *We would like to seek comments on whether expenses, brokerage or commissions incurred in a buyback of shares should be treated in a similar manner as the cost of the shares bought back.* Committee's view: The Committee has no objections to this approach.
Schemes of Arrangement			
104	Recommendation 3.41 For the purposes of section	Clause 112 New section 181(1C) to	This recommendation has been modified during the drafting of the Bill.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	210, if a majority in number of proxies and a majority in value of proxies representing the nominee member voted in favor of the scheme, it would count as the nominee member having voted in favor of the scheme.	allow each member to appoint only one proxy for the purposes of section 210, unless the Court orders otherwise. This is based on the proposed modified approach.	Recommendation 3.41 was originally intended to clarify how votes for schemes of arrangements under section 210 should be counted with the introduction of a multiple proxies regime (i.e. Recommendation 2.10). However, practitioners had commented that proxies for each nominee member would have to be aggregated and separately analysed in order to operationalise the counting approach under Recommendation 3.41. This would create practical difficulties if there were many nominee members that had multiple proxies. To avoid the complications of implementing the multiple proxies regime on schemes of arrangements, we propose to only allow each member to appoint one proxy for the purposes of section 210, unless the Court orders otherwise. The proposed default position of restricting each member to one proxy is in line with current practice. The new section 181(1C) provides for the proposed modified approach. *Consultation question 34* *We would like to seek comments on whether each member should be allowed only one proxy for schemes of arrangement under section 210, unless the Court orders otherwise.* Committee's view: The Committee noted that this approach represents the position the Committee had previously taken in Law Society's letter dated 23 January 2013 to ACRA and is thus in agreement with the same.
Compulsory Acquisition			
115	Recommendation 3.52	Clause 158	Section 979(5) of the UK Companies Act 2006 excludes not only

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	A cut-off at the date of offer should be imposed for determining the 90% threshold for the offeror to acquire buyout rights so that shares issued after that date are not taken into account.	New section 215(1C) to state that shares allotted after the date of offer are not to be included.	shares that are allotted after the date of the offer but section 979(5)(b) also excludes relevant treasury shares that cease to be held as treasury shares after the date of offer. *Consultation question 35* *We would like to seek comments on whether the proposed section 215(1C) should exclude shares that cease to be held as treasury shares after the date of offer.* Committee's view: The Committee is of the view that the proposed section 215(1C) is conceptually sound but it must be consistent with the Code of Takeovers and Mergers.
117	Recommendation 3.54 Where the terms of the offer give the shareholders a choice of consideration, the shareholder should be given 2 weeks to elect his choice of consideration and the offeror should also be required to state the default position if no election is made.	Clause 158 New section 215(1A) and (1B).	*Consultation question 36* *We would like to seek comments on whether the periods of 1 month and 14 days specified in the proposed section 215(1A) are appropriate.* Committee's view: The Committee has no objections to the proposed periods of time.

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<tr><th>S/n</th><th>Steering Committee's Recommendation</th><th>Clause in Draft Bill and Description of Amendment</th><th>Remarks/ Consultation Questions</th></tr>
<tr><td colspan="4">Financial Reporting for Small Companies</td></tr>
<tr><td>124</td><td><u>Recommendation 4.1</u>

Small company criteria should be introduced to determine whether a company is required to be audited. Small companies would be exempted from the statutory requirement for audit. The following are the criteria for determining a "small company":
(a) the company is a private company; and
(b) it fulfils two of the following criteria

<table><tr><td>Criterion One</td><td>Criterion Tw</td></tr><tr><td>Total annual revenue of not more than S$10 million.</td><td>Total gross assets of not more than S$10 million</td></tr></table></td><td><u>Clauses 7, 148 and 195</u>

Repeal and re-enact section 205C.

New Thirteenth Schedule and new section 8(7)(b) which allows Minister to amend the Thirteenth Schedule.</td><td>In accordance with Recommendation 4.1, a private company needs to fulfil any 2 out of the 3 proposed criteria to qualify as a small company, and this is reflected in the new Thirteenth Schedule.

The applicability of the criteria has been drafted to follow that for the Singapore Financial Reporting Standards for Small Entities as far as possible. An illustration of the applicability of the small company criteria under various scenarios is set out at the end of this table.

It was proposed by the Steering Committee that the threshold quantum for each of the criteria be prescribed in the regulations so that they can keep pace with changes in the business environment. However, we are of the view that setting out the small company criteria, including the quantum, under the Thirteenth Schedule allows for easier reference. Powers will be granted to the Minister under section 8(7)(b) to amend the Schedule so that the quantum can be adjusted where necessary.

The audit exemption will be applicable to companies for a financial year commencing on or after the effective date of the change in law. The financial statements for a financial year which commences before the effective date should be prepared in accordance with the current requirements.

<u>Consultation question 37</u>
We would like to seek comments on whether a private company should be able to qualify as a small company if it fulfils any 2 out of the 3 proposed criteria, or if it fulfils the revenue threshold and one</td></tr>
</table>

			other criterion. Committee's views: The Committee has a diversity of views on this issue. Some Committee members were of the view that the revenue threshold and one other criterion should be fulfilled, noting that the revenue criterion would take into account the activity for the entire year, and thus safeguard against any manipulation. A member took the contrary view that the revenue criterion was in fact quite subjective and is dependent on the company's accounting policy, and none of the criterion in and of itself would be a sufficient safeguard. Another member was of the view that the employee criterion would need to be clarified as the term 'employee' is open to interpretation. *Consultation question 38* *We would like to seek comments on whether the transitional provisions provided are appropriate and adequate.* The Committee has no comments on this issue.
125	Recommendation 4.2 Where a parent company prepares consolidated accounts, a parent should qualify as a "small company" if the criteria in Recommendation 4.1 are met on a consolidated basis.	Clause 148 New section 205C(3).	Section 205C(3) is drafted such that the audit exemption is available to a parent company only if it qualifies as a small company and if it belongs to a small group. The calculation of the revenue and gross assets criteria on a consolidated basis would be in accordance with the accounting standards applicable to the group (not necessarily the Singapore Financial Reporting Standards). Where the parent of the group is not required to prepare consolidated financial statements, the criteria would be determined by aggregating the revenue and gross assets of all the members of the group. *Consultation question 39*

			We would like to seek comments on whether a parent company should be able to qualify as long as it is a private company and belongs to a small group, regardless of whether the parent company itself qualifies as a small company. Committee's view: The Committee agrees with this approach. *Consultation question 40* *We would like to seek comments on whether the above approach for determining the thresholds on a group basis is appropriate.* Committee's view: The Committee has no objections to this approach.
126	Recommendation 4.3 A subsidiary which is a member of a group of companies may be exempt from audit as a "small company" only if the entire group to which it belongs qualifies on a consolidated basis for audit exemption under the "small company" criteria.	Clause 148 New section 205C(4).	Section 205C(4) is drafted such that the audit exemption is available to a subsidiary company only if it qualifies as a small company and if it belongs to a small group. When the small company criteria are assessed on a group basis, the group will include all Singapore and foreign-incorporated companies within the group, regardless of whether the parent is incorporated in Singapore. We did not specifically require that the parent also has to be a small company in order for the subsidiary company to qualify, as the small company criteria would only be applicable to a company incorporated in Singapore. Our view is that the exemption should be applicable to subsidiary companies which are members of a group headed by either a Singapore or a foreign parent. We have provided transitional provisions in the Thirteenth Schedule such that for groups that have been formed before the effective date of the change in law, the small group criteria would be applied for financial years commencing on or after the effective date of the

			change. This would mean that the small company criteria would not be applicable to a subsidiary company for the first financial year after the effective date if it belongs to a group which was formed before the effective date, but has a financial year commencing before the effective date of the change in law. *Consultation question 41* *We would like to seek comments on whether a subsidiary company should be able to qualify as long as it is a private company and belongs to a small group, regardless of whether the subsidiary company itself qualifies as a small company.* Committee's view: The Committee agrees with this approach. *Consultation question 42* *We would like to seek comments on whether the transitional provisions provided are appropriate and adequate.* The committee has no comments to the transitional provisions.
Financial Reporting for Dormant Companies			
129	Recommendation 4.6 Dormant non-listed companies (other than subsidiaries of listed companies) should be exempt from financial reporting requirements, subject to certain safeguards.	Clause 137 New section 201A.	The definition of a "relevant company" in section 201A(5)(a), which determines the scope of the exemption from preparation of financial statements for dormant companies, is restricted to a dormant company which is not a Singapore-incorporated company listed in Singapore ("Singapore listed company")or a subsidiary company of a Singapore listed company. If a dormant company which is exempt from preparation of financial statements under section 201A chooses to prepare financial statements, it would still be able to enjoy the exemption from audit

			under section 205B. We have provided a transitional provision in section 201A(6) which retains the applicability of the current requirements for a dormant company which has a financial year that ends before the change in the law. <u>*Consultation question 43*</u> *We would like to seek comments on whether the proposed definition of "relevant company" for the purpose of the exemption in relation to dormant companies is appropriate.* Committee's views: The Committee is of the view that the definition of dormant companies is very narrow and as a result most dormant companies do not actually fall under the prescribed definition of dormancy. The Committee suggests that the definition could be refined, such that companies which are commercially dormant but hire book-keepers and company secretaries to prepare and file company statements will fall within the exemption. The Committee would also like to propose that a company's gross assets instead of total assets be considered when assessing if it is a "relevant company". It was observed that in this provision, the reference was made to 'number of issued shares' rather than 'voting power'. It was suggested that the term 'voting power' could be used consistently throughout the entire Act. <u>*Consultation question 44*</u> *We would like to seek comments on whether the transitional provisions provided are appropriate and adequate.* The Committee has no comments on this issue.

The Directors' Report			
138	Recommendation 4.15 The requirement for a separate directors' report should be abolished.	Clauses 136 and 195 New section 201(16) and new Twelfth Schedule omit requirement for a separate directors' report.	The extension of the disclosure requirements in the directors' report to the CEO was considered, but it was decided that no such extension be made at this time for the following reasons: • The extension of the disclosure requirements under Recommendation 1.25 is already a significant shift and there is no compelling need to extend disclosures further than what has been recommended under Recommendation 1.25. • It would not be appropriate for disclosures relating to CEOs be made in the directors' statements (as the directors' report will be abolished) as the directors should not be made to be responsible for disclosing interests of CEOs. We have provided a transitional period in section 201(23) such that the new requirements shall not apply to a company in respect of a financial year which ends before the effective date of the changes in the law, and that the current provisions will continue to apply to such companies instead. *Consultation question 45* *We would like to seek comments on whether the transitional provisions provided are appropriate and adequate.* The Committee has no views on this matter.
Resignation of Auditors			

146	Recommendation 4.23 The auditor of a non-public-interest company (other than a subsidiary of a public interest company) should be allowed to resign upon giving notice to the company. The status quo should be retained for the auditor of a non-public-interest company which is a subsidiary of a public interest company, viz, such a company's auditor may only resign if he is not the sole auditor or at a general meeting, and where a replacement auditor is appointed. Recommendation modified by MOF. The requirement for resignation for an auditor of a non-public-interest company, which is a subsidiary of a public-interest company, is made consistent with that for an auditor of a public-interest company (under Recommendation 4.24).	Clauses 145 and 146 Repeal section 205(14) and (15). New sections 205AA and 205AB, read with new section 205AF.	Under section 205AB(1), the auditor of a subsidiary company of a Singapore public interest company can only resign with ACRA's consent. This does not apply to the auditor of a subsidiary company of a foreign corporation. Where the auditor of a company (in respect of both recommendations 4.23 and 4.24) has resigned, a replacement auditor must be appointed as soon as practicable, and in any case, not more than 3 months from the date of the auditor's resignation. *Consultation question 46* *We would like to seek comments on whether the proposed scope of the provision for the resignation of auditors of subsidiary companies of public-interest companies is appropriate.* Committee's view: The Committee is of the view that the definition of "public-interest companies" should be clarified. The Committee's proposed definition is "*companies whose shares are listed on the Securities Exchange in Singapore*". *Consultation question 47* *We would like to seek comments on whether the period of 3 months is appropriate for the appointment of a replacement auditor.* Committee's view: The Committee agreed that the period of 3 months is appropriate for the appointment of a replacement auditor.
Framework for Consolidation of Accounts			

161	Recommendation 4.38 The determination of whether a company should prepare consolidated accounts should be set by only the financial reporting standards and not the Companies Act.	Clause 136 and 154 New definitions of "financial statements", "consolidated financial statements", "consolidated entity", "parent company" and "subsidiary company" in section 209A, read with section 201.	The requirement for a balance sheet of a parent company to be prepared has been retained in section 201(5). *Consultation question 48* *We would like to seek comments on whether the balance sheet of a parent company is still necessary or if it would be sufficient for a parent company to prepare only consolidated accounts for the consolidated entity.* Committee's view: The Committee is of the view that a balance sheet of a parent company would still be necessary.

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S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Registers			
165	<u>Recommendation 5.1</u> Section 190 (Register and index of members) should no longer apply to private companies as the registers maintained by ACRA in electronic form and accessible by the public can be used as the main and authoritative register of members for private companies in Singapore.	<u>Clauses 13, 57 and 125-131</u> Repeal and re-enact section 19(6). New section 19(6A). New section 189A and amendments to sections 190 to 193, and 196. New Division 4A of Part V (i.e. new sections 196A to 196D). Consequential amendment to section 76H.	• The current section 190(1) requires every company to enter into its register of members the share number if any of each share, or the share certificate number if any. We have removed this requirement due to feedback that share certificates may be redundant and outdated. • The current section 192(1) provides that a company may close its register of members or any class of members for one or more periods not exceeding 30 days in the aggregate in any calendar year. We are of the view that this provision will no longer be applicable to the definitive register of members kept by ACRA as this register will be accessible to the public throughout the year. • The current section 196(7) relating to branch registers applies to all companies incorporated in Singapore. As private companies will no longer need to keep registers of members under the new Companies Act, we propose that section 196(7) will no longer be applicable to private companies. Public companies having a share capital may, however, choose to continue to keep their branch registers of members outside of Singapore.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			• New section 196A(3) (adapted from the current section 190(2)) provides that where a private company has converted any of its shares into stock, ACRA's register of members will reflect the information relating to the stocks instead of information relating to shares. New section 196B(4) (adapted from the current section 190(2A)) provides that changes in particulars of a company's stocks in the ACRA register of members must be given if the company purchases its stocks under section 76H, unless it cancels all the stocks immediately. *Consultation question 49* *We would like to seek comments on whether the current section 192(1) should apply to the definitive register of members kept by ACRA.* Committee's view: The Committee is of the view that section 192(1) should apply to the definitive register. Further, the right to close the register should be retained. The Committee also proposed pegging the closure date to a specific time. The Committee also referred to s128(a) and suggested that individuals should only be able to register as members prospectively not retrospectively, so that there is certainty of who are members as at a certain date. It was observed that there might be practical implications arising from this suggestion, such as having to ensure that filing is done without any delay. *Consultation question 50* *We would like to seek comments on whether the current section 196(7) should also apply to private companies.* Committee's view: The Committee is of the view that there is no

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
			need for branch registers in this regard as ACRA is keeping the electronic register. *Consultation question 51* *We would like to seek comments on whether sections 196A(3) and 196B(4) are relevant for the purpose of maintaining the ACRA definitive register of members.* Committee's view: The Committee is of the view that sections 196A(3) and 196B(4) are relevant for the purpose of maintaining the ACRA definitive register of members.
167	Recommendation 5.3 The status of members in the context of share allotments and transfers for private companies should be determined in the following manner: (a) a 14-day period should be given for the filing of information regarding the allotment or transfer of shares with ACRA; (b) the effective date of notice of the allotment or transfer would be based on the date of filing with ACRA; and	Clauses 38, 43, 47, 72 and 131 New section 196B, read with section 196A. New sections 63A, 71(1B) and 74A. Amendment to section 128A.	New sections 63A, 71(1B) and 74A The following provisions are introduced to update ACRA's definitive register of members: • New section 63A will require private companies to update any increase in the total amount paid up on any class of shares within 14 days. • New section 71(1B) will require private companies to file a notice with the Registrar relating to any relevant permitted alteration in share capital within 14 days. • New section 74A will require private companies to file a notice of conversion of shares from one class to another with the Registrar within 14 days. Amendment to section 128A The amendment introduces a new 14-day filing requirement for private companies to inform ACRA of any transfer of shares. Private companies may notify ACRA of share transfers after the

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	(c) such filing shall be prima facie evidence of the change in interest in the shares of the company.		execution of the transfers, regardless whether stamp duty has been paid. The instrument of transfer is not required to be produced or filed with ACRA. Private companies may indicate the effective date of transfer of shares when filing the prescribed form. *Consultation question 52* *We would like to seek comments on the new sections 63A, 71(1B) and 74A, and the amended section 128A.* Committee's views: The Committee is of the view that section 63A should not be included as Recommendation 3.38 has already been rejected by the Ministry of Finance. It is the Committee's opinion that the new 14-day filing requirement may be irrelevant and the transfer of shares should be made effective only when filed. The Committee also notes that the Stamp Duties Act (Chapter 312) needs to be amended to reflect the changes.
169	Recommendation 5.5 (a) The definitive register for directors, secretaries and auditors should be kept by ACRA; (b) it should not be mandatory for companies to keep a register of directors,	Clauses 3, 9, 103 and 105 Repeal and re-enact section 173. New sections 173A to 173H. Amendment to section 12 to provide for access to the definitive registers of private companies that are	The recommendation has been modified during the drafting of the Bill. For clarity on the filing requirement and for greater transparency, we propose to replace the current requirement on the register of managers with the register of CEOs. This means that ACRA will keep the definitive registers for directors, secretaries, auditors and CEOs. Definition of CEO

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
	secretaries, auditors and managers; and (c) there is no requirement for ACRA to keep a register of managers.	wholly owned by the Government. Amendment to section 4(1) to insert the definition of "chief executive officer" (CEO) and delete the definition of "manager". Amendment to section 171(1D) extends the definition of a secretary in section 171(1D) to the re-enacted section 173 and new sections 173A to 173H.	The proposed definition of CEO is based on section 30AA(2) of the Monetary Authority of Singapore Act. However, it does not include the following limb that is present in section 32F(5) of the Telecommunications Act and the SGX-ST Listing Manual i.e. "includes any person for the time being performing all or any of the functions or duties of a chief executive officer". The proposed definition and amendments relating to CEO mean that a company will only be allowed to appoint one CEO. <u>*Consultation question 53*</u> *We would like to seek comments on whether the definition of CEO should include "any person for the time being performing all or any of the functions or duties of a chief executive officer".* Committee's view: The Committee observes that the definition of chief executive officer is already provided for in the Bill (under amendment to section 4 of the Act) and therefore does not see any need for the proposed additional definition of the same term taken from the MAS Act. <u>*Consultation question 54*</u> *We would like to seek comments on whether there will be any practical difficulties in allowing a company to appoint only one CEO.* Committee's view: The Committee is of the view that the company should be allowed to appoint co-CEOs.

S/n	Steering Committee's Recommendation	Clause in Draft Bill and Description of Amendment	Remarks/ Consultation Questions
Striking Off Defunct Local Companies			
189	Recommendation 5.25 Section 344(5) should be amended to allow the Registrar to restore companies which have been struck-off as a result of a review conducted by ACRA. Recommendation modified by MOF. To specify that an appeal to the High Court will be allowed if the Registrar refuses to restore the company.	Clause 179 New sections 344D and 344E. New section 344F. New section 344G.	New sections 344D and 344E implement Recommendation 5.25. These provisions apply to ACRA-initiated striking off only. We have also included a new section 344F to allow the Registrar to restore a company if he is satisfied that its name has been struck off as a result of a mistake of the Registrar. This new provision will apply to both ACRA-initiated striking off and company initiated striking off. *Consultation question 55* *We would like to seek comments on whether the Registrar should be given powers to restore a company under the new section 344F.* Committee's views: The Committee is agreeable to this approach.

General Comments of the Committee:

1. The Committee suggests that in the review of the drafting of the Bill, every instance where the term 'subsidiary' is used could be looked at, in order to evaluate whether in the particular instance, it is appropriate to base the definition of a subsidiary on the concept of control rather than ownership of shares.

2. The CDP holds company shares as a 'bare trustee' and it is anomalous to deem this person as a member with full rights generally. Such a 'bare trustee' should only have rights for specific purposes.