

Companies (Amendment No. 2) Bill

Bill No. 00/2004.

Read the first time on

2004.

A BILL

intituled

An Act to amend the Companies Act (Chapter 50 of the 1994 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 No. 2) Act 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 4

2. Section 4(1) of the Companies Act is amended by inserting, immediately after the definition of “telecommunication system”, the following definition:

“ “treasury share” means a share which —

- 10 (a) was (or is treated as having been) purchased by a company in circumstances in which section 76H applies; and
- (b) has been held by the company continuously since the treasury share was so purchased;”.

15 *[Source: UK, 1985, s.162A; UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, Regulation 3]*

Consequential to R 2.23

Amendment of section 5

20 3. Section 5(1)(a) of the Companies Act is amended by inserting, immediately after the words “preference shares” in sub-paragraph (iii), the words “and treasury shares”.

Consequential to R 2.23

Amendment of section 7

25 4. Section 7 of the Companies Act is amended by inserting, immediately after the words “an interest in a share” in subsection (4A), the words “(excluding any treasury share)”.

[Source: For amendment to s.7(4A) –UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, the Schedule (Para 17)]

Consequential to R 2.23

30 New section 7A

5. The Companies Act is amended by inserting, immediately after section 7, the following section:

“Solvency statement and offence for making false statement

7A.—(1) In this Act, unless the context otherwise requires, “solvency statement”, in relation to a proposed redemption of preference shares by a company out of its capital under section 70, a proposed giving of financial assistance by a company under section 76(9A) or (9B) or a proposed reduction by a company of its share capital under section 78B or 78C, means a statement by the directors of the company —

(a) that they have formed the opinion that, as regards the company’s situation at the date of the statement, there is no ground on which the company could then be found to be unable to pay its debts;

(b) that they have formed the opinion —

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

(ii) if 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 following the date of the statement; and

(c) that they have formed the opinion that the value of the company’s assets is not less than the value of its liabilities (including its contingent liabilities) and will not, after the proposed redemption, giving of financial assistance or reduction (as the case may be), become less than the value of its liabilities (including contingent liabilities),

being a statement which complies with subsection (2).

(2) The solvency statement —

(a) if the company is exempt from audit requirements under section 205B or 205C, shall be in the form of a statutory declaration; or

(b) if the company is not such a company, shall be in the form of a statutory declaration or shall be accompanied by a report from its auditor that he has inquired into the affairs of the company and is of the opinion that the statement is not unreasonable given all the circumstances.

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(3) In forming an opinion for the purposes of subsection (1)(a) and (b), the directors of the company must take into account all liabilities of the company (including contingent and prospective liabilities).

(4) In determining, for the purposes of subsection (1)(c), whether the value of the company's assets is or will become less than the value of its liabilities (including contingent liabilities) the directors of the company —

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(a) must have regard to —

(i) the most recent financial statements of the company that comply with section 201(1A), (3) and (3A), as the case may be; and

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(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities (including its contingent liabilities); and

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(b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(5) In determining, for the purposes of subsection (4), the value of a contingent liability, the directors of a company may take into account —

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(a) the likelihood of the contingency occurring; and

(b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

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(6) A director of a company who makes a solvency statement without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years, or to both.”.

[Source: UK, Bill 2002, clause 63; Singapore, Companies Act (Cap. 50), s.76F(4) to (6)]

Query for public consultation: Do you agree that the solvency test (modelled after the UK Bill 2002) should require the directors to take into account all liabilities including contingent and prospective liabilities ?

Consequential to R 2.18, R 2.19 & R 2.21

Amendment of section 22

- 5 **6.** Section 22(1) of the Companies Act is amended by deleting the words “and the division thereof into shares of a fixed amount” in paragraph (c).

Consequential to R 2.18

Amendment of section 33

- 10 **7.** Section 33 of the Companies Act is amended —
- (a) by deleting the words “5% in nominal value of the company’s issued share capital or any class of that capital” in subsection (5)(a) and substituting the words “5% of the total number of issued shares of the company or any class of those shares”; and
- 15 (b) by inserting, immediately after subsection (5), the following subsection:

“(5A) For the purposes of subsection (5), any of the company’s issued share capital held as treasury shares shall be disregarded.”.

- 20 [Source: UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, the Schedule (para 1)]

Consequential to R 2.18 & R 2.23

Amendment of section 38

- 25 **8.** Section 38(2) of the Companies Act is amended by deleting the words “nominal amount or”.

Consequential to R 2.18

New sections 62A and 62B

- 9.** The Companies Act is amended by inserting, immediately above section 63, the following sections:

“No par value shares

62A.—(1) Shares of a company have no par or nominal value.

(2) Subsection (1) shall apply to shares issued before the date of commencement of the Companies (Amendment No. 2) Act 2004 as well as shares issued after that date.

[Source: Aust., 2001, s.254C]

Transitional provisions for section 62A

62B.—(1) For the purpose of the operation of this Act after the appointed day in relation to a share issued before that day —

(a) the amount paid on the share is the sum of all amounts paid to the company at any time for the share (but not including any premium);

(b) the amount unpaid on the share is the difference between the price of issue of the share (but not including any premium) and the amount paid on the share.

(2) Immediately after the appointed day, any amount standing to the credit of a company’s share premium account and capital redemption reserve becomes part of the company’s share capital.

(3) A company may use the amount standing to the credit of its share premium account immediately before the appointed day to —

(a) provide for the premium payable on redemption of redeemable preference shares issued before that day;

(b) write off —

(i) the preliminary expenses of the company incurred before that day; or

(ii) expenses incurred, or commissions or brokerages paid or discounts allowed, on or before that day, for or on any duty, fee or tax payable on or in connection with any issue of shares of the company;

(c) pay up shares issued before that day to members of the company as fully paid bonus shares;

(d) pay up in whole or in part the balance unpaid on shares issued before that day to members of the company; or

(e) pay dividends declared before that day, if such dividends are satisfied by the issue of shares to members of the company.

5 (4) If the company carries on insurance business in Singapore immediately before the appointed day, it may also apply the amount standing to the credit of its share premium account immediately before that day by appropriation or transfer to any statutory fund established and maintained pursuant to the Insurance Act (Cap. 142).

10 (5) Notwithstanding subsection (1), the liability of a shareholder for calls in respect of money unpaid on shares issued before the appointed day (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.

15 (6) For the purpose of interpreting and applying after the appointed day a contract entered into before that day (including the memorandum and articles of the company) or a trust deed or other document executed before that day —

(a) a reference to the par or nominal value of a share is a reference to —

20 (i) if the share is issued before that day — the par or nominal value of the share immediately before that day;

(ii) if the share is issued after that day but shares of the same class were on issue immediately before that day — the par or nominal value that the share would have had if it had been issued then; or

25 (iii) if the share is issued after that day and shares of the same class were not on issue immediately before that day — the par or nominal value determined by the directors,

30 and a reference to share premium is taken to be a reference to any residual share capital in relation to the share;

(b) a reference to a right to a return of capital on a share is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par or nominal value;

(c) a reference to the aggregate par or nominal value of the company's issued share capital is taken to be a reference to that aggregate as it existed immediately before that day and —

5 (i) increased to take account of the par or nominal value as defined in paragraph (a) of any shares issued after that day; and

10 (ii) reduced to take account of the par or nominal value as defined in paragraph (a) of any shares cancelled after that day.

(7) A company may, at any time before its first annual general meeting after the appointed day, file with the Registrar a notice in the prescribed form of its share capital.

15 (8) In this section, “appointed day” means the date of commencement of the Companies (Amendment No. 2) Act 2004.

[Source: Australian Corporations Law (in force before the commencement of Aust., 2001), s.1444 to s.1449]

R 2.18

Amendment of section 63

20 **10.** Section 63(1) of the Companies Act is amended —

(a) by deleting the words “and nominal amounts” in paragraph (a); and

(b) by inserting, immediately after the word “company” in paragraph (d)(ii), the words “(excluding treasury shares)”.

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<i>Query for public consultation: Should we impose an additional reporting requirement for consideration unpaid on the shares at the point of allotment?</i>
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Consequential to R 2.18 & R 2.23

Repeal of sections 67 to 69F

11. Sections 67 to 69F of the Companies Act are repealed.

<i>Query for public consultation: Should we repeal S67 totally or retain some basic conditions such as authorization by articles etc to allow payment of commissions?</i>

Consequential to R 2.18

Amendment of section 70

12. Section 70 of the Companies Act is amended —

(a) by deleting the word “authorised” in subsection (2); and

5 (b) by deleting subsections (3), (4), (5), (6) and (7) and substituting the following subsections:

“(3) The shares shall not be redeemed unless they are fully paid-up.

10 (4) The shares shall not be redeemed out of the capital of the company unless —

(a) all the directors have made a solvency statement in relation to such redemption; and

(b) the company has lodged a copy of the statement with the Registrar.”.

15 *Consequential to R 2.18*

Amendment of section 71

13. Section 71 of the Companies Act is amended —

(a) by deleting the words “of such amount as it thinks expedient” in subsection (1)(a);

20 (b) by deleting the words “into shares of larger amount than its existing shares” in subsection (1)(b);

(c) by deleting the words “of any denomination” in subsection (1)(c);

25 (d) by deleting the words “into shares of smaller amount than is fixed by the memorandum” in subsection (1)(d);

(e) by inserting, immediately after the word “cancel” in subsection (1)(e), the words “the number of”;

(f) by deleting the word “amount” in the 5th line of subsection (1)(e) and substituting the word “number”;

30 (g) by deleting the word “nominal” in the 1st line of subsection (3)(a);

- (h) by deleting the words “nominal amount” in the 2nd line of subsection (3)(a) and substituting the words “issue price”; and
- (i) by deleting subsections (4) and (5).

Consequential to R 2.18

5 **Repeal of section 73**

14. Section 73 of the Companies Act is repealed

Consequential to R 2.19

Amendment of section 74

10 **15.** Section 74 of the Companies Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1A) For the purposes of subsection (1), any of the company’s issued share capital held as treasury shares shall be disregarded.”.

[Source: UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, the Schedule (para 9)]

15 *Consequential to R 2.23*

Amendment of section 76

16. Section 76 of the Companies Act is amended —

- (a) by deleting the words “or of any premium payable in respect of the shares” in subsection (4)(b);
- 20 (b) by inserting, immediately after paragraph (g) of subsection (8), the following paragraph:
 - 25 “(ga) the giving by a company in good faith and in the ordinary course of commercial dealing of any representation, warranty or indemnity in relation to an offer to the public of, or an invitation to the public to subscribe for or purchase, shares or units of shares in that company;”;
- (c) by deleting the words “(including payments in respect of any premium)” in subsection (8)(j);
- 30 (d) by inserting, immediately after the words “the giving of a guarantee or the provision of security” in subsection (9)(a), the words “, in connection with loans made by other persons,”;

(e) by deleting sub-paragraph (i) of subsection (9)(a) and substituting the following sub-paragraph:

5 “(i) the lending of money, the giving of guarantees or the provision of security in connection with loans made by other persons is done in the course of such activities;”;

(f) by deleting the words “fully-paid shares” wherever they appear in subsection (9)(b) and substituting in each case the word “shares”;

10 (g) by inserting, immediately after subsection (9), the following subsections:

15 “(9A) 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 —

20 (a) the amount of the financial assistance, together with any other financial assistance given by the company under this subsection repayment of which remains outstanding, would not exceed 10% of the aggregate of —

(i) the total paid-up capital of the company or the holding company; and

25 (ii) the reserves of the company or the holding company,

as disclosed in the most recent financial statements of the company or the holding company that comply with section 201;

(b) all the directors of the company resolve that —

30 (i) the company should give the assistance;

(ii) giving the assistance is in the best interests of the company;

- (iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;
- (c) the resolution sets out in full the grounds for the directors' conclusions;
- (d) all the directors make a solvency statement in relation to the giving of the financial assistance;
- (e) within 10 business days of providing the financial assistance, the company sends to each member a notice containing the following particulars:
 - (i) the class and number of shares or units of shares in respect of which the financial assistance was given;
 - (ii) the consideration paid or payable for those shares or units of shares;
 - (iii) the identity of the person receiving the financial assistance and, if that person is not the beneficial owner of those shares or units of shares, the identity of the beneficial owner;
 - (iv) the nature and the amount of the financial assistance; and
- (f) not later than the business day next following the day when the notice referred to in paragraph (e) is sent to members of the company, the company lodges with the Registrar a copy of that notice and a copy of the solvency statement referred to in paragraph (d).

[Source: s.76, s.77 and s.80, New Zealand Companies Act 1993]

(9B) 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 —

- (a) all the directors of the company resolve that —
 - (i) the company should give the assistance;

- 5
- (ii) giving the assistance is in the best interests of the company;
- (iii) the terms and conditions under which the assistance is given are fair and reasonable to the company;
- (iv) giving the assistance is of benefit to those members not receiving the assistance;
- (v) the terms and conditions under which the assistance is given are fair and reasonable to those members not receiving the assistance;
- 10
- (b) the resolution sets out in full the grounds for the directors' conclusions;
- (c) all the directors make a solvency statement in relation to the giving of the financial assistance;
- 15
- (d) not later than the business day next following the day when the resolution referred to in paragraph (a) is passed, the company sends to each member having the right to vote on the resolution referred to in paragraph (e) a notice containing the following particulars:
- 20
- (i) the directors' resolution referred to in paragraph (a);
- (ii) the class and number of shares or units of shares in respect of which the financial assistance is to be given;
- 25
- (iii) the consideration payable for those shares or units of shares;
- (iv) the identity of the person who will be receiving the financial assistance and, if that person is a nominee for another person, the identity of that other person;
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- (v) the nature and, if quantifiable, the amount of the financial assistance;

- 5 (vi) such further information and explanation as may be necessary to enable a reasonable member to understand the nature and implications for the company and its members of the proposed transaction;
- (e) a resolution is passed —
- (i) by all the members of the company present and voting either in person or by proxy at the relevant meeting; or
- 10 (ii) if the resolution is proposed to be passed by written means under section 184A, by all the members of the company,
- to give that assistance;
- (f) not later than the business day next following the day when the resolution referred to in paragraph (e) is passed, the company lodges with the Registrar a copy of that resolution and a copy of the statement referred to in paragraph (c); and
- 15 (g) the financial assistance is given not more than 12 months after the resolution referred to in paragraph (e) is passed.
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[Source: s.76, s.78 and s.79, New Zealand Companies Act 1993]

25 (9C) A company shall not give financial assistance under subsection (9A) if, before the assistance is given, any of the directors —

- (a) ceases to be satisfied that the giving of the assistance is in the best interests of the company;
- (b) ceases to be satisfied that the terms and conditions under which the assistance is proposed are fair and reasonable to the company; or
- 30 (c) no longer has reasonable grounds for any of the opinions expressed in the solvency statement.

[Source: s.76 and s.77, New Zealand Companies Act 1993]

(9D) A company shall not give financial assistance under subsection (9B) if, before the assistance is given, any of the directors —

- 5 (a) ceases to be satisfied that the giving of the assistance is in the best interests of the company;
- (b) ceases to be satisfied that the terms and conditions under which the assistance is proposed are fair and reasonable to the company;
- 10 (c) ceases to be satisfied that giving the assistance is of benefit to those members not receiving the assistance;
- (d) ceases to be satisfied that the terms and conditions under which the assistance is given are fair and reasonable to those members not receiving the assistance; or
- 15 (e) no longer has reasonable grounds for any of the opinions expressed in the solvency statement.”;

[Source: s.76 and s.77, New Zealand Companies Act 1993]

- (h) by deleting the words “special resolution” in subsection (15) and substituting the word “resolution”; and
- 20 (i) by inserting, immediately before the words “the approval by the Court” in subsection (15), the words “(as the case may be)”.

R 2.18 & R 2.21

Amendment of section 76A

17. Section 76A of the Companies Act is amended —

- 25 (a) by deleting the words “section 76(10)(a) to (j), inclusive” in subsection (6) and substituting the words “section 76(9A), (9B) or (10) (as the case may be)”;
- (b) by deleting the words “section 76(10)” in subsections (7) and (12) and substituting in each case the words “section 76(9A), (9B) or (10) (as the case may be)”;
- 30 (c) by deleting the words “section 76(10)” in subsection (11) and substituting the words “section 76(9A), (9B) or (10)”.

Consequential to R 2.21

Amendment of section 76B

18. Section 76B of the Companies Act is amended —

- 5 (a) by deleting the words “issued ordinary share capital” in subsection (3) and substituting the words “total number of ordinary shares in the same class”;
- (b) by deleting the words “section 73(4)” in subsections (3), (3A), (3B) and (3C) and substituting in each case the words “section 78I”;
- 10 (c) by deleting the words “issued non-redeemable preference share capital” in subsection (3B) and substituting the words “total number of preference shares in the same class”;

[Source: Aust., 2001, s.254Y]

- (d) by inserting, immediately after subsection (3D), the following subsection:
- 15 “(3E) For the purposes of this section, any of the company’s ordinary shares held as treasury shares shall be disregarded.”;
- (e) by inserting, immediately after “76D” in subsection (5), “, 76DA”;
- (f) by inserting, immediately after subsection (6), the following subsection:
- 20 “(6A) Ordinary shares that are purchased or acquired by a company pursuant to section 76C, 76D, 76DA or 76E may instead of being cancelled under subsection (5) be held in treasury in accordance with section 76H.”; and
- (g) by deleting subsection (9) and substituting the following subsection:
- 25 “(9) Within 30 days of the purchase or acquisition of the shares, the directors of the company shall lodge with the Registrar the notice of the purchase or acquisition in the prescribed form with the following particulars:
- 30 (a) the date of the purchase or acquisition;
- (b) the number of shares purchased or acquired;
- (c) the number of shares cancelled;

- (d) the number of shares held as treasury shares;
- (e) the company's issued share capital before the purchase or acquisition;
- (f) the company's issued share capital after the purchase or acquisition; and
- (g) the amount of consideration paid by the company for the purchase or acquisition of each share, including whether each share was purchased out of the profits or the capital of the company.”.

10 *Consequential to R 2.18, R 2.22 & R 2.23*

Repeal and re-enactment of sections 76F and 76G and new sections 76H, 76I, 76J and 76K

19. Sections 76F and 76G of the Companies Act are repealed and the following sections substituted therefor:

15 **“Payments to be made only if company is solvent**

76F.—(1) A payment made by a company in consideration of —

- (a) acquiring any right with respect to the purchase or acquisition of its own shares in accordance with section 76C, 76D, 76DA or 76E;
- (b) the variation of an agreement approved under section 76D or 76DA; or
- (c) the release of any of the company's obligations with respect to the purchase or acquisition of any of its own shares under an agreement approved under section 76D or 76DA,

25 may be made out of the company's capital or profits so long as the company is solvent.

(2) If the requirements in subsection (1) are not satisfied in relation to an agreement —

- (a) in a case within subsection (1)(a), no purchase or acquisition by the company of its own shares in pursuance of that agreement is lawful;

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(b) in a case within subsection (1)(b), no such purchase or acquisition following the variation is lawful; and

(c) in a case within subsection (1)(c), the purported release is void.

5 (3) Every director or manager of a company who approves or authorises, the purchase or acquisition of the company's own shares or the release of obligations, knowing that the company is not solvent shall, without prejudice to any other liability, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or
10 to imprisonment for a term not exceeding 3 years.

(4) For the purposes of this section, a company is solvent if —

(a) the company is able to pay its debts in full at the time of the payment referred to in subsection (1) and will be able to pay its debts as they fall due in the normal course of business
15 during the period of 12 months immediately following the date of the payment; and

(b) the value of the company's assets is not less than the value of its liabilities (including its contingent liabilities) and will not after the proposed purchase, acquisition or release,
20 become less than the value of its liabilities (including its contingent liabilities).

(5) In determining, for the purposes of subsection (4), whether the value of a company's assets is less than the value of its liabilities (including its contingent liabilities), the directors or managers of a
25 company —

(a) must have regard to —

(i) the most recent financial statements of the company that comply with section 201(1A), (3) and (3A), as the case may be; and

30 (ii) all other circumstances that the directors or managers know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities (including its contingent liabilities); and

(b) may rely on valuations of assets or estimates of liabilities
35 that are reasonable in the circumstances.

(6) In determining, for the purposes of subsection (5), the value of a contingent liability, the directors or managers of a company may take into account —

(a) the likelihood of the contingency occurring; and

5 (b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

[Source: Singapore, Companies Act (Cap 50), s76F - modified]

Query for public consultation: Should the solvency test for share buybacks under section 76F (when the company buys back out of capital or profits or a combination of both) be identical to the test in section 7A?

Capital reduction on cancellation of repurchased shares

10 **76G.** Where under section 76C, 76D, 76DA or 76E, shares of a company are purchased or acquired, and cancelled under section 76B(5), the company shall —

(a) reduce the amount of its share capital where the shares were purchased or acquired out of the capital of the company;

15 (b) reduce the amount of its profits where the shares were purchased or acquired out of the profits of the company; or

(c) reduce the amount of its share capital and profits proportionately where the shares were purchased or acquired out of both the capital and the profits of the company,

20 by the total amount of the purchase price paid by the company for the shares cancelled.

Treasury shares

25 **76H.**—(1) Where ordinary shares or stocks are purchased or otherwise acquired by a company in accordance with sections 76B to 76G, the company may —

(a) hold the shares or stocks (or any of them); or

(b) deal with any of them, at any time, in accordance with section 76K.

30 (2) Where ordinary shares or stocks are held under subsection (1)(a) then, for the purposes of section 190 (Register and index of

members), the company shall be entered in the register as the member holding those shares or stocks.

[Source: UK, 1985, s162A; UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, Regulation 3]

5 **Treasury shares: maximum holdings**

76I.—(1) Where a company has shares of only one class, the aggregate number of shares held as treasury shares shall not at any time exceed 10% of the total number of shares of the company at that time.

10 (2) Where the share capital of a company is divided into shares of different classes, the aggregate number of the shares of any class held as treasury shares shall not at any time exceed 10% of the total number of the shares in that class at that time.

15 (3) Where subsection (1) or (2) is contravened by a company, the company shall dispose of or cancel the excess shares, in accordance with section 76K before the end of the period of 12 months beginning with the day on which that contravention occurs.

Query for public consultation: Do you think the 12 month period is too long? What do you suggest is an appropriate period? We propose that the company should dispose or cancel the shares within one month.

20 (4) In subsection (3), “the excess shares” means such number of the shares, held by the company as treasury shares at the time in question, as resulted in the limit being exceeded.

[Source: UK, 1985, s162B; UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, Regulation 3]

Treasury shares: voting and other rights

25 **76J.**—(1) This section shall apply to shares which are held by a company as treasury shares.

(2) The company shall not exercise any right in respect of the treasury shares, and any purported exercise of such a right is void.

30 (3) The rights to which subsection (2) applies include any right to attend or vote at meetings (including meetings under section 210) and for the purposes of this Act, the company shall be treated as having

no right to vote and the treasury shares shall be treated as having no voting rights.

(4) No dividend may be paid, and no other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) may be made, to the company in respect of the treasury shares.

(5) Nothing in this section is to be taken as preventing —

(a) an allotment of shares as fully paid bonus shares in respect of the treasury shares; or

(b) the subdivision of any treasury share into treasury shares of a smaller amount, if the total value of the treasury shares after the subdivision is the same as the total value of the treasury share before the subdivision.

(6) Any shares allotted as fully paid bonus shares in respect of the treasury shares shall be treated for the purposes of this Act as if they were purchased by the company at the time they were allotted, in circumstances in which section 76H applied.

[Source: UK, 1985, s162C; UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, Regulation 3]

Query for public consultation: Is it necessary or desirable to expressly provide for share splits of treasury shares (see s 76J(5)(b))?

Treasury shares: disposal and cancellation

76K.—(1) Where shares are held as treasury shares, a company may at any time —

(a) sell the shares (or any of them) for cash;

(b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme;

(c) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or assets of a person; or

(d) cancel the shares (or any of them).

Query for public consultation: Do you think that the uses of treasury shares should be expanded further? We have received suggestions for additional uses but we are concerned that there are no accounting standards for additional uses of treasury shares.

<i>Are these valid concerns?</i>

(2) In subsection (1)(a), “cash”, in relation to a sale of shares by a company, means —

- (a) cash (including foreign currency) received by the company;
- (b) a cheque received by the company in good faith which the directors have no reason for suspecting will not be paid;
- (c) a release of a liability of the company for a liquidated sum; or
- (d) an undertaking to pay cash to the company on or before a date not more than 90 days after the date on which the company agrees to sell the shares.

(3) But if the company receives a notice under section 215 (Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority) that a person desires to acquire any of the shares, the company shall not, under subsection (1), sell or transfer the shares to which the notice relates except to that person.

(4) The directors may take such steps as are requisite to enable the company to cancel its shares under subsection (1) without complying with section 78B (reduction of share capital by private company), 78C (reduction of share capital by public company) or 78I (court order approving reduction).

(5) Within 30 days of the cancellation or disposal of treasury shares in accordance with subsection (1), the directors of the company shall lodge with the Registrar the notice of the cancellation or disposal of treasury shares in the prescribed form with the following particulars:

- (a) the date of the cancellation or disposal of treasury shares;
- (b) the number of treasury shares sold for cash;
- (c) the number of treasury shares transferred for the purposes of or pursuant to an employees’ share scheme;
- (d) the number of treasury shares transferred as consideration for the acquisition of shares in or assets of another company or assets of any person;
- (e) the number of treasury shares cancelled;

- (f) the company's issued share capital before the cancellation or disposal of treasury shares;
- (g) the company's issued share capital after the cancellation or disposal of treasury shares; and
- 5 (h) the amount of consideration paid to the company for the disposal of each treasury share.”.

[Source: UK, 1985, s162D; UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, Regulation 3]

[Note for public consultation: Former section 76L which appeared in the MOF Consultation draft Companies (Amendment No.2) Bill 2003 (CLRFC Chapter 2) has been omitted entirely as the accounting treatment in relation to Treasury Shares will be left to Accounting Standards rather than prescribed by legislation. Section 403 will be amended to insert limitations on uses of profits that can be distributed as dividends.]

Consequential to R 2.22 & R 2.23

10 **Amendment of section 78**

20. Section 78 of the Companies Act is amended by inserting, immediately after the words “the company may pay interest on so much of such share capital”, the words “(except treasury shares)”.

Consequential to R 2.23

15 **New Division 3A**

21. The Companies Act is amended by inserting, immediately after section 78, the following Division:

“Division 3A — Reduction of Share Capital

Query for public consultation: Do you think that the differences in requirements for reduction of share capital for public and private companies are justified? How would these new provisions compare with the current regime which is retained under the new section 78I in this Bill?

Preliminary

20 **78A.—**(1) A company may reduce its share capital under the provisions of this Division in any way and, in particular, do all or any of the following:

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) cancel any paid-up share capital which is lost or unrepresented by available assets;

(c) return to shareholders any paid-up share capital which is more than it needs,

5 and may, so far as necessary alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A company may not reduce its share capital in any way except by a procedure provided for it by the provisions of this Division.

10 (3) A company's memorandum or articles may exclude or restrict any power to reduce share capital conferred on the company by this Division.

(4) In this Division —

15 “reduction information”, in relation to a proposed reduction of share capital by a special resolution of a company, means the following information:

(a) the amount of the company's share capital that is thereby reduced; and

(b) the number of shares that are thereby cancelled;

20 “resolution date”, in relation to a resolution, means the date when the resolution is passed.

(5) This Division shall not apply to an unlimited company, and shall not preclude such a company from reducing in any way its share capital.

25 [*Source: UK, Bill, 2002, clause 50; Singapore, Companies Act (Cap. 50), s.73(1) and (11)*]

Reduction of share capital by private company

30 **78B.**—(1) A private company limited by shares may reduce its share capital in any way by a special resolution if the company meets the solvency requirements, but the resolution shall not take effect until —

(a) the company has complied with subsection (6); and

(b) the Registrar has recorded in the appropriate register the information lodged with him under that subsection.

(2) Notwithstanding subsection (1), the company need not meet the solvency requirements if the reduction of share capital is solely by way of cancellation of any paid-up share capital which is lost or unrepresented by available assets.

5 (3) For the purposes of subsection (1), the company meets the solvency requirements if —

(a) all the directors of the company make a solvency statement in relation to the reduction of capital; and

(b) the statement is made —

10 (i) in time for subsection (4) to be complied with; but

(ii) not before the beginning of the period of 15 days ending with the resolution date.

(4) Unless subsection (2) applies, the company must —

15 (a) if the resolution for reducing share capital is a special resolution to be passed by written means under section 184A, ensure that every copy of the resolution served under section 183(3A) or 184C(1) (as the case may be) is accompanied by a copy of the solvency statement; or

20 (b) if the resolution is a special resolution to be passed in general meeting, make the solvency statement or a copy of it available throughout that meeting for inspection by the members at the meeting.

25 (5) The resolution does not become invalid by virtue only of a contravention of subsection (4); but every officer of the company who is in default shall be guilty of an offence.

(6) If a private company passes a special resolution for reducing share capital under this section, the company shall (for the reduction to take effect) lodge with the Registrar —

(a) if applicable, a copy of the solvency statement;

30 (b) if applicable, a statement made by the directors confirming that the requirements of subsection (3) were complied with;

(c) a notice containing the reduction information; and

(d) a copy of the resolution,

within 15 days beginning with the resolution date.

[Source: UK, Bill, 2002, clause 51]

Reduction of share capital by public company

5 **78C.**—(1) A public company may reduce its share capital in any way by a special resolution if the company meets the solvency requirements and publicity requirements, but the resolution shall take effect only as provided by section 78E.

10 (2) Notwithstanding subsection (1), the company need not meet the solvency requirements if the reduction of share capital is solely by way of cancellation of any paid-up share capital which is lost or unrepresented by available assets.

(3) The company meets the solvency requirements if —

(a) all the directors of the company make a solvency statement in relation to the reduction of share capital;

15 (b) the statement is made —

(i) in time for subsection (5)(a) to be complied with; but

(ii) not before the beginning of the period of 22 days ending with the resolution date; and

20 (c) a copy of the solvency statement is lodged with the Registrar together with the copy of the resolution required to be lodged with the Registrar under section 186 within 15 days beginning with the resolution date.

(4) The company meets the publicity requirements if —

25 (a) the company causes a notice of reduction to be published within 8 days beginning with the resolution date in one English and one Chinese daily newspaper circulating generally in Singapore; and

30 (b) the company within those 8 days sends a notice of reduction to each of its creditors to whom is owed a sum that is above the prescribed sum and for whom it has a current address.

(5) Unless subsection (2) applies, the company shall —

(a) throughout the meeting at which the resolution is to be passed, make the solvency statement or a copy of it available for inspection by the members at the meeting; and

(b) throughout the 6 weeks beginning with the resolution date, make the solvency statement or a copy of it available at the company's registered office for inspection free of charge by any creditor of the company.

(6) Where a public company has passed a resolution for reducing its share capital and (unless subsection (2) applies) its directors have made a solvency statement in relation to the resolution in accordance with subsection (3) —

(a) the company does not fail to meet the publicity requirements by virtue only of an accidental omission to send a notice of reduction to a creditor in accordance with subsection (4)(b); but

(b) every officer of the company who is in default shall be guilty of an offence.

(7) The resolution does not become invalid by virtue only of a contravention of subsection (5); but every officer of the company who is in default shall be guilty of an offence.

(8) Any requirement under subsection (3)(c), (4)(a) or (b) or (5)(b) ceases if the resolution is revoked.

(9) In this section, "notice of reduction" means a notice stating that the resolution has been passed and containing —

(a) the text of the resolution;

(b) the resolution date;

(c) if applicable, a statement that any creditor of the company may at any time during the 6 weeks referred to in subsection (5)(b) inspect the solvency statement (or a copy of it) at the company's registered office.

(10) For the purposes of this section, a company has a current address for a person if —

(a) it has been notified by the person of an address at which documents may be sent to him; and

- (b) it has no reason to believe that documents sent to him at that address will not reach him.

[Source: UK, Bill, 2002, clauses 52, 53 and 88; Singapore, Companies Act (Cap. 50), s.173A]

5 **Creditor's right to object to public company's reduction**

78D.—(1) This section shall apply where a public company has passed a special resolution for reducing share capital under section 78C.

10 (2) Any creditor of the company to which this subsection applies may, at any time during the 6 weeks beginning with the resolution date, apply to the Court for the resolution to be cancelled.

(3) Subsection (2) shall apply to a creditor of the company who, at the date of his application to the Court, is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company.

(4) When an application is made under subsection (2), the company shall as soon as possible give notice of that fact to the Registrar.

[Source: UK, Bill, 2002, clause 54]

Position at end of period for creditor objections

20 **78E.**—(1) Where —

(a) a public company passes a special resolution for reducing its share capital and meets the solvency requirements (if applicable) and the publicity requirements referred to in section 78C; and

25 (b) no application for cancellation of the resolution has been made under section 78D(2) during the 6 weeks beginning with the resolution date,

the company must, for the reduction of share capital to take effect, lodge with the Registrar —

30 (i) a statement made by the directors confirming that all the requirements of section 78C(3) (if applicable) and (4) were complied with and that there has been no application for cancellation of the resolution; and

(ii) a notice containing the reduction information, after the end of 6 weeks, and before the end of 8 weeks, beginning with the resolution date.

(2) The resolution in a case referred to in subsection (1) shall take effect when the company has complied with that subsection and the Registrar has recorded the information lodged with it in the appropriate register.

(3) Where —

(a) a public company passes a special resolution for reducing its share capital and meets the solvency requirements (if applicable) and the publicity requirements referred to in section 78C; but

(b) during the 6 weeks beginning with the resolution date, one or more applications for cancellation of the resolution are made under section 78D(2),

the resolution shall not take effect until all the following conditions are satisfied:

(i) the company has complied with section 78D(4) (notification to Registrar) as respects all such applications;

(ii) the Court has dismissed every application under section 78F or proceedings on it have been brought to an end without determination (for example, because the application has been withdrawn);

(iii) the company has, within 15 days beginning with the date on which every such application or proceedings (or the last of such applications or proceedings) have been dismissed or brought to an end without determination, lodged with the Registrar —

(A) a statement made by the directors confirming that all the requirements of section 78C(3) (if applicable) and (4) and section 78D(4) were complied with and that, in relation to each application, the Court has dismissed the application or proceedings or the application or proceedings were brought to an end without determination;

(B) a copy of every order of the Court dismissing any such application; and

(C) a notice containing the reduction information;

(iv) the Registrar has recorded the information lodged with him under paragraph (iii) in the appropriate register.

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[Source: UK, Bill, 2002, clauses 55 and 57]

Power of Court where creditor objection made

78F.—(1) An application by a creditor under section 78D shall be determined by the Court in accordance with this section.

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(2) The Court shall make an order cancelling the resolution (if not previously cancelled) if, at the time the application is considered, any debt or claim on which the application was based is outstanding and the Court is satisfied that —

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(a) the debt or claim has not been secured and the applicant does not have other adequate safeguards for it; and

(b) it is not the case that security or other safeguards are unnecessary in view of the assets that the company would have after the reduction.

(3) Otherwise, the Court shall dismiss the application.

20

(4) Where the Court makes an order under subsection (1), the company must send notice of the order to the Registrar within 15 days beginning with the date the order is made.

(5) If a company contravenes subsection (4), every officer of the company who is in default shall be guilty of an offence.

25

(6) For the purposes of this section, a debt is outstanding if it has not been discharged, and a claim is outstanding if it has not been terminated.

[Source: UK, Bill, 2002, clauses 56 and 58]

Reduction by special resolution subject to Court approval

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78G. A company limited by shares may, as an alternative to reducing its share capital under section 78B or 78C, reduce it in any way by a special resolution approved by an order of the Court under section 78I; but the resolution shall not take effect until —

- (a) that order has been made;
- (b) the company has complied with section 78I(3) (lodgment of information with Registrar); and
- (c) the Registrar has recorded the information lodged with him under section 78I(3) in the appropriate register.

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[Source: UK, Bill, 2002, clause 59]

Creditor protection

78H.—(1) This section shall apply if a company makes an application under section 78G and the proposed reduction of share capital involves either —

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- (a) a reduction of liability in respect of unpaid share capital; or
- (b) the payment to a shareholder of any paid-up share capital,

and also applies if the Court so directs in any other case where a company makes an application under that section.

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(2) Upon the application to the Court, the Court shall settle a list of qualifying creditors.

(3) If the proposed reduction of share capital involves either —

- (a) a reduction of liability in respect of unpaid share capital; or
- (b) the payment to a shareholder of any paid-up share capital,

20

the Court may, if having regard to any special circumstances of the case it thinks it appropriate to do so, direct that any class or classes of creditors are not qualifying creditors.

(4) For the purpose of settling the list of qualifying creditors, the Court —

25

- (a) shall ascertain, as far as possible without requiring an application from any creditor, the names of qualifying creditors and the nature and amount of their debts or claims; and

30

- (b) may publish notices fixing a day or days within which creditors not included in the list are to claim to be so included or are to be excluded from the list.

(5) Any officer of the company who —

- (a) intentionally conceals the name of a qualifying creditor;
- (b) intentionally misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years.

(6) In this section and section 78I but subject to subsection (3), “qualifying creditor” means a creditor of the company who at a date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company.

[Source: UK, Bill, 2002, clause 60]

Court order approving reduction

78I.—(1) On an application by a company under section 78G, the Court may, subject to subsection (2), make an order approving the reduction in share capital unconditionally or on such terms and conditions as it thinks fit.

(2) If, at the time the Court considers the application, there is a qualifying creditor within the meaning of section 78H —

- (a) who is included in the Court’s list of qualifying creditors under that section; and
- (b) whose claim or debt has not terminated or been discharged,

the Court must not make an order approving the reduction unless satisfied, as respects each qualifying creditor, that —

- (i) he has consented to the reduction;
- (ii) his debt or claim has been secured or that he has other adequate safeguards for it; or
- (iii) that security or other safeguards are unnecessary in view of the assets the company would have after the reduction.

(3) Where an order is made under this section approving a company's reduction in share capital, the company shall (for the reduction to take effect) lodge with the Registrar —

(a) a copy of the order; and

(b) a notice containing the reduction information,

within 15 days beginning with the date the order is made.

[Source: UK, Bill, 2002, clause 61]

Offences for making groundless or false statements

78J. A director making a statement under section 78B(6)(b) (private companies) or 78E(1)(i) or (3)(iii)(A) (public companies) shall be guilty of an offence if the statement —

(a) is false; and

(b) is not believed by him to be true.

[Source: UK, Bill, 2002, clause 65]

Liability of members on reduced shares

78K. Where a company's share capital is reduced under any provision of this Division, a member of the company (past or present) is not liable in respect of the issue price of any share to any call or contribution greater in amount than the difference (if any) between —

(a) the issue price of the share; and

(b) the aggregate of the amount paid up on the share (if any) and the amount reduced on the share.”.

Consequential to R 2.19

Amendment of section 79

22. Section 79(3) of the Companies Act is amended by deleting the words “having the same nominal amount as the amount of that stock and”.

Consequential to R 2.18

Amendment of section 81

23. Section 81 of the Companies Act is amended —

- (a) by deleting the words “nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than 5% of the aggregate of the nominal amount of all the voting shares” in subsection (1) and substituting the words “total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares”;
- (b) by deleting the words “nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than 5% of the nominal amount of all the voting shares” in subsection (2) and substituting the words “total votes attached to that share, or those shares, is not less than 5% of the total votes attached to all the voting shares”; and
- (c) by deleting subsections (4) and (5) and substituting the following subsection:
- “(4) In this section and section 83, “voting shares” exclude treasury shares.”.

[Source: Aust., 2001, s.9]

Consequential to R 2.18 & R 2.23

Amendment of section 82

24. Section 82(2) of the Companies Act is amended by deleting the words “1st October 1971” in paragraph (a) and substituting the words “the date of commencement of the Companies (Amendment No. 2) Act 2004”.

<p><i>Query for public consultation: Is this necessary in view of the fact that the substantial shareholdings are likely to remain unchanged under the new section 83?</i></p>
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Consequential to R 2.18

Amendment of section 83

25. Section 83(3) of the Companies Act is amended —
- (a) by deleting the words “aggregate of the nominal amount of the voting shares” and substituting the words “total votes attached to all the voting shares”; and
- (b) by deleting the words “percentage of the nominal amount of” and substituting the words “percentage of the total votes attached to”.

[Source: Aust., 2001, s.671B]

Consequential to R 2.18

Amendment of section 123

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

“(c) the class of shares and the extent to which the shares are paid up.”

Query for public consultation: Is it necessary to impose the disclosure requirement of consideration unpaid on the shares? (See also clause 10 of this Bill).

Consequential to R 2.18

Amendment of section 163

10 **27.** Section 163 of the Companies Act is amended —

(a) by deleting the words “shares in the other company of a nominal value equal to 20% or more of the nominal value of its equity share capital” in subsection (1) and substituting the words “20% or more of the total number of equity shares (excluding treasury shares) in the other company”; and

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

“(a) is or together are interested in 20% or more of the total number of equity shares (excluding treasury shares) in the other company; or”.

Consequential to R 2.18 & R 2.23

Amendment of section 164A

28. Section 164A(1) of the Companies Act is amended —

25 (a) by inserting, immediately after the word “company” in paragraph (a), the words “(excluding the company itself if it is registered as a member)”; and

(b) by deleting paragraph (b) and substituting the following paragraph:

30 “(b) a member or members with at least 5% of the total number of issued shares of the company,”.

Consequential to R 2.18 & R 2.23

Amendment of section 176

29. Section 176 of the Companies Act is amended by inserting, immediately after subsection (1), the following subsection:

- 5 “(1A) For the purposes of subsection (1), any of the company’s paid-up capital held as treasury shares shall be disregarded.”.

[Source: UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, the Schedule (para 19)]

Consequential to R 2.23

10 **Amendment of section 177**

30. Section 177 of the Companies Act is amended —

- (a) by deleting the words “10% of the issued share capital” in subsection (1) and substituting the words “10% of the total number of issued shares of the company (excluding treasury shares)”; and
- 15

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

20 “(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting.”.

Consequential to R 2.18 & R 2.23

Amendment of section 184

25 **31.** Section 184 of the Companies Act is amended —

- (a) by deleting the words “95% in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represents not less than 95% of the total voting rights that could be exercised at that meeting” in subsection (2) and substituting the words “95% of the total voting rights of all the members having a right to vote at that meeting”;
- 30

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

“(b) if no such provision is made by the articles, by 3 members so entitled, or by one or 2 members so entitled, if —

5 (i) that member holds or those 2 members together hold not less than 10% of the total number of paid-up shares of the company (excluding treasury shares); or

10 (ii) that member represents or those 2 members together represent not less than 10% of the total voting rights of all the members having a right to vote at that meeting.”; and

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

15 “(4A) For the purposes of subsection (4), any reference to a member does not include a reference to a company itself where it is registered as a member.”.

Consequential to R 2.18

Amendment of section 184A

32. Section 184A of the Companies Act is amended —

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

25 “(4A) A resolution referred to in section 76(9B)(e) is passed by written means if the resolution indicates that it is a resolution referred to in that provision and if it has been formally agreed on any date by all the members of the company who on that date would have the right to vote on that resolution at a general meeting of the company.”; and

(b) by deleting the words “subsection (3) or (4)” in subsection (6) and substituting the words “subsection (3), (4) or (4A)”.

30 *Consequential to R 2.21*

Amendment of section 190

33. Section 190 of the Companies Act is amended by inserting, immediately after subsection (2), the following subsection:

“(2A) Where a company purchases one or more of its own shares or stocks in circumstances in which section 76H applies —

(a) the requirements of subsections (1)(a), (b) and (c) and (2) shall be complied with unless the company cancels all of the shares or stocks immediately after the purchase in accordance with section 76K(1); but

(b) any share or stock which is so cancelled shall be disregarded for the purposes of subsections (1)(a) and (2).”.

[Source: UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, the Schedule (para 18)]

Consequential to R 2.23

Amendment of section 205B

34. Section 205B of the Companies Act is amended by deleting subsection (6) and substituting the following subsection:

“(6) Any member or members holding not less than 5% of the total number of issued shares of the company or any class of those shares, or not less than 5% of the total number of members of the company (excluding the company itself if it is registered as a member) may, by notice in writing to the company during a financial year but not later than one month before the end of that year, require the company to obtain an audit of its accounts for that year.”.

Consequential to R 2.18

Amendment of section 206

35. Section 206(1) of the Companies Act is amended by deleting paragraph (b) and substituting the following paragraph:

“(b) the holders in aggregate of not less than 5% of the total number of issued shares of the company.”.

Consequential to R 2.18

Amendment of heading of Part VII

36. The Companies Act is amended by deleting the heading of Part VII and substituting the following heading:

**“ARRANGEMENTS, RECONSTRUCTIONS AND
AMALGAMATIONS”.**

Consequential to R 5.8

Amendment of section 212

5 **37.** Section 212 of the Companies Act is amended by deleting the marginal note and substituting the following section heading:

“Approval of compromise or arrangement by court”.

Consequential to R 5.8

Amendment of section 215

10 **38.** Section 215 of the Companies Act is amended —

(a) by deleting the words “90% in nominal value of those shares” in subsection (1) and substituting the words “90% of the total number of those shares (excluding treasury shares)”;

15 (b) by inserting, immediately after the words “other than shares already held at the date of the offer by the transferee company” in subsection (1), the words “, and excluding any shares in the company held as treasury shares”; and

20 (c) by deleting the words “90% in nominal value of the shares” in subsection (3) and substituting the words “90% of the total number of the shares (excluding treasury shares)”.

Consequential to R 2.18 & R 2.23

New sections 215A to 215J

39. The Companies Act is amended by inserting, immediately after section 215, the following sections:

25 **“Amalgamations**

30 **215A.** Without prejudice to section 212 and any other law relating to the merger or amalgamation of companies, 2 or more companies may amalgamate and continue as one company, which may be one of the amalgamating companies or may be a new company, in accordance with the provisions of sections 215B to 215G, where applicable.

[Source: s.188, New Zealand Law Reform Commission Company Law Reform: Transition and Revision No. 16 (hereafter “NZ LRC”); s.219, New Zealand Companies Act 1993 (hereafter “NZ CA”)]

Amalgamation proposal

- 5 **215B.**—(1) Every amalgamation proposal shall contain the terms of
an amalgamation under section 215A and, in particular —
- (a) the name of the amalgamated company, if it is the same as
the name of one of the amalgamating companies;
 - (b) the registered office of the amalgamated company;
 - 10 (c) the full name and residential address of the director or
directors of the amalgamated company;
 - (d) the share structure of the amalgamated company,
specifying —
 - (i) the number of shares of the company;
 - 15 (ii) the rights, privileges, limitations and conditions
attached to each share of the company;
 - (iii) whether the shares are transferable or non-transferable
and, if transferable, whether their transfer is subject to
any condition or limitation;
 - 20 (e) a copy of the memorandum, if any, of the amalgamated
company;
 - (f) the manner in which the shares of each amalgamating
company are to be converted into shares of the amalgamated
company;
 - 25 (g) if any shares of an amalgamating company are not to be
converted into shares of the amalgamated company, the
consideration that the holders of those shares are to receive
instead of shares of the amalgamated company;
 - (h) any payment to be made to any member or director of an
30 amalgamating company, other than a payment of the kind
described in paragraph (i); and
 - (i) details of any arrangement necessary to complete the
amalgamation or to provide for the subsequent management
and operation of the amalgamating company.

(2) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.

(3) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal —

(a) shall provide for the cancellation of those shares without any payment in respect of those shares when the amalgamation becomes effective; and

(b) shall not provide for the conversion of those shares into shares of the amalgamated company.

(4) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

[Source: s.189, NZ LRC; s.220, NZ CA]

Manner of approving amalgamation proposal

215C.—(1) An amalgamation proposal shall be approved —

(a) subject to the memorandum of each amalgamating company, by the members of each amalgamating company by special resolution at a general meeting; and

(b) by any other person, where any provision in the amalgamation proposal would, if contained in any amendment to an amalgamating company's memorandum or otherwise proposed in relation to that company, require the approval of that person.

(2) The board of directors of each amalgamating company shall, before the general meeting referred to in subsection (1)(a) —

(a) resolve that the amalgamation is in the best interest of the amalgamating company;

(b) make a solvency statement in relation to the amalgamating company; and

(c) make a solvency statement in relation to the amalgamated company.

(3) Every director who votes in favour of the resolution and the making of the statements referred to in subsection (2) shall sign a declaration stating —

- 5 (a) that, in his opinion, the conditions specified in subsection (2)(a), section 215I(1)(a) and (b) (in relation to the amalgamating company) and section 215J(1)(a) and (b) (in relation to the amalgamated company) are satisfied; and
- (b) the grounds for that opinion.

10 (4) The board of directors of each amalgamating company shall send to every member of the company, not less than 21 days before the general meeting referred to in subsection (1)(a) —

- (a) a copy of the amalgamation proposal;
- (b) a copy of the declarations given by the directors under subsection (3);
- 15 (c) a statement of any material interests of the directors, whether in that capacity or otherwise; and
- (d) such further information and explanation as may be reasonably necessary to enable a member to understand the nature and implications, for the company and its members,
- 20 of the proposed amalgamation.

(5) The directors of each amalgamating company shall, not less than 21 days before the general meeting referred to in subsection (1)(a) —

- 25 (a) send a copy of the amalgamation proposal to every secured creditor of the amalgamating company; and
- (b) cause to be published in one English and one Chinese daily newspaper circulating generally in Singapore a notice of the proposed amalgamation, including a statement that —
- 30 (i) copies of the amalgamation proposal are available for inspection by any member or creditor of an amalgamating company at the registered offices of the amalgamating companies and at such other place as may be specified in the notice during ordinary business hours; and

(ii) a member or creditor of an amalgamating company is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating company.

5 (6) Every director who fails to comply with subsection (3) shall be guilty of an offence.

[Source: s.190, NZ LRC; s.221, NZ CA]

Short form amalgamation

10 **215D.**—(1) A company (referred to in this section as the amalgamating holding company) and one or more of its wholly-owned subsidiaries (referred to in this section as the amalgamating subsidiary companies) may amalgamate and continue as one company, being the amalgamated holding company, without complying with sections 215B and 215C if the members of each
15 amalgamating company, by special resolution at a general meeting, resolve to approve an amalgamation of the amalgamating companies on the terms that —

- 20 (a) the shares of each amalgamating subsidiary company will be cancelled without any payment or any other consideration in respect of those shares;
- (b) the memorandum of the amalgamated company will be the same as the memorandum of the amalgamating holding company;
- 25 (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 during the period of 12 months immediately after the date on which the amalgamation is to become effective; and
- 30 (d) the person or persons named in the resolution will be the director or directors, respectively, of the amalgamated company.

35 (2) Two or more wholly-owned subsidiary companies of the same corporation may amalgamate and continue as one company without complying with sections 215B and 215C if the members of each

amalgamating company, by special resolution at a general meeting, resolve to approve an amalgamation of the amalgamating companies on the terms that —

- 5 (a) the shares of all but one of the amalgamating companies will be cancelled without any payment or other consideration in respect of those shares;
- (b) the memorandum of the amalgamated company will be the same as the memorandum of the amalgamating company whose shares are not cancelled;
- 10 (c) the directors of every amalgamating company are satisfied that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and
- 15 (d) the person or persons named in the resolution will be the director or directors, respectively, of the amalgamated company.

 (3) The directors of each amalgamating company shall, not less than 21 days before the general meeting referred to in subsection (1) or (2), as the case may be, give written notice of the proposed amalgamation to every secured creditor of the amalgamating company.

 (4) The resolution referred to in subsection (1) or (2), as the case may be, shall be deemed to be an amalgamation proposal that has been approved for the purposes of sections 215E, 215F and 215G.

 (5) The board of directors of each amalgamating company shall, before the date of the general meeting referred to in subsection (1) or (2), as the case may be, make a solvency statement in relation to the amalgamated company.

30 (6) Every director who votes in favour of the making of the solvency statement referred to in subsection (5) shall sign a declaration stating —

- (a) that, in his opinion, the conditions specified in section 215J(1)(a) and (b) are satisfied; and
- 35 (b) the grounds for that opinion.

(7) Every director who fails to comply with subsection (6) shall be guilty of an offence.

(8) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

5 [Source: s.191, NZ LRC; s.222, NZ CA]

Registration of amalgamation

215E. After an amalgamation has been approved under section 215C or 215D, as the case may be, the following documents shall be filed with the Registrar:

- 10 (a) the amalgamation proposal, if any;
- (b) any declaration required under that section;
- (c) a declaration signed by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the memorandum of the
- 15 amalgamating company; and
- (d) a declaration signed by the directors, or proposed directors, of the amalgamated company stating that, in their opinion, no creditor will be prejudiced by the amalgamation.

[Source: s.192, NZ LRC; s.223, NZ CA]

Notice of amalgamation

215F.—(1) Immediately after the receipt of the documents required under section 215E, the Registrar shall —

- 25 (a) if the amalgamated company is the same as one of the amalgamating companies, issue a notice of amalgamation in such form as the Registrar may determine; or
- (b) if the amalgamated company is a new company, issue a notice of amalgamation in such form as the Registrar may determine together with the notice of incorporation under section 19(4).
- 30 (2) The Registrar shall specify, in the notice of incorporation referred to in subsection (1)(b), the effective date of the amalgamation.

(3) Where an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as or later than the date on which the Registrar receives the documents required under section 215E, the notice of amalgamation and any notice of incorporation issued by the Registrar shall be expressed to have effect on the date specified in the amalgamation proposal.

(4) Upon the application of the company and payment of the prescribed fee, the Registrar shall issue to the company a certificate, under his hand and seal, confirming the amalgamation or incorporation, as the case may be, of the company.

[Source: s.193, NZ LRC; s.224, NZ CA]

Effect of notice of amalgamation

215G. On the effective date of an amalgamation pursuant to section 215A —

- (a) the amalgamated company shall have the registered name specified in the amalgamated proposal, if it is the same as the name of one of the amalgamating companies;
- (b) the Registrar shall remove the amalgamating companies, other than the amalgamated company, from the register;
- (c) all the property, rights and privileges of each of the amalgamating companies shall be transferred to and vest in the amalgamated company;
- (d) all the liabilities and obligations of each of the amalgamating companies shall be transferred to and become the liabilities and obligations of the amalgamated company;
- (e) all proceedings pending by or against any amalgamating company may be continued by or against the amalgamated company;
- (f) any conviction, ruling, order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company; and

- (g) the shares and rights of the members in the amalgamating companies shall be converted into the shares and rights provided for in the amalgamation proposal, if any.

[Source: s.194, NZ LRC; s.225, NZ CA]

5 **Power of court in certain cases**

10 **215H.**—(1) If the court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application of that person made at any time before the date on which the amalgamation becomes effective, make any order it thinks fit in relation to the amalgamation proposal, and may, without limiting the generality of this subsection, make an order —

- 15 (a) directing that effect must not be given to the amalgamation proposal;
- (b) modifying the amalgamation proposal in such manner as may be specified in the order; or
- 20 (c) directing the amalgamating company or its board of directors to reconsider the amalgamation proposal or any part thereof.

(2) An order may be made under subsection (1) on such terms or conditions as the court thinks fit.

[Source: s.194A, NZ LRC; s.226, NZ CA]

25 **Solvency statement in relation to amalgamating company and offence for making false statement**

215I.—(1) For the purposes of section 215C(2)(b), “solvent statement”, in relation to an amalgamating company, means a statement by the board of directors of each amalgamating company that it has formed the opinion —

- 30 (a) that, as regards the company’s situation at the date of the statement, there is no ground on which the company could then be found to be unable to pay its debts; and

- (b) that, at the date of the statement, the value of the company's assets is not less than the value of its liabilities (including its contingent liabilities),

being a statement which complies with subsection (2).

5 (2) The solvency statement —

- (a) if the company is exempt from audit requirements under section 205B or 205C, shall be in the form of a statutory declaration; or

- 10 (b) if the company is not such a company, shall be in the form of a statutory declaration or shall be accompanied by a report from its auditor that he has inquired into the affairs of the company and is of the opinion that the statement is not unreasonable given all the circumstances.

15 (3) In forming an opinion for the purposes of subsection (1)(a) and (b), the directors shall take into account all liabilities of the company (including contingent and prospective liabilities).

20 (4) In determining, for the purposes of subsection (1)(b), whether the value of the company's assets is or will become less than the value of its liabilities (including contingent liabilities), the board of directors of each amalgamating company —

(a) shall have regard to —

- 25 (i) the most recent financial statements of the company that comply with section 201(1A), (3) and (3A), as the case may be; and
- (ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities (including its contingent liabilities); and

30 (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(5) In determining, for the purposes of subsection (4), the value of a contingent liability, the board of directors of each company may take into account —

- (a) the likelihood of the contingency occurring; and

(b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(6) A director of a company who votes in favour of or otherwise causes a solvency statement under this section to be made without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years, or to both.

[Source: UK, Bill 2002, clause 63; Singapore, Companies Act (Cap. 50), s.76F(4) to (6)]

Solvency statement in relation to amalgamated company and offence for making false statement

215J.—(1) For the purposes of sections 215C(2)(c) and 215D(5), “solvency statement”, in relation to an amalgamated company, means a statutory declaration by the board of directors of each amalgamating company that it has formed the opinion —

(a) that the amalgamated company will be able to pay its debts as they fall due during the period of 12 months immediately after the date on which the amalgamation is to become effective; and

(b) that the value of the amalgamated company’s assets will not be less than the value of its liabilities (including its contingent liabilities).

(2) In forming an opinion for the purposes of subsection (1)(a) and (b), the directors shall take into account all liabilities of the company (including contingent and prospective liabilities).

(3) In determining, for the purposes of subsection (1)(b), whether the value of the amalgamated company’s assets will become less than the value of its liabilities (including contingent liabilities), the board of directors of each amalgamating company —

(a) shall have regard to —

(i) the most recent financial statements of the company and the other amalgamating companies that comply with section 201(1A), (3) and (3A), as the case may be; and

(ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the amalgamated company's assets and the value of the amalgamated company's liabilities (including its contingent liabilities); and

(b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(4) In determining, for the purposes of subsection (3), the value of a contingent liability, the board of directors of each amalgamating company may take into account —

(a) the likelihood of the contingency occurring; and

(b) any claim the amalgamated company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(5) A director of a company who votes in favour of or otherwise causes a solvency statement under this section to be made without having reasonable grounds for the opinions expressed in it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years, or to both.”

[Source: UK, Bill 2002, clause 63; Singapore, Companies Act (Cap. 50), s.76F(4) to (6)]

Query for public consultation: Would you agree that the solvency test to be adopted should be consistent with that crafted under section 7A? If you disagree could you suggest how the solvency test should be constructed?

Consequential to R 5.8

Amendment of section 232

40. Section 232 of the Companies Act is amended by deleting sub-paragraph (i) of subsection (1)(a) and substituting the following sub-paragraph:

“(i) not less than 200 members (excluding the company itself if it is registered as a member) or of members holding not less than 10% of the shares issued (excluding treasury shares); or”.

[Source: UK, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, the Schedule (para 28)]

Consequential to R 2.23

Amendment of section 268

41. Section 268(4) of the Companies Act is amended by inserting, immediately after the words “issued capital of the company”, the words “(excluding treasury shares)”.

5 *Consequential to R 2.23*

Amendment of section 401

42. Section 401(1) of the Companies Act is amended —

10 (a) by deleting the words “or in which the amount of nominal or authorised capital is stated without the words “nominal” or “authorised”, or in which the amount of capital or authorised” and substituting the words “, or in which the amount of capital”; and

15 (b) by deleting the words “amount of authorised or subscribed capital” and substituting the words “amount of subscribed capital”.

Consequential to R 2.18

Amendment of section 403

43. Section 403 of the Companies Act is amended —

20 (a) by deleting the words “or pursuant to section 69” in subsection (1);

(b) by deleting the words “except pursuant to section 69” in subsection (2); and

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

25 “(5) In this section —

“dividend” includes bonus and payment by way of bonus;

“profits” —

30 (a) does not include any profits applied towards the purchase of shares which have not been cancelled but shall include any part of the sale proceeds received from the sale or disposal of such treasury

shares under section 76K for cash which has been applied towards profits; and

- (b) does not include any profits derived from the sale or disposal of any treasury shares under section 76K.”.

5

Query for public consultation: Do you agree with the above restrictions imposed on profits that are payable as dividends to shareholders?

Consequential to R 2.18 & R 2.23

Amendment of Second Schedule

44. The Second Schedule to the Companies Act is amended by deleting item 22 and substituting the following item:

“22. 372(2) Lodgment of notice of increase in authorised share capital \$10”.

10

Consequential to R 2.18

Amendment of Fourth Schedule

45. The Fourth Schedule to the Companies Act is amended —

- (a) by deleting the words “(whether on account of the nominal value of the shares or by way of premium)” in regulation 13;
- 15 (b) by deleting the words “exceed 25% of the nominal value of the share or” in regulation 13;
- (c) by deleting the words “, whether on account of the nominal value of the share or by way of premium,” in regulations 17 and 35;
- (d) by deleting the words “, but the minimum shall not exceed the
20 nominal amount of the shares from which the stock arose” in regulation 37;
- (e) by deleting the words “, any capital redemption reserve fund or any share premium account” in regulation 42; and
- 25 (f) by deleting the words “A share premium account and a capital redemption reserve may, for the purposes of this regulation, be applied only in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.” in regulation 106.

Consequential to R 2.18

Amendment of Sixth Schedule

46. Part I of the Sixth Schedule to the Companies Act is amended by deleting the following:

5	“The nominal share capital of the company	\$	Shares of \$	each: \$
	Divided into		Shares of \$	each: \$
			Shares of \$	each: \$
10	Amount (if any) of above capital which consists of redeemable preference shares		Shares of \$	each: \$”,

and substituting the following:

15	“The issued share capital of the company	\$	Shares of \$	
	Divided into		Shares of \$	
			Shares of \$	
20	Amount (if any) of above capital which consists of redeemable preference shares		Shares of \$”.	

Consequential to R 2.18

Consequential amendments to other written laws

47. 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.

THE SCHEDULE

Section 47

CONSEQUENTIAL AMENDMENTS

<i>First column</i>	<i>Second column</i>
(1) Architects Act (Chapter 12, 2000 Ed.)	
Section 20(1)	Delete paragraph (b) and substitute the following paragraph: “(b) it has a paid-up capital of at least \$1 million;”.
(2) Broadcasting Act (Chapter 28, 2003 Ed.)	
Section 35(3)	Delete the words “nominal amount of” and substitute the words “total votes attached to”.
(3) Economic Development Board Act (Chapter 85, 2001 Ed.)	
Section 10(3)(a)	Delete the word “nominal” wherever it appears.
(4) Land Surveyors Act (Chapter 156, 2002 Ed.)	
Section 22(1)	Delete paragraph (b) and substitute the following paragraph: “(b) it has a paid-up capital of at least \$1 million;”.
(5) Newspaper and Printing Presses Act (Chapter 206, 2002 Ed.)	
(a) Section 10(14)	Delete the words “shall have the same par value as ordinary shares but”.

- (b) Section 11(3) Delete the words “nominal amount of” and substitute the words “total votes attached to”.
- (6) Professional Engineers Act
(Chapter 253, 1992 Ed.)
- Section 20(1) Delete paragraph (b) and substitute the following paragraph:
- “(b) it has a paid-up capital of at least \$1 million;”.
- (7) Trust Companies Act
(Chapter 336, 1985 Ed.)
- (a) Section 3
- (i) Delete paragraph (b) and substitute the following paragraph:
- “(b) the share capital of the company is made up of shares of not less than \$10 each;”.
- (ii) Delete the word “authorised” in paragraph (e) and substitute the word “share”.
- (b) The Schedule Delete item 2 and substitute the following item:
- “2. For certificate of registration 100 00”.

[Note for Public Consultation: Consequential amendments to statutes relating to inland revenue and financial services and securities will be addressed separately.]

Consequential to R 2.18

EXPLANATORY STATEMENT

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

TABLE OF DERIVATIONS OF AMENDMENTS

<i>Companies (Amendment No. 2) Bill 2004</i>		<i>Source</i>			
<i>Provision in Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section Heading</i>	<i>Draft Bill in UK White Paper on Modernising Company Law, July 2002 CM 5553-I</i>	<i>Australian Corporations Act 2001</i>	<i>N.Z. Companies Act 1993</i>	<i>Others</i>
<i>Section</i>		<i>Clause</i>	<i>Section</i>	<i>Section</i>	
4	Interpretation	—	—	—	Section 162A, UK Companies Act 1985; Regulation 3, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK
7	Interests in shares	—	—	—	Paragraph 17 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK
7A	Solvency statement and offence for making false statement	63	—	—	Section 76F(4) to (6) of the Companies Act (Cap. 50)

<i>Companies (Amendment No. 2) Bill 2004</i>		<i>Source</i>			
<i>Provision in Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section Heading</i>	<i>Draft Bill in UK White Paper on Modernising Company Law, July 2002 CM 5553-I</i>	<i>Australian Corporations Act 2001</i>	<i>N.Z. Companies Act 1993</i>	<i>Others</i>
<i>Section</i>		<i>Clause</i>	<i>Section</i>	<i>Section</i>	
33	Alterations of objects in memorandum	—	—	—	Paragraph 1 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK
62A	No par value shares	—	254C	—	—
62B	Transitional provisions for section 62A	—	—	—	Australian Corporations Law (in force before the commencement of the Australian Corporations Act 2001), s.1444 to s.1449
63	Return as to allotments	—	—	—	—
74	Rights of holders of classes of shares	—	—	—	Paragraph 9 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK

<i>Companies (Amendment No. 2) Bill 2004</i>		<i>Source</i>			
<i>Provision in Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section Heading</i>	<i>Draft Bill in UK White Paper on Modernising Company Law, July 2002 CM 5553-1</i>	<i>Australian Corporations Act 2001</i>	<i>N.Z. Companies Act 1993</i>	<i>Others</i>
<i>Section</i>		<i>Clause</i>	<i>Section</i>	<i>Section</i>	
76(9A)	Company financing dealings in its shares, etc.	—	—	76, 77, 80	—
76(9B)				76, 78, 79	
76(9C)				76, 77	
76(9D)				76, 77	
76B (Amendment to clause 18(a), (b), (c))	Company may acquire its own shares	—	254Y	—	—
76F	Payments to be made only if company is solvent	—	—	—	Section 76F (Modified), Companies Act (Cap. 50)
76H	Treasury shares	—	—	—	Section 162A, UK Companies Act 1985; Regulation 3 of The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK

<i>Companies (Amendment No. 2) Bill 2004</i>		<i>Source</i>			
<i>Provision in Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section Heading</i>	<i>Draft Bill in UK White Paper on Modernising Company Law, July 2002 CM 5553-I</i>	<i>Australian Corporations Act 2001</i>	<i>N.Z. Companies Act 1993</i>	<i>Others</i>
<i>Section</i>		<i>Clause</i>	<i>Section</i>	<i>Section</i>	
76I	Treasury shares: maximum holdings	—	—	—	Section 162B, UK Companies Act 1985; Regulation 3 of The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK
76J	Treasury shares: voting and other rights	—	—	—	Section 162C, UK Companies Act 1985; Regulation 3 of The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK
76K	Treasury shares: disposal and cancellation	—	—	—	Section 162D, UK Companies Act 1985; Regulation 3 of The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK

<i>Companies (Amendment No. 2) Bill 2004</i>		<i>Source</i>			
<i>Provision in Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section Heading</i>	<i>Draft Bill in UK White Paper on Modernising Company Law, July 2002 CM 5553-I</i>	<i>Australian Corporations Act 2001</i>	<i>N.Z. Companies Act 1993</i>	<i>Others</i>
<i>Section</i>		<i>Clause</i>	<i>Section</i>	<i>Section</i>	
78A	Preliminary	50	—	—	Section 73(1) and (11), Companies Act (Cap. 50)
78B	Reduction of share capital by private company	51	—	—	—
78C	Reduction of share capital by public company	52, 53, 88	—	—	Section 173A, Companies Act (Cap. 50)
78D	Creditor's right to object to public company's reduction	54	—	—	—
78E	Position at end of period for creditor objections	55, 57	—	—	—
78F	Power of Court where creditor objection made	56, 58	—	—	—
78G	Reduction by special resolution subject to court approval	59	—	—	—
78H	Creditor protection	60	—	—	—
78I	Court order approving reduction	61	—	—	—
78J	Offences for making groundless or false statement	65	—	—	—

<i>Companies (Amendment No. 2) Bill 2004</i>		<i>Source</i>			
<i>Provision in Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section Heading</i>	<i>Draft Bill in UK White Paper on Modernising Company Law, July 2002 CM 5553-I</i>	<i>Australian Corporations Act 2001</i>	<i>N.Z. Companies Act 1993</i>	<i>Others</i>
<i>Section</i>		<i>Clause</i>	<i>Section</i>	<i>Section</i>	
78K					
81	Substantial shareholdings and substantial shareholders	—	9	—	—
83	Substantial shareholder to notify company of charge in interests	—	671B	—	—
123	Certificate to be evidence of title	—	—	—	—
176	Convening of extraordinary general meeting on requisition	—	—	—	Paragraph 19 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK
190	Register and index of members	—	—	—	Paragraph 18 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK
215A	Amalgamations	—	—	219	Section 188, NZ LRC
215B	Amalgamation proposal	—	—	220	Section 189, NZ LRC

<i>Companies (Amendment No. 2) Bill 2004</i>		<i>Source</i>			
<i>Provision in Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section Heading</i>	<i>Draft Bill in UK White Paper on Modernising Company Law, July 2002 CM 5553-I</i>	<i>Australian Corporations Act 2001</i>	<i>N.Z. Companies Act 1993</i>	<i>Others</i>
<i>Section</i>		<i>Clause</i>	<i>Section</i>	<i>Section</i>	
215C	Manner of approving amalgamation proposal	—	—	221	Section 190, NZ LRC
215D	Short form amalgamation	—	—	222	Section 191, NZ LRC
215E	Registration of amalgamation	—	—	223	Section 192, NZ LRC
215F	Notice of amalgamation	—	—	224	Section 193, NZ LRC
215G	Effect of notice of amalgamation	—	—	225	Section 194, NZ LRC
215H	Power of court in certain cases	—	—	226	Section 194A, NZ LRC
215I	Solvency statement in relation to amalgamating company and offence for making false statement	63	—	—	Section 76F(4) to (6) of the Companies Act (Cap. 50)
215J	Solvency statement in relation to amalgamated company and offence for making false statement	63	—	—	Section 76F(4) to (6) of the Companies Act (Cap. 50)

<i>Companies (Amendment No. 2) Bill 2004</i>		<i>Source</i>			
<i>Provision in Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section Heading</i>	<i>Draft Bill in UK White Paper on Modernising Company Law, July 2002 CM 5553-I</i>	<i>Australian Corporations Act 2001</i>	<i>N.Z. Companies Act 1993</i>	<i>Others</i>
<i>Section</i>		<i>Clause</i>	<i>Section</i>	<i>Section</i>	
232	Investigation of affairs of company by inspectors at direction of Minister	—	—	—	Paragraph 28 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK

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