

## **Companies (Amendment No. 2) Bill**

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**Bill No. /2003.**

*Read the first time on* 2003.

BILL

*intituled*

An Act to amend the Companies Act (Chapter 50 of the 1994 Revised Edition).

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 2003 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### 5 **Recommendation 1.5**

#### **Amendment of section 18**

2. Section 18 (1) of the Companies Act is amended —

(a) by inserting, immediately after the words “transfer its shares;” in paragraph (a), the word “and”; and

10 (b) by deleting paragraphs (c) and (d).

[Source: new]

#### **Amendment of section 32**

3. Section 32 of the Companies Act is amended —

(a) by deleting subsection (1);

15 (b) by deleting paragraphs (a) and (b) of subsection (2);

(c) by deleting the words “restrictions, limitations or prohibitions” and substituting the words “restrictions or limitations” in paragraph (c) of subsection (2);

(d) by deleting the words “(1) or” in subsection (4);

20 (e) by deleting subsection (7); and

(f) by deleting the words “restrictions, limitations or prohibitions” and substituting the words “restrictions or limitations” in subsection (8).

[Source: new]

### 25 **Recommendation 1.6**

#### **Amendment of section 144**

4. Section 144 of the Companies Act is amended —

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

“(1) The name of a company shall appear in legible romanised letters on —

(a) its seal; and

5 (b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, indorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the company.”.

10 (1A) The registration number of a company shall appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of the company.

(1B) A company shall be guilty of an offence if default is made in complying with subsection (1) or (1A).”;

15 (b) by deleting the words “wherein its name is not so mentioned” in subsection (2)(b) and substituting the words “in which its name or registration number is not so mentioned”;

20 (c) by deleting the word “wherein” and substituting the words “in which” in paragraph (c) and in the third last line of subsection (2); and

(d) by inserting, immediately after the word “name” in section heading, the words “and registration number”.

*[Source: new]*

### **Recommendation 1.10**

#### **25 Amendment of section 22**

5. Section 22 (1) of the Companies Act is amended —

(a) by inserting, immediately after the words “in addition to other requirements”, the words “in this Act or other written law”; and

(b) by deleting paragraph (b).

30 *[Source: new]*

#### **Amendment of section 23**

6. Section 23 of the Companies Act is amended —

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

“(1) A company is a legal entity in its own right separate from its members and continues in existence until it is removed from the register in accordance with this Act.

(1A) Subject to this Act and any other written law, a company has —

(a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and

(b) for the purposes of paragraph (a), full rights, powers and privileges.

(1B) A company may have the objects of the company included in its memorandum.

(1C) The memorandum or articles of a company may contain a provision relating to the capacity, rights, powers or privileges of the company only if it or they restrict the capacity of the company or those rights, powers or privileges.”;

*[Source: sections 15 and 16 New Zealand Companies Act 1993]*

(b) by deleting the words “A company” in subsection (2) and substituting the words “Subject to subsections (1), (1A), (1B) and (1C), a company”; and

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

**“Separate legal personality, capacity and powers of a company.”.**

### **Amendment of section 33**

7. Section 33 of the Companies Act is amended —

(a) by inserting, immediately after the word “alter” in subsections (1) and (2), the words “or remove”;

(b) by inserting, immediately after the words “the objects of the company” in subsections (1) and (2), the words “, if any” wherever it appears;

(c) by inserting, immediately after the word “alteration” in subsections (5), (7) and (10), the words “or removal”; and

(d) by inserting immediately after the word “altering”, the words “or removing” in subsections (6) and (8).

5 *[Source: new]*

### **Repeal of Third Schedule**

**8.** The Third Schedule to the Companies Act is repealed.

### **Recommendation 1.11**

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

10 **9.** Section 4 of the Companies Act is amended by inserting, immediately after subsection (9), the following subsections:

“(10) A reference in this Act to the directors of a company shall, in the case of a private company limited by shares which has only one director, be construed as a reference to that director.

15 (11) A reference in this Act to the doing of any act by 2 or more directors of a company shall, in the case of a company limited by shares which has only one director, be construed as the doing of that act by that director.”.

*[Source: new]*

#### **Amendment of section 17**

20 **10.** Section 17 of the Companies Act is amended by inserting, immediately after subsection (1), the following subsections:

25 “(1A) Notwithstanding subsection (1), a private company limited by shares may be formed by at least one person of full age and capacity who is ordinarily resident in Singapore, by subscribing his name to a memorandum and complying with the requirements as to registration.

(1B) A private company limited by shares shall have at least one director and at least one member.”.

*[Source: new]*

#### **Repeal of section 42**

30 **11.** Section 42 of the Companies Act is repealed.

**Amendment of section 145**

**12.** Section 145 of the Companies Act is amended —

- 5 (a) by inserting, immediately after the words “Every company” in subsection (1), the words “, other than a private company limited by shares,”;
- (b) by inserting, immediately after subsection (1), the following subsection:
- 10 “(1A) A private company limited by shares shall have at least one director who is ordinarily resident in Singapore and, where the company only has one member, he may also be the sole member of the company.”;
- (c) by deleting subsection (5) and substituting the following subsection:
- 15 “(5) A director of a company shall not, notwithstanding anything in this Act or in the memorandum or articles of the company, or in any agreement with the company, resign or vacate his office unless —
- (a) in the case of a private company limited by shares, there is remaining in the company at least one director who is ordinarily resident in Singapore;
- 20 (b) in the case of any other company, there are remaining in the company at least 2 directors, one of whom shall be ordinarily resident in Singapore,
- and any purported resignation or vacation of office in breach of this section shall be deemed to be invalid.”; and
- 25 (d) by inserting, immediately after subsection (6), the following subsections:
- “ (7) If there is a contravention of subsection (5), the Court or the Registrar may direct the company to appoint —
- 30 (a) in the case of a private company limited by shares, a director who is ordinarily resident in Singapore;
- (b) in the case of any other company, at least 2 directors, one of whom shall be ordinarily resident in Singapore.

(7A) If a company fails to comply with the direction made under subsection (7), the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.”.

5 [Source: section 201A Australia Corporations Act 2001]

#### **Amendment of section 156**

13. Section 156 of the Companies Act is amended by inserting, immediately after subsection (10), the following subsection:

10 “(11) This section shall not apply to a private company limited by shares which has only one director.”.

[Source: section 191 Australia Corporations Act 2001]

#### **Amendment of section 171**

14. Section 171 of the Companies Act is amended by inserting, immediately after subsection (1D), the following subsection:

15 “(1E) Where a director is the sole director of a private company limited by shares, he shall not act or be appointed as the secretary of the company.”.

[Source: section 283 UK Companies Act 1985]

#### **Consequential amendments to other written laws**

20 15. The Minister may, by order published in the *Gazette*, repeal or amend any provision of the Companies Act or other written law which appears to him unnecessary having regard to the provisions of, or to be inconsistent with any provision of, this Act.

#### **Transitional and savings provisions**

25 16. The Minister may, by regulations, prescribe such transitional, savings and other consequential provisions as he may consider necessary or expedient.

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- 5 An Act to amend the Companies Act (Chapter 50 of the 1994 Revised Edition).

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

**Short title**

1. This Act may be cited as the Companies (Amendment No. 2) Act 2003 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Recommendation 2.18****Amendment of section 62**

2. The Companies Act is amended by inserting, immediately above section 63, the following section:

**“No par value shares**

10 **62A.**—(1) Shares of a company have no par or nominal value.

(2) Subsection (1) applies to shares issued before the date of commencement of the Companies (Amendment No. 2) Act 2003 as well as shares issued after that date.”.

*[Source: section 254C, Australia Corporations Act 2001]*

15 **Repeal of sections 67 to 69F**

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

**Transitional provisions for new section 62A**

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

20 (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  
25 the amount paid on the share.

(2) Immediately after the appointed date, 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.

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

(a) provide for the premium payable on redemption of redeemable preference shares [or debentures] issued before that date; or

(b) write off —

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

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

10 (4) Notwithstanding subsection (1), the liability of a shareholder for calls in respect of money unpaid on shares issued before the appointed date (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 (5) For the purpose of interpreting and applying after the appointed date a contract entered into before that date (including the memorandum and articles of the company) or a trust deed or other document executed before that date —

(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 date — the par or nominal value of the share immediately before that date;

(ii) if the share is issued after that date but shares of the same class were on issue immediately before that date — 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 date and shares of the same class were not on issue immediately before that date — 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 date and —

- 5 (i) increased to take account of the par or nominal value of any shares issued after that date; and
- (ii) reduced to take account of the par or nominal value of any shares cancelled after that date.

(6) In this section, “appointed date” means the date of commencement of the Companies (Amendment No. 2) Act 2003.

10 [*Source: sections 1444 to 1449, Australia Corporations Law*]

### **Recommendation 2.19**

#### **Repeal of section 73**

5. Section 73 of the Companies Act is repealed

#### **New Division 3A**

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

“DIVISION 3A

#### REDUCTION OF SHARE CAPITAL

##### **Preliminary**

20 78A.—(1) The ways in which a company may reduce its share capital under the provisions of this Division include, in particular —

- (a) extinguishing or reducing the liability on any of its shares in respect of share capital not paid up;
- 25 (b) cancelling any paid-up share capital which is lost or unrepresented by available assets;
- (c) returning to shareholders any paid-up share capital which is more than it needs.

(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.

(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 —

5 “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

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

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

(2) For the purposes of this Division, a company is insolvent if either —

15 (a) the company is unable to pay its debts as they become due in the normal course of business; or

(b) the value of the company's assets is less than the value of its liabilities, including contingent liabilities.

20 (3) In determining for the purposes of subsection (2) whether the value of a company's assets is less than the value of its liabilities, including contingent liabilities, the directors of a company —

(a) must have regard to —

(i) the most recent financial statements of the company that comply with this Act; and

25 (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;

30 (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 directors of a 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.

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

*[Source: sections 73(1) and (11) and 76F(4) to (6) CA; clause 50, Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]*

### 10 **Reduction of share capital by private company**

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

- (a) the company has complied with subsection (7); and
- 15 (b) the Registrar has recorded in the appropriate register the information lodged with him under that subsection.

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

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

- (a) all the directors of the company are satisfied on reasonable grounds that the company is not insolvent and will not, immediately after the proposed reduction, become insolvent; and make a statement to this effect (referred to in this section as the solvency statement) that complies with subsection (4); and
- 25 (b) the statement is made —
  - 30 (i) in time for subsection (5) to be complied with; but
  - (ii) not before the beginning of the period of 15 days ending with the day the resolution is passed.

(4) The solvency statement must —

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

5 (b) if the company is not such a company, be in the form of a statutory declaration or 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 directors' statement is not unreasonable given all the circumstances.

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

10 (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 or made accessible under section 183(3A) is accompanied by a copy of the solvency statement; or

15 (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.

20 (6) 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.

(7) 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 —

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

(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,

30 within 15 days beginning with the date when the resolution is passed.

*[Source: clause 51, Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]*

**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 that meets the solvency requirements and publicity requirements, but the resolution shall take effect only as provided by section 78E.

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

10 (3) The resolution meets the solvency requirements if —

(a) all the directors of the company are satisfied on reasonable grounds that the company is not insolvent and will not, immediately after the reduction, become insolvent; and make a statement to this effect (referred to in this section as the solvency statement) that is either —

15 (i) in the form of a statutory declaration;

(ii) accompanied by a report from its auditor that he has inquired into the affairs of the company and is of the opinion that the directors' statement is not unreasonable given all the circumstances;

20 (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

25 (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 and within 15 days beginning with the resolution date.

(4) The resolution meets the publicity requirements if —

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

(b) the company within those 8 days sends a notice of reduction in legible form or a permitted alternative form to each of its creditors for whom it has a current address.

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

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

10 (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.

15 (6) Where a public company has passed a resolution for reducing 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 resolution 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

20 (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.

25 (8) Any requirement under subsection (3)(c), (4)(a) or (b) or 5(b) ceases if the resolution is revoked; but this does not affect any liability already incurred under this section.

(9) In this section —

30 “address” includes any number or address used for electronic communication;

“electronic communication” has the meaning given to that expression in section 173A;

“notice of reduction” means a notice stating that the resolution has been passed and containing —

- (a) the text of the resolution;
- (b) the date on which it was passed;
- (c) if applicable, a statement that any creditor of the company may at any time during the 6 weeks referred to in subsection (3)(a) inspect the solvency statement (or a copy of it) at the company's registered office;

“in legible form or a permitted alternative form” has the meaning given to that expression in section 173A.

(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: section 173A CA; clauses 52, 53 and 88, Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]*

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

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

(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) applies 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 give notice of that fact to the Registrar without delay.

*[Source: clause 54, Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]*

### **Position at end of period for creditor objections**

**78E.**—(1) Where —

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

5 (b) no application for cancellation of the resolution is 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 —

10 (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 was no application for cancellation of the resolution; and

(ii) a notice containing the reduction information,

15 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.

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(3) Where —

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

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(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:

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(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.

*[Source: clauses 55 and 57, Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]*

### **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.

(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 —

(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.

(4) Where the Court makes an order under subsection (1), the company must send notice of that fact 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.

(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: clauses 56 and 58, Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]*

### **Reduction by special resolution subject to Court approval**

**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.

*[Source: clause 59, Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]*

### **Creditor protection**

**78H.—**(1) This section applies if a company makes an application under section 78G and 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,

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

(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,

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 —

(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

(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) For the purposes of 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: clause 60, Draft Bill in UK White Paper, on Modernising Company Law Cm 5553-1]*

### **Court order approving reduction**

5 **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 under that section; and

(b) whose claim or debt has not terminated or been discharged,

10 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

15 (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 —

20 (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: clause 61, Draft Bill in UK White Paper on Modernising Company Law Cm 5553-1]*

### **Offences for making groundless or false statements**

25 **78J.**—(1) A director of a company who makes a solvency statement under section 78B or 78C 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 \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

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(2) A director making a statement under section 78B(7)(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: clauses 63 and 65 Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]*

### **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.

### **Recommendation 2.21**

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

7. Section 76 of the Companies Act is amended —

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

“(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;”;

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

“(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;”;

- (c) by deleting the words “fully-paid shares” wherever they appear in subsection (9)(b) and substituting in each case the word “shares”;
- (d) by inserting, immediately after subsection (9), the following subsections:

5           “(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 —

10           (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 percent of the aggregate of —

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

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

20           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 have resolved that —

             (i) the company should provide the assistance;

25           (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;

30           (c) the resolution set out in full the grounds for the directors’ conclusions;

(d) all the directors are satisfied on reasonable grounds that the company is not insolvent and will not, immediately after the giving of the financial

assistance, become insolvent; and make a statement to this effect which —

- 5
- (i) if the company is exempt from audit requirements under section 205B or 205C, is in the form of a statutory declaration; or
  - (ii) if the company is not such a company, is in the form of a statutory declaration or is accompanied by a report from its auditor that he has inquired into the affairs of the company and is of the opinion that the directors' statement is not unreasonable given all the circumstances;
- 10
- (e) within 10 working days of providing the financial assistance, the company sends to each member a notice containing the following particulars:
- 15 (i) the class and number of shares or units of shares in respect of which the financial assistance was provided;
  - (ii) the consideration paid or payable for those shares or units of shares;
  - 20 (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, if quantifiable, the amount of the financial assistance;
- 25
- (f) not later than the 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 statement referred to in paragraph (d).
- 30

*[Source: sections 76, 77 and 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 have resolved that —
  - (i) the company should provide 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;
  - 10 (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;
- 15 (b) the resolution set out in full the grounds for the directors' conclusions;
- (c) all the directors are satisfied on reasonable grounds that the company is not insolvent and will not, immediately after the giving of the financial  
20 assistance, become insolvent; and make a statement to this effect which —
  - (i) if the company is exempt from audit requirements under section 205B or 205C, is in the form of a statutory declaration; or
  - 25 (ii) if the company is not such a company, is in the form of a statutory declaration or is accompanied by a report from its auditor that he has inquired into the affairs of the company and is of the opinion that the directors' statement is not  
30 unreasonable given all the circumstances;
- (d) not later than the 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:

- (i) the directors' resolution referred to in paragraph (a);
- 5 (ii) the class and number of shares or units of shares in respect of which the financial assistance is to be provided;
- (iii) the consideration payable for those shares or units of shares;
- 10 (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;
- (v) the nature and, if quantifiable, the amount of the financial assistance;
- 15 (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;
- 20 (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
  - 25 (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;
- 30 (f) not later than the 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);

- (g) the financial assistance is given not more than 12 months after the resolution referred to in paragraph (e) is passed.

*[Source: sections 76, 78 and 79, New Zealand Companies Act 1993]*

5 (9C) A company must not give financial assistance under subsection (9A) if, before the assistance is given, all the directors cease to be satisfied that —

- (a) the giving of the assistance is in the best interests of the company;
- 10 (b) the terms and conditions under which the assistance is proposed are fair and reasonable to the company; or
- (c) the company is not insolvent and will not, immediately after the giving of the assistance, become insolvent.

15 *[Source: sections 76 and s77, New Zealand Companies Act 1993]*

(9D) A company must not give financial assistance under subsection (9B) if, before the assistance is given, all the directors cease to be satisfied that —

- 20 (a) the giving of the assistance is in the best interests of the company;
- (b) the terms and conditions under which the assistance is proposed are fair and reasonable to the company;
- (c) giving the assistance is of benefit to those members not receiving the assistance;
- 25 (d) the terms and conditions under which the assistance is given are fair and reasonable to those members not receiving the assistance; or
- (e) the company is not insolvent and will not, immediately after the giving of the assistance, become insolvent.
- 30

*[Source: sections 76 and 77, New Zealand Companies Act 1993]*

(9E) For the purposes of subsections (9A) to (9D), a company is insolvent if either —

- (a) the company is unable to pay its debts as they become due in the normal course of business; or
- (b) the value of the company's assets is less than the value of its liabilities, including contingent liabilities.

5 (9F) In determining for the purposes of subsection (9E) whether the value of a company's assets is less than the value of its liabilities, including contingent liabilities, the directors of a company —

- (a) must have regard to —
  - 10 (i) the most recent financial statements of the company that comply with this Act; 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;
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

20 (9G) In determining, for the purposes of subsection (9F), the value of a contingent liability, the directors of a 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.

*[Source: section 76F(4) to (6), CA]*

30 (9H) A director of a company who makes a statement under subsection (9A)(d) or (9B)(c) 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 \$5,000 or to imprisonment for a term not exceeding 12 months or to both.”;

- (e) by deleting the words “special resolution” in subsection (15) and substituting the word “resolution”; and

- (f) by inserting, immediately before the words “the approval of the Court” in subsection (15), the words “(as the case may be)”.

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

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

- 5 (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),  
10 (9B) or (10) (as the case may be)”;
- (c) by deleting the words “section 76(10)” in subsection (11) and substituting the words “section 76(9A), (9B) or (10)”.

#### **Recommendation 2.22**

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

15 **9.** Section 76F of the Companies Act is amended by —

- (a) deleting the words “must be made out of the company’s distributable profits” in subsection (1) and substituting the words, “may be made out of the company’s profits or capital so long as the company is not insolvent or will not become insolvent as a  
20 result of the purchase or acquisition”;
- (b) deleting paragraph (b) of subsection (3);
- (c) deleting paragraph (a) of subsection (4); and
- (d) by deleting the section heading and substituting the following section heading:

25 **“Payments to be made only if company is not insolvent”.**

#### **Recommendation 2.23**

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

**10.** Section 76B of the Companies Act (Cap. 50) is amended —

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

“(3E) For the purposes of this section, any of the company’s ordinary shares held as treasury shares shall be disregarded.”;

(b) by inserting, immediately after subsection (6), the following subsection —

5           “(6A) Ordinary shares that are purchased or acquired by a company pursuant to sections 76C, 76D, 76DA or 76E may instead of being cancelled under subsection (5) be held in treasury in accordance with section 76H.”.

10           (c) by deleting subsection (9) and substituting the following subsection:

          “(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:

- 15           (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;
- 20           (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
- 25           (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 .”.

**Deletion and substitution of section 76G and new sections 76H, 76I, 76J, 76K and 76L**

30           **11.** Section 76G of the Companies Act is deleted and the following sections substituted therefor:

**“Capital reduction on cancellation of repurchased shares**

**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 —

- 5           (a) reduce the amount of its share capital where the shares were purchased or acquired out of the capital of the company;
- (b) reduce the amount of its profits where the shares were purchased or acquired out of the profits of the company; or
- 10           (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,

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

**Treasury shares**

15           **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
- 20           (b) deal with any of them, at any time, in accordance with section 76K.

(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.

25           *[Source: section 162A, UK Companies Act 1985; regulation 3, the Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003]*

**Treasury shares: maximum holdings**

30           **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.

(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.

(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.

(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: section 162B, UK Companies Act 1985; regulation 3, the Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003]*

### **Treasury shares: voting and other rights**

**76J.**—(1) This section applies 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.

(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 an allotment of shares as fully paid bonus shares in respect of the treasury shares.

(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: section 162C, UK Companies Act 1985; regulation 3, the Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003]*

### **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;
- 5 (b) transfer the shares (or any of them) for the purposes of or pursuant to an employees' share scheme;
- (c) transfer the shares as consideration for the acquisition of shares in or assets of another company or assets of a person; or
- 10 (d) cancel the shares (or any of them).

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

- (a) cash (including foreign currency) received by the company;
- 15 (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
- 20 (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 received 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 sections 78B, 78C or 78I.

(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
- (h) the amount of consideration paid to the company for the disposal of each treasury share.

[Source: section 162D, UK Companies Act 1985; regulation 3, the Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003]

### **Treasury shares and share capital**

**76L.**—(1) Where shares purchased or acquired by a company are held as treasury shares, 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;
- (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,

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

(2) Where treasury shares are sold, then, the company shall increase the amount of its share capital by an amount equal to the proceeds of sale.

(3) Where treasury shares are transferred —

- (a) for the purposes of or pursuant to an employees' share scheme; or
- (b) as consideration for the acquisition of shares in or assets of another company or assets of any person,

5 then, the company shall increase the amount of its share capital by an amount equal to the value, at the time of the transfer, of the shares transferred.

10 (4) Where treasury shares are cancelled and a reduction has been made pursuant to subsection (1) in respect of those shares, then, no further reduction of share capital or profits is required.

(5) Where the shares were allotted to the company as fully paid bonus shares in respect of other treasury shares, the purchase price paid for them shall, for the purposes of subsection (1), be treated as being nil.”.

15 *[New]*

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

**12.** Section 4(1) of the Companies Act is amended by inserting, immediately after the definition of “Table A”, the following definition:

“ “treasury share” means a share which —

- 20 (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;”.

25 *[Source: section 162A, UK Companies Act 1985; regulation 3, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulation 2003]*

#### **Recommendations 2.18, 2.21, 2.22 and 2.23 (Consequential Amendments)**

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

30 **13.** Section 5(1)(a)(iii) of the Companies Act is amended by inserting, immediately after the words “preference shares”, the words “and treasury shares”.

### **Amendment of section 7**

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

5 *[Source: paragraph 17 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK]*

### **Amendment of section 22**

15. 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).

### **Amendment of section 33**

16. 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

(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.”.

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

### **Amendment of section 38**

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

### **Amendment of section 63**

18. Section 63(1) of the Companies Act is amended —

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

(b) by deleting the words “due and payable on the allotment of” in paragraph (b) and substituting the words “unpaid on”; and

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

*[Source: section 254X, Australia Corporations Act 2001]*

#### **Amendment of section 70**

- 5 **19.** Section 70 of the Companies Act is amended —
- (a) by deleting the word “authorised” in subsection (2); and
- (b) by deleting subsections (4), (5), (6) and (7).

#### **Amendment of section 71**

- 10 **20.** Section 71 of the Companies Act is amended —
- (a) by deleting the words “of such amount as it thinks expedient” in subsection (1)(a);
- (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);
- 15 (d) by deleting the words “into shares of smaller amount that 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”;
- 20 (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
- 25 (i) by deleting subsections (4) and (5).

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

**21.** 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: paragraph 9 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK]*

5 **Amendment of section 76**

**22.** 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); and

10 (b) by deleting the words “(including payments in respect of any premium)” in subsection (8)(j).

**Amendment of section 76B**

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

15 (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 “section 78I”;

20 (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”; and

(d) by deleting the words “and nominal value” in subsection (9)(b).

*[Source: section 254Y, Australia Corporations Act 2001]*

**Amendment of section 76F**

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

25 (a) by deleting the word “; or” in subsection (3)(a) and substituting a semi-colon;

(b) by deleting paragraph (b) of subsection (3); and

(c) by deleting paragraph (a) of subsection (4).

*[Source: section 254Y(a), Australia Corporations Act 2001]*

**Amendment of section 78**

25. 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)”.

5 **Amendment of section 79**

26. 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”.

**Amendment of section 81**

27. Section 81 of the Companies Act is amended —

10 (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”;

15

(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

20

(c) by deleting subsections (4) and (5).

*[Source: section 9, Australia Corporations Act 2001]*

**Amendment of section 83**

25 28. 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”.

30

*[Source: section 671B, Australia Corporations Act 2001]*

**Amendment of section 123**

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

5 “(c) the class of shares and the amount unpaid (if any) on the shares.”.

*[Source: section 1087, Australia Corporations Act 2001]*

**Amendment of section 163**

30. Section 163 of the Companies Act is amended —

10 (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

15 (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”;

**Amendment of section 164A**

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

(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

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

“(b) a member or members with at least 5% of the voting rights of all the members having a right to vote at a general meeting of the company.”.

**Amendment of section 176**

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

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

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

5 **Amendment of section 177**

**33.** 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

10

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

(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.”.

15

**Amendment of section 184**

**34.** 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”;

20

25

(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 —

30

(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

(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:

“(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.”.

#### **Amendment of section 184A**

**35.** Section 184A of the Companies Act is amended —

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

“(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)”.

#### **Amendment of section 190**

**36.** 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: paragraph 18 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK]*

5 **Amendment of section 205B**

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

10 “(6) Any member or members representing not less than 5% of the total voting rights of all the members of the company having a right to vote at a general meeting , 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  
15 that year.”.

**Amendment of section 206**

**38.** Section 206(1) of the Companies Act is amended by deleting paragraphs (a) and (b) and substituting the following paragraphs:

- 20 “(a) not less than 5% of the total number of members of the company (excluding the company itself it is registered as a member); or
- (b) a member or members representing not less than 5% of the total voting rights of all the members of the company having a right to vote at a general meeting of the company.”.

25 **Amendment of section 215**

**39.** 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)”;
- 30 (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

- (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)”;

#### **Amendment of section 232**

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

10           “(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: paragraph 28 of the Schedule, The Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003, UK]*

#### **Amendment of section 268**

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

#### **Amendment of section 401**

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

20           (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

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

#### **Amendment of section 403**

- 43.** Section 403 of the Companies Act is amended —

(a) by deleting the words “or pursuant to section 69”; and

(b) by deleting the words “except pursuant to section 69”.

**Amendment of Regulations for Management of a Company Limited by Shares in Table A of Fourth Schedule**

44. The Regulations For Management of A Company Limited By Shares set out in Table A of the Fourth Schedule to the Companies Act are amended —

- 5
- (a) by deleting the words “(whether on account of the nominal value of the shares or by way of premium)” in regulation 13;
- (b) by deleting the words “exceed 25% of the nominal value of the share or” in regulation 13;
- 10 (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 nominal amount of the shares from which the stock arose” in regulation 37;
- 15 (e) by deleting the words “, any capital redemption reserve fund or any share premium account” in regulation 42;
- (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.
- 20

**Amendment of Sixth Schedule**

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

25

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

30

and substituting the following:

47

“The issued share capital  
of the company

\$

Shares of \$

Divided into

Shares of \$

Shares of \$

5

Amount (if any) of  
above capital which  
consists of redeemable  
preference shares

Shares of \$”,

10

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jk/companies(amend2).5 (e-mail/TK/LCH Zip1) (22.7.03)

## **Companies (Amendment No. 2) Bill**

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**Bill No. 00/2003.**

*Read the first time on*

*2003.*

A BILL

*intituled*

5 An Act to amend the Companies Act (Chapter 50 of the 1994 Revised Edition).

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

**Short title**

1. This Act may be cited as the Companies (Amendment No. 2) Act 2003 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Recommendation 3.2****Repeal of section 201B**

2. Section 201B of the Companies Act is repealed.

**Related amendment**

10 3. The Securities and Futures Act (Cap. 289) is amended by inserting, immediately after section [     ], the following section:

**“Audit committees**

\*[     ].—(1) Every listed company shall have an audit committee.

15 (2) An audit committee shall be appointed by the directors from among their number (pursuant to a resolution of the board of directors) and shall be composed of 3 or more members of whom a majority shall not be —

- (a) executive directors of the company or any related corporation;
- 20 (b) a spouse, parent, brother, sister, son or adopted son or daughter or adopted daughter of an executive director of the company or of any related corporation; or
- (c) any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an  
25 audit committee.

(3) The members of an audit committee shall elect a chairman from among their number who is not an executive director or employee of the company or any related corporation.

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\* The position of this provision in the SFA will be determined at a future date.

(4) If a member of an audit committee resigns, dies or for any other reason ceases to be a member with the result that the number of members is reduced below 3, the board of directors shall, within 3 months of that event, appoint such number of new members as may be required to make up the minimum number of 3 members.

(5) The functions of an audit committee shall be —

(a) to review —

(i) with the auditor, the audit plan;

(ii) with the auditor, his evaluation of the system of internal accounting controls;

(iii) with the auditor, his audit report;

(iv) the assistance given by the company's officers to the auditor;

(v) the scope and results of the internal audit procedures; and

(vi) the balance-sheet and profit and loss account of the company and, if it is a holding company, the consolidated balance-sheet and profit and loss account, submitted to it by the company or the holding company, and thereafter to submit them to the directors of the company or the holding company; and

(b) to nominate a person or persons as auditor, notwithstanding anything contained in the articles or under section 205 of the Companies Act (Cap. 50),

together with such other functions as may be agreed to by the audit committee and the board of directors.

(6) The auditor has the right to appear and be heard at any meeting of the audit committee and shall appear before the committee when required to do so by the committee.

(7) Upon the request of the auditor, the chairman of the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the directors or shareholders.

(8) Each audit committee may regulate its own procedure and in particular the calling of meetings, the notice to be given of such meetings, the voting and proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

5 (9) Where the directors of a company or of a holding company are required to make a report under section 201(5) or (6A) of the Companies Act (Cap. 50) and the company is a listed company, the directors shall describe in the report the nature and extent of the functions performed by the audit committee pursuant to subsection  
10 (5).

(10) In this section, “listed company” means a company that is incorporated in Singapore and has been admitted to the official list of a securities exchange in Singapore and has not been removed from the official list.

15 (11) Any reference in this section to a director who is not an executive director of a company is a reference to a director who is not an employee of, and does not hold any other office of profit in, the company or in any related corporation of that company in conjunction with his office of director and his membership of any audit  
20 committee, and executive director shall be read accordingly.”.

### **Recommendation 3.7**

#### **New section 157B**

4. The Companies Act is amended by inserting, immediately after section 157A, the following section:

#### **“Use of information and advice**

25 **157B.**—(1) Subject to subsection (2), a director of a company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by  
30 any of the following persons:

- (a) an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(b) a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;

(c) any other director or a committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.

(2) Subsection (1) applies to a director only if the director —

(a) acts in good faith;

(b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(c) has no knowledge that such reliance is unwarranted.”.

*[Source: originally section 107B of the New Zealand draft legislation as reflected in the NZ Law Commission 1989 Report, but finally enacted as section 138 of the New Zealand Companies Act 1993].*

### **Recommendation 3.16**

#### **Amendment of section 216B**

5. Section 216B(1) of the Companies Act is amended by inserting, immediately after the words “approval by the members”, the words “and how such approval has been or may be obtained”.

#### **New section 37A**

6. The Companies Act is amended by inserting, immediately after section 37, the following section:

#### **“Power to make provisions of memorandum and articles more difficult to alter**

37A.—(1) An entrenching provision —

(a) may be included in the memorandum or articles with which a company is formed; and

(b) may at any time be inserted in a company's memorandum or articles only if all the members of the company agree.

(2) An entrenching provision may be removed or altered only if all the members of the company agree.

(3) In this section, “an entrenching provision” means a provision of a company’s memorandum or articles to the effect that other specified provisions of the memorandum or articles —

(a) may not be altered by resolution as mentioned in sections 33, 34 and 37; or

(b) may not be so altered except —

(i) by a resolution passed by a specified majority greater than 75% (the minimum majority required by this Act for a special resolution); or

(ii) where other specified conditions are met.”.

[Source: clause 21 Draft Bill in UK White Paper on Modernising Company Law Cm 5553-I]

### **Recommendation 3.18**

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

7. Section 4 of the Companies Act is amended by inserting, immediately after subsection (9), the following subsection:

“(10) References in this Act to sending or sending out copies of any of the documents referred to in section 203(1) include sending or sending out such copies in accordance with section 203(4) or (5).”.

[Source: paragraph 28, UK Companies Act 1985 (Electronic Communications) Order 2000 and section 742 of the UK Companies Act 1985]

#### **Amendment of section 173A**

8. Section 173A(6) of the Companies Act is amended by deleting the words “and section 175A” and substituting the words “, sections 175A and 185A”.

#### **New section 185A**

9. The Companies Act is amended by inserting, immediately after section 185, the following section:

##### **“Electronic transmission of notices of meetings**

**185A.**—(1) For the purposes of sections 177, 184 and 185, the cases in which notice in writing of a meeting is to be taken as given to

a person include any case in which notice of the meeting is sent using electronic communications to such address as may, for the time being, be notified by that person to the company for that purpose.

5 (2) For the purposes of this section, a notice in writing of a meeting is also to be treated as given to a person where —

(a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site;

(b) the meeting is a meeting to which that agreement applies;

10 (c) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of —

(i) the publication of the notice on a web site;

(ii) the address of that web site; and

15 (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and

(d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting,

20 and, for the purposes of this section, a notice treated in accordance with this subsection as given to any person is to be treated as so given at the time of the notification mentioned in paragraph (c).

(3) A notification given for the purposes of subsection (2)(c) must —

25 (a) state that it concerns a notice of a company meeting served in accordance with this Act;

(b) specify the place, date and time of the meeting; and

(c) state whether the meeting is to be an annual or extraordinary general meeting.

30 (4) Nothing in subsection (2) shall invalidate the proceedings of a meeting where —

(a) any notice that is required to be published as mentioned in paragraph (d) of subsection (2) is published for a part, but not all, of the period mentioned in that paragraph; and

(b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

5 (5) A company may, notwithstanding any provision to the contrary in a company's articles, take advantage of subsection (1), (2), (3) or (4).

10 (6) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A in relation to such service shall apply.”.

### **Amendment of section 203**

**10.** Section 203 of the Companies Act is amended —

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

20 “(3A) References in this section to sending to any person copies of a company's accounts or balance-sheet, or furnishing any person with such documents include references to using electronic communications for sending copies of those documents to such address as may for the time being be notified to the company by that person for that purpose.

(3B) For the purposes of this section, copies of those documents are also to be treated as sent to a person where —

25 (a) the company and that person have agreed to his having access to the documents on a web site (instead of their being sent to him);

(b) the documents are documents to which that agreement applies; and

30 (c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of —

(i) the publication of the documents on a web site;

(ii) the address of that web site; and

(iii) the place on that web site where the documents may be accessed, and how they may be accessed.

(3C) For the purposes of this section, documents treated in accordance with subsection (3B) as sent to any person are to be treated as sent to him not less than 14 or 28 days, as the case may be, before the date of a meeting if, and only if—

- (a) the documents are published on the web site throughout a period beginning at least 14 or 28 days, as the case may be, before the date of the meeting and ending with the conclusion of the meeting; and
- (b) the notification given for the purposes of subsection (3B)(c) is given not less than 14 or 28 days, as the case may be, before the date of the meeting.

(3D) Nothing in subsection (3C) shall invalidate the proceedings of a meeting where —

- (a) any documents that are required to be published as mentioned in paragraph (a) of that subsection are published for a part, but not all, of the period mentioned in that paragraph; and
- (b) the failure to publish those documents throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(3E) A company may, notwithstanding any provision to the contrary in its articles, take advantage of subsection (3A), (3B), (3C) or (3D).”;

(b) by inserting, immediately after subsection (7), the following subsection:

“(8) In this section and section 203A —

- (a) an address of a person includes any number or address used for electronic communication;
- (b) “electronic communication” means communication transmitted (whether from one person to another, from

one device to another, from a person to a device or from a device to a person) —

- (i) by means of a telecommunication system; or
  - (ii) by other means but while in an electronic form;
- and

(c) “telecommunication system” has the same meaning as in the Telecommunications Act (Cap.323).”.

[Source: paragraphs 12 and 13, UK Companies Act 1985 (Electronic Communications) Order 2000; sections 238(4) – (4E) and 239(2A) and (2B), UK Companies Act 1985.]

### **Amendment of section 203A**

**11.** Section 203A of the Companies Act is amended by inserting, immediately after subsection (4), the following subsections:

“(4A) References in this section to sending a summary financial statement to an entitled person include references to using electronic communications for sending the statement to such address as may for the time being be notified to the company by that person for that purpose.

(4B) For the purposes of this section, a summary financial statement is also to be treated as sent to an entitled person where —

- (a) the company and that person have agreed to his having access to summary financial statements on a web site (instead of their being sent to him);
- (b) the statement is a statement to which that agreement applies; and
- (c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of —
  - (i) the publication of the statement on a web site;
  - (ii) the address of that web site; and
  - (iii) the place on that web site where the statement may be accessed, and how it may be accessed.

(4C) For the purposes of this section, a statement treated in accordance with subsection (4B) as sent to an entitled person is to be treated as sent to him if, and only if —

- 5           (a) the statement is published on the web site throughout a period beginning at least 28 days before the date of the meeting at which the accounts and directors' report from which the statement is derived are to be laid and ending with the conclusion of that meeting; and
- 10          (b) the notification given for the purposes of subsection (4B)(c) is given not less than 28 days before the date of the meeting.

(4D) Nothing in subsection (4C) shall invalidate the proceedings of a meeting where —

- 15           (a) any statement that is required to be published as mentioned in paragraph (a) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and
- (b) the failure to publish that statement throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

20           (4E) A company may, notwithstanding any provision to the contrary in its articles, take advantage of subsection (4A), (4B), (4C) or (4D).”.

*[Source: paragraph 14, UK Companies Act 1985 (Electronic Communications) Order 2000, and sections 251(2A)-(2E) UK Companies Act 1985.]*

#### **Amendment of Fourth Schedule**

25           **12.** Regulation 108 of the Regulations for Management of a Company Limited by Shares set out in the Fourth Schedule is deleted and the following regulation substituted therefor:

30           “**108.**—(1) Any notice to be given to or by any person pursuant to the articles (other than a notice calling a meeting of the directors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice.

(2) A notice may be given by the company to any member either —

- (a) personally;

(b) by sending it by post to him at his registered address or by leaving it at that address; or

(c) by giving it using electronic communications to an address for the time being notified to the company by the member.

5 (3) A member whose registered address is not within Singapore and who gives to the company an address within Singapore at which notices may be given to him or an address to which notices may be sent using electronic communications shall be entitled to have notices given to him at that address, but otherwise no such member shall be  
10 entitled to receive any notice from the company.

(4) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in  
15 any other case at the time at which the letter would be delivered in the ordinary course of post.

(5) In this regulation, “address”, in relation to electronic communications, includes any number or address used for the purpose of such communications.”

20 [Source: Table A, UK Companies Act 1985]

## **Companies (Amendment No. 2) Bill**

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**Bill No. 00/2003.**

*Read the first time on*

*2003.*

A BILL

*intituled*

5 An Act to amend the Companies Act (Chapter 50 of the 1994 Revised Edition).

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 2003 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### 5 Recommendation 5.2

#### Amendment of section 130A

2. Section 130A of the Companies Act is amended —

- 10 (a) by inserting, immediately after the words “an international body” in paragraph (b) of the definition of “documents evidencing title”, the words “, or any other securities”; and
- (b) by deleting the definition of “securities” and substituting the following definition:

““securities”, in relation to the Depository, means —

- 15 (a) debentures, stocks or shares issued by a government, a body corporate or unincorporate or an international body, or any right, option or derivative instrument in respect of any such debentures, stocks or shares;
- 20 (b) any unit in a collective investment scheme within the meaning of the Securities and Futures Act (Cap.289); or
- (c) such other instrument as the Minister may, by order published in the *Gazette*, prescribe;”.

25 [*Source: new, except for definition of “securities” which is based on the definition in the Securities and Futures Act (Cap.289)*]

#### Repeal and re-enactment of section 130B

3. Section 130B of the Companies Act is repealed and the following section substituted therefor:

##### “Application

- 30 **130B.**—(1) This Division shall apply only to —
- (a) book-entry securities; and

(b) designated securities, as if a reference to “book-entry securities” includes a reference to designated securities.

(2) The application of this Division to designated securities under subsection (1) shall be subject to such modifications as may be prescribed in regulations, and different modifications may be prescribed for different classes of designated securities.

(3) In this section, “designated securities” means such securities as may be accepted or designated by the Depository for clearance and book-entry settlement.”.

#### Amendment of section 130D

4. Section 130D of the Companies Act is amended —

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

“(1) Notwithstanding anything in this Act or any other written law or rule of law or in any instrument or in a corporation’s memorandum or articles, where book-entry securities of a corporation are deposited with the Depository, the persons named as the depositors in a Depository Register shall, for such period as the book-entry securities are entered against their names in the Depository Register, be deemed to be —

(a) members of the corporation in respect of the amount of book-entry securities (relating to the stocks or shares issued by the corporation) entered against their respective names in the Depository Register; or

(b) holders of the amount of the book-entry securities (relating to the debentures or any derivative instrument) entered against their names in the Depository Register.”;

(b) by deleting the word “listed” in subsection (2)(b); and

(c) by deleting the word “company” wherever it appears in subsections (2)(c) and (4) and substituting in each case the word “corporation”.

**Amendment of section 130E**

5. Section 130E of the Companies Act is amended by deleting the word “company” wherever it appears and substituting in each case the word “corporation”.

5 **Recommendation 5.3****Amendment of section 130A**

6. Section 130A of the Companies Act is amended by deleting the words “as a bare trustee” in the definition of “Depository”.

**New Section 130CA**

10 7. The Companies Act is amended by inserting, immediately after section 130C, the following section:

**“Depository deemed to be bare trustee**

15 **130CA.**—(1) The Depository or its nominee shall hold the book-entry securities deposited with it as a bare trustee for the collective benefit of depositors.

(2) Subject to subsections (3) and (4), a depositor shall not have any right to specific book-entry securities deposited with the Depository but shall be entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts in the depositor’s name.

20

(3) A depository agent shall hold book-entry securities deposited in its name with the Depository, on behalf of any sub-account holder, as a bare trustee.

25 (4) A sub-account holder shall not have any right to specific book-entry securities deposited with the Depository but shall be entitled to a pro rata share computed on the basis of the book-entry securities credited to one or more accounts maintained by such holder with a depository agent.”.

## **Recommendation 5.6**

### **Amendment of section 80**

8. Section 80 of the Companies Act is amended by inserting, immediately after subsection (2), the following subsection:

- 5       “(3) The Minister may, by order published in the *Gazette*, exempt any person or any class of persons from all or any of the provisions of this Division, subject to such terms or conditions as may be prescribed.”.

## **Recommendation 5.8**

### 10 **New sections 212A to 212H**

9. The Companies Act is amended by inserting, immediately after section 212, the following sections:

#### **“Voluntary amalgamations**

15       **212A.** Without prejudice to section 212 and any other written 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 212B to 212G, where applicable.

20       [Source: section 188, *New Zealand Law Commission Company Law Reform: Transition and Revision Report No. 16, hereafter “NZ LRC”*]

#### **Amalgamation proposal**

25       **212B.—**(1) Each company which proposes to amalgamate pursuant to section 212A shall approve an amalgamation proposal setting out the terms of the amalgamation 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;
  - (c) the maximum number of directors of the amalgamated company;
- 30

- (d) the full names and residential addresses of the director or directors of the amalgamated company;
  - (e) the address for service of documents on the amalgamated company;
  - 5 (f) the share structure of the amalgamated company, specifying —

    - (i) the number of shares of the company;
    - (ii) the rights, privileges, limitations and conditions attached to each share of the company;
    - 10 (iii) whether the shares are transferable or non-transferable and, if transferable, whether their transfer is subject to any condition or limitation;
  - (g) a copy of the memorandum, if any, of the amalgamated company;
  - 15 (h) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;
  - (i) 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;
  - 20 (j) any payment to be made to any member or director of an amalgamating company, other than a payment of the kind described in paragraph (i); and
  - 25 (k) details of any arrangement necessary to effect 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.
- 30 (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 when the amalgamation becomes effective without any payment in respect of those shares; and
- (b) shall not provide for the conversion of those shares into shares of the amalgamated company.

*[Source: section 189, NZ LRC]*

### **Manner of approving amalgamation proposal**

**212C.**—(1) For the purposes of section 212B, the 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 directors of each amalgamating company shall, before the date of the general meeting referred to in subsection (1)(a), sign a declaration that, in their opinion —

- (a) the amalgamation is in the best interests of the members of the company;
- (b) the amalgamating company will be able to pay its debts immediately before the date on which the merger is to become effective; and
- (c) the amalgamated company will be able to pay its debts immediately after the date on which the amalgamation is to become effective.

(3) The 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 copy of the amalgamation proposal;

- (b) a copy of the declarations given by the directors under subsection (2);
  - (c) a statement of any material interests of the directors, whether in that capacity or otherwise; and
  - 5 (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, of the proposed amalgamation.
- (4) Every director who fails to comply with subsection (2) shall be  
10 guilty of an offence.

*[Source: section 190, NZ LRC]*

### **Short form amalgamation**

15 **212D.**—(1) A company and one or more of its wholly-owned subsidiaries may amalgamate and continue as one company without complying with sections 212B and 212C 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 —

- 20 (a) the shares of each amalgamating subsidiary company will be cancelled without any payment or any other consideration in respect of those shares; and
- (b) the memorandum of the amalgamated company will be the same as the memorandum of the amalgamating holding company.

25 (2) Two or more wholly-owned subsidiary companies of the same holding company may amalgamate and continue as one company without complying with sections 212B and 212C if the members of each amalgamating company, by special resolution, resolve to approve an amalgamation of the amalgamating companies on the  
30 terms that —

- (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; and

(b) the memorandum of the amalgamated company will be the same as the memorandum of the amalgamating company whose shares are not cancelled.

5 (3) The resolution referred to in subsection (1) or (2), as the case may be, shall be deemed to be an amalgamation proposal for the purposes of sections 212E and 212G.

10 (4) The directors of the amalgamating companies shall, before the date of the general meeting referred to in subsection (1) or (2), as the case may be, sign a declaration that, in their opinion, the amalgamated company will be able to pay its debts immediately after the date on which the amalgamation is to become effective.

(5) Every director who fails to comply with subsection (4) shall be guilty of an offence.

*[Source: section 191, NZ LRC]*

### 15 **Registration of amalgamation**

**212E.** After an amalgamation has been approved under section 212C or 212D, as the case may be, the following documents shall be filed with the Registrar:

- 20 (a) the amalgamation proposal, if any;
- (b) any declaration required under section 212C;
- (c) a declaration signed by the directors of each amalgamating company stating that the company has approved the amalgamation in the manner required by this Act and by the memorandum of the company;
- 25 (d) a declaration signed by the directors, or proposed directors, of the amalgamated company stating that, in their opinion, no creditors will be prejudiced by the amalgamation;
- (e) consents signed by each of the persons named as directors in the amalgamation proposal.

30 *[Source: section 192, NZ LRC]*

### **Notice of amalgamation**

**212F.—**(1) Immediately after the receipt of the documents required under section 212E, the Registrar shall —

(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

5 (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).

(2) The Registrar shall specify, in the notice of incorporation referred to in subsection (1), the effective date of the amalgamation.

10 (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 212E, the notice of amalgamation and any notice of incorporation issued by the Registrar shall be  
15 expressed to have effect on that date.

(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.

20 *[Source: section 193, NZ LRC]*

### **Effect of notice of amalgamation**

**212G.**—(1) On the effective date of an amalgamation pursuant to section 212A —

25 (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;

30 (c) all the property and privileges of each of the amalgamating companies shall be transferred to and vest in the amalgamated company;

(d) all the liabilities of each of the amalgamating companies shall be transferred to and become the liabilities 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.
- (2) In this section, “liabilities” and “property” shall have the same meaning as in section 212(5).

*[Source: section 194, NZ LRC]*

### **Creditors’ rights on amalgamation**

**212H.** Where, immediately after the date on which an amalgamation becomes effective, an amalgamated company is unable to pay its debts within the meaning of that expression in section 254(2), any creditor of any of the amalgamating companies may recover any loss he has suffered by reason of the amalgamation —

- (a) if no declaration was given by directors of that amalgamating company in accordance with section 212C(2) or 212D(4), from the directors of that amalgamating company at the time the amalgamation was approved; or
- (b) if the declaration referred to in paragraph (a) was given and there were no reasonable grounds for the opinion that the amalgamated company would be unable to pay its debts, from the directors who signed the declaration.”.

*[Source: section 194A, NZ LRC]*

## **Companies (Amendment No. 2) Bill**

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**Bill No. /2003.**

*Read the first time on*

*2003.*

BILL

*intituled*

- 5 An Act to amend the Companies Act (Chapter 50 of the 1994 Revised Edition).

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 2003 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 deleting the words “an approved company auditor” in the definition of “approved liquidator” and substituting the words “any person”.

**Amendment of section 9**

10 3. Section 9 of the Companies Act is amended by deleting subsection (3) and substituting the following subsection:

15 “(3) Any person may apply to the Minister to be approved as a liquidator for the purposes of this Act, and the Minister, if satisfied as to the experience and capacity of the applicant, may on payment of the fee set out in the Second Schedule, approve such person as a liquidator for the purposes of this Act, and if the applicant is not an approved company auditor, the Minister may impose such additional conditions as he thinks fit.”.

**Amendment of section 144**

20 4. Section 144 of the Companies Act is amended by deleting subsection (3).

**Amendment of section 192**

5. Section 192 of the Companies Act is amended by deleting subsection (1) and substituting the following subsection:

25 “(1) A company may close the register of members or any class of members for any time or times, not exceeding 30 days in the aggregate in any calendar year.”.

**Amendment of section 201**

30 6. Section 201 of the Companies Act is amended by inserting, immediately after subsection (6A), the following subsection:

“(7) The Minister may, by regulations, prescribe any additional information to be contained in the reports under subsections (5) and (6A).”.

**Repeal of section 201A**

- 5     **7.** Section 201A of the Companies Act is repealed.