

**SUMMARY OF AMENDMENTS
IN THE DRAFT COMPANIES (AMENDMENT NO. 2) BILL 2003**

1. Simplifying and streamlining the incorporation process: The CLRFC recommends the deletion of Section 18(1)(c) and Section 18(1)(d) of the Companies Act. This would allow private companies to raise capital through private and exempted offerings without uncertainty or the need to convert to public companies unless they exceed the remaining criteria in Section 18(1) of the Companies Act.
2. Streamlining of incorporation process: The CLRFC recommends the requirement for all companies to include their RCB registration numbers on all business letters, statements of account, invoices, official notes and publications.
3. Corporate personality: The CLRFC recommends the abolition of the *ultra vires* doctrine. A company should be statutorily conferred with all the powers of a natural person. However, the ultra vires doctrine would be retained for the limited purpose of preserving the rights of internal redress by members against the directors, where the company's constitution places limits on a company's capacity and powers. It is proposed that Singapore adopt, with appropriate modifications, Sections 7 and 8 of the New Zealand Law Commission's Company Law Reform and Restatement Draft Companies Act.
4. One shareholder/one director companies: The CLRFC recommends that all private companies incorporated in Singapore be required to have at least one shareholder and one director who is ordinarily resident in Singapore. The shareholder and director can be the same person.
5. Par value and authorised capital: The CLRFC recommends the abolition of the concepts of par value and authorised share capital. The amounts standing to the credit of the share premium account should be made available to provide the premium payable on redemption of debentures or redeemable preference shares issued, to write off preliminary expenses of the company incurred before, and to write off expenses incurred, payments made or discounts allowed on or before the abolition of par value.
6. Capital reduction: The CLRFC recommends introducing an alternative capital reduction process which does not require court sanction. The alternative capital reduction process would require shareholders' special resolution approval as well as a declaration of solvency. Where a company's accounts are not audited, the directors would be required to make a statutory declaration of solvency. Where a company's accounts are audited, the solvency declaration, if not made by a statutory declaration, should be

confirmed by external auditors. For public companies, the alternative capital reduction process would further require publication of a notice (in advance of the proposed capital reduction) in a national newspaper and making available for public inspection the shareholders' resolution and solvency statement and be susceptible to creditor challenge in court.

7. Financial assistance: The CLRFC recommends the further liberalisation of our financial assistance restrictions to allow financial assistance to be provided in the following circumstances:

- (a) where less than 10% of the company's paid-up capital is involved;
- (b) where it is approved by a unanimous resolution of shareholders;
- (c) under specific exemptions for financial institutions and approved employee share schemes; and
- (d) for representations, warranties and indemnities by an issuer or a vendor in the context of a public offering.

For purposes of (a) and (b), where a company's accounts are not audited, the directors would be required to make a statutory declaration of solvency. Where a company's accounts are audited, the solvency declaration, if not made by a statutory declaration, should be confirmed by external auditors.

8. Share buy-back: The CLRFC recommends that share buy-backs should continue to be funded out of distributable profits or where supported by a declaration of solvency.

9. Treasury shares: The CLRFC recommends allowing repurchased ordinary shares to be held in treasury without the need for the company to obtain shareholders' approval on how the repurchased ordinary shares would be treated after the share buy-back. Their voting and other rights of the repurchased ordinary shares would be suspended so long as they are held in treasury. Companies should be permitted to use treasury shares to meet their obligations under employee share option schemes, transfer to third parties to fund acquisitions or to raise cash.

10. Non-executive directors: The CLRFC recommends that Section 201B of the Companies Act relating to audit committees of listed companies be migrated to the Securities and Futures Act.

11. Use of information and advice: The CLRFC recommends that directors be accorded protection for reasonable reliance on advice and information from professionals and experts along the lines of the Section 107 of the New Zealand draft legislation.

12. Directors' duties and liabilities on the consent: The CLRFC recommends that a summary account of directors' duties and liabilities be inscribed on the director's consent to act.

13. Limitation of majority rights: The CLRFC recommends the adoption of the recommendation in the UK Steering Committee's Final Report to statutorily impose limits on majority rule in the context of alterations of the articles of association or alteration of class rights. The CLRFC also recommends that shareholder resolutions to ratify or condone wrongs be effective, provided that the votes of members with an interest or subject to the substantial influence by a person with an interest in the wrong have been discounted.

14. Voting at general meetings: The CLRFC recommends that the Companies Act be amended to provide for the electronic distribution of statutory reports to shareholders and for hardcopies to be available to shareholders who require them.

15. Book-entry securities in Singapore – legal title and ownership: The CLRFC recommends that the statutory treatment of book-entry securities should be extended to the following range of securities:

- (a) Listed equity securities issued by non-Singapore incorporated corporations and securities issued by supra-nationals and states;
- (b) Listed debt and derivative securities issued by Singapore and non-Singapore incorporated issuers other than debt and derivative securities of Singapore-incorporated companies who have Central Depository (Pte) Limited named in its register of members;
- (c) Unlisted securities by Singapore and non-Singapore issuers;
- (d) Dematerialised securities; and
- (e) Interests in collective investment schemes.

With respect to securities issued by Singapore corporations, the same treatment may be accorded. With respect to securities issued by non-Singapore corporations, it should be provided that insofar as Singapore law is relevant such depositor shall be treated as if he were a member of the corporation or registered holder of the relevant securities.

16. Equitable title or ownership: The CLRFC recommends that the Companies Act and/or Securities and Futures Act respectively should expressly define the depositors' collective ownership of the Central Depository (Pte) Limited's ("CDP") trust assets, so that each depositor is only entitled to a pro rata share in the pool of securities or proceeds arising from such assets held in trust by CDP. The CLRFC further recommends that statutory provisions should be introduced to enhance the protection of securities in the sub-accounts of a depository agent upon the insolvency of the Depository Agent, by providing for pro rata entitlements to the pool of securities held by the depository agent.

17. Scrip lending transactions: The CLRFC recommends that scrip lending intermediaries, whose securities are transferred to and out of its securities account in connection with a scrip lending transaction within two market days, be exempted from Division 4 of Part IV of the Companies Act.
18. Merger and amalgamations: The CLRFC recommends the introduction of a more effective and efficient statutory form of merger/ amalgamation process to be modeled after Section 188 – Section 194A of the New Zealand Law Commission Company Law Reform: Transition and Revision Report No. 16.
19. Approved company auditors: The Act will be amended to allow any person to apply to the Minister to be approved as a liquidator. Currently, only approved company auditors can become approved liquidators under the Companies Act.
20. Display of name on all offices: The statutory requirement under Section 144(3) for every company to display its name outside its office will be removed.
21. Notification of closure of register of members: The requirement under Section 192 for every company to notify RCB of its intention to close its register of members at least 14 days before closure will be removed.
22. Directors' report: Section 201 will be amended to enable the Minister to prescribe any additional information in the directors' report.
23. Consolidated accounts: The requirement under Section 201A pertaining to the issuance of consolidated accounts will be removed.