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Companies (Amendment) Bill

Bill No. 13/2017.

Read the first time on 28 February 2017.

A BILL

i n t i t u l e d

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

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 is the Companies (Amendment) Act 2017 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

Amendment of section 4

2. Section 4 of the Companies Act is amended —

(*a*) by deleting paragraph (*b*) of the definition of "branch register" in subsection (1);

(*b*) by deleting the definition of "financial year" in subsection (1) and substituting the following definition:

" "financial year" —

(*a*) in relation to a corporation, means the period in respect of which the financial statements of the corporation is made up, whether that period is a year or not; and

(*b*) in relation to a company, is also to be determined in accordance with section 198;"; and

(*c*) by inserting, immediately after "155B(8)," in subsection (12), "359(9), 360(3),".

Amendment of section 8

3. Section 8(7) of the Companies Act is amended —

(*a*) by deleting the word "and" at the end of paragraph (*a*); and

(*b*) by deleting the full-stop at the end of paragraph (*b*) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

"(*c*) the Fourteenth Schedule in relation to the list of companies to which Part XIA does not apply;

(*d*) the Fifteenth Schedule in relation to the list of foreign companies registered under Division 2 of Part XI to which Part XIA does not apply; and

(*e*) the Sixteenth Schedule in relation to the meanings of "significant control" and "significant interest".".

Amendment of section 19

4. Section 19 of the Companies Act is amended —

(*a*) by deleting the word "such" in subsection (1)(*b*) and substituting the words "the last day of the proposed company's first financial year and such other"; and

(*b*) by deleting the words "and a common seal" in subsection (5).

Amendment of section 27

5. Section 27(1) of the Companies Act is amended by deleting the words "or section 378(15)," in paragraph (*c*) and substituting the words ", subsection (12B) as applied by section 357(2), or section 378(15),".

New sections 41A, 41B and 41C

6. The Companies Act is amended by inserting, immediately after section 41, the following sections:

"**Common seal**

41A.—(1) A company may have a common seal but need not have one.

(2) Sections 41B and 41C apply whether a company has a common seal or not.

Execution of deeds by company

41B.—(1) A company may execute a document described or expressed as a deed without affixing a common seal onto the document by signature —

(*a*) on behalf of the company by a director of the company and a secretary of the company;

(*b*) on behalf of the company by at least 2 directors of the company; or

(*c*) on behalf of the company by a director of the company in the presence of a witness who attests the signature.

(2) A document mentioned in subsection (1) that is signed on behalf of the company in accordance with that subsection has the same effect as if the document were executed under the common seal of the company.

(3) Where a document is to be signed by a person on behalf of more than one company, the document is not considered to be signed by that person for the purposes of subsection (1) or (2) unless the person signs the document separately in each capacity.

(4) This section applies in the case of a document mentioned in subsection (1) that is executed by the company in the name or on behalf of another person, whether or not that person is also a company.

Alternative to sealing

41C. Where any written law or rule of law requires any document to be under or executed under the common seal of a company, or provides for certain consequences if it is not, a document satisfies that written law or rule of law if the document is signed in the manner set out in section 41B(1)(*a*), (*b*) or (*c*) and (3).".

Amendment of section 144

7. Section 144(1) of the Companies Act is amended by inserting, immediately after the words "its seal" in paragraph (*a*), the words ", if any".

Amendment of section 154

8. Section 154 of the Companies Act is amended —

(*a*) by inserting, immediately after "(Cap. 289)" in subsection (1)(*a*)(ii), the words ", where the conviction was on or after 1 July 2015";

(*b*) by inserting, immediately after the word "Act" in subsection (1)(*b*), the words "on or after 1 July 2015";

(*c*) by deleting the word "or" at the end of subsection (4)(*a*); and

(*d*) by deleting the full-stop at the end of paragraph (*b*) of subsection (4) and substituting the word "; or", and by inserting immediately thereafter the following paragraph:

"(*c*) in a case where the disqualified person is subject, on or after 1 July 2015, to the imposition of a civil penalty under section 232 of the Securities and Futures Act, take effect upon the imposition of the civil penalty and continue for a period of 5 years after the imposition of the civil penalty.".

Amendment of section 175

9. Section 175 of the Companies Act is amended —

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

"(1) Subject to this section and section 175A, a general meeting of every company to be called the "annual general meeting" must, in addition to any other meeting, be held after the end of each financial year within —

(*a*) 4 months in the case of a public company that is listed; or

(*b*) 6 months in the case of any other company.

(2) The Registrar may extend the period mentioned in subsection (1)(*a*) or (*b*) —

(*a*) upon an application by the company, if the Registrar thinks there are special reasons to do so; or

(*b*) in respect of any prescribed class of companies."; and

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

"(5) The Minister may, by order in the *Gazette*, specify such other period in substitution of the period mentioned in subsection (1)(*a*) or (*b*), or both.".

Amendment of section 175A

10. Section 175A of the Companies Act is amended —

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

"(1) A company need not hold an annual general meeting for a financial year —

(*a*) if it is a private company in respect of which there is in force a resolution passed in accordance with subsection (2) to dispense with the holding of annual general meetings;

(*b*) if, at the end of that financial year, it is a private company and has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1) within the period specified in section 203(1)(*b*); or

(*c*) if, at the end of that financial year, it is both a private company and a dormant relevant company the directors of which are, under section 201A, exempt from the

requirements of section 201 for the financial year.";

(*b*) by deleting the words "subsection (1)" in subsections (2), (3) and (7) and substituting in each case the words "subsection (1)(*a*)";

(*c*) by deleting the words "3 months before the end of the year" in subsection (4) and substituting the words "14 days before the date by which an annual general meeting would have been required under section 175 to be held";

(*d*) by deleting subsection (8) and substituting the following subsection:

"(8) If the resolution mentioned in subsection (1)(*a*) ceases to be in force but less than 3 months remain to the date on which the company is required under section 175 to hold an annual general meeting, the company need not hold that annual general meeting.";

(*e*) by deleting subsection (10) and substituting the following subsection:

"(10) Unless the contrary intention appears, if a company need not hold an annual general meeting for a financial year then for that financial year —

(*a*) a reference in any provision of this Act to the doing of anything at an annual general meeting is to be read as a reference to the doing of that thing by way of a resolution by written means under section 184A;

(*b*) a reference in any provision of this Act to the date or conclusion of an annual general meeting is, unless the meeting is held, to be read as a reference to the date of expiry of the period by which an annual general meeting would have been required under section 175 to be held;

(*c*) the reference in section 197(1) or (1A) to the lodging of a return with the Registrar after its annual general meeting is to be read as a reference to the lodging of that return —

(i) in the case of a company mentioned in subsection (1)(*a*) or (*b*), after the company has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1); or

(ii) in the case of a company mentioned in subsection (1)(*c*), after the end of its financial year."; and

(*f*) by deleting the section heading and substituting the following section heading:

"**When private company need not hold annual general meeting**".

Amendment of section 184A

11. Section 184A(2) of the Companies Act is amended by deleting the words "section 175A(1)" and substituting the words "section 175A(1)(*a*)".

Amendment of section 186

12. Section 186(1) of the Companies Act is amended by deleting the words "section 175A(1)" in paragraph (*b*) and substituting the words "section 175A(1)(*a*)".

Amendment of section 195

13. Section 195 of the Companies Act is amended —

(*a*) by deleting the words "or branch register kept in Singapore" in subsections (1), (2) and (3);

(*b*) by deleting the words "or branch register" in subsections (3) and (4); and

(*c*) by deleting the word "corporation" wherever it appears in subsections (1) to (4) and substituting in each case the word "company".

Amendment of section 197

14. Section 197 of the Companies Act is amended —

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

"(1) Every company, other than a company mentioned in subsection (1A), must lodge a return with the Registrar after its annual general meeting —

(*a*) in the case of a listed company, within 5 months after the end of its financial year; and

(*b*) in any other case, within 7 months after the end of its financial year.

(1A) A company having a share capital and keeping a branch register in any place outside Singapore must lodge a return with the Registrar after its annual general meeting —

(*a*) in the case of a listed company, within 6 months after the end of its financial year; and

(*b*) in any other case, within 8 months after the end of its financial year.

(1B) The Registrar may, if the Registrar thinks there are special reasons to do so, extend any period within which a company must lodge a return under subsection (1) or (1A) —

(*a*) upon an application by the company; or

(*b*) in respect of any prescribed class of companies.";

(*b*) by deleting the words "subsection (1)" in subsection (2) and substituting the words "subsections (1) and (1A)";

(*c*) by inserting, immediately after the word "particulars" in subsection (2)(*b*), the words "and information"; and

(*d*) by deleting subsections (4) and (5) and substituting the following subsection:

"(4) If a private company is required under section 175A(4) to hold an annual general meeting for a financial year after it has lodged its annual return for that financial year, the company must lodge a notice of the date on which the annual general meeting was held with the Registrar within 14 days after that date.".

New section 198

15. The Companies Act is amended by inserting, immediately after section 197, the following section:

"**Financial year of company**

198.—(1) Where a company is incorporated on or after the appointed day —

(*a*) the company's first financial year starts on the company's date of incorporation and, subject to subsection (4), ends on the last day of the company's first financial year as furnished under section 19(1)(*b*); and

(*b*) each of the company's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

(2) A company's first financial year must not be longer than 18 months unless the Registrar on the application of the company otherwise approves.

(3) Where a company was incorporated before the appointed day —

(*a*) the last day of the financial year for the company's first financial year ending on or after the appointed day is —

(i) where the company had, before the appointed day, lodged an annual return, or lodged a notification with the Registrar informing the Registrar of the end of the company's financial year, the anniversary of the last day of the financial year as indicated by the company in the last annual return or last such notification with the Registrar; or

(ii) where the company had not, before the appointed day, lodged an annual return, or lodged a notification with the Registrar informing the Registrar of the end of the company's financial year, the anniversary of the date of incorporation of the company; and

(*b*) each of the company's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

(4) Despite subsections (1) and (3), but subject to subsections (5) and (6), a company may by notice lodged with the Registrar in the prescribed form specify a new date as the last day of the company's financial year to apply to its previous or current financial year.

(5) The Registrar's approval must be obtained if the notice mentioned in subsection (4) —

(*a*) results in a financial year being longer than 18 months; or

(*b*) is lodged less than 5 years after the end of an earlier financial year that ended on a date on or after the appointed day, if the end of that earlier financial year was changed under this section.

(6) The notice under subsection (4) cannot specify a new date as the last day of the company's financial year —

(*a*) after the expiry of the period under section 175 within which an annual general meeting of the company must be held after that financial year;

(*b*) after the expiry of the period under section 197 within which an annual return of the company must be lodged with the Registrar after that financial year; or

(*c*) after the expiry of the period under section 203 within which a copy of the financial statements, or consolidated financial statements, balance-sheet, and documents mentioned in section 203(1) are required to be sent to all persons entitled to receive notice of general meetings of the company.

(7) For the purposes of —

(*a*) subsection (3)(*a*)(i), where the last day of the financial year of a company as indicated in the last annual return or in the last notification with the Registrar informing the Registrar of the last day of the company's financial year falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February; and

(*b*) subsection (3)(*a*)(ii), where the date of incorporation of a company falls on 29 February, the anniversary of that date in a year that is not a leap year is to be taken as 28 February.

(8) In this section, "appointed day" means the date of commencement of section 15 of the Companies (Amendment) Act 2017.".

Amendment of section 201

16. Section 201 of the Companies Act is amended —

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

"(1) The directors of every company must lay before the company at its annual general meeting the financial statements for the financial year in respect of which the annual general meeting is held.";

(*b*) by deleting subsections (3) and (4);

(*c*) by deleting paragraph (*a*) of subsection (5) and substituting the following paragraph:

"(*a*) consolidated financial statements dealing with the financial position and performance of the group for the financial year in respect of which the annual general meeting is held; and"; and

(*d*) by deleting subsection (6).

Amendment of section 201AA

17. Section 201AA(1) of the Companies Act is amended by deleting the words "if the company has dispensed with the holding of its annual general meeting under section 175A" in paragraph (*b*) and substituting the words "in respect of any financial year for which the company need not hold an annual general meeting because of section 175A(1)".

Repeal and re-enactment of section 201C

18. Section 201C of the Companies Act is repealed and the following section substituted therefor:

"**When directors need not lay financial statements before company**

201C.—(1) The directors of a private company need not comply with the requirement in section 201 to lay before the company at its annual general meeting financial statements or consolidated financial statements of the company if the company need not hold an annual general meeting because of section 175A(1).

(2) Where the financial statements or consolidated financial statements are not laid before the company at its annual general meeting under subsection (1), the reference in section 207(1) to financial statements required to be laid before the company in general meeting is to be read as a reference to the documents required to be sent to persons entitled to receive notice of general meetings of the company under section 203(1).".

Amendment of section 203

19. Section 203(1) of the Companies Act is amended —

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

"(*b*) if the company is not required to hold an annual general meeting because of section 175A(1)(*a*), not later than 5 months after the end of the financial year to which the financial statements, or consolidated financial statements and balance-sheet, relate.";

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

"(4A) Where a company is not required to hold an annual general meeting because of section 175A(1)(*b*), any member or auditor of the company may, by notice to the company not later than 14 days after the day on which the documents mentioned in subsection (1) were sent out, require

that a general meeting be held for the purpose of laying those documents before the company."; and

(*c*) by inserting, immediately after the words "subsection (4)" in subsections (5) and (6), the words "or (4A)".

Amendment of section 205

20. Section 205(12A) of the Companies Act is amended by deleting the words "resolution under section 175A is in force" and substituting the words "company need not hold an annual general meeting for a financial year because of section 175A(1)".

Amendment of section 207

21. Section 207 of the Companies Act is amended by inserting, immediately after subsection (10), the following subsection:

"(11) The reference to the registers of —

(*a*) a company in subsection (5);

(*b*) a subsidiary corporation of a parent company in subsection (6); or

(*c*) a corporation in subsection (10),

does not include any register kept by the company, subsidiary corporation of a parent company or corporation, as the case may be, under Part XIA.".

New sections 211A to 211J

22. The Companies Act is amended by inserting, immediately after section 211, the following sections:

"**Application of sections 211B to 211J, etc.**

211A.—(1) Sections 211B to 211J only apply in a case that involves a compromise or an arrangement between a company and its creditors or any class of those creditors.

(2) Except as provided in sections 211G, 211H and 211I, sections 211B to 211J do not derogate from sections 210 and 211.

(3) In this section and sections 211B to 211J, "company" means any corporation liable to be wound up under this Act, but excludes such company or class of companies as the Minister may by order in the *Gazette* prescribe.

Power of Court to restrain proceedings, etc., against company

211B.—(1) Where a company proposes, or intends to propose, a compromise or an arrangement between the company and its creditors or any class of those creditors, the Court may, on the application of the company, make one or more of the following orders, each of which is in force for such period as the Court thinks fit:

(*a*) an order restraining the passing of a resolution for the winding up of the company;

(*b*) an order restraining the appointment of a receiver or manager over any property or undertaking of the company;

(*c*) an order restraining the commencement or continuation of any proceedings (other than proceedings under this section or section 210, 211D, 211G, 211H or 212) against the company, except with the leave of the Court and subject to such terms as the Court imposes;

(*d*) an order restraining the commencement, continuation or levying of any execution, distress or other legal process against any property of the company, except with the leave of the Court and subject to such terms as the Court imposes;

(*e*) an order restraining the taking of any step to enforce any security over any property of the company, or to repossess any goods held by the company under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes;

(*f*) an order restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the company (including any enforcement pursuant to section 18 or 18A of the Conveyancing and Law of Property Act (Cap. 61)), except with the leave of the Court and subject to such terms as the Court imposes.

(2) The company may make the application under subsection (1) only if all of the following conditions are satisfied:

(*a*) no order has been made and no resolution has been passed for the winding up of the company;

(*b*) the company makes, or undertakes to the Court to make as soon as practicable —

(i) an application under section 210(1) for the Court to order to be summoned a meeting of the creditors or class of creditors in relation to the compromise or arrangement mentioned in subsection (1); or

(ii) an application under section 211I(1) to approve the compromise or arrangement mentioned in subsection (1);

(*c*) the company does not make an application under section 210(10).

(3) When the company makes the application under subsection (1) to the Court —

(*a*) the company must publish a notice of the application in the *Gazette* and in at least one English local daily newspaper, and send a copy of the notice published in the *Gazette* to the Registrar; and

(*b*) unless the Court orders otherwise, the company must send a notice of the application to each creditor meant to be bound by the intended or proposed compromise or arrangement and who is known to the company.

(4) The company must file the following with the Court together with the application under subsection (1):

(*a*) evidence of support from the company's creditors for the intended or proposed compromise or arrangement, together with an explanation of how such support would be important for the success of the intended or proposed compromise or arrangement;

(*b*) in a case where the company has not proposed the compromise or arrangement to the creditors or class of creditors yet, a brief description of the intended compromise or arrangement, containing sufficient particulars to enable the Court to assess whether the intended compromise or arrangement is feasible and merits consideration by the company's creditors when a statement mentioned in section 211(1)(*a*) or 211I(3)(*a*) relating to the intended compromise or arrangement is placed before those creditors;

(*c*) a list of every secured creditor of the company;

(*d*) a list of all unsecured creditors who are not related to the company or, if there are more than 20 such unsecured creditors, a list of the 20 such unsecured creditors whose claims against the company are the largest among all such unsecured creditors.

(5) An order of the Court under subsection (1) —

(*a*) may be made subject to such terms as the Court imposes; and

(*b*) may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in Singapore or elsewhere.

(6) When making an order under subsection (1), the Court must order the company to submit to the Court, within such time as the Court may specify, sufficient information relating to the company's financial affairs to enable the company's creditors to assess the feasibility of the intended or proposed compromise or

arrangement, including such of the following information as the Court may specify:

(*a*) a report on the valuation of each of the company's significant assets;

(*b*) if the company acquires or disposes of any property or grants security over any property — information relating to the acquisition, disposal or grant of security, such information to be submitted not later than 14 days after the date of the acquisition, disposal or grant of security;

(*c*) periodic financial reports of the company and the company's subsidiaries;

(*d*) forecasts of the profitability, and the cash flow from the operations, of the company and the company's subsidiaries.

(7) The Court may extend the period for which an order under subsection (1) is in force, if an application for the extension of the period is made by the company before the expiry of that period.

(8) Subject to subsection (9), during the automatic moratorium period for an application under subsection (1) by a company —

(*a*) no order may be made, and no resolution may be passed, for the winding up of the company;

(*b*) no receiver or manager may be appointed over any property or undertaking of the company;

(*c*) no proceedings (other than proceedings under this section or section 210, 211D, 211G, 211H or 212) may be commenced or continued against the company, except with the leave of the Court and subject to such terms as the Court imposes;

(*d*) no execution, distress or other legal process may be commenced, continued or levied against any property of the company, except with the leave of the Court and subject to such terms as the Court imposes;

(*e*) no step may be taken to enforce any security over any property of the company, or to repossess any goods under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes; and

(*f*) despite sections 18 and 18A of the Conveyancing and Law of Property Act (Cap. 61), no right of re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced, except with the leave of the Court and subject to such terms as the Court imposes.

(9) Subsection (8) does not apply to a company that makes an application under subsection (1) if, within the period of 12 months immediately before the date on which that application is made, the company made an earlier application under subsection (1) to which subsection (8) applied.

(10) The company, any creditor of the company, or any receiver and manager of the whole (or substantially the whole) of the property or undertaking of the company, may apply to the Court for —

(*a*) the discharge or variation of any order made under subsection (1); or

(*b*) an order that subsection (8), or any paragraph of that subsection that is specified in the order, does not apply to the company starting on the date of the order.

(11) The Court must grant an application under subsection (10) by a creditor of a company, or by a receiver and manager of the whole (or substantially the whole) of the property or undertaking of a company, if the company failed to comply with subsection (4) when making the application under subsection (1) for the order.

(12) Neither an order made by the Court under subsection (1) nor subsection (8) affects the exercise of any legal right under any arrangement (including a set-off arrangement or a netting

arrangement) that may be prescribed by regulations made under section 411.

(13) In this section —

"automatic moratorium period", in relation to an application under subsection (1), means the period starting on the date on which the application is made, and ending on the earlier of the following:

(*a*) a date that is 30 days after the date on which the application is made;

(*b*) the date on which the application is decided by the Court;

"chattels leasing agreement", "hire-purchase agreement" and "retention of title agreement" have the same meanings as in section 227AA;

"netting arrangement" means an arrangement under which 2 or more claims or obligations can be converted into a net claim or obligation, and includes a close-out netting arrangement (under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set-off against each other or to be converted into a net debt);

"set-off arrangement" means an arrangement under which 2 or more debts, claims or obligations can be set-off against each other.

Power of Court to restrain proceedings, etc., against subsidiary or holding company

211C.—(1) Where the Court has made an order under section 211B(1) in relation to a company (called in this section the subject company), the Court may, on the application of a company that is a subsidiary, a holding company or an ultimate holding company of the subject company (called in this section the related company), make one or more of the following orders, each of which is in force for such period (but not exceeding the

period for which the order under section 211B(1) is in force) as the Court thinks fit:

(*a*) an order restraining the passing of a resolution for the winding up of the related company;

(*b*) an order restraining the appointment of a receiver or manager over any property or undertaking of the related company;

(*c*) an order restraining the commencement or continuation of any proceedings (other than proceedings under this section or section 210, 211D, 211G, 211H or 212) against the related company, except with the leave of the Court and subject to such terms as the Court imposes;

(*d*) an order restraining the commencement, continuation or levying of any execution, distress or other legal process against any property of the related company, except with the leave of the Court and subject to such terms as the Court imposes;

(*e*) an order restraining the taking of any step to enforce any security over any property of the related company, or to repossess any goods held by the related company under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes;

(*f*) an order restraining the enforcement of any right of re-entry or forfeiture under any lease in respect of any premises occupied by the related company (including any enforcement pursuant to section 18 or 18A of the Conveyancing and Law of Property Act (Cap. 61)), except with the leave of the Court and subject to such terms as the Court imposes.

(2) The related company may make the application under subsection (1) only if all of the following conditions are satisfied:

(*a*) no order has been made and no resolution has been passed for the winding up of the related company;

(*b*) the order under section 211B(1) made in relation to the subject company is in force;

(*c*) the related company plays a necessary and integral role in the compromise or arrangement relied on by the subject company to make the application for the order under section 211B(1);

(*d*) the compromise or arrangement mentioned in paragraph (*c*) will be frustrated if one or more of the actions that may be restrained by an order under subsection (1) are taken against the related company;

(*e*) the Court is satisfied that the creditors of the related company will not be unfairly prejudiced by the making of an order under subsection (1).

(3) When the related company makes the application under subsection (1) to the Court —

(*a*) the related company must publish a notice of the application in the *Gazette* and in at least one English local daily newspaper, and send a copy of the notice published in the *Gazette* to the Registrar; and

(*b*) unless the Court orders otherwise, the related company must send a notice of the application to each creditor of the related company who will be affected by an order under subsection (1) and who is known to the related company.

(4) An order of the Court under subsection (1) —

(*a*) may be made subject to such terms as the Court imposes; and

(*b*) may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in Singapore or elsewhere.

(5) The Court may extend the period for which an order under subsection (1) is in force, if an application for the extension of the

period is made by the related company before the expiry of that period.

(6) The related company, any creditor of the related company, or any receiver and manager of the whole (or substantially the whole) of the property or undertaking of the related company, may apply to the Court for the discharge or variation of any order made under subsection (1).

(7) An order made by the Court under subsection (1) does not affect the exercise of any legal right under any arrangement (including a set-off arrangement or a netting arrangement) that may be prescribed by regulations made under section 411.

(8) In this section —

"chattels leasing agreement", "hire-purchase agreement" and "retention of title agreement" have the same meanings as in section 227AA;

"netting arrangement" means an arrangement under which 2 or more claims or obligations can be converted into a net claim or obligation, and includes a close-out netting arrangement (under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set-off against each other or to be converted into a net debt);

"set-off arrangement" means an arrangement under which 2 or more debts, claims or obligations can be set-off against each other.

Restraint of disposition of property, etc., during moratorium period

211D.—(1) The Court may, on an application made by any creditor of a relevant company at any time during a moratorium period, make either or both of the following orders, each of which is in force for such part of the moratorium period as the Court thinks fit:

(*a*) an order restraining the relevant company from disposing of the property of the relevant company

other than in good faith and in the ordinary course of the business of the relevant company;

(*b*) an order restraining the relevant company from transferring any share in, or altering the rights of any member of, the relevant company.

(2) In this section —

"moratorium period", in relation to a relevant company, means any of the following periods that is applicable to the company:

(*a*) the automatic moratorium period mentioned in section 211B(8);

(*b*) the period during which an order under section 211B(1) is in force, including any extension of that period under section 211B(7);

(*c*) the period during which an order under section 211C(1) is in force, including any extension of the period under section 211C(5);

"relevant company" means a company that has made an application under section 211B(1), or in relation to which an order under section 211C(1) is made.

Super priority for rescue financing

211E.—(1) Where a company has made an application under section 210(1) or 211B(1), the Court may, on an application by the company under this subsection, make one or more of the following orders:

(*a*) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to be treated as if it were part of the costs and expenses of the winding up mentioned in section 328(1)(*a*);

(*b*) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to have priority over all

the preferential debts specified in section 328(1)(*a*) to (*g*) and all other unsecured debts, if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is given the priority mentioned in this paragraph;

(*c*) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by —

(i) a security interest on property of the company that is not otherwise subject to any security interest; or

(ii) a subordinate security interest on property of the company that is subject to an existing security interest,

if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph;

(*d*) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by a security interest, on property of the company that is subject to an existing security interest, of the same priority as or a higher priority than that existing security interest, if —

(i) the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph; and

(ii) there is adequate protection for the interests of the holder of that existing security interest.

(2) A company that makes an application under subsection (1) must, unless the Court orders otherwise, send a notice of the application to each creditor of the company.

(3) Where a company that has 2 or more super priority debts is wound up, the super priority debts —

(*a*) rank equally in priority between themselves; and

(*b*) are to be paid in full or, if the company has insufficient property to meet them, are to abate in equal proportions between themselves.

(4) Where a company that has 2 or more super priority debts is wound up, the super priority debts constitute one class of debts and, despite section 328 —

(*a*) the super priority debts are to be paid in priority to all the preferential debts specified in section 328(1)(*a*) to (*g*) and all other unsecured debts; and

(*b*) if the property of the company available for the payment of the super priority debts is insufficient to meet the super priority debts, the super priority debts —

(i) have priority over the claims of the holders of any debentures of the company secured by a floating charge (which, as created, was a floating charge); and

(ii) are to be paid out of any property comprised in or subject to that floating charge.

(5) The reversal or modification on appeal of an order under subsection (1)(*c*) or (*d*) does not affect the validity of any debt so incurred, or any security interest that was granted pursuant to the order, or the priority of that security interest, if the rescue financing (from which arose the debt intended to be secured by that security interest) was provided in good faith, whether or not with knowledge of the appeal, unless the order was stayed pending the appeal before the rescue financing was provided.

(6) For the purposes of subsection (1)(*d*)(ii), there is adequate protection for the interests of the holder of an existing security interest on the property of a company, if —

(*a*) the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under subsection (1)(*d*);

(*b*) the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under subsection (1)(*d*); or

(*c*) the Court grants any relief (other than compensation) that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

(7) Section 329 does not affect any priority conferred, any security interest or relief granted, or any payment made, pursuant to and in accordance with an order made by the Court under subsection (1).

(8) The company must, within 14 days after the date of an order under subsection (1), lodge a copy of the order with the Registrar.

(9) In this section —

"rescue financing" means any financing that satisfies either or both of the following conditions:

(*a*) the financing is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern;

(*b*) the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company;

"security interest" means any mortgage, charge, pledge, lien or other type of security interest recognised by law;

"super priority debt" means a debt, arising from any rescue financing obtained or to be obtained by a company, that is to have priority, pursuant to an order under subsection (1)(*b*), over all the preferential debts specified in section 328(1)(*a*) to (*g*) and all other unsecured debts, if the company is wound up.

Filing, inspection and adjudication of proofs of debt

211F.—(1) Where the Court orders under section 210(1) a meeting of the creditors, or a class of creditors, of a company to be summoned, the company must state in every notice mentioned in section 211(1) summoning the meeting (called in this section the notice summoning the meeting) —

(*a*) the manner in which a creditor is to file a proof of debt with the company; and

(*b*) the period within which the proof is to be filed.

(2) Subject to subsection (3), if a creditor does not file the creditor's proof of debt in the manner and within the period stated in the notice summoning the meeting, the creditor is not allowed to vote (whether in person or by proxy) at the meeting.

(3) The Court may, on an application made by the company or a creditor, make an order extending the period stated in the notice summoning the meeting within which a proof of debt is to be filed.

(4) Upon the making of an order under subsection (3), the company must as soon as practicable send a notice of the order to each creditor meant to be bound by the compromise or arrangement.

(5) Every proof of debt filed under this section is to be adjudicated by the person who is appointed by the Court to serve as the chairman of the meeting summoned pursuant to the order made under section 210(1) (called in this section the chairman).

(6) A creditor who has filed a proof of debt under this section is entitled to inspect the whole or any part of a proof of debt filed by any other creditor, except a part of the other creditor's proof that contains information that is subject to any obligation as to secrecy, or to any other restriction upon the disclosure of information, imposed by any written law, rule of law, contract or rule of professional conduct, or by any person or authority under any written law.

(7) The chairman must inform each creditor who has filed a proof of debt, within such time and manner as may be prescribed, of the results of the adjudication of the proofs of debt filed by all creditors.

(8) A creditor (*A*) who has filed a proof of debt may object to one or more of the following:

(*a*) the rejection by the chairman of the whole or any part of *A*'s proof of debt;

(*b*) the admission by the chairman of the whole or any part of a proof of debt filed by another creditor;

(*c*) a request by another creditor to inspect the whole or any part of *A*'s proof of debt.

(9) Any dispute between the chairman and the company, between the chairman and one or more creditors in relation to the rejection of a proof of debt, or between 2 or more creditors in relation to the inspection or admission of a proof of debt, may be adjudicated by an independent assessor appointed —

(*a*) by the agreement of all parties to the dispute; or

(*b*) if there is no such agreement, by the Court on the application of —

(i) any party to the dispute; or

(ii) the company (whether or not a party to the dispute).

(10) Where a creditor, the company or the chairman disagrees with any decision of an independent assessor on an adjudication under subsection (9) in relation to the inspection, admission or

rejection of a proof of debt, the creditor, company or chairman (as the case may be) may file a notice of disagreement regarding that decision for consideration by the Court when the Court hears an application for the Court's approval under section 210(4) of the compromise or arrangement in question.

(11) When exercising its discretion under section 210(4), the Court must take into account any notice of disagreement filed under subsection (10).

(12) The Minister may make regulations under section 411 to provide for the procedure relating to the inspection and adjudication of proofs of debt filed by creditors under this section.

(13) Without restricting the generality of subsection (12), the regulations mentioned in that subsection may provide for the following matters:

(*a*) the procedures for the making of a request, by a creditor who has filed a proof of debt, to inspect a proof of debt filed by any other creditor, and for the objection to the request by that other creditor;

(*b*) the period within which a proof of debt is to be adjudicated by the chairman;

(*c*) the time and manner in which creditors are to be informed under subsection (7) of the results of the adjudication;

(*d*) the procedure relating to the resolution of any dispute mentioned in subsection (9).

(14) Despite anything in the regulations mentioned in subsection (12), the Court may —

(*a*) on an application by the company, approve any variation in or substitution of the procedure relating to the inspection and adjudication of proofs of debt filed by creditors under this section; and

(*b*) on an application by any person subject to any requirement imposed by the regulations, grant relief

to the person or extend the time for the person to comply with the requirement.

Power of Court to order re-vote

211G.—(1) At the hearing of an application for the Court's approval under section 210(4) of a compromise or an arrangement between a company and its creditors or any class of those creditors, the Court may order the company to hold another meeting of the creditors or class of creditors (called in this section the further meeting) for the purpose of putting the compromise or arrangement to a re-vote.

(2) When making an order under subsection (1), the Court may —

(*a*) make the order subject to such terms as the Court thinks fit;

(*b*) direct that the further meeting be summoned or held in such manner as the Court thinks fit; and

(*c*) make such orders or directions as the Court thinks appropriate in respect of one or more of the following matters:

(i) the classification of any creditor for the purposes of voting at the further meeting;

(ii) the quantum of any creditor's debt that is to be admitted for the purposes of voting at the further meeting;

(iii) the weight to be attached to the vote of any creditor at the further meeting.

Power of Court to cram down

211H.—(1) This section applies where —

(*a*) a compromise or an arrangement between a company and its creditors or any class of those creditors has been voted on at a relevant meeting;

(*b*) the creditors meant to be bound by the compromise or arrangement are placed in 2 or more classes of creditors for the purposes of voting on the compromise or arrangement at the relevant meeting;

(*c*) the conditions in section 210(3AB)(*a*) and (*b*) (insofar as they are applicable) are satisfied at the relevant meeting in respect of at least one class of creditors; and

(*d*) either or both of the conditions in section 210(3AB)(*a*) and (*b*) (insofar as they are applicable) are not satisfied at the relevant meeting in respect of at least one class of creditors (each called in this section a dissenting class).

(2) Despite section 210(3AA) and (3AB)(*a*) and (*b*), the Court may, subject to this section and on the application of the company, or a creditor of the company who has obtained the leave of the Court to make an application under this subsection, approve the compromise or arrangement, and order that the compromise or arrangement be binding on the company and all classes of creditors meant to be bound by the compromise or arrangement.

(3) The Court may not make an order under subsection (2) unless —

(*a*) a majority in number of the creditors meant to be bound by the compromise or arrangement, and who were present and voting either in person or by proxy at the relevant meeting, have agreed to the compromise or arrangement;

(*b*) the majority in number of creditors mentioned in paragraph (*a*) represents three-fourths in value of the creditors meant to be bound by the compromise or arrangement, and who were present and voting either in person or by proxy at the relevant meeting; and

(*c*) the Court is satisfied that the compromise or arrangement does not discriminate unfairly between

2 or more classes of creditors, and is fair and equitable to each dissenting class.

(4) For the purposes of subsection (3)(*c*), a compromise or an arrangement is not fair and equitable to a dissenting class unless —

(*a*) no creditor in the dissenting class receives, under the terms of the compromise or arrangement, an amount that is lower than what the creditor is estimated by the Court to receive in the most likely scenario if the compromise or arrangement does not become binding on the company and all classes of creditors meant to be bound by the compromise or arrangement; and

(*b*) either of the following applies:

(i) where the creditors in the dissenting class are secured creditors, the terms of the compromise or arrangement must —

(A) provide for each creditor in the dissenting class to receive deferred cash payments totalling the amount of the creditor's claim that is secured by the security held by the creditor, and preserve that security and the extent of that claim (whether or not the property subject to that security is to be retained by the company or transferred to another entity under the terms of the compromise or arrangement);

(B) provide that where the security held by any creditor in the dissenting class to secure the creditor's claim is to be realised by the company free of encumbrances, the creditor has a charge over the proceeds of the realisation to satisfy the creditor's claim that is secured by that security; or

(C) provide that each creditor in the dissenting class is entitled to realise the indubitable

equivalent of the security held by the creditor in order to satisfy the creditor's claim that is secured by that security;

(ii) where the creditors in the dissenting class are unsecured creditors, the terms of the compromise or arrangement —

(A) must provide for each creditor in that class to receive property of a value equal to the amount of the creditor's claim; or

(B) must not provide for any creditor with a claim that is subordinate to the claim of a creditor in the dissenting class, or any member, to receive or retain any property on account of the subordinate claim or the member's interest.

(5) The Court may appoint any person of suitable knowledge, qualification or experience to assist the Court in estimating the amount that a creditor is expected to receive in the most likely scenario if the compromise or arrangement does not become binding on the company and all classes of creditors meant to be bound by the compromise or arrangement.

(6) In this section, "relevant meeting" means —

(*a*) in a case where the compromise or arrangement in question is subject to a re-vote under section 211G(1), the meeting held for that purpose; or

(*b*) in any other case, the meeting ordered by the Court under section 210(1) or, if that meeting is adjourned under section 210(3), the adjourned meeting.

Power of Court to approve compromise or arrangement without meeting of creditors

211I.—(1) Despite section 210 but subject to this section, where a compromise or an arrangement is proposed between a company and its creditors or any class of those creditors, the Court may, on an application made by the company, make an

order approving the compromise or arrangement, even though no meeting of the creditors or class of creditors has been ordered under section 210(1) or held.

(2) Subject to subsection (12), if the compromise or arrangement is approved by order of the Court under subsection (1), the compromise or arrangement is binding on the company and the creditors or class of creditors meant to be bound by the compromise or arrangement.

(3) The Court must not approve a compromise or an arrangement under subsection (1) unless —

(*a*) the company has provided each creditor meant to be bound by the compromise or arrangement with a statement that complies with subsection (8) and contains the following information:

(i) information concerning the company's property, assets, business activities, financial condition and prospects;

(ii) information on the manner in which the terms of the compromise or arrangement will, if it takes effect, affect the rights of the creditor;

(iii) such other information as is necessary to enable the creditor to make an informed decision whether to agree to the compromise or arrangement;

(*b*) the company has published a notice of the application under subsection (1) in the *Gazette* and in at least one English local daily newspaper, and has sent a copy of the notice published in the *Gazette* to the Registrar;

(*c*) the company has sent a notice and a copy of the application under subsection (1) to each creditor meant to be bound by the compromise or arrangement; and

(*d*) the Court is satisfied that had a meeting of the creditors or class of creditors been summoned, the

conditions in section 210(3AB)(*a*) and (*b*) (insofar as they relate to the creditors or class of creditors) would have been satisfied.

(4) Despite subsection (3)(*c*), the company may, if directed by the Court, give notice of the application under subsection (1) to the creditors or class of creditors in such manner as the Court may direct.

(5) Where the company is a banking corporation or licensed insurer, the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186) has the same powers and rights as a creditor of the company under this Act, including the right to appear and be heard before a Court in any proceedings under this section.

(6) Subject to subsection (7), the Court may grant its approval of a compromise or an arrangement subject to such alterations or conditions as the Court thinks just.

(7) The Court must not approve any compromise or arrangement which has been proposed for the purposes of or in connection with any scheme mentioned in section 212(1), under which the whole or any part of the undertaking or the property of a banking corporation incorporated in Singapore or licensed insurer incorporated in Singapore is to be transferred, unless the Minister charged with the responsibility for banking or insurance matters, as the case may be, has consented to the compromise or arrangement or has certified that his consent is not required.

(8) The statement mentioned in subsection (3)(*a*) must —

(*a*) explain the effect of the compromise or arrangement and, in particular, state —

(i) any material interests of the directors of the company (whether as directors or as members, creditors or holders of units of shares of the company or otherwise); and

(ii) the effect that the compromise or arrangement has on those interests, insofar as that effect is

different from the effect that the compromise or arrangement has on the like interests of other persons; and

(*b*) where the compromise or arrangement affects the rights of debenture holders, contain the like explanation with respect to the trustees for the debenture holders as, under paragraph (*a*), the statement is required to give with respect to the directors of the company.

(9) Each director, and each trustee for debenture holders, must give notice to the company of such matters relating to the director or trustee as may be necessary for the purposes of subsection (8) within 7 days after the director or trustee receives a request in writing from the company for information as to such matters.

(10) Any director of a company or trustee for debenture holders who contravenes subsection (9) 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.

(11) A person, being a director of a company or a trustee for debenture holders, is not guilty of an offence under subsection (10), if the person shows that the person's contravention of subsection (9) was due to the refusal of another director of the company or trustee for debenture holders to supply to the person the particulars of the person's material interests affected by the compromise or arrangement.

(12) Unless the Court orders otherwise, an order made under subsection (1) —

(*a*) has no effect until a copy of the order is lodged with the Registrar; and

(*b*) takes effect starting on the date of the lodgment.

(13) Where the terms of any compromise or arrangement approved under this section provides for any money or other consideration to be held by or on behalf of any party to the compromise or arrangement in trust for any person, the person holding the money or other consideration may after the

expiration of 2 years, and must before the expiration of 10 years, starting on the date on which the money or other consideration was received by the person, transfer the money or other consideration to the Official Receiver.

(14) The Official Receiver must —

(*a*) deal with any moneys received under subsection (13) as if the moneys were paid to the Official Receiver under section 322; and

(*b*) sell or dispose of any other consideration received under subsection (13) in such manner as the Official Receiver thinks fit, and deal with the proceeds of the sale or disposal as if those proceeds were moneys paid to the Official Receiver under section 322.

Power of Court to review act, omission or decision, etc., after approval, etc., of compromise or arrangement

211J.—(1) This section applies after a compromise or an arrangement, between a company and its creditors or any class of those creditors, has been approved by the Court under section 210(4) or 211I(1).

(2) Where the Court is satisfied that the company or the scheme manager of the compromise or arrangement has committed an act or omission, or made a decision, that results in a breach of any term of the compromise or arrangement, the Court may, on the application of the company, the scheme manager or any creditor bound by the compromise or arrangement —

(*a*) reverse or modify the act or decision of the company or the scheme manager; or

(*b*) give such direction or make such order as the Court thinks fit to rectify the act, omission or decision of the company or scheme manager.

(3) The Court may, on an application of the company, the scheme manager or any creditor bound by the compromise or arrangement, clarify any term of the compromise or arrangement.

(4) No order or clarification made, and no direction given, by the Court under subsection (2) or (3) may alter, or affect any person's rights under, the terms of the compromise or arrangement as approved by the Court under section 210(4) or 211I(1).

(5) In this section, "scheme manager", in relation to a compromise or an arrangement, means a person appointed by the Court or the company to administer the compromise or arrangement.".

Amendment of section 212

23. Section 212(1A) of the Companies Act is amended by deleting the words "section 210(4A)" and substituting the words "sections 210(4A) and 211I(7)".

New section 227AA

24. The Companies Act is amended by inserting, immediately before section 227A in Part VIIIA, the following section:

"**Interpretation of this Part**

227AA. In this Part —

"chattels leasing agreement" means an agreement for the bailment of goods that are capable of subsisting for more than 3 months;

"company" means any corporation liable to be wound up under this Act;

"hire-purchase agreement" has the same meaning as in section 2 of the Hire-Purchase Act (Cap. 125);

"property", in relation to a company, includes money, goods, things in action and every description of property, whether real or personal, and whether in Singapore or elsewhere, and also obligations and every description of interest whether present or future or vested or contingent arising out of, or incidental to, property;

"retention of title agreement" means an agreement for the sale of goods to a company, being an agreement —

(*a*) that does not constitute a charge on the goods; but

(*b*) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods.".

Amendment of section 227B

25. Section 227B of the Companies Act is amended —

(*a*) by deleting the words "will be" in subsection (1)(*a*) and substituting the words "is likely to become";

(*b*) by inserting, immediately after the words "section 210" in subsection (1)(*b*)(ii), the words "or 211I";

(*c*) by deleting the words "and Chinese" in subsection (4)(*a*);

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

"(5) Subject to subsection (10), the Court must dismiss an application for a judicial management order if —

(*a*) the making of the order is opposed by a person who has appointed, will appoint or is entitled to appoint, a receiver and manager mentioned in subsection (4); and

(*b*) the Court is satisfied that the prejudice that would be caused to the person mentioned in paragraph (*a*) if the order is made is disproportionately greater than the prejudice that would be caused to unsecured creditors of the company if the application is dismissed.";

(*e*) by deleting the word "or" at the end of subsection (7)(*b*);

(*f*) by deleting the full-stop at the end of paragraph (*c*) of subsection (7) and substituting the word "; or", and by inserting immediately thereafter the following paragraph:

"(*d*) where the company belongs to such class of companies as the Minister may by order in the *Gazette* prescribe."; and

(*g*) by deleting subsection (11).

Amendment of section 227D

26. Section 227D of the Companies Act is amended by deleting subsection (4) and substituting the following subsections:

"(4) During the period for which a judicial management order is in force —

(*a*) no order may be made, and no resolution may be passed, for the winding up of the company;

(*b*) no receiver or manager may be appointed over any property or undertaking of the company;

(*c*) no other proceedings may be commenced or continued against the company, except with the consent of the judicial manager, or with the leave of the Court and subject to such terms as the Court imposes;

(*d*) no execution, distress or other legal process may be commenced, continued or levied against any property of the company, except with the consent of the judicial manager, or with the leave of the Court and subject to such terms as the Court imposes;

(*e*) no step may be taken to enforce any security over any property of the company, or to repossess any goods under any chattels leasing agreement, hire-purchase agreement, or retention of title agreement, except with the consent of the judicial manager, or with the leave of the Court and subject to such terms as the Court imposes; and

(*f*) despite sections 18 and 18A of the Conveyancing and Law of Property Act (Cap. 61), no right of re-entry or forfeiture under any lease in respect of any premises occupied by the company may be enforced, except with the consent of the judicial manager, or with the leave of the Court and subject to such terms as the Court imposes.

(5) Subsection (4) does not affect the exercise of any legal right under any arrangement (including a set-off arrangement or a netting arrangement) that may be prescribed by regulations made under section 411.

(6) In this section —

"netting arrangement" means an arrangement under which 2 or more claims or obligations can be converted into a net claim or obligation, and includes a close-out netting arrangement (under which actual or theoretical debts are calculated during the course of a contract for the purpose of enabling them to be set-off against each other or to be converted into a net debt);

"set-off arrangement" means an arrangement under which 2 or more debts, claims or obligations can be set-off against each other.".

Amendment of section 227H

27. Section 227H of the Companies Act is amended by deleting subsection (9).

New section 227HA

28. The Companies Act is amended by inserting, immediately after section 227H, the following section:

"**Super priority for rescue financing**

227HA.—(1) At any time when a judicial management order is in force, the Court may, on an application by the judicial manager, make one or more of the following orders:

(*a*) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to be treated as if it were part of the costs and expenses of the winding up mentioned in section 328(1)(*a*);

(*b*) an order that if the company is wound up, the debt arising from any rescue financing obtained, or to be obtained, by the company is to have priority over all the preferential debts specified in section 328(1)(*a*) to (*g*) and all other unsecured debts, if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is given the priority mentioned in this paragraph;

(*c*) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by —

(i) a security interest on property of the company that is not otherwise subject to any security interest; or

(ii) a subordinate security interest on property of the company that is subject to an existing security interest,

if the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in the manner mentioned in this paragraph;

(*d*) an order that the debt arising from any rescue financing to be obtained by the company is to be secured by a security interest, on property of the company that is subject to an existing security interest, of the same priority as or a higher priority than that existing security interest, if —

(i) the company would not have been able to obtain the rescue financing from any person unless the

debt arising from the rescue financing is secured in the manner mentioned in this paragraph; and

(ii) there is adequate protection for the interests of the holder of that existing security interest.

(2) A judicial manager that makes an application under subsection (1) must send a notice of the application to each creditor of the company.

(3) Any creditor of the company may oppose an application under subsection (1).

(4) Where a company that has 2 or more super priority debts is wound up, the super priority debts —

(*a*) rank equally in priority between themselves; and

(*b*) are to be paid in full or, if the company has insufficient property to meet them, are to abate in equal proportions between themselves.

(5) Where a company that has 2 or more super priority debts is wound up, the super priority debts constitute one class of debts and, despite section 328 —

(*a*) the super priority debts are to be paid in priority to all the preferential debts specified in section 328(1)(*a*) to (*g*) and all other unsecured debts; and

(*b*) if the property of the company available for the payment of the super priority debts is insufficient to meet the super priority debts, the super priority debts —

(i) have priority over the claims of the holders of any debentures of the company secured by a floating charge (which, as created, was a floating charge); and

(ii) are to be paid out of any property comprised in or subject to that floating charge.

(6) The reversal or modification on appeal of an order under subsection (1)(*c*) or (*d*) does not affect the validity of any debt so

incurred, or any security interest that was granted pursuant to the order, or the priority of that security interest, if the rescue financing (from which arose the debt intended to be secured by that security interest) was provided in good faith, whether or not with knowledge of the appeal, unless the order was stayed pending the appeal before the rescue financing was provided.

(7) For the purposes of subsection (1)(*d*)(ii), there is adequate protection for the interests of the holder of an existing security interest on the property of a company, if —

(*a*) the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under subsection (1)(*d*);

(*b*) the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order under subsection (1)(*d*); or

(*c*) the Court grants any relief (other than compensation) that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

(8) Section 329 does not affect any priority conferred, any security interest or relief granted, or any payment made, pursuant to and in accordance with an order made by the Court under subsection (1).

(9) The judicial manager must, within 14 days after the date of an order under subsection (1), lodge a copy of the order with the Registrar.

(10) In this section —

"rescue financing" means any financing that satisfies one or more of the following conditions:

(*a*) the financing is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern;

(*b*) the financing is necessary for the Court's approval under section 210(4) or 211I(6) of a compromise or an arrangement mentioned in section 210(1) or 211I(1) (as the case may be) involving a company that obtains the financing;

(*c*) the financing is necessary to achieve a more advantageous realisation of the assets of a company that obtains the financing, than on a winding up of that company;

"security interest" means any mortgage, charge, pledge, lien or other type of security interest recognised by law;

"super priority debt" means a debt, arising from any rescue financing obtained or to be obtained by a company, that is to have priority, pursuant to an order under subsection (1)(*b*), over all the preferential debts specified in section 328(1)(*a*) to (*g*) and all other unsecured debts, if the company is wound up.".

Amendment of section 227K

29. Section 227K(1) of the Companies Act is amended by deleting the words "and Chinese" in paragraph (*b*).

Amendment of section 227M

30. Section 227M(2) of the Companies Act is amended by deleting the words "and Chinese" in paragraph (*b*).

Amendment of section 227N

31. Section 227N(4) of the Companies Act is amended by deleting the words "and Chinese".

Amendment of section 227P

32. Section 227P(3) of the Companies Act is amended by deleting the words "and Chinese" in paragraph (*b*).

Amendment of section 227R

33. Section 227R(4) of the Companies Act is amended by inserting, immediately after the words "section 210", the words "or 211I".

Amendment of section 227X

34. Section 227X of the Companies Act is amended by deleting paragraph (*a*) and substituting the following paragraphs:

"(*a*) section 210 applies as if —

(i) the following subsection replaces subsections (1) and (2):

"(1) Where a compromise or an arrangement is proposed between a company under judicial management and its creditors or any class of those creditors, the Court may, on the application of the judicial manager, order a meeting of the creditors or class of creditors to be summoned in such manner as the Court directs."; and

(ii) the following subsections replace subsections (3), (3AA) and (3AB):

"(3) A meeting held pursuant to an order under subsection (1) may be adjourned from time to time if the resolution for the adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors (as the case may be) present and voting either in person or by proxy at the meeting.

(3AA) If the conditions set out in subsection (3AB) are satisfied, a compromise or an arrangement is binding on the company, on the judicial manager, and on the creditors or class of creditors (as the case may be).

(3AB) The conditions mentioned in subsection (3AA) are as follows:

(*a*) a majority in number, or such other number as the Court may order, of the creditors or class of creditors (as the case may be) present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to the compromise or arrangement;

(*b*) the majority in number, or other number, of the creditors or class of creditors (as the case may be) mentioned in paragraph (*a*) represents three-fourths in value of the creditors or class of creditors (as the case may be) present and voting either in person or by proxy at the meeting or the adjourned meeting; and

(*c*) the compromise or arrangement is approved by order of the Court.";

(*aa*) section 211F applies as if —

(i) the following subsection replaces subsection (1):

"(1) Where the Court orders under section 210(1) a meeting of the creditors, or a class of creditors, of a company under judicial management to be summoned, the judicial manager must state in every notice mentioned in section 211(1) summoning the meeting (called in this section the notice summoning the meeting) —

(*a*) the manner in which a creditor is to file a proof of debt with the company; and

(*b*) the period within which the proof is to be filed."; and

(ii) the word "company" in subsections (3), (4), (9), (10) and (14)(*a*) was replaced by the words "judicial manager";

(*ab*) section 211G applies as if the following subsection replaces subsection (1):

"(1) At the hearing of an application for the Court's approval under section 210(4) of a compromise or an arrangement between a company under judicial management and its creditors or any class of those creditors, the Court may order the judicial manager to hold another meeting of the creditors or class of creditors (called in this section the further meeting) for the purpose of putting the compromise or arrangement to a re-vote.";

(*ac*) section 211H applies as if —

(i) the following subsection replaces subsection (2):

"(2) Despite section 210(3AA) and (3AB)(*a*) and (*b*), the Court may, subject to this section and on the application of the judicial manager, or a creditor of the company who has obtained the leave of the Court to make an application under this subsection, approve the compromise or arrangement, and order that the compromise or arrangement be binding on the judicial manager, the company and all classes of creditors meant to be bound by the compromise or arrangement.";

(ii) the following paragraph replaces paragraph (*a*) of subsection (4):

"(*a*) no creditor in the dissenting class receives, under the terms of the compromise or arrangement, an amount that is lower than what the creditor is estimated by the Court to receive in the most likely scenario if the compromise or

arrangement does not become binding on the judicial manager, the company and all classes of creditors meant to be bound by the compromise or arrangement; and"; and

(iii) the following subsection replaces subsection (5):

"(5) The Court may appoint any person of suitable knowledge, qualification or experience to assist the Court in estimating the amount that a creditor is expected to receive in the most likely scenario if the compromise or arrangement does not become binding on the judicial manager, the company and all classes of creditors meant to be bound by the compromise or arrangement.";

(*ad*) section 211I applies as if —

(i) the following subsections replace subsections (1) and (2):

"(1) Despite section 210 but subject to this section, where a compromise or an arrangement is proposed between a company under judicial management and its creditors or any class of those creditors, the Court may, on an application made by the judicial manager, make an order approving the compromise or arrangement, even though no meeting of the creditors or class of creditors has been ordered under section 210(1) or held.

(2) Subject to subsection (12), if the compromise or arrangement is approved by order of the Court under subsection (1), the compromise or arrangement is binding on the judicial manager, the company and the creditors or class of creditors meant to be bound by the compromise or arrangement.";

(ii) the words "the company has provided" in subsection (3)(*a*) were replaced by the words "the judicial manager has provided"; and

(iii) the word "company" in subsections (3)(*b*) and (*c*), (4) and (9) was replaced by the words "judicial manager"; and".

Amendment of section 253

35. Section 253(1) of the Companies Act is amended by deleting the words "section 254(1)(*d*) or (*l*)" in paragraph (*e*) and substituting the words "section 254(1)(*d*), (*l*) or (*la*)".

Amendment of section 254

36. Section 254(1) of the Companies Act is amended by deleting the word "or" at the end of paragraph (*l*), and by inserting immediately thereafter the following paragraph:

"(*la*) the company, being a foreign corporate entity that was registered as a company limited by shares under section 359(1) subject to conditions, has breached any of the conditions of registration imposed under that section; or".

Amendment of section 272

37. Section 272(2) of the Companies Act is amended by inserting, immediately after the words "company's seal" in paragraph (*d*), the words ", if any".

Amendment of section 320

38. Section 320 of the Companies Act is amended —

(*a*) by deleting the words "2 years" in subsections (2) and (3) and substituting in each case the words "5 years"; and

(*b*) by deleting paragraphs (*b*) and (*c*) of subsection (3).

New section 344H

39. The Companies Act is amended by inserting, immediately after section 344G, the following section:

"**Retention of books and papers upon striking off**

344H.—(1) Where the name of a company has been struck off and the company dissolved under section 344 or 344A, a person who was an officer of the company immediately before the company was dissolved must ensure that all books and papers of the company are retained for a period of at least 5 years after the date on which the company was dissolved.

(2) An officer of a company who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000.".

Amendment of section 351

40. Section 351 of the Companies Act is amended —

(*a*) by deleting the full-stop at the end of paragraph (*c*) of subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

"(*d*) where the company is a foreign company, it may be wound up only if it has a substantial connection with Singapore.";

(*b*) by inserting, immediately after subsection (2), the following subsection:

"(2A) For the purposes of subsection (1)(*d*), the Court may rely on the presence of one or more of the following matters to support a determination that a foreign company has a substantial connection with Singapore:

(*a*) Singapore is the centre of main interests of the company;

(*b*) the company is carrying on business in Singapore or has a place of business in Singapore;

(*c*) the company is a foreign company that is registered under Division 2 of Part XI;

(*d*) the company has substantial assets in Singapore;

(*e*) the company has chosen Singapore law as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction;

(*f*) the company has submitted to the jurisdiction of the Court for the resolution of one or more disputes relating to a loan or other transaction.”; and

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

“(4) In this section, “carrying on business” and “to carry on business” have the same meaning as in section 366.”.

New Division 6 of Part X

41. The Companies Act is amended by inserting, immediately after section 354, the following Division:

“*Division 6 — Adoption of UNCITRAL Model Law on Cross-Border Insolvency*

Interpretation of this Division

354A. In this Division, “Model Law” means the UNCITRAL Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law on 30 May 1997.

Model Law to have force of law

354B.—(1) The Model Law (with certain modifications to adapt it for application in Singapore) as set out in the Tenth Schedule has the force of law in Singapore.

(2) In the interpretation of any provision of the Tenth Schedule, the following documents are relevant documents for the purposes of section 9A(3)(*f*) of the Interpretation Act (Cap. 1):

(*a*) any document relating to the Model Law that is issued by, or that forms part of the record on the preparation of the Model Law maintained by, the United Nations Commission on International Trade Law and its working group for the preparation of the Model Law;

(*b*) the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency (UN document A/CN.9/442).

(3) The Minister may, by notification in the *Gazette*, add to, vary or amend the Tenth Schedule.

Interaction with Singapore insolvency law

354C.—(1) Singapore insolvency law applies with such modifications as the context requires for the purpose of giving effect to this Division and the Tenth Schedule.

(2) This Division and the Tenth Schedule do not derogate from the operation of section 377(2), (3), (4), (4A) and (7).

(3) In this section, "Singapore insolvency law" has the same meaning as in Article 2(*k*) of the Tenth Schedule.".

New Part XA

42. The Companies Act is amended by inserting, immediately before Part XI, the following Part:

"PART XA

TRANSFER OF REGISTRATION

Foreign corporate entities to which this Part applies

355. This Part applies to a foreign corporate entity which intends to be registered as a company limited by shares under this Act.

Interpretation of this Part

356. In this Part, unless the context otherwise requires —

"date of registration", in relation to a foreign corporate entity that has applied to be registered as a company limited by shares under this Part, means the date of registration of the foreign corporate entity specified in the notice of transfer of registration;

"foreign corporate entity" means a body corporate that is incorporated outside Singapore;

"notice of transfer of registration" means the notice of transfer of registration issued under section 359(3);

"place of incorporation" means, in the case of a foreign corporate entity that had transferred its domicile after its incorporation, the jurisdiction where the foreign corporate entity is domiciled at the time it applies for registration;

"registration", in relation to a foreign corporate entity that has applied to be registered as a company limited by shares under this Part, means registration by the Registrar under section 359(1), and "register" and "registered" are to be construed accordingly.

Names of companies to be registered under this Part

357.—(1) A foreign corporate entity which intends to be registered as a company limited by shares under this Act must apply to reserve the name of the intended company.

(2) Section 27 applies to and in respect of an application under subsection (1) as if it were an application to reserve the name of an intended company under that section.

(3) A foreign corporate entity must not be registered under section 359(1) unless the name which it is proposed to be registered has been reserved under section 27, as applied by subsection (2).

Application for registration

358.—(1) A foreign corporate entity may apply to the Registrar to be registered as a company limited by shares under this Act.

(2) An application under subsection (1) —

(*a*) must be made in such form and manner, and contain such particulars, as may be prescribed;

(*b*) must be accompanied by —

(i) a certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any), in its place of incorporation;

(ii) the constitution by which the foreign corporate entity proposes to be registered;

(iii) such other documents as may be prescribed; and

(iv) the prescribed fee.

(3) The Registrar may require an applicant to furnish to the Registrar such further information or documents as the Registrar may require.

Registration

359.—(1) Subject to section 360, upon compliance by the foreign corporate entity with section 358, the Registrar may, if he thinks fit, register the foreign corporate entity as a company limited by shares by registering its constitution.

(2) The registration of the foreign corporate entity is subject to such conditions that the Registrar may impose.

(3) Upon registration of the foreign corporate entity, the Registrar must issue a notice of transfer of registration in the prescribed form stating that the company is, on and from the date specified in the notice —

(*a*) registered by way of transfer of registration under this Act;

(*b*) a company limited by shares; and

(*c*) where applicable, a private company.

(4) A certificate of confirmation of registration must be issued by the Registrar upon the application of the company.

(5) A notice of transfer of registration issued under subsection (3), and a certificate of confirmation of registration issued under subsection (4), is each conclusive evidence —

(*a*) that the foreign corporate entity is registered under this section; and

(*b*) of the date of the company's registration.

(6) A foreign corporate entity registered under this section must, within 60 days after the issue of the notice of transfer of registration under subsection (3), or such further period as may be extended under subsection (7), submit to the Registrar a document evidencing that the foreign corporate entity has been de-registered in its place of incorporation.

(7) The Registrar may, on the application of the foreign corporate entity registered under this section, extend the 60-day period mentioned in subsection (6) subject to such conditions as the Registrar considers fit.

(8) The Registrar may, at any time in the Registrar's discretion, waive or modify any condition imposed by the Registrar under subsection (2).

(9) Any person aggrieved by —

(*a*) the refusal of the Registrar to register a foreign corporate entity under subsection (1);

(*b*) any condition of registration imposed by the Registrar under subsection (2); or

(*c*) the modification of any condition by the Registrar under subsection (8),

may within 30 days after the date of the refusal to register, or the imposition or modification of the condition, as the case may be, appeal to the Minister whose decision is final.

When registration must be refused

360.—(1) The Registrar must refuse to register a foreign corporate entity if he is not satisfied that the minimum requirements prescribed for registration have been met and that all other requirements for registration have been complied with.

(2) The Registrar must refuse to register a foreign corporate entity if he is satisfied that —

(*a*) the intended company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or

(*b*) it would be contrary to national security or interest for the intended company to be registered.

(3) Any person aggrieved by the decision of the Registrar under subsection (1) or (2) may, within 30 days after the date of the decision, appeal to the Minister whose decision is final.

Effect of registration

361.—(1) Starting on the date of registration specified in the notice of transfer of registration —

(*a*) the foreign corporate entity is deemed to be a company as defined in section 4(1) and all provisions of this Act pertaining to companies apply with such adaptations,

exceptions and modifications as may be specified in regulations; and

(*b*) if the foreign corporate entity was registered as a foreign company under Division 2 of Part XI immediately before that date, ceases to be so registered under Division 2 of that Part.

(2) To avoid doubt, the registration of a foreign corporate entity does not —

(*a*) create a new legal entity;

(*b*) prejudice or affect the identity of the body corporate constituted by the foreign corporate entity or its continuity as a body corporate;

(*c*) affect the property, or the rights or obligations, of the foreign corporate entity; or

(*d*) render defective any legal proceedings by or against the foreign corporate entity,

and any legal proceedings that could have been continued or commenced by or against the foreign corporate entity before its registration may be continued or commenced by or against the company after the registration.

Revocation of registration

362.—(1) The Registrar may by order revoke the registration of a company if the company fails to comply with section 359(6).

(2) The Registrar must, before making an order of revocation —

(*a*) give the company notice in writing of the Registrar's intention to revoke the registration;

(*b*) specify in the notice a period of at least 30 days within which the company may make written representations to the Registrar; and

(*c*) consider the company's written representations (if any) that are received by the Registrar within the time specified in the notice.

(3) At the expiration of the time mentioned in the notice mentioned in subsection (2), the Registrar may, unless cause to the contrary is previously shown, order that the registration of the company be revoked.

(4) The Registrar must —

(*a*) cause a notice of the order of revocation to be published in the *Gazette*; and

(*b*) serve a copy of the notice of the order of revocation on the company which registration is revoked.

(5) Upon publication of the notice of the order of revocation in the *Gazette*, the order of revocation takes effect and the company ceases to be a company as defined in section 4(1) and the provisions of this Act cease to apply to the company.

(6) An order of revocation under subsection (3) is final.

(7) Despite the order of revocation in respect of a company under subsection (3), the liability, if any, of every officer and member of the company continues.

(8) Nothing in this section prejudices —

(*a*) the enforcement by any person of any right or claim against the company; or

(*b*) the enforcement by the company of any right or claim against any person.

Duty of company to register pre-existing charges

363.—(1) If, before the registration of a foreign corporate entity, there are any charges, whether created by the foreign corporate entity or otherwise, which would have been required to be registered under Division 8 of Part IV if the foreign corporate entity had been incorporated as a company under this Act, there must be lodged with the Registrar in the prescribed manner for registration, within 30 days after the date of registration of the

company, a statement containing the prescribed particulars of the charge.

(2) Documents and particulars required to be lodged for registration under subsection (1) may be lodged by the company concerned or by any person interested in the documents.

(3) Where registration under subsection (1) is effected by some person other than the company concerned, that person is entitled to recover from the company the amount of any fees properly paid by him for the registration.

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

(5) To avoid doubt, a failure to comply with subsection (1) does not affect the continuity of status, operation or effect of any security, right, priority or obligation of the charge.

(6) The Court, on being satisfied —

(*a*) that the omission to register a charge requiring registration under subsection (1), or that the omission or mis-statement of any particular with respect to such charge, was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders; or

(*b*) that on other grounds it is just and equitable to grant relief,

may on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the rectification is to be without prejudice to any liability already incurred by the company or any of its officers in respect of the default) order that the time for registration be extended or that the omission or mis-statement be rectified.

(7) In respect of any charge that is required to be lodged under subsection (1), sections 134, 135, 136 and 138 apply as if the charge were a charge to which Division 8 of Part IV applied.

Duties of company with respect to issue of certificates

364.—(1) Within 60 days after the date of registration of the company, the company must complete and have ready for delivery appropriate certificates in respect of all persons registered as holders of existing shares or debentures, as the case may be, as at the date of registration.

(2) Upon the delivery of the certificates to the holders of existing shares or debentures under subsection (1), all prior certificates in respect of such shares or debentures cease to be operative and cease to have any validity for the purposes of this Act.

(3) Any share warrant, stating that the bearer of the warrant is entitled to the shares specified in the warrant and enabling the shares to be transferred by delivery of the warrant, that had been issued by the foreign corporate entity before the date of registration of the company is void.

(4) If any company on which a notice has been served requiring the company to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him, make an order directing the company and any officer of the company to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application are to be borne by the company or by any officer of the company in default in such proportions as the Court thinks fit.

Regulations

364A. The Minister may make regulations under section 411 in respect of applications for registration, and registration of a foreign corporate entity, under this Part, including —

(*a*) prescribing the minimum and other requirements that a foreign corporate entity must meet before it may be registered under section 359(1);

(*b*) waiving any requirement of this Part in respect of any foreign corporate entity, or class of foreign corporate entities; and

(*c*) adapting, modifying or excluding the provisions of this Act in their application to any foreign corporate entity or class of foreign corporate entities registered under this Part.".

Amendment of section 372

43. Section 372(4) of the Companies Act is amended by inserting, immediately after the words "section 210", the words "or 211I".

Amendment of section 373

44. Section 373(10) of the Companies Act is amended by deleting the words "subsection (7)" and substituting the words "subsections (3)(*b*) and (7)".

Amendment of section 377

45. Section 377 of the Companies Act is amended —

(*a*) by deleting paragraph (*c*) of subsection (3) and substituting the following paragraph:

"(*c*) must, unless otherwise ordered by the Court, only recover and realise the assets of the foreign company in Singapore and, subject to paragraph (*b*) and subsection (7) —

(i) in a case where the foreign company is, or was prior to the liquidation or dissolution carrying on business as, a relevant company, pay the net amount so recovered and realised to the liquidator of that foreign company

for the place where it was formed or incorporated after paying any debts and satisfying any liabilities incurred in Singapore by the foreign company; or

(ii) in any other case, pay the net amount so recovered and realised to the liquidator of that foreign company for the place where it was formed or incorporated.";

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

"(4A) A liquidator of a foreign company appointed for Singapore by the Court or a person exercising the powers and functions of such a liquidator must, before paying any amount so recovered and realised in Singapore to the liquidator of that foreign company for the place where it was formed or incorporated, be satisfied that the interests of creditors in Singapore are adequately protected."; and

(*c*) by inserting, immediately after subsection (13), the following subsection:

"(14) In this section, "relevant company" means a foreign company that is any of the following:

(*a*) a bank licensed under section 7 of the Banking Act (Cap. 19);

(*b*) a merchant bank, or any other financial institution, approved under section 28 of the Monetary Authority of Singapore Act (Cap. 186);

(*c*) a finance company licensed under section 6 of the Finance Companies Act (Cap. 108);

(*d*) a person licensed to carry on a remittance business under section 8 of the

Money-changing and Remittance Businesses Act (Cap. 187);

(*e*) a licensed insurer licensed under section 8 of the Insurance Act (Cap. 142);

(*f*) a recognised market operator as defined in section 2(1) of the Securities and Futures Act (Cap. 289);

(*g*) a licensed foreign trade repository as defined in section 2(1) of the Securities and Futures Act;

(*h*) a recognised clearing house as defined in section 2(1) of the Securities and Futures Act;

(*i*) an approved holding company as defined in section 2(1) of the Securities and Futures Act;

(*j*) a holder of a capital markets services licence granted under section 86 of the Securities and Futures Act that does not only carry on the business of providing credit rating services;

(*k*) a Registered Fund Management Company as defined in the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10);

(*l*) a financial adviser licensed under section 13 of the Financial Advisers Act (Cap. 110);

(*m*) a licensed trust company licensed under section 5 of the Trust Companies Act (Cap. 336);

(*n*) an operator of a designated payment system designated under section 7 of the Payment Systems (Oversight) Act (Cap. 222A);

(*o*) an approved holder of a widely accepted stored value facility approved under section 35 of the Payment Systems (Oversight) Act.".

Repeal of sections 379 to 385 and new sections 379 to 384

46. Sections 379 to 385 of the Companies Act are repealed and the following sections substituted therefor:

"**Register of members of foreign companies**

379.—(1) A foreign company registered under this Division on or after the appointed day must, within 30 days after it is registered —

(*a*) keep a register of its members at its registered office in Singapore or at some other place in Singapore; and

(*b*) lodge a notice with the Registrar specifying the address at which the register of members is kept.

(2) A foreign company registered under this Division before the appointed day must, within 60 days after the appointed day —

(*a*) keep a register of its members at its registered office in Singapore or at some other place in Singapore; and

(*b*) lodge a notice with the Registrar specifying the address at which the register of members is kept.

(3) If there is any change in the address at which the register of members mentioned in subsection (1) or (2) is kept, the foreign company must, within 30 days after the change, lodge a notice of the change with the Registrar.

(4) In this section, "appointed day" means the date of commencement of section 46 of the Companies (Amendment) Act 2017.

Contents of register and index of members of foreign companies

380.—(1) The register of members of a foreign company required to be kept under section 379 must contain the following particulars:

(*a*) the names and addresses of the members of the foreign company;

(*b*) the date on which the name of each person was entered in the register as a member;

(*c*) the date on which any person who ceased to be a member during the previous 7 years so ceased to be a member;

(*d*) in the case of a foreign company having a share capital —

(i) a statement of the shares held by each member, distinguishing each share by its number, if any, or by the number, if any, of the certificate evidencing the member's holding and of the amount paid or agreed to be considered as paid on the shares of each member; and

(ii) such particulars of the shares held by each member, including the date of every allotment of shares to members and the number of shares comprised in each allotment;

(*e*) such other particulars as may be prescribed.

(2) Every foreign company having more than 50 members must, unless the register of members is in such a form as to constitute in itself an index —

(*a*) keep an index in convenient form of the names of the members;

(*b*) within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index; and

(*c*) keep the index at the same place as the register of members.

(3) The index must in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

Register to be prima facie evidence

381. A register of members of a foreign company kept under section 379 is prima facie evidence of any matter which the register is required under this Division to be contained.

Certificate as to shareholding

382. A certificate made under the seal of a foreign company (or in any manner permitted for certificates of such type by the laws of the country or territory in which the foreign company is incorporated or established) specifying any shares held by any member of that company and registered in the register of members of the foreign company kept under section 379 is prima facie evidence of the title of the member to the shares and the registration of the shares in that register.

No civil proceedings to be brought in respect of bearer shares or share warrants

383.—(1) Any allotment, issue, sale, transfer, assignment or other disposition in Singapore of any bearer share or share warrant by a foreign company registered under this Division is void.

(2) No civil proceedings may be brought or maintained in any court for or in respect of any bearer share or share warrant allotted, issued, sold, transferred, assigned or disposed by a foreign company registered under this Division.

Application of provisions of Act

384. Regulations made under section 411 may —

(*a*) provide for —

(i) the application of any provision of Division 7 of Part IV relating to the transfer of shares in a company to the transfer of shares in a foreign company; and

(ii) the application of Division 4 of Part V relating to the register of members to the register of members of a foreign company,

subject to such adaptations, modifications or additions as may be prescribed; and

(*b*) exempt any foreign company or class of foreign companies from all or any provision of this Division.".

New Part XIA

47. The Companies Act is amended by inserting, immediately after section 386, the following Part:

"PART XIA

REGISTER OF CONTROLLERS AND NOMINEE DIRECTORS OF COMPANIES

Application of this Part

386AA.—(1) This Part applies to —

(*a*) all companies other than a company that is set out in the Fourteenth Schedule; and

(*b*) all foreign companies registered under Division 2 of Part XI other than a foreign company that is set out in the Fifteenth Schedule.

(2) The obligation to comply with this Part extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or not.

(3) This Part extends to acts done or omitted to be done outside Singapore.

Interpretation of this Part

386AB. In this Part, unless the context otherwise requires —

"approved exchange" means an approved exchange as defined in section 2(1) of the Securities and Futures Act (Cap. 289);

"controller" means an individual controller or a corporate controller;

"corporate controller", in relation to a company or a foreign company, means a legal entity which has a significant interest in, or significant control over, the company or the foreign company, as the case may be;

"individual controller", in relation to a company or a foreign company, means an individual who has a significant interest in, or significant control over, the company or the foreign company, as the case may be;

"legal entity" means any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes a foreign company;

"limited liability partnership" has the same meaning given to it by section 4(1) of the Limited Liability Partnerships Act (Cap. 163A);

"member of the public" includes —

(*a*) in the case of a company, any member of the company acting in the member's capacity as such; and

(*b*) in the case of a foreign company, any member of the foreign company acting in the member's capacity as such;

"register of controllers" or "register" —

(*a*) in relation to a company to which this Part applies, means the register that the company is required to keep of its registrable controllers under section 386AF(1), (2) or (3); and

(*b*) in relation to a foreign company to which this Part applies, means the register that the foreign company is required to keep of its registrable controllers under section 386AF(4), (5) or (6);

"registered filing agent" means a filing agent registered under section 28F of the Accounting and Corporate Regulatory Authority Act (Cap. 2A);

"significant control", in relation to a company or a foreign company, has the meaning given to it in the Sixteenth Schedule;

"significant interest", in relation to a company or a foreign company, has the meaning given to it in the Sixteenth Schedule.

Meaning of "registrable"

386AC. For the purposes of this Part, in relation to a company (*X*) or a foreign company (*X*), a controller (*A*) is registrable unless —

(*a*) *A*'s significant interest in or significant control over *X* is only through one or more controllers (*B*) of *X*;

(*b*) *A* is a controller of *B* (or each *B* if more than one); and

(*c*) *B* (or each *B* if more than one) is either —

(i) a company, or foreign company to which this Part applies, that is required to keep a register of controllers under section 386AF;

(ii) a company that is set out in the Fourteenth Schedule;

(iii) a foreign company that is set out in the Fifteenth Schedule;

(iv) a corporation which shares are listed for quotation on an approved exchange;

(v) a limited liability partnership to which Part VIA of the Limited Liability Partnerships Act (Cap. 163A) applies, that is required to keep a register of controllers of limited liability partnerships under that Act;

(vi) a limited liability partnership that is set out in the Sixth Schedule to the Limited Liability Partnerships Act; or

(vii) a trustee of an express trust to which Part VII of the Trustees Act (Cap. 337) applies.

State of mind of corporation, unincorporated association, etc.

386AD.—(1) Where, in a proceeding for an offence under this Part, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

(*a*) an officer, employee or agent of the corporation engaged in that conduct within the scope of the officer's, employee's or agent's actual or apparent authority; and

(*b*) the officer, employee or agent had that state of mind,

is evidence that the corporation had that state of mind.

(2) Where, in a proceeding for an offence under this Part, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(*a*) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of the employee's or agent's actual or apparent authority; and

(*b*) the employee or agent had that state of mind,

is evidence that the unincorporated association or partnership had that state of mind.

Meaning of "legal privilege"

386AE.—(1) For the purposes of this Part, information or a document is subject to legal privilege if —

(*a*) it is a communication made between a lawyer and a client, or a legal counsel acting as such and the legal counsel's employer, in connection with the lawyer giving legal advice to the client or the legal counsel giving legal advice to the employer, as the case may be;

(*b*) it is a communication made between 2 or more lawyers acting for a client, or 2 or more legal counsel acting as such for their employer, in connection with one or more of the lawyers giving legal advice to the client or one or more of the legal counsel giving legal advice to the employer, as the case may be;

(*c*) it is a communication made —

(i) between a client, or an employer of a legal counsel, and another person;

(ii) between a lawyer acting for a client and either the client or another person; or

(iii) between a legal counsel acting as such for the legal counsel's employer and either the employer or another person,

in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or employer, as the case may be, is or may be, or was or might have been, a party;

(*d*) it is an item, or a document (including its contents), that is enclosed with or mentioned in any

communication in paragraph (*a*) or (*b*) and that is made or prepared by any person in connection with a lawyer or legal counsel, or one or more of the lawyers or legal counsel, in either paragraph giving legal advice to the client or the employer of the legal counsel, as the case may be; or

(*e*) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (*c*) and that is made or prepared by any person in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or the employer of the legal counsel, as the case may be, is or may be, or was or might have been, a party,

but it is not any such communication, item or document that is made, prepared or held with the intention of furthering a criminal purpose.

(2) In subsection (1) —

"client", in relation to a lawyer, includes an agent of or other person representing a client and, if a client has died, a personal representative of the client;

"employer", in relation to a legal counsel, includes —

(*a*) if the employer is one of a number of corporations that are related to each other under section 6, every corporation so related as if the legal counsel is also employed by each of the related corporations;

(*b*) if the employer is a public agency within the meaning of section 128A(6) of the Evidence Act (Cap. 97) and the legal counsel is required as part of the legal counsel's duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute

to any other public agency or agencies, the other public agency or agencies as if the legal counsel is also employed by the other public agency or each of the other public agencies; and

(*c*) an employee or officer of the employer;

"lawyer" means a solicitor or a professional legal adviser, and includes an interpreter or other person who works under the supervision of a solicitor or a professional legal adviser;

"legal counsel" means a legal counsel as defined in section 3(7) of the Evidence Act, and includes an interpreter or other person who works under the supervision of a legal counsel.

Register of controllers

386AF.—(1) A company incorporated on or after the appointed day must keep a register of its registrable controllers not later than 30 days after the date of the company's incorporation.

(2) A company incorporated before the appointed day must keep a register of its registrable controllers not later than 60 days after the appointed day.

(3) If a company that is not a company to which this Part applies subsequently becomes a company to which this Part applies, the company must keep a register of its registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the company.

(4) A foreign company registered under Division 2 of Part XI on or after the appointed day must keep a register of its registrable controllers not later than 30 days after the date of the foreign company's registration.

(5) A foreign company registered under Division 2 of Part XI before the appointed day must keep a register of its registrable controllers not later than 60 days after the appointed day.

(6) If a foreign company that is not a foreign company to which this Part applies subsequently becomes a foreign company to which this Part applies, the foreign company must keep a register of its registrable controllers not later than 60 days after the date on which this Part applies or re-applies to the foreign company.

(7) A company or foreign company must ensure that its register —

(*a*) contains such particulars of the company's or foreign company's registrable individual controllers and registrable corporate controllers as may be prescribed;

(*b*) is updated if any change to the prescribed particulars occurs; and

(*c*) is kept in such form and at such place as may be prescribed.

(8) A company or foreign company must enter the particulars in its register and update the register within the prescribed time and in the prescribed manner.

(9) A company or foreign company must —

(*a*) enter the particulars of any controller in its register, or update the particulars of that controller in the register, after the particulars of that controller are confirmed by the controller; or

(*b*) if the company or foreign company does not receive the controller's confirmation, enter or update the particulars with a note indicating that the particulars have not been confirmed by the controller.

(10) For the purposes of subsection (9)(*a*), the particulars of the controller to be entered, or updated, in a register must be confirmed by the controller in the prescribed manner.

(11) Subject to section 386AM, a company or foreign company must not disclose, or make available for inspection, a register or any particulars contained in the register to any member of the public.

(12) If a company fails to comply with —

(*a*) subsection (1), (2) or (3), whichever is applicable; or

(*b*) subsection (7), (8), (9) or (11),

the company, and every officer of the company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

(13) If a foreign company fails to comply with —

(*a*) subsection (4), (5) or (6), whichever is applicable; or

(*b*) subsection (7), (8), (9) or (11),

the foreign company, and every officer of the foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

(14) In this section, "appointed day" means the date of commencement of section 47 of the Companies (Amendment) Act 2017.

Duty of company and foreign company to investigate and obtain information

386AG.—(1) A company or foreign company must take reasonable steps to find out and identify the registrable controllers of the company or foreign company.

(2) A company (*A*) or foreign company (*A*) —

(*a*) must give a notice to any person (*B*) whom *A* knows or has reasonable grounds to believe is a registrable controller in relation to *A*, requiring *B* —

(i) to state whether *B* is or is not a registrable controller of *A*;

(ii) to state whether *B* knows or has reasonable grounds to believe that any other person (*C*) is a registrable controller of *A* or is likely to have that knowledge and to give such particulars of *C* that are within *B*'s knowledge; and

(iii) to provide such other information as may be prescribed; and

(*b*) must give a notice to any person (*D*) whom *A* knows, or has reasonable grounds to believe knows, the identity of a person who is a registrable controller of *A* or is likely to have that knowledge, requiring *D* —

(i) to state whether *D* knows or has reasonable grounds to believe that any other person (*E*) is a registrable controller of *A* or is likely to have that knowledge and to give such particulars of *E* that are within *D*'s knowledge; and

(ii) to provide such other information as may be prescribed.

(3) A notice mentioned in subsection (2) —

(*a*) must state that the addressee must comply with the notice not later than the time prescribed for compliance;

(*b*) must be in such form, contain such particulars and be sent in such manner, as may be prescribed; and

(*c*) must be given within such period as may be prescribed after the company or foreign company first knows the existence of, or first has reasonable grounds to believe that there exists, a person to whom a notice must be given under that subsection.

(4) Subsection (2) does not require a company or foreign company to give notice to any person in respect of any information that is required to be stated or provided pursuant to the notice if the information was previously provided by that person or by any registered filing agent on behalf of that person.

(5) If a company or foreign company fails to comply with subsection (2) or (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

(6) An addressee of a notice under subsection (2) must comply with the notice within the time specified in the notice for compliance except that an addressee is not required to provide any information that is subject to legal privilege.

(7) An addressee of a notice under subsection (2) who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

Duty of company and foreign company to keep information up-to-date

386AH.—(1) If a company or foreign company knows or has reasonable grounds to believe that a relevant change has occurred in the particulars of a registrable controller that are stated in the company's or foreign company's register of controllers, the company or foreign company must give notice to the registrable controller —

(*a*) to confirm whether or not the change has occurred; and

(*b*) if the change has occurred —

(i) to state the date of the change; and

(ii) to provide the particulars of the change.

(2) A company or foreign company must give the notice mentioned in subsection (1) within such period as may be prescribed after it first knows of the change or first has reasonable grounds to believe that the change has occurred.

(3) Section 386AG(3)(*a*) and (*b*) applies to a notice under this section as it applies to a notice under that section.

(4) Subsection (1) does not require a company or foreign company to give notice to any person in respect of any information that was previously provided by that person or by any registered filing agent on behalf of that person.

(5) If a company or foreign company fails to comply with subsection (1) or (2), or section 386AG(3)(*a*) and (*b*) as applied by subsection (3), the company or foreign company, and every

officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

(7) For the purposes of this section, a relevant change occurs if —

(*a*) a person ceases to be a registrable controller in relation to the company or foreign company, as the case may be; or

(*b*) any other change occurs as a result of which the particulars of the registrable controller in the company's or foreign company's register of controllers are incorrect or incomplete.

Duty of company and foreign company to correct information

386AI.—(1) If a company or foreign company knows or has reasonable grounds to believe that any of the particulars of a registrable controller that are stated in the company's or foreign company's register is incorrect, the company or foreign company must give notice to the registrable controller to confirm whether the particulars are correct and, if not, to provide the correct particulars.

(2) A company or foreign company must give the notice mentioned in subsection (1) within such period as may be prescribed after it first knows or first has reasonable grounds to believe that the information is incorrect.

(3) Section 386AG(3)(*a*) and (*b*) applies to a notice under this section as it applies to a notice under that section.

(4) Subsection (1) does not require a company or foreign company to give notice to any person in respect of any

information that was previously provided by that person or by any registered filing agent on behalf of that person.

(5) If a company or foreign company fails to comply with subsection (1) or (2), or section 386AG(3)(*a*) and (*b*) as applied by subsection (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

Controller's duty to provide information

386AJ.—(1) A person who knows or ought reasonably to know that the person is a registrable controller in relation to a company or foreign company must —

(*a*) notify the company or foreign company, as the case may be, that the person is a registrable controller in relation to the company or foreign company;

(*b*) state the date, to the best of the person's knowledge, on which the person became a registrable controller in relation to the company or foreign company; and

(*c*) provide such other information as may be prescribed.

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known that that person was a registrable controller.

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company or foreign company under section 386AG(2) and has complied with the requirements of the notice within the time specified in the notice for compliance.

(4) If a person fails to comply with subsection (1) or (2), the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

Controller's duty to provide change of information

386AK.—(1) A person who is a registrable controller in relation to a company or foreign company who knows, or ought reasonably to know that a relevant change has occurred in the prescribed particulars of the registrable controller must notify the company or foreign company of the relevant change —

(*a*) stating the date that the change occurred; and

(*b*) providing the particulars of the change.

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within such period as may be prescribed after the date on which that person first knew or ought reasonably to have known of the relevant change.

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company or foreign company under section 386AH(1) and has complied with the requirements of the notice within the time specified in the notice for compliance.

(4) Any person who fails to comply with subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

(5) For the purposes of this section, a relevant change occurs if —

(*a*) a person ceases to be a registrable controller in relation to the company or foreign company, as the case may be; or

(*b*) there is a change in the person's contact details or such other particulars as may be prescribed.

Nominee directors

386AL.—(1) A director of a company incorporated on or after the appointed day —

(*a*) who is a nominee must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the date of incorporation; and

(*b*) who becomes a nominee must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

(2) A director of a company incorporated before the appointed day —

(*a*) who is a nominee must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 60 days after the appointed day; and

(*b*) who becomes a nominee must inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

(3) A director of a company mentioned in subsection (1) or (2) must inform the company —

(*a*) that he ceases to be a nominee within 30 days after the cessation; and

(*b*) of any change to the particulars provided to the company under that subsection within 30 days after the change.

(4) A company must keep a register of its directors who are nominees (called in this Part the register of nominee directors) in such form and at such place as may be prescribed.

(5) Subject to section 386AM, a company must not disclose, or make available for inspection, the register of nominee directors

or any particulars contained in the register of nominee directors to any member of the public.

(6) If a director fails to comply with subsection (1), (2) or (3), the director shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

(7) If a company fails to comply with subsection (4) or (5), the company, and every officer of the company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

(8) In this section, a director is a nominee if the director is accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of any other person.

(9) In this section, "appointed day" means the date of commencement of section 47 of the Companies (Amendment) Act 2017.

Power to enforce

386AM.—(1) The Registrar or an officer of the Authority may —

(*a*) require a company or foreign company to which this Part applies to produce its register, its register of nominee directors and any other document relating to those registers or the keeping of those registers;

(*b*) inspect, examine and make copies of the registers and any document so produced; and

(*c*) make such inquiry as may be necessary to ascertain whether the provisions of this Part are complied with.

(2) Where any register or documents as are mentioned in subsection (1) are kept in electronic form —

(*a*) the power of the Registrar or an officer of the Authority in subsection (1)(*a*) to require the register or any documents to be produced includes the power to require a copy of the register or documents to be

made available in legible form and subsection (1)(*b*) is to accordingly apply in relation to any copy so made available; and

(*b*) the power of the Registrar or an officer of the Authority under subsection (1)(*b*) to inspect the register or any documents includes the power to require any person on the premises in question to give the Registrar or the officer of the Authority such assistance as the Registrar or officer may reasonably require to enable the Registrar or officer to inspect and make copies of the register or documents in legible form, and to make records of the information contained in them.

(3) The powers conferred on the Registrar or an officer of the Authority under subsections (1) and (2) may be exercised by a public agency to enable the public agency to administer or enforce any written law.

(4) Any person who fails to comply with any requirement imposed under subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000.

(5) This section applies in addition to any right of inspection conferred by section 396A.

(6) In this section, "public agency" means a public officer, an Organ of State or a ministry or department of the Government, or a public authority established by or under any public Act for a public purpose or a member, an officer or an employee, or any department, thereof.

Central register of controllers

386AN.—(1) This section applies where the Minister, by notification in the *Gazette*, directs the Registrar to maintain a central register of controllers of companies and foreign companies.

(2) Where the Minister has directed the Registrar to maintain a central register of controllers of companies and foreign companies under subsection (1) —

(*a*) the Registrar must keep a central register of controllers consisting of the particulars contained in the registers kept by companies and foreign companies to which this Part applies; and

(*b*) the Registrar must require any company or foreign company to which this Part applies to lodge with the Registrar —

(i) all particulars contained in the company's or foreign company's register maintained under section 386AF; and

(ii) all updates to the company's or foreign company's register that occur after the lodgment of the particulars under sub-paragraph (i).

(3) A lodgment mentioned in subsection (2)(*b*) must be made in such form and manner, and within such time, as may be prescribed.

(4) If a company or foreign company fails to comply with subsection (2)(*b*) or (3), the company or foreign company, and every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding $5,000.

(5) Except in such circumstances as may be prescribed, the Registrar must not disclose, or make available for inspection, the central register of controllers of companies and foreign companies kept by the Registrar under this section to any member of the public.

Codes of practice, etc.

386AO.—(1) The Registrar may issue one or more codes, guidance, guidelines, policy statements and practice directions for all or any of the following purposes:

(*a*) to provide guidance to companies or foreign companies, or to both, in relation to the operation or administration of any provision of this Part;

(*b*) generally for carrying out the purposes of this Part.

(2) The Registrar may publish any such code, guidance, guideline, policy statement or practice direction, in such manner as the Registrar thinks fit.

(3) The Registrar may revoke, vary, revise or amend the whole or any part of any code, guidance, guideline, policy statement or practice direction issued under this section in such manner as the Registrar thinks fit.

(4) Where amendments are made under subsection (3) —

(*a*) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guidance, guideline, policy statement and practice direction; and

(*b*) any reference in this Act or any other written law to the code, guidance, guideline, policy statement or practice direction however expressed is to be treated, unless the context otherwise requires, as a reference to the code, guidance, guideline, policy statement or practice direction as so amended.

(5) The failure by any person to comply with any of the provisions of a code, guidance, guideline, policy statement or practice direction issued under this section that applies to that person does not of itself render that person liable to criminal proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

(6) Any code, guidance, guideline, policy statement or practice direction issued under this section —

(*a*) may be of general or specific application; and

(*b*) may specify that different provisions apply to different circumstances or provide for different cases or classes of cases.

(7) It is not necessary to publish any code, guidance, guideline, policy statement or practice direction issued under this section in the *Gazette*.

Exemption

386AP. The Minister may, by order in the *Gazette*, exempt any person or class of persons from all or any of the provisions of this Part.".

Amendment of section 387C

48. Section 387C of the Companies Act is amended by deleting subsection (3) and substituting the following subsection:

"(3) For the purposes of this section, but subject to regulations mentioned in subsection (4), a member is deemed to have consented if —

(*a*) the member was by notice in writing given an opportunity to elect, within such period of time specified in the notice, whether to receive the notice or document by way of electronic communications or as a physical copy; and

(*b*) the member failed to make an election within the time so specified.".

Amendment of section 411

49. Section 411(1) of the Companies Act is amended by inserting, immediately after paragraph (*a*), the following paragraph:

"(*aa*) all matters connected with or arising out of a compromise or an arrangement between a company and its creditors or any class of those creditors;".

New Tenth Schedule

50. The Companies Act is amended by inserting, immediately before the Eleventh Schedule, the following Schedule:

"TENTH SCHEDULE

Sections 354B and 354C

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

PREAMBLE

The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of —

(*a*) cooperation between the courts and other competent authorities of Singapore and foreign States involved in cases of cross-border insolvency;

(*b*) greater legal certainty for trade and investment;

(*c*) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(*d*) protection and maximisation of the value of the debtor's property; and

(*e*) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

CHAPTER I

GENERAL PROVISIONS

Article 1. Scope of Application

1. This Law applies where —

(*a*) assistance is sought in Singapore by a foreign court or a foreign representative in connection with a foreign proceeding;

(*b*) assistance is sought in a foreign State in connection with a proceeding under Singapore insolvency law;

(*c*) a foreign proceeding and a proceeding under Singapore insolvency law in respect of the same debtor are taking place concurrently; or

(*d*) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under Singapore insolvency law.

2. This Law does not apply to any proceedings concerning such entities or classes of entities which the Minister may, by order in the *Gazette*, prescribe.

3. The Court must not grant any relief, or modify any relief already granted, or provide any cooperation or coordination, under or by virtue of any of the provisions of this Law if and to the extent that such relief or modified relief or cooperation or coordination would, in the case of a proceeding under Singapore insolvency law, be prohibited under or by virtue of —

(*a*) this Act;

(*b*) Part VII or section 61, 62 or 76A of the Banking Act (Cap. 19);

(*c*) section 27(2) or 52(2) of the Deposit Insurance and Policy Owners' Protection Schemes Act (Cap. 77B);

(*d*) Part IIIAA of the Insurance Act (Cap. 142);

(*e*) the International Interests in Aircraft Equipment Act (Cap. 144B);

(*f*) Part IVA or IVB or section 41C of the Monetary Authority of Singapore Act (Cap. 186);

(*g*) the Payment and Settlement Systems (Finality and Netting) Act (Cap. 231);

(*h*) Division 4 of Part III, or Part IIIAA, of the Securities and Futures Act (Cap. 289); or

(*i*) any other written law that the Minister may, by order in the *Gazette*, prescribe.

4. Where a foreign proceeding regarding a debtor, who is an insured under the provisions of a relevant Act (being the Third Parties (Rights against Insurers) Act (Cap. 395) or the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap. 189)), is recognised under this Law, any stay and suspension mentioned in Article 20(1) and any relief granted by the Court under Article 19 or 21 does not apply to or affect —

(*a*) any transfer of rights of the debtor under that relevant Act; or

(*b*) any claim, action, cause or proceeding by a third party against an insurer under or in respect of rights of the debtor transferred under that relevant Act.

5. Any suspension under this Law of the right to transfer, encumber or otherwise dispose of any of the debtor's property —

(*a*) is subject to sections 46 and 47 of the Land Titles Act (Cap. 157) in relation to any estate or interest in land under the provisions of that Act; and

(*b*) in any other case, does not bind a purchaser of any estate or interest in land in good faith for money or money's worth unless the purchaser has express notice of the suspension.

6. In paragraph 5, "land" has the same meaning as in section 4(1) of the Land Titles Act.

Article 2. Definitions

For the purposes of this Law —

(*a*) "the Court" except as otherwise provided in Articles 14(4) and 23(6)(*b*), means the Court mentioned in Article 4(1);

(*b*) "chattel agreement" includes a conditional sale agreement, a chattels leasing agreement (as defined in section 227AA of this Act) and a retention of title agreement (as defined in section 227AA of this Act);

(*c*) "debtor" means a corporation as defined in section 4(1) of this Act;

(*d*) "establishment" means any place where the debtor has property, or any place of operations where the debtor carries out a non-transitory economic activity with human means and property or services;

(*e*) "foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

(*f*) "foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has its centre of main interests;

(*g*) "foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment;

(*h*) "foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;

(*i*) "foreign representative" means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding;

(*j*) "security" means any mortgage, charge, lien or other security;

(*k*) "Singapore insolvency law" means any of the following:

(i) sections 210 to 212 and Parts VIIIA and X of this Act;

(ii) any subsidiary legislation made under any section or Part of this Act mentioned in sub-paragraph (i);

(iii) the common law of Singapore relating to or in connection with the subject-matter of any section or Part of this Act mentioned in sub-paragraph (i), or the subject-matter of any subsidiary legislation mentioned in sub-paragraph (ii);

(*l*) "Singapore insolvency officeholder" means —

(i) the Official Receiver, when acting as liquidator, provisional liquidator or scheme manager of a scheme of arrangement under this Act; or

(ii) a person acting as a liquidator, provisional liquidator, judicial manager, interim judicial manager or scheme manager of a scheme of arrangement under this Act;

(*m*) "State" means Singapore and any country other than Singapore;

(*n*) any reference to the law of Singapore includes a reference to the rules of private international law applicable in Singapore.

Article 3. International obligations of Singapore

To the extent that this Law conflicts with an obligation of Singapore arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

Article 4. Competent Court

1. The functions mentioned in this Law relating to recognition of foreign proceedings and cooperation with foreign courts are to be performed by the High Court in Singapore.

2. Subject to paragraph 1 of this Article, the Court has jurisdiction in relation to the functions mentioned in that paragraph if —

(*a*) the debtor —

(i) is or has been carrying on business within the meaning of section 366 of this Act in Singapore; or

(ii) has property situated in Singapore; or

(*b*) the Court considers for any other reason that it is the appropriate forum to consider the question or provide the assistance requested.

Article 5. Authorisation of Singapore insolvency officeholders to act in a foreign State

1. A Singapore insolvency officeholder is authorised to act in a foreign State on behalf of a proceeding under Singapore insolvency law, as permitted by the applicable foreign law.

2. The Court has the power to appoint any other person or persons to act in a foreign State on behalf of a proceeding under Singapore insolvency law, as permitted by the applicable foreign law.

Article 6. Public policy exception

Nothing in this Law prevents the Court from refusing to take an action governed by this Law, if the action would be contrary to the public policy of Singapore.

Article 7. Additional assistance under other laws

Nothing in this Law limits the power of a Court or a Singapore insolvency officeholder to provide additional assistance to a foreign representative under other laws of Singapore.

Article 8. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

CHAPTER II

ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN SINGAPORE

Article 9. Right of direct access

A foreign representative is entitled to apply directly to the Court in Singapore.

Article 10. Limited jurisdiction

The sole fact that an application under this Law is made to the Court in Singapore by a foreign representative does not subject the foreign representative or the foreign property and affairs of the debtor to the jurisdiction of the courts of Singapore for any purpose other than the application.

Article 11. Application by a foreign representative to commence a proceeding under Singapore insolvency law

A foreign representative appointed in a foreign main proceeding or foreign non-main proceeding is entitled to apply to commence a proceeding under Singapore insolvency law if the conditions for commencing such a proceeding are otherwise met.

Article 12. Participation of a foreign representative in a proceeding under Singapore insolvency law

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under Singapore insolvency law.

Article 13. Access of foreign creditors to a proceeding under Singapore insolvency law

1. Subject to paragraph 2 of this Article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under Singapore insolvency law as creditors in Singapore.

2. Paragraph 1 of this Article does not affect the ranking of claims in a proceeding under Singapore insolvency law, or the exclusion of foreign tax claims, social security claims or claims for employees' superannuation or provident funds or under any scheme of superannuation (collectively, "tax and social security obligations") from such a proceeding. Nevertheless, the claims of foreign creditors other than those concerning tax and social security obligations are not to be given a lower priority than that of general unsecured claims solely because the holder of such a claim is a foreign creditor.

Article 14. Notification to foreign creditors of a proceeding under Singapore insolvency law

1. Whenever under Singapore insolvency law notification is to be given to creditors in Singapore, such notification must also be given to the known creditors who do not have addresses in Singapore. The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

2. The notification under paragraph 1 of this Article must be made to the foreign creditors individually, unless —

(*a*) the Court considers that under the circumstances some other form of notification would be more appropriate; or

(*b*) the notification to creditors in Singapore is to be by advertisement only, in which case the notification to the known foreign creditors

may be by advertisement in such foreign newspapers as the Singapore insolvency officeholder considers most appropriate for ensuring that the content of the notification comes to the notice of the known foreign creditors.

3. When notification of a right to file a claim is to be given to foreign creditors, the notification must —

(*a*) indicate a reasonable time period for filing claims and specify the place for their filing;

(*b*) indicate whether secured creditors need to file their secured claims; and

(*c*) contain any other information required to be included in such a notification to creditors under the law of Singapore and the orders of the Court.

4. In this Article, "the Court" means the Court which has jurisdiction in relation to the particular proceeding under Singapore insolvency law under which notification is to be given to creditors.

CHAPTER III

RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

Article 15. Application for recognition of a foreign proceeding

1. A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

2. An application for recognition must be accompanied by —

(*a*) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

(*b*) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(*c*) in the absence of evidence mentioned in sub-paragraphs (*a*) and (*b*), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

3. An application for recognition must also be accompanied by a statement identifying all foreign proceedings and proceedings under Singapore insolvency law in respect of the debtor that are known to the foreign representative.

4. The foreign representative must provide the Court with a translation into English of documents supplied in support of the application for recognition.

Article 16. Presumptions concerning recognition

1. If the decision or certificate mentioned in Article 15(2) indicates that the proceeding in respect of which an application for recognition is made is a foreign proceeding within the meaning of Article 2(*h*) and that the person or body making that application is a foreign representative within the meaning of Article 2(*i*), the Court is entitled to so presume.

2. The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.

3. In the absence of proof to the contrary, the debtor's registered office is presumed to be the debtor's centre of main interests.

Article 17. Decision to recognise a foreign proceeding

1. Subject to Article 6, a proceeding must be recognised if —

(*a*) it is a foreign proceeding within the meaning of Article 2(*h*);

(*b*) the person or body applying for recognition is a foreign representative within the meaning of Article 2(*i*);

(*c*) the application meets the requirements of Article 15(2) and (3); and

(*d*) the application has been submitted to the Court mentioned in Article 4.

2. The foreign proceeding must be recognised —

(*a*) as a foreign main proceeding if it is taking place in the State where the debtor has its centre of main interests; or

(*b*) as a foreign non-main proceeding, if the debtor has an establishment within the meaning of Article 2(*d*) in the foreign State.

3. An application for recognition of a foreign proceeding must be decided upon at the earliest possible time.

4. The provisions of Articles 15 to 16, this Article and Article 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have fully or partially ceased to exist; and in such a case, the Court may, on the application of the foreign representative or a person affected by the recognition, or of its own motion, modify or terminate recognition, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Article 18. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative must inform the Court promptly of —

(*a*) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and

(*b*) any other foreign proceeding or proceeding under Singapore insolvency law regarding the same debtor that becomes known to the foreign representative.

Article 19. Relief that may be granted upon application for recognition of a foreign proceeding

1. From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is urgently needed to protect the property of the debtor or the interests of the creditors, grant relief of a provisional nature, including —

(*a*) staying execution against the debtor's property;

(*b*) entrusting the administration or realisation of all or part of the debtor's property located in Singapore to the foreign representative or another person designated by the Court, in order to protect and preserve the value of property that, by its nature or because of other circumstances, is perishable, susceptible to devaluation or otherwise in jeopardy; and

(*c*) any relief mentioned in Article 21(1)(*c*), (*d*) or (*g*).

2. Unless extended under Article 21(1)(*f*), the relief granted under this Article terminates when the application for recognition is decided upon.

3. The Court may refuse to grant relief under this Article if such relief would interfere with the administration of a foreign main proceeding.

Article 20. Effects of recognition of a foreign main proceeding

1. Upon recognition of a foreign proceeding that is a foreign main proceeding, subject to paragraph 2 of this Article —

(*a*) commencement or continuation of individual actions or individual proceedings concerning the debtor's property, rights, obligations or liabilities is stayed;

(*b*) execution against the debtor's property is stayed; and

(*c*) the right to transfer, encumber or otherwise dispose of any property of the debtor is suspended.

2. The stay and suspension mentioned in paragraph 1 of this Article are —

(*a*) the same in scope and effect as if the debtor had been made the subject of a winding up order under this Act; and

(*b*) subject to the same powers of the Court and the same prohibitions, limitations, exceptions and conditions as would apply under the law of Singapore in such a case,

and the provisions of paragraph 1 of this Article are to be interpreted accordingly.

3. Without prejudice to paragraph 2 of this Article, the stay and suspension mentioned in paragraph 1 of this Article do not affect any right —

(*a*) to take any steps to enforce security over the debtor's property;

(*b*) to take any steps to repossess goods in the debtor's possession under a hire-purchase agreement (as defined in section 227AA of this Act);

(*c*) exercisable under or by virtue of or in connection with any written law mentioned in Article 1(3)(*a*) to (*i*); or

(*d*) of a creditor to set off its claim against a claim of the debtor,

being a right which would have been exercisable if the debtor had been made the subject of a winding up order under this Act.

4. Paragraph 1(*a*) of this Article does not affect the right to —

(*a*) commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor; or

(*b*) commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public nature, being an action or proceedings brought in the exercise of those functions.

5. Paragraph 1 of this Article does not affect the right to request or otherwise initiate the commencement of a proceeding under Singapore insolvency law or the right to file claims in such a proceeding.

6. In addition to and without prejudice to any powers of the Court under or by virtue of paragraph 2 of this Article, the Court may, on the application of the foreign representative or a person affected by the stay and suspension mentioned in paragraph 1 of this Article, or of its own motion, modify or terminate such stay and suspension or any part of it, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

Article 21. Relief that may be granted upon recognition of a foreign proceeding

1. Upon recognition of a foreign proceeding, whether a foreign main proceeding or a foreign non-main proceeding, where necessary to protect the property of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including —

(*a*) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's property, rights, obligations or liabilities, to the extent they have not been stayed under Article 20(1)(*a*);

(*b*) staying execution against the debtor's property to the extent it has not been stayed under Article 20(1)(*b*);

(*c*) suspending the right to transfer, encumber or otherwise dispose of any property of the debtor to the extent this right has not been suspended under Article 20(1)(*c*);

(*d*) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, rights, obligations or liabilities;

(*e*) entrusting the administration or realisation of all or part of the debtor's property located in Singapore to the foreign representative or another person designated by the Court;

(*f*) extending relief granted under Article 19(1); and

(*g*) granting any additional relief that may be available to a Singapore insolvency officeholder, including any relief provided under section 227D(4) of this Act.

2. Upon recognition of a foreign proceeding, whether a foreign main proceeding or a foreign non-main proceeding, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's property located in Singapore to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Singapore are adequately protected.

3. In granting relief under this Article to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to property that, under the law of Singapore, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

4. No stay under paragraph 1(*a*) of this Article affects the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory or investigative functions of a public

nature, being an action or proceedings brought in the exercise of those functions.

Article 22. Protection of creditors and other interested persons

1. In granting or denying relief under Article 19 or 21, or in modifying or terminating relief under paragraph 3 of this Article or Article 20(6), the Court must be satisfied that the interests of the creditors (including any secured creditors or parties to hire-purchase agreements (as defined in section 227AA of this Act)) and other interested persons, including if appropriate the debtor, are adequately protected.

2. The Court may subject relief granted under Article 19 or 21 to conditions it considers appropriate, including the provision by the foreign representative of security or caution for the proper performance of his functions.

3. The Court may, at the request of the foreign representative or a person affected by relief granted under Article 19 or 21, or of its own motion, modify or terminate such relief.

Article 23. Actions to avoid acts detrimental to creditors

1. Subject to paragraphs 6 and 9 of this Article, upon recognition of a foreign proceeding, the foreign representative has standing to make an application to the Court for an order under or in connection with sections 131(1), 259, 260, 329, 330, 331, 340 and 341 of this Act and section 73B of the Conveyancing and Law of Property Act (Cap. 61).

2. Where the foreign representative makes such an application under paragraph 1 of this Article ("an Article 23 application"), the provisions of this Act and the Conveyancing and Law of Property Act mentioned in paragraph 1 of this Article apply —

(*a*) whether or not the debtor is being wound up or is in judicial management or undergoing a scheme of arrangement, under Singapore insolvency law; and

(*b*) with the modifications set out in paragraph 3 of this Article.

3. The modifications mentioned in paragraph 2 of this Article are as follows:

(*a*) for the purposes of section 329 of this Act read with section 100(1) of the Bankruptcy Act (Cap. 20) —

(i) the date which corresponds with the day of the making of the bankruptcy application is the date of the opening of the relevant foreign proceeding; and

(ii) section 329(2) of this Act does not apply;

(*b*) for the purposes of section 329 of this Act read with section 102(3A) of the Bankruptcy Act —

(i) a person has notice of the relevant proceedings if he has notice of the opening of the relevant foreign proceeding; and

(ii) section 329(2) of this Act does not apply;

(*c*) for the purposes of section 329 of this Act read with section 103(2) of the Bankruptcy Act —

(i) the date which corresponds with the commencement of the bankruptcy is the date of the opening of the relevant foreign proceeding; and

(ii) section 329(2) of this Act does not apply;

(*d*) for the purposes of sections 259, 260, 330, 331 and 341 of this Act, the date which corresponds with the commencement of the winding up is the date of the opening of the relevant foreign proceeding.

4. For the purposes of paragraph 3 of this Article, the date of the opening of the foreign proceeding is to be determined in accordance with the law of the State in which the foreign proceeding is taking place, including any rule of law by virtue of which the foreign proceeding is deemed to have opened at an earlier time.

5. When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the Article 23 application relates to property that, under the law of Singapore, should be administered in the foreign non-main proceeding.

6. At any time when a proceeding under Singapore insolvency law is taking place regarding the debtor —

(*a*) the foreign representative must not make an Article 23 application except with the permission of the Court; and

(*b*) references to "the Court" in paragraphs 1, 5 and 7 of this Article are references to the Court in which that proceeding is taking place.

7. On making an order on an Article 23 application, the Court may give such directions regarding the distribution of any proceeds of the claim by the foreign representative, as it thinks fit to ensure that the interests of creditors in Singapore are adequately protected.

8. Nothing in this Article affects the right of a Singapore insolvency officeholder to make an application under or in connection with any of the provisions mentioned in paragraph 1 of this Article.

9. Nothing in paragraph 1 of this Article applies in respect of any preference given, floating charge created, alienation, assignment made or other transaction entered into before the date on which this Law comes into force.

Article 24. Intervention by a foreign representative in proceedings in Singapore

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of Singapore are met, intervene in any proceedings in which the debtor is a party.

CHAPTER IV

COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Article 25. Cooperation and direct communication between a Court of Singapore and foreign courts or foreign representatives

1. In matters mentioned in Article 1(1), the Court may cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a Singapore insolvency officeholder.

2. The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Cooperation and direct communication between the Singapore insolvency officeholder and foreign courts or foreign representatives

1. In matters mentioned in Article 1(1), a Singapore insolvency officeholder must to the extent consistent with the Singapore insolvency officeholder's other duties under the law of Singapore, in the exercise of the Singapore insolvency officeholder's functions and subject to the supervision of the Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

2. The Singapore insolvency officeholder is entitled, in the exercise of the Singapore insolvency officeholder's functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Article 27. Forms of cooperation

Cooperation mentioned in Articles 25 and 26 may be implemented by any appropriate means, including —

(*a*) appointment of a person to act at the direction of the Court;

(*b*) communication of information by any means considered appropriate by the Court;

(*c*) coordination of the administration and supervision of the debtor's property and affairs;

(*d*) approval or implementation by courts of agreements concerning the coordination of proceedings; and

(*e*) coordination of concurrent proceedings regarding the same debtor.

CHAPTER V

CONCURRENT PROCEEDINGS

Article 28. Commencement or continuation of a proceeding under Singapore insolvency law after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, the effects of a proceeding under Singapore insolvency law in relation to the same debtor are to, insofar as the property of that debtor is concerned, be restricted to property that is located in Singapore and, to the extent necessary to implement cooperation and coordination under Articles 25, 26 and 27, to other property of the debtor that, under the law of Singapore, should be administered in that proceeding.

Article 29. Coordination of a proceeding under Singapore insolvency law and a foreign proceeding

Where a foreign proceeding and a proceeding under Singapore insolvency law are taking place concurrently regarding the same debtor, the Court may seek cooperation and coordination under Articles 25, 26 and 27, and the following apply:

(*a*) when the proceeding in Singapore is taking place at the time the application for recognition of the foreign proceeding is filed —

(i) any relief granted under Article 19 or 21 must be consistent with the proceeding in Singapore; and

(ii) if the foreign proceeding is recognised in Singapore as a foreign main proceeding, Article 20 does not apply;

(*b*) when the proceeding in Singapore commences after the filing of the application for recognition of the foreign proceeding —

(i) any relief in effect under Article 19 or 21 must be reviewed by the Court and must be modified or terminated if inconsistent with the proceeding in Singapore;

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension mentioned in Article 20(1) must be

modified or terminated under Article 20(6), if inconsistent with the proceeding in Singapore; and

(iii) any proceedings brought by the foreign representative by virtue of Article 23(1) before the proceeding in Singapore commenced must be reviewed by the Court and the Court may give such directions as it thinks fit regarding the continuance of those proceedings; and

(*c*) in granting, extending or modifying relief granted to a foreign representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to property that, under the law of Singapore, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30. Coordination of more than one foreign proceeding

In matters mentioned in Article 1(1), in respect of more than one foreign proceeding regarding the same debtor, the Court may seek cooperation and coordination under Articles 25, 26 and 27, and the following are to apply:

(*a*) any relief granted under Article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(*b*) if a foreign main proceeding is recognised after the filing of an application for recognition of a foreign non-main proceeding, any relief in effect under Article 19 or 21 must be reviewed by the Court and must be modified or terminated if inconsistent with the foreign main proceeding; and

(*c*) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Court is to grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under Singapore insolvency law, proof that the debtor is unable to pay its debts within the meaning given to the expression under Singapore insolvency law.

Article 32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding under a law

relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under Singapore insolvency law regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.".

Amendment of Eleventh Schedule

51. The Eleventh Schedule to the Companies Act is amended by inserting, immediately after the words "company's seal" in sub-paragraph (*h*), the words ", if any".

New Fourteenth, Fifteenth and Sixteenth Schedules

52. The Companies Act is amended by inserting, immediately after the Thirteenth Schedule, the following Schedules:

"FOURTEENTH SCHEDULE

Sections 8(7), 386AA(1) and 386AC(*c*) and Fifteenth Schedule

COMPANIES TO WHICH PART XIA DOES NOT APPLY

1. Part XIA does not apply to any of the following companies:

(*a*) a public company which shares are listed for quotation on an approved exchange in Singapore;

(*b*) a company that is a Singapore financial institution;

(*c*) a company that is wholly-owned by the Government;

(*d*) a company that is wholly-owned by a statutory body established by or under a public Act for a public purpose;

(*e*) a company that is a wholly-owned subsidiary of a company mentioned in sub-paragraph (*a*), (*b*), (*c*) or (*d*);

(*f*) a company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to —

(i) regulatory disclosure requirements; and

(ii) requirements relating to adequate transparency in respect of its beneficial owners,

imposed through stock exchange rules, law or other enforceable means.

2. For the purposes of paragraph 1, a Singapore financial institution is —

(*a*) any financial institution that is licensed, approved, registered (including a fund management company registered under paragraph 5(1)(*i*) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap. 289, Rg 10)) or regulated by the Monetary Authority of Singapore but does not include —

(i) any holder of a stored value facility as defined in section 2(1) of the Payment Systems (Oversight) Act (Cap. 222A); and

(ii) a person (other than a person mentioned in sub-paragraphs (*b*) and (*c*)) who is exempted from licensing, approval or regulation by the Monetary Authority of Singapore under any Act administered by the Monetary Authority of Singapore, including a private trust company exempted from licensing under section 15 of the Trust Companies Act (Cap. 336) read with regulation 4 of the Trust Companies (Exemption) Regulations (Cap. 336, Rg 1);

(*b*) any person exempted under section 23(1)(*f*) of the Financial Advisers Act (Cap. 110) read with regulation 27(1)(*d*) of the Financial Advisers Regulations (Cap. 110, Rg 2); or

(*c*) any person exempted under section 99(1)(*h*) of the Securities and Futures Act (Cap. 289) read with paragraph 7(1)(*b*) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations.

FIFTEENTH SCHEDULE

Sections 8(7), 386AA(1) and 386AC(*c*)

FOREIGN COMPANIES TO WHICH PART XIA DOES NOT APPLY

1. Part XIA does not apply to any of the following foreign companies:

(*a*) a foreign company that is a Singapore financial institution;

(*b*) a foreign company that is a wholly-owned subsidiary of a foreign company that is a Singapore financial institution;

(*c*) a foreign company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to —

(i) regulatory disclosure requirements; and

(ii) requirements relating to adequate transparency in respect of its beneficial owners,

imposed through stock exchange rules, law or other enforceable means.

2. In paragraph 1, "Singapore financial institution" has the meaning given to it in paragraph 2 of the Fourteenth Schedule.

SIXTEENTH SCHEDULE

Sections 8(7) and 386AB

MEANINGS OF "SIGNIFICANT CONTROL" AND "SIGNIFICANT INTEREST"

Definition of "significant control"

1. For the purposes of Part XIA, an individual or a legal entity has significant control over a company or foreign company if the individual or legal entity —

(*a*) holds the right, directly or indirectly, to appoint or remove the directors or equivalent persons of the company or foreign company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters;

(*b*) holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the members or equivalent persons of the company or foreign company; or

(*c*) has the right to exercise, or actually exercises, significant influence or control over the company or foreign company.

Definition of "significant interest"

2.—(1) For the purposes of Part XIA, an individual or a legal entity has a significant interest in a company or foreign company having a share capital —

(*a*) if the individual or legal entity, as the case may be, has an interest in more than 25% of the shares in the company or foreign company; or

(*b*) if —

(i) the individual or legal entity, as the case may be, has an interest in one or more voting shares in the company or foreign company; and

(ii) the total votes attached to that share, or those shares, is more than 25% of the total voting power in the company or foreign company.

(2) In sub-paragraph (1)(*b*), "voting share" does not include any treasury share or any share mentioned in section 21(4B) or (6C).

3. For the purposes of Part XIA, an individual or a legal entity has a significant interest in a company or foreign company that does not have a share capital if the individual or legal entity holds, whether directly or indirectly, a right to share in more than 25% of the capital, or more than 25% of the profits, of the company or foreign company.

Supplementary provisions

4.—(1) Subject to sub-paragraphs (2), (3) and (5), subsections (1A) to (6A), (8), (9) and (10) of section 7 apply in determining whether a person has an interest in a share.

(2) If 2 or more persons jointly have an interest in a share, or jointly hold a right, each of the persons is considered for the purposes of this Schedule as having an interest in that share, or as holding that right, as the case may be.

(3) If shares in respect of which a person has an interest and the shares in respect of which another person has an interest are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as having an interest in the combined shares of both of them.

(4) If the rights held by a person and the rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as holding the combined rights of both of them.

(5) A share or right held by a person as nominee for another is to be considered for the purposes of this Schedule as held by the other (and not by the nominee).

(6) In this paragraph —

(*a*) a "joint arrangement" is an arrangement between the persons having an interest in shares or between holders of rights that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement; and

(*b*) "arrangement" includes —

(i) any scheme, agreement or understanding, whether or not it is legally enforceable; and

(ii) any convention, custom or practice of any kind,

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).".

Consequential and related amendments to other Acts

53.—(1) The Accountants Act (Cap. 2, 2005 Ed.) is amended —

(*a*) by inserting, immediately after subsection (1) of section 2, the following subsection:

"(1A) In this Act, a reference to improper conduct by, of or on the part of a public accountant, an accounting corporation, an accounting firm or an accounting LLP includes any breach of any code of professional conduct and ethics prescribed by rules made under section 64, including any code of professional conduct and ethics adopted by reference in those rules."; and

(*b*) by deleting subsection (3) of section 64 and substituting the following subsections:

"(3) In making rules for the purpose of subsection (2)(*e*), the Authority may adopt by reference (whether wholly or in part) any standard, method or procedure issued or applied by any professional accountancy body or organisation, whether in Singapore or elsewhere.

(4) In making rules for the purpose of subsection (2)(*f*), the Authority may adopt by reference (whether wholly or in part) any code of professional conduct and ethics issued or applied by any professional accountancy body or organisation, whether in Singapore or elsewhere.

(5) In this section, a reference to a code of professional conduct and ethics includes any code or ethics pronouncement that seeks to give effect (whether wholly or in part) to the recommendations issued or adopted by the intergovernmental body

known as the Financial Action Task Force relating to the prevention of money laundering and the financing of terrorism.".

(2) Section 17(1) of the Business Names Registration Act 2014 (Act 29 of 2014) is amended by deleting the words "or 378(15)" in paragraph (*c*) and substituting the words ", section 27(12B) as applied by section 357(2), or section 378(15)".

(3) Section 2(1) of the International Interests in Aircraft Equipment Act (Cap. 144B, 2012 Ed.) is amended —

(*a*) by deleting the word "or" at the end of paragraph (*d*) of the definition of "commencement of insolvency proceedings", and by inserting immediately thereafter the following paragraph:

"(*da*) in the case of a compromise or an arrangement under section 211I of the Companies Act, the date of the application under section 211I(1) of that Act; or"; and

(*b*) by inserting, immediately after the words "section 210" in paragraph (*c*) of the definition of "insolvency proceedings", the words "or 211I".

(4) Section 19A(1) of the Limited Liability Partnerships Act (Cap. 163A, 2006 Ed.) is amended by deleting the words "or 378(15)" in paragraph (*c*) and substituting the words ", section 27(12B) as applied by section 357(2), or section 378(15)".

(5) Section 17A(1) of the Limited Partnerships Act (Cap. 163B, 2010 Ed.) is amended by deleting the words "or 378(15)" in paragraph (*c*) and substituting the words ", section 27(12B) as applied by section 357(2), or section 378(15)".

(6) The Telecommunications Act (Cap. 323, 2000 Ed.) is amended by inserting, immediately after the words "section 210" in sections 32J(3)(*a*) and 32L(1)(*b*) and (2)(*a*), the words "or 211I".

Saving and transitional provisions

54.—(1) Section 22 does not apply to or in relation to any compromise or arrangement proposed between a company and its creditors or any class of those creditors, for which an application under section 210(1) of the Companies Act is made before the date of commencement of section 22.

(2) Despite section 25, section 227B of the Companies Act as in force immediately before the date of commencement of section 25 continues to apply to or in relation to any application under section 227B(1) of the Companies Act made before that date.

(3) Despite section 26, section 227D of the Companies Act as in force immediately before the date of commencement of section 26 continues to apply to or in relation to any judicial management order arising from an application under section 227B(1) of the Companies Act made before that date.

(4) Section 28 does not apply to or in relation to any judicial management order arising from an application under section 227B(1) of the Companies Act made before the date of commencement of section 28.

(5) Despite section 29, section 227K(1)(*b*) of the Companies Act as in force immediately before the date of commencement of section 29 continues to apply to or in relation to any judicial management order arising from an application under section 227B(1) of the Companies Act made before that date.

(6) Despite section 30, section 227M(2)(*b*) of the Companies Act as in force immediately before the date of commencement of section 30 continues to apply to or in relation to any judicial management order arising from an application under section 227B(1) of the Companies Act made before that date.

(7) Despite section 31, section 227N(4) of the Companies Act as in force immediately before the date of commencement of section 31 continues to apply to or in relation to an order made by the Court under section 227N(4) of the Companies Act, if that order arose from a report given to the Court under section 227N(3) of the Companies Act by a judicial manager appointed under a judicial management

order arising from an application under section 227B(1) of the Companies Act made before that date.

(8) Despite section 32, section 227P(3) of the Companies Act as in force immediately before the date of commencement of section 32 continues to apply to or in relation to any statement of proposed revisions by a judicial manager appointed under a judicial management order arising from an application under section 227B(1) of the Companies Act made before that date.

(9) Despite section 34, section 227X of the Companies Act as in force immediately before the date of commencement of section 34 continues to apply to or in relation to any judicial management order arising from an application under section 227B(1) of the Companies Act made before that date.

(10) Despite section 40, section 351 of the Companies Act as in force immediately before the date of commencement of section 40 continues to apply to or in relation to an application made before that date for the winding up of an unregistered company.

(11) Sections 41 and 50 do not apply to or in relation to —

(*a*) any collective judicial or administrative proceeding, (including any interim proceeding) commenced before the date of commencement of sections 41 and 50, in a country other than Singapore, under a law relating to insolvency or adjustment of debt, in which proceeding the property and affairs of a corporation (as defined in section 4(1) of the Companies Act) are subject to control or supervision by a judicial or other authority (of that country) that is competent to control or supervise that proceeding, for the purpose of reorganisation or liquidation; or

(*b*) any proceedings under any provision of sections 210 to 212 and Parts VIIIA and X of the Companies Act, or under any rule of law relating to insolvency or adjustment of debt, commenced before the date of commencement of sections 41 and 50.

(12) Section 43 only applies to an order mentioned in section 372(4) of the Companies Act, if the order is made on or after the date of commencement of section 43.

(13) Despite section 45, section 377 of the Companies Act as in force immediately before the date of commencement of section 45 continues to apply to or in relation to any liquidator of a foreign company appointed for Singapore by the High Court, or any person exercising the powers and functions of such a liquidator, if that foreign company went into liquidation or is dissolved in its place of incorporation or origin before that date.

(14) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Companies Act (Cap. 50) for the following main purposes:

(*a*) to implement changes to address key findings in the Financial Action Task Force (FATF)'s fourth mutual evaluation of Singapore's anti-money laundering and countering the financing of terrorism regime, ahead of Singapore's peer review by the Global Forum on Transparency and Exchange of Information for Tax Purposes;

(*b*) to establish a new regime to enable a foreign corporate entity to transfer its registration to Singapore by registering as a company limited by shares in Singapore;

(*c*) to simplify the timelines for holding of annual general meetings and filing of annual returns and to implement other measures to reduce the regulatory burden for companies;

(*d*) to amend Parts VII, VIIIA, X and XI to implement changes which are related to recommendations in the report of the Insolvency Law Review Committee dated 4 October 2013 and the report of the Committee to Strengthen Singapore as an International Centre for Debt Restructuring dated 20 April 2016;

(*e*) amendments to Part VII introduce a new set of provisions (sections 211A to 211J) relating to a compromise or an arrangement between a company and its creditors (or a class of the creditors) and which are additional to sections 210 and 211, in particular —

(i) to allow the High Court or a judge thereof (the Court) to make an order protecting a company from certain actions or proceedings that may be taken against the company (a moratorium) if the company has made or undertakes to make an application under section 210(1)(*a*) or new section 211I (new section 211B);

(ii) where the Court had ordered a moratorium under section 211B(1) in respect of a company, to allow the Court to order a similar moratorium in favour of its subsidiary, holding company or ultimate holding company (new section 211C);

(iii) to empower the Court to order that certain debts arising from rescue financing obtained by the company are granted priority over the claims of other creditors or are to be secured by a security interest (new section 211E);

(iv) to allow the Court to approve a compromise or an arrangement between a company and its creditors despite the requisite majority under section 210(3AB)(*a*) and (*b*) not being met in respect of every class of creditors, provided that the dissenting classes of creditors will not be unfairly prejudiced by the compromise or arrangement (new section 211H); and

(v) to introduce a process by which a Court may approve a compromise or an arrangement without a meeting of the creditors (new section 211I);

(*f*) amendments to Part VIIIA will —

(i) allow the Court to make a judicial management order in relation to any corporation liable to be wound up under the Act (new section 227AA);

(ii) modify the insolvency requirement that needs to be met for a judicial management order to be made (section 227B(1)(*a*)); and

(iii) empower the Court to order that certain debts arising from rescue financing obtained by a company under judicial management are granted priority over the claims of other creditors or are to be secured by a security interest (new section 227HA);

(*g*) amendments to Part X will introduce new provisions to facilitate the resolution of cross-border insolvency, in particular —

(i) to provide that a foreign company may be wound up only if it has a substantial connection with Singapore, and the matters that the Court may rely on when determining whether the foreign company has a substantial connection with Singapore (section 351); and

(ii) to adopt the UNCITRAL Model Law on Cross-Border Insolvency (new Division 6 of Part X and new Tenth Schedule);

(*h*) amendments to section 377 in Part XI to generally abolish the 'ring-fencing' of assets of a foreign company in a winding up, except for certain specified exceptions.

The Bill also makes related amendments to the Accountants Act (Cap. 2) to address key findings of the FATF's fourth mutual evaluation of Singapore's anti-money laundering and countering the financing of terrorism regime.

The Bill also makes consequential and related amendments to the Business Names Registration Act 2014 (Act 29 of 2014), the International Interests in Aircraft Equipment Act (Cap. 144B), the Limited Liability Partnerships Act (Cap. 163A), the Limited Partnerships Act (Cap. 163B) and the Telecommunications Act (Cap. 323).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 4 (on interpretation) —

(*a*) by deleting limb (*b*) of the definition of "branch register" in subsection (1) (as the reference in that limb to the branch register of a foreign company is obsolete because of the repeal and re-enactment of section 379 by clause 46);

(*b*) by deleting and substituting the definition of "financial year" in subsection (1). Limb (*b*) of the new definition includes a reference to the new section 198 (on financial year) inserted by clause 15; and

(*c*) by inserting references to sections 359(9) and 360(3) into subsection (12) so that any reference to the Minister in each of those sections is to be read as including a reference to such Minister of State for the Ministry who is authorised by the Minister for the purposes of hearing an appeal under the respective section.

Clause 3 amends section 8 (on administration of Act and appointment of Registrar of Companies, etc.) to provide that the power of the Minister under subsection (7) to add to, vary or amend the Schedules to the Act by notification in the *Gazette*, includes the new Fourteenth Schedule (on companies to which the new Part XIA does not apply), the new Fifteenth Schedule (on foreign companies

to which the new Part XIA does not apply) and the new Sixteenth Schedule (on meanings of "significant control" and "significant interest"), all of which are inserted by clause 52.

Clause 4 amends section 19 (on registration and incorporation) —

(*a*) to provide in subsection (1) that amongst the information that a person desiring the incorporation of a company must furnish to the Registrar of Companies (the Registrar) is the last day of the proposed company's first financial year; and

(*b*) to remove in subsection (5) the reference to a company having a common seal (as a common seal is optional for a company under the new section 41A, inserted by clause 6).

Clause 5 amends section 27 (on names of companies) to provide in subsection (1) that the Registrar must refuse to register a company under the Act under a name that is identical to a name that is reserved under section 27(12B) as applied by the new section 357(2). The new section 357, which is in new Part XA (on transfer of registration) inserted by clause 42, provides that a foreign corporate entity which intends to be registered as a company limited by shares under the Act must apply to reserve the name of the company and that section 27 applies to and in respect of such an application as if the application were an application to reserve the name of an intended company under section 27.

Clause 6 inserts new sections 41A, 41B and 41C.

The new section 41A provides that a company may have a common seal but need not have one. It also provides that new sections 41B and 41C apply whether the company has a common seal or not.

The new section 41B provides —

(*a*) that a company may execute a document described or expressed as a deed without affixing a common seal onto the document by signature on behalf of the company by a director of the company and a secretary of the company, by at least 2 directors of the company, or by a director of the company in the presence of a witness who attests the signature;

(*b*) that such a document has the same effect as if the document were executed under the common seal of the company; and

(*c*) for certain ancillary matters.

The new section 41B therefore provides a company with an alternative means to execute a document described or expressed as a deed without affixing a common seal onto the document.

The new section 41C provides that where any written law or rule of law requires any document to be under or executed under the common seal of a company, or

provides for certain consequences if it is not, a document satisfies that written law or rule of law if the document is signed in the manner set out in the new section 41B(1)(*a*), (*b*) or (*c*) (i.e. on behalf of the company by a director of the company and a secretary of the company, by at least 2 directors of the company, or by a director of the company, in the presence of a witness who attests the signature). The new section 41C therefore allows a requirement that a document be under the common seal of a company to be satisfied in an alternative way.

Clause 7 amends section 144 (on publication of name and registration number) to make clear that the obligations under subsection (1) apply in respect of the company's seal "if any". This is because a common seal is optional for a company under the new section 41A (inserted by clause 6).

Clause 8 amends section 154 (on disqualification to act as director on conviction of certain offences) to insert a new subsection (4)(*c*) setting out that the period of disqualification where a person is subject to the imposition of a civil penalty under section 232 of the Securities and Futures Act (Cap. 289) is a period of 5 years after the imposition of the civil penalty. The clause also amends subsection (1) for greater clarity. Section 154 was amended by the Companies (Amendment) Act 2014 (Act 36 of 2014), effective 1 July 2015, to provide (amongst other things) that a person who was convicted of an offence under Part XII of the Securities and Futures Act, or was subject to the imposition of a civil penalty under section 232 of the Securities and Futures Act, was disqualified from acting as a director, etc., of a company or of a foreign company to which Division 2 of Part XI applies. However, the period of disqualification in respect of an imposition of a civil penalty was omitted. This amendment corrects the omission to the time that the relevant amendments to section 154 took effect (that is, on 1 July 2015).

Clause 9 amends section 175 (on annual general meeting) —

(*a*) by deleting and substituting subsections (1) and (2) to tie the requirement imposed on a company to hold an annual general meeting to certain deadlines after the end of the financial year of the company, to set out new deadlines for the holding of the annual general meeting, and to allow the Registrar to extend the deadlines for the holding of the annual general meeting; and

(*b*) by inserting a new subsection (5) to empower the Minister, by order in the *Gazette*, to specify some other deadline for the holding of the "annual general meeting" in substitution of the deadlines prescribed in the new subsection (1).

Clause 10 amends section 175A (on private company may dispense with annual general meetings) to extend the circumstances in which a private company need not hold an annual general meeting. So, apart from a resolution dispensing with the holding of an annual general meeting, a company need not hold an annual general meeting for a financial year if, at the end of that financial year, it is a private

company and either has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1) within the prescribed period, or is a dormant relevant company the directors of which are, under section 201A, exempt from the requirements of section 201 for the financial year. The clause also makes consequential amendments to the section and to the section heading.

Clause 11 amends section 184A (on passing of resolutions by written means) by changing a section reference in subsection (2) (which is consequential upon the amendments to section 175A made by clause 10).

Clause 12 amends section 186 (on registration and copies of certain resolutions) by changing a section reference in subsection (1) (which is consequential upon the amendments to section 175A made by clause 10).

Clause 13 amends section 195 (on limitation of liability of trustee, etc., registered as holder of shares) to remove references to a branch register kept in Singapore because the requirement is obsolete. Under the new section 379 (inserted by clause 46), a foreign company is required to keep a register of members and not a branch register. The references to corporation in section 195 will also be replaced with company as Division 4 of Part V (of which section 195 is a part) applies only in relation to public companies (under section 189A) and not to corporations in general.

Clause 14 amends section 197 (on annual return by companies) —

(*a*) to tie the requirement imposed on a company to lodge with the Registrar a return after its general meeting (that is, its annual return) to certain deadlines after the end of the financial year of the company, to set out new deadlines for the lodgment of the annual return, and to allow the Registrar to extend the deadlines for lodging the annual return;

(*b*) to make clear that the annual return must include prescribed information (in addition to prescribed particulars); and

(*c*) to provide that where a private company is required under section 175A(4) to hold an annual general meeting for a financial year after it has lodged its annual return for that financial year, the company must lodge a notice with the Registrar of the date on which the annual general meeting was held.

Clause 15 inserts a new section 198 (on financial year). The new section sets out —

(*a*) how a financial year, including the last day of a financial year, is to be calculated;

(*b*) the maximum duration of a financial year; and

(*c*) how the last day of the financial year may be changed by the company and the limits to such changes.

The new section on financial year is relevant, amongst other things, for determining when an annual general meeting of a company must be held under section 175 (as amended by clause 9) and when the annual return of a company must be lodged under section 197 (as amended by clause 14).

Clause 16 amends section 201 (on financial statements and consolidated financial statements) to provide that directors of a company must lay before the company at its annual general meeting the financial statements or the consolidated financial statements (as the case may be) for the financial year in respect of which the annual general meeting is held.

Clause 17 makes an amendment to section 201AA(1)(*b*) as a result of the change to clause 175A (as amended by clause 10).

Clause 18 repeals and re-enacts section 201C to provide that the directors of a private company need not comply with the requirement in section 201 to lay before the company at its annual general meeting financial statements or consolidated financial statements of the company if the company need not hold an annual general meeting under section 175A.

Clause 19 amends section 203 (on members of company entitled to financial statements, etc.) —

(*a*) to provide that if the company is not required to hold an annual general meeting by virtue of section 175A(1)(*a*), the financial statements, consolidated financial statements, etc., of the company (mentioned in subsection (1)) must be sent to all persons entitled to receive notice of general meetings of the company not later than 5 months after the end of the financial year to which the financial statements, or consolidated financial statements and balance-sheet, relate; and

(*b*) to provide that if a company is not required to hold an annual general meeting under section 175A(1)(*b*), any member or auditor of the company may, by notice to the company not later than 14 days after the day on which the financial statements, consolidated financial statements, etc., of the company (mentioned in subsection (1)) were sent out, require that a general meeting be held for the purpose of laying those documents before the company.

Clause 20 makes an amendment to section 205(12A) as a consequence of the change to section 175A (as amended by clause 10).

Clause 21 amends section 207 (on powers and duties of auditors as to reports on financial statements) to provide that the right of access of the auditor to the registers of a company, subsidiary corporation of a parent company or corporation does not

extend to any register kept by the company under the new Part XIA, on register of controllers and nominee directors of companies (inserted by clause 47).

Clause 22 inserts new sections 211A to 211J.

The new section 211A relates to the application of the new sections 211B to 211J. The new sections 211B to 211J only apply in a case of a compromise or an arrangement between a company and its creditors, and do not apply to a compromise or an arrangement between a company and its members. The new section 211A(3) empowers the Minister to prescribe by order in the *Gazette* that a specified company or class of companies is excluded from the meaning of "company", and hence, excluded from the scope of new sections 211A to 211J.

The new section 211B(1) gives the Court the power to make one or more orders restraining certain actions and proceedings against the company (a moratorium), on an application by a company that has proposed a compromise or an arrangement with its creditors, or intends to do so. The company may apply for a moratorium under new section 211B(1) only if it has made an application under section 210(1) for a Court order for a meeting of its creditors to be summoned, or an application under the new section 211I(1) for the Court's approval of a compromise or an arrangement without calling a meeting of the creditors, or undertakes to the Court to make either application as soon as practicable.

New section 211B(4) requires the company to file together with the application under new section 211B(1) — (i) evidence of support from the company's creditors for the compromise or arrangement, together with an explanation of how such support would be important to the success of the compromise or arrangement; (ii) a list of the company's secured creditors; (iii) a list of the 20 unsecured creditors who have the largest claims against the company; and (iv) in a case where the company has not yet proposed the compromise or arrangement to the creditors, a brief description of the intended compromise or arrangement, containing sufficient particulars to enable the Court to assess whether the intended compromise or arrangement is feasible and merits consideration by the company's creditors when the statement mentioned in section 211(1)(*a*) or new section 211I(3)(*a*) is placed before the creditors. The requirement for the brief description to contain sufficient particulars to enable the Court to assess whether the intended compromise or arrangement is feasible and merits consideration by the creditors when subsequently placed before the creditors in a prescribed statement is similar to the approach in the case of *Re Conchubar Aromatics Ltd and other matters* [2015] SGHC 322. The information provided by the company under new section 211B(4) will assist the Court in deciding whether any order under new section 211B(1) should be made, and will also allow creditors of the company to determine if they should apply under new section 211B(10)(*b*) for a termination of the automatic moratorium under new section 211B(8).

Under new section 211B(6), the Court must, when granting a moratorium, order the company to submit to the Court sufficient information relating to the

company's financial affairs to enable the company's creditors to assess the feasibility of the intended or proposed compromise or arrangement. New section 211B(6)(*a*) to (*d*) lists non-exhaustive examples of information or reports that the Court may order to be submitted. A creditor may gain access to the information submitted to the Court by making an application to the Court.

The Court may under new section 211B(5)(*b*), order that the moratorium applies to any act of any person in Singapore or within the jurisdiction of the Court, whether the act takes place in or outside Singapore.

In addition, new section 211B(8) provides for an automatic moratorium of not more than 30 days to apply upon the making of an application under new section 211B(1). New section 211B(9) provides that an automatic moratorium may apply to a company not more frequently than once every 12 months.

New section 211B(10) provides that the company, any creditor, or a receiver and manager of the whole (or substantially the whole) of the property or undertaking of the company may apply to the Court for a discharge or variation of the moratorium granted under section 211B(1), or for a termination of the automatic moratorium under section 211B(8). Under new section 211B(11), the Court must grant the application under new section 211B(10) made by a creditor or a receiver and manager if the company failed to comply with new section 211B(4) when it made the application under new section 211B(1).

New section 211B(12) provides that neither a moratorium under new section 211B(1) nor new section 211B(8) affects the exercise of any legal right under any arrangement (including a set-off arrangement or a netting arrangement) that may be prescribed by regulations made by the Minister under section 411. The regulations so made will describe the type of arrangement that is to be the subject of such a carve out.

The new section 211C gives the Court the power to grant a similar moratorium in favour of a subsidiary, holding company or an ultimate holding company (related company) of a company in respect of which a moratorium under new section 211B(1) is in force (subject company). The moratorium under new section 211C(1) may be granted only if — (i) the related company plays a necessary and integral role in the compromise or arrangement relied on by the subject company in applying for the moratorium under new section 211B(1); (ii) that compromise or arrangement will be frustrated if one or more of the actions that may be restrained by the moratorium is taken against the related company; and (iii) the Court is satisfied that the creditors of the related company will not be unfairly prejudiced. New section 211C(7) contains a provision that is similar to new section 211B(12).

The new section 211D enables a creditor to apply to the Court to make an order restraining certain disposals of property of, or a transfer of shares in, a company in

respect of which a moratorium under new section 211B(1) or 211C(1) or an automatic moratorium under new section 211B(8) is in force.

Where a company has made an application under section 210(1) or new section 211B(1), the new section 211E gives the Court power to order that debt arising from any rescue financing obtained or to be obtained by the company is to have priority over some or all of the preferential debts specified in section 328(1), or is to be secured by a security interest, as described in new section 211E(1)(*a*), (*b*), (*c*) and (*d*). Certain provisions in new section 211E(1)(*c*) and (*d*), (5) and (6) are adapted with modification from certain provisions in sections 361 and 364 of Title 11 of the United States Code (US Bankruptcy Code).

Under new section 211E(1)(*a*), the Court may order that the debt arising from rescue financing is to have the same priority as the costs and expenses of winding up mentioned in section 328(1)(*a*) if the company is wound up. Under new section 211E(1)(*b*), the Court may order that the debt arising from rescue financing is to have priority over all the preferential debts specified in section 328(1)(*a*) to (*g*) if the company is wound up. Under new section 211E(1)(*c*), the Court may order that the debt arising from rescue financing is to be secured by a security interest on property that is not otherwise subject to any security interest or by a subordinate security interest on property that is subject to an existing security interest. Under new section 211E(1)(*d*), the Court may order that the debt arising from rescue financing is to be secured by a security interest, on property that is subject to an existing security interest, that is of the same priority as or a higher priority than the existing security interest.

The company may apply for an order under new section 211E(1)(*a*) or (*b*) either before or after obtaining the rescue financing concerned. However, if the company wishes to obtain an order of the Court under new section 211E(1)(*c*) or (*d*), the company must make the application under new section 211E(1)(*c*) or (*d*) before obtaining the rescue financing.

The Court may make an order under new section 211E(1)(*b*), (*c*) or (*d*) only if the company is unable to obtain the rescue financing from any person unless the debt arising from the rescue financing is accorded that level of priority or is secured in the manner concerned. Additionally, the Court cannot make an order under new section 211E(1)(*d*) unless there is adequate protection for the interests of the holder of the existing security interest. New section 211E(6) provides that there is adequate protection for the interests of the holder of an existing security interest if one of the criteria set out in new section 211E(6)(*a*), (*b*) or (*c*) is satisfied, whilst leaving open the possibility that adequate protection may be satisfied in some other manner.

New section 211E(5) provides that a reversal or modification on appeal of an order under new section 211E(1)(*c*) or (*d*) does not affect the validity of any debt so incurred, or any security interest granted or the priority of that security interest, if the rescue financing was provided in good faith (whether or not with knowledge of

the appeal), unless the order was stayed pending the appeal before the rescue financing was provided.

New section 211E(7) provides that section 329 does not affect any priority conferred, any security interest or relief granted or any payment made, pursuant to and in accordance with an order made under new section 211E(1). New section 211E(7) is applicable even where the order under new section 211E(1) concerned is reversed or modified on appeal if the rescue financing was provided in good faith in accordance with new section 211E(5).

To avoid doubt, new section 211E does not prevent a company from obtaining financing and granting security for any debt arising from the financing without an order of Court under new section 211E(1), where the company is otherwise able to do so.

The new section 211F provides a statutory framework for the filing, inspection and adjudication of proofs of debt filed by creditors for the purpose of identifying creditors who are entitled to vote at the meeting summoned pursuant to an order under section 210(1), and provides for the role of an independent assessor. Every proof of debt filed is to be adjudicated by the person appointed by the Court to serve as chairman of the meeting (the chairman). An independent assessor may be appointed to adjudicate a dispute between the chairman and the company, between the chairman and one or more creditors, or between 2 or more creditors. Any party who disagrees with the decision of the independent assessor may file a notice of disagreement with the Court. The Court must take into account the notice of disagreement when the Court hears an application for its approval of the compromise or arrangement under section 210(4).

New section 211F(12) gives the Minister the power to make regulations to provide for the procedure relating to the inspection and adjudication of proofs of debt filed by creditors under new section 211F. A company may apply to the Court under new section 211F(14)(*a*) to approve any variation in or substitution of the procedure prescribed in such regulations. A person subject to any requirement imposed by such regulations may apply to the Court under new section 211F(14)(*b*) for relief (for example, to be excused from complying with the requirement or a modification of the requirement) or an extension of the time for compliance.

The new section 211G provides that the Court hearing an application for the Court's approval of a compromise or an arrangement under section 210(4), may order the company to hold another meeting of the creditors for the purpose of putting the compromise or arrangement to a re-vote.

Despite the fact that the conditions in section 210(3AB)(*a*) and (*b*) are not satisfied in respect of at least one class of creditors (dissenting class), the new section 211H gives the Court the power to 'cram down' the dissenting classes of creditors by approving the compromise or arrangement and ordering that the

compromise or arrangement be binding on the company and all classes of creditors meant to be bound by the compromise or arrangement, if certain conditions under this provision are met.

New section 211H(1)(*c*) requires, as a pre-condition for the application of the section, that the conditions in section 210(3AB)(*a*) and (*b*) must have been satisfied at the relevant meeting (defined in new section 211H(6)) in respect of at least one class of creditors. This requirement is adapted with modification from section 1129(a)(10) of the US Bankruptcy Code.

New section 211H(3) sets out the conditions that must be satisfied before a Court may 'cram down' a dissenting class of creditors. First, a majority in number of creditors who are meant to be bound by the compromise or arrangement and who were present and voting at the relevant meeting, and representing three-fourths in value of those creditors, must have agreed to the compromise or arrangement. Second, the Court must be satisfied that the compromise or arrangement does not discriminate unfairly between 2 or more classes of creditors, and is fair and equitable to each dissenting class. The second of these requirements is adapted with modification from section 1129(b)(1) of the US Bankruptcy Code.

New section 211H(4) sets out the minimum requirements that a compromise or an arrangement must meet in order for it to be considered fair and equitable to a dissenting class for the purposes of new section 211H(3)(*c*). However, the Court may consider a compromise or an arrangement to be otherwise than fair and equitable even if the requirements in new section 211H(4) are met. New section 211H(4)(*b*) is adapted with modification from section 1129(b)(2)(A) and (B) of the US Bankruptcy Code.

New section 211H(5) allows the Court to appoint any person of suitable knowledge, qualification or experience to assist the Court in estimating (under new section 211H(4)(*a*)) the amount that a creditor is expected to receive in the most likely scenario if the compromise or arrangement does not become binding on the company and all classes of creditors meant to be bound by the compromise or arrangement. The references in new section 211H(4)(*a*) and (5) to "the most likely scenario if the compromise or arrangement does not become binding" give effect to the 'appropriate comparator' test as applied by the Court of Appeal in *The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] SGCA 9 at ¶140.

The new section 211I gives the Court the power to approve a compromise or an arrangement proposed by a company without a meeting of the creditors being ordered to be summoned under section 210(1) or held by the company. The Court must not approve a compromise or an arrangement under new section 211I(1) unless the Court is satisfied that had such a meeting of creditors been summoned, the requisite majority of creditors mentioned in section 210(3AB)(*a*) and (*b*) would have approved the compromise or arrangement. New section 211I(3) and (4) provides safeguards for the interests of creditors who are meant to be bound by the

compromise or arrangement. New section 211I(5) is adapted from section 210(3A), while new section 211I(7) is adapted from section 210(4A).

The new section 211J which applies after a compromise or an arrangement between a company and its creditors has been approved by the Court under section 210(4) or new section 211I(1), enables the company, the scheme manager or a creditor bound by the compromise or arrangement to apply to the Court for certain orders, directions or clarifications. The Court may reverse or modify an act or decision of the company or scheme manager that results in a breach of a term of the compromise or arrangement, or give directions or make any order to rectify the act, omission or decision of the company or scheme manager. For instance, where an innocent third party would be affected by a reversal or modification of the act or decision of the company or scheme manager under new section 211J(2)(*a*), the Court could instead exercise its discretion to give such direction or make such order for rectification as the Court thinks fit under new section 211J(2)(*b*). New section 211J(4) provides that no order or clarification made, and no direction given, under new section 211J(2) or (3) may alter or affect any person's rights under the compromise or arrangement.

Clause 23 makes a related amendment to section 212(1A) as a result of the new section 211I(7).

Clause 24 inserts a new section 227AA that defines the terms "chattels leasing agreement", "company", "hire-purchase agreement", "property" and "retention of title agreement" for the purposes of Part VIIIA. Whereas only a company incorporated under the Act or any corresponding previous written law may be subject to a judicial management order under the existing Part VIIIA, the insertion of the definition for "company" in new section 227AA extends the application of Part VIIIA to unregistered companies as well. The definitions for "chattels leasing agreement", "hire-purchase agreement" and "retention of title agreement" are moved from section 227H(9).

Clause 25(*a*) amends section 227B(1)(*a*) to lower the threshold of likelihood of insolvency of the company that the Court must be satisfied of before making a judicial management order, so that a company that is likely to become unable to pay its debts may be placed under judicial management.

Clause 25(*b*) makes a related amendment to section 227B(1)(*b*)(ii) as a result of the new section 211I.

Clause 25(*c*) amends section 227B(4)(*a*) to remove the requirement for notice of an application for a judicial management order to be published in a Chinese local daily newspaper.

Clause 25(*d*) amends section 227B(5) to give the Court a discretion to make a judicial management order despite the opposition of a person who has appointed or is entitled to appoint a receiver or manager mentioned in section 227B(4). The Court must dismiss an application for a judicial management order if in addition to

the opposition of such a person, the Court is satisfied that the prejudice that would be caused to such a person if the judicial management order is made is disproportionately greater than the prejudice that would be caused to unsecured creditors if the application is dismissed.

Clause 25(*e*) and (*f*) inserts a new section 227B(7)(*d*) so as to empower the Minister to prescribe by order in the *Gazette* any class of companies in relation to which a judicial management order must not be made.

Clause 25(*g*) deletes section 227B(11) as a consequence of the moving of the definition of "property" to the new section 227AA (inserted by clause 24).

Clause 26 amends section 227D(4) and inserts new section 227D(5) and (6). The new section 227D(4) broadens the range of actions and proceedings restrained during the period for which a judicial management order is in force, and aligns the provisions with new section 211B(8).

New section 227D(5), which is similar to new section 211B(12), provides that section 227D(4) does not affect the exercise of any legal right under any arrangement (including a set-off arrangement or a netting arrangement) that may be prescribed by regulations made by the Minister under section 411.

Clause 27 deletes section 227H(9) as a consequence of moving the definitions for "chattels leasing agreement", "hire-purchase agreement" and "retention of title agreement" to new section 227AA (inserted by clause 24).

Clause 28 inserts a new section 227HA which provides that when a judicial management order is in force, the Court may order that debt arising from any rescue financing obtained or to be obtained by the company is to have priority over some or all of the preferential debts specified in section 328(1), or is to be secured by a security interest, as described in new section 227HA(1)(*a*), (*b*), (*c*) and (*d*). New section 227HA contains provisions that are aligned with the provisions in new section 211E (inserted by clause 22).

Clause 29 amends section 227K(1)(*b*) to remove the requirement to publish a notice of a judicial management order in a Chinese local daily newspaper.

Clause 30 amends section 227M(2)(*b*) to remove the requirement to publish the notice mentioned in that provision in a Chinese local daily newspaper.

Clause 31 amends section 227N(4) to remove the requirement to publish the order of the Court made under that provision in a Chinese local daily newspaper.

Clause 32 amends section 227P(3)(*b*) to remove the requirement to publish the notice mentioned in that provision in a Chinese local daily newspaper.

Clause 33 makes a related amendment to section 227R(4) as a result of the new section 211I.

Clause 34 amends section 227X to provide for the application of section 210 (with changes) and new sections 211F, 211G, 211H and 211I to a company under judicial management, subject to the modifications set out in the amended section 227X.

Clause 35 amends section 253 (on application for winding up) to provide that a company may be wound up under an order of Court on the application of the Minister on a ground specified in new section 254(1)(*la*) (inserted by clause 35).

Clause 36 amends section 254 (on circumstances in which company may be wound up by Court) to provide that a Court may (under the new subsection (1)(*la*)) order the winding up of a company if the company, being a foreign corporate entity that was registered as a company limited by shares under the new section 359(1) (inserted by clause 42) subject to conditions, has breached any of the conditions of registration imposed under section 359.

Clause 37 amends section 272 (on powers of liquidator) to make clear in subsection (2)(*d*) that the liquidator may use for the relevant purposes the company's seal, if any (as the requirement for a company to have a company seal is optional under the new section 41A (inserted by clause 6)).

Clause 38 amends section 320 (on books and papers of company and liquidator) to extend the period for which the liquidator of a company that is wound up must keep the books and papers of the company from a minimum of 2 years to a minimum of 5 years and to limit the exceptions allowing the books and papers to be destroyed before that period.

Clause 39 inserts a new section 344H to provide that where the name of a company has been struck off and the company dissolved under section 344 or 344A, a person who was an officer of the company immediately before the company was dissolved must ensure that all books and papers of the company are retained for a period of at least 5 years after the date on which the company was dissolved.

Clause 40(*a*) inserts a new section 351(1)(*d*) that provides that an unregistered company that is a foreign company may be wound up only if it has a substantial connection with Singapore. The Court may rely on the presence of one or more of the matters listed in the new section 351(2A) (inserted by clause 40(*b*)) to support a determination that a foreign company has a substantial connection with Singapore. The matters that are listed are drawn from case law from Singapore and other common law jurisdictions dealing with the determination of whether a foreign company is liable to be wound up under this Act or the corresponding legislation of those other common law jurisdictions.

Clause 41 inserts a new Division 6 of Part X (comprising new sections 354A, 354B and 354C) to adopt the UNCITRAL Model Law on Cross-Border Insolvency (with certain modifications to adapt it for application in Singapore), and to clarify its interaction with Singapore insolvency law.

Clause 42 inserts a new Part XA (consisting of sections 355 to 364A) relating to transfer of registration.

The new section 355 provides that the new Part applies to a foreign corporate entity which intends to be registered as a company limited by shares under the Act.

The new section 356 defines, for the purposes of the new Part XA, the terms "date of registration", "foreign corporate entity", "notice of transfer of registration", "place of incorporation" and "registration".

The new section 357 provides that a foreign corporate entity which intends to be registered as a company limited by shares under the Act must apply to reserve the name of the company, that section 27 applies to such an application and that a foreign corporate entity cannot be registered under new section 359(1) unless the name by which the foreign corporate entity proposes to be registered has been reserved.

The new section 358 provides that a foreign corporate entity may apply to the Registrar to be registered as a company limited by shares under the Act and provides for the requirements for registration.

The new section 359 deals with —

(*a*) the registration by the Registrar of a foreign corporate entity as a company limited by shares;

(*b*) the requirement of a foreign corporate entity as a company limited by shares registered under the section to submit to the Registrar documentary evidence that the foreign corporate entity has been de-registered in its place of incorporation;

(*c*) the power of the Registrar to impose, waive and modify conditions of registration;

(*d*) the requirements relating to the issue by the Registrar of a notice of transfer of registration and a certificate of confirmation of registration; and

(*e*) the right of a person aggrieved by certain decisions of the Registrar to appeal to the Minister.

The new section 360 sets out the circumstances in which the Registrar must refuse to register a foreign corporate entity as a company limited by shares under section 359(1) and provide for a right of a person aggrieved by such refusal to appeal to the Minister.

The new section 361 sets out the effects of the registration of a foreign corporate entity as a company limited by shares under section 359(1). In particular —

(*a*) the foreign corporate entity is deemed to be a company as defined in section 4(1) and all provisions of the Act pertaining to companies apply

with such adaptations, exceptions and modifications as may be specified in regulations; and

(*b*) if the foreign corporate entity was registered as a foreign company under Division 2 of Part XI immediately before the date of registration specified in the notice of transfer of registration, the foreign corporate entity ceases to be so registered under Division 2 of that Part.

The new section 362 —

(*a*) empowers the Registrar by order to revoke the registration of a company if the company has failed to comply with the new section 359(6), that is, the company has failed to submit to the Registrar a document evidencing that the foreign corporate entity has been de-registered in its place of incorporation within the prescribed time;

(*b*) provides for the steps that the Registrar must take before making an order of revocation;

(*c*) provides for the publication of the notice of the order of revocation in the *Gazette* and for the service of a copy of the notice of the order of revocation on the company which registration is revoked; and

(*d*) provides for when the order of revocation takes effect and the consequences of the order of revocation.

The new section 363 provides for the duty of a foreign corporate entity that is registered as a company limited by shares under section 359(1) to lodge with the Registrar a statement of prescribed particulars of charges created before the registration of the foreign corporate entity as a company which would have been required to be registered under Division 8 of Part IV if the foreign corporate entity had been incorporated as a company under the Act and for certain ancillary matters.

The new section 364 provides that, within 60 days after the date of registration of the foreign corporate entity as a company limited by shares under section 359(1), the company must complete and have ready for delivery appropriate certificates in respect of all persons registered as holders of existing shares or debentures, as the case may be, as of the date of registration. However, any share warrant, stating that the bearer of the warrant is entitled to the shares specified in the warrant and enabling the shares to be transferred by delivery of the warrant, that had been issued by the foreign corporate entity before the date of registration of the company is void. The clause also provides for certain ancillary matters.

The new section 364A empowers the Minister to make regulations under section 411 in respect of applications for registration, and registration of a foreign corporate entity, under the Part, including —

(*a*) prescribing the minimum and other requirements that a foreign corporate entity must meet before it may be registered under section 359(1);

(*b*) waiving any requirement of the new Part XA in respect of any foreign corporate entity or class of foreign corporate entities; and

(*c*) adapting, modifying or excluding the provisions of the Act in their application to any foreign corporate entity or class of foreign corporate entities registered under the new Part XA.

Clause 43 makes a related amendment to section 372(4) as a result of the new section 211I.

Clause 44 amends section 373 (on financial statements) to provide that the Registrar may, under subsection (10), also extend the period mentioned in subsection (3) within which the company is required to comply with all or any of the requirements of subsection (3)(*b*).

Clause 45(*a*) amends section 377(3)(*c*) to abolish the 'ring-fencing' of the assets of a foreign company in Singapore in a winding up, with certain exceptions. A liquidator of a foreign company appointed for Singapore by the Court must recover and realise the assets of the foreign company in Singapore and pay the net amount so realised to the liquidator of the foreign company for the place where it was formed or incorporated, unless the foreign company is, or was prior to the liquidation or dissolution carrying on business as, a relevant company as defined in the new section 377(14). In the latter case such a liquidator must first pay any debts and satisfy any liabilities incurred in Singapore by the foreign company before paying the net amount realised to the liquidator of the foreign company for the place where it was formed or incorporated. The new section 377(14) (inserted by clause 45(*c*)) defines "relevant company" as a foreign company falling within one of the listed types of companies (which are regulated by the Monetary Authority of Singapore).

Clause 45(*b*) inserts a new section 377(4A) which requires the liquidator of a foreign company appointed for Singapore or a person exercising the powers and functions of such a liquidator to be satisfied that the interests of creditors in Singapore are adequately protected before paying any amount recovered or realised in Singapore to the liquidator of the foreign company for the place where it was formed or incorporated.

Clause 46 repeals sections 379 to 385 and substitutes sections 379 to 384.

The new section 379 provides that a foreign company registered under Division 2 of Part XI must keep a register of its members at its registered office in Singapore or at some other place in Singapore, lodge a notice with the Registrar specifying the address at which the register is kept and lodge with the Registrar notice of any change in that address.

The new section 380 —

(*a*) sets out the contents that the register of members of a foreign company must contain; and

(*b*) provides that a foreign company having more than 50 members must, unless the register is in such a form as to constitute in itself an index, keep an index of the names of members.

The new section 381 provides that a register of members of a foreign company kept under section 379 is prima facie evidence of any matter which the register is required under Division 2 of Part XI to contain.

The new section 382 provides for a certificate of the foreign company specifying any shares held by any member of that company and registered in the register of members of the foreign company kept under the new section 379 to be prima facie evidence of the title of the member to the shares and the registration of the shares in that register.

The new section 383 provides that —

(*a*) any allotment, issue, sale, transfer, assignment or other disposition in Singapore of any bearer share or share warrant by a foreign company registered under Division 2 of Part XI is void; and

(*b*) no civil proceedings may be brought or maintained in any court for or in respect of any bearer share or share warrant allotted, issued, sold, transferred, assigned or disposed by a foreign company registered under Division 2 of Part XI.

The new section 384 provides that regulations may be made under section 411 to apply certain provisions of the Act relating to companies to foreign companies to which Division 2 of Part XI applies, subject to such adaptations, modifications or additions as may be prescribed.

Clause 47 inserts a new Part XIA (consisting of new sections 386AA to 386AP) relating to the register of controllers and nominee directors of companies.

The new section 386AA sets out the application of the new Part XIA. The new Part XIA applies to —

(*a*) all companies other than a company that is set out in the new Fourteenth Schedule (inserted by clause 52); and

(*b*) all foreign companies registered under Division 2 of Part XI other than a foreign company that is set out in the new Fifteenth Schedule (inserted by clause 52).

The obligation to comply with the new Part XIA extends to all natural persons, whether resident in Singapore or not and whether citizens of Singapore or not, and to all entities, whether formed, constituted or carrying on business in Singapore or

not and the new Part XIA also extends to acts done or omitted to be done outside Singapore.

The new section 386AB defines, for the purposes of the new Part XIA, the terms "approved exchange", "controller", "corporate controller", "individual controller", "legal entity", "limited liability partnership", "register of controllers" or "register", "registered filing agent", "significant control" and "significant interest". The term "controller" encompasses a "corporate controller" and an "individual controller". A "corporate controller" and an "individual controller" are, respectively, a legal entity which, and an individual who, has a significant interest in, or significant control over, a company or a foreign company, as the case may be. The terms "significant control" and "significant interest" are defined to have the meanings given to those terms in the new Sixteenth Schedule (inserted by clause 52).

The new section 386AC defines the meaning of "registrable" for the purposes of the new Part XIA. The obligations under the new Part XIA generally relate to registrable controllers. So, the new section 386AF requires a company and a foreign company to keep a register of registrable controllers and the duties imposed under new sections 386AG to 386AK and sections 386AM and 386AN apply in relation to registrable controllers. In general, a "controller" of a company or a foreign company is registrable unless the controller's significant interest in or significant control over the company or foreign company, as the case may be, is through certain controllers specified in the new section.

The new section 386AD sets out how the state of mind of a corporation, an unincorporated association or a partnership is to be determined where it is necessary to establish that state of mind for the purposes of criminal proceedings under the new Part XIA.

The new section 386AE defines the meaning of "legal privilege" for the purpose of the new Part XIA, in particular the new section 386AG. The definition is based on the definition of "item subject to legal privilege" in section 3 of the Organised Crime Act 2015 (Act 26 of 2015).

The new section 386AF provides that a company and a foreign company registered under Division 2 of Part XI must keep a register of its registrable controllers and sets out certain duties of the company and foreign company in relation to the register. Except for certain exceptions, a company and a foreign company must not disclose, or make available for inspection, the register or any particulars contained in the register to any member of the public.

The new section 386AG provides that a company and a foreign company must take reasonable steps to find out and identify the registrable controllers of the company or foreign company, as the case may be, and have a duty to send notices to certain persons for that purpose.

The new section 386AH sets out the steps that a company and a foreign company must take where it knows or has reasonable grounds to believe that a

relevant change (as defined in the section) has occurred in the particulars of the registrable controller that are stated in the company's or foreign company's register of controllers.

The new section 386AI sets out the steps that a company and a foreign company must take where the company or foreign company, as the case may be, knows or has reasonable grounds to believe that any of the particulars of a registrable controller that are stated in the company's or foreign company's register of controllers is incorrect.

The new section 386AJ requires a person who knows or ought reasonably to know that the person is a registrable controller in relation to a company or foreign company to notify the company or foreign company, as the case may be, of that fact and certain other particulars.

The new section 386AK requires a registrable controller in relation to a company or foreign company who knows, or ought reasonably to know, that a relevant change (as defined in the section) has occurred in the prescribed particulars of the registrable controller to notify the company or foreign company, as the case may be, of the relevant change.

The new section 386AL requires a director of a company who is a nominee (that is, if the director is accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of any other person) to inform the company of that fact, to provide prescribed particulars of the person for whom the director is a nominee, and to update the company of changes in the director's particulars or status as nominee. The company is required to keep a register of its directors who are nominees and, subject to certain exceptions, must not disclose, or make available for inspection, the register of nominee directors or any particulars contained in the register of nominee directors to any member of the public.

The new section 386AM confers on the Registrar and an officer of the Accounting and Corporate Regulatory Authority certain powers of production, inspection, inquiry and other powers of enforcement. The powers of enforcement may be exercised by a public agency (as defined in the section) to enable the public agency to administer or enforce any written law.

The new section 386AN empowers the Minister, by notification in the *Gazette*, to direct the Registrar to maintain a central register of controllers of companies and foreign companies. Where such a direction is made, the Registrar must keep a central register of controllers of companies and foreign companies. The Registrar may require any company or foreign company to which the new Part XIA applies to lodge with the Registrar the particulars contained in the register of controllers kept by that company or foreign company and to keep the Registrar updated as to changes in the company's or foreign company's register of controllers. Except for certain exceptions, the Registrar must not disclose, or make available for

inspection, the register or any particulars contained in the register to any member of the public.

The new section 386AO empowers the Registrar to issue codes, guidance, guidelines, policy statements and practice directions to provide guidance to companies or foreign companies, or to both, in relation to the operation or administration of any provision of the new Part XIA and generally for carrying out the purposes of the Part.

The new section 386AP empowers the Minister, by order in the *Gazette*, to exempt any person or class of persons from all or any of the provisions of the new Part XIA.

Clause 48 amends section 387C (on electronic transmission in accordance with constitution, etc.) to provide that a member of a company is deemed (subject to regulations made under subsection (4)) to have consented to notices and documents mentioned in subsection (1) to be given, sent or served using electronic communications if —

(*a*) the member was by notice in writing given an opportunity to elect, within such period of time specified in the notice, whether to receive the notice or document by way of electronic communications or as a physical copy; and

(*b*) the member failed to make an election within the time so specified.

Clause 49 inserts a new section 411(1)(*aa*) to empower the Minister to make regulations on all matters connected with or arising out of a compromise or an arrangement between a company and its creditors.

Clause 50 inserts a new Tenth Schedule that contains the articles of the UNCITRAL Model Law on Cross-Border Insolvency, with modifications to adapt them for application in Singapore. The Tenth Schedule is adapted with modifications from Schedule 1 to the UK Cross-Border Insolvency Regulations 2006.

Clause 51 amends the Eleventh Schedule (on powers of judicial manager) to provide that a judicial manager may exercise the power to use the company's seal, if any (as a common seal is optional for a company under new section 41A, inserted by clause 6).

Clause 52 inserts the new Fourteenth, Fifteenth and Sixteenth Schedules. The new Fourteenth Schedule sets out the companies to which the new Part XIA (inserted by clause 47) does not apply. The new Fifteenth Schedule sets out the foreign companies to which the new Part XIA does not apply. The new Sixteenth Schedule sets out, for the purposes of the new Part XIA, the meanings of "significant control" and "significant interest".

Clause 53(1) makes the following related amendments to the Accountants Act. First, a new section 2(1A) is inserted into the Accountants Act to make clear that a reference to improper conduct by, of or on the part of a public accountant, an accounting corporation, an accounting firm or an accounting LLP includes any breach of any code of professional conduct and ethics prescribed by rules made under section 64, including any code of professional conduct and ethics adopted by reference in those rules.

Second, section 64 of the Accountants Act is amended to make clear that —

(*a*) in making rules to prescribe the standards, methods, procedures and other requirements to be applied by public accountants when providing public accountancy services, the Accounting and Corporate Regulatory Authority may adopt by reference (whether wholly or in part) any standard, method or procedure issued or applied by any professional accountancy body or organisation, whether in Singapore or elsewhere;

(*b*) in making rules to prescribe the code of professional conduct and ethics of public accountants, accounting corporations, accounting firms and accounting LLPs, the Accounting and Corporate Regulatory Authority may adopt by reference (whether wholly or in part) any code of professional conduct and ethics issued or applied by any professional accountancy body or organisation, whether in Singapore or elsewhere; and

(*c*) a reference in section 64 to a code of professional conduct and ethics includes any code or ethics pronouncement that seeks to give effect (whether wholly or in part) to the recommendations issued or adopted by the FATF relating to the prevention of money laundering and the financing of terrorism.

Clause 53(2) amends section 17(1)(*c*) of the Business Names Registration Act 2014 to provide that the Registrar of Business Names must not (amongst other things) register a person under that Act to carry on business under a business name, etc., that is identical to a name that is reserved under section 27(12B) of the Companies Act as applied by the new section 357(2) of the Companies Act.

Clause 53(3) and (6) makes related amendments to the International Interests in Aircraft Equipment Act and the Telecommunications Act as a result of the new section 211I.

Clause 53(4) amends section 19A(1)(*c*) of the Limited Liability Partnerships Act to provide that the Registrar of Limited Liability Partnerships must not (amongst other things) register a limited liability partnership under that Act under a name that is identical to a name that is reserved under section 27(12B) of the Companies Act as applied by the new section 357(2) of the Companies Act.

Clause 53(5) amends section 17A(1)(*c*) of the Limited Partnerships Act to provide that the Registrar of Limited Partnerships must not (amongst other things) register a limited partnership under that Act under a name that is identical to a name that is reserved under section 27(12B) of the Companies Act as applied by the new section 357(2) of the Companies Act.

Clause 54 contains saving and transitional provisions. The Minister is further empowered to make regulations of a saving or transitional nature, within the 2 years after the relevant amendment comes into force.

EXPENDITURE OF PUBLIC MONEY

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