

such acquisition was passed, unless certain circumstances apply. This amendment gives effect to modified Recommendation 3.23 of the RSC;

- (c) to replace subsection (4) to introduce a new definition of “relevant period”. This amendment gives effect to modified Recommendation 3.22 of the RSC; and
- (d) to replace subsections (7), (8) and (9):
 - (i) the new subsection (7) requires a private company, which acquires shares in itself, to lodge a copy of the resolution authorising the acquisition and a notice of purchase or acquisition with the Registrar;
 - (ii) the new subsection (8) provides that an acquisition by a private company of shares in itself will not take effect until the Registrar updates its electronic register of members kept under the new section 196A (inserted by clause 110) to include particulars of such acquisition. This amendment gives effect to Recommendation 5.2 and modified Recommendation 5.3 of the RSC; and
 - (iii) the new subsection (9) requires a public company which acquires shares in itself to lodge a copy of the resolution authorising the acquisition and a notice of purchase or acquisition with the Registrar within the period stipulated.

Clause 44 amends section 76C to clarify in subsection (1) that an acquisition of shares by a company in itself under an equal access scheme authorised by the company must not entail acquisitions being made on a securities exchange, whether it is a securities exchange in Singapore or outside Singapore and to make a technical amendment in subsection (2).

Clause 45 amends section 76D to delete paragraph (b) of subsection (1) to allow listed companies to make selective off-market acquisition of shares in itself, in accordance with an agreement authorised by the company. This amendment gives effect to modified Recommendation 3.25 of the RSC.

Clause 46 amends section 76DA(1) to clarify that a company, whether or not it is listed on a securities exchange in Singapore or any securities exchange outside Singapore, may acquire shares in itself under a contingent purchase contract which is authorised by the company.

Clause 47 makes a technical amendment to section 76E(2)(a).

Clause 48 amends section 76F —

- (a) to insert a new subsection (1A) to clarify that a company, in using its capital or profits to acquire shares in itself under subsection (1)(a), may also use such capital or profits to pay for any expenses (including

brokerage and commission) incurred directly in such acquisition. This amendment gives effect to Recommendation 3.35 of the RSC; and

- (b) to delete subsections (4), (5) and (6) and substitute a new subsection (4) to align the solvency test, which must be satisfied by a company before it may make a payment under subsection (1), with the solvency test referred to in section 7A(1) as amended by clause 6. This amendment gives effect to Recommendations 3.18 and 3.19 of the RSC.

Clause 49 amends section 76G to renumber the existing provision as subsection (1) and insert a new subsection (2) to clarify that for the purposes of subsection (1), the reference to the total amount of the purchase price includes any expenses (including brokerage or commission) incurred directly in the purchase or acquisition of the relevant shares. This amendment gives effect to Recommendation 3.35 of the RSC.

Clause 50 makes a consequential amendment to section 76H(2) in relation to the new section 196A, which is inserted by clause 110, and the amendment to section 190 by clause 105.

Clause 51 makes a technical amendment to section 76J(5)(b).

Clause 52 amends section 76K —

- (a) to delete subsection (1) and substitute new subsections (1) to (1D):
 - (i) the new subsections (1) and (1C) set out the circumstances in which a private company and a public company may deal with its treasury shares, respectively. In particular, these subsections provide that a company may transfer treasury shares for the purposes of or pursuant to any share scheme, whether for employees, directors or other persons. This amendment gives effect to Recommendation 3.26 of the RSC;
 - (ii) the new subsection (1A) enables a private company, to cancel or dispose of treasury shares under subsection (1), by lodging a prescribed notice of the cancellation or disposal of treasury shares with the Registrar. Under the new subsection (1B), the cancellation or disposal of treasury shares by a private company will not take effect until the Registrar updates its electronic register of members kept under the new section 196A (inserted by clause 110) to include the particulars of such cancellation or disposal. This amendment gives effect to Recommendation 5.2 and modified Recommendation 5.3 of the RSC; and
 - (iii) the new subsection (1D) requires a public company which cancels or disposes treasury shares under subsection (1C) to notify the Registrar within the period stipulated;

- (b) to delete subsection (5); and
- (c) to make certain consequential amendments.

Clause 53 amends section 78A —

- (a) to delete the definition of “Comptroller” in subsection (4). This is a consequential amendment pursuant to the amendments to sections 78B(1)(a), 78C(1)(a) and 78G(2), by clauses 54, 55 and 57 respectively; and
- (b) to insert a new subsection (5A) to clarify that Division 3A (Reduction of share capital) will not apply to any redemption of preference shares issued by a company under section 70(1) that results in a reduction in the company’s share capital.

Clause 54 amends section 78B —

- (a) to delete paragraph (a) of subsection (1) to remove the requirement for a private company, which intends to reduce its share capital to notify the Comptroller of Income Tax;
- (b) to replace subsection (2) to set out the circumstances under which the company need not satisfy the solvency requirements required under subsection (1). This amendment gives effect to Recommendation 3.31 of the RSC; and
- (c) to amend subsection (3)(b)(ii) to increase from 15 to 20 days the longest period permissible between the date of the making of the solvency statement by the directors of the company and the date on which the company passes a resolution to authorise the reduction of its share capital. This amendment gives effect to Recommendation 3.32 of the RSC.

Clause 55 amends section 78C —

- (a) to delete paragraph (a) of subsection (1) to remove the requirement for a public company, which intends to reduce its share capital, to notify the Comptroller of Income Tax;
- (b) to replace subsection (2) to set out the circumstances under which the company need not satisfy the solvency requirements required under subsection (1). This amendment gives effect to Recommendation 3.31 of the RSC; and
- (c) to amend subsection (3)(b)(ii) to increase from 22 to 30 days the longest period permissible between the date of the making of the solvency statement by the directors of the company and the date on which the company passes a resolution to authorise the reduction of its share capital. This amendment gives effect to Recommendation 3.32 of the RSC.

Clause 56 makes consequential amendments to section 78E pursuant to the amendments to sections 78B and 78C by clauses 54 and 55 respectively.

Clause 57 amends section 78G to delete subsection (2) to remove the requirement for a company limited by shares, which intends to reduce its share capital by a special resolution approved by an order of the Court, to notify the Comptroller of Income Tax.

Clause 58 amends section 86 to insert a new subsection (2A) to provide that section 86 will not apply to the Depository (deemed to continue in existence under the new section 81SH of the Securities and Futures Act (Cap. 289)) as the registered holder of a company's shares. This amendment gives effect to modified Recommendation 3.16 of the RSC.

Clause 59 amends section 123 to replace paragraph (c) of subsection (2) to remove the requirement to disclose the amount paid on the shares in the share certificate relating to those shares. This amendment gives effect to Recommendation 3.36 of the RSC.

Clause 60 amends section 125 to insert new subsections (4) and (5). This amendment gives effect to modified Recommendation 3.16 of the RSC.

The new subsection (4) clarifies that for the purpose of section 125, a reference to the owner of a book-entry security means the Depository (deemed to continue in existence under the new section 81SH of the Securities and Futures Act).

The new subsection (5) clarifies that subsection (2), which sets out the procedure for applying to the company for the issue of a duplicate certificate or document, will not apply to documents evidencing title in relation to listed securities, which have been deposited with the Depository and registered in its name or its nominee's name.

Clause 61 repeals sections 126 to 130 and substitutes new sections 126 to 130AE.

The new section 126(2) requires a private company to lodge a notice of transfer pertaining to any transfer of shares in the private company with the Registrar. The new section 126(3) states that a transfer of share in a private company will not come into effect until the Registrar updates its electronic register of members kept under the new section 196A (inserted by clause 110) to include particulars of such transfer. This amendment gives effect to Recommendation 5.2 and modified Recommendation 5.3 of the RSC.

The new section 127 deals with the transfer of debentures in private companies.

The new section 128 deals with the transfer of any share, debenture and other interest in a private company where the transfer is made at the request of the holder of that share, debenture or other interest, as the case may be. Consistent with section 126, any request to transfer shares in a private company will not come into

effect until the company lodges a notice of transfer with the Registrar and upon the Registrar updating its electronic register of members kept under the new section 196A (inserted by clause 110) to include particulars of such transfer. This amendment gives effect to Recommendation 5.2 and modified Recommendation 5.3 of the RSC.

The new section 129 deals with the refusal by a private company to lodge a notice of transfer of shares or to register a transfer of any debentures or other interests in the company. This amendment gives effect to Recommendation 5.2 and modified Recommendation 5.3 of the RSC.

The new section 130 deals with the transfer of shares and debentures in public companies.

The new section 130AA deals with the transfer of any share, debenture and other interest in a public company, where the transfer is made at the request of the holder of that share, debenture or other interest, as the case may be.

The new section 130AB deals with the refusal by a public company to register a transfer of any share, debenture or other interest in the company.

The new section 130AC deals with the transfer of a share, debenture or other interest of the deceased person by the person's personal representative.

The new section 130AD deals with the certification by a company of an instrument of transfer of shares, debentures or other interests in the company.

The new section 130AE stipulates the periods during which a company is required to have ready for delivery all appropriate certificates and debentures in connection with an allotment of shares or debentures or a transfer of shares or debentures.

Clause 62 deletes Division 7A of Part IV (on the Central Depository System) which will be replicated in the Securities and Futures Act. This amendment gives effect to modified Recommendation 3.16 of the RSC.

Clause 63 amends section 131 —

- (a) to state in subsection (1) that registration of the charge has to be in a prescribed manner. This amendment gives effect to Recommendation 6.9 of the RSC;
- (b) to update the list of charges in subsection (3) to give effect to Recommendation 6.1 of the RSC. In particular, subsection (3) has been amended such that section 131 will not apply to —
 - (i) an assignment created or evidenced by an instrument which if executed by an individual, would require registration as a bill of sale, and any charge for any rent or other periodical sum issuing out of land; and

- (ii) a charge on goodwill, on a patent or a licence under a patent, on a trade mark or a licence to use a trademark, or on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design; and

(c) to provide for transitional matters.

Clause 64 amends section 132(1) to make clear that the relevant documents and particulars must be lodged in the prescribed manner. This amendment gives effect to Recommendation 6.9 of the RSC.

Clause 65 amends section 138 —

- (a) to provide in subsection (1) that a company needs only to keep the instrument creating any charge requiring registration or a copy of the instrument at its registered office for as long as the charge remains in force. This amendment gives effect to Recommendation 6.4 of the RSC; and
- (b) to insert a new subsection (1A) to provide that an instrument creating any charge or a copy of the instrument or a copy of the series of debentures that is required to be kept under subsection (1) forms part of the records that are required to be kept under section 199(1), and that such record must be kept for the stipulated period. This amendment gives effect to Recommendation 6.5 of the RSC.

Clause 66 amends section 141 to clarify that the provisions of Division 8 of Part IV, which relate to the requirement to register certain charges, apply only to foreign companies registered under the Act, and not to unregistered foreign entities. This amendment gives effect to Recommendation 6.8 of the RSC.

Clause 67 makes a technical amendment to section 143(1).

Clause 68 amends section 145 —

- (a) to insert new subsections (4A) and (4B):
 - (i) the new subsection (4A) provides that subject to the constitution of a company, a director of the company may resign by giving the company written notice of his resignation. This amendment gives effect to Recommendation 1.10 of the RSC; and
 - (ii) the new subsection (4B) provides that the resignation of a director is not conditional upon the company's acceptance of his resignation. This amendment gives effect to Recommendation 1.11 of the RSC; and
- (b) to replace subsection (6) to update the circumstances in which the restriction under subsection (5) against a sole director vacating his office does not apply.

Clause 69 amends section 146 to replace paragraph (a) of subsection (1A) to impose a requirement on a person who seeks to be a director of a company to file or cause to be filed with the Registrar a statement that (amongst other things) he is not debarred from acting as a director of the company under the new section 155B inserted by clause 76.

Clause 70 amends section 148 —

- (a) to change the time limit by which a person who has been granted leave of Court or written permission from the Official Assignee to act as director, etc., must notify the Registrar. This amendment gives effect to modified Recommendation 5.12 of the RSC; and
- (b) to amend the section heading to better reflect the substance of the section.

Clause 71 amends section 149(6)(a)(iii) to provide that the Court in deciding whether a person's conduct as a director of any particular company or companies makes him unfit to be concerned in, or take part in, the management of a company, may consider the extent of the director's responsibility for any failure by the company to comply with the new section 196B, which is inserted by clause 110.

Clause 72 inserts a new section 149B to clarify that, subject to the constitution of a company, the company may appoint a director by ordinary resolution. This amendment gives effect to Recommendation 1.3 of the RSC.

Clause 73 amends section 152 —

- (a) to restrict the application of subsections (1) to (8), which concerns the removal of directors, to public companies; and
- (b) to insert a new subsection (9) to clarify that a private company may, subject to its constitution, remove a director by ordinary resolution before the expiration of his period of office, notwithstanding any agreement between the private company and the director. This amendment gives effect to Recommendation 1.13 of the RSC.

Clause 74 repeals section 153 to remove any maximum age limit for directors in the Act. This amendment gives effect to Recommendations 1.7 and 1.8 of the RSC.

Clause 75 amends section 154 —

- (a) to replace subsections (1) to (4):
 - (i) the new subsection (1) expands the circumstances under which a person is subject to the disqualification from acting as director, etc., under subsection (3);
 - (ii) the new subsection (2) is a re-enactment of the existing provision allowing a court to make a disqualification order against a person who is convicted of any of the offences specified in the subsection,

in addition to any sentence given by the court in relation to any of those offences;

(iii) the new subsection (3) prohibits, subject to leave of Court granted under new subsection (6), any person who is disqualified under subsection (1) or has a disqualification order made against him under subsection (2) from acting as director, etc., of a company or foreign company during the periods stipulated in the new subsection (4); and

(iv) the new subsection (4) sets out the periods of disqualification from acting as director, etc., referred to in new subsection (3); and

(b) to replace subsection (6) to allow a person disqualified under subsection (1) or has a disqualification order made against him under subsection (2) from acting as director, etc., to apply to Court for leave to act as director, etc. This amendment gives effect to Recommendation 1.9 of the RSC.

Clause 76 repeals and re-enacts section 155A and inserts new sections 155B and 155C.

The new section 155A disqualifies a person from acting as a director, etc., of any company or a foreign company for a period of 5 years if he was a director in at least 3 companies which were struck off the register under section 344 within a period of 5 years. The 5-year disqualification period commences after the last of the 3 companies were struck off. The disqualified person may apply to the Court for leave to act as director, etc., of a company or a foreign company.

The new section 155B empowers the Registrar to make a debarment order prohibiting any person who is a director or secretary of a company from accepting a new appointment to act as director or secretary, as the case may be, of any company, if the first-mentioned company is in default of a relevant requirement (as defined in section 155(2)). The Registrar may suspend or cancel a debarment order in certain circumstances. An appeal against the Registrar's decision lies to the Minister.

The new section 155C re-states the existing prohibition on a person who is subject to a disqualification or disqualification order under certain provisions in the Limited Liability Partnerships Act from acting as a director of a company or a foreign company during the period of disqualification or disqualification order. The disqualified person may apply to the Court for leave to act as director, etc., of a company or a foreign company.

Clause 77 repeals and re-enacts section 156 to require, in addition to every director of a company, every chief executive officer of a company to disclose particulars of his interest in any transaction or proposed transaction with the company. Particulars of the interest of a director or chief executive officer in the

transaction may be disclosed to the company through a declaration at a meeting of the directors of the company or a written notice to the company. This amendment gives effect to Recommendation 1.25 of the RSC.

Clause 78 amends section 157(2) to prohibit an officer or agent of a company from making improper use of his position as an officer or agent of the company to gain an advantage for himself or for any other person, or to cause detriment to the company. This amendment gives effect to Recommendation 1.24 of the RSC.

Clause 79 amends section 157A(1) to provide that the business of a company must be managed by, or under the direction or supervision of, the directors. This amendment gives effect to Recommendation 1.19 of the RSC.

Clause 80 amends section 158 to give effect to Recommendation 1.27 of the RSC. In particular —

- (a) to amend subsection (1) to allow a director of a company to disclose information which he has only in his capacity as a director or an employee of the company, if such disclosure is not likely to prejudice the company and is made with the authorisation of the board of directors; and
- (b) to delete subsections (3) and (4) and substitute subsection (3) to provide that the authorisation of the board of directors may be conferred in respect of disclosure of all or any class of information, or only such information which is specified in the authorisation.

Clause 81 replaces section 162 to extend the restriction against a company from making loans to directors to include quasi-loans, credit transactions and related arrangements. This amendment gives effect to Recommendation 1.18 of the RSC.

Clause 82 amends section 163 —

- (a) to replace existing subsections (1), (2) and (3) and insert new subsections (3A) to (3D) to give effect to Recommendations 1.17(b) and 1.18 of the RSC:
 - (i) the new subsection (1) prohibits a company other than an exempt private company from making certain restricted transactions involving a company or limited liability partnership, without the company's prior approval in general meeting, if the director or directors of the first-mentioned company possess an interest in the company or limited liability partnership which is equal to or more than the threshold stipulated in subsection (1). In obtaining the prior approval from the company, the interested director or directors and their family members must abstain from voting, unless the exception in the new subsection (3C) applies;
 - (ii) the new subsection (2) extends the prohibition on a company in the new subsection (1) to making certain restricted transactions

involving a company or limited liability partnership incorporated or formed outside Singapore if a director or directors of the first-mentioned company possess an interest in the company or limited liability partnership which is equal to or more than the threshold stipulated in the new subsection (3);

- (iii) the new subsection (3) sets out when a director or directors have an interest in a company or limited liability partnership for the purposes of subsection (2);
- (iv) the new subsection (3A) prohibits a company from entering into certain arrangements without the company's prior approval. In obtaining the prior approval from the company, a director or directors of the company, who have an interest in the arrangement, and their family members must abstain from voting, unless the exception in the new subsection (3C) applies;
- (v) the new subsection (3B) determines the date on which an arrangement referred to in subsection (3A) is entered into;
- (vi) the new subsection (3C) provides that with respect to the requirement to obtain the prior approval of a company under subsections (1) and (3A), the interested director or directors or their family members need not abstain from voting at the general meeting if all the shareholders of the company have each voted to approve the arrangement; and
- (vii) the new subsection (3D) deals with the interpretation of certain terms which are used in the amended section 163;

(b) to replace subsection (5) to make a technical amendment;

(c) to make technical amendments to subsections (6) and (7); and

(d) to change the section heading to better reflect the substance of the amended section 163.

Clause 83 inserts new sections 163A and 163B to give effect to Recommendation 1.29 of the RSC.

The new section 163A allows a company to lend, on specified terms, funds to a director if the funds are used to meet expenditure incurred or to be incurred by him in defending certain criminal or civil proceedings, or in connection with an application for certain reliefs; or to enable the director to avoid incurring such expenditure.

The new section 163B allows a company to lend funds to a director to meet expenditure incurred or to be incurred by him in defending himself in any investigation by a regulatory authority or against specified action proposed to be

taken by a regulatory authority; and to enable the director to avoid incurring such expenditure.

Clause 84 amends section 164 to give effect to modified Recommendation 1.25 of the RSC —

- (a) to insert a new subsection (1A) to require a company to keep a register showing specified particulars of each chief executive officer of the company. The particulars do not include interests in related corporations;
- (b) to replace subsection (3) to incorporate consequential amendments arising from the new subsection (1A);
- (c) to replace subsection (5) to require a company to update its register relating to a director or a chief executive officer kept under subsection (1) or (1A) upon its receipt of a notice from that director or chief executive officer under section 133(1)(a), (b), (c), (d) or (e) of the Securities and Futures Act or under section 165(1)(a);
- (d) to replace subsection (12) to incorporate consequential amendments arising from new subsections (1A) and (5); and
- (e) to replace subsections (15) and (16):
 - (i) the new subsection (15) provides that a director or chief executive officer of a company is deemed to hold or have an interest or right in or over any share or debentures which his spouse or child holds or has an interest in. It also deems a director or chief executive officer of a company of entering into or exercising or making, any contract, assignment or right of subscription, or a grant being made to a director or chief executive officer, if the contract, assignment or right of subscription is entered into, exercised or made by his spouse or child, or the grant is made to his spouse or child; and
 - (ii) the new subsection (16) defines the word “child” for the purposes of subsection (15).

Clause 85 amends section 165 —

- (a) to give effect to modified Recommendation 1.25 of the RSC. In particular, subsection (1) is amended to require chief executive officers, in addition to directors, of a company to make such disclosure to the company as is necessary for the company to comply with sections 164, 173 and 173A. Consequential amendments are also made to the other subsections to apply section 165 to chief executive officers;
- (b) to delete paragraph (d) of subsection (1) as a consequence of the repeal of section 153; and

(c) to make technical amendments to subsection (10).

Clause 86 amends section 168 to insert new subsections (1A) and (1B) to provide that approval from a company is not required under subsection (1) in respect of any payment to a director holding a salaried employment or office in the company by way of compensation for termination of employment pursuant to an existing legal obligation arising from an agreement made between the company and the director if certain conditions are met. This amendment gives effect to modified Recommendation 1.15 of the RSC.

Clause 87 repeals section 170 as it is obsolete. This amendment gives effect to Recommendation 1.4 of the RSC.

Clause 88 amends section 171 —

- (a) to replace subsection (1AA) to impose a duty on the directors of a public company to take all reasonable steps to ensure that each secretary of the company satisfies such requirements relating to experience, professional and academic requirements and membership of professional associations, as may be prescribed;
- (b) to insert a new subsection (3A) to provide that a secretary of a private company, or his agent or clerk need not be physically present at the registered office during the times specified in subsection (3) if any one of these persons is readily contactable by a person at the registered office. This amendment gives effect to Recommendation 5.42 of the RSC; and
- (c) to make consequential amendments to subsections (1), (1AB), (1C) and (1D).

Clause 89 repeals and re-enacts section 172 and inserts new sections 172A and 172B to give effect to modified Recommendation 1.28 of the RSC.

The new section 172 provides that any provision which seeks to exempt an officer of a company from or provides an indemnity for an officer of a company against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void, except as permitted by the new section 172A or 172B.

The new section 172A permits a company to purchase and maintain insurance for an officer of the company against liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company.

The new section 172B permits a company to provide an indemnity for an officer of a company against liability incurred by the officer to a person other than the company, except for certain specified liabilities.

Clause 90 repeals and re-enacts section 173 and inserts new sections 173A to 173I to give effect to modified Recommendations 5.5 and 5.11 of the RSC.

The new section 173 requires the Registrar to maintain, with respect to each company, a register of directors, a register of chief executive officers, a register of secretaries and a register of auditors (if any), containing specified personal particulars of each. Where the register is required to contain the person's residential address, the register may contain the person's alternate address instead at that person's option, subject to the conditions specified in subsection (13).

The new section 173A imposes an obligation on a company to furnish such information as may be required, within the specified period, to enable the Registrar to maintain and update the registers of directors, chief executive officers, secretaries and auditors (if any) of the company.

The new section 173B imposes an obligation on a director, a chief executive officer, a secretary and an auditor of a company to furnish such information as may be required, within the specified period, to enable the company to fulfil its obligations under the new section 173A. Each of these persons is also required to furnish the information to the company if the company requires the information for the purpose of enabling the company to confirm its record of such information or reinstate its record of the information where the original record of the information has been destroyed or lost.

The new section 173C requires every company to keep documents which concern the appointment of a person as a director or secretary of the company. These include the signed copy of the person's consent to act as a director or secretary of the company.

The new section 173D provides savings and transitional provisions relating to existing particulars of directors, managers, secretaries and auditors lodged with the Registrar.

The new section 173E allows a director, a chief executive officer, a secretary and an auditor to notify the Registrar of certain facts or events if the person has reasonable cause to believe that the company will not do so.

The new section 173F empowers the Registrar to, at his own initiative, amend the respective registers of directors, chief executive officers, secretaries and auditors to reflect that the director, chief executive officer, etc., has ceased to act as such because of disqualification or death. The Registrar may reverse the amendment if the amendment was made because of a mistaken belief of the facts.

The new section 173G requires a director, a chief executive officer and a secretary of a company to provide his residential address, and particulars of any subsequent change to his residential address, to the Registrar. Unless the director, chief executive officer or secretary has opted to disclose his residential address in the relevant register kept by the Registrar under the new section 173 or unless otherwise provided for in subsection (5), the residential address will be protected from disclosure to the public.

The new section 173H sets out the penalties for breaches of the new sections 173, 173A, 173B, 173C and 173G.

The new section 173I requires a company to continue to keep the signed copy of a person's consent to act as a director or secretary, which is furnished to the company prior to the commencement of the new sections 173 to 173I until such person ceases to be a director or secretary, as the case may be, of the company.

Clause 91 amends section 175 to replace subsection (2) to allow the Registrar to extend the period for a company to hold its annual general meeting, not only pursuant to an application by the company, but if the company falls within a prescribed class of companies.

Clause 92 amends section 176 to replace subsection (1) to substitute the word "articles" with the word "constitution" to give effect to Recommendation 5.6 of the RSC and to make a consequential amendment.

Clause 93 amends section 177 to replace subsection (4) to substitute the word "articles" with "constitution" pursuant to Recommendation 5.6 of the RSC, and to substitute the reference to "Table A" with a reference to the model constitution to be prescribed under the new section 36(1) inserted by clause 29.

Clause 94 makes the following amendments to section 178:

- (a) it amends subsection (1) —
 - (i) to lower the threshold to demand for a poll at a meeting of a company on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting, from 10% to 5% of the total voting rights of the company. This amendment gives effect to Recommendation 2.2 of the RSC; and
 - (ii) to allow companies to require members to send the instrument appointing their proxies to the company not less than 72 hours before the time of a meeting, to give the company more time to process the instruments. This amendment gives effect to Recommendation 2.12 of the RSC;
- (b) it inserts new subsections (1A) and (1B) to provide savings and transitional provisions for the amendments to subsection (1); and
- (c) it changes the section heading to better reflect the substance of the amended section 178.

Clause 95 makes the following amendments to section 179:

- (a) it amends subsection (1) to substitute the word "articles" with the word "constitution" to give effect to Recommendation 5.6 of the RSC;
- (b) it amends subsection (4)(b) to clarify that a corporation will be taken to be present at a meeting of a company if its corporate representative is present

at the meeting and that representative is not otherwise entitled to be present at the meeting as a member or a proxy, or as a corporate representative of another member. This amendment gives effect to modified Recommendation 2.16 of the RSC; and

- (c) it amends subsection (7) to shorten the period within which the minute referred to in subsection (6) is required to be lodged by a company with the Registrar. This amendment gives effect to modified Recommendation 5.12 of the RSC.

Clause 96 repeals and re-enacts section 180 to re-state the rights of members to attend and speak and, as the case may be, vote at a general meeting of a company. The rights of holders of existing preference shares are also preserved. This amendment gives effect to Recommendation 3.2 of the RSC.

Clause 97 amends section 181 —

- (a) to delete subsection (1) and substitute new subsections (1) and (1A) to re-state a member’s right to appoint up to 2 proxies, subject to the company’s constitution and certain exceptions, and the rights of such proxies;
- (b) to insert new subsection (1B) to allow each member to appoint one proxy for schemes of arrangement under section 210 unless the Court orders otherwise. This is an exception to the multiple proxy rule and gives effect to modified Recommendation 3.41 of the RSC;
- (c) to insert new subsections (1C) and (1D) to allow a relevant intermediary to appoint more than 2 proxies who are entitled to vote at a meeting by a show of hands. This amendment gives effect to Recommendations 2.10, 2.11, 2.14 and 2.15 of the RSC; and
- (d) to insert a new subsection (6) to define the term “relevant intermediary”.

Clause 98 amends section 184A —

- (a) to extend the provisions concerning the passing of resolutions by written means to unlisted public companies and to define the term “unlisted public company”. This amendment gives effect to Recommendation 2.9 of the RSC; and
- (b) to clarify that the manner of indicating a member’s agreement to a written resolution is by way of the member’s signature, or such other method as the constitution provides. This amendment gives effect to Recommendation 2.6 of the RSC.

Clause 99 inserts a new section 184DA to provide that, subject to the constitution of a company, a proposed written resolution of the company will lapse after 28 days of it being circulated if the required majority vote is not attained. This amendment gives effect to Recommendation 2.7 of the RSC.

Clause 100 amends section 186 to replace subsection (1) to shorten the time within which a copy of the resolutions specified in the subsection are required to be lodged with the Registrar. This amendment gives effect to modified Recommendation 5.12 of the RSC.

Clause 101 amends section 188(1)(a) to replace the reference to the company's managers with the company's chief executive officers. This amendment gives effect to modified Recommendation 5.5 of the RSC.

Clause 102 amends section 189(2A) to replace the reference to the company's managers with its chief executive officers. This amendment gives effect to modified Recommendation 5.5 of the RSC.

Clause 103 amends the heading of Division 4 of Part V to reflect that the Division has been amended to apply only to public companies.

Clause 104 inserts a new section 189A to state that Division 4 of Part V will apply only to public companies.

Clause 105 amends section 190 to limit its application only to public companies and to provide that private companies no longer need to keep and maintain a register of members. This amendment gives effect to Recommendation 5.1 of the RSC.

Clauses 106, 107 and 108 amend sections 191, 192 and 193, respectively, as a consequence of the amendments to section 190 by clause 105.

Clause 109 amends section 196 —

(a) to shorten the period in subsection (2) within which a company must lodge with the Registrar a notice of the situation of the office where any branch register is kept and other related notices to give effect to modified Recommendation 5.12 of the RSC; and

(b) as a consequence of the amendments to section 190 by clause 105.

Clause 110 inserts new sections 196A to 196D to give effect to Recommendations 5.1 and 5.2 and modified Recommendation 5.3 of the RSC.

The new section 196A requires the Registrar to keep and maintain an electronic register of members of each private company.

The new section 196B requires existing private companies to furnish such information as is necessary to be included in the electronic register of members for those companies within the specified period.

The new section 196C applies, with modifications, the provisions of sections 194 and 195 to the electronic register of members of a private company.

The new section 196D requires existing private companies to continue to keep, but not update, their existing branch registers of members and register of members.

Clause 111 repeals and re-enacts section 197 —

- (a) to provide that the annual return required to be lodged by every company is to contain prescribed particulars (instead of those set out in the Eighth Schedule, which is repealed by clause 183); and
- (b) to clarify in the new subsection (4), when a company that has dispensed with the holding of its annual general meeting in relation to a year is required to lodge its annual return.

Clause 112 replaces the heading of Part VI as a consequence of the replacement of the references to “accounts” with “financial statements”.

Clause 113 replaces the heading of Division 1 of Part VI to better reflect the substance of the division.

Clause 114 amends section 199 —

- (a) to provide in subsection (1) that the obligation to keep accounting and other records to explain the transactions and financial position of the company is imposed on the company only, for consistency with subsection (2A);
- (b) to substitute the words “profit and loss accounts and balance-sheets” with the words “financial statements” to give effect to Recommendation 4.35 of the RSC;
- (c) to substitute the word “subsidiary” with the words “subsidiary company” to give effect to Recommendation 4.38 of the RSC; and
- (d) to align the penalty for breaching the section, which is set out in subsection (6), with the penalty imposed under the new section 201AA(2) for a breach of the new section 201AA(1).

Clause 115 repeals section 200 as the alignment of the financial year between a parent company and its subsidiaries will be governed by the Accounting Standards. This amendment gives effect to Recommendation 4.39 of the RSC.

Clause 116 repeals and re-enacts section 201 —

- (a) to substitute the references to “profit and loss account” and “accounts” with “financial statements”. This amendment gives effect to Recommendation 4.35 of the RSC;
- (b) to substitute the references to “holding company” and “subsidiary” with “parent company” and “subsidiary company”, respectively. This amendment gives effect to Recommendation 4.38 of the RSC;
- (c) to empower the Registrar to extend the periods for a company to lay its financial statements at its annual general meeting in respect of such class of companies as may be prescribed;

- (d) to allow the financial statements of a company to be audited less than 14 days before the annual general meeting if all the persons who are entitled to receive notice of general meetings of a company agree;
- (e) to remove the requirement for the directors to, issue a report to be attached to the financial statements and disclose directors' benefits, as similar disclosure requirements are already prescribed under the Accounting Standards or are fulfilled in the financial statements. This amendment gives effect to Recommendations 4.13 and 4.15 of the RSC;
- (f) to require 2 directors of a company, on behalf of all the directors of the company, to sign a statement containing the information set out in the new Twelfth Schedule inserted by clause 184. The statement, which will contain the list of all the directors of the company, will accompany the audited financial statements of the company. This amendment gives effect to Recommendation 4.16 of the RSC; and
- (g) to provide savings and transitional provisions.

Clause 117 inserts new sections 201A and 201AA.

The new section 201A exempts dormant companies that satisfy the requirements of subsection (2) from the requirement to prepare financial statements under the new section 201. This amendment gives effect to Recommendations 4.6, 4.7 and 4.11 of the RSC.

The new section 201AA requires a company to keep at its registered office, or such other place as the directors think fit, a copy of each document that was laid before the company at its annual general meeting, or where a company has dispensed with holding its annual general meeting, a copy of its financial statements, or consolidated financial statements and balance-sheet, and related documents which were sent to all persons entitled to receive notice of general meetings of the company. The Registrar or authorised officers are empowered to inspect the financial statements kept or to require a company to produce the documents that are required to be kept.

Clause 118 amends section 201B to replace sub-paragraph (vi) of subsection (5)(a) and to replace subsection (9) for the following purposes:

- (a) to substitute the references to "balance-sheet" and "profit and loss account" with "financial statements" to give effect to Recommendation 4.35 of the RSC;
- (b) to substitute the references to "holding company" with "parent company" to give effect to Recommendation 4.38 of the RSC;
- (c) to substitute the references to the directors' report with the references to the directors' statement; and
- (d) to delete subsection (10) which is obsolete.

Clause 119 amends section 201C to substitute the references to “accounts” with “financial statements” to give effect to Recommendation 4.35 of the RSC.

Clause 120 amends section 202 —

- (a) to substitute the references to “accounts” with “financial statements” to give effect to Recommendation 4.35 of the RSC; and
- (b) to delete references to the directors’ report, the requirement for which has been deleted under the new section 201 inserted by clause 116.

Clause 121 inserts new sections 202A and 202B.

The new section 202A empowers the directors of a company to cause the financial statements, or consolidated financial statements or balance-sheet, to be revised if they are of the view that these documents do not comply with the requirements of the Act. The directors may also make necessary consequential revisions to the summary financial statement or directors’ statement. This amendment gives effect to Recommendation 4.41 of the RSC.

The new section 202B empowers the Registrar to apply to the Court for a declaration that the financial statements, or consolidated financial statements or balance-sheet, of a company do not comply with the requirements of the Act, and for an order to require a company to revise any of these documents, if it appears to the Registrar that the documents do not comply with the requirements of the Act. The Registrar may make the application if, upon giving notice of this to the company, the Registrar does not get any response from the company, or he is not satisfied with the explanation given by the company with respect to the documents, or he does not agree with the manner in which the company has proposed to revise the documents. This amendment gives effect to Recommendation 4.40 of the RSC.

Clause 122 amends section 203 —

- (a) to substitute the references to “profit and loss account and balance-sheet”, “accounts and balance-sheet”, “accounts” and “balance-sheet” with “financial statements” to give effect to Recommendation 4.35 of the RSC;
- (b) to substitute the references to “holding company” with “parent company” to give effect to Recommendation 4.38 of the RSC;
- (c) to allow a company to send the financial statements, or consolidated financial statements, balance-sheet and related documents, less than 14 days before the date of the general meeting if all the persons entitled to receive notice of general meetings consent. This amendment gives effect to modified Recommendation 4.37 of the RSC;
- (d) to shorten the period in subsection (4) within which a member or an auditor of a company, which has dispensed with the holding of its annual general meeting, may require the company to hold a general meeting for

the purpose of laying the financial statements and related documents before the company; and

- (e) to shorten the period in subsection (6) within which the directors of the company have to hold a general meeting after receiving a notice from a member or an auditor under subsection (4).

Clause 123 amends section 203A —

- (a) to allow all companies to send to its members summary financial statements, instead of the documents referred to in section 203(1). This amendment gives effect to Recommendation 4.12 of the RSC;
- (b) to substitute the references to “annual accounts” and “accounts and the report” with “annual financial statements” and “financial statements or consolidated financial statements, and the directors’ statement”, respectively, to give effect to Recommendations 4.15 and 4.35 of the RSC;
- (c) to clarify that the directors of a company are responsible for ensuring that the summary financial statements comply with the requirements specified in subsections (5) and (6); and
- (d) to delete the definition of the word “listed” in subsection (8) as it is no longer used in section 203A.

Clause 124 amends section 204 —

- (a) to make consequential amendments in relation to the repeal and re-enactment of section 201 by clause 116;
- (b) to substitute the references to “accounts” with “financial statements” to give effect to Recommendation 4.35 of the RSC; and
- (c) to substitute the references to “holding company” with “parent company” to give effect to Recommendation 4.38 of the RSC.

Clause 125 amends section 205 —

- (a) to clarify that the directors of a company may only appoint an accounting entity or accounting entities to be the auditor or auditors of the company;
- (b) to replace subsection (3) to provide that the power of the directors of a company to appoint an accounting entity to fill any casual vacancy in the office of auditor of the company is subject to the new section 205AF (Appointment of new auditor in place of resigning auditor) inserted by clause 126;
- (c) to amend subsection (8) to provide that the Registrar has the discretion, but is not required, to appoint an auditor for a company if the company

does not appoint another auditor where an auditor of the company is removed from office at a general meeting of the company; and

- (d) to delete subsections (14) and (15) as a consequence of the insertion of the new sections 205AA to 205AF by clause 126.

Clause 126 inserts new sections 205AA to 205AF.

The new section 205AA provides that an auditor of a non-public interest company (other than a subsidiary company of a public interest company) may resign before the end of the term of office for which he was appointed by giving the company a written notice of resignation. This amendment gives effect to modified Recommendation 4.23 of the RSC.

The new section 205AB provides that an auditor of a public interest company or a subsidiary company of a public interest company may resign before the end of the term of office for which he was appointed if the auditor has applied for and obtained consent from the Registrar to the resignation, and has notified the company of his application. This amendment gives effect to modified Recommendation 4.23 and Recommendation 4.24 of the RSC.

The new section 205AC requires a company which receives a notice of resignation from its auditor and a written statement of the auditor's reasons for his resignation under the new section 205AB to send a copy of the written statement to every member of the company, unless an application is made to the Court for a determination that the auditor has abused the use of the written statement or is using the procedure in the new section 205AC to secure needless publicity for defamatory matter. This amendment gives effect to modified Recommendation 4.25 of the RSC.

The new section 205AD sets out the procedure and the Court's powers following an application to the Court for an order to not send the written statement of the auditor's reasons for resignation to its members.

The new section 205AE provides that a person will not be liable to any action for defamation in respect of publication of a written statement of an auditor's reasons for resignation if there is an absence of malice or if the publication is made upon a refusal of an application made to the Court under the new section 205AC.

The new section 205AF requires the directors of a company, whose financial statements are required to be audited under the Act or where the resigning auditor is the sole auditor of the company, to appoint an auditor in place of the auditor who desires to resign or has resigned, failing which the Registrar may, on the application of any member of the company, make the appointment.

Clause 127 amends section 205B —

- (a) to expand the list of transactions in subsection (3), the occurrence of which is to be disregarded in determining whether a dormant company has

ceased to be dormant. This amendment gives effect to Recommendation 4.10 of the RSC; and

- (b) to substitute the references to “profit and loss accounts and balance-sheet, or consolidated accounts and balance-sheet” in subsection (4)(a) with “financial statements or consolidated financial statements and balance-sheet” to give effect to Recommendation 4.35 of the RSC.

Clause 128 repeals and re-enacts section 205C to exempt from the audit requirements —

- (a) a small company;
- (b) a parent company which is a small company and is part of a small group; and
- (c) a subsidiary company which is a small company and is part of a small group.

This amendment gives effect to Recommendations 4.1, 4.2 and 4.3 of the RSC.

Clause 129 amends section 205D to substitute the references to “accounts” with “financial statements” to give effect to Recommendation 4.35 of the RSC.

Clause 130 amends section 206(1) to substitute the reference to “subsidiary” with “subsidiary corporation” to give effect to Recommendation 4.38 of the RSC.

Clause 131 amends section 207 —

- (a) to substitute the references to “accounts” and “consolidated accounts” with “financial statements” and “consolidated financial statements”, respectively, to give effect to Recommendation 4.35 of the RSC;
- (b) to substitute the references to “holding company” and “subsidiaries” with “parent company” and “subsidiary corporations”, respectively, to give effect to Recommendation 4.38 of the RSC;
- (c) to make a consequential amendment to subsection (2)(aa) in relation to the repeal and re-enactment of section 201;
- (d) to clarify that the reference to proper accounting and other records in subsection (3) refers to the records which have to be kept under section 199(1). This amendment gives effect to Recommendation 4.19 of the RSC;
- (e) to delete paragraph (d) of subsection (3) to remove the requirement for an auditor to form an opinion on the procedures and methods used by a holding company or a subsidiary in arriving at the amounts taken into any consolidated financial statements. This amendment gives effect to Recommendation 4.20 of the RSC; and

- (f) to revise the definition of “a serious offence involving fraud or dishonesty” by increasing the value of the property obtained or likely to be obtained from the commission of the offence. This amendment gives effect to modified Recommendation 4.22 of the RSC.

Clause 132 inserts a new section 208A to render any provision for exempting any auditor of a company from or indemnifying him or it against any liability in respect of any negligence, default, breach of duty or breach of trust of which he or it may be guilty in relation to the company, void. However, a company may indemnify an auditor against any liability incurred or will be incurred in defending any proceedings in which judgement is given in his or its favour or in which he or it is acquitted, or in connection with any application specified in subsection (2) in which relief is granted to him or it by the court. This amendment gives effect to Recommendations 4.28 and 4.29 of the RSC.

Clause 133 amends section 209(1) by substituting the references to “balance-sheet or profit and loss account” with “financial statements” to give effect to Recommendation 4.35 of the RSC.

Clause 134 repeals and re-enacts section 209A to set out definitions of terms that are used in Part VI.

Clause 135 amends section 210 —

- (a) to delete subsections (1), (2) and (3) and substitute new subsections (1) to (3AB), and make consequential amendments to the other subsections to clarify that holders of units of shares in a company, for instance holders of share options, can be parties to a scheme of arrangement of the company. These amendments give effect to Recommendation 3.39 of the RSC;
- (b) to confer a discretion on the Court, under the new subsection (3AB) to prevent the defeat of a member’s scheme of arrangement by opposing parties who engaged in share splitting, that is to say, one or more members transferring small parcels of shares to a large number of other persons who are willing to vote according to their wishes. This amendment gives effect to Recommendation 3.40 of the RSC;
- (c) to replace subsection (6) to substitute references to “memorandum” with “constitution” to give effect to Recommendation 5.6 of the RSC;
- (d) to insert new subsections (10A) and (10B) to provide that all forms of consideration paid under any compromise or arrangement may be transferred to the Official Receiver if the rightful owner cannot be located. This clarifies the handling of unclaimed consideration. This amendment gives effect to Recommendation 3.55 of the RSC;
- (e) by amending the definition of “company” in subsection (11) to exclude any society;

- (f) to insert a new definition of “holder of units of shares” in subsection (11); and
- (g) to replace the section heading to better reflect the substance of the amended section 210.

Clause 136 amends section 211 and the section heading to clarify that holders of units of shares in a company, for instance holders of share options, can be parties to a scheme of arrangement of the company under the amended section 210. These amendments give effect to Recommendation 3.39 of the RSC.

Clause 137 amends section 212 to replace subsection (6) to amend the definition of “company” so that, for the purposes of the provision, it includes foreign companies. This amendment gives effect to Recommendation 3.43 of the RSC.

Clause 138 amends section 215 —

- (a) to enable an individual to acquire shares in a transferor company under this section. This amendment gives effect to Recommendation 3.47 of the RSC;
- (b) to insert new subsections (1A) and (1B) to give effect to Recommendation 3.54 of the RSC:
 - (i) the new subsection (1A) provides that where a transferee offers alternative terms to the shareholders of the transferor company for the acquisition of the shares in the transferor company, the dissenting shareholder has to elect which of the alternative terms he prefers within the period stipulated in the subsection; and
 - (ii) the new subsection (1B) requires a transferee, who offers alternative terms to the shareholders of the transferor company, to specify which of the terms will apply to a dissenting shareholder who fails to make an election;
- (c) to insert new subsections (1C) and (1D):
 - (i) the new subsection (1C) states that shares issued, and treasury shares that cease to be held as treasury shares, after the date of the transferee’s offer to acquire the shares in the transferor company, will be disregarded for purposes of determining whether the threshold of 90% of the total number of shares, or shares in a particular class, of the transferor company has been attained. This amendment gives effect to Recommendation 3.52 of the RSC; and
 - (ii) the new subsection (1D) sets out the definition of “relevant treasury shares” which is used in the new subsection (1C);
- (d) to delete subsection (3) and substitute new subsections (3) and (3A) to make consequential amendments in relation to the amendment to enable

an individual to acquire shares in a transferor company under this section, and to state that in determining whether the threshold of 90% of the total number of shares, or shares in a particular class, of the transferor company has been attained before a transferee is entitled and bound to acquire the remaining shares, or remaining shares of that class, from holders who have not accepted the offer, shares held by the transferor company as treasury shares are to be treated as having been acquired by the transferee. This amendment gives effect to Recommendation 3.53 of the RSC;

- (e) to replace subsections (6) and (7) so that all forms of consideration paid under an offer to acquire shares in a transferor company which are held in trust by a company for any person, may or shall (as the case may be) be transferred to the Official Receiver within the specified period. This amendment gives effect to Recommendation 3.55 of the RSC; and
- (f) to insert 2 new subsections (8A) and (8B) to define the terms used in the section and the new sections 215AA and 215AB, and to extend the ambit of section 215 to include an offer to acquire units of shares in a transferor company. This amendment gives effect to Recommendation 3.46 of the RSC.

Clause 139 inserts new sections 215AA and 215AB.

The new section 215AA sets out the modifications to section 215 where an offer to acquire shares in a transferor company is made by 2 or more persons jointly. This amendment gives effect to Recommendation 3.48 of the RSC.

The new section 215AB provides that where a transferor company has shareholders to whom an offer to acquire shares in the transferor company could not be communicated, the offer does not fail under section 215 if these shareholders are not resident in Singapore, the offer was not communicated to them to avoid contravening a foreign law or because communication to these shareholders would be onerous, and reasonable efforts have been made to publicise details of the offer. This amendment gives effect to Recommendation 3.56 of the RSC.

Clause 140 amends section 215B(1) to delete paragraph (c) and substitute new paragraphs (c) and (ca) to allow every director of an amalgamated company to state an alternate address, instead of his residential address, in the register of directors kept by the Registrar. This is a consequential amendment arising from the amendments to section 173 by clause 90. A consequential amendment is also made to section 215B(5)(b).

Clause 141 amends section 215D —

- (a) to provide in subsection (1) that the short-form amalgamation under the section applies to an amalgamation of a group of companies where one of

the subsidiaries is the surviving amalgamated company. This amendment gives effect to Recommendation 3.57 of the RSC;

- (b) to amend subsection (2)(c) so that it is a requirement for the directors of every amalgamating company, which intends to amalgamate under subsection (2), to be satisfied that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to be effective, instead of within a 12-month period after this date. The solvency requirement of each amalgamating company in the new subsection (1)(c) and the solvency requirement in the amended subsection (2)(c) are also aligned. These amendments give effect to modified Recommendation 3.60 of the RSC; and
- (c) to make other consequential amendments.

Clause 142 amends section 215E(1) by inserting a new paragraph (*aa*) to require a solvency statement, if made under section 215C(2) or 215D(5), to be filed with the Registrar for the purpose of effecting an amalgamation, and by making other consequential amendments.

Clause 143 amends section 215I(2) so that a solvency statement issued for the purpose of an amalgamation need not be in the form of a statutory declaration. A declaration in writing will suffice. This amendment gives effect to Recommendation 3.20 of the RSC. A consequential amendment is also made to section 215I(4)(a)(i).

Clause 144 amends section 215J to replace subsection (1) so that —

- (a) the solvency statement to be made by the board of directors of each amalgamating company must state that the directors are of the opinion that the amalgamated company will be able to pay its debts as they fall due as at the date on which the amalgamation is to be effective, instead of within a 12-month period after this date. This amendment gives effect to modified Recommendation 3.60 of the RSC; and
- (b) the solvency statement need not be in the form of a statutory declaration. A declaration in writing will suffice. This amendment gives effect to Recommendation 3.20 of the RSC.

A consequential amendment is also made to section 215J(3)(a)(i).

Clause 145 inserts a new section 215K so that all forms of consideration, which are paid under an amalgamation and held by or on behalf of any party to the amalgamation in trust for any person, may or shall (as the case may be) be transferred to the Official Receiver within the specified period. This amendment gives effect to Recommendation 3.55 of the RSC.

Clause 146 amends section 216A —

- (a) to delete the definition of “company” in subsection (1), which defines the term to exclude a company listed on the securities exchange in Singapore, so that derivative or representative actions referred to in the section may also be brought in respect of companies listed on a security exchange in Singapore. This amendment gives effect to Recommendations 2.29 and 2.30 of the RSC; and
- (b) to expand the scope of section 216A to allow a complainant to bring an arbitration in the name and on behalf of a company, or intervene in an arbitration to which a company is party for the purpose of prosecuting, defending or discontinuing the arbitration on behalf of the company. This amendment gives effect to Recommendation 2.28 of the RSC.

Clause 147 makes a technical amendment to section 223(1)(c).

Clause 148 makes technical amendments to section 225(1)(a).

Clause 149 amends section 227X to make consequential amendments in relation to the amendments to section 210 made by clause 135.

Clause 150 amends section 254 to insert a new subsection (2A) to empower the Court, in relation to certain applications for winding up a company, to order that interest in shares held by one or more members of the company be purchased by the company or other members of the company, instead of winding up the company. This amendment gives effect to Recommendations 2.26 and 2.27 of the RSC.

Clause 151 amends section 328 to delete subsections (2) and (2A) and substitute a new subsection (2) to enable the Minister to publish the maximum amounts of wages or salary, and the amount due to an employee as a retrenchment benefit or ex gratia payment, which are conferred priority to other unsecured debts in a winding up.

Clause 152 amends section 344 —

- (a) to provide in subsection (1) that the letter stating the Registrar’s belief that a company is not carrying on business or is not in operation, must also be sent to the company’s directors, secretaries and members. This amendment gives effect to modified Recommendation 5.21 of the RSC;
- (b) to insert a new subsection (1A) to provide that the Registrar may have regard to prescribed circumstances in determining whether there is reasonable ground to believe that a company is not carrying on business;
- (c) to shorten the period under subsection (2) within which cause may be shown as to why the name of a company should not be struck off, failing which the name of the company will be struck off the register and the company will be dissolved. This amendment gives effect to Recommendation 5.20 of the RSC;

- (d) to shorten the period under subsection (5) within which an aggrieved person may apply to the Court to restore the name of a company which has been struck off the register. This amendment gives effect to Recommendation 5.24 of the RSC; and
- (e) to insert a new subsection (7) to require the Registrar to send the particulars of a company, which the Registrar believes is not carrying on business or is not in operation, to the Inland Revenue Authority of Singapore and the Central Provident Fund Board, and to publish the substance of certain notices on the Authority's website. This amendment gives effect to modified Recommendation 5.21 and Recommendation 5.22 of the RSC.

Clause 153 inserts new sections 344A to 344G to give effect to modified Recommendations 5.21 and 5.25 and Recommendations 5.22, 5.23, 5.24, 5.26, 5.27, 5.28, 5.29 and 5.30 of the RSC.

The new section 344A sets out the manner in which a company may apply for its name to be struck off the register (striking off) and the procedure to be followed (including the notices to be published and the public authorities to be notified).

The new section 344B allows the applicant for striking off to withdraw the application.

The new section 344C sets out the grounds and manner for an objection to an application for striking off.

The new section 344D allows a former director or a former member of a company which name has been struck off, to apply to the Registrar to restore the name of the company to the register.

The new section 344E sets out the consequences of the Registrar's decision to restore the name of a company that had been struck off. A person aggrieved by the Registrar's decision not to restore the name of a company that was struck off may appeal to the Court.

The new section 344F empowers the Registrar to, at his own initiative, restore the name of a company which was struck off the register as a result of the Registrar's mistake.

The new section 344G sets out the effect of a restoration of the name of a company that had been struck off.

Clause 154 repeals and re-enacts section 365 to clarify that Division 2 of Part XI applies to all foreign companies which establish a place of business or carry on business in Singapore, or intend to do so.

Clause 155 amends section 366 —

- (a) to insert a definition of the term “authorised representative” which replaces the term “agent” in the provisions in Division 2 of Part XI to better reflect the accountability and responsibility expected of the person;
- (b) to clarify that the definition of “carrying on business” does not exclude activities carried on without a view to any profit. This makes clear that the activities of non-profit organisations in Singapore are not excluded from the definition by reason only that the activities in question are not carried on with a view to making a profit;
- (c) to clarify that the word “Authority” in subsection (2)(k) refers to “the Monetary Authority of Singapore”; and
- (d) to empower the Minister to prescribe other activities that are not to be regarded as carrying on business for the purposes of Division 2 of Part XI.

Clause 156 repeals and re-enacts section 368 and inserts new sections 368A and 368B.

The new section 368 seeks to give effect to the following:

- (a) to require a foreign company to lodge the specified particulars and documents of the foreign company with the Registrar;
- (b) to reduce the minimum number of authorised representatives to be appointed by a foreign company from 2 to one;
- (c) to require a foreign company to lodge specified particulars of each of its authorised representatives, and to document the consent of the authorised representative;
- (d) to require a foreign company to make available for inspection the evidence of appointment of each of its authorised representatives at its registered office in Singapore; and
- (e) to require a foreign company to provide the residential address of each of its directors and authorised representatives.

The new section 368A imposes a duty on a director and an authorised representative of a foreign company to furnish such information to the company so as to enable the company to comply with sections 370(4) and 372(1). The director and authorised representative must also furnish such information to the foreign company, as may be required to confirm the company’s record of such information or reinstate its record of the information where the original record of the information has been destroyed or lost.

The new section 368B provides saving and transitional provisions pursuant to the re-enactment of section 368.

Clause 157 amends section 369(1) to align the provision with existing section 20(2).

Clause 158 amends section 370 to delete subsections (4), (5) and (6) and substitute new subsections (4) to (7):

- (a) to replace the word “agent” with “authorised representative”;
- (b) to require the lodgment of a consent statement in respect of the appointment of any new authorised representative; and
- (c) to require a foreign company to appoint a replacement authorised representative before the existing sole authorised representative is permitted to resign, and to appoint a replacement authorised representative within 21 days after the death of the existing sole authorised representative.

Clause 159 inserts a new section 370A to set out the conditions and circumstances in which an alternate address may be disclosed or made available on the register instead of a director’s or an authorised representative’s residential address and also the circumstances in which the privilege of having an alternate address disclosed or made available may be lost or restricted.

Clause 160 amends section 372 —

- (a) to require in subsection (1) that a foreign company must lodge particulars of any change of the following with the Registrar:
 - (i) its constitution;
 - (ii) particulars of its directors and authorised representatives;
 - (iii) the description of its business; and
 - (iv) the type of legal form or legal entity of the foreign company;
- (b) to remove the existing requirement in subsection (1)(g) to lodge the particulars of any change in the powers of any directors resident in Singapore who are members of its local board of directors and to make a technical amendment;
- (c) to replace subsections (1A), (1B) and (1C) to require a director and an authorised representative of a foreign company to inform the Registrar of changes of his residential address;
- (d) to delete subsection (2) to remove the requirement on a foreign company to report any change in its authorised share capital;
- (e) to delete subsection (3) to remove the requirement on a foreign company to report any change in its number of members; and
- (f) to make other technical amendments.

Clause 161 repeals and re-enacts section 373 —

- (a) to require in subsection (1) that a foreign company must lodge (depending on the circumstances) financial statements which are prepared in accordance with any applicable accounting standards which are similar to the Accounting Standards or which are acceptable to the Registrar; or financial statements which the directors of the company would be required to prepare or obtain under the Act if the foreign company were a public company;
- (b) to specify in subsection (3) the period within which a foreign company must lodge its financial statements with the Registrar;
- (c) to require the foreign company to lodge a statement of the name of the auditor who audited the documents specified in subsection (7);
- (d) to exempt a foreign company's accounts relating to their operations in Singapore (Singapore branch accounts) from audit requirements under subsection (9), if the foreign company is dormant in Singapore;
- (e) to allow, under subsection (10), a foreign company to apply for an extension of time to prepare and file their Singapore branch accounts upon payment of a fee;
- (f) to empower the Registrar under subsection (12) to waive the requirement of a foreign company to file any document specified in subsection (7), relating to its Singapore branch accounts;
- (g) to empower the Registrar under subsection (13) to grant relief to a foreign company from any requirement relating to the audit or form and contents of its Singapore branch accounts and, where the head office financial statements are required to be prepared as if the foreign company were a public company incorporated in Singapore, its head office financial statements;
- (h) to empower the Minister, under subsection (17)(b), to exempt foreign companies of a specified class or description from the requirement to file their Singapore branch accounts; and
- (i) to provide in subsection (18) that if a foreign company fails to comply with the section, the company, every director or equivalent person, and every authorised representative of the company who knowingly and wilfully authorises or permits the default will be guilty of an offence. The penalties imposed are consistent with that imposed on a director of a Singapore-incorporated company for similar offences under section 204.

Clause 162 amends section 375 —

- (a) to remove the requirement for a foreign company to exhibit its name and place of formation outside its registered office and every place of business it establishes in Singapore;
- (b) to require under new subsection (3) that a foreign company must state its unique entity number issued by the Registrar in its documents; and
- (c) to provide under new subsection (4) a transitional period for existing companies to comply with the amendments to section 375.

Clause 163 amends section 377 —

- (a) to delete subsection (1) and substitute subsections (1), (1A) and (1B) to shorten the period from the time of lodgment of a notice of cessation of business within which the Registrar must record in the register the fact that the company has ceased to have a place of business in Singapore or ceased to carry on business in Singapore;
- (b) to shorten the timeframe in subsection (2) for lodging the notice of liquidation and dissolution of a foreign company which goes into liquidation or is dissolved;
- (c) to substitute the reference to “agent” with “authorised representative”;
- (d) to delete subsection (6); and
- (e) to delete subsections (8) and (9) and substitute new subsections (8) to (13). In particular —
 - (i) to empower the Registrar to strike the name of foreign company off the register if the company ceases to carry on business or to have a place of business in Singapore;
 - (ii) to empower the Registrar to strike the name of foreign company off the register upon the application of the sole authorised representative of the company if the company fails to appoint an authorised representative after the death of its sole authorised representative, or the company has failed to respond to a written request by its sole authorised representative to appoint a replacement authorised representative for the purpose of his resignation or to a written request for instructions as to whether the company wishes to cancel or continue its registration under the Act;
 - (iii) to provide that the Registrar may have regard to such prescribed circumstances in determining whether there is reasonable ground to believe that the company is not carrying on business; and

- (iv) to give a person who is aggrieved by the Registrar's decision under subsection (8), (9) or (10) a right of appeal to the Minister.

Clause 164 inserts new sections 377A to 377D relating to administrative restoration of foreign companies which names have been struck off the register (struck-off), which are similar to the new sections 344D to 344G, which are inserted by clause 153 and are applicable to Singapore-incorporated companies.

The new section 377A allows a former director or a member of a foreign company which name has been struck off to apply to the Registrar to restore the name of the company to the register within 6 years of the company being struck-off.

The new section 377B sets out the consequences of the Registrar's decision to restore the name of a foreign company that had been struck-off. A person aggrieved by the Registrar's decision not to restore a foreign company that was struck off may appeal to the Court.

The new section 377C empowers the Registrar to, at his own initiative, restore the name of a foreign company which was struck off the register as a result of the Registrar's mistake.

The new section 377D sets out the effect of a restoration of a foreign company that had been struck off.

Clause 165 repeals and re-enacts section 378 —

- (a) to expand the Registrar's powers to refuse the registration of a foreign company by a name which is identical to a name of a company, limited liability partnership, limited partnership or corporation or to a business name which is registered or reserved by the Registrar;
- (b) to prevent the Registrar from registering a foreign company by a name which is identical to certain business names and the names of certain companies, foreign companies, limited liability partnerships and limited partnerships, within the moratorium period specified in subsection (2), unless consent of the Minister is obtained;
- (c) to set out the exceptions, which relate to certain foreign companies and limited partnerships, to subsection (1);
- (d) to empower the Registrar to direct a foreign company to change its name under the circumstances set out in subsection (5);
- (e) to empower a person to apply to the Registrar to direct a foreign company to change its name, and to confer a right of appeal, on a person who is aggrieved by the Registrar's refusal to do so, to the Minister;
- (f) to provide that the Registrar must not reserve any name in respect of a foreign company where he is satisfied that the foreign company is likely to

be used for certain undesirable purposes specified in subsection (15). A person who is aggrieved by the Registrar's decision may appeal to the Minister; and

- (g) to allow an application to be made to extend the period during which a name of a foreign company may be reserved. A person who is aggrieved by the Registrar's refusal of the application may appeal to the Minister.

Clause 166 amends section 379 to align for consistency the periods within which a foreign company must notify the Registrar of the address at which it is keeping its branch register, of any change to that address or of the fact that the branch register is discontinued, to 30 days.

Clause 167 inserts a new section 386A to define the terms "consolidated financial statements", "parent company" and "financial statements" which are used in the amended section 387B, new section 387C and amended sections 397 and 401.

Clause 168 amends section 387B —

- (a) to provide that the financial statements may be sent, etc., to a member, an officer or an auditor of the company using electronic communications; and
- (b) to substitute the references to "memorandum or articles" with "constitution" arising from Recommendation 5.6 of the RSC.

Clause 169 inserts a new section 387C to clarify that certain documents may be given, sent or served by a company using electronic communications in accordance with the constitution of the company. This amendment gives effect to Recommendations 2.18, 2.19, 2.20 and 2.21 of the RSC.

Clause 170 repeals and re-enacts sections 395 and 396 and inserts new section 396A to give effect to Recommendations 5.15 and 5.16 of the RSC.

The new section 395 requires a company to keep adequate records of the information required to be contained in any company records for future reference. Such records may be kept in hard copy form or in electronic form.

The new section 396 requires the company to take reasonable precautions to ensure the proper maintenance and authenticity of company records which are not kept in hard copy form.

The new section 396A sets out the company's duties where the Act requires its company's records to be available for inspection.

Clause 171 amends section 397 to replace subsection (3) to provide that if financial statements of a company required to be kept by the Act are not kept in English, the directors of the corporation are required to provide an English translation of the financial statements.

Clause 172 amends section 401 to replace subsection (2) to make clear that the offence of making or authorising the making of a false or misleading document, etc., applies such that every person who wilfully makes or authorises the making of a false and misleading statement in any financial statement, or causes any of the documents specified in the subsection to be misleading in a material respect, will be guilty of an offence.

Clause 173 amends section 405 —

- (a) to make it an offence for any person, other than a foreign company, to have the word “Limited” or “Berhad” as the final word in its name or title, or to hold out that he is carrying on a business incorporated under the Act, if the business was not so incorporated under the Act at the time; and
- (b) to insert a new subsection (3) to make it an offence for any person, his agent or a person acting on his behalf, to hold out that a business is registered as a foreign company when at the material time the business was not so registered.

Clause 174 makes a technical amendment to section 408(1).

Clause 175 amends section 409 to delete subsections (4), (5) and (6) as they are covered by the new section 409B inserted by clause 176.

Clause 176 inserts a new section 409B to empower the Registrar to compound any offence under the Act which is prescribed as a compoundable offence by collecting a sum of money from a person reasonably suspected of having committed the offence.

Clause 177 inserts a new section 409C which gives any party aggrieved by an act or a decision of the Registrar under the Act a right to appeal to the Court against the act or decision. This reproduces the content of section 12(6) which is deleted by clause 10.

Clause 178 amends section 410 to clarify that the Rules Committee is constituted under section 80 of the Supreme Court of Judicature Act (Cap. 322).

Clause 179 amends section 411 to empower the Minister to —

- (a) prescribe fees payable under the Act and in respect of certain other matters;
- (b) prescribe penalties payable for the late lodgment of documents;
- (c) prescribe the manner in which prescribed fees and penalties are to be paid;
- (d) make regulations relating to the waiver, refund or remission of any fee or penalty chargeable under the Act;

- (e) to prescribe all matters connected with or arising from the restrictions as to the reservation or registration of names of companies and foreign companies; and
- (f) to insert a new subsection (2) to expressly provide that regulations may provide that a contravention of a specified provision of the regulations is an offence.

Clause 180 repeals the Second Schedule.

Clause 181 repeals the Fourth Schedule to give effect to modified Recommendation 5.10 of the RSC.

Clause 182 makes consequential amendments to the Sixth Schedule which relate to the amendments to section 173 made by clause 90.

Clause 183 repeals the Eighth Schedule as the contents of an annual return will be prescribed under the new section 197 inserted by clause 111.

Clause 184 inserts new Twelfth and Thirteenth Schedules.

The new Twelfth Schedule sets out the contents of directors' statement referred to in the new section 201(16) inserted by clause 116. This is a consequential amendment arising from the abolition of a separate directors' report. It also consolidates the disclosure requirements in a directors' statement to give effect to Recommendations 4.13, 4.15 and 4.16 of the RSC.

The new Thirteenth Schedule sets out the criteria for a small company and for a small group, which are referred to in the new section 205C inserted by clause 128.

Clause 185 provides that the miscellaneous amendments to the Companies Act as set out in the First Schedule will apply.

Clause 186 provides savings and transitional provisions in relation to the deletion of the references to "prescribed person" and empowers the Minister to prescribe savings and transitional provisions arising from the enactment of the Bill.

Clause 187 inserts new sections 81SF to 81SV in the Securities and Futures Act (Cap. 289). These provisions substantially replicate the existing provisions contained in Division 7A of Part IV of the Companies Act, which are repealed by clause 62. This amendment gives effect to modified Recommendation 3.16 of the RSC.

Clause 188 provides for the consequential amendments to other written laws.

The First Schedule contains the miscellaneous amendments to the Companies Act.

The Second Schedule contains the consequential amendments to the other written laws.

EXPENDITURE OF PUBLIC MONEY

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