

DEVELOPMENT OF SINGAPORE COMPANY LAW

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¶1-000 Overview of the Companies Act 2006

Companies in Singapore are principally governed by the *Companies Act* (Cap 50).

Singapore's first companies' legislation was the *Indian Companies Act, 1866* which was introduced when Singapore was part of the Straits Settlements. The *Companies Ordinance* (1889) replaced the *Indian Companies Act, 1866* which was then amended a few more times before it was repealed by Singapore's *Companies Act* in 1967.

Since then, the *Companies Act* has been amended substantially to accommodate changes in the business environment and enhance Singapore's competitiveness. Although the *Companies Act* drew extensively from the *Malaysian Companies Act*, various sections of the current *Companies Act* are also based on legislation from UK,¹ Australia,² Canada,³ New Zealand⁴ and Hong Kong.⁵

The *Companies Act* is augmented by the *Companies Regulations 1990*. In addition to the *Companies Act*, Singapore's companies' legislation is further supplemented by other laws like the *Securities and Futures Act* (Cap 289), *Insurance Act* (Cap 142), *Banking Act* (Cap 19), *Finance Companies Act* (Cap 108) and *Trust Companies Act* (Cap 336). The *Companies Act* also extends its legislative reach to include the registration of foreign companies operating in Singapore.

1 *Companies Act 1948, Companies Act 1985*, Companies Bill published with the Department of Trade and Industry Committee: Modernising Company Law (White Paper, CM 5553, Vol II, 2002) and Treasury Shares: Companies (Acquisition of Own Shares) (Treasury Shares) Regulations 2003.

2 *Company Law Review Act 1998, Corporations Law, Corporations Act 2001 and Corporations Act 2002*.

3 *Canada Business Corporations Act 1985*.

4 *Companies Act 1993 and the Report on Company Law Reform: Transition and Revision* (Report No 16 of the Law Commission 1990).

5 *Companies Ordinance* (Cap 32) and *Securities (Disclosure of Interests) Ordinance* (Cap 396).

The *Companies Act* is one of the regulatory statutes that are within the purview of the Minister of Finance. The Minister collaborates and consults with industry experts and key stakeholders to make Singapore a world-class financial and business hub. More specifically, the administration of the *Companies Act* and appointment of the Registrar of Companies are overseen by the Accounting and Corporate Regulatory Authority (ACRA) established under the *Accounting and Corporate Regulatory Authority Act* (ACRA Act) (Cap 2A)⁶ subject to the general or special directions of the Minister.

¶1-010 Application of precedents from Malaysia, Australia, UK, Canada, New Zealand and Hong Kong

Judicial precedent in Singapore is not a straightforward matter. It has even been described as a patchwork quilt since various sections of the current *Companies Act* are adopted from different legislations. Consequently, although Singapore's company law is largely based on English law principles, the two (2) laws differ in the specifics and details. This mirrors Singapore's application of Malaysian, Australian, Canadian, New Zealand and Hong Kong's company law principles. Notwithstanding that, in the absence of guidance from our courts, precedents from these jurisdictions are often cited and relied on due to our common heritage. Authorities from these jurisdictions are persuasive, but not decisive or binding, and should not be referred to indiscriminately.

¶1-020 Application of English Law in commercial matters

Section 5 (now repealed) of the *Civil Law Act* (Cap 43) previously provided that if a question or issue on specific categories of law or in general mercantile law arose in Singapore, the law to be administered should be the same as that administered in England at the corresponding period, unless another provision is made by any written law having force in Singapore. The specific reception of English law under the former s 5 of the *Civil Law Act* has been replaced with the enactment of the *Application of English Law Act* (Cap 7A).

The *Application of English Law Act* provides that the common law of England (including the principles and rules of equity), so far as it was part of the law of Singapore before 12 November 1993, shall continue to be part of the law of Singapore.⁷ Section 3 of the *Application of the English Law Act* also provides that the common law, however, will continue to be in force in Singapore as long as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require.

6 See s 4 and 8(1) of the *Companies Act*; s 2 and 3 of the *Accounting and Corporate Regulatory Authority Act*.

7 See s 3 of the *Application of English Law Act*.

Section 4, read with the First Schedule of the *Application of English Law Act*, specifies the English enactments (adopted in whole or in parts), with the necessary modifications, that apply or continue to apply in Singapore. Some examples include the *Partnership Act 1890*, *Marine Insurance Act 1906*, *Corporate Bodies' Contracts Act 1960* and the *Carriage of Goods by Sea Act 1992*. Section 7 of the *Application of English Law Act* effects miscellaneous amendments to local Acts (as specified in the Second Schedule), incorporating relevant English statutory law into local legislation.

¶1-030 Recent amendments to the Companies Act 2006

In the wake of the Asian Financial Crisis in the late 1990s, the Government initiated several committees to review ways to promote Singapore as a business and financial hub. The *Companies Act* has been amended from time to time and the recommendations of these committees were carried out through a series of legislative amendments, beginning in 2001 with the latest in early 2016.

The main focus of the 2001 amendments was the disclosure requirements for offers or invitations to the public of shares and debentures which saw a shift from merit-based approach in regulating the capital markets to a market-driven disclosure-based regime of supervision.⁸ This was to allow market participants the choice and freedom to take calculated risks in the promotion of a more vibrant market.⁹ To further improve the standard of disclosure, the 2001 amendments saw the introduction of the "reasonable investor" test. This test generally requires an issuer making a public offer to include all material information in the prospectus that an investor and his professional advisors would reasonably require to make an informed decision on the securities being offered.

Further changes were also made to the documents and requirements to enable a company to raise funds from the public. These amendments included:

- the use of a profile statement¹⁰ to accompany the offer of securities;
- lodging a supplementary or replacement prospectus or a supplementary or replacement profile statement which allows issuers to make corrections to its prospectus, with the Registrar of Companies;
- removal of the limit of fifty (50) persons for offers to sophisticated investors;

⁸ *Companies (Amendment) Act 2000*.

⁹ MAS Annual Report 2001/2002 — Developing the Disclosure-based Regime for Singapore's Capital Markets: www.mas.gov.sg/annual_reports/annual20012002/developing-annual-c.html.

¹⁰ Profile statement is an extract from, or an abridged version of, the prospectus.

- the Registrar of Companies to make exemptions from requirements as to form or content of prospectus or profile statement; and
- the time for public listed companies to present their annual reports were also shortened and share buy-back provisions were liberalised to extend to preference shares.¹¹

The next set of amendments was made in 2002 and geared towards effecting the recommendations of the Disclosure and Accounting Standards Committee (DASC) with regards to companies disclosing information to their members. Some examples of the amendments included:¹²

- companies to comply with prescribed accounting standards unless the company is able to disclose the nature and justification for deviations and the companies' external auditor agrees with the decision to deviate from prescribed accounting standards;
- the establishment of a body referred to as the Accounting Standards Committee which was tasked with prescribing statements of standard accounting practice applicable to companies to be referred to as the Accounting Standards; and
- the directors of a company should cause to be made out and laid before the company the true and fair financial statements at its Annual General Meeting (AGM).

The amendments in 2003 were implemented due to the recommendations of the Company Legislation and Regulatory Framework Committee (CLFRC) which sought to reduce costs for small businesses.¹³ The amendments included:¹⁴

- the removal of statutory audit for dormant companies and small exempt private companies;
- removal of statutory requirements for professionally qualified company secretaries for private companies;
- permitting "paper" meetings; and
- dispensing with the requirement of AGM upon the unanimous consent of all members of the company.

In 2004, the following amendments were made:¹⁵

- introduction of a single natural person shareholder company;

¹¹ Previously, share buy-backs were confined to ordinary shares.

¹² *Companies (Amendment) Act 2002*.

¹³ Report of the CLFRC (2002).

¹⁴ *Companies Act (Amendment of Eighth Schedule) Notification 2003 and Companies (Amendment) Act 2003*.

¹⁵ *Companies (Amendment) Act 2004*.

- private companies allowed to raise funds from the public through certain exempted offerings;
- abolition of *ultra vires* and constructive notice doctrines;
- giving companies power to entrench provisions in the memorandum and articles of association (now referred to as the constitution); and
- permitting electronic transmission of notices of meetings and documents.

The *Companies Act* was amended again in 2005 to mainly give effect to four (4) recommendations of the CLFRC which:¹⁶

- abolished the concepts of par value and authorised capital;
- introduced an additional method of reducing capital which did not require court sanction;
- allowed shares to be repurchased by companies to be held as treasury shares; and
- simplified the amalgamation process for companies.

In 2007, a Steering Committee was set up by the Ministry of Finance to review the *Companies Act* to shape a corporate regulatory framework that supports Singapore's growth as a global hub for businesses and investors. The amendments made in the *Companies (Amendment) Act 2014* sought to implement the Steering Committee's recommendations and saw the most amendments made to the *Companies Act* since its enactment in 1967. These changes seek to reduce the regulatory burden on companies by providing greater business efficacy. These amendments were implemented in two (2) phases.

The first phase of the amendments that came into force on 1 July 2015 saw the implementation of about forty per centum (40%) of the recommendations of the Steering Committee. Key amendments to the *Companies Act* included:

- shareholders' approval not required for payment of compensation up to a year's emoluments to a director holding salaried employment for termination of his/her employment (s 168(1A));
- relaxing conditions for nominee directors to disclose information to nominating shareholders (s 158);
- empowering the court hearing a winding-up application to order a buy-out instead of ordering winding-up (s 254(2A));
- expanding the scope of the statutory derivative action in s 216A to allow a complainant to apply to the court for leave to commence/intervene in an arbitration (s 216A(2), 216A(3) and 216A(5));

¹⁶ *Companies (Amendment) Act 2005*.

- extending application of s 216A such that the statutory derivative action is applicable to Singapore-incorporated companies that are listed for quotation or quoted on a securities market, whether in Singapore or overseas;
- allowing listed companies to make selected off-market acquisition of its own shares (s 76(1));
- removal of prohibition against financial assistance by private companies and introducing new exceptions to financial assistance (s 76);
- permitting use of capital to pay for share issues and buybacks for brokerage or commissions (s 67);
- allowing companies to issue shares for no consideration (s 68);
- consolidating provisions relating to auditor independence under the *Accountants Act* (s 10);
- introduction of audit exemption for "small companies" (s 205C);
- auditors of non-public interest company may resign upon giving notice to the company (s 205AA);
- auditors of public interest companies and their subsidiaries to obtain ACRA's consent for premature resignation (s 205AB);
- requirement to prepare consolidated financial statements to be determined by financial reporting standards and not the *Companies Act* (s 201(2) and 209A));
- company secretaries of private companies need not be physically present at the company's registered office (s 171(3A)); and
- abolition of transitional arrangements for share warrants (s 66). The bearer of a share warrant issued before 29 December 1967 must surrender it for cancellation and have his name entered in the register of members.

The second phase of amendments came into effect on 3 January 2016 in tandem with the launch of ACRA's revamped online business filing and information portal — BizFile⁺. The list of key amendments include:

- removing the requirement for shareholders' approval to re-appoint directors aged seventy (70) and above (s 153);
- extension of the types of loans permitted to directors to include quasi-loans, credit transactions and related arrangements (s 162);
- extension of directors' disclosures requirements to chief executive officers (CEOs) (s 165);
- allowing a company to provide indemnity against liability incurred by directors to third parties (s 172 and 172B);
- according power to Registrar of Companies to debar directors and secretaries (s 155B);

- lowering the threshold of ten per centum (10%) of total voting rights for the eligibility of shareholders to demand a poll to five per centum (5%) (s 178(1A));
- introduction of multiple proxies regime to enfranchise indirect investors (s 181);
- liberalising rules on electronic transaction of documents by companies (s 12A);
- extension of procedures for passing written resolutions by written means to unlisted public companies (s 184DA);
- removal of one-share-one-vote for public companies (s 64A);
- introduction of statutory mechanism for redenomination of shares (s 73);
- refinements to the amalgamation process (s 215A–215K);
- transfer of the provisions relating to the Central Depository System to the *Securities and Futures Act*;
- new exemption from preparation of financial statements for dormant non-listed companies (s 201A);
- provisions relating to the revision of defective accounts (s 121 of the *Companies (Amendment) Act 2014* and s 202A of the *Companies Act*);
- electronic registers of members of private companies to be kept by ACRA (s 196A);
- electronic registers of directors and other officers of all companies to be kept by ACRA (s 196A);
- memorandum and articles of association to be merged into a single constitution (s 4);
- removal of requirement for charities registered under the *Charities Act* to apply to omit the word “limited” from their names (s 29A);
- allowing directors and other persons to report an alternate address (s 173);
- updating of striking-off provisions for local companies (s 344A–344G);
- amendments relating to reservation/protection of company names (s 27(12B), 27(12C) and 378); and
- further amendments relating to foreign companies (Pt XI Div 2).

SOURCES OF COMPANY LAW

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¶1-100 Sources of company law

The main sources of company law in Singapore are from:

- primary legislation;
- secondary legislation;
- rule-making by legislatively recognised bodies; and
- the common law.

¶1-110 Primary legislation

Company law is a creature of statute and in Singapore; companies are governed by the *Companies Act*. The *Companies Act* is the core piece of legislation we refer to in this book and is the key legislation governing corporate entities. There are also other types of business structures in Singapore which are regulated by other statutes such as the *Partnership Act* (Cap 391), *Trust Companies Act* (Cap 336) and *Co-operative Societies Act* (Cap 62).

¶1-120 Secondary legislation

The *Companies Act* has undergone extensive changes in recent years and amendments to the same are time consuming as three (3) readings in Parliament are required. For this reason, rules which relate to more mechanical, technical or administrative matters are often set out in secondary legislation which does not require such scrutiny in Parliament. For example, the *Companies Regulations* and the *Companies (Winding-Up) Rules* prescribe the particulars of various forms that are used under the *Companies Act* and are required to be lodged with ACRA.

¶1-130 Delegated rule-making

There are instances where it is appropriate to have experts (such as people in a particular industry) to frame the rules. For example, the *Singapore Code on Take-Overs and Mergers* (the Take-Over Code) is issued by the Monetary Authority of Singapore (MAS) pursuant to s 321 of the *Securities and Futures Act*. The Take-Over Code is overseen by the Securities Industry Council (SIC)

whose role is to *inter alia*, advise the Minister in relation to matters of the securities industry. Members of the SIC are made up of representatives from both the private and public sectors who are appointed by the Minister in charge of the *Securities and Futures Act*.

Another example is the enactment of the *Accounting Standards Act* (Cap 2B) by the Accounting Standards Council (ASC). In 2002, the Government set up the Council of Corporate Disclosure and Governance (CCDG) to give investors the confidence that companies registered in Singapore present true and fair financial statements that are in accordance with internationally accepted accounting standards. When the *Accounting Standards Act* came into effect in 2007, the ASC took over the role of the CCDG. Although the ASC is responsible for the formulation and promulgation of accounting standards, the enforcement of compliance with accounting standards will remain with the respective "regulators", ie ACRA for companies.

Both companies and foreign companies (in relation to their business operations in Singapore) incorporated under the *Companies Act* have to comply with the Financial Reporting Standard (FRS) issued by ASC based on the International FRS.

¶1-140 Case law

Case law is another important source of law governing companies that our courts heavily rely on. The only authorities that are binding are those decided by the Singapore courts and the earlier binding decisions of the Privy Council. As mentioned in ¶1-010, the court decisions from Malaysia, Australia, Canada, New Zealand and Hong Kong interpreting similar provisions have persuasive (but not binding) authority in Singapore. With a "common law" system of law in place, our courts interpret statutory provisions and are at liberty to develop Singapore's company law to adhere to its needs.

BUSINESS STRUCTURES

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¶1-200 Forms of business organisations

Companies are one of many potential vehicles to carry on a business in Singapore. Other types of business structures include sole proprietorships, general partnerships, limited partnerships, limited liability partnerships, business trusts and unincorporated joint ventures. The primary difference between a company and other types of business organisations is the concept of a "separate legal entity" which is described in detail later.

It is also important to note that there are organisations whose primary purpose is not to conduct a business and/or to make a profit. Examples of such organisations are unincorporated associations, companies limited by guarantee and certain types of trusts.

¶1-210 Unincorporated associations

An unincorporated association is an organisation set up through an agreement between a group of people who band together to pursue a common purpose other than to make a profit. Unincorporated associations are governed by "rules" to which its members agree to be bound by. Some examples of unincorporated associations include clubs and societies which are formed to carry out various activities other than to conduct a business.

Although the aim of an unincorporated association is not to make a profit, an unincorporated association may make a profit as an incidental result of its activities. The distribution of such profits should go towards the purpose of the unincorporated association and not to the individual members.

Unlike companies, unincorporated associations are not a separate legal entity from their members and as such, cannot hold property in their own name. Instead, the individual members or their trustees hold the properties in their names. The members of unincorporated associations also do not enjoy limited

Hence, parties sometimes also incorporate the same provisions in the shareholders' agreement and the constitution. Since the constitution may be amended without the agreement of all parties, a shareholder may have his/her rights altered against his/her volition, assuming such shareholder does not control enough voting shares to block the special resolution. Without the shareholders' agreement, the shareholder would be forced to accept such alteration without any remedy. Having the same provisions in the shareholders' agreement would at least afford the shareholder with a contractual remedy against the counterparty who is acting in breach.

Chapter 4

COMPANY'S SHARES

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NATURE OF SHARES

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¶4-000 Nature of shares

Shares are classified as movable property known as “choses in action”. A chose in action refers to intangible property represented by a bundle of legally enforceable rights and obligations. A shareholder owns the number of shares that he/she has subscribed in the company. A shareholder can accordingly sell or give his/her shares away, mortgage them, or devise them by will. When shares are transferred, the rights and liabilities which the shares represent are also transferred to the transferee.¹

The most commonly cited legal definition come from the case of *Borland's Trustee v Steel Bros & Co Ltd* (1901), where Farwell J said:

“[a] share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of mutual covenants entered into by all the shareholders inter se in accordance with s 16 of the *Companies Act*.”

¶4-010 Share capital structure

Shares and share capital are dealt with in Div 3 of Pt IV of the *Companies Act*. The rights and obligations pertaining to the different classes or types of shares are to an extent governed by Pt IV of the *Companies Act*, but are mostly provided for in a company's constitution.

The main requirements on an issue of securities (which includes issuance of shares as well as debentures for financing) of a company that is listed on the Singapore Exchange (SGX) to the public are set out in the *Securities and Futures Act of Singapore* (Cap 289) and the *SGX Listing Manual*. For a private company, any issuance of shares would have to comply with the company's constitution and the *Companies Act*.

The share capital is simply one (1) method of attracting finance into the company, representing the amount of money or assets that the shareholders contribute to the company upon subscription for shares. The issued share

¹ See s 121 of the *Companies Act*.

capital of a company is the amount of money (or other assets-in-kind) which has been provided by the shareholders in consideration for the shares issued to them.

As of 30 January 2006, shares of Singapore-incorporated companies no longer have par values ascribed to them. Consequently, there is no requirement for companies to state an authorised share capital.

¶4-020 Stock

“Stock” is considered as part of the share capital expressed in terms of dollars or cents as opposed to existing in discrete units like shares. Fully paid-up shares may be converted into stock subject to the terms of the company's constitution.² The difference between stock and shares is that stock exists as a fund. Another difference between shares and stock is that shares must be numbered but stock need not be.

Regulations 40 to 43 of the *model constitution for a private company limited by shares*, as set out in the First Schedule of the *Companies (Model Constitutions) Regulations 2015* allow for conversion of paid-up shares into stock and re-conversion of stock into paid-up shares of any denomination. The abolition of par value for shares has largely removed the benefits of converting shares to and from stock, but one of the key differences between the two (2) forms was that stock could be held and transferred in terms of value as opposed to whole units of shares, which was a more significant issue when shares held par value.

¶4-030 Rights conferred on shareholders

The law provides all shareholders with several basic rights. Listed below are the key rights:

- the right of participation in the affairs of the company in accordance with its constitution: namely, the right to vote over particular decisions in relation to the company;³ and
- distribution rights: namely, the right to receive dividends during the lifetime of the company subject to its constitution and the *Companies Act*, and the right to return of the subscribed capital and any surplus assets of the company after it has been wound up (and all its debts have been paid).⁴

² See s 71(1)(c) of the *Companies Act*.

³ See s 75 of the *Companies Act*.

⁴ See s 300 of the *Companies Act*.

The liabilities may include a liability to pay calls and contribute toward the assets of the company if its assets are insufficient to meet the liabilities of the company, though it should be noted that in relation to a limited company, this would only be the case for holders of shares which are only partly paid up.

A liability to pay calls refers to the obligation of the shareholder of a partly paid share and shareholders are severally liable to pay all calls in respect of that share. This liability in relation to a share ceases once the share is fully paid up.

CLASSES OF SHARES

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¶4-100 Classes of shares

The definition for what constitutes a class was enunciated in *Sovereign Life Assurance Co v Dodd* (1892) by Bowen LJ, where he stated that the term class:

"... [must be confined to those persons whose rights are not so dissimilar as to make it impossible for the creditors to consult together with a view to their common interest.]"

The rights and interests attached to these persons' shares are known as class rights. Where there is only one (1) class of shares, the rights are simply called shareholder rights rather than class rights because there is no other class to compare with.

¶4-110 Class rights

The share capital of a company may be divided into a number of different classes, each conferring different rights on their respective owners. The rights and obligations which accrue to a particular class of shares may be provided for in the company's constitution. Regulation 7 of the Companies (Model Constitutions) Regulations 2015 gives the directors the power to allot different classes of shares, subject to an ordinary resolution empowering them to do so.

There is, however, no obligation on the company to provide the directors with this power. If the constitution is silent and a company wishes to allot a different class of shares, it must amend its constitution to allow for such power. The constitution must also be amended to set out the rights and obligations of a new class of shares where one is created.

The significance of the different classes of shares lies in the rights accruing to each class to vote, to receive dividends and to receive capital and any surplus assets in the event of winding up. There may potentially be many classes of

shares, as the rights accorded to each are determined by agreement between the company and the subscribers.⁵ However, it is possible to identify the common classes of shares as further described below.

¶4-120 Ordinary shares

Generally, most companies issue ordinary shares. This is the risk capital of the company. Ordinary shareholders are commonly entitled to their dividend after preference shareholders. A full right to vote is usually given to ordinary shareholders by a company's constitution and the ordinary shareholders usually exert the largest amount of control over the company. In the event of a liquidation, ordinary shares rank for repayment after all other liabilities of the company.

¶4-130 Preference shares

Preference shares confer some preferential right on their holders. These normally carry rights to a fixed and (sometimes) cumulative dividend which is payable out of profits in priority to dividends on ordinary shares, and to a return of capital in the event of a winding up. Preference shares may be preferred also as regards to the distribution of assets upon dissolution of the company. A company may not issue preference shares unless its constitution sets out the rights of the holders of those shares as to:

- repayment of capital;
- participation in surplus assets and profits;
- cumulative or non-cumulative dividends;
- voting and priority of payment of capital; and
- dividend in relation to other shares or other classes of preference shares.⁶

Preference shares usually have no voting rights in a general meeting. However, voting rights may be made contingent upon failure to pay dividends on preference shares for a certain period where such preference share was issued after 15 August 1984 but before 3 January 2016. Shares issued after this period will have certain rights as provided in the company's constitution.

The *Companies Act* does allow that every preference shareholder shall hold the right to vote on a resolution to wind up the company or a resolution to vary the rights attached to such preference share and conferred on the shareholder.⁷

⁵ See s 64 of the *Companies Act*.

⁶ See s 75 of the *Companies Act*.

⁷ See s 64 and 180 of the *Companies Act*.

¶4-140 Participating preference shares

Preference shares may carry the right not only to receive a dividend at a specified rate but also to receive a further dividend if any surplus profits remain after a dividend has been paid to ordinary shareholders, and may also carry rights with respect to surplus assets in the event of a winding up of the company. These shares are known as participating preference shares.

¶4-150 Cumulative or non-cumulative preference shares

Cumulative preference shares entitle the shareholder to a dividend at a fixed rate throughout the entire life of the company. If there is a fall or absence of profits in one (1) year and the full rate of dividend cannot be paid, this deficit is made up in later years.

Non-cumulative preference shares entitle the holder to a dividend at the fixed rate only in the years in which the profits enable a dividend of that rate to be paid. Failure through a fall or absence of profits in one (1) year, to pay the fixed rate of dividend does not carry the obligations to meet the deficit in the next year(s).

¶4-160 Redeemable preference shares

Redeemable preference shares are those which either give the holders of the shares the right to be repaid their capital at a specified date or alternatively give the company the right to repay the capital after a specified time (for instance, giving a notice of redemption) or within a specified period. The general principle that a company may not reduce its capital is not breached by the redemption of redeemable preference shares because the *Companies Act* states that such redemption shall not be taken as reducing the amount of share capital. The shares to be redeemed should be fully paid up.

Redeemable preference shares may be redeemed out of the proceeds of a fresh issue of shares. If they are not redeemed in this way, they may be deemed out of the capital of the company provided the directors of the company have signed a solvency statement in relation to the intended redemption of shares. Upon redemption, the company should lodge details of the redemption with Accounting and Corporate Regulatory Authority (ACRA), along with the solvency statement where appropriate.⁸

¶4-170 Convertible preference shares

These shares will typically carry the right to a preferred fixed dividend for a particular term, and then either allow for or require conversion into another class of shares (normally ordinary shares) at the end of the term. The

⁸ See s 70 of the *Companies Act*.

conversion ratio, ie the number of ordinary shares that will be received in exchange for the preference shares, will usually reflect the value of the ordinary shares in the company at the time of the conversion.⁹

¶4-180 Non-voting shares

Non-voting (or restricted voting) shares are shares with no (or very limited) voting rights attached to them. As compensation for giving up their voting rights, holders of non-voting shares usually get preferential treatment regarding dividends (fixed dividend or increased dividend compared to ordinary shareholders).

¶4-190 Variation of class rights

The law gives a certain degree of protection to the holders of classes of shares against variation of their rights without their consent. For example, if a company has issued various classes of shares, each of these classes may have different rights as to voting, dividends, priority of repayment of capital and other rights. It is necessary to protect the rights of holders of particular classes of shares against attempts by holders of other classes of shares to vary those rights.

A company's constitution will often set out the manner in which the rights of particular classes are to be protected. For example, reg 8 of the Model Constitution requires a seventy-five per centum (75%) majority of holders of the issued shares of that class to consent in writing, or pass a special resolution at a separate general meeting of holders of that class of shares, to approve a variation of their rights. In relation to preference shareholders, their right to vote on a resolution to vary their class rights is a statutory entitlement.

Section 74(6) of the *Companies Act* deems an allotment of preference shares ranking equally with existing preference shares to be a variation of their class rights of holders of existing preference shares. This is so unless the constitution authorised a later issue of preference shares of equal rank. The reason is that the holders of preference shares will know that their rights may be subject to equal rights of later preference shareholders.

Regulation 9 of the Model Constitution reinforces this by stating that the rights conferred to holders of any shares or class of shares (issued with preferred or other rights) shall be deemed to be varied by the creation or issue of further shares ranking equally with the shares of that class, unless otherwise expressly provided by the terms of issue of the shares of that class.

⁹ See s 74A of the *Companies Act*.

ALLOTMENT AND ISSUE OF SHARES

| | |
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| Allotment and issue of shares | ¶4-200 |
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| Contract arising from application for shares | ¶4-220 |
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¶4-200 Allotment and issue of shares

The meanings for allotment and issue of shares have often historically been interchangeably used in most legal text. However, as is evidenced in s 161 of the *Companies Act*, there are actually two (2) stages involved, namely, allotment and issue, as further explained below.

Section 161 states that a director of a company shall not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares. Any approval shall continue in force until:

- the conclusion of the Annual General Meeting (AGM) commencing next after the date on which the approval was given; or
- the expiration of the period within which the next AGM after that date is required by law to be held,

whichever is the earlier; but any approval may be previously revoked or varied by the company in general meeting.

The company in a general meeting may pass an ordinary resolution to approve the directors' exercise of power to issue of shares and thereafter to lodge a copy of the resolution with ACRA.

The meaning of issue is akin to an offering of shares to the shareholders or investors, where an invitation is made by the company for the subscription of the shares offered at a pre-determined price. The persons intending to subscribe for the shares must then complete an application form and return it together with the remittance for the board of directors to allot the shares.

Upon the allotment, the *Companies Act* requires the lodgement of a "Return of Allotment of Shares" with ACRA confirming the particulars of the allottees, the amount paid (or unpaid) on the allotment of the shares, the class of the shares, and the number of shares allotted.

After the approval to issue shares has been obtained by the directors, subsequent allotments of shares by the company do not require any approval, as the approval will continue in force until the period as mentioned in paragraphs (a) and (b) above. The company is only required to lodge the "Return of Allotment of Shares" with ACRA whenever there is any subsequent allotment.

Other than a deemed allotment (being an issue of shares without formal allotment to subscribers to the company's constitution upon the incorporation of a company), an allotment by a private company on or after 3 January 2016 does not take effect until the "Return of Allotment of Shares" has been lodged with ACRA and the electronic register of members of the company has been accordingly updated by ACRA.¹⁰ Prior to 3 January 2016, private companies each had to maintain a manual register and update it with the current shareholding of the company.

Any issue of shares by a private company must comply with the terms of s 161 of the *Companies Act* or such issue would be void (and the shareholder would be able to recover the consideration he/she provided for the shares) though the Singapore Court may subsequently validate any improper issue or allotment of shares, which it will typically do if it would be just and equitable taking into account all the circumstances.

Issuance of shares by a public listed company is significantly more complicated, and will involve restrictions as covered below. Typically for public listed companies, the approval pursuant to s 161 of the *Companies Act* will be included as one of the ordinary business to be approved by shareholders at the AGM irrespective of whether there is an intended allotment of shares or not. As such, public listed companies do not need to specifically call for an Extraordinary General Meeting (EGM) just to approve the approval to allot shares pursuant to s 161 when there is a need for allotment of shares after the AGM. This will assist with the operation of public listed companies as convening an EGM can be costly and time consuming.

¶4-210 The meaning of "allotment"

Legally, the terms "allotment" of shares and "issue" of shares are not interchangeable. "Allotment" is the formal act of appropriation by the company to a person of a specific number of shares but this does not have to refer to specific shares (per Abdoolcader J in *Raja Khairulzaman Shah v Zaman Indah Sdn Bhd* [1979] 2 MLJ 181). Conversely, a share is "issued" to a person when the person gains control of the allotted shares (per Dixon J in *Central Piggery Co Ltd v McNicoll* (1949) 78 CLR 594).

The act of allotment is carried out when the company (ie the board or a committee of the board) appropriates or assigns a certain number of its unissued shares to a specified person. However, the allotment in itself does not make that person a member of the company. The allotment constitutes a

¹⁰ See s 63(2) of the *Companies Act*.

binding contract under which the company must make a complete allotment of the specified number of shares, and under which the person who had made the offer and is now bound by the acceptance, is bound to take that particular number of shares (per Chitty J in *Re Florence Land and Public Works Co*). Once acceptance has taken place, the next step is to issue the shares. This involves providing the shareholder with complete control over the shares. The House of Lords has held that the allotment and registration of shares are distinct procedures and that shares are issued only when they are registered. "Allotment confers a right to be registered. Registration confers title ... A person who has been allotted shares is in as good a position in equity as a person to whom shares have been issued but that does not mean that there is no distinction between allotment and issue." (Per Lord Templeman in *National Westminster Bank Plc & Anor v Inland Revenue Commissioners; Barclays Bank Plc & Anor v Inland Revenue Commissioners* (1994) 12 ACLC 3,215.)

¶4-220 Contract arising from application for shares

The usual way for a person to become a shareholder of a company, apart from the transfer of shares from another person (already a shareholder), is by contract with the company arising from an application to the company for shares accompanied by all or part of the subscription amount to the company. Where only part of the subscription amount is paid, the shares will be partly paid up. The application for shares is the offer, and the notice to the applicant of the acceptance of this application is the acceptance. The ordinary rules of contract law (including offer and acceptance) will apply. Upon receiving an application, the board of directors of the company decides whether to accept such application, and allot the shares to the applicant.

The applicant will not become a member of the company until:

- the electronic register of members is updated by ACRA in relation to a private company;¹¹ and
- the register of members has been updated by the company for public companies (in as much as the register is considered *prima facie* evidence of such companies' shareholdings).¹²

The applicant will receive a share certificate (or "share scrip") or a statement similar to a bank statement to indicate how many shares they hold (where the company is listed on the SGX and the applicant has a "scripless" shareholding).

¶4-230 Option to take up shares

A company may issue options to any person allowing him/her to take up unissued shares in the company at a future date if he/she chooses, typically within a period of five (5) years.

¹¹ See s 63(2) of the *Companies Act*.

¹² See s 190(4) of the *Companies Act*.

An option in a public company that enables any person other than an employee to take up unissued shares of the company shall be void after a period of five (5) years has elapsed from the date on which the option was granted.

Where the option is granted to an employee of the company or a related corporation, such option shall be void if it enables the employee to take up unissued shares more than ten (10) years after the option was granted.¹³

¹³ See s 77 of the *Companies Act*.

PAYMENT FOR SHARES

| | |
|---|--------|
| Payment for shares | ¶4-300 |
| Calls on shares | ¶4-310 |
| Lien on shares | ¶4-320 |
| Forfeiture | ¶4-330 |
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| Acquisition by a company of its own shares | ¶4-350 |
| Purchase of its own shares by listed company | ¶4-360 |
| Effect of cancellation of shares acquired by a company | ¶4-370 |
| Underwriting an initial public offer | ¶4-380 |

¶4-300 Payment for shares

Normally, shares are paid for in cash but it is not uncommon for shares to be issued for non-cash consideration, also called "otherwise than in cash". For example, on the incorporation of a company to takeover an existing business of a sole proprietor, the assets and undertakings are exchanged by the proprietor for shares in the company.

The *Companies Act* recognises the use of non-cash consideration in the issuing and allotment of shares, which requires the filing of a "Return of Allotment of Shares", a statement containing the particulars of shares allotted otherwise than for cash (or where the shares are allotted pursuant to a scheme of arrangement approved by the Singapore Court under s 210 of the *Companies Act*, a copy of the order of the Singapore Court), and a copy of the contract in writing (where relevant) pursuant to which such allotment is made, which must be lodged at the same time as the Return of Allotment of Shares. When non-cash consideration is provided, the directors of the company should ensure that they are able to justify the value being placed on the assets.¹⁴

¶4-310 Calls on shares

A company may allot shares for which not all the consideration has been received. The shares are then termed "partly paid". It is possible for a company to take payment for shares in instalments, if so authorised by its constitution.

The balance can be requested ("called") from the shareholders at any time unless the shareholders decide by special resolution only on the winding up of the company will the money be called.

¹⁴ See s 63B of the *Companies Act*.

¶8-060 Deceased joint-holder

It is common for the company's constitution to provide for the death of a joint-shareholder. When shares are held jointly and one (1) of the joint owners dies, it is usual for the constitution to provide that the survivor shall be the only person whom the company may recognise as having any title to the jointly held shares. Typically, death certificate of the shareholder is to be produced.

DUTIES AND RIGHTS OF SHAREHOLDERS

| | |
|---|--------|
| Role of shareholders | ¶8-100 |
| Rights at general meetings | ¶8-110 |
| Other powers of the shareholders | ¶8-120 |
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| Right to vote | ¶8-170 |
| Exercise of vote | ¶8-180 |
| Non-payment of calls on shares | ¶8-190 |

¶8-100 Role of shareholders

Customarily, the members are seen as owners of the company and consequently, control of the company vests in them. Some of this control is reflected in company law. For example, members' approval is required to make amendments to the constitution, structure and/or business of the company. Members are also typically vested with *inter alia*, the power to elect or remove directors. This arguably gives members the power to control the composition of the company's board of directors who runs and manage the company.

¶8-110 Rights at general meetings

The manner in which general meetings are convened is primarily stipulated in the constitution and the provisions of the *Companies Act*. Generally, the board of directors arranges for an Annual General Meeting (AGM) and Extraordinary General Meetings (EGM). Please refer to ¶8-200 for a detailed discussion on AGMs and EGMs.

Members may also, under specific circumstances, request or make a requisition to the directors to call a meeting or convene one themselves. Pursuant to s 182 of the *Companies Act*, if for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the constitution or the *Companies Act*, the court may either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called, held and conducted in a manner as the court thinks fit.

Pursuant to s 176(1) of the *Companies Act*, the board of director must convene a meeting of members when such a meeting is requisitioned by:

- members holding, at the date of the deposit of the requisition, not less than ten per centum (10%) of the total number of paid-up shares as at the date of the deposit carries the right to vote at general meetings; or
- in the case of a company not having a share capital, of members representing not less than ten per centum (10%) of the total voting rights of all members having at that date, a right to vote at general meetings.

The requisition must state the intended objects of the meeting and must be signed by the requisitioning members and sent to the company's registered office.¹² Upon receipt of the requisition, the directors must immediately proceed to convene an EGM to be held as soon as practicable but in any case not later than two (2) months after the date of the requisition.¹³

The directors may refuse to act where the purpose of the meeting is an improper one, eg where the purpose of the meeting is to vote on some matter which is solely within the authority of the directors.¹⁴ If, however, the directors do not within twenty-one (21) days after the date of the deposit of the requisition proceed to convene a meeting, the requisitionists, or any of them representing more than fifty per centum (50%) of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any meeting so convened shall not be held after the expiration of within three (3) months from that date.¹⁵ Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting will be paid to the requisitionists by the company, and such sums paid will be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such directors as were in default.¹⁶

¶8-120 Other powers of the shareholders

The constitution may vest additional powers to the shareholders or stipulate that certain reserved matters require the approval of the shareholders. Some examples include:

- the election and the removal of directors;
- the remuneration of directors;

¹² See s 176(2) of the *Companies Act*.

¹³ See s 176(1) of the *Companies Act*.

¹⁴ *Credit Development Pte Ltd v IMO Pte Ltd* [1993] 2 SLR 370.

¹⁵ See s 176(3) of the *Companies Act*.

¹⁶ See s 176(4) of the *Companies Act*.

- amendments to the constitution;
- increase and/or reduction in the share capital; and
- matters that affect the company.

¶8-130 Right to call a meeting

Two (2) or more members holding not less than ten per centum (10%) of the company's issued share capital (excluding treasury shares) may call a meeting of the company or where the company does not have a share capital, not less than five per centum (5%) of the members or such lesser number as provided by the constitution, may call a general meeting under the procedures laid down in s 177 of the *Companies Act*. This power cannot be excluded by a contrary provision in the constitution. Unlike the case of meetings held on members' requisition, it is not expressly provided in the *Companies Act* that members who convene a meeting themselves under s 177 of the *Companies Act*, may be reimbursed for any reasonable expenses incurred. It is implied then that these members are to pay the expenses of calling and holding the meeting out of their own pockets.

A meeting (other than a meeting for the passing of a special resolution), may be called by notice in writing of not less than fourteen (14) days or such longer period as is provided in the constitution.¹⁷ A meeting, may however, be called by a shorter notice if it is so agreed:¹⁸

- in the case of a meeting called as the AGM, by all the members entitled to attend and vote thereat; or
- in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than ninety-five per centum (95%) of the total voting rights of all the members having a right to vote at that meeting.

Unless the constitution stipulates otherwise, notice of every meeting shall be served on every member having a right to attend thereat in the manner in which notices are required to be served by the model constitution prescribed under s 36(1) of the *Companies Act* for the type of company to which the company belongs, if any.¹⁹

¶8-140 Court's intervention in calling a meeting

As discussed in ¶8-110, under s 182 of the *Companies Act*, the court may convene a meeting if it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner

¹⁷ See s 177(2) of the *Companies Act*.

¹⁸ See s 177(3) of the *Companies Act*.

¹⁹ See s 177(4) of the *Companies Act*.

prescribed by the constitution or the *Companies Act*. For example, if a quorum for the shareholders' meeting cannot be obtained because disputing shareholders refuse to attend the meeting, the meeting may be called on the court's own motion or on the application of any director or member of the company.

¶8-150 Rights at meetings

Notwithstanding any provision in the constitution, members have a right to attend any general meeting of the company and to speak on any resolution prior to the meeting.²⁰

In the case of a company limited by shares, the holder of a share may vote on a resolution before a general meeting of the company if, in accordance with the provisions of s 64 of the *Companies Act*, the share confers on the holder a right to vote on that resolution.²¹ In the case of a company other than a company limited by shares, a member may vote on a resolution before a general meeting of the company if the right to vote on that resolution is conferred on the member under the constitution.²²

Members may also use their voting rights to initiate a members' voluntary winding up and to pass resolutions where the board is unable to act or in instances where it wishes to ratify a breach of the directors' duties.

However, the matters on which shareholders may vote are restricted. For example, members cannot give directions to the board of directors on how the business of the company is to be managed.

¶8-160 Right to appoint proxies

Every member who has a right to attend and vote at a meeting of the company or at a meeting of a class of members, is entitled to appoint another person or persons (whether a member or not) as a proxy to attend and vote in his/her place at the meeting.²³ The proxy has the same rights as the member to speak at the meeting. In the absence of any provision in the constitution, the *Companies Act* provides that:²⁴

- a proxy shall not be entitled to vote except on a poll;
- a member is not entitled to appoint more than two (2) proxies to attend and vote at the same meeting; and
- where a member appoints two (2) proxies, the appointment will be invalid unless he/she specifies the proportions of the holdings to be represented by each proxy.

²⁰ See s 180 of the *Companies Act*.

²¹ See s 180(2) of the *Companies Act*.

²² See s 180(3) of the *Companies Act*.

²³ See s 181(1) of the *Companies Act*.

²⁴ See s 181(1A) of the *Companies Act*.

A statement stating that members have the right to appoint a proxy or proxies to attend and vote instead of the member and a proxy need not be members must be stated in every notice calling for a meeting.²⁵ Any person who authorises or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued at the company's expense to some of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, are guilty of an offence.²⁶

Unless the constitution states otherwise, a member is not entitled to appoint more than two (2) proxies to attend and vote at the same meeting and if so, the appointments will be invalid unless he/she specifies the proportions of his/her holdings to be represented by each proxy.²⁷ However, a member of a company entitled to attend and vote at a meeting of the company held pursuant to an order of the court under s 210(1) of the *Companies Act*, or at any adjourned meeting under s 210(3) of the *Companies Act*, is, unless the court orders otherwise, entitled to appoint only one (1) proxy to attend and vote at the same meeting.²⁸

A member of a company having a share capital who is a relevant intermediary²⁹ may appoint more than two (2) proxies in relation to a meeting to exercise all or any of his/her rights to attend and to speak and vote at the meeting, but each proxy must be appointed to exercise the rights attached to a different share or shares held by him/her (which number and class of shares shall be specified).³⁰ A proxy appointed under s 181(1C) of the *Companies Act* shall be entitled to vote on a show of hands at a meeting.³¹

As stated above, the notice of meeting must include information on the shareholder's right to appoint a proxy or proxies.³² The manner of appointment as well as the powers vested to a proxy is laid out in the constitution. However, pursuant to s 178(1)(c) of the *Companies Act*, any provision in the constitution will be void if it requires the instrument appointing a proxy to be received by the company or any other person more than seventy-two (72) hours before a meeting to make the appointment effective. It is common for the constitution to provide that the instrument appointing a proxy is to be deposited at the registered office of the company not less than forty-eight (48) hours before the time appointed for taking the poll.

²⁵ See s 181(2) of the *Companies Act*.

²⁶ See s 181(3) of the *Companies Act*.

²⁷ See s 181(1A)(b) and (c) of the *Companies Act*.

²⁸ See s 181(1B) of the *Companies Act*.

²⁹ As defined in s 181(6) of the *Companies Act*.

³⁰ See s 181(1C) of the *Companies Act*.

³¹ See s 181(1D) of the *Companies Act*.

³² See s 181(2) of the *Companies Act*.

A body corporate which is a member cannot attend a meeting "in person". As such, it would need to appoint a natural person to be its representative(s) at the meeting. A certificate under the seal of the body corporate is *prima facie* evidence of the appointment or of the revocation of the appointment of a representative.³³

The representative may exercise all or any of the powers the corporation may exercise at a specific meeting or at all meetings.

¶8-170 Right to vote

A "voting share" in relation to a body corporate means an issued share in the body corporate not being:³⁴

- a share to which, in no circumstances, is there attached a right to vote; or
- a share to which there is attached a right to vote only in one (1) or more of the following circumstances:
 - during a period in which a dividend (or part of a dividend) in respect of the share is in arrear;
 - upon a proposal to reduce the share capital of the body corporate;
 - upon a proposal that affects rights attached to the share;
 - upon a proposal to wind up the body corporate;
 - upon a proposal for the disposal of the whole of the property, business and undertakings of the body corporate; or
 - during the winding up of the body corporate.

Shareholders are "members" of the company and generally have the right to vote at general meetings. The number of votes each share carries is stipulated by the constitution. The *Companies (Amendment) Act 2014* has removed the one-share-one-vote restriction for public companies and now, public companies may also issue different classes of shares.³⁵

¶8-180 Exercise of vote

At a general meeting, so far as the constitution does not make provision in the case of a company having a share capital, on a show of hands, each member who is personally present and entitled to vote shall have one (1) vote and on a poll, each member shall have one (1) vote in respect of each share held by him/her and where all or part of the share capital consists of stock or units of stock each member shall have one (1) vote in respect of the stock or units of stock held by him/her which is or are or were originally equivalent to one (1) share.³⁶

³³ See s 179(5) of the *Companies Act*.

³⁴ See s 4(1) of the *Companies Act*.

³⁵ See s 64A of the *Companies Act*.

³⁶ See s 179(c) of the *Companies Act*.

Unless the constitution provides otherwise, the instrument appointing a proxy to vote at a meeting of a company is deemed to confer authority to demand or join in demanding a poll, and a demand by a person as proxy for a member of the company will be deemed to be the same as a demand by the member.³⁷

The constitution may, to a limited extent, regulate the right to demand a poll. Any provision of the constitution is void in so far as it would have the effect:³⁸

- of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;
- of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made:
 - by not less than five (5) members having the right to vote at the meeting;
 - by a member or members representing not less than five per centum (5%) of the total voting rights of all the members having the right to vote at the meeting;
 - by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than five per centum (5%) of the total sum paid up on all the shares conferring that right; or
 - of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than seventy-two (72) hours before a meeting or adjourned meeting in order that the appointment may be effective thereat.

The way the poll is to be conducted is usually prescribed in the constitution. The chairman of the meeting has no common law casting vote but the constitution may provide a chairman with a casting vote or a second vote in the case of an equality of votes. This is separate from the chairman exercising his/her ordinary vote as a member or while acting as proxy for a member.

On 31 July 2013, Singapore Exchange (SGX) introduced amendments to the Singapore Exchange Securities Trading Limited (SGX-ST) *Listing Manual*. This was to promote greater transparency in general meetings and enhance shareholders' engagement to strengthen corporate governance.

³⁷ See s 178(2) of the *Companies Act*.

³⁸ See s 178(1) of the *Companies Act*.

Following the amendments:

- (i) all SGX-ST primary-listed companies and trusts must hold all their general meetings in Singapore (unless prohibited by relevant laws and regulations in the jurisdiction of its incorporation);
- (ii) all resolutions at general meetings are voted by poll; and
- (iii) at least one (1) scrutineer must be appointed for each general meeting.³⁹

The scrutineer is to be an independent person undertaking the polling process and where the appointed scrutineer is interested in the resolution(s) to be passed at the general meeting, he/she must refrain from acting in that capacity for such resolution(s).⁴⁰

The appointed scrutineer has to also exercise the following duties:⁴¹

- ensuring that satisfactory procedures of the voting process are in place before the general meeting; and
- directing and supervising the count of the votes cast through proxy and in person.

With effect from 1 August 2015, listed companies must immediately (after each general meeting and before the commencement of the pre-opening session on the market day following the general meeting) announce whether the resolutions put to a general meeting of an issuer were passed.⁴² The announcement must include the following:⁴³

- Breakdown of all valid votes cast at the general meeting, in the following format:

| Resolution number and details | Total number of shares represented by votes for and against the relevant resolution | For | | Against | |
|-------------------------------|---|------------------|---|------------------|---|
| | | Number of shares | As a percentage of total number of votes for and against the resolution (%) | Number of shares | As a percentage of total number of votes for and against the resolution (%) |
| | | | | | |

³⁹ See r 730A(1), (2), (3) and Practice Note 7.5 of the Mainboard Rules.

⁴⁰ See r 730A(3) of the Mainboard Rules.

⁴¹ See r 730A(4) of the Mainboard Rules.

⁴² See r 704(15) of the Mainboard Rules.

⁴³ See r 704(16) of the Mainboard Rules.

- details of parties who are required to abstain from voting on any resolution(s), including the number of shares held and the individual resolution(s) on which they are required to abstain from voting; and
- name of firm and/or person appointed as scrutineer.

¶8-190 Non-payment of calls on shares

The obligation to pay a call in respect of any money unpaid on shares is the basic contractual relationship between the shareholder and the company. It is "... the duty of directors, when a call is made ... to compel every shareholder to pay to the company the amount due by him in respect of that call; and they are guilty of a breach of their duty to the company if they do not take all reasonable means of enforcing that payment ...".⁴⁴

The effect of non-payment will depend on the constitution. It is generally the duty of the directors to compel the relevant shareholder to pay the amount due in respect of a call on shares. A director may be in breach of his/her fiduciary duty to the company if he/she does not take all reasonable steps to enforce the payment.

⁴⁴ *Speckamn v Evans* (1865) LR 3 NL 171.

COMPANY MEETINGS

| | |
|-------------------------------------|--------|
| General meetings | ¶8-200 |
| Procedure of general meetings | ¶8-210 |
| Conduct at general meetings | ¶8-220 |
| Class meetings | ¶8-230 |

¶8-200 General meetings

Generally, there are two (2) types of general meetings. These are:

- AGMs; and
- EGMs.

Pursuant to s 175 of the *Companies Act*, a general meeting of every company called an AGM shall in addition to any other meeting be held once in every calendar year and not more than fifteen (15) months after the holding of the last preceding AGM but so long as a company holds its first AGM within eighteen (18) months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

The *Companies Act* requires the directors of the company (to lay the company's financial statements before its members at the AGM), for the period since the preceding financial statements (or in the case of the first financial statements, since the incorporation of the company) made up to a date:⁴⁵

- in the case of a public company that is listed, not more than four (4) months before the date of the meeting; or
- in the case of any other company, not more than six (6) months before the date of the meeting.

The requirement stated above is a necessity unless a resolution under s 175A of the *Companies Act* is passed which allows private companies to dispense with the holding of AGMs.⁴⁶

An EGM, on the other hand, is any general meeting which is not an AGM.

Although all companies are required to hold an AGM and EGM (when necessary), the event is not merely a matter of legal form. It provides the principal forum in which the directors account to the shareholders for their management of the company. It also gives shareholders an opportunity to raise issues before voting on matters which require their approval. As such, the shareholders' relationship with their company can be developed significantly by enhancing the general meetings.

⁴⁵ See s 201 of the *Companies Act*.

⁴⁶ See s 201C of the *Companies Act*.

Company law traditionally sees the requirement of holding a meeting as sacrosanct as the AGM:

- allows the directors to update the members on the affairs of the company; and
- provides members a chance to question the directors on the management of the company and give their views on matters affecting the company.

More recently, company law recognises that this requirement may not be necessary. An example where this would be apparent would be in small or family companies where the members themselves are running and managing the company.

As stated above, s 175A of the *Companies Act* allows private companies to dispense with AGMs by passing a resolution by all the members who are eligible to vote in person, or where proxies are allowed, by proxy present at the meeting.⁴⁷

In any year in which an AGM would be required to be held but for s 175A of the *Companies Act*, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three (3) months before the end of the year, require the holding of an AGM in that year.⁴⁸ The power of a member under s 175A(4) of the *Companies Act* requires the holding of an AGM is exercisable not only by giving a notice but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.⁴⁹

Any resolution passed under s 175A(1) of the *Companies Act* will cease to be in force if the company is converted to a public company.⁵⁰

¶8-210 Procedure of general meetings

(a) Convening a members' meeting

The manner a members' meeting is convened is primarily governed by the *Companies Act* and the constitution. As a start, the board of directors would be the ones to arrange for AGMs and EGMs. As stated in ¶8-110, members may also, under certain circumstances, request or requisition the directors to call for a meeting or convene one themselves. The court may also step in to convene a meeting if for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the constitution or the *Companies Act*.⁵¹

⁴⁷ See s 175A(1) and (2) of the *Companies Act*.

⁴⁸ See s 175A(4) of the *Companies Act*.

⁴⁹ See s 175A(5) of the *Companies Act*.

⁵⁰ See s 175A(7) of the *Companies Act*.

⁵¹ See s 182 of the *Companies Act*.

(b) Requesting and calling for a meeting

The provisions of the constitution will stipulate who may arrange for the meetings of members to be held or convened.

(c) Determining the agenda for the meeting

The agenda of the meeting will be defined by the person who convenes the meeting. In practice, the board of directors will typically determine the agenda of the meeting as member's meetings are generally convened by the board of directors. Conversely, where the meeting is convened by members, the matters will deal with those raised by the members.

Pursuant to s 183(2) of the *Companies Act*, members holding not less than five per centum (5%) of the total voting rights of all members having at the date of requisition a right to vote at the meeting to which the requisition relates or no less than one hundred (100) members holding shares in the company on which there has been paid up an average sum, per member, of no less than five hundred Singapore dollars (S\$500), may propose resolutions to be considered at a meeting. This gives members the means to include a matter for consideration at the next EGM. A notice of this resolution must be given and any statement referred to will be circulated to the members of the company entitled to have notice of the meeting sent to them by serving on each member, in any manner permitted for service of the notice of the meeting, a copy of the resolution and statement.⁵²

(d) Notice requirements

One (1) of the key aspects of meetings is that members should receive adequate notice of the matters to be considered at a meeting.

Subject to the constitution, written notice of every meeting of members must be served on every member having a right to attend the meeting in the manner in which notices are required to be served in accordance with the constitution.⁵³

For example, if the company has an auditor, the auditor must also be given notice of the meeting.⁵⁴

Pursuant to s 392(3) of the *Companies Act*, any accidental omission to give notice of the meeting to a person, or non-receipt by any person of notice of the meeting does not invalidate the meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or the Registrar, declares the proceedings at the meeting to be void.

⁵² See s 183(3) of the *Companies Act*.

⁵³ See s 177(4) of the *Companies Act*.

⁵⁴ See s 207(8) of the *Companies Act*.

(e) Advance notice of meeting

The period of notice to be given for a meeting of members differs for the different types of companies and the type of resolution intended to be passed.

Pursuant to s 177(2) of the *Companies Act*, a meeting of a company or of a class of members, other than a meeting for the passing of a special resolution must be called by notice in writing of not less than fourteen (14) days or such longer period as provided in the constitution. Notwithstanding that it is called by notice shorter than is required by s 177(2) of the *Companies Act*, a meeting will be deemed to be duly called if it is so agreed:

- (i) in the case of a meeting called as the AGM, by all the members entitled to attend and vote thereat; or
- (ii) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than ninety-five per centum (95%) of the total voting rights of all the members having a right to vote at that meeting.⁵⁵

If a public company intends to pass a special resolution, at least twenty-one (21) days' notice must be given.⁵⁶ A resolution may be proposed and passed as a special resolution at a meeting of which written notice of a period less than that required under s 184(1) of the *Companies Act* has been given if it so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than ninety-five per centum (95%) of the total voting rights of all the members having a right to vote at that meeting.⁵⁷

In practice, company secretaries often review the constitution to ensure accuracy on the calculation of the requisite notice period. Some companies may provide in their respective constitutions that the day of issue and receipt of notice be excluded from the requisite notice period. Where the constitution is silent, calendar days will suffice.

(f) Content of notice

The notice must contain a statement informing members their rights to appoint a proxy and that the proxy need not be a member of the company.⁵⁸ The *Companies Act* also requires written notices of special resolutions specifying the intention to propose the resolution as a special resolution to be duly given.⁵⁹

⁵⁵ See s 177(3) of the *Companies Act*.

⁵⁶ See s 184(1)(b) of the *Companies Act*.

⁵⁷ See s 184(2) of the *Companies Act*.

⁵⁸ See s 181(2) of the *Companies Act*.

⁵⁹ See s 184(1) of the *Companies Act*.

There are more requirements for a listed company to adhere to. Listed companies are required to have a provision in the constitution stating that all notices have to specify:

- the place, day and hour of the meeting; and
- where the meeting is called to consider special business, a statement regarding the effect of any proposed resolutions in respect of such business.⁶⁰

As a matter of general practice, non-listed companies also tend to include these matters in their notices as well. Most notices would also include information of the general business to be transacted at the meeting and resolutions to be passed.

There are circumstances where the *Companies Act* or the *SGX Listing Manual* imposes additional requirements for the notice where the agenda of the meeting involves particular resolutions.

An example would be where the meeting is held for the purpose of authorising a selective off-market acquisition of shares under s 76D of the *Companies Act*. Section 76D(2) of the *Companies Act* expressly provides that the terms of the agreement for a selective off-market purchase must be authorised by a special resolution of the company, with no votes being cast by any person whose shares are proposed to be purchased or acquired or by his/her associated persons, and s 76D(3) to (13) of the *Companies Act* will apply with respect to that authority and to resolutions conferring it. Specifically, the notice specifying the intention to propose a special resolution to authorise an agreement for a selective off-market purchase must specify a date on which the authority is to expire, being a date that must not be later than the date on which the next AGM of the company is or is required by law to be held, whichever is the earlier and specify the sources of funds to be used for the purchase or acquisition including the amount of financing and its impact on the company's financial position.⁶¹ The special resolution authorising a selective off-market purchase referred to in s 76D(2) of the *Companies Act* must also state the expiry date referred to in s 76D(3)(a) of the *Companies Act*.⁶²

Directors have a fiduciary duty to inform the members fully and fairly of the matters on which they will have an opportunity to vote. The information in the notice must be "substantially full and true" and intelligible to reasonable members of the class to whom it is directed. The notice should therefore include all relevant information to allow a member reading the notice to make

⁶⁰ See Appendix 2.2. of the *Listing Manual*. The constitution should also define "special business".

⁶¹ See s 76D(3) of the *Companies Act*.

⁶² See s 76D(4) of the *Companies Act*.

an informed decision on whether to vote for or against the proposed resolution. However, the notice should not be so technical that it cannot be understood by the members to whom it is addressed. As a matter of practice, the text of any and/or all resolution should be included in full in the notice.

As the members' right to receive a substantially full and true notice of meeting is a personal right which is enforceable by the member, it is common in practice for directors to send out circulars or explanatory notes with the notice to provide members with the relevant information of the intended business to be transacted at the meeting.

Given the stringent requirement that adequate notice has to be given of all intended business to be transacted at a meeting, a meeting should only deal with matters of which notice has been given. Arguably, one may contend that matters within the scope of the "ordinary business" of an AGM such as:

- declaring dividends;
- consideration of the company's financial statements and the report of the directors and auditors;
- election of directors in the place of those retiring; and
- the appointment and fixing of the remuneration of the auditors,

could still be dealt with at a meeting notwithstanding that adequate notice has not been given of the same.

It is often the case that the intended business to be transacted at an AGM is stipulated in the constitution and any other matters not expressly covered are to be dealt with at an EGM. Thus, it is advisable to check the constitution when drafting a notice. Minor variations to the text of resolutions included in the notice are permissible, but the substance of the resolution cannot be changed.

¶8-220 Conduct at general meetings

There are also procedural requirements to adhere to with regards to the conduct of meetings including quorum requirements and proxy rules.

(a) Quorum requirements

A quorum is the minimum number of people who must be present at a meeting in order for the meeting to be valid. This is fixed by the constitution. It is not uncommon for smaller companies to have a lower quorum as compared to that of a large public company.

The constitution typically provides that, in determining whether a quorum is present, each person in attendance is only counted once even if the person is attending in more than one (1) capacity, eg in their own right as a member and in their capacity as a proxy for another person.

DISSOLUTION OF A COMPANY

| | |
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¶12-000 Definition of dissolution

Dissolution refers to the end of a company's existence. The process by which a company is dissolved is known as "liquidation" or "winding up" (the terms are synonymous). When a company is in liquidation, its assets are realised to pay off its creditors and any surplus would then be distributed to its members. The company only ceases to exist, ie dissolved at the end of this whole process. In general, a company may be wound up:

- (a) by the court; or
- (b) voluntarily.

A company can be dissolved by:

- (a) dissolution following a members' or creditors' voluntary winding up;¹
- (b) dissolution following a compulsory winding up;²
- (c) dissolution by the Registrar striking the company off the register and publishing notice of the same in the Gazette;³ and
- (d) dissolution on application by the company for it to be struck off the register and publishing notice of this in the Gazette.⁴

¶12-010 Types of dissolution

(a) Dissolution following winding up

In a voluntary liquidation, as soon as the affairs of the company are fully wound up, the liquidator will make an account showing how the winding up has been conducted and the property of the company has been disposed of. Thereafter, the liquidator will call a general meeting of the company or in the

- 1 See s 276 of the *Companies Act*.
- 2 See s 308 of the *Companies Act*.
- 3 See s 344 of the *Companies Act*.
- 4 See s 344A of the *Companies Act*.

case of a creditors' voluntary winding up, a meeting of the company and the creditors for the purpose of laying it before the account and providing any explanation thereof.⁵

The meeting will be called by advertisement published in at least four (4) local daily newspapers, one (1) each in the English, Malay, Chinese and Tamil languages and the advertisement will specify the time, place and object of the meeting and published at least one (1) month before the meeting unless a declaration is made by the liquidator and filed with the Official Receiver that neither at the date of the commencement of the winding up nor since that date has the company had trade creditors.⁶

Within seven (7) days after the meeting, the liquidator will lodge with the Registrar and the Official Receiver a return of the holding of the meeting and of its date with a copy of the account attached to such return and if such return or copy of the account is not lodged, the liquidator will be found guilty of an offence.⁷

The quorum at the meeting of the company is two (2) and at a meeting of the company, the creditors will be two (2) members and two (2) creditors.⁸

The company will be dissolved on the expiration of three (3) months after the lodging of the return with the Registrar and with the Official Receiver.⁹ Notwithstanding the same, note that the court may, in the application of the liquidator of any person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time at the court thinks fit.¹⁰

(b) Dissolution following compulsory winding up

In a compulsory winding up, when the liquidator has realised all the property, the company (or as much as in his/her opinion can be realised without needlessly protracting the liquidation), and has distributed the final dividend (if any) to the creditors and adjusted the rights of the contributories among themselves and made a final return (if any) to these contributories, the liquidator may apply to court for an order that he/she be released as liquidator and/or that the company be thereby dissolved.¹¹ The liquidator may also make this application if he/she has resigned or is removed from the office.¹² Before applying for such release and dissolution, a liquidator shall

- 5 See s 308(1) of the *Companies Act*.
- 6 See s 308(2) of the *Companies Act*.
- 7 See s 308(3) of the *Companies Act*.
- 8 See s 308(4) of the *Companies Act*.
- 9 See s 308(5) of the *Companies Act*.
- 10 See s 308(6) of the *Companies Act*.
- 11 See s 275(a) of the *Companies Act*.
- 12 See s 275(b) of the *Companies Act*.

give notice of his/her intention to apply for his/her release to creditors and contributories of the company and shall also send with the notice a summary of all receipts and payments in the winding up. These notices will be in Forms 66 and 68 of the Companies (Winding Up) Rules.¹³

Where the court makes the order for dissolution, the company is dissolved with effect from the date the order is made.¹⁴ An order of court releasing the liquidator discharges him/her from all liability in respect of any act done or default made by him/her in the administration of the affairs of the company or otherwise in relation to his/her conduct as liquidator. However, such orders may be revoked upon proof that it was obtained by fraud or by suppression or concealment of any material fact.¹⁵

A liquidator may, when applying for an order for dissolution and his/her release, also seek an order that the books and records of the company be destroyed pursuant to s 320(3) of the *Companies Act*. Without such an order or direction by the court, the books and records of the company will have to be retained for a further two (2) years following the dissolution of the company.¹⁶ This will normally cause storage costs to be incurred.

(c) Dissolution by striking off

There are two (2) instances in which a Registrar may strike a company off the companies register, namely:

- (a) where the Registrar has reasonable cause to believe that a company is not carrying on business or not in operation and the company does not show cause to the contrary;¹⁷ and
- (b) where on application by the company, the Registrar is satisfied that the company shall be struck off on such grounds and subject to such conditions as may be prescribed by the Registrar.¹⁸

(d) Dissolution by striking off register by Registrar

Where the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, the Registrar may send to the company, its directors, secretaries and members, a letter to that effect stating that, if an answer showing cause to the contrary is not received within thirty (30) days after the date of the letter, a notice will be published in the Gazette with a view to striking the company's name off the register.¹⁹

¹³ See r 149 of the Companies (Winding Up) Rules.

¹⁴ See s 276(1) of the *Companies Act*.

¹⁵ See s 276(4) of the *Companies Act*.

¹⁶ See s 320(2) of the *Companies Act*.

¹⁷ See s 344 of the *Companies Act*.

¹⁸ See s 344A of the *Companies Act*.

¹⁹ See s 344(1) of the *Companies Act*.

If the Registrar does not receive an answer within one (1) month from the date of the letter to the effect that the company is carrying on business or in operation, the Registrar may publish in the Gazette and send to the company by registered post, a notice that at the expiration of sixty (60) days after the date of that notice the name of the company mentioned in that notice will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

The Registrar may also strike off defunct companies off the register (in a similar fashion) if the Registrar has reasonable cause to believe that:²⁰

- no liquidator is acting on behalf of the company;
- the affairs of the company are fully wound up and for a period of six (6) months the liquidator has been in default in lodging any return required to be made by him/her; or
- the affairs of the company have been fully wound up under Div 2 of the *Companies Act* and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the court dissolving the company.

A director may face disqualification in his/her role as a director if he had been a director of three (3) other companies which had been struck off the register.²¹ The disqualification is for a period of five (5) years,²² and once a person is disqualified, he/she will not be allowed to be a director or take part in the management of any local or foreign company unless he/she seeks permission from the High Court or Official Assignee (as the case may be) during the period of disqualification.²³ Any person who acts as a director during the disqualification period shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand Singapore dollars (S\$10,000), or imprisonment for a term not exceeding two (2) years, or both.²⁴

(e) Dissolution by striking off and dissolution on application by the company to Registrar

The Registrar may also, on the application by a company (by the directors or a majority of them),²⁵ strike off the company's name off the register on such grounds and subject to such conditions as may be prescribed.²⁶

²⁰ See s 344(3) of the *Companies Act*.

²¹ See s 155A of the *Companies Act*.

²² See s 155A(1) of the *Companies Act*.

²³ See s 155A(3) of the *Companies Act*.

²⁴ See s 155A(2) of the *Companies Act*.

²⁵ See s 344A(2) of the *Companies Act*.

²⁶ The Companies (Striking Off) Regulations 2015 came into operation on 3 January 2016 which is to be read conjunctively with s 344A of the *Companies Act*.

The grounds on which the Registrar may strike the name of a company off the register are that:

- (a) the company has not started to carry on business or being in operation; or
- (b) the company has ceased to carry on business or operate.

The conditions on which the Registrar may strike the name of a company off the register on the application of the company are:²⁷

- the company is not a party to any ongoing or pending proceedings (whether civil or criminal) before a court, whether in Singapore or elsewhere;
- the company has no assets or contingent assets and no liability or contingent liability; and
- the company is not subject to any ongoing or pending regulatory action or disciplinary proceeding.

Upon receiving the company's application, the Registrar will, if satisfied that the grounds and conditions (if any) have been satisfied, send to the company and its directors, secretaries and members a letter informing them of the application and stating that if an answer showing cause to the contrary (in the form and manner referred to in s 344C of the *Companies Act*) is not received within thirty (30) days after the date thereof, a notice will be published in the Gazette with a view to striking the company's name off the register.²⁸

The Registrar may not, however, strike a company's name off the register until the expiration of sixty (60) days after the publication by the Registrar in the Gazette of a notice.²⁹

- stating that the Registrar intends to exercise the power under s 344A of the *Companies Act* in relation to the company; and
- inviting any person to show cause why that should not be done within such period as may be prescribed.³⁰

If no person shows cause or sufficient cause as to why the name of the company should not be struck off the register within the period, the Registrar will strike off the name of the company from the register and publish a notice in the Gazette of the company's name having been so struck off.³¹ The company will be dissolved on the publication of the notice in the Gazette.³²

²⁷ See s 2(3) of the *Companies (Striking Off) Regulations 2015*.

²⁸ See s 344A(3) of the *Companies Act*.

²⁹ See s 344A(4) of the *Companies Act*.

³⁰ The *Companies (Striking Off) Regulations 2015* prescribes that the date of notice of intention to show cause refers to the date on which notice of the Registrar's intention to exercise the power to strike the name of a company off the register is first published in the Gazette under s 344A(4) of the *Companies Act*.

³¹ See s 344A(5) of the *Companies Act*.

³² See s 344A(6) of the *Companies Act*.

It is worthwhile to note that even on dissolution of the company under s 344A(6) of the *Companies Act*:³³

- the liability, if any of every officer and member of the company will continue and may still be enforced as if the company has not been dissolved; and
- the court still has the power to wind up a company the name of which has been struck off the register.

Another point to note is that the Registrar will ensure that particulars of the company in the application under s 344A(1) of the *Companies Act* (as detailed above) is sent to:

- the Inland Revenue Authority of Singapore (IRAS); and
- the Central Provident Fund Board (CPF),

and the substance of the notices to be published referred to under s 344A(4) and (5) of the *Companies Act* is also published on the IRAS' website.³⁴

It is possible for an application, by way of a written notice to the Registrar, to withdraw an application to strike a company's name off the register under s 344A of the *Companies Act* at any time before the name of the company has been struck off the register.³⁵

When the Registrar receives the written notice, he/she will:³⁶

- send to the company by ordinary post a notice that the application to strike the company's name off the register has been withdrawn; and
- publish a notice on the IRAS' website that the application to strike the company's name off the register has been withdrawn.

¶12-020 Objections to striking off

Where a notice is given or published by the Registrar under s 344(2) or 344A(4) of the *Companies Act* of the Registrar's intention to strike the company's name off the register, any person may deliver, not later than the date specified in the notice an objection to the striking off of the name of the company from the register on the ground that there is reasonable cause why the name of the company should not be so struck off, including that the company does not satisfy any of the prescribed grounds for striking off referred to in s 344(1) or 344A(1) of the *Companies Act*.³⁷

³³ See s 344A(7) of the *Companies Act*.

³⁴ See s 344A(8) of the *Companies Act*.

³⁵ See s 344B(1) of the *Companies Act*.

³⁶ See s 344B(2) of the *Companies Act*.

³⁷ See s 344C(1) of the *Companies Act*.

The objection is to be given to the Registrar by notice in the prescribed form and manner.³⁸ Once the Registrar receives the notice of objection, the Registrar will:³⁹

- where applicable, give the applicant(s) for striking the name of the company off the register notice of the objection; and
- in deciding whether to allow the objection, take into account such consideration as may be prescribed.

¶12-030 Restoration to register

An application may be made to the Registrar to restore to the register the name of a company whose name has been struck off the register by the Registrar under s 344 of the *Companies Act*.⁴⁰ Only a former director or former member of the company may make this application.⁴¹ Such an application will be invalid unless the application is received by the Registrar within six (6) years after the date on which the company is dissolved.⁴²

If it is the Registrar's decision that the name of the company should be restored to the register, the restoration takes effect as from the date the notice is sent and the Registrar will:

- (1) enter in the register a note of the date in which the restoration takes effect; and
- (2) cause notice of the restoration to be published in the Gazette and on the IRAS' website.⁴³

The notice will state:⁴⁴

- the name of the company or if the company is restored to the register under a different name, that name and the former name;
- the company's registration number; and
- the date on which the restoration of the name of the company to the register takes effect.

If the Registrar does not restore the name of the company to the register, the person who made the application or any other person aggrieved by the Registrar's decision may appeal to the court which may confirm the Registrar's decision or restore the name of the company to the register and give directions and make such orders as the court is empowered to give and make under s 344G(3) of the *Companies Act*.⁴⁵

38 See s 344C(2) of the *Companies Act*.

39 See s 344C(3) of the *Companies Act*.

40 See s 344D of the *Companies Act*.

41 See s 344D(3) of the *Companies Act*.

42 See s 344D(4) of the *Companies Act*.

43 See s 344E(2) of the *Companies Act*.

44 See s 344E(3) of the *Companies Act*.

45 See s 344E(5) of the *Companies Act*.

The Registrar may, on his/her own initiative, also restore a company which was deregistered by mistake if he/she is satisfied that the name of the company has been struck off the register and the company is dissolved as a result of mistake of the Registrar.⁴⁶

¶12-040 Effects of restoration

If the name of a company is restored to the register under s 344E(2) or 344F or on appeal to the court under s 344E(5) of the *Companies Act*, the company will be regarded to have continued to be in existence as if its name had not been struck off the register.⁴⁷

¶12-050 Effects of dissolution

(a) Official Receiver to as representative of defunct company

As stated above, upon dissolution, a company ceases to exist, however, there may instances where the Official Receiver may act as representative of the defunct company in certain events.

The Official Receiver may, as representing the company or its liquidator, do or cause to be done any act if it is proved to the satisfaction of the Official Receiver that:⁴⁸

- the company, if still existing would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and
- in order to carry out, complete or give effect thereto, some purely administrative act, not discretionary should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing.

The Official Receiver may execute or sign any relevant instrument or document adding a memorandum stating that he/she has done so in pursuance of s 345 of the *Companies Act*, and such execution or signature will have the same force, validity and effect as if the company is still existing had duly executed such instrument or document.⁴⁹

(b) Outstanding assets of defunct company vest in Official Receiver

Where there remains any outstanding property, movable or immovable including things in action and whether in or outside Singapore which was vested in the company or which it was entitled to has a disposing power at the time of dissolution but which was not realised upon or disposed or dealt with by the company or the liquidator, these properties (save for called and uncalled capital) will be vested in the Official Receiver.⁵⁰

46 See s 344F(1) of the *Companies Act*.

47 See s 344G of the *Companies Act*.

48 See s 345(1) of the *Companies Act*.

49 See s 345(2) of the *Companies Act*.

50 See s 346(1) of the *Companies Act*.

The Official Receiver may also sell or otherwise dispose of or deal with such estate or interest or any part thereof as he/she sees fit.⁵¹ This may be done by way of public auction, public tender or private contract upon such terms and conditions as he/she thinks fit. The Official Receiver also has the power to rescind any contract and resell or otherwise dispose of or deal with such property as he/she thinks expedient and may make, execute, sign and give such contracts, instruments and documents as he/she thinks necessary.⁵²

(c) Liability of Official Receiver

All property vested in the Official Receiver will be liable and are subject to all charges, claims and liabilities imposed thereon or affecting such property by reason if any statutory provision as to rates, taxes, charges or any other matter or thin to which such property would have been liable or subject has such property continued in the possession, ownership or occupation of the company. However, there will not be imposed any duty, obligation or liability on the Official Receiver to do or suffer any act or thing required by any such statutory provisions to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of assets of the company so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment.⁵³

⁵¹ See s 347 of the *Companies Act*.

⁵² See s 347(2) of the *Companies Act*.

⁵³ See s 348 of the *Companies Act*.

WINDING UP FRAMEWORK

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|--|---------|
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¶12-100 Overview of the winding up mechanism

The winding up or liquidation of a company is the process by which a company's assets are collected and realised, and the proceeds distributed to its creditors in order of fixed priority. Any monies remaining (after all debts, expenses and costs incurred from the process of liquidating the company have been paid off) are distributed among the shareholders of the company. When the winding up has been completed, the company is formally dissolved and ceases to exist.

The two (2) modes of winding up that are set out in s 247 of the *Companies Act* are:

- (a) by the court; or
- (b) voluntary.

The court may compulsorily wind up a company (compulsory winding up) upon the application of a person entitled to do so. Persons entitled to make such an application include, *inter alia*, the company, a creditor and a contributory. The most common ground on which a winding up application is presented is by a creditor of a company on the grounds of a company's inability to pay its debts.⁵⁴ The court may also compulsorily wind up a company where the court deems that it is just and equitable to do so.

A voluntary winding up, on the other hand, is a process undertaken by either the shareholders or creditors of the company voluntarily. Please refer to ¶12-200 for a detailed discussion on the two (2) modes of winding up.

¶12-110 Modes of winding up application

Members' voluntary winding up

In a members' voluntary winding up, the company is solvent while in a creditors' voluntary winding up, the company is usually insolvent. A members' voluntary winding up is sometimes the result of a reconstruction or merger, or in most cases, where the company has ceased to carry out its business and its members wish to realise and distribute its assets of the company.

⁵⁴ See s 254(1)(e) of the *Companies Act*.

Creditors' voluntary winding up

A creditors' voluntary winding up is brought about by a resolution of the company resolving that by reasons of its liabilities, the business can no longer be carried on and the company should be wound up.⁵⁵

In a creditors' voluntary winding up, the creditors exert control through a committee of inspection⁵⁶ whereas in the case of a members' voluntary winding up, the members are in control. The court is given a degree of jurisdiction in cases of voluntary windings up. In both forms of voluntary winding up, should there arise any disagreement between the different parties to the winding up, they may refer to and seek direction from the court. Please refer to ¶12-230 for a discussion on the creditors voluntary winding up proceedings.

Compulsory winding up

In a compulsory winding up, an application is made to the court to wind up the company. The *Companies Act* provides for thirteen (13) different circumstances under which a company may be compulsorily wound up. Please refer to ¶12-300 for a discussion on the compulsory winding up mechanism.

¶12-120 Parties to a winding up application

The parties involved in a winding up are described in terms which are specific to the winding up process. The most important parties are the liquidator, the Official Receiver, creditors, contributories and the committee of inspection.

Liquidator

The liquidator (who must be a natural person) is appointed in a general meeting by the company⁵⁷ or the court⁵⁸ to administer the affairs of the wound up company. If no private liquidator is appointed by the court, the Official Receiver shall be the liquidator.

When a company is in liquidation, powers of the directors cease. The liquidator is then vested with the power to manage the company within the ambit of his/her delegated powers, duties and functions as prescribed by the *Companies Act*.

The primary tasks of the liquidator include but are not limited to:

- a winding up of the company's business;
- realisation of the assets;
- payment of the creditors; and
- distribution of the remaining to the members of the company.

⁵⁵ See s 290 read with s 296 of the *Companies Act*.

⁵⁶ See Pt IX, Div 3, Subdiv 3 of the *Companies Act*.

⁵⁷ See s 294(1) or 291(1) of the *Companies Act*.

⁵⁸ See s 263(b) and (c) of the *Companies Act*.

The *Companies Act* accords the liquidator with certain powers⁵⁹ to perform his/her duties and tasks and if he/she breaches these statutory and common law duties or obligations, he/she may be held personally accountable.

Provisional liquidator

In the context of a compulsory winding up, a provisional liquidator may be appointed to preserve the assets of the company pending the hearing of the winding up petition and to maintain the status quo of the company. The provisional liquidator has all the powers and may exercise all the functions of a liquidator, subject to such limitations and restrictions as may be prescribed by the Rules or as the court may specify in appointing him/her.⁶⁰

The court may appoint a provisional liquidator at any time after the filing of a winding up application and before the making of a winding up order.⁶¹ If there is no provisional liquidator appointed by the company, the court may appoint the Official Receiver as the provisional liquidator to perform the role of a liquidator.

Creditor

A creditor is any person to whom the company owes a debt. Creditors are entitled to petition for a compulsory winding up if they can show that the company they traded with is unable to pay its debts.

Contributory

A contributory is a person who is required to contribute to the assets of the company in the event of it being wound up. Every past and present member is liable to contribute to the property of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributories among themselves, subject to the following qualifications:

- A past member is not liable to contribute if he/she has ceased to be a member for one (1) year or more before commencement of the winding up.⁶²
- A past member is not liable to contribute in respect of any debt or liability of the company contracted after he/she ceased to be a member.⁶³
- A past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the *Companies Act*.

⁵⁹ See s 272 of the *Companies Act*.

⁶⁰ See s 267 of the *Companies Act*.

⁶¹ See s 267 of the *Companies Act*.

⁶² See s 250(1)(a) of the *Companies Act*.

⁶³ See s 250(1)(b) of the *Companies Act*.

- In the case of a company limited by shares, no contribution is required from a member exceeding the amount (if any) unpaid on the shares in respect of which he/she is liable as a present or past member.⁶⁴
- In the case of a company limited by guarantee, no contribution is required from a member exceeding the amount undertaken to be contributed by him/her to the property of the company in the event of its being wound up.⁶⁵
- In the adjustment of the rights of contributories among themselves, a sum due to a member (in his/her capacity as a member) by way of dividends, profits or otherwise is not to be treated as a debt of the company, payable to the member in a case of competition between that member and any other creditor who is not a member.⁶⁶

The liability of a contributory is unique in the sense that the liability creates a debt which accrues from him/her at the time when his/her liability commenced but payable only at the time when calls are made for enforcing the liability.⁶⁷

Liability in the event of a contributory's death

One of the functions of a liquidator is to prepare a list of members liable to contribute in the event of a winding up of a company. If a contributory dies either before or after he/she has been placed on that list, his/her personal representatives are liable in due course of administration to contribute to the assets of the company in the discharge of his liability and shall be contributories accordingly.⁶⁸ If the contributory's personal representative defaults in paying any money ordered to be paid, proceedings may be taken out against the estate of the deceased contributory for administering of the estate in order to compel payment out of the assets of the estate.⁶⁹

Liability in the event of bankruptcy

A member who becomes bankrupt or who assigns his/her estate to his/her creditors before or after his/her name is listed as a contributory will be represented by his/her trustee for all purposes of the winding up. The trustee will be considered a contributory. In addition, there may be proved against the member's estate the estimated value of his/her liability to future calls as well as calls already made.⁷⁰

64 See s 250(1)(d) of the *Companies Act*.

65 See s 250(1)(e) of the *Companies Act*.

66 See s 250(1)(g) of the *Companies Act*.

67 See s 251 of the *Companies Act*.

68 See s 252(1) of the *Companies Act*.

69 See s 252(1) of the *Companies Act*.

70 See s 252(2) of the *Companies Act*.

Directors

In the winding up of a limited company, any director, whether past or present, whose liability is unlimited shall, in addition to the liability, if any, also be liable to contribute as an ordinary member and make such additional and further contribution as if he/she were, at the commencement of the winding up, a member of an unlimited company,⁷¹ subject to the following exceptions:

- (1) a past director who has ceased to hold office for a year or more before the commencement of the winding up, shall not be liable to make further contribution;⁷²
- (2) a past director shall not be liable to make further contribution in respect of any debt or liability of the company contracted after he/she ceased to hold office;⁷³ and
- (3) subject to the company's constitution, a director shall not be liable to make further contribution unless the court considers it necessary to require that contribution, in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.⁷⁴

In the winding up of a company limited by guarantee, every member shall be liable to contribute to the extent of any sums unpaid on any shares held by the member, in addition to the amount undertaken to be contributed by him/her to the assets of the company in the event of its being wound up.

Committee of inspection

Although the liquidator is ultimately responsible for the administration in the winding up of a company, he/she may be assisted by a committee of inspection. If requested by any creditor or contributory, the liquidator may summon separate meetings of the creditors and contributories for the purposes of determining whether or not a committee shall be appointed to act with the liquidator and if so who are to be members of the committee.⁷⁵ In the event that there is a difference in the determinations of the meetings of the creditors and contributories such that the committee cannot be agreed upon, the court shall decide the difference and make such order as it thinks fit.

The committee of inspection is therefore a representative group of creditors and contributories of the company holding:

- (a) general powers of attorney from creditors or contributories; or
- (b) special authorities from creditors or contributories authorising the specific individuals to act on such a committee of inspection, or in the case of a difference, as determined by the court.⁷⁶

71 See s 250(2) of the *Companies Act*.

72 See s 250(3)(a) of the *Companies Act*.

73 See s 250(3)(b) of the *Companies Act*.

74 See s 250(3)(c) of the *Companies Act*.

75 See s 277(1) of the *Companies Act*.

76 See s 278(1) of the *Companies Act*.

While the *Companies Act* does not stipulate explicitly the minimum number of members required to form a committee, it does however, state that continuing members of the committee may act notwithstanding any vacancy therein if the continuing members are not less than two (2). Thus, the committee should always comprise at least two (2) continuing members in order for it to act with the liquidator.⁷⁷

⁷⁷ See s 278(9) of the *Companies Act*.

VOLUNTARY WINDING UP

| | |
|---|---------|
| Overview | ¶12-200 |
| Procedure for members' voluntary winding up | ¶12-220 |
| Procedure for creditors' voluntary winding up | ¶12-230 |

¶12-200 Overview

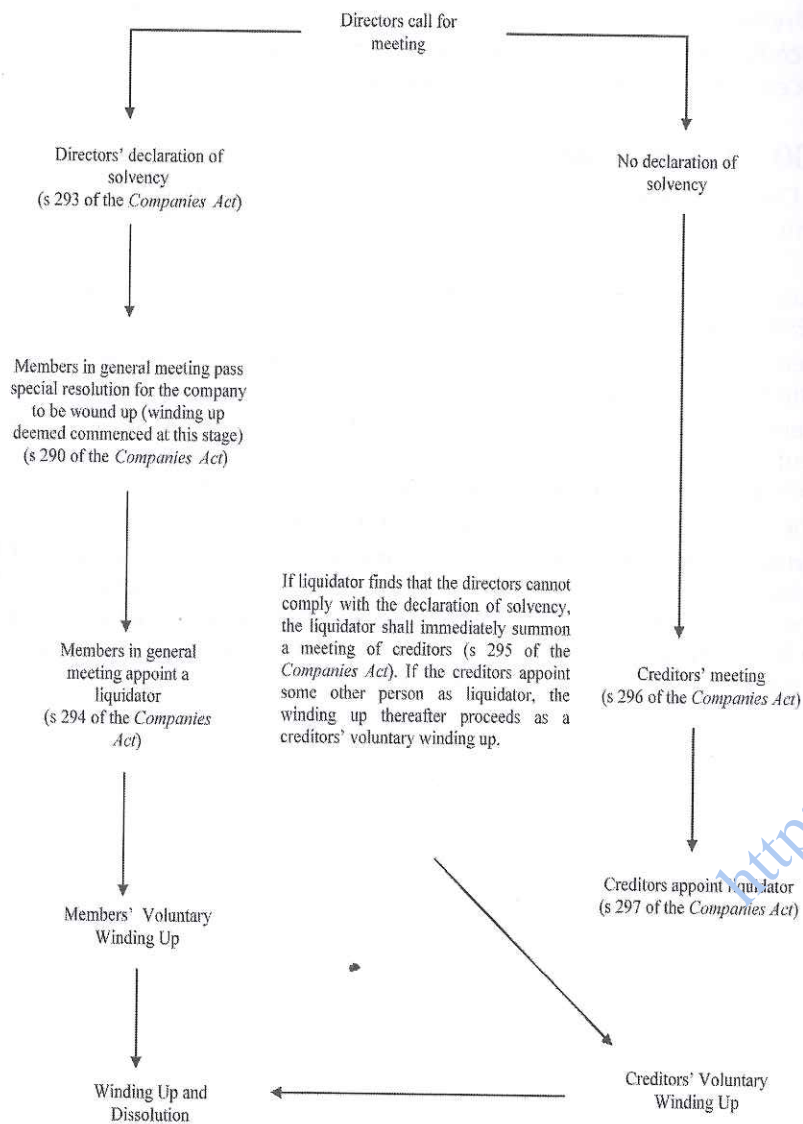
Part X, Div 3 of the *Companies Act* provides for the two (2) modes of voluntarily winding up, namely, creditors and members voluntary winding up.

The circumstances in which a company may be wound up voluntarily are set out in s 290(1) of the *Companies Act*:

- (a) when the period fixed by the constitution for the duration of the company to exist expires;
- (b) where the constitution provides that with the occurrence of a specified event, the company shall be dissolved, and the company in general meeting passes a resolution requiring to be wound up; or
- (c) if the company so resolves by special resolution.

As a starting point, both modes of voluntary winding up are commenced by the passing of a special resolution. The procedure which follows after the initial resolution differs according to whether the company can or cannot carry on its business by reason of its liabilities. An overview of the process in which a company can be wound up is set out in Figure 12.1.

Figure 12.1



In a members' voluntary winding up, it is crucial for the company to be solvent at the time at which the resolution is passed. Solvency is a prerequisite condition of a members' voluntary winding up petition because the company's directors have to make a declaration to the effect that they have

made an inquiry into the affairs of the company, and have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve (12) months after the commencement of winding up.⁷⁸

The declaration must fulfil the following criteria in order to be effective:⁷⁹

- it must be made at a meeting of directors of the company;
- it must be made within five (5) weeks immediately preceding the passing of the resolution for voluntary winding up; and
- it must be lodged with the Registrar before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out.

The declaration must be accompanied by:

- a statement of affairs of the company showing the assets of the company;
- the total amount expected to be realised from the liquidation of the assets;
- the liabilities of the company; and
- the estimated expenses of the winding up.⁸⁰

The directors should satisfy themselves that there are sufficient grounds for making their s 293(1) declaration of solvency. If the company that is wound up pursuant to a resolution for voluntary winding up following a declaration of solvency has debts that are not paid in full within the 12-month period (despite what is stated in the declaration), the directors are presumed not to have reasonable grounds for their opinion unless they can show otherwise. If they are unable to show otherwise, the directors shall be guilty of an offence and subject to a penalty (on conviction, to a term of imprisonment or a fine) in accordance with the *Companies Act*.⁸¹

¶12-220 Procedure for members' voluntary winding up

A members' voluntary winding up is a liquidation of a company which the directors believe to be solvent.

The steps involved in a members' voluntary winding up are:

- Where it is proposed to wind up a company voluntarily, the majority of the company's directors shall, make a declaration to the effect that they have inquired into the company's affairs, and are of the opinion that the company will be able to pay its debts in full within twelve (12) months (the declaration of solvency provided for at s 293 of the *Companies Act* which is a formal acknowledgement that the company is solvent).

⁷⁸ See s 293(1) of the *Companies Act*.

⁷⁹ See s 293(3) of the *Companies Act*.

⁸⁰ See s 293(2) of the *Companies Act*.

⁸¹ See s 293(4) of the *Companies Act*.

The declaration of solvency should also have attached to it, a statement of the company's affairs stating, in the prescribed form, namely:

- (i) the assets of the company and the total amount expected to be realised;
 - (ii) the liabilities of the company; and
 - (iii) the estimated expenses of winding up, made up to the latest practicable date before making of the declaration.⁸²
- (2) The company's members in general meeting pass a special resolution that the company be wound up voluntarily.⁸³
 - (3) The members in general meeting appoint a liquidator.⁸⁴
 - (4) The commencement of the winding up is deemed to have commenced when the resolution for voluntary winding up is passed,⁸⁵ even if the company is subsequently wound up by the court.⁸⁶ From the time of commencement of winding up in step (2):
 - (a) every invoice, order for goods or business letter issued by or on behalf of the company shall have the words "in liquidation" added after the name of the company where it first appears on the document;⁸⁷
 - (b) the company shall cease to carry on its business, except to the extent the liquidator is of the opinion that is necessary for the beneficial disposal or winding up of the business;⁸⁸
 - (c) transfers of the company's shares and alteration of status of the company's members are void unless the liquidator approves the transfer;⁸⁹
 - (d) if a judgment creditor has not completed execution or attachment against the company before commencement of winding up, he/she may not have the benefit of his/her execution as against the liquidator. In instances where the creditor had notice of the resolution to wind up the company, he/she cannot retain the benefit of any execution that was not completed before he/she received such notice.⁹⁰

⁸² See s 293 of the *Companies Act*.

⁸³ See s 290(1) of the *Companies Act*.

⁸⁴ See s 294(1) of the *Companies Act*.

⁸⁵ See s 291(6)(b) of the *Companies Act*.

⁸⁶ See s 255(1) of the *Companies Act*.

⁸⁷ See s 391(1) of the *Companies Act*.

⁸⁸ See s 292(1) of the *Companies Act*.

⁸⁹ See s 292(2) of the *Companies Act*.

⁹⁰ See s 334(1) of the *Companies Act*.

- (5) From the time of the liquidator's appointment in step (3), the directors lose their powers over the company, except to the extent allowed by the liquidator or by the members with the consent of the liquidator.⁹¹
- (6) The liquidator has specific functions and duties to carry out. An elaboration on the specific functions and duties of the liquidator is discussed at ¶12-400.
- (7) If at any time the liquidator forms the opinion that the company will not be able to pay its debts in full within the 12-month period, the liquidator must call a meeting of the company's creditors, after which the winding up will proceed as if it were a creditors winding up.⁹²
- (8) When the winding up is completed, the company is normally dissolved.

A situation may arise where it may be desirable to liquidate a successful company for the purpose of restructuring. In such a case where the creditors are amply covered by the company's assets, there is little need for supervision and the objective is to minimise delay and expenses incurred in the liquidation process. The company will proceed to liquidate by way of a members' voluntary winding up.

In the process of the member's voluntary winding up proceedings, such proceedings may be "converted" to another form of winding up proceedings in the following circumstances:

- (a) Where it becomes apparent to the liquidator that the company will not be able to pay its debts in full, contrary to the declaration of solvency given by the directors, the liquidator must immediately call a meeting of the company's creditors and lay before the meeting a statement of assets and liabilities of the company and notify the creditors that they have the right to appoint some other liquidator for the purpose of the winding up proceedings. In the event that the creditors opt to appoint their own liquidator, the winding up will thereafter proceed as if the winding up were a creditors' voluntary winding up application;⁹³ or
- (b) If a person having *locus standi* presents a winding up application and the leave of court is obtained, and the court is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.⁹⁴

⁹¹ See s 294(2) of the *Companies Act*.

⁹² See s 295(1) of the *Companies Act*.

⁹³ See s 295 of the *Companies Act*.

⁹⁴ See s 253(2)(d) of the *Companies Act*.

¶12-230 Procedure for creditors' voluntary winding up

The difference between a members' voluntary winding up and a creditors' voluntary winding up is that no declaration of solvency is required for a creditors' winding up application.

The steps involved for a creditors' voluntary winding up are:

- (1) Either:
 - (a) A company's members in general meeting pass a special resolution that the company be wound up voluntarily, where the directors have not made a declaration of solvency;⁹⁵ or
 - (b) Where a provisional liquidator is appointed after the directors have made a statutory declaration that the company cannot by reason of its liabilities continue its business and that a meeting of the company and of its creditors have been summoned within one (1) month of the date of declaration.⁹⁶
- (2) A meeting of the company's creditors is held on the same day or the next day following the day on which the company holds the meeting to pass the resolution for voluntary winding up of the company.⁹⁷

The notices of the meeting of the creditors and the notices of the meeting of the company shall be sent by post simultaneously. The creditors must be given at least seven (7) clear days of notice by post of the meeting.⁹⁸

At the creditors' meeting, the directors must provide a full statement of the company's affairs showing:

- (1) the assets of the company;
- (2) the valuation of the assets and the manner in which the valuation was conducted; and
- (3) a list of the company's creditors and their estimated claims.⁹⁹

The directors must also appoint at least one (1) representative to be present at the meeting.¹⁰⁰

- (3) At the creditors' meeting, the creditors may nominate a person to be liquidator for the purpose of the winding up, who shall be the appointed liquidator even if the members had previously nominated a different liquidator. If the creditors do not do so, the person nominated by the members in Step 1 above shall be the liquidator.¹⁰¹ Where there are different nominations for liquidator, any director, member or creditor

⁹⁵ See s 291 and 293 of the *Companies Act*.

⁹⁶ See s 291 of the *Companies Act*.

⁹⁷ See s 296(1) of the *Companies Act*.

⁹⁸ See s 296(2) of the *Companies Act*.

⁹⁹ See s 296(4)(a) of the *Companies Act*.

¹⁰⁰ See s 296(4)(b) of the *Companies Act*.

¹⁰¹ See s 297(1) of the *Companies Act*.

may within seven (7) days after the date of the creditors' nomination, apply to court for an order directing that the person nominated as liquidator by the company shall be the liquidator instead of or jointly with the person nominated by the creditors.¹⁰²

- (4) In the case of any voluntary winding up, winding up shall commence:
 - (a) Where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in s 291(1) of the *Companies Act* was lodged with the Registrar; and
 - (b) In any other case, at the time of passing of the resolution for voluntary winding up.

¹⁰² See s 297(2) of the *Companies Act*.

COMPULSORY WINDING UP

| | |
|---|---------|
| Who may bring an application | ¶12-300 |
| Circumstances in which a company may be wound up by the court | ¶12-310 |
| Procedure | ¶12-320 |

¶12-300 Who may bring an application

A company, whether or not it is being wound up voluntarily, may be wound up under an order of the court on the application of any one (1) or more of the following:

- (1) the company;
- (2) a creditor;
- (3) a "contributory" (a member, or a past member who is liable to contribute to the company's property on a winding up);
- (4) a liquidator of a company;
- (5) a judicial manager appointed under Pt VIIIA of the *Companies Act*;
- (6) in the case of a company that is in the banking business by Monetary Authority of Singapore; or
- (7) the Minister on grounds specified in s 253(1) and 254(1)(d), (l) and (m) of the *Companies Act*.

¶12-310 Circumstances in which a company may be wound up by the court

A compulsory winding up occurs when an application is made to the court to wind up the company and the court makes a winding up order against the company.

Section 254(1) of the *Companies Act* provides for thirteen (13) circumstances under which a court may order a compulsory winding up of a company which are as follows:

- (1) The company has, by special resolution, resolved that it be wound up by the court.¹⁰³
- (2) Default is made by the company in lodging the statutory report or in holding the statutory meeting.¹⁰⁴
- (3) The company does not commence business within a year from its incorporation, or suspends its business for a whole year.¹⁰⁵
- (4) The company has no member.¹⁰⁶

103 See s 254(1)(a) of the *Companies Act*.

104 See s 254(1)(b) of the *Companies Act*.

105 See s 254(1)(c) of the *Companies Act*.

106 See s 254(1)(d) of the *Companies Act*.

- (5) The company is unable to pay its debts.¹⁰⁷
- (6) The directors have acted in the affairs of the company, in their own interests rather than in the interests of the members as a whole, or in any other manner which appears to be unfair or unjust to the other members.¹⁰⁸
- (7) An inspector appointed under Pt IX of the *Companies Act* has recommended the winding up of the company.¹⁰⁹ This provision should be read together with s 241(1) of the *Companies Act* which allows the Minister to apply to court for the winding up of a company after an inspector has made his/her report. It should be noted that s 241 of the *Companies Act* does not limit in any way and does not specify on what grounds the Minister must base his/her application. On the contrary, s 254(1)(g) of the *Companies Act* only applies where the inspector is of the opinion that the company cannot pay its debts or that it is in the interests of the public, the shareholders or the creditors that the company should be wound up.
- (8) The time fixed for the duration of the company by its constitution to exist has expired, or some other event happens and the occurrence of it triggers an article in the constitution which provides for the dissolution of the company.¹¹⁰
- (9) The court is of the opinion that it is just and equitable for the company to be wound up (see discussion below).¹¹¹
- (10) A banking company has had its licence revoked, expired or not renewed.¹¹²
- (11) The company is carrying on or has carried on banking business in Singapore in contravention of the provisions of any written law relating to banking.¹¹³
- (12) The company had carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling.¹¹⁴
- (13) The company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest.¹¹⁵

107 See s 254(1)(e) of the *Companies Act*.

108 See s 254(1)(f) of the *Companies Act*.

109 See s 254(1)(g) of the *Companies Act*.

110 See s 254(1)(h) of the *Companies Act*.

111 See s 254(1)(i) of the *Companies Act*.

112 See s 254(1)(j) of the *Companies Act*.

113 See s 254(1)(k) of the *Companies Act*.

114 See s 254(1)(l) of the *Companies Act*. Multi-level marketing and pyramid selling mean the same thing and are defined in s 2 of the *Multi-Level Marketing and Pyramid Selling (Prohibition) Act* (Cap 190, 2000 Rev Ed).

115 See s 254(1)(m) of the *Companies Act*.