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The following Act was passed by Parliament on 12th October 1998 and assented to by the President on 9th November 1998:—

**REPUBLIC OF SINGAPORE**

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**No. 38 of 1998.**

I assent.



ONG TENG CHEONG,  
*President.*  
9th November 1998.

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

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

**Short title and commencement**

**1.** This Act may be cited as the Companies (Amendment) Act 1998 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

**Amendment of section 7****2. Section 7 of the Companies Act is amended —**

- (a) by deleting subsection (4) and substituting the following subsections:

“(4) Where a body corporate has, or is by the provisions of this section deemed to have, an interest in a share and —

- (a) the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or
- (b) a person has a controlling interest in the body corporate,

that person shall be deemed to have an interest in that share.

(4A) Where a body corporate has, or is by the provisions of this section (apart from this subsection) deemed to have, an interest in a share and —

- (a) a person is;
- (b) the associates of a person are; or
- (c) a person and his associates are,

entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the body corporate, that person shall be deemed to have an interest in that share.”.

- (b) by deleting the words “subsection (4) (c)” in the first line of subsection (5) and substituting the words “subsection (4A)”;
- and

- (c) by deleting the word “and” at the end of paragraph (c) of subsection (9) and by inserting immediately thereafter the following paragraph:

“(ca) an interest of a company in its own shares being purchased or otherwise acquired in accordance with sections 76B to 76G; and”.

**Amendment of section 73**

3. Section 73 of the Companies Act is amended by inserting, immediately after subsection (11), the following subsection:

“(12) This section shall not apply to the purchase or acquisition or proposed purchase or acquisition by a company of its own shares in accordance with sections 76B to 76G.”.

**Amendment of section 76**

4. Section 76 (9) of the Companies Act is amended —

- (a) by deleting the word “or” at the end of paragraph (a); and
- (b) by deleting the full-stop at the end of paragraph (b) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

“(c) the purchase or acquisition or proposed purchase or acquisition by a company of its own shares in accordance with sections 76B to 76G.”.

**New sections 76B to 76G**

5. The Companies Act is amended by inserting, immediately after section 76A, the following sections:

**“Company may acquire its own shares**

**76B.**—(1) Notwithstanding section 76, a company may, in accordance with this section and sections 76C to 76G, purchase or otherwise acquire ordinary shares issued by it if it is expressly permitted to do so by its articles.

(2) This section and sections 76C to 76G shall apply only to ordinary shares.

(3) The total number of shares purchased or acquired by a company during the relevant period shall not exceed 10% (or such other percentage as the Minister may by notification prescribe) of the issued ordinary share capital of the company ascertained —

- (a) as at the date of the last annual general meeting of the company held before any resolution passed pursuant to section 76C, 76D or 76E; or
- (b) as at the date of such resolution,

whichever is the higher, unless the Court has, at any time during the relevant period, made an order under section 73 (4) confirming the reduction of share capital of the company and in such circumstances the issued ordinary share capital of the company shall, notwithstanding paragraphs (a) and (b), be taken to be the amount of the issued ordinary share capital as altered by the order of the Court.

(4) In subsection (3), “relevant period” means the period commencing from the date the last annual general meeting of the company was held or if no such meeting was held the date it was required by law to be held before the resolution in question is passed, and expiring on the date the next annual general meeting is or is required by law to be held, whichever is the earlier, after the date the resolution in question is passed.

(5) Shares that are purchased or acquired by a company pursuant to section 76C, 76D or 76E are deemed to be cancelled immediately on purchase or acquisition.

(6) On the cancellation of a share under subsection (5), the rights and privileges attached to that share expire.

(7) For the purposes of this section, shares are deemed to be purchased or acquired on the date on which the company would, apart from subsection (5), become entitled to exercise the rights attached to the shares.

(8) Within 30 days of the passing of a resolution referred to in section 76C, 76D or 76E, the directors of the company shall lodge with the Registrar a copy of the resolution.

(9) Within 30 days of the purchase or acquisition of the shares, the directors of the company shall lodge with the Registrar the notice of the purchase or acquisition in the prescribed form with the following particulars:

- (a) the date of the purchase or acquisition;
- (b) the number and nominal value of shares purchased or acquired;
- (c) the company’s issued share capital as at the date of the resolution passed pursuant to section 76C, 76D or 76E and the company’s issued share capital after the purchase or acquisition; and

- (d) the amount of consideration paid by the company for the purchase or acquisition of each share.

(10) Nothing in this section or in sections 76C to 76G shall be construed so as to limit or affect an order of the Court made under any section that requires a company to purchase or acquire its own shares.

**Authority for off-market acquisition on equal access scheme**

**76C.**—(1) A company, whether or not it is listed on a stock exchange, may make a purchase or acquisition of its own shares otherwise than on a stock exchange (referred to in this section as an off-market purchase) if the purchase or acquisition is made in accordance with an equal access scheme authorised in advance by the company in general meeting.

(2) The notice specifying the intention to propose the resolution to authorise an off-market purchase referred to in subsection (1) must —

- (a) specify the maximum number of shares or the maximum percentage of ordinary issued share capital authorised to be purchased or acquired;
- (b) determine the maximum price which may be paid for the shares;
- (c) 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 annual general meeting of the company is or is required by law to be held, whichever is the earlier; and
- (d) 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.

(3) The resolution authorising an off-market purchase referred to in subsection (2) must state the particulars referred to in subsection (2) (a), (b) and (c).

(4) The authority for an off-market purchase referred to in subsection (2) may, from time to time, be varied or revoked by the company in general meeting.

(5) A resolution to confer or vary the authority for an off-market purchase under this section may determine the maximum price for purchase or acquisition by —

- (a) specifying a particular sum; or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(6) For the purposes of this section and section 76D, an "equal access scheme" means a scheme which satisfies all the following conditions:

- (a) the offers under the scheme are to be made to every person who holds shares to purchase or acquire the same percentage of their shares;
- (b) all of those persons have a reasonable opportunity to accept the offers made to them; and
- (c) the terms of all the offers are the same except that there shall be disregarded —
  - (i) differences in consideration attributable to the fact that the offers relate to shares with different accrued dividend entitlements;
  - (ii) differences in consideration attributable to the fact that the offers relate to shares with different amounts remaining unpaid; and
  - (iii) differences in the offers introduced solely to ensure that each member is left with a whole number of shares.

#### **Authority for selective off-market acquisition**

**76D.**—(1) A company may make a purchase or acquisition of its own shares otherwise than on a stock exchange and not in accordance with an equal access scheme (referred to in this section as a selective off-market purchase) if —

- (a) the purchase or acquisition is made in accordance with an agreement authorised in advance under subsection (2); and
- (b) the company is not listed on a stock exchange.

(2) 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 associated

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persons, and subsections (3) to (13) shall apply with respect to that authority and to resolutions conferring it.

(3) The notice specifying the intention to propose a special resolution to authorise an agreement for a selective off-market purchase must —

- (a) 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 annual general meeting of the company is or is required by law to be held, whichever is the earlier; and
- (b) 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.

(4) The special resolution authorising a selective off-market purchase referred to in subsection (2) must state the expiry date referred to in subsection (3) (a).

(5) The authority referred to in subsection (2) may, from time to time, be varied or revoked by a special resolution with no votes being cast by any person whose shares are proposed to be purchased or acquired or by his associated persons.

(6) For the purposes of subsections (2) and (5) —

- (a) a member or his associated persons who holds any of the shares to which the resolution relates is regarded as exercising the voting rights carried by those shares not only if he votes in respect of them on a poll on the question whether the resolution shall be passed, but also if he votes on the resolution otherwise than on a poll;
- (b) notwithstanding anything in the company's articles, any member of the company may demand a poll on that question; and
- (c) a vote and a demand for a poll by a person as proxy for a member or any of his associated persons are the same respectively as a vote and a demand by the member.

(7) The special resolution referred to in subsection (2) is not effective for the purposes of this section unless (if the proposed agreement is in writing) a copy of the agreement or (if not) a written memorandum of its terms is available for inspection by members of the company both —

- (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is passed; and
- (b) at the meeting itself.

(8) A memorandum of terms so made available must include the names of any members holding shares to which the agreement relates and where a member holds such shares as nominee for another person, the name of that other person; and a copy of the agreement so made available must have annexed to it a written memorandum specifying any such names which do not appear in the agreement itself.

(9) A company may agree to a variation of an existing agreement so approved, but only if the variation is authorised, before it is agreed to, 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 associated persons.

(10) Subsections (3) to (7) shall apply to the authority for a proposed variation as they apply to the authority for a proposed agreement except that a copy of the original agreement or (as the case may require) a memorandum of its terms, together with any variations previously made, must also be available for inspection in accordance with subsection (7).

(11) The rights of a company under an agreement for a selective off-market purchase approved under this section shall not be capable of being assigned except by order of the Court made pursuant to any provision of this Act or any other written law.

(12) An agreement by a company to release its rights under an agreement for a selective off-market purchase approved under this section is void unless the terms of the release agreement are approved in advance before the agreement is entered into 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 associated persons; and subsections (3) to (7) shall apply to the approval for a proposed release agreement as they apply to authority for the proposed variation of an existing agreement.



(13) A resolution to confer or vary authority for a selective off-market purchase under this section may determine the maximum price for purchase or acquisition by —

- (a) specifying a particular sum; or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

(14) For the purposes of this section, “associated person” in relation to a person means —

- (a) the person's spouse, child or step-child; or
- (b) a person who would, by virtue of section 7 (5), be treated as an associate of the first-mentioned person.

#### **Authority for market acquisition**

**76E.**—(1) A company shall not make a purchase or acquisition of its own shares on a stock exchange (referred to in this section as a market purchase) unless the purchase or acquisition has been authorised in advance by the company in general meeting.

(2) The notice specifying the intention to propose the resolution to authorise a market purchase must —

- (a) specify the maximum number of shares or the maximum percentage of ordinary issued share capital authorised to be purchased or acquired;
- (b) determine the maximum price which may be paid for the shares;
- (c) 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 annual general meeting of the company is or is required by law to be held, whichever is the earlier; and
- (d) 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.

(3) The authority for a market purchase may be unconditional or subject to conditions and must state the particulars referred to in subsection (2) (a), (b) and (c).

(4) The authority for a market purchase may, from time to time, be varied or revoked by the company in general meeting but the variation must comply with subsections (2) and (3).

(5) A resolution to confer or vary authority for a market purchase under this section may determine the maximum price for purchase or acquisition by —

- (a) specifying a particular sum; or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

**Payments to be made out of distributable profits and company not to be insolvent**

**76F.**—(1) A payment made by a company in consideration of —

- (a) acquiring any right with respect to the purchase or acquisition of its own shares in accordance with section 76C, 76D or 76E;
  - (b) the variation of an agreement approved under section 76D; or
  - (c) the release of any of the company's obligations with respect to the purchase or acquisition of any of its own shares under an agreement approved under section 76D,
- must be made out of the company's distributable profits.

(2) If the requirements in subsection (1) are not satisfied in relation to an agreement —

- (a) in a case within subsection (1) (a), no purchase or acquisition by the company of its own shares in pursuance of that agreement is lawful;
  - (b) in a case within subsection (1) (b) , no such purchase or acquisition following the variation is lawful; and
  - (c) in a case within subsection (1) (c), the purported release is void.
- (3) Every director or manager of a company who —
- (a) approves or authorises the purchase or acquisition of the company's own shares knowing that the company is

insolvent or will become insolvent as a result of the purchase or acquisition; or

- (b) wilfully makes or authorises the making of a payment referred to in subsection (1) out of what he knows are not distributable profits,

shall, without prejudice to any other liability, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months; and shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the amount paid as consideration as described in subsection (1) has exceeded the distributable profits and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors.

- (4) For the purposes of this section —

- (a) “distributable profits” means profits that are available for payment as dividends but excludes any amount in —

- (i) the share premium account referred to in section 69 (1); and
  - (ii) the capital redemption reserve referred to in sections 70 (7) and 76G;

- (b) a company is insolvent if either —

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

- (5) In determining for the purposes of subsection (4) whether the value of a company’s assets is less than the value of its liabilities, including contingent liabilities, the directors or managers of a company —

- (a) must have regard to —

- (i) the most recent financial statements of the company that comply with this Act; and
    - (ii) all other circumstances that the directors or managers know or ought to know affect, or may affect, the value of the company’s assets and the

value of the company's liabilities, including its contingent liabilities;

(b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(6) In determining, for the purposes of subsection (5), the value of a contingent liability, the directors or managers of a company may take into account —

(a) the likelihood of the contingency occurring; and

(b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

### **Capital redemption reserve**

**76G.**—(1) Where, under section 76B, 76C, 76D or 76E, shares of a company are purchased or acquired, the amount by which the company's issued share capital is diminished in accordance with section 76B (5) on cancellation of the shares purchased or acquired shall be transferred to a reserve called “the capital redemption reserve”.

(2) The provisions of this Act relating to the reduction of the share capital of a company shall apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.”.

### **Amendment of section 77**

**6.** Section 77 of the Companies Act is amended —

(a) by inserting, immediately after subsection (1), the following subsection:

“(1A) An option granted on or after the commencement of the Companies (Amendment) Act 1998 by a public company which enables any employee of that company or its related corporation (including any director holding a salaried office or employment in that company or corporation) to take up unissued shares of the company after a period of 10 years had elapsed from the date on

which the option was granted shall be void and subsection (1) shall not apply to such an option.”; and

- (b) by inserting, immediately after the words “subsection (1)” in subsection (2), the words “or (1A)”.

#### **Amendment of section 107**

7. Section 107 (1) of the Companies Act is amended —

- (a) by inserting, immediately after the definition of “financial year”, the following definition:

“ “franchise” means a written agreement or arrangement between 2 or more persons by which —

- (a) a party to the agreement or arrangement (referred to in this definition as the franchisor) authorises or permits another party (referred to in this definition as the franchisee), or a person associated with the franchisee, to exercise the right to engage in the business of offering, selling or distributing goods or services in Singapore under a plan or system controlled by the franchisor or a person associated with the franchisor;
- (b) the business carried on by the franchisee or the person associated with the franchisee, as the case may be, is capable of being identified by the public as being substantially associated with a trade or service mark, logo, symbol or name identifying, commonly connected with or controlled by the franchisor or a person associated with the franchisor;
- (c) the franchisor exerts, or has authority to exert, a significant degree of control over the method or manner of operation of the franchisee’s business;
- (d) the franchisee or a person associated with the franchisee is required under the agreement or arrangement to make payment or give some other form of consideration to the franchisor or a person associated with the franchisor;

- (e) the franchisor agrees to communicate to the franchisee or a person associated with the franchisee, knowledge, experience, expertise, know-how, trade secrets or other information whether or not it is proprietary or confidential; and
  - (f) the agreement or arrangement referred to in paragraph (a) is not a unit trust scheme as defined in the Securities Industry Act (Cap. 289) or an investment contract;”;
- (b) by deleting the word “or” at the end of paragraph (d) of the definition of “interest”; and
- (c) by inserting, at the end of paragraph (e) of the definition of “interest”, the word “or”, and by inserting immediately thereafter the following paragraph:

“(f) any franchise;”.

#### **Amendment of section 111**

8. Section 111 of the Companies Act is amended by inserting, immediately after subsection (1), the following subsection:

“(1A) In addition to the covenants referred to in subsection (1), the deed shall contain such covenant as the Minister may by regulations prescribe and such regulations may provide for different covenants to apply to different classes of interests.”.

#### **Amendment of section 113**

9. Section 113 (1) of the Companies Act is amended by inserting, immediately after the word “Act” in the eighth line, the words “, other than section 57 (8), (9) and (10),”.

#### **New section 113A**

10. The Companies Act is amended by inserting, immediately after section 113, the following section:

##### **“Restriction on issue, etc., of interest to public**

**113A.**—(1) No company or agent of a company shall —

- (a) issue or offer to the public for subscription or purchase;  
or
- (b) invite the public to subscribe for or purchase,

any interest on the basis of a statement referred to in section 113 after the expiration of 6 months from the issue of the statement except for a designated interest referred to in subsection (2).

(2) No company or agent of a company shall —

(a) issue or offer to the public for subscription or purchase; or

(b) invite the public to subscribe for or purchase, any designated interest on the basis of a statement referred to in section 113 after the expiration of 12 months from the issue of the statement.

(3) A purchase of or subscription for any interest made on the basis of the statement after the expiration of —

(a) 6 months, in the case of an interest other than a designated interest; or

(b) 12 months, in the case of a designated interest, shall not, by reason of that fact, be voidable or void.

(4) For the purposes of this section, “designated interest” means such interest or class of interests as the Minister may, by notification in the *Gazette*, designate for the purposes of this section.”.

### **Repeal of sections 160A to 160D**

**11.** Sections 160A to 160D of the Companies Act are repealed.

### **Amendment of section 172**

**12.** Section 172 of the Companies Act is amended by deleting subsection (2) and substituting the following subsection:

“(2) This section shall not prevent a company —

(a) from purchasing and maintaining for any such officer insurance against any liability referred to in subsection (1) except where the liability arises out of conduct involving dishonesty or a wilful breach of duty; or

(b) from indemnifying such officer or auditor against any liability incurred by him —

(i) in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or in which he is acquitted; or

- (ii) in connection with any application, in relation to such liability, in which relief is granted to him by the court.”.

### **Amendment of section 366**

**13.** Section 366 (2) of the Companies Act is amended —

- (a) by deleting the word “or” at the end of paragraph (h); and
- (b) by deleting the full-stop at the end of paragraph (i) and substituting the word “; or”, and by inserting immediately thereafter the following paragraphs:

- “(j) establishes a share transfer or share registration office in Singapore in order to become a listed corporation; or

- (k) effects any transaction through its related corporation licensed or approved under any written law by the Monetary Authority of Singapore, established under the Monetary Authority of Singapore Act (Cap. 186), under an arrangement approved by the Authority.”.

### **Amendment of Seventh Schedule**

**14.** Paragraph 34 (a) of the Seventh Schedule is amended by inserting, immediately after the words “6 months”, the words “or 12 months in the case of a designated interest referred to in section 113A”.

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