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# GOVERNMENT GAZETTE

## BILLS SUPPLEMENT

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**Notification No. B 28** — The Companies (Amendment) Bill is hereby published for general information. It was introduced in Parliament on the 9th day of October 2000.

# Companies (Amendment) Bill

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**Bill No. 28/2000.**

*Read the first time on 9th October 2000.*

A BILL

*intituled*

An Act to amend the Companies Act (Chapter 50 of the 1994 Revised Edition) and to make related amendments to the Business Registration Act (Chapter 32 of the 1985 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.**—(1) This Act may be cited as the Companies (Amendment)  
5 Act 2000 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) The Minister may appoint different dates for the coming into operation of the different provisions of this Act.

#### **Amendment of section 4**

2. Section 4 of the Companies Act is amended —

(a) by inserting, immediately after the definition of “private company” in subsection (1), the following definition: 5

“ “profile statement” means a profile statement referred to in section 45A;”;

(b) by inserting, immediately after the definition of “repealed written laws” in subsection (1), the following definition: 10

“ “replacement document” means a replacement prospectus or a replacement profile statement referred to in section 50A (1), as the case may be;”;

(c) by inserting, immediately after the definition of “statutory report” in subsection (1), the following definition: 15

“ “supplementary document” means a supplementary prospectus or a supplementary profile statement referred to in section 50A (1), as the case may be;”;  
and

(d) by deleting subsection (6) and substituting the following subsection: 20

“(6) Any reference in this Act to offering shares or debentures, or units of shares or debentures, to the public or to issuing an invitation to the public in respect of shares or debentures, or units of shares or debentures, shall, 25 unless the contrary intention appears, include a reference to offering shares or debentures, or units of shares or debentures, to any section of the public or to issuing an invitation to any section of the public, as the case may be, whether selected as clients of the person making the offer 30 or issuing the invitation or in any other manner, but does not include the following:

(a) an offer or invitation to enter into an underwriting agreement, whether or not relating to shares or debentures, or units of shares or 35 debentures, that have been previously issued;

- (b) an offer or invitation made to existing members or debenture holders of a corporation which —
  - (i) relates to shares in or debentures of that corporation, or to units of such shares or debentures; and
  - (ii) is not an offer or invitation to which section 47 applies; and
- (c) an offer made to existing members of a company under section 306 which relates to shares, or units of shares, in the company.”.

### **Amendment of section 12B**

3. Section 12B of the Companies Act is amended by inserting, immediately after subsection (2), the following subsections:

“(3) Notwithstanding subsections (1) and (2), an officer of a company may notify the Registrar in the prescribed form of any typographical or clerical error contained in any document relating to the company lodged with the Registrar.

(4) The Registrar may, upon receipt of any notification referred to in subsection (3), rectify the registers accordingly.”.

### **Amendment of section 43**

4. Section 43 of the Companies Act is amended —

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

“(1) No person shall make an offer or invitation to the public in respect of shares in or debentures of, or units of shares in or debentures of, a corporation unless —

(a) a prospectus prepared in accordance with section 45 in respect of such shares or debentures, or such units of shares or debentures, has been lodged with and registered by the Registrar; and

(b) such offer or invitation is made in or accompanied by a profile statement lodged with and registered by the Registrar under section 45A, if not made in or accompanied by a prospectus referred to in paragraph (a).

(2) No person shall make an offer or invitation to the public in respect of shares in or debentures of, or units of shares in or debentures of, a corporation which has not been formed or does not exist.

(2A) Subsection (1) shall not apply to an offer made or invitation issued to the public in respect of shares or debentures, or units of shares or debentures, that is exempted under Division 5A of this Part.”; and

(b) by inserting, immediately after the words “subsection (1)” in subsection (3), the words “or (2)”. 10

### **Repeal and re-enactment of section 45**

5. Section 45 of the Companies Act is repealed and the following section substituted therefor:

#### **“Contents of prospectuses**

**45.—**(1) A prospectus for an offer or invitation to the public in respect of shares in or debentures of, or units of shares in or debentures of, a corporation shall contain — 15

(a) all the information that investors and their professional advisers would reasonably require to make an informed assessment of the matters specified in subsection (3); and 20

(b) the matters specified in the Fifth Schedule.

(2) The prospectus shall, with respect to subsection (1) (a), contain such information —

(a) only to the extent to which it is reasonable for investors and their professional advisers to expect to find in the prospectus; and 25

(b) only to the extent that a person whose knowledge is relevant —

(i) actually knows the information; or 30

(ii) in the circumstances ought reasonably to have obtained the information by making enquiries.

(3) The matters referred to in subsection (1) (a) shall relate to —

(a) the rights and liabilities attaching to the shares or debentures, or units of shares or debentures; 35

- (b) the assets and liabilities, profits and losses, financial position and performance, and prospects of the corporation that is to issue or has issued the shares or debentures, or units of shares or debentures;
  - 5 (c) in the case of options over shares or debentures, the capacity of the person making the offer or invitation to issue or deliver the relevant shares or debentures; and
  - 10 (d) if the person making the offer or invitation is one who controls the corporation whose shares or debentures underlie the offer or invitation, the assets and liabilities, profits and losses, financial position and performance, and prospects of the corporation.
- (4) In deciding what information shall be included under subsection (1) (a), regard shall be had to —
- 15 (a) the nature of the shares or debentures, or units of shares or debentures, and the nature of the corporation concerned;
  - (b) the matters that likely investors may reasonably be expected to know; and
  - 20 (c) the fact that certain matters may reasonably be expected to be known to the professional advisers of such investors.
- (5) For the purposes of subsection (2), a person's knowledge is relevant only if he is one of the following persons:
- 25 (a) the person making the offer or invitation in respect of the shares or debentures, or units of shares or debentures;
  - 30 (b) if the person making the offer or invitation in respect of the shares or debentures, or units of shares or debentures, is a corporation, a director of the corporation;
  - (c) a proposed director of the corporation whose shares or debentures, or units of shares or debentures, will be issued under the offer or invitation;
  - 35 (d) a person named in the prospectus as an underwriter of the issue or sale;

- (e) a person named in the prospectus as a stockbroker to the issue or sale if he participates in any way in the preparation of the prospectus;
- (f) a person named in the prospectus with his consent as having made a statement — 5
  - (i) that is included in the prospectus; or
  - (ii) on which a statement made in the prospectus is based;
- (g) a person named in the prospectus with his consent as having performed a particular professional or advisory 10 function.

(6) A condition requiring or binding an applicant for shares in or debentures of, or units of shares in or debentures of, a corporation to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, 15 document or matter not specifically referred to in the prospectus, shall be void.

(7) This section shall not affect any liability that a person has under any other law.

(8) The Minister may, by notification in the *Gazette*, add to, 20 vary or amend the Fifth Schedule.”.

## **New section 45A**

**6.** The Companies Act is amended by inserting, immediately after section 45, the following section:

### **“Profile statement 25**

**45A.—**(1) Subject to this section, nothing in this Act shall be construed as preventing any person from issuing, circulating or distributing an extract from, or an abridged version of, the prospectus (referred to in this section as the profile statement) if — 30

- (a) a copy of the profile statement and the prospectus have been lodged with and registered by the Registrar; and
- (b) sufficient copies of the prospectus are made available free of charge for collection at the times and places specified in the profile statement. 35

(2) The directors of the corporation concerned shall ensure that the profile statement shall contain at least —

(a) the following particulars:

- 5 (i) identification of the corporation and the nature of the shares or debentures, or units of shares or debentures, to which the prospectus relates;
  - (ii) the nature of the risks involved in investing in the shares or debentures, or units of shares or debentures; and
  - 10 (iii) details of all amounts payable in respect of the shares or debentures, or units of shares or debentures (including any amount by way of fee, commission or charge);
- (b) a statement that copies of the prospectus are available
- 15 free of charge for collection at the times and places specified in the profile statement; and
- (c) a statement that the directors are satisfied that the profile statement contains a fair summary of the key information set out in the prospectus.

20 (3) A profile statement shall not contain —

- (a) any statement or matter that is false or misleading in the form and context in which it is included;
- (b) any material information that is not contained in the prospectus; and
- 25 (c) any material information that differs in any material particular from that set out in the prospectus.

(4) The Registrar may refuse to register a copy of any profile statement if —

- (a) it is not in compliance with subsection (2) or (3);
- 30 (b) the copy, signed by every director and by every person who is named therein as a proposed director of the corporation or by his agent authorised in writing, is not lodged with the Registrar on or before the date of its issue;
- 35 (c) the prospectus has not been registered or is not to be registered at the same time; or

(d) it appears to the Registrar that it is not in the public interest to do so.

(5) Sections 50 (2A), (2B) and (2C) and 54 shall apply in relation to a profile statement as they apply in relation to a prospectus.

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(6) If a profile statement is issued, circulated or distributed without a copy thereof having been registered by the Registrar, the corporation and every person who is knowingly a party to the issue, circulation or distribution of the profile statement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.”

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### **Repeal and re-enactment of section 46**

7. Section 46 of the Companies Act is repealed and the following section substituted therefor:

#### **“Exemption from requirements as to form or content of prospectus or profile statement**

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**46.—**(1) A person may apply to the Registrar in writing for an order of exemption from any requirement of this Act relating to the form or content of a prospectus or a profile statement, and the Registrar may make such an order either unconditionally or subject to such conditions as he may think fit to impose.

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(2) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements in respect of which exemption has been applied for would be unduly burdensome.

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(3) The Registrar may, by order published in the *Gazette*, exempt any class or description of prospectuses or profile statements from such requirement of this Act relating to the form or content of a prospectus or a profile statement, as the case may be, as may be specified in the order.

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(4) An exemption referred to in subsection (3) may be subject to such conditions as may be specified in the order.

(5) Any person who contravenes or fails to comply with any of the conditions specified in the order made under subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

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(6) A prospectus or a profile statement shall be deemed to be in compliance with all the requirements of this Act relating to the form and content of a prospectus or a profile statement, as the case may be, if it is issued in compliance with an order made under subsection (1) or (3).”.

### **Repeal and re-enactment of section 48**

**8.** Section 48 of the Companies Act is repealed and the following section substituted therefor:

#### **“Restrictions on advertisements, etc.**

**48.—**(1) A person shall not —

(a) advertise; or

(b) publish a statement that directly or indirectly refers to, an offer or intended offer of shares or debentures, or units of shares or debentures, to the public for subscription or purchase that would need a prospectus or a profile statement.

(2) If an offer or intended offer of shares or debentures, or units of shares or debentures, to the public for subscription or purchase needs a prospectus or a profile statement, a person shall not —

(a) advertise the offer or intended offer; or

(b) publish a statement that —

(i) directly or indirectly refers to the offer or intended offer; or

(ii) is reasonably likely to induce people to subscribe or purchase the shares or debentures, or units of shares or debentures,

unless the advertisement or publication is authorised by subsection (4), (5), (7) or (8).

(3) In deciding whether a statement —

(a) indirectly refers to an offer or intended offer of shares or debentures, or units of shares or debentures; or

(b) is reasonably likely to induce people to apply for or purchase the shares or debentures, or units of shares or debentures,

regard shall be had to whether the statement —

- (i) forms part of the normal advertising of a corporation's products or services and is genuinely directed at maintaining its existing customers, or attracting new customers, for those products or services; 5
- (ii) communicates information that materially deals with the affairs of the corporation; and
- (iii) is likely to encourage investment decisions being made on the basis of the statement rather than on the basis of information contained in a prospectus or a profile statement. 10

(4) For the avoidance of doubt, a person may disseminate a prospectus or a profile statement that has been registered by the Registrar without contravening subsection (1).

(5) Before a prospectus or a profile statement is registered 15  
by the Registrar, an advertisement or publication does not contravene subsection (1) if it contains the following but nothing more:

- (a) a statement that identifies the offeror and the shares or debentures, or units of shares or debentures; 20
- (b) a statement that a prospectus or a profile statement for the offer will be made available when the shares or debentures, or units of shares or debentures, are offered;
- (c) a statement that anyone who wants to acquire the shares 25  
or debentures, or units of shares or debentures, will need to make an application in the manner set out in the prospectus or the profile statement; and
- (d) a statement on how to arrange to receive a copy of the prospectus or the profile statement. 30

(6) To satisfy subsection (5), the advertisement or publication shall include all of the statements referred to in paragraphs (a), (b) and (c) of that subsection, and may include the statement referred to in paragraph (d).

(7) After the prospectus or the profile statement is registered 35  
by the Registrar, an advertisement or publication does not

contravene subsection (1) if it includes a statement to the effect that —

- 5       (a) the offer of the shares or debentures, or units of shares or debentures, will be made in, or accompanied by, a copy of the prospectus or the profile statement; and
- (b) anyone wishing to acquire the shares or debentures, or units of shares or debentures, will need to make an application in the manner set out in the prospectus or the profile statement.

10       (8) An advertisement or publication does not contravene subsection (1) if it —

- (a) consists of a notice or report by the corporation or one of its officers about its affairs to a stock exchange;
- 15       (b) consists solely of a notice or report by the corporation or one of its officers of a general meeting;
- (c) consists solely of a report about the corporation that is published by the corporation or one of its officers and —
  - 20           (i) does not contain information that materially affects affairs of the corporation other than information previously made available in a prospectus that has been registered by the Registrar, an annual report or a report referred to in paragraph (a) or (b); and
  - 25           (ii) does not refer (whether directly or indirectly) to the offer;
- (d) is a news report or a genuine comment, in a newspaper, periodical or magazine or on radio or television, or any other means of broadcasting or communication, relating
  - 30           to —
    - (i) a prospectus or a profile statement that has been registered by the Registrar or information contained in such a prospectus or a profile statement; or
    - 35           (ii) a notice or report covered by paragraph (a), (b) or (c);

- (e) is a report about the shares in or debentures of, or units of the shares in or debentures of, the corporation published by someone who is not —
- (i) the corporation;
  - (ii) acting at the instigation of, or by arrangement with, the corporation; 5
  - (iii) a director of the corporation; or
  - (iv) a person who has an interest in the success of the issue or sale of the shares or debentures, or units of shares or debentures; or 10
- (f) is published in the ordinary course of a business of —
- (i) publishing a newspaper, periodical or magazine; or
  - (ii) broadcasting by radio, television or any other means of broadcasting or communication, 15
- and the person who published the advertisement or statement did not know and had no reason to suspect that its publication would amount to a contravention of subsection (1).

(9) Subsection (8) (d) and (e) shall not apply if any person gives consideration or any other benefit for the publication of the report or comment, as the case may be. 20

(10) Any person who contravenes or fails to comply with subsection (1), and every officer of the corporation concerned, or other person, who knowingly authorised or permitted the publication or dissemination, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months. 25

(11) This section shall not affect any liability that a person has under any other law. 30

(12) The Minister may, by order published in the *Gazette*, exempt any person or class of persons from this section, subject to such conditions as may be specified in the order.

(13) For the purposes of this section, “offer” or “intended offer” of shares or debentures, or units of shares or debentures, includes an invitation to the public in respect thereof.” 35

## **Amendment of section 50**

9. Section 50 (3) of the Companies Act is amended by deleting the words “\$2,000 or to imprisonment for a term not exceeding 6 months” at the end thereof and substituting “\$50,000”.

## **5 New section 50A**

10. The Companies Act is amended by inserting, immediately after section 50, the following section:

### **“Lodging supplementary document or replacement document**

10 **50A.**—(1) If the person making an offer or invitation to the public in respect of shares in or debentures of, or units of shares in or debentures of, a corporation becomes aware of —

- (a) a false or misleading statement in the prospectus or the profile statement;
- 15 (b) an omission, from the prospectus or the profile statement, of information required by section 45 or 45A, as the case may be; or
- (c) a new circumstance that —
  - (i) has arisen since the prospectus or the profile statement was registered by the Registrar; and
  - 20 (ii) would have been required by section 45 or the Fifth Schedule to be included in the prospectus, or by section 45A to be included in the profile statement, if it had arisen before the prospectus or the profile statement was registered,

25 that is materially adverse from the point of view of an investor, the person may lodge a supplementary or replacement prospectus or a supplementary or replacement profile statement (referred to in this section as a supplementary or replacement document, as the case may be) with the Registrar.

30 (2) At the beginning of a supplementary document, there shall be —

- (a) a statement that it is a supplementary prospectus or a supplementary profile statement, as the case may be;
- 35 (b) an identification of the prospectus or the profile statement it supplements;

(c) an identification of any previous supplementary document lodged with the Registrar in relation to the offer or invitation; and

(d) a statement that it is to be read together with the prospectus or the profile statement it supplements and any previous supplementary document. 5

(3) At the beginning of a replacement document, there shall be —

(a) a statement that it is a replacement prospectus or a replacement profile statement, as the case may be; and 10

(b) an identification of the prospectus or the profile statement it replaces.

(4) The supplementary document and the replacement document must be dated with the date on which they are lodged with the Registrar. 15

(5) The person who lodges a supplementary document or the corporation concerned shall take reasonable steps to inform investors of such lodgment and make available the supplementary document free of charge to them, whereupon, for the purposes of the application of this Part to events that occur after the lodgment of the supplementary document — 20

(a) where the supplementary document is a supplementary prospectus, the prospectus shall be taken to be the prospectus together with the supplementary prospectus; and 25

(b) where the supplementary document is a supplementary profile statement, the profile statement shall be taken to be the profile statement together with the supplementary profile statement.

(6) The person who lodges a replacement document or the corporation concerned shall take reasonable steps to inform investors of such lodgment and make available the replacement document free of charge to them, whereupon, for the purposes of the application of this Part to events that occur after the lodgment of the replacement document — 30 35

(a) where the replacement document is a replacement prospectus, the prospectus shall be taken to be the

prospectus together with the replacement prospectus;  
and

- (b) where the replacement document is a replacement profile statement, the profile statement shall be taken to be the profile statement together with the replacement profile statement.”.

## **Repeal and re-enactment of section 55 and new sections 55A and 55B**

**11.** Section 55 of the Companies Act is repealed and the following sections substituted therefor:

### **“Civil liability for false or misleading statements and omissions**

**55.**—(1) Where an offer or invitation in respect of shares or debentures, or units of shares or debentures, is made under a prospectus or a profile statement and —

- (a) a false or misleading statement is contained in —

- (i) the prospectus or the profile statement; or  
(ii) any application form that is in or accompanies the prospectus or the profile statement;

- (b) there is an omission to state any information required to be disclosed under section 45 in respect of the prospectus, or under section 45A in respect of the profile statement; or

- (c) there is an omission to state a new circumstance that —

- (i) has arisen since the prospectus or the profile statement was registered by the Registrar; and  
(ii) would have been required by section 45 to be included in the prospectus, or by section 45A to be included in the profile statement, if it had arisen before the prospectus or the profile statement was registered,

the persons referred to in subsection (3) shall be liable to compensate any person who suffers loss or damage as a result of the false or misleading statement in or omission from the prospectus or the profile statement, even if such persons were not involved in the making of the false or misleading statement or the omission.

(2) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

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(3) The persons liable are —

(a) the person making the offer or invitation to the public;

(b) if the offer or invitation is made by a corporation, each director of the corporation;

(c) a person named in the prospectus or the profile statement with his consent as a proposed director of the corporation;

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(d) an underwriter (but not a sub-underwriter) to the issue or sale of the shares or debentures, or units of shares or debentures, named in the prospectus or the profile statement with his consent;

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(e) a person named in the prospectus or the profile statement with his consent as having made a statement —

(i) that is included in the prospectus or the profile statement; or

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(ii) on which a statement made in the prospectus or the profile statement is based,

but only in respect of the inclusion of that statement; and

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(f) a person who made the false or misleading statement, or omitted to state the information or circumstance, as the case may be.

(4) A person who acquires shares or debentures, or units of shares or debentures, as a result of an offer or invitation that was made in or accompanied by a profile statement is taken to have acquired the shares or debentures, or units of shares or debentures, in reliance on both the profile statement and the prospectus for the offer.

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(5) An action under subsection (1) may begin at any time within 6 years after the day on which the cause of action arose.

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(6) This section shall not affect any liability that a person has under any other law.

**Persons liable to inform person making offer or invitation about certain deficiencies**

5       **55A.**—(1) A person referred to in section 55 (3) shall notify in writing the person making an offer or invitation in respect of shares or debentures, or units of shares or debentures, as soon as practicable, if he becomes aware during the application period that —

10       (a) a material statement in the prospectus or the profile statement is false or misleading;

(b) there is a material omission from the prospectus of material required by section 45, or from the profile statement of material required by section 45A; or

15       (c) a material new circumstance —

(i) has arisen since the prospectus or the profile statement was registered by the Registrar; and

(ii) would have been required by section 45 to be included in the prospectus, or by section 45A to be included in the profile statement, as the case may be, if it had arisen before the prospectus or the profile statement was registered.

20       (2) Any person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000.

**Defences**

25       **55B.**—(1) A person is not liable under section 55 (1) only because of a false or misleading statement in a prospectus or a profile statement if the person proves that he —

30       (a) made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, believed on reasonable grounds that the statement was not false or misleading.

(2) A person is not liable under section 55 (1) only because of an omission from a prospectus or a profile statement in relation to a particular matter if the person proves that he —

- (a) made all inquiries (if any) that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that there was no omission from the prospectus or the profile statement in relation to that matter.

(3) A person is not liable under section 55 (1) only because of a false or misleading statement in, or an omission from, a prospectus or a profile statement if the person proves that he placed reasonable reliance on information given to him by —

- (a) if the person is a corporation, someone other than a director, an employee or agent of the corporation; or
- (b) if the person is an individual, someone other than an employee or agent of the individual.

(4) For the purposes of subsection (3), a person is not the agent of a corporation or an individual merely because he performs a particular professional or advisory function for the corporation or individual.

(5) A person who is named in a prospectus or a profile statement as —

- (a) being a proposed director or underwriter;
- (b) making a statement included in the prospectus or the profile statement; or
- (c) making a statement on the basis of which a statement is included in the prospectus or the profile statement,

is not liable under section 55 (1) only because of a false or misleading statement in, or an omission from, the prospectus or the profile statement if the person proves that he publicly withdrew his consent to being named in the prospectus or the profile statement in that way.

(6) A person is not liable under section 55 (1) only because of a new circumstance that has arisen since the prospectus or the profile statement was registered if the person proves that he was not aware of the matter.”.

## Repeal and re-enactment of section 56

**12.** Section 56 of the Companies Act is repealed and the following section substituted therefor:

**“Criminal liability for false or misleading statements and omissions**

**56.—**(1) Where an offer or invitation in respect of shares or debentures, or units of shares or debentures, is made under a prospectus or a profile statement and —

(a) a false or misleading statement is contained in —

- (i) the prospectus or the profile statement; or
- (ii) any application form that is in or accompanies the prospectus or the profile statement;

(b) there is an omission to state any information required to be disclosed under section 45 in respect of the prospectus, or under section 45A in respect of the profile statement; or

(c) there is an omission to state a new circumstance that —

- (i) has arisen since the prospectus or the profile statement was registered by the Registrar; and
- (ii) would have been required by section 45 to be included in the prospectus, or by section 45A to be included in the profile statement, if it had arisen before the prospectus or the profile statement was registered,

the persons referred to in subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) The persons guilty of the offence are —

- (a) the person making the offer or invitation to the public;
- (b) if the offer or invitation is made by a corporation, each director of the corporation;
- (c) a person named in the prospectus or the profile statement with his consent as a proposed director of the corporation;
- (d) an underwriter (but not a sub-underwriter) to the issue or sale of the shares or debentures, or units of shares or

debentures, named in the prospectus or the profile statement with his consent;

- (e) a person named in the prospectus or the profile statement with his consent as having made a statement —

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(i) that is included in the prospectus or the profile statement; or

(ii) on which a statement made in the prospectus or the profile statement is based,

but only in respect of the inclusion of that statement; and

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- (f) a person who made the false or misleading statement, or omitted to state the information or circumstance, as the case may be.

(3) A person shall not be taken to have contravened subsection (1) if the false or misleading statement, or omission, or new circumstance that is omitted from disclosure, is not materially adverse from the point of view of the investor.

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(4) For the purposes of subsection (1), a false or misleading statement about a future matter (including the doing of, or the refusal to do, an act) is taken to have been made if a person makes the statement without having reasonable grounds for making the statement.

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(5) Where a prospectus relating to any shares or debentures, or any unit of shares or debentures, in a corporation is issued and the prospectus omits to state any matter required to be stated as specified in the Fifth Schedule, each director of the corporation and other person responsible for the prospectus shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years.

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(6) The defences specified in section 55B shall, with the necessary modifications, be available to any person who is liable for an offence under this section.”.

## **Amendment of section 76B**

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**13.** Section 76B of the Companies Act is amended —

- (a) by deleting the word “ordinary” in subsection (1);

(b) by deleting subsection (2) and substituting the following subsection:

“(2) This section and sections 76C to 76G shall apply to ordinary shares, stocks and preference shares.”; and

5 (c) by deleting subsection (3) and substituting the following subsections:

10 “(3) The total number of ordinary shares and stocks that may be 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 —

15 (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

20 (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.

25 (3A) Where the Court has made an order under section 73 (4), the issued ordinary share capital of the company shall, notwithstanding subsection (3) (a) and (b), be taken to be the amount of the issued ordinary share capital as altered by the order of the Court.

30 (3B) The total number of preference shares which are not redeemable under section 70 that may be 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 non-redeemable preference share capital of the company ascertained —

35 (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.

(3C) Where the Court has made an order under section 73 (4), the issued non-redeemable preference share capital of the company shall, notwithstanding subsection (3B) (a) and (b), be taken to be the amount of the issued non-redeemable preference share capital as altered by the order of the Court. 5

(3D) There shall be no limit on the number of redeemable preference shares that may be purchased or acquired by a company during the relevant period.”. 10

### **Amendment of section 106B**

**14.** Section 106B of the Companies Act is amended by deleting subsection (1) and substituting the following subsections:

“(1) Divisions 1 and 5 of this Part shall not apply to an offer or invitation to the public in respect of shares or debentures, or units of shares or debentures, if it is — 15

(a) made in connection with a take-over scheme which is in compliance with the provisions of this Act applicable to such schemes; 20

(b) made —

(i) in the case of an offer or invitation in respect of shares or debentures, in relation to shares or debentures; or

(ii) in the case of an offer or invitation in respect of units of shares or debentures, in relation to units of shares or debentures, 25

that have been previously issued and that are of a class that are quoted or listed for quotation on a stock exchange in Singapore approved under the Securities Industry Act (Cap. 289); 30

(c) made, whether or not in relation to shares or debentures, or units of shares or debentures, that have been previously issued, by a corporation to employees of the corporation or its related corporation, where the shares or debentures, or units of shares or debentures, are to be held by or for the benefit of the employees in accordance with an employee share investment offer 35

or scheme (including a share option offer or scheme) for the time being in force, if —

- 5 (i) the employees are not induced to purchase the shares or debentures, or units of shares or debentures, by an expectation of employment or continued employment; and
- 10 (ii) no selling or promotional expenses are paid or incurred in connection with the offer or scheme, other than those incurred for administrative or professional services or incurred by way of commission or fee for services rendered by —
  - (A) a dealer or investment adviser licensed under the Securities Industry Act (Cap. 289);
  - 15 (B) an exempt dealer under section 40 (d) of that Act; or
  - (C) an exempt dealer within the meaning of section 40 of that Act whose carrying on of the business of advising others concerning securities is solely incidental to the conduct of his business in dealing in securities.

25 (1A) For the avoidance of doubt, nothing in subsection (1) (c) shall be construed to make an offer by a corporation to employees of the corporation or its related corporation of any of its shares or debentures, or units of shares or debentures, an offer to the public by reason only that such offer is made to the employees of the corporation or its related corporation.”.

### **Amendment of section 106C**

30 **15.** Section 106C of the Companies Act is amended —

- (a) by inserting, immediately after the word “debentures” in the 2nd line, the words “, or units of shares or debentures, to the public”;
- 35 (b) by deleting paragraph (ca) and substituting the following paragraph:
  - “(ca) a person who is licensed as a dealer under the Securities Industry Act (Cap. 289), or a person

exempted under that Act or any subsidiary legislation made thereunder from obtaining a dealer's licence;";

- (c) by deleting paragraph (f) and substituting the following paragraph:

5

“(f) an investment company as defined in section 355 (1), or any person exempted under the Securities Industry Act (Cap. 289) or any subsidiary legislation made thereunder from obtaining an investment adviser's licence; and”;

10

- (d) by inserting, immediately after the word “order” in paragraph (g), the words “published in the *Gazette*”.

### **Amendment of section 106D**

**16.** Section 106D of the Companies Act is amended —

- (a) by deleting the words “not more than 50 persons, each of whom is” in the 4th line of subsection (1); 15
- (b) by deleting the words “the Stock Exchange of Singapore Ltd.” in the 10th and 11th lines of the definition of “advertisement” in subsection (2) and substituting the words “a stock exchange in Singapore”; 20
- (c) by deleting the words “section 48 (1)” at the end of the definition of “advertisement” in subsection (2) and substituting the words “section 48”;
- (d) by deleting the words “S\$1 million” in the 2nd line of paragraph (b) (i) of the definition of “sophisticated investor” in subsection (2) and substituting the words “S\$2 million”; 25
- (e) by deleting “S\$200,000” in the 5th line of paragraph (b) (i) of the definition of “sophisticated investor” in subsection (2) and substituting “S\$300,000”; 30
- (f) by deleting the words “S\$5 million” in the 2nd line of paragraph (b) (ii) of the definition of “sophisticated investor” in subsection (2) and substituting the words “S\$10 million”; and

(g) by deleting subsection (4) and substituting the following subsection:

5 “(4) The Minister may, by order published in the *Gazette*, specify an amount in substitution of any amount specified in paragraph (a) or (b) of the definition of “sophisticated investor” in subsection (2).”.

### **Amendment of section 106E**

**17.** Section 106E of the Companies Act is amended —

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

“(1) Where shares or debentures, or units of shares or debentures, initially acquired pursuant to an exemption in section 106C or 106D, are first sold to any of the persons specified in the sections —

15 (a) the offer for sale to any of those persons shall not be regarded as an offer to the public for which a prospectus is required; and

20 (b) any subsequent offer for sale to any of those persons shall not be regarded as an offer to the public for which a prospectus is required.

25 (2) Where shares or debentures, or units of shares or debentures, initially acquired pursuant to an exemption in section 106C or 106D, are first sold to any person other than those specified in the sections, the offer for sale shall be regarded as an offer to the public for which a prospectus is required, unless —

30 (a) the shares or debentures, or units of shares or debentures, to which the offer relates are listed or quoted on a stock exchange in Singapore or a recognised stock exchange, and at least 6 months have elapsed from the date that they were initially acquired pursuant to the exemption under section 106C or 106D; or

35 (b) where the shares or debentures, or units of shares or debentures, to which the offer relates are not listed or quoted on a stock exchange in

Singapore or a recognised stock exchange, the following conditions are satisfied:

- (i) the seller gives a notice in writing to the purchaser at the time of the sale that —
  - (A) he is buying the shares or debentures, or units of shares or debentures, acquired by the seller pursuant to an exemption under section 106C or 106D; and
  - (B) the shares or debentures, or units of shares or debentures, shall not be sold, transferred or assigned by the purchaser to any person, other than to any of the persons specified in section 106C or 106D, for at least 6 months from the date that the shares or debentures, or units of shares or debentures, are initially acquired pursuant to the exemption under section 106C or 106D;
- (ii) the seller gives a notice in writing, within 3 days of the sale to the person from whom he initially acquired the shares or debentures, or units of shares or debentures, containing particulars of the sale in such form as may be prescribed; and
- (iii) the offer of the shares or debentures, or units of shares or debentures, is not accompanied by an advertisement offering or calling attention to the offer and no selling or promotional expenses are paid or incurred in connection with the offer except for administrative or professional services or services performed by a dealer or investment adviser licensed under the Securities Industry Act (Cap. 289).”;

(b) by deleting the words “subsection (2) (a) or (b)” in subsection (3) and substituting the words “subsection (2) (b)”; and

(c) by deleting subsection (5) and substituting the following subsection:

“(5) In a case to which subsection (2) (a) applies, any subsequent offer for sale of the listed or quoted shares or debentures, or units of shares or debentures, after the expiration of the 6-month period shall not require a prospectus.”.

### **Amendment of section 119**

**18.** Section 119 of the Companies Act is amended —

(a) by deleting the word “company” in the 2nd line of subsection (1) and substituting the words “person or class of persons”; and

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

“(1A) Any person who contravenes or fails to comply with any of the conditions specified in the notification shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.”.

### **New section 149A**

**19.** The Companies Act is amended by inserting, immediately after section 149, the following section:

#### **“Disqualification of directors of companies wound up on grounds of national security or interest**

**149A.**—(1) Subject to subsections (2) and (3), where a company is ordered to be wound up by the Court under section 254 (1) (m) on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, make an order (referred to in this section as a disqualification order) disqualifying any person who is a director of that company from being a director or in any way, directly or indirectly, being concerned in, or from taking part in, the management of any company or foreign company for a

period of 3 years from the date of the making of the winding up order.

(2) The Court shall not make a disqualification order against any person under subsection (1) unless the Court is satisfied that the person against whom the order is sought has been given not less than 14 days' notice of the Minister's application for the order. 5

(3) The Court shall not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the Court that — 10

- (a) the company had been used for purposes against national security or interest without his consent or connivance; and
- (b) he had exercised such diligence to prevent the company from being so used as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances. 15

(4) Any person who acts in contravention of a disqualification order made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both. 20

(5) In this section —

“director”, in relation to a company, includes a shadow director;

“foreign company” means a foreign company to which Division 2 of Part XI applies; 25

“shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of a company are accustomed to act except that a person shall not be deemed to be a shadow director by reason only that the directors act on advice given by him in a professional capacity.”. 30

## **Amendment of section 200**

**20.** Section 200 of the Companies Act is amended by inserting, immediately after subsection (2), the following subsection: 35

“(2A) Notwithstanding subsection (1) or (2), the financial year of a subsidiary which is a foreign company shall end on a date which is —

- 5           (a) not later than the financial year of its holding company; and
- (b) not earlier than 2 months before the end of the financial year of its holding company, or such other earlier date as the Registrar may, on an application in writing by the directors of the holding company, approve.”.
- 10

### **Amendment of section 201**

**21.** Section 201 of the Companies Act is amended —

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

15           “(1) The directors of every company shall, at a date not later than 18 months after the incorporation of the company and subsequently at least once in every calendar year at intervals of not more than 15 months, lay before the company at its annual general meeting a profit and loss

20           account for the period since the preceding account (or in the case of the first account, since the incorporation of the company) made up to a date —

- (a) in the case of a public company listed or quoted on a stock exchange in Singapore, not more than
- 25           5 months before the date of the meeting;

- (b) in the case of any other company, not more than 6 months before the date of the meeting.

          (1A) The profit and loss account referred to in subsection (1) shall give a true and fair view of the profit and loss of the company for the period of accounting as shown in the accounting and other records of the company.

30

          (1B) The Minister may, by order published in the *Gazette*, specify such other period in substitution of the period referred to in subsection (1) (a) or (b).”; and

35

- (b) by deleting the words “of 6 months referred to in that subsection” in the 5th and 6th lines of subsection (2) and

substituting the words “referred to in subsection (1) (a) or (b)”.

### **Amendment of section 201A**

**22.** Section 201A of the Companies Act is amended by inserting, immediately after subsection (6), the following subsection: 5

“(7) The Registrar may, by order published in the *Gazette*, exempt the directors of a holding company from compliance with subsection (6) in respect of a specified company or class of companies, whether incorporated in or outside Singapore, subject to such conditions as he may think fit.”. 10

### **Amendment of section 254**

**23.** Section 254 of the Companies Act is amended by inserting, immediately after subsection (2), the following subsections:

“(3) For the purpose of subsection (1) (m), a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that the company referred to in the certificate is being used for purposes against national security or interest shall be conclusive evidence that the company is being used for such purposes. 15

(4) Upon the presentation of a petition by the Minister under section 253 (1) (h) for the winding up of a company under subsection (1) (m) on the ground that it is being used for purposes against national security or interest, the Court, upon the application of the Minister, may, pending the hearing of the petition or the making of a winding up order, make — 20

(a) an order restraining the company or its directors, manager, officers or employees from doing any act or from carrying out any activity as may be specified in the order; and 25

(b) such other interim orders as the Court thinks fit. 30

(5) Any person who acts in contravention of an order made by the Court under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.”.

### **Amendment of section 262**

**24.** Section 262 (4) of the Companies Act is amended by deleting the words “An order” and substituting the words “Subject to section 322A, an order”.

### 5 **Amendment of section 263**

**25.** Section 263 of the Companies Act is amended by inserting, immediately after paragraph (d), the following paragraph:

“(da) in a case where a winding up order is made under section 254 (1) (m) on the ground that the company is  
10 being used for purposes against national security or interest, the Official Receiver shall be the liquidator of the company;”.

### **New section 322A**

**26.** The Companies Act is amended by inserting, immediately after  
15 section 322, the following section:

#### **“Outstanding assets of company wound up on grounds of national security or interest**

**322A.** Notwithstanding any written law or rule of law to the contrary, upon a company being wound up under  
20 section 254 (1) (m) on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, order that any assets of the company remaining after payment of its debts and liabilities and the costs, charges and expenses of the winding up shall be paid  
25 into the Consolidated Fund.”.

### **Amendment of section 400**

**27.** Section 400 of the Companies Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

“(2) The Minister may, by order published in the  
30 *Gazette*, exempt —

(a) any person or class of persons; or

- (b) any class or description of shares,  
from compliance with subsection (1), subject to such  
conditions as may be specified in the order.”; and
- (b) by deleting “\$1,000” in the 4th line and “\$5,000” in the  
6th line of subsection (5) and substituting “\$10,000” and  
“\$20,000”, respectively.

### **Amendment of section 409**

**28.** Section 409 of the Companies Act is amended —

- (a) by deleting subsection (2); and
- (b) by deleting the words “the regulations” in the 2nd and  
3rd lines of subsection (4) and substituting the words “any  
subsidiary legislation made thereunder”.

### **Miscellaneous amendments**

**29.** The following sections of the Companies Act are amended —

- (a) by inserting, immediately after the word “debentures”, the  
words “, or units of shares or debentures,”;  
sections 47 (1) (2nd line) and (2), 52 (1) (11th line),  
(2) (3rd and 4th lines), (2) (a) and (b) and (4) (a) and (b),  
53 (1) (3rd line), 106A(a) (1st line) and (b) (2nd and  
4th lines), 106B (2) (a) (2nd line), 106C (23rd line),  
106D (1) (2nd line), (1) (a), (2) (8th line of the definition  
of “advertisement”, last line of the definition of  
“information memorandum” and 2nd line of para-  
graph (b) of the definition of “sophisticated investor”)  
and (3) (3rd, 6th and 10th lines), 106E (3) and (4) (a),  
106F (1) (2nd, 3rd and 4th and 5th lines) and 106I (2), (3)  
and (5);
- (b) by inserting, immediately after the word “debentures” in  
section 47 (1) (penultimate line), the words “, or units of  
such shares or debentures,”;
- (c) by inserting, immediately after the words “debentures of” in  
sections 52 (1) (2nd line) and 54 (1) (2nd line), the words  
“, or units of shares in or debentures of,”;

- (d) by inserting, immediately after the word “debentures” in sections 52 (1) (12th line) and 53 (6) (a), the words “, or units of any shares or debentures,”;
- 5 (e) by inserting, immediately after the word “debentures” in section 53 (3) (1st line), the words “, or units of any shares or debentures”;
- (f) by inserting, immediately after the word “debenture” in section 53 (3) (8th line), the words “, or unit of any share or debenture,”;
- 10 (g) by inserting, immediately after the word “shares” in section 53 (6) (b) (1st line), the words “or units of shares”;
- (h) by inserting, immediately after the word “debentures” in sections 106A (a) (last line) and (c), 106C (2) (1st and 2nd lines of paragraph (a) of the definition of “sophisticated investor”), 106E (6) (paragraph (a) (iii) of the definition of “advertisement”) and 106I (1) (penultimate line), the words “, or units of shares or debentures”; and
- 15 (i) by inserting, immediately after the word “debentures” in sections 106G (1) (2nd and 8th lines) and (2) (a) and 106H (2nd line), the words “or units of debentures”.
- 20

### **Amendment of Fifth Schedule**

**30.** The Fifth Schedule to the Companies Act is amended —

- (a) by inserting, immediately after the heading “Part I”, the following paragraph:

25 *“Form of prospectus*

The prospectus shall be printed in type of a size no smaller than the type known as 8 point Times unless the Registrar, before the issuing, advertising, circulating or distributing of the prospectus in Singapore, certifies in writing, that the type and size of the printed letters are legible.”;

30

- (b) by inserting, immediately after paragraph 3, the following paragraphs:

“3A. The date of the prospectus.

35 3B. A statement that a copy of the prospectus has been lodged with and registered by the Registrar and, immediately after that statement, another statement that the Registrar takes no responsibility as to the contents of the prospectus.

3C. Where the persons making any report specified in Part II of this Schedule have made therein or have, without giving reasons, indicated therein any such adjustments as are mentioned in paragraph 31, a statement which is to be endorsed thereon or attached thereto by those persons, setting out the adjustments and giving the reasons for the adjustments. 5

3D. A statement that no shares or debentures, or units of shares or debentures, as the case may be, shall be allotted on the basis of the prospectus later than 6 months after the date of the issue of the prospectus. 10

3E. Where the prospectus contains any statement made by an expert or contains what purports to be a copy of or extract from a report, memorandum or valuation of an expert, the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for the purpose of incorporation in the prospectus. 15

3F. The name of any person as a trustee for debenture holders, or as an auditor, a banker, a solicitor, a stock broker or share broker of the corporation or proposed corporation or for or in relation to the issue or proposed issue of shares or debentures, or units of shares or debentures, if, but only if — 20

- (a) that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus; and
- (b) in the case of a company or proposed company, a copy, verified as prescribed, of the consent has been lodged with the Registrar. 25

3G.—(1) Where the prospectus relates to shares in or debentures of, or units of shares in or debentures of, a foreign company that has been incorporated or is to be incorporated, the prospectus shall also contain particulars with respect to — 30

- (a) the instrument constituting, or defining the constitution of, the foreign company;
- (b) the enactments or provisions having the force of an enactment by or under which the incorporation of the company was effected or is to be effected; 35
- (c) an address in Singapore where such instrument, enactments or provisions or certified copies thereof may be inspected;
- (d) the date on which and the place where the company was or is to be incorporated; and 40
- (e) whether the company has established a place of business in Singapore and, if so, the address of its principal office in Singapore.

(2) Sub-paragraph (1) (a), (b) and (c) shall not apply in the case of a prospectus issued more than 2 years after the date on which the company is entitled to commence business.

5 (3) For the purposes of this paragraph, in the application of this Part to a foreign company, paragraph 2 of this Part shall have effect as if a reference to the constitution of the company were substituted for the reference to the articles.”; and

(c) by inserting, immediately after paragraph 14 of Part V, the following paragraphs:

10 “15. A statement that no shares or debentures, shares and debentures, units of shares or debentures, or units of shares and debentures, as the case may be, shall be allotted on the basis of the prospectus later than 6 months after the date of the issue of the prospectus.

15 16. Where the prospectus contains any statement made by an expert or contains what purports to be a copy of or extract from a report, memorandum or valuation of an expert, the date on which the statement, report, memorandum or valuation was made and whether or not it was prepared by the expert for the purpose of incorporation  
20 in the prospectus.

25 17. The name of any person as a trustee for debenture holders, or as an auditor, a banker, a solicitor, a stock broker or share broker of the corporation or proposed corporation or for or in relation to the issue or proposed issue of shares or debentures, or units of shares or debentures, if, and only if —

(a) that person has consented in writing before the issue of the prospectus to act in that capacity in relation to the prospectus; and

30 (b) in the case of a company or proposed company, a copy, verified as prescribed, of the consent has been lodged with the Registrar.”.

### **Related amendments to Business Registration Act**

**31.** The Business Registration Act (Cap. 32) is amended —

35 (a) by deleting paragraph (a) of section 31B (1) and substituting the following paragraph:

“(a) the Registrar is satisfied that the business of such person is being used or is intended to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore, or

that it would be contrary to the national security or interest for the person to continue to be registered under this Act; or”; and

- (b) by deleting section 31C and substituting the following section:

5

**“Supplemental provision to sections 31A and 31B**

**31C.**—(1) For the purpose of sections 31A and 31B, a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that it would be contrary to the national security or interest for the person named in the certificate to be registered or to continue to be registered under this Act shall be conclusive evidence of the matters so stated.

10

(2) Section 31B (2) shall not apply in a case where the Registrar cancels the registration of a person under section 31B (1) (a) pursuant to a certificate referred to in subsection (1).”.

15

**Transitional provision**

**32.** Notwithstanding the provisions of this Act, sections 4, 5, 11, 12 and 30 shall not apply in relation to a prospectus lodged with and registered by the Registrar of Companies before the commencement of this Act, and sections 43, 45, 55 and 56 of, and the Fifth Schedule to, the Companies Act (Cap. 50) in force immediately before the commencement of this Act shall continue to apply in relation to such a prospectus.

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**EXPLANATORY STATEMENT**

This Bill seeks to amend the Companies Act (Cap. 50) (the Act) for the following purposes:

- (a) to improve the disclosure requirements in the Act for offers or invitations to the public in respect of shares and debentures including units of shares or debentures;
- (b) to improve the provisions in the Act on exemptions from such disclosure requirements;
- (c) to make reforms in tandem to the provisions in the Act in respect of both civil and criminal liability for breach of such disclosure requirements;

- (d) to enlarge the scope of the share buy-back provisions in the Act to include both redeemable and non-redeemable preference shares;
- (e) to improve the provisions in the Act in relation to the submission of financial statements of certain companies; and
- (f) to make provisions to improve the winding up process of companies that are being used for purposes against national security or national interest, and to make a related amendment to the Business Registration Act (Cap. 32).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 4 (6) to include the definitions of the terms “profile statement”, “replacement document” and “supplementary document”, and to clarify that certain offers or invitations are not to be construed as offering shares or debentures to the public.

Clause 3 amends section 12B by inserting new subsections (3) and (4) that allow the Registrar to rectify the registers under certain circumstances.

Clause 4 amends section 43 by providing that no person shall make an offer or invitation to the public in respect of shares or debentures, or units of shares or debentures, of a corporation unless certain conditions are satisfied.

Clause 5 repeals and re-enacts section 45 to require that a prospectus shall contain certain prescribed information as well as such information as investors and their professional advisers would reasonably require and reasonably expect to find in the prospectus. This is intended to introduce a disclosure-based regime in the financial and securities markets.

Clause 6 inserts new section 45A to make provision for the issuing, circulation and distribution of a profile statement, subject to certain conditions relating to registration and contents.

Clause 7 repeals and re-enacts section 46 to allow the Registrar to exempt, by order published in the *Gazette*, any class or description of prospectuses from any requirement in the Act relating to the form and content of prospectuses or profile statements.

Clause 8 repeals and re-enacts section 48 to prohibit certain advertisements or particulars in respect of an offer or invitation of shares or debentures or units of shares or debentures to the public. Exceptions, however, are also provided in the clause.

Clause 9 amends the penalty prescribed in section 50.

Clause 10 inserts new section 50A to specify the circumstances under which a supplementary or a replacement document may be lodged with the Registrar.

Clause 11 amends section 55 to expand the scope of civil liability for false or misleading statements or omissions in a prospectus or profile statement, and inserts new sections 55A and 55B.

New section 55A provides that the persons liable under section 55 must notify in writing the person making offers or invitations in respect of shares or debentures, or units of shares or debentures, in the corporation if they are aware of any false or misleading statement in the prospectus or profile statement or an omission in a material particular or of a new circumstance.

New section 55B provides the defences available to a person who is liable under section 55 or 56.

Clause 12 repeals and re-enacts section 56 to provide for criminal liability for false or misleading statements, or omissions in a prospectus or a profile statement, which are materially adverse from the viewpoint of an investor.

Clause 13 amends section 76B to provide for buy-back of preference shares.

Clauses 14 and 15 make certain technical amendments to section 106B and 106C.

Clause 16 amends section 106D to raise the monetary limits specified in the definition of “sophisticated investor” in that section and to provide that the Minister may vary these limits by order published in the *Gazette*.

Clause 17 makes certain technical amendments to section 106E.

Clause 18 amends section 119 to widen the Minister’s power of exemption under that section to any person or class of persons.

Clause 19 inserts a new section 149A to disqualify any person from being a director or from being concerned or from taking part in the management of any company or foreign company for a period of 3 years if he had been a director of a company which had been wound up by the Court on the ground that it was being used for purposes against national security or interest.

Clause 20 amends section 200 to insert a new subsection (2A) which provides that the financial year of a subsidiary which is a foreign company may not end earlier than 2 months before the end of the financial year of its holding company.

Clause 21 amends section 201 to provide that the profit and loss account of a public company listed or quoted on a stock exchange in Singapore shall be made up to a date not more than 5 months before the date of its annual general meeting.

Clause 22 amends section 201A to allow the Registrar to exempt, by order published in the *Gazette*, the directors of a holding company from compliance with subsection (6) of that section.

Clause 23 amends section 254 by inserting 3 new subsections (3), (4) and (5).

The new subsection (3) provides that for the purpose of the winding up of a company on the ground that it is being used for purposes against national security

or interest, a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that the company is being used for such purposes shall be conclusive evidence of the matters so stated.

The new subsection (4) empowers the Court, upon the presentation of a petition by the Minister (under section 253 (1) (*h*)) for the winding up of a company on the ground that it is being used for purposes against national security or interest, to make —

- (a) an order restraining the company or its directors, manager, officers or employees from doing any act or from carrying out any activity as may be specified in the order; and
- (b) such other interim orders as the Court thinks fit.

The new subsection (5) makes it an offence for any person to act in contravention of an order made by the Court under the new subsection (4).

Clause 24 makes a consequential amendment to section 262 (which relates to the effect of a winding up order) arising from the insertion of a new section 322A by clause 6.

Clause 25 amends section 263 to provide that where a winding up order is made against a company on the ground that it is being used for purposes against national security or interest, the Official Receiver shall be the liquidator of the company.

Clause 26 inserts a new section 322A to empower the Court, upon a company being wound up on the ground that it is being used for purposes against national security or interest, to order the residual assets of the company to be paid into the Consolidated Fund, if the Minister applies therefor.

Clause 27 amends section 400 to allow the Minister to exempt, by order published in the Gazette, any person or class of persons, or any class or description of shares, from compliance with subsection (1).

Clause 28 amends section 409 to remove the restriction on prosecutions under the Act, and to make a technical amendment to subsection (4).

Clause 29 makes miscellaneous amendments to various sections to include references to “units” of shares or debentures.

Clause 30 amends the Fifth Schedule by incorporating certain requirements relating to the contents of prospectuses removed from section 45.

Clause 31 makes certain related amendments to the Business Registration Act (Cap. 32).

Firstly, section 31B (1) (*a*) of the Business Registration Act is amended to enhance its conciseness and clarity.

Secondly, section 31C of the Business Registration Act is repealed and re-enacted —

- (a) to provide that a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that it would be contrary to the national security or interest for the person named in the certificate to be registered or to continue to be registered under the Business Registration Act shall be conclusive of the matters so stated; and
- (b) to provide that in cancelling the registration of a person under section 31B (1) (a) of that Act pursuant to a certificate issued by the Minister charged with the responsibility for internal security, the Registrar shall not be required to give prior notice of the cancellation under section 31B (2) of that Act to the person whose registration is being cancelled.

(The existing section 31C of the Business Registration Act (Cap. 32) is a transitional provision which has already been spent. Hence its replacement by the new section 31C.)

Clause 32 deals with a transitional matter.

#### EXPENDITURE OF PUBLIC MONEY

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

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## TABLE OF DERIVATIONS OF AMENDMENTS

<i>Number of section of Companies Act (Cap. 50) amended or inserted by this Bill</i>	<i>Section heading</i>	<i>Source: section number of Corporate Law Economic Reform Program Act 1999, Australia</i>
Section 43 (1) and (1A)	Requirement to issue form of application for shares or debentures with a prospectus	Section 721 (1) and (2)
Section 45	Contents of prospectuses	Section 710 (1), (2) and (3)
Section 45A	Profile statement	Section 714
Section 48	Restrictions on advertisements, etc.	Section 734
Section 50A	Lodging supplementary document or replacement document	Section 719
Section 55	Civil liability for false or misleading statements and omissions	Section 729
Section 55A	Persons liable to inform person making the offer or invitation about certain deficiencies	Section 730
Section 55B	Defences	Sections 731, 732 and 733
Section 56	Criminal liability for false or misleading statements and omissions	Section 728