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September 30, 2011

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Dear Barbara,

Response to the "Report of the Steering Committee for Review of the Companies Act"

ACGA is pleased to have the opportunity to respond to the Consultation Paper on the Report of the Steering Committee for Review of the Companies Act published by the Ministry of Finance in June 2011. Due to time constraints in recent months, our submission is limited to selected issues and recommendations in the Review of the Act. We would be pleased to discuss any of these issues further with the Ministry.

Recommendation 1.25

The disclosure requirements under sections 156 and 165 should be extended to the Chief Executive Officer of a company: Currently, company directors are required to disclose conflict of interests in transactions with the company, as well as shareholdings in the company or related corporation. As a company's key decisions are made by management who may not be directors, the report recommends extending the disclosure requirement to the CEO who is at the apex of the company's management.

ACGA Response

We strongly support the spirit of this recommendation, however we believe its scope could be extended. As was mentioned in the discussions on the subject, it would be more reasonable to add other key management officers in a company; "that is, any person who makes or participates in making decisions that affect the whole or a substantial part of the business of the company, or who has the capacity to affect significantly the company's financial standing, or in accordance with whose instructions or wishes the directors of the company are accustomed to act".[1]

All directors bear collective responsibility and it would be appropriate for key management officers who make decisions that affect a company to be made equally liable. For practical purposes, "key management officers" could be defined as C-suite managers (ie, CEO, COO, CFO, CRO, etc) or the top five senior executives of a company.

Recommendation 2.10
Section 181 should be amended to the effect that, subject to contrary provision in the company's articles, members falling within the following two categories are allowed to appoint more than two proxies, provided that each proxy is appointed to exercise the rights attached to a different share or shares and the number of shares and class of shares shall be specified:

a) any banking corporation licensed under the Banking Act or wholly-owned subsidiary of such a banking corporation, whose business includes the provision of nominee services and who holds shares in that capacity; and
b) any person holding a capital markets services licence to provide custodial services for securities under the Securities and Futures Act.

Recommendation 2.11
The Companies Act should be amended to allow the proposed multiple proxies to each be given the right to vote on a show of hands in a shareholders' meeting.

Recommendation 2.12
The Companies Act should be amended to bring earlier the cut-off timeline for the filing of proxies from 48 hours prior to the shareholders' meeting, to 72 hours prior to the shareholders' meeting.

ACGA Response
We strongly support these three measures, with one exception—the exemption at the beginning of the revised Section 181 stating, "subject to contrary provision in the company's articles".

As mentioned in the Consultation Paper, ACGA brought this issue to the notice of the Government of Singapore in 2008 and we have been pursuing this matter since then in close collaboration with sub-custodian banks and institutional investors in Singapore. We have some difficulty understanding why such an exemption has been provided for, since it would appear to defeat the purpose and usefulness of the amendment. Companies could still limit the number of proxies that each member (registered shareholder) could appoint by amending their Articles.

[1] Consultation Paper: Report of the Steering Committee for Review of the Companies Act, XIII. IMPOSITION OF LIABILITY ON OTHER OFFICERS, *(a) Extension of disclosure requirements*, 139 (b), pg 1-31.

As the Consultation Paper noted, a large majority of the focus group respondents on this issue were in favour of a multiple-proxies regime, with certain qualifications including: "Companies should not be able to prohibit this right to appoint multiple proxies by amending their articles"[2].

Recommendations 2.18 – 2.21

Liberalise rules on electronic transmission of notices and documents: The report recommends liberalising the rules for companies to transmit notices and documents electronically. Specifically, the report recommends that companies be allowed to use electronic communications if a member has given "deemed consent" or "implied consent". Under the "deemed consent" regime, members can choose to receive electronic or physical notices and documents. Under the "implied consent" regime, members will not have any right to request for physical copies, and the absence of such rights must be specified in companies' articles. The report also recommends that shareholders should be given sufficient time to react and adjust if a company amends its articles to adopt the "implied consent" regime. It will be left to investors to decide whether they wish to be shareholders of such companies.

ACGA Response
We broadly support these amendments and would like to add one further recommendation: that any material transmitted electronically should be archived for a minimum of five to ten years (something that is especially relevant for listed companies, but also important for unlisted ones).

Indeed, the Steering Committee suggested in the Consultation Paper that SGX was "at liberty to prescribe additional safeguards as may be appropriate for listed companies"[3]. We believe this issue will become increasingly important in the coming years, since many listed companies do not, in our view, use their websites as efficient and effective communication platforms.

We believe this issue will become increasingly important in the coming years, since many listed companies do not, in our view, use their websites as efficient and effective communication platforms.

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[2] Consultation Paper: Report of the Steering Committee for Review of the Companies Act, IV. ENFRANCHISING INDIRECT INVESTORS, 58(e), pg 2-14.

[3] Consultation Paper: Report of the Steering Committee for Review of the Companies Act, VI. ELECTRONIC TRANSMISSION OF NOTICES AND DOCUMENTS, *(a) Electronic transmission of notices and documents,* 102 €, pg. 2-26.

Recommendation 3.4
Companies should be allowed to issue non-voting shares and shares with multiple votes.

ACGA Response
We strongly oppose allowing companies to issue common shares with no voting rights or multiple voting rights. While we have no problem accepting higher dividend, non-voting preference shares (as long as they are used judiciously and not excessively), we firmly believe that each ordinary share should have only one vote. Treating all shareholders equally in this regard is a basic tenet of good corporate governance and contributes to greater investor confidence in a country's regulatory system. We also believe it facilitates a stronger relationship of trust between a company and its shareholders, since the adoption of shares with super voting rights usually signals a controlling shareholder's disregard for his or her minority shareholders. In the Asian context of "controlled corporations" (where one or two large shareholders typically control a company), allowing non-voting or multiple-voting common shares would enhance majority control and very likely heighten the abuse of minorities over time, whether in listed or unlisted companies.

While the Consultation Paper recommends certain safeguards be put in place to protect minority shareholders, such as higher approval thresholds for shares with differential voting rights, we do not believe that such measures are likely to prove effective—especially if controlling shareholders and those connected to controlling shareholders are allowed to vote. Nor does the Consultation Paper provide any evidence that differential voting rights are necessary for more 'flexible capital management'.

Thank you for the opportunity to comment upon this review of the Companies Act.

We would be pleased to answer any questions you may have regarding our comments and recommendations above.

Yours truly,

Jamie Allen
Secretary General

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