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Modernising Company Law: The Singapore Experience

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MODERNISING COMPANY LAW: THE SINGAPORE EXPERIENCE

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INTRODUCTION

In October 2014, the Singapore Parliament passed the *Companies (Amendment) Act 2014* (Singapore).[1] Encompassing the most comprehensive revision of corporate legislation in the history of Singapore, this Act has been implemented in two phases.[2] This article will consider the impetus for as well as the salient themes that guided this wide-ranging review.

BACKGROUND TO THE REFORM

Enacted in 1967, the lineage of Singapore's modern *Companies Act*[3] (hereafter "the Act") is traceable to the *Companies Act 1948* (UK).[4] Since its enactment, the Act has been amended 17 times.[5] Of these amendments, most were piecemeal responses to specific outdated or problematic aspects of the law, and it was not until the turn of the last century that a comprehensive review of the Act was undertaken. In December 1999, the Company Legislation and Regulatory Framework Committee (CLRFC) was appointed to conduct an extensive review of our company law and regulatory framework (the "1999 Review"). The chief objective was to ensure that our laws were sufficiently modern and flexible to enhance Singapore's competitiveness as a global business centre.[6] To this end, the CLRFC recommended[7] wide-ranging measures to modernise the Act,[8] reduce regulatory structures,[9] lower compliance costs[10] and to enlarge the range of business vehicles.[11] But while the

[1] *Companies (Amendment) Act 2014* (Singapore).

[2] On 1 July 2015 and 3 January 2016 respectively.

[3] *Companies Act* (Singapore, cap 50, 2006 rev ed).

[4] The Explanatory Statement to the *Companies Bill 1966* (Singapore) stated that "[t]his Bill follows closely the provisions contained in the Malaysian Companies Act, 1965, as it is considered that Singapore's new law relating to companies should not be different from the legislation in force in Malaysia in order to facilitate trade and commercial intercourse with and within this region." The *Companies Act 1965* (Malaysia), was itself based on the *Companies Act 1961* (Vic), which was in turn a replica of the *Companies Act 1948* (UK).

[5] This excludes consequential amendments promulgated under other Acts.

[6] See Company Legislation and Regulatory Framework Committee, *Report of the Company Legislation and Regulatory Framework Committee* (CLRFC, October 2002), [1.1].

[7] In all, the CLRFC made 77 recommendations.

[8] For example, to abolish the concepts of par value and authorised share capital which no longer perform any meaningful function: see CLRFC, n 8, Recommendation 2.18.

[9] For example, by allowing the formation of one-director and one-shareholder companies: see CLRFC, n 8, Recommendation 1.11; allowing private companies to issue different classes of shares with multiple, limited or no voting rights (see Recommendation 2.25); and to dispense with the holding of annual general meetings (see Recommendation 3.17).

[10] For example, by exempting dormant and exempt private companies with annual turnover below $5 million from audit: see CLRFC, n 8, Recommendation 1.18.

[11] By introducing the Limited Liability Partnership and Limited Partnership: see CLRFC report, Recommendation 1.1. See now the *Limited Liability Partnerships Act* (Singapore, cap 163A, 2006 rev ed) and *Limited Partnerships Act* (Singapore, cap 163B, 2010 rev ed).

implementation[12] of these recommendations succeeded in bringing the law up to date, the Act remained very much a "patchwork quilt" with structural flaws and inconsistencies that had to be addressed.[13] It is against this backdrop that a further round of consultation was launched in 2007 ("the 2007 Review") to review and rewrite the Act so as to retain an efficient and transparent corporate regulatory framework that supports Singapore's growth as a global hub for both businesses and investors.[14]

To satisfactorily address the gaps and incoherence that have arisen as a result of the patchwork approach to law reform in the past, the Steering Committee overseeing the 2007 Review decided that it would be necessary to re-write and not merely amend the Act.[15] This did not, however, entail ripping the Act apart and drafting it from scratch.[16] Rather, what was envisioned was that the Act would be streamlined by ironing out inconsistencies, clarifying uncertainties, and excising obsolescence. Provisions that were well-understood would, however, be undisturbed. Consistently with this measured approach, the Steering Committee also rejected the suggestion to remodel the Act on a particular piece of foreign (whether the United Kingdom (UK) or other jurisdiction) legislation (ie as a "template" for rewriting the Act).[17] Such an approach is, as Professor Walter Woon (chairman of the Steering Committee) explained, eminently unsuitable since it threatened to supplant the existing legal framework with which users are familiar:[18]

> The reason for this is that the Steering Committee did not have a *tabula rasa* to deal with. To copy the legislation of another country would have meant changing the underlying framework of business. Legislation does not exist in isolation; there is a whole economic ecosystem of regulations, rules and practices that will have grown up to support it. It would be unwise to abandon the old familiar system for something completely new unless there is a compelling case to do so; none was made out. In any case, the UK legislation is so far removed from what we are used to that adapting it would in effect amount to rewriting the Act. The effort involved in considering the legislative rationale for each section of the thousand-plus provisions to determine whether we should adopt it would not be commensurate with the benefit.

Thus, while it is critical that Singapore should benchmark against developments in other countries to ensure that we are keeping pace with the most current international practices and standards, that does not mean we should blindly copy the laws of any particular jurisdiction. Rather, it is always necessary to identify the policy underlying a particular provision, and to ask whether the importation of a foreign development or innovation would serve any useful purpose in our context.[19] A change should not therefore be introduced for its own sake, but only where it would render the law more comprehensible, coherent and practical.

Another important principle that guided the Steering Committee's work was the belief that the regulatory burden placed on companies should, so far as is justifiable, be minimised. For "[the] overarching ideal is to make it easier for companies to comply with the statutory requirements whilst ensuring transparency and accountability to third parties."[20] There are at least two aspects to the

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[12] The CLRFC's recommendations were implemented in phases by the legislation of several amendment Acts, including the *Companies (Amendment) Act 2003* (Singapore); *Companies (Amendment) Act 2004* (Singapore); *Companies (Amendment) Act 2005* (Singapore).

[13] Ministry of Finance, *Report of the Steering Committee for Review of the Companies Act* (MOF, 2011) [4].

[14] MOF, n 13, [1].

[15] MOF, n 13, [7].

[16] Contrast the approach in UK where the *Companies Act 2006* (UK) was substantially redrafted to render it more "accessible" to lay persons and small enterprises: see Department of Trade and Industry (UK), *Company Law Reform*, White Paper (2005) [4.1]. The companies legislation of both Australia and Hong Kong have also been entirely rewritten: see respectively, *Corporations Act 2001* (Cth) and the *Companies Ordinance 2014* (HK).

[17] MOF, n 13, [7].

[18] Woon W, "Company Law Reform in Singapore" (2011) 23 SAcLJ 795, [5].

[19] MOF, n 13, [8].

[20] MOF, n 13, [9].

actualisation of this objective. The first is to ensure that the legislative policy is clear and the specific rules easily understood by those who are required to comply with them. The second is to reduce, where appropriate, the actual outlay of costs, effort and time for purposes of compliance.

However, while easing regulatory burden is helpful for attracting enterprises and creating a vibrant commercial landscape, it is not to be pursued by undermining transparency and accountability. A system of rules that accords robust protection to investors and creditors against managerial abuses remains the bedrock of good corporate governance. Indeed, a great number of the Steering Committee's final recommendations concern measures to improve accountability, even while it is recognised that regulatory burden should be lessened and managerial flexibility enhanced wherever possible.

With these broad aims in mind, the Steering Committee made a total of 217 recommendations. The government of Singapore accepted 192 of these recommendations, modified 17 of them, and rejected the rest.[21] As it is neither feasible nor meaningful to consider all the recommendations in an article of this brevity, the discussion below will focus on salient measures aimed at reducing regulatory burden, optimising operational flexibility and enhancing corporate governance.

REDUCING REGULATORY BURDEN

Audit Exemption for Small Companies

The expansion of the regime for exemption from audit is arguably the most significant cost-reduction measure introduced by the 2007 Review. With effect from 1 July 2015, audit exemption is governed by the concept of a "small company". Previously, a company is exempted from audit if it is an "exempt private company" with an annual turnover of less than SGD 5 million. The exempt private company is identified primarily by its membership, ie it must have no more than 20 members and no corporate member.[22] In contrast, the small company is defined by a broader set of criteria that includes the company's revenue, assets and number of employees.[23] This expanded set of criteria reflects the fact that audit is of value to a broader group of stakeholders (eg creditors, employees and customers) than shareholders. It also brings Singapore's audit exemption regime in line with those of other leading jurisdictions (such as the UK[24] and Australia[25]). The effect of its implementation is to reduce compliance costs for about 25,000 small companies that did not qualify for exemption under the previous regime.[26] At the same time, risks of abuse are contained as exempted companies are still statutorily required to keep proper financial records and accounts,[27] and shareholders holding not less than 5 per cent of the company's voting shares may require a small company to audit its accounts.[28]

Dormant companies exempted from financial reporting

Dormant companies are also exempted from audit but they are still required to prepare accounts and file them with the Registrar of Companies. To further ease the administrative burden of such companies, the 2014 Act abolished the requirement for a dormant company to prepare and file

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[21] See MOF, *Ministry of Finance's Responses to the Report of the Steering Committee for Review of the Companies Act* (3 October 2012) [6].

[22] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 4(1) (definition of "exempt private company").

[23] Paragraph 2 of the Thirteenth Schedule to the *Companies Act 1967* (Singapore) states that a company qualifies as a small company from a particular financial year if: (1) it is a private company throughout the financial year; and (2) it satisfies any two of the following criteria for each of the two consecutive financial years immediately preceding the financial year: the revenue of the company for each financial year does not exceed $10 million; the value of the company's total assets at the end of each financial year does not exceed $10 million; it has at the end of each financial year not more than 50 employees.

[24] *Companies Act 2006* (UK), ss 382, 477.

[25] *Corporations Act 2001* (Cth), ss 45A(2), 292(2).

[26] See Josephine Teo, "Second Reading Speech on the Companies (Amendment) Bill 2014" (Speech delivered at Parliament, 7 October 2014).

[27] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 199(1).

[28] *Companies Act* (Singapore, cap 50, 2006 rev ed) ss 205B(6), 205C(2).

accounts provided its assets do not exceed $500,000 and it is not a listed company or a subsidiary of a listed company.[29] This privilege is, however, subject to certain safeguards, viz, that the directors must have filed an annual declaration confirming that the company has been dormant throughout the financial year, and that the company's accounting records have been kept in accordance with the requirements of the Act.[30] Further, a dormant company will have to prepare accounts if requested to do so by the Registrar or shareholders holding not less than 5 per cent of the company's issued shares.

Online registers and electronic communications

Apart from minimising reporting requirements, the law reformers also recommended, where appropriate, the adoption of technology to reduce administrative burden and enhance efficiency. This strategy was a prominent feature of the 1999 Review, which resulted in a simpler and cheaper incorporation process via electronic filings,[31] amendments that enabled the passing of shareholder resolutions by electronic communications,[32] as well as provisions for the electronic distribution of notices of meetings and other statutory reports and documents.[33] This commitment to leverage on technology to provide cheap and real-time communication continues to be a dominant theme in the 2007 Review, culminating in the transition from physical registers kept by companies to a centralised online register maintained by the Registrar. The registers affected are those relating to members,[34] directors, CEO, secretaries and auditors.[35] As a result, the registers maintained by the Registrar now constitute the single authoritative record[36] of the matters set out therein that may be electronically accessed by the public free of charge. However, the onus remains on the companies to make timely filings with the Registrar so as to ensure that the electronic registers are up to date. Overall, this is a significant development as it distinguishes Singapore as one of the first jurisdictions in the world to operate a centralised online-register for private companies.[37]

OPTIMISING FLEXIBILITY

That company law should primarily be facilitative or enabling is now widely accepted as a fundamental tenet of companies legislative design.[38] This means that so far as possible, the law should "provide the means for those engaged in business and other corporate activity to arrange and manage their affairs in the way which they believe is most likely to lead to mutual success and effective

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[29] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 201A(1).

[30] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 201A(2).

[31] Through the Singapore government's one-stop business services portal Bizfile, https://www.bizfile.gov.sg.

[32] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 184A.

[33] *Companies Act* (Singapore, cap 50, 2006 rev ed) ss 387A, 387B. Subsequent to the 2007 Review, a further amendment was made to reduce companies' burden in obtaining shareholders' consent to electronic communications. This involves, in essence, a new provision that identifies the circumstances in which a member would be regarded has given implied or deemed consent to the receipt of notices and documents via electronic communications: see s 387C.

[34] See *Companies Act* (Singapore, cap 50, 2006 rev ed) s 196A. This change is, however, applicable only to private companies. Public companies will continue to maintain their own registers of members in the traditional way: s 190.

[35] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 173.

[36] This means, in relation to the register of members, that no change in membership will take effect until and unless that change is reflected in the electronic register maintained by ACRA: see *Companies Act* (Singapore, cap 50, 2006 rev ed) s 126(3).

[37] At the time of enacting the *Companies (Amendment) Act 2014* (Singapore), the drafters were unaware of any other jurisdiction that similarly permits company registers to be kept in digital form. Since then, however, it has come to their attention that small companies in the UK are given the option to elect to treat the register maintained by the registrar of companies as the definitive record: see Schedule 5 to the *Small Business, Enterprise and Employment Act 2015* (UK). We are grateful to Elgin Tay of the Accounting and Corporate Regulation Authority for bringing this to our attention.

[38] This principle pervades corporations law in the United States, where the *Delaware General Corporation Law* (US) is often held up as the exemplar of an "enabling" corporation statute: see, eg, the discussion in L Hamermesh, "The Policy Foundations of Delaware Corporate Law" (2006) 106 Colum L Rev 1749, 1782–1786.

productive activity."[39] In Singapore, the same principle has underpinned company law reform in much of the last three decades. In the discussion below, we shall consider the impact of this approach in the areas of capital maintenance, shareholder votes and communication.

CAPITAL MAINTENANCE

Share buybacks and capital reduction

In Singapore, the recognition that companies should have more autonomy in the management of their excess liquidity has led to the significant liberalisation of the capital maintenance regime since the late 1990s. Notably, the common law prohibition against the purchase of a company's own shares was first relaxed in 1998,[40] when the Act was amended to allow companies to acquire its own shares or the shares of its holding company via a few methods (viz, equal access scheme,[41] selective off-market acquisition,[42] and market acquisition[43]) subject to various safeguards, chief of which is the requirement that the company remains solvent after the acquisition.[44] Thereafter, further amendments were effected to allow companies to retain purchased shares as treasury shares,[45] to allow the purchase to be funded by capital[46] (as an alternative to profits) and for shares to be purchased pursuant to a contingent purchase contract.[47] In the last round of reform, the limit on share buybacks was also raised from 10 per cent to 20 per cent of the companies issued share capital.[48] Equally, the general prohibition against share capital reduction has been relaxed to allow solvent companies to reduce share capital without having to seek court sanction. These developments bring the regulatory regime in Singapore broadly in line with those of other major capital markets (such as the UK, Australia and Hong Kong).

Financial assistance for the acquisition of shares

Like other common law jurisdictions, Singapore has for a long time maintained the prohibition against financial assistance for acquisition of shares. Encapsulated in s 76(1) of the Act, the provision states that a company is not permitted to give financial assistance for the acquisition of its own shares or those of its holding company, except where certain exceptions apply. The rule is conventionally justified by the need to protect a company's capital against improper depletion through deliberate non-arm-length transactions. However, its application has given rise to considerable uncertainty and controversy as the prohibition is couched in broad language that may render even innocuous and beneficial transactions unlawful.[49] Acknowledging these difficulties, the Singapore legislator decided

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[39] See CLRFC, n 6, [2.1], endorsing the general principles laid down in the UK: Company Law Review Steering Group, *Modern Company Law for a Competitive Economy: Final Report, Volume 1* (June 2001), [1.10]–[1.35].

[40] See *Companies (Amendment) Act 1998* (Singapore).

[41] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76C.

[42] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76D.

[43] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76E.

[44] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76F.

[45] *Companies Act* (Singapore, cap 50, 2006 rev ed) ss 76H – 76K.

[46] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76F.

[47] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76DA.

[48] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76B(3). For listed companies, however, the listing rules of the Singapore Exchange continue to restrict permitted share buybacks to 10 per cent of the company's issued share capital.

[49] The breadth of the prohibition is exemplified by the English Court of Appeal decision in *Chaston v SWP Group Ltd* [2003] 1 BCLC 675, where it was confirmed that the prohibition may be breached even if the directors had acted in good faith in the company's interests and the assistance in question had not adversely affected the substantive merit of the terms of the acquisition. In Singapore, the Court of Appeal has adopted (obiter) a similarly broad view of the prohibition in *Wu Yang Construction Group Ltd v Mao Yong Hui* [2008] 2 SLR 350.

to abolish the prohibition in respect of private companies but retain it for public companies.[50] In addition, a new exception has been added (by adapting s 260A of the *Corporations Act 2001* (Cth)) to allow public companies to provide financial assistance where the assistance does not materially prejudice the interests of the company or its shareholders or the company's ability to pay its creditors.[51] Taken together, these amendments have the effect of substantially eviscerating the prohibition against financial assistance. Private companies are now free to financially assist with the purchase of their own shares or the shares of their holding (or ultimate holding) company. Even in respect of public companies, the prohibition is unlikely to impede legitimate transactions given the range of exceptions now available.[52]

Removal of one-share-one-vote restriction

The removal of the one-share-one-vote restriction for *public* companies is another move aimed at optimising a company's flexibility in organising its capital structure. With this amendment, a public non-listed company will henceforth be able to issue two classes of shares bearing the same economic benefits and risks, but with different voting rights.[53] Interestingly, this suggestion (to remove the restriction) had previously been considered but was rejected by the CLRFC in the 1999 Review. The reason then cited was that the restriction was essential for ensuring a level playing field for shareholders of public companies since shareholder democracy (and by extension, equal treatment of shareholders) was the bedrock of good corporate governance.[54] By the time of the 2007 Review, however, regulatory attitude had shifted owing to concerns that insistence on the one share per vote principle might render Singapore uncompetitive as a destination for Initial Public Offerings.[55] In its report, the Steering Committee noted the risk of minority abuse but nevertheless recommended removing the restriction to give companies greater flexibility in managing their capital.[56] As a result, s 64 of the Act has been amended to clarify that the one-share-one-vote principle is only a *default* rule which may be displaced by contrary provisions in the company's constitution.[57] This brings the position in line with that of leading jurisdictions such as Australia, where the one-share-one-vote rule is also a replaceable or default rule.[58] Although the Singapore Exchange has yet to relax its rules to

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[50] This distinct treatment was justified on the ground that shareholders of private company, being far fewer in number, would likely have more control over the company's decision to provide financial assistance. In contrast, shareholders of large public companies will typically not have such control and will hence require the protection of the statutory prohibition: see MOF, n 13, [95]–[96].

[51] See *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76(9BA), which is modelled on *Corporations Act 2001* (Cth), s 260A.

[52] Other exceptions to the prohibition are found in *Companies Act* (Singapore, cap 50, 2006 rev ed) s 76(9A) (giving assistance for up to 10 per cent of the company's capital with board approval and solvency statement), s 76(9B) (with shareholders' approval and solvency statement) and s 76(10) (with shareholders' approval by special resolution).

[53] This should be contrasted with the issue of different classes of shares with *distinct* benefits and risks (such as ordinary and preference shares), which has always been permitted in Singapore.

[54] CLRFC, n 6, [3.6.3].

[55] The debate was ignited after Manchester United reportedly cited Singapore's ban on dual-class share structures as a reason for aborting its IPO plans here: see Reuters, "Singapore to Allow Dual-class Shares to Attract Listings", *Reuters*, 3 October 2012; L Lim, "Recent Amendments to the Companies Act: Rethinking Dual-class Shares in Singapore – Caveat Emptor?" (2015) *Sing Law Gaz* 30. Interestingly, Hong Kong regulators were subject to similar pressure after losing Alibaba's IPO application to New York: see the helpful discussion of R Chan and J Ho, "Should Listed Companies be Allowed to Adopt Dual-Class Share Structure in Hong Kong?" (2014) 43 CLWR 155.

[56] MOF, n 13, [14]–[16].

[57] The issue of shares with no or different voting rights is, however, subject to the following safeguards: (1) A public company may only issue different classes of shares if: (a) its constitution provides for the issue of different classes of shares; (b) the rights attached to each class of shares are set out therein; and (c) the issue is approved by special resolution: see *Companies Act* (Singapore, cap 50, 2006 rev ed) ss 64A(1), (3); and (2) The holder of a *non-voting share* will still have one vote in a general meeting to vote on any resolution that seeks to wind up the company voluntarily or vary the rights attached to that share: see s 64(4).

[58] See *Corporations Act 2001* (Cth), s 250E.

permit listing of dual-class shares,[59] the removal of the restriction at general law is widely seen as a prelude to that possible development, and is reflective of the Singapore regulators' readiness to effect fundamental changes to enhance its competitiveness as an international financial centre.

ENHANCING CORPORATE GOVERNANCE

The promotion of sound corporate governance lies at the heart of company law. For modern economies founded on free enterprise, the challenge confronting regulators is the need to construct a regulatory environment that strikes a felicitous balance between optimising managerial freedom on the one hand and deterring abuse on the other. In Singapore, the attitude that appears to have guided the regulators in divining this intricate balance is one of caution. Thus, the general approach is to avoid sweeping reform, but to respond to specific problems by making calibrated or incremental refinements to existing rules.

This attitude of circumspection is perhaps best illustrated by the Steering Committee's recommendation *against* adopting the UK's approach in extensively codifying directors' duties.[60] Whilst recognising that an exhaustive legislative statement would lend to certainty and accessibility, the Committee was nonetheless concerned that such a move would inhibit judicial development in a particularly dynamic area of law.[61] More importantly, perhaps, it was noted that non-exhaustive statements of directors' duties have long been a feature of the *Companies Act*.[62] Given that users are familiar with the existing rules, a complete overhaul (in the form of an exhaustive restatement) did not appear necessary in the absence of clear evidence that fundamental reform was needed.[63] By preserving the status quo, Singapore's approach to regulating directors' duties is more attuned with that in Australia, where non-exhaustive statements[64] are also preferred.

But while radical changes were resisted, the recent reform did introduce a number of refinements aimed at improving managerial accountability and enhancing enforcement powers in relation thereto. Some examples of such changes are:

- The extension of directors' statutory obligations to disclose conflicting interests and duties to the company's chief executive officer.[65]
- The expansion of the grounds on which a director may be disqualified[66] or debarred[67] from acting as a director.

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[59] Singapore Exchange, "The Capital Structure of Listed Companies in Singapore" (2011).

[60] This recommendation was subsequently endorsed by the government: see MOF, n 21, [39].

[61] MOF, n 13, [115].

[62] The principal provision is found in *Companies Act* (Singapore, cap 50, 2006 rev ed) s 157(1), which states that a director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office. See s 157(2) which further provides that an officer or agent of a company shall not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the company. This provision has its origin in an Australian Act, viz, *Companies Act 1961* (Vic), s 124 (now repealed).

[63] See Woon, n 18, [27].

[64] Comprised in *Corporations Act 2001* (Cth), ss 180 – 184.

[65] See *Companies Act* (Singapore, cap 50, 2006 rev ed) ss 156, 165. However, the government did not accept the Steering Committee's recommendation to extend directors' *duties* to the company's chief executive officer: see MOF, n 21, [47]. One concern was that such a move would render our law more onerous than those of the UK, New Zealand and Hong Kong. Also, such a development may not be necessary given that a chief executive who has not been formally appointed as a director may in any event be liable as a *de facto* director.

[66] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 155A, which automatically disqualifies a person from acting as a director if he has been a director of three companies that have been struck off the register within a period of five years.

[67] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 155B. An order of debarment may be imposed by the Registrar of Companies on a person who has defaulted on his statutory filing obligations. Such an order does not disqualify him from acting as a director or secretary of all companies, but only bars him from taking up *new* appointments as director or secretary.

- Extending the prohibition against loans to directors (and persons connected to them) to quasi-loans, credit transactions, as well as other transactions and arrangements that have financial effects similar to that of a loan.[68]
- Extending the right to petition for statutory derivative action to shareholders of listed companies, and expanding its scope to allow for intervention in arbitration proceedings. [69]

At the same time, relaxations were introduced to ensure that existing rules operate realistically and accord with market norms. For example, amendments were made to ease the conditions under which a nominee director may disclose information to its nominator,[70] to clarify that a company may indemnify its directors against third-party claims,[71] and to allow a company to compensate a salaried director for loss of office where the compensation is less than one year of total emoluments earned by him before the termination of his employment.[72]

On the whole, the changes made to directorial responsibility and shareholder rights are conservative in nature. They reflect the guiding principle that a change should only be made if its benefits clearly outweigh its costs. Where this is not so, the preference is to retain the status quo, or to craft narrow responses to specific problems. This explains why some proposals with more far-reaching effects were ultimately rejected. Examples would include the suggestions to impose fiduciary duties on chief executive officers,[73] abolish the requirement for shareholders' approval for payments for loss of director's office,[74] and introduce minority buy-out or appraisal rights.[75]

AN AUTOCHTHONOUS COMPANY LAW?

As a former British colony, Singapore has benefitted immensely from the rich legal legacy bequeathed by its colonial master. Nevertheless, it is clear that Singapore would have to develop laws that are tailored to her own social, political and cultural needs as she matures as an independent state.[76] This quest for an autochthonous[77] corpus of law is palpable also in the reform of company law. In deciding what works best for Singapore, the law reformers have not looked exclusively to the UK but have had regard to the laws of other common law jurisdictions (including Australia, Canada, New Zealand, Hong Kong and Delaware). An early and prominent example of Singapore's readiness to chart its own path was its adoption of the statutory derivative action in 1990, modelled on equivalent provisions in Canada.[78] This was a trailblazing move as Australia, Hong Kong and the UK only enacted statutory derivative actions in 1999, 2005 and 2006 respectively.[79] A similar attitude was dominant in the 2007

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[68] *Companies Act* (Singapore, cap 50, 2006 rev ed) ss 162, 163.

[69] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 216A.

[70] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 158.

[71] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 172B.

[72] *Companies Act* (Singapore, cap 50, 2006 rev ed) s 168(1B), an addition inspired by *Corporations Act 2001* (Cth), s 200F.

[73] MOF, n 21, [47], discussed in n 65.

[74] MOF, n 13, [69]–[86]. The Steering Committee's recommendations were subsequently modified by the government: see MOF, n 21, [25].

[75] MOF, n 13, [118]–[130].

[76] Thus, the Singapore parliament enacted the *Application of English Law Act* (Singapore, cap 7A, 1994 rev ed) in 1993 to clarify the limited extent to which English law applied in Singapore, and abolished appeals to the Judicial Committee of the Privy Council in 1994. Together, these developments conclusively sealed Singapore's control over its own laws.

[77] An idea first advocated by Prof GW Bartholomew in an interview: see "In Conversation: Prof GW Bartholomew" (1985) 6 Sing L Rev 56.

[78] Now embodied in *Companies Act* (Singapore, cap 50, 2006 rev ed) ss 216A, 216B. For a useful discussion of the background to this reform, see MS Wee and DW Puchniak, "Derivative Actions in Singapore: Mundanely Non-Asian, Intriguingly Non-American and at the Forefront of Commonwealth" in DW Puchniak, H Baum and M Ewing-Chow (eds), *The Derivative Action in Asia: A Comparative and Functional Approach* (Cambridge University Press, 2012).

[79] DW Puchniak, H Baum and M Ewing-Chow, *The Derivative Action in Asia: A Comparative and Functional Approach* (Cambridge University Press, 2012) 337.

Review, when (as noted earlier[80]) the Steering Committee rejected the adoption of the UK legislation as a template for the rewriting of the *Companies Act* and stressed the importance of importing a foreign innovation only if it would serve a useful purpose in our context. This is not, of course, to deny that the UK and other foreign laws would continue to be important in shaping our laws: Singapore's aspiration as a global financial centre necessarily precludes any such ostrich mentality. Nevertheless, it is equally clear that the young nation is no longer constrained to follow developments elsewhere, and will innovate when appropriate. The decision to centralise company registers on an electronic platform is, as we have seen,[81] an instance where Singapore has charged ahead of other jurisdictions in providing a new standard of service to optimise efficiency and long-term business savings.

CONCLUSION

There can be no doubt that the recent reform has streamlined Singapore's companies legislation, brought it up-to-date, and reduced the regulatory burden of private companies in significant ways. Yet it is trite that the law – by reason of its static nature – is constantly playing "catch-up" with reality. Even with a modernised framework, it is clear that sustained vigilance is required for ensuring that Singapore's corporate regulation is relevant, enabling and business friendly. For an optimal regulatory environment is always a critical, though in itself insufficient, condition for drawing enterprise.

[80] See text to n 17 above.

[81] See "Online registers and electronic communications" above.