RESPONSE TO PUBLIC CONSULTATION QUESTIONS ON THE RECOMMENDATIONS OF THE COMPANIES ACT WORKING GROUP

Thank you for the opportunity to respond to the recommendations of the CAWG. My responses and comments reflect my personal views.

Recommendation	Consultation questions	Response to Recommendations	Comments on Consultation Questions
DIGITALISATION			
1.1	Question 1.1a: To effect this amendment, would a provision which allows digital share certificates or an entry in the share register to be the equivalent of the current physical share certificates be sufficient, or should all references in the CA to share certificates be deleted? Question 1.1b: Are there any practical concerns if physical share certificates are no longer required which need to be specifically addressed in the CA?	**Agree**	No comments
1.2	Question 1.2: Would an electronic register of members/shareholders of non-listed public companies, similar to that currently maintained by ACRA for private companies under section 196A be an appropriate approach to facilitate dematerialisation of shares of nonlisted companies?	**Agree**	No comments
1.3	Question 1.3a: The provisions above are examples where the mode of holding the meeting either require physical attendance or refer to speaking or voting	**Agree subject to certain significant qualifications**	Agree with greater use of technology for shareholder meetings and therefore support digital or virtual meetings in principle.

	in a physical environment. Is it sufficient if, in each instance, a general provision is drafted to provide that for avoidance of doubt such actions can be undertaken through the use of any technology (without specifically indicating how companies may do so)? Question 1.3b: Specifically, in the case of a right to vote on a show of hands, should voting be allowed by voice or by a show of hands, which can be done using any technology with audio-visual capacity, or should the provision also address modes of holding electronic meetings that do have audio-visual capacities e.g. electronic chatrooms? Question 1.3c: Are there any other specific concerns (e.g. proper identification of members) which the CA should expressly provide safeguards for?		Question 1.3a –hybrid meetings should be used for listed companies. For listed companies, meetings should be hybrid, with the opportunity for shareholders to attend physically. An annual general meeting is a once-a-year opportunity for shareholders to interact with directors (and to observe their body language), which will be lost with purely virtual meetings. The virtual meeting should allow shareholders to listen, speak and vote – in other words, it should replicate a physical meeting as much as possible in terms of shareholder participation. I understand that virtual meetings for listed companies introduced as Covid-19 measures in a number of countries allow shareholders to listen and speak, unlike those in Singapore which are passive webcasts. If physical meetings are discontinued, there is one less reason for investors to invest in Singapore companies. Shareholders should also not be forced to vote before the meeting occurs when they have not had the opportunity to listen and ask questions. Question 1.3b – audio-visual capabilities should be mandatory for electronic meetings Question 1.3c – this can be left to individual companies, which have to address any such concerns in accordance with legal requirements.

			The technology is available and concerns such as proper identification are already there for listed companies here and overseas. For listed companies, the stock exchange regulator can provide guidance.
1.4	Question 1.4: Is the proposed safeguard in Recommendation 1.4 adequate or should there be additional safeguards in respect of digital meetings?	**Agree**	Proposed safeguard is adequate
1.5	Question 1.5: Should the CA be amended to introduce rules that are more prescriptive for digital board meetings? If yes, what are the areas which require more specific rules?	**Agree**	No need to introduce more prescriptive rules – same rules as for physical board meetings which are largely governed by articles/constitution can apply.
1.6	Question 1.6a: Are there administrative concerns if all companies are required by law to accept proxy instructions by electronic means? Question 1.6b: Are there specific concerns in respect of authenticity of the proxy forms which should be provided for in the law?	**Agree**	No comments
1.7	Question 1.7: Are there any documents that the CA requires or permits companies or directors to send to members, officers or auditors that sections 387B and 387C should not apply to, apart from notices or documents	**Agree**	No comments

	relating to take-over offers and rights issues which are already excluded under regulation 89D of the Companies Regulations?		
1.8	Question 1.8: Are there any documents that the CA requires companies and foreign companies to keep or make available for inspection that sections 395 and 396A should not apply to?	**Agree**	No comments
1.9	Question 1.9: Are there specific issues or concerns in respect of the communications between the parties described in Recommendation 1.9 which need to be addressed in the law?	**Agree**	No comments
1.10	**-**	**Agree**	No comments
1.11	Question 1.11: Should the rules that apply to documents sent using electronic communications by companies or directors to members, officers or auditors be different from the rules that apply to documents sent using electronic communications by (a) companies or directors to persons who are not members, officers or auditors; and (b) members, officers, auditors and other persons to companies or directors?	**Agree**	No comments
1.12	Question 1.12a: Are the debentures, certificates, declarations and reports etc. indicated in page 25, paragraph 34 of the Report already made in digital form and accepted as a matter of practice? Should	**Agree**	No comments

	the CA be amended to address the making of such things in digital form? If yes, what are the specific provisions in the CA that should be amended? Question 1.12b: Are documents already sent by foreign companies using digital means and accepted as a matter of practice? Should the CA be amended to address the sending of documents by foreign companies using digital means? If yes, what are the specific provisions in the CA that should be amended?		
1.13	Question 1.13: Are there any other requirements in the CA relating to the audit process or other company processes that may hamper companies' digitalisation efforts? If yes, what are the specific provisions in the CA and how should they be amended to facilitate companies' digitalisation efforts?	**Agree**	No comments
TYPES OF COMPANIES AND FINANCIAL REPORTING			
2.1	Question 2.1: Do any of the obligations that apply to public or private companies need to be changed to address specific concerns that certain public/private companies should be subject to less/more rigorous obligations?	**Agree**	No comments.
2.2	**-**	**Agree**	
2.3	Question 2.3: Are there any concerns in respect of corporate governance that arise	**Disagree**	The concept of exempt private company (EPC) should be abolished or at least the criteria/reporting

	from the current exemptions in sections 162 and 163 of exempt private companies?		requirements should be strengthened. If continued, a stronger justification should be provided than simply the fact that they are well entrenched. The review should not further entrench certain practices without strong justification. The company structure provides limited liability protection and needs to be balanced by adequate safeguards and transparency to avoid moral hazard – whereby founders avail themselves to the limited liability protection and are at the same time not having adequate transparency. The reports states: "There were concerns that abolishing the EPC type would constitute a significant change in practice, and may make the use of the Singapore company vehicle restrictive and unattractive. There has also been no feedback that the EPC type has resulted in governance challenges." Following the debacles involving companies such as Hin Leong, Ocean Tankers, Zenrock, Hintop, Agritrade and others, there have in fact been governance concerns raised about EPCs because a number of these were EPCs, even though they were large companies in terms of revenues, assets, etc. I wrote an article about the Hin Leong group of companies which discusses the problems with the company structures used, and especially the EPC structure, and it can be accessed here: https://governanceforstakeholders.com/2020/05/18/hin-

			leong-trading-time-to-reconsider-regulatory-framework-for-private-companies/ If the EPC structure is retained, other criteria should be introduced, such as total revenues, total assets and total employees similar to the current concept of "small" versus "large" companies for audit exemption. EPCs which have few shareholders/no corporate shareholders but which are nevertheless large should not be exempted from requirements to file financial statements if they are solvent. The exemption from filing if solvent is also problematic because what is solvent is not clearly defined. Were Hin Leong Trading and Ocean Tankers solvent when they filed for restructuring just because they had unmodified audit opinions? Is it not too late to require filing of financial statements only when insolvent? Exempting such large EPCs from filing financial statements creates an information asymmetry between large creditors such as banks which can always demand audited financial statements, and smaller creditors like suppliers who are unable to do so. It is actually in my view disadvantageous to SMEs if EPCs are not required to file financial statements as many SMEs may be small creditors and business partners of large EPCs. If the concern is that removing the EPC concept will require Temasek Holdings or other government-linked

			companies to file financial statements, they could be separately carved out with their own justification for such carve-outs.
2.4	**-**		
2.5	Question 2.5: Should a distinction be drawn between dormant listed public companies and dormant non-listed public companies, such that only the latter may be exempted from holding AGMs?	**Agree**	Agree with distinction for dormant listed and non-listed companies
2.6	Question 2.6a: Are the concepts of "publicly accountable company" and "non-publicly accountable company" better categorisations for determining financial reporting obligations, instead of the current concepts of public company and private company? Question 2.6b: Is it appropriate to include the companies described in Recommendation 2.6(a)-(d) in the definition of "publicly accountable company"? Are there any other types of companies that should be included or excluded?	**Agree with qualifications**	At the moment, the number of different categories of companies is already complicated so careful consideration should be given to introducing yet another categorisation. Since the concept of "public interest company" is already in use, should this concept be used rather than another concept of "publicly accountable company" be introduced, especially as the latter will draw on the criteria used for the former? I agree with the inclusion of the companies described in Recommendation 2.6(a)-(d) but believe that large private companies can also be public interest entities or publicly accountable companies, so I would recommend that revenues, size, number of employees tests should be used to include certain private companies. I understand in some countries, the equivalent codes of professional conduct and ethics for public accountants do include size criteria with regards to restrictions relating to auditor independence .
2.7	**-**	**Agree with qualifications**	See comments on 2.6

2.8	Question 2.8a: Should micro non-publicly accountable companies be allowed to prepare reduced/simplified financial statements so as to reduce their compliance burden? If so, is the suggested criteria of total annual revenue and total assets each not being more than $500,000 for the previous two consecutive financial years appropriate? Question 2.8b: If micro non-publicly accountable companies are allowed to prepare reduced/simplified financial statements containing only the statement of comprehensive income, the statement of financial position and specific key disclosures, will members of such companies and other stakeholders be provided with sufficient information relating to the financial position of the company? Question 2.8c: To facilitate the implementation of the micro non publicly accountable company criteria under Recommendation 2.8, the following transitional provisions are proposed to be introduced: (a) a company is eligible to prepare reduced/simplified financial statements if it meets the quantitative criteria in the first or second financial year commencing	**Disagree**	I believe it is a misconception that the statement of comprehensive income and statement of financial position are more important than the statement of cash flows. With today's financial reporting standards that rely heavily on fair values and impairment testing which are highly subjective, cash flow information is perhaps even more important than ever. It is not burdensome to produce a cash flow statement if the company can produce the other two statements, so there is not going to be much difference in compliance costs.

	on or after the date of commencement of the provisions that allows micro non-publicly accountable companies to prepare reduced/simplified financial statements. (b) to ensure the same assessment period applies to both the micro non-publicly accountable company criteria under Recommendation 2.8 and the revised small company audit exemption criteria under Recommendations 2.9 to 2.11, the same transitional provision as that under (a) should be applied to the revised small company audit exemption criteria. For clarity, the same assessment period also applies to eligibility to file simplified XBRL financial statements. The proposed transitional provisions are intended to ensure that the same assessment period applies for both sets of criteria. Are there any concerns with implementing these two sets of transitional provisions?		
2.9	**-**	**Agree**	No comments
2.10	**-**	**Disagree**	Most jurisdictions include number of employees as one of the criteria. The argument in the report that it may be difficult for some companies to determine number of employees due to outsourcing is not convincing. I would expect HR to know how many employees there are,

			regardless of whether this information needs to be disclosed in financial statements. Further, it is difficult to see the practical import of removing this criterion and reducing the number of criteria from three to two. In fact, if the objective is to exempt more companies, this will make it less likely that a company will be exempted. This is because currently, to be considered small, a company has to satisfy two out of three criteria. Under the proposed change, it will have to satisfy two out of two (of the same existing criteria). If it can satisfy two out of two under the proposed criteria, it would be able to satisfy two out of three under the previous criteria. However, if it could satisfy two out of three under the previous criteria, it may not be able to satisfy two out of two under the proposed criteria. Is this the intention of the CWAG – to make it harder for companies to be exempted?
2.11	Question 2.11a: Currently, a subsidiary can only qualify for audit exemption if the entire group to which it belongs qualifies as a small group. Does this requirement cause practical difficulties, for example in cases involving multiple layers of shareholding where a company can both be a subsidiary and a holding company?	**Disagree**	Each subsidiary is a separate legal entity with its own creditors and stakeholders. If the owners choose to create layers of subsidiaries to ringfence their risks or for other reasons, then they should be prepared to bear the additional audit costs to ensure the interests of the stakeholders of the subsidiaries are protected. It is insufficient to rely on the group auditors to determine the scope of the audit and take into account materiality given the concerns with independence of auditors and how they make such judgements.

	Question 2.11b: Would the potential for abuse by a company structuring itself in the form of multiple small companies to avoid audit be sufficiently mitigated by the requirement for the parent company's audit exemption to be determined based on the amounts in its consolidated financial statements?		The potential for abuse is not sufficiently mitigated by the requirement for the parent company's exemption to be determined based on the accounts in the consolidated financial statements as the subsidiaries are separate legal entities with its own creditors as mentioned above. Subsidiary creditors do not have right of claim against the group assets unless the parent has guaranteed the subsidiary debts.
2.12	Question 2.12a: Should special criteria such as that in Recommendation 2.12 be applied in order to assess the size of a trustee-manager and its business trust? Question 2.12b: Are there other categories of companies which require special criteria to be applied for assessing the size of a company for the purpose of the small non publicly accountable company audit exemption and eligibility to prepare reduced/simplified financial statements?	**Agree**	No comments on 2.12a For 2.12b, see comments on 2.11 and 2.8
2.13	Question 2.13: Are there any other categories of companies which should be prescribed in regulations as being exempt from the requirement to file financial statements?	**Disagree**	EPCs, if retained, should only be exempt from having to file financial statements if they meet certain size thresholds (which can be similar to audit exemption thresholds). The requirement to file financial statements should not be based on whether the EPC is solvent. See earlier comments on 2.3.
2.14	Question 2.14a: Is there any information in the financial statements of certain private companies that can be considered commercially sensitive (e.g. revenue and	**Disagree**	Financial statements for EPCs should be required to be filed and made available to the public and not be based on whether they are solvent. Exemptions can be given

	gross profit margins)? If yes, why is this financial information commercially sensitive and are there any other specific financial information within a private company's financial statements which may be more commercially sensitive han others? What are the attributes or types of private companies or industries for which the financial statements would be considered more commercially sensitive than others? Other than Gazetted exempt private companies which are wholly owned by the Government, are there other special circumstances whereby financial statements ought not to be made available to the public? Question 2.14b: All solvent EPCs are presently not required to file and make their financial statements available to the public. To promote corporate transparency, should all or some solvent EPCs be subject to the same requirements as other private companies to file and make financial statements available to the public? If only some solvent EPCs should be required to do so, what are the parameter(s) and threshold(s) that should be adopted to identify such solvent EPCs? One option could be to adopt parameters		for "small" EPCs based on revenues, assets and/or number of employees. If Temasek Holdings or other GLCs are to be exempted even though they do not qualify as "small" EPCs, they can be separately gazetted by the Minister as being exempt. There should not be a widening of exemptions in terms of specific financial statement items or company or industry type on basis of commercial sensitivity. The limited liability protection provided by the company structure must be accompanied by sufficient transparency. Business owners can opt for other structures without limited liability protection if they do not wish for certain information to be disclosed. See earlier comments on 2.3. My thinking is along the lines of 2.14b in that if EPCs continue, only "small" ones should be exempted from filing requirements as mentioned above. The "solvency" criterion should be removed as explained earlier. I disagree with 2.14c that the financial statements for solvent EPCs be filed but not made publicly available. If they are sufficiently large, they should be made publicly available.

	and thresholds which are similar to the small company criteria for audit exemption (as amended under Recommendation 2.10) which determines the need for the financial statements to be audited, such that a solvent EPC must file its financial statements for a financial year if its total revenue and total assets are each more than $10 million for the previous two consecutive financial years. This would result in only audited financial statements of solvent EPCs being filed. Another option is to prescribe certain categories of business activities (e.g. commodity trading), such that solvent EPCs that carry out such businesses are required to file their financial statements. Question 2.14c: As an alternative to the approach in Question 2.14b, should all or some solvent EPCs be required to file their financial statements, but these financial statements are not made publicly available? If only some solvent EPCs should be required to disclose their financial statements, what are the parameter(s) and threshold(s) that should be adopted to identify the group for which the financial information should not be disclosed? For example, in order to address possible concerns with		If families are concerned about confidentiality, then they could consider other business structures. The limited liability protection provided by companies comes with certain minimum requirements for transparency.

	confidentiality of family investment companies, should solvent EPCs whose shareholders are all individuals who are members of the same family be required to file but not make publicly available their financial statements?		
2.15	Question 2.15: Would the separation in the filing requirement of the annual return and financial statements of the company but within the same timeframes create any additional regulatory burden on companies? Should the timeframes for filing of the annual return and financial statements be different?	**Agree**	No comments
MATTERS RELATING TO DIRECTORS AND COMPANY SECRETARIES			
3.1	**-**	**Agree**	
3.2	**-**	**Agree**	
3.3	**-**	**Agree**	
3.4	Question 3.4: Are there any concerns with insider trading and directors' share dealings for companies which are wholly-owned subsidiaries of foreign ultimate holding companies? If yes, would disclosure under sections 164 and 165 mitigate such concerns?	**Agree**	While I disagree with the argument for non-disclosure, i.e., that such disclosure may compromise the confidentiality of their remuneration packages, because shares are likely to constitute a part of the total remuneration, I think removing such disclosure is unlikely to materially affect the interests of the stakeholders of the wholly-owned subsidiaries.
3.5	Question 3.5: Are there specific directors' offences under the CA which should be reviewed for decriminalisation? If yes, what are these offences?	**Disagree**	I believe criminal penalties should continue to apply to key director duties, such as duty to act honestly, duty of exercise reasonable diligence and duty to disclose interests. Decriminalisation such offences sends the wrong message and may also be seen to demonstrate leniency towards "white collar" offences as opposed to

			"blue collar" offences. Countries like Australia have in fact increased both criminal and civil penalties for such offences. The criminal penalties are also considerably harsher in Australia and Malaysia for such offences. I believe the maximum fine for the above offences in the CA should be urgently reviewed and raised from its current $5,000 which makes a mockery of the offence in my view. I do agree that civil penalties should be introduced to complement criminal penalties, but not replace them.
SAFEGUARDING SHAREHOLDERS' INTERESTS			
4.1	Question 4.1: Are there any practical concerns with setting out in the CA a specific threshold percentage that a variation or abrogation of class rights must be approved by? Is 75% of the class-rights holders the appropriate percentage?	**Agree**	No comments
4.2	-	**Agree**	No comments
4.3	-	**Agree**	No comments
4.4	-	**Agree**	No comments
4.5	-	**Agree**	No comments
4.6	Question 4.6a: For the proposed exclusions under Recommendation 4.6(b) and (f), is 30% the appropriate threshold to be adopted to establish control of a body corporate? Question 4.6b: Recommendation 4.6© excludes from the computation of the	**Agree**	No comments

	threshold for compulsory acquisition, shares which are the subject of an agreement or arrangement and have not been tendered into an offer, but includes in the computation (a) nonconcert parties; (b) irrevocables; (c) undertakings to tender into the offer; (d) agreements entered into that give rise to the general offer; and (e) shares bought by the transferee in the market. Are there any other types of parties and transactions which should be included or excluded from the computation of the threshold under Recommendation 4.6(c)? If yes, what are they and why? Question 4.6c: Recommendation 4.6(d) excludes from the computation of the threshold for compulsory acquisition, shares held or acquired by the transferee's spouse; children (including adopted children and step-children); parents; and siblings. Are there any other relationships which should be included or excluded from the computation of the threshold under Recommendation 4.6(d)? If yes, what are they and why?		
SHARE CAPITAL AND FINANCIAL ASSISTANCE			
5.1	Question 5.1: Given that Recommendation 5.1 does not result in a withdrawal or reduction in share capital, are there any concerns to shareholders or	**Agree**	No comments

	third parties (e.g. creditors), which require safeguards to be provided for in the CA?		
5.2	Question 5.2: Is the interpretation of section 78A on the reduction of share capital and return of such capital to its shareholders without cancelling issued shares clear? Is there a need for ACRA to issue a Registrar's Interpretation to clarify the position to practitioners?	**Agree**	No comments
5.3	Question 5.3a: Should the phrase "in connection with" be removed only from the definition of financial assistance in section 76(1), or should it also be removed from the exceptions to the prohibition against financial assistance in sections 76(9)(a)-(b); 76(9A); 76(9B); 76(9BA); and/or 76(10)? Question 5.3b: If the references to "in connection with" are removed, should any of the existing exemptions also be amended or deleted?	**Agree**	No comments
5.4	Question 5.4a: Should there be any difference between the treatment of the expenses of initial public offerings where new securities are being offered, and the treatment of such expenses where existing securities are being offered?	**Agree**	No comments

	Question 5.4b: Is there a need to specify what type of expenses should be exempted?		
5.5	Question 5.5: Are there any other actions in respect of the implementation of a take-over which should be included as an exception to the prohibition against financial assistance?	**Agree**	No comments
5.6	Question 5.6: Is the restriction of the proposed exception to a judicial manager's statement of proposal approved under section 227N(1) appropriate? Are there other transactions relating to judicial management which should also be exempted?	**Agree**	No comments
5.7	Question 5.7: The exception is proposed to be drafted to provide that the refinancing or repayment of any existing debt owed by the company (including the refinancing or redemption of the company's debt securities) where such existing debt has become due and payable as a consequence of the acquisition of shares in that company by any person, would not constitute financial assistance. Is the proposed scope of this exception appropriate?	**Agree**	No comments
5.8	**-**	**Agree**	No comments
5.9	**-**	**Agree**	No comments
5.10	Question 5.10: Is the exception as proposed in Recommendation 5.10	**Agree**	No comments

	suitable in terms of the cap on the percentage of shares and the period within which the shares may be bought back?		
OTHER RECOMMENDATIONS			
6.1	Question 6.1: Are there concerns that the removal of the requirement to lodge a statement in lieu of prospectus may adversely affect certain investors, and if so, under what circumstances?	**Agree**	No comments
6.2	-	**Agree**	No comments
6.3	-	**Agree**	No comments
6.4	-	**Agree**	No comments
6.5	Question 6.5a: Are there specific matters in respect of the areas under paragraphs (a)-(f) which should be included in the model constitution? Question 6.5b: Are there areas, other than those set out in paragraphs (a)-(f), of the model constitutions which require amendment, and if so, what are these?	**Agree**	No comments
6.6	-	**Agree**	No comments
6.7	-	**Agree**	No comments

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2 August 2020