Key changes to Companies Act relating to issues on Share Capital, Capital Maintenance, Schemes of Arrangements and Amalgamations

Topic	Current Provision/Requirement	Changes and Reasons
Narrow the scope of section 7(4A) which deems a person to have "interests in shares" by excluding holding company and fellow subsidiaries [Amendment of section 7]	Currently, section 7 of the CA sets out the circumstances when a person is deemed to have an interest in a share, for the purposes of certain provisions of the CA: (a) Section 7(4A): where a body corporate has or is deemed (apart from this subsection) to have an interest in a share, and a person ("C") is, the "associates" of C are, or C together with his "associates", is entitled to exercise or control the exercise of not less than 20% of the voting shares of the votes attached to the voting shares in the body corporate. (b) C's associates currently include, amongst other things C's subsidiaries, holding companies and fellow subsidiaries.	The definition of "associates" will be confined to C's subsidiaries only. C's holding companies and fellow subsidiaries are not included in the definition. In short, after the amendment, section 7(5) will define a person C as an associate of B if C is a subsidiary of B or B is able to control the decisions of C. **Reason for amendment** For consistency with the manner in which corporate control is exercised.

Remove one-share-one-vote restriction for public companies [New sections 64 and 64A]	Section 64(1) of the Companies Act provides that each equity share issued by a public company confers the right at a poll to one vote, and to one vote only. There is no such restriction for private companies.	The Amendment Act removes the restriction for public companies and introduces the following safeguards: (a) Shareholders' approval for issuance of shares (special resolution) (b) Information on voting rights for each class of shares must accompany the notice of meeting & proposed resolution (c) The rights of shares must be specified in the companies' constitutions and must be clearly demarcated so that shareholders know the rights attached (d) Holders of non-voting shares must have equal voting rights on 2 resolutions: (a) winding up and (b) varying of the rights of non-voting shares. For listed companies, SGX's existing policy of not allowing different voting rights will continue to apply pending conclusion of MAS' and SGX' review. **Reasons for change** • Give companies greater flexibility in capital management • Give investors a wider range of investment opportunities • UK, NZ and Australia allow shares with different voting

		rights (Australia restricts listed companies in its listing rules)
No more prohibition against financial assistance by private companies [Amendment of section 76]	A company may not give financial assistance to any person (whether directly or indirectly) for the purpose of acquisition/ proposed acquisition of shares or units of shares in the company or holding company.	(a) The financial assistance prohibition for private companies will be done away with. (b) But will still apply to public company / subsidiary of public company. **Reason for amendment** • Private companies are usually closely held and shareholders have greater control over the decision to give financial assistance. ○ This will reduce cost for private companies and is consistent with the position in the UK.
New exceptions to financial assistance provisions [Amendment of section 76]		The following new exceptions will be introduced for a public company or a subsidiary of a public company: (a) Where it does not materially prejudice interests of company or shareholders or company's ability to pay its creditors (subject to the company satisfying certain prescribed conditions); (b) Distributions made in the course of the company's winding up; (c) Allotment of bonus shares;

		(d) Redemption of redeemable shares of a company in accordance with its constitution. **Reason for exceptions:** To clarify/ address concerns that the present financial assistance prohibition may impede potentially beneficial or innocuous transactions.
Solvency statement by declaration (rather than statutory declaration) [Amendments to section 7A, section 215I, and section 215J]	Currently section 7A(2) of the Companies Act requires that the solvency statement should be in the form of a statutory declaration. Section 7A(2)(b) provides an alternative to the statutory declaration requirement – it provides that a company which is subject to audit requirements may use a solvency statement which is not in the form of a statutory declaration if accompanied by a report from its auditors that the statement is not unreasonable. Similarly, as part of the amalgamation process, various solvency statements are required to be made by way of a statutory declaration (sections 215I(2) and	The Amendment Act provides that solvency statements under sections 7A(2), 215I(2) and 215J(1) is by way of declaration in writing by the directors of the company. **Reasons for amendment** It has been noted that directors are reluctant to provide a statutory declaration because of the penalties under the Oaths and Declarations Act. Also, it is not pro-business to retain the current requirements for a statutory declaration. A declaration in writing by the directors would be sufficient as false statements are still subject to criminal sanctions in the Act.

	215J(1) of the Companies Act).	
Uniform solvency statement for all transactions (except amalgamations) [Amendment of section 76F]	Under section 7A of the Companies Act (which applies to financial assistance, redemption of preference shares and capital reduction) the test imposed on directors is: (a) that they have formed the opinion that, as regards the company's situation at the date of the statement, there is no ground on which the company could then be found to be unable to pay its debts; (b) that they have formed the opinion — (i) if it is intended to commence winding up of the company within the period of 12 months immediately following the date of the statement, that the company will be able to pay its debts in full within the period of 12 months beginning with the commencement of the winding up; or (ii) if it is not intended so to commence winding up, that the company will be able to pay its debts as	The Amendment Act introduces one uniform solvency test (ie. the section 7A solvency test) to be applied for all transactions (except amalgamations). **Reasons for amendment** It is timely to consider a uniform solvency test for all transactions. The preferred test is the section 7A test because it is less onerous and less hypothetical when compared to the section 76F(4) test, which requires that the company should be "able to pay its debts in full at the time of the payment".

	they fall due during the period of 12 months immediately following the date of the statement; and (c) that they have formed the opinion that the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not, after the proposed redemption, giving of financial assistance or reduction (as the case may be), become less than the value of its liabilities (including contingent liabilities). Under section 76F(4) of the Companies Act (which applies to share buybacks) the test is that: (a) the company is able to pay its debts in full at the time of the payment and will be able to pay its debts as they fall due in the normal course of business during the period of 12 months immediately following the date of the payment; and (b) the value of the company's assets is not	

	less than the value of its liabilities (including contingent liabilities) and will not after the proposed purchase, acquisition or release, become less than the value of its liabilities (including contingent liabilities).	
Permitted use of capital for share issues and buybacks for brokerage, commissions [Amendment to section 67 and section 76F]	Prior to the commencement of the Companies (Amendment) Act 2005 (hereinafter referred to as it the Amendment Act‖) on 30 January 2006, a company could use its share premium account to pay commissions as well as other permitted expenses incurred for an issue of shares. The Amendment Act repealed the applicable provisions pursuant to the recommendations of the CLRFC. Whilst the Amendment Act also allowed any amount remaining in the share premium account (which has been added to and now forms part of the company's share capital after 30 January 2006) to be used for payment of expenses connected with	The new section 67 allows a company to use its share capital to pay any expenses incurred directly in the issue of new shares, and provides that the payment will not be taken as a reduction of the company's share capital. **Reason for amendment** This is to address the uncertainty on whether a company might use its share capital for payment of brokerage or commission incurred for share buybacks.

	an issue of shares incurred before 30 January 2006,24 it does not however expressly provide that companies can use its share capital to pay for the permitted expenses, if these are incurred after 30 January 2006; neither does the Amendment Act introduce any prohibition on so doing. There is some uncertainty as to whether a company can utilise the proceeds of the issue or its share capital to meet the permitted expenses (by the prescribed accounting standards, with details in the latter part of this paragraph below) incurred after 30 January 2006, since there is no longer a share premium account mandated by law.	
Reporting of amounts paid up on shares in share certificate [Amendment of section 123]	Currently, companies are required to disclose the amounts paid, amounts unpaid (if any) on the shares, the class of the shares and the extent to which the shares are paid up. The reason is that the amount unpaid, if any, represents the	The requirement to disclose the "amount paid" on the shares in the share certificate under section 123(2)(c) is removed. Companies are required to disclose the class of shares, the extent to which the shares are paid up (i.e. whether fully or partly paid) and the amounts unpaid on

	outstanding amount due from the shareholders and should therefore be reflected.	the shares, if applicable under section 123(2)(c). **Reason for amendment** There is not much value in including such historical information in the share certificates of fully paid shares. The return of allotment is a better source of information on the amounts paid for shares.
Permitting the repurchase of "odd-lot" shares through a discriminatory offer [Amendment of section 76D]	Section 76D(1)(d) of the Companies Act precludes a listed company from repurchasing odd-lots from the odd-lot shareholders through a discriminatory repurchase offer (ie. selective off-market buybacks). Section 76(1) also prohibits a company from financing dealings in its shares, unless they fall within the exceptions (including buybacks).	The existing restriction of selective off-market acquisitions for listed companies is removed. The Amendment Act clarifies that sponsoring an odd-lot program does not amount to financial assistance. **Reason for amendment** The recommendation will reduce administrative costs for companies with a substantial number of odd-lot shareholders and allow odd-lot shareholders, who are currently discouraged from selling their small holdings due to high transaction costs, to dispose their shares.
Removal of restriction on use of treasury shares [Amendment of section 76K]	Section 76K(1)(b) of the Companies Act states that treasury shares may be transferred for the purposes of —an employees' share scheme.	The Amendment Act removes the restriction imposed on the use of treasury shares by deleting the word "employee" in section 76K(1)(b). **Reason for amendment**

		Treasury shares transfers for the purposes of “employees’ share scheme” is unduly restrictive. Where necessary safeguards are concerned, these should be imposed by the Listing Rules.
New statutory mechanism for redenomination of shares [New sections 73, 73A, 73B]	Currently the Companies Act does not specify a mechanism for redenomination of capital and where such redenomination involves a capital reduction, court sanction would be required.	The Amendment Act introduces a statutory mechanism for redenomination of shares. **Reason for amendment** It is common for companies with foreign businesses to re-denominate their share structure and hence the statutory mechanism would be useful and provide greater certainty.
Compulsory acquisition [Amendment of section 215]	***Holders of units of shares*** Currently, section 215 covers only shares, but does not cover options or convertibles.	Section 215 is amended to extend to units of a company’s shares via the new subsections (8A) and (8B). The new subsection (8B), which is based on section 989(2)(b) of the UK Companies Act, is intended to clarify that convertibles are not in the same class as the shares they are convertible to. **Reason for amendment** Section 215 is meant to allow an offeror to take up remaining minority positions in order to complete the takeover of a company. In this regard, the provision is amended to extend to options and convertibles of all sorts, to fulfil the intention of section 215.

		Section 215 is amended to extend to individual offerors via subsections (1) – (4) and (8) – (11) (as amended where applicable)
	Individual offerors Currently section 215 of the Companies Act applies to the transfer of shares in one company to "another company or corporation". (As noted in Walter Woon on Company Law at paragraph 15.165, — this section cannot be invoked by a natural person.)	**Reason for amendment** There is no compelling reason why section 215 cannot be invoked by a natural person. The amendment is therefore intended to allow for this. The new section 215AA sets out the modifications to section 215 where an offer to acquire shares in a transferor company is made by 2 or more persons jointly.
	Joint offers Section 215 of the Companies Act confers squeeze-out rights to an offeror company in a takeover to acquire shares of the dissenting minority if 90% of the target company shareholders have approved the takeover offer. Subsection (3) provides sell-out rights to shareholders. However, the Act does not make clear that where a takeover offer is made jointly by more than one person, all the joint	The new section 215AB provides that where a transferor company has shareholders to whom an offer to acquire shares in the transferor company could not be communicated, the offer does not fail under section 215 if these shareholders are not resident in Singapore, the offer was not communicated to them to avoid contravening a foreign law or because communication to these shareholders would be onerous, and reasonable efforts have been made to publicise details of the offer. **Reason for amendment**

	offerors have the same legal obligations.	To make clear that where a takeover offer is made jointly by more than one person, all the joint offerors would have the same legal obligations.
	Cut-off date Section 215 of the Companies Act currently does not fix a point in time at which to determine whether the 90% threshold has been reached, presumably leading to the default position that shares issued after the takeover offer would have to be factored in to calculate whether the 90% threshold has been reached.	A cut-off at the date of offer is imposed for determining the 90% threshold for the offeror to acquire buyout rights so that shares issued after that date are not taken into account. The new subsection (1C) states that shares issued, and treasury shares that cease to be held as treasury shares, after the date of the transferee's offer to acquire the shares in the transferor company, will be disregarded for purposes of determining whether the threshold of 90% of the total number of shares, or shares in a particular class, of the transferor company has been attained. **Reason for amendment** To create greater certainty for the offeror. Without this amendment, the offeror is put in the position of potentially having to shoot for a moving target of 90% since the number of shares needed to reach that target changes if new shares are issued in the interim.
	Computation of 90% threshold In computing whether the 90% threshold has been	Section 215(3) is amended by deleting "(excluding treasury shares)" and substituting "(including treasury shares)" so as to grant sell out rights when the

	reached, treasury shares are excluded for the following: • Dealing with the offeror's perspective of squeeze-out rights, section 215(1) of the Companies Act provides that treasury shares should be excluded. • Dealing with the minority shareholders' perspective of sell-out rights, section 215(3) also provides that treasury shares should be excluded.	offeror has control over 90% of the shares, including treasury shares. **Reason for amendment** Amending the law to include treasury shares recognises the reality that the offeror who crosses the 90% threshold when treasury shares are included is already in a position to control the target company (and therefore the treasury shares) by virtue of his majority shareholding.
	Unclaimed consideration When an offeror has acquired minority shareholdings, section 215(4) of the Companies Act provides for payment of the price to the target company and section 215(5) provides that the target company shall hold the consideration	The current subsections (6) and (7) of section 215 are deleted and replaced with new subsections (6) and (7) to provide that all forms of consideration paid under an offer to acquire shares in a transferor company which are held intrust by a company for any person, may or shall (as the case may be) be transferred to the Official Receiver within the specified period. New subsections (10A) and (10B) of section 210 provide that all

	received in trust for the share owners. Section 215(6) states: “Where any consideration other than cash is held in trust by a company for any person under this section, it may, after the expiration of two years and shall before the expiration of 10 years from the date on which such consideration was allotted or transferred to it, transfer such consideration to the Official Receiver”. Section 215(7) states: “The Official Receiver shall sell or dispose of any consideration so received in such manner as he thinks fit and shall deal with the proceeds of such sale or disposal as if it were moneys paid to him in pursuance of section 322 (Companies Act)”.	forms of consideration paid under any compromise or arrangement may be transferred to the Official Receiver if the rightful owner cannot be located. This clarifies the handling of unclaimed consideration. **Reason for amendment** It would be useful for the Official Receiver to similarly handle cash consideration as well. Given that unclaimed consideration may also arise from sections 210 and 215A to 215J situations, a separate section similar to sections 215(6) and 215(7) are enacted to allow transfer of consideration to the Official Receiver in all such situations.
	Overseas shareholders Section 215 of the Companies Act deals with a scheme “involving the transfer of all of the shares …”. This can lead	The Amendment Act introduces an exemption to section 215, via the new section 215AB. The new section 215AB provides that where a transferor company has shareholders to whom an offer to acquire shares in the transferor

	to an argument that section 215 does not apply if every one of the shareholders has not had the offer delivered to them. Delivering the offer to every single overseas shareholder may however be unduly onerous or impossible where shareholders have no local address.	company could not be communicated, the offer does not fail under section 215 if these shareholders are not resident in Singapore, the offer was not communicated to them to avoid contravening a foreign law or because communication to these shareholders would be onerous, and reasonable efforts have been made to publicise details of the offer. **Reason for amendment** This is to address the problem of an unduly onerous or impossible task to deliver an offer to overseas shareholders who do not have local addresses.
Refinements to scheme of arrangement regime [Amendment of section 210, 211, 212]	***Holders of units of shares*** Section 210 of the Companies Act provides the mechanism for a compromise or arrangement between a company and its creditors or any class of them or between the company and its members or any class of them. Based on the wording of section 210, there could be doubts as to whether or not holders of options and convertibles could be	Section 210 is amended to state explicitly that it includes a compromise or arrangement between a company and holders of units of company shares. **Reason for amendment** To clarify any doubts on whether holders of options and convertibles could be parties to a section 210 scheme of arrangement.

	parties to a section 210 scheme.	
	Share-splitting and voting by nominees For section 210(3) of the Companies Act to be binding, a proposal must have the agreement of a majority in number, representing three-fourths in value of the creditors or members present and voting. A members' scheme could be defeated by parties opposed to the scheme engaging in "share-splitting", which involves one or more members transferring small parcels of shares to a large number of other persons who are willing to attend the meeting and vote in accordance with the wishes of the transferor. By splitting shares to increase the number of members voting against the scheme, an individual or small group opposed to the scheme may cause the scheme to be defeated. This may occur even though a special majority is achieved in	The words "unless the Court orders otherwise" are inserted preceding the numerical majority requirement in section 210(3). For the purposes of section 210, if a majority in number of proxies and a majority in value of proxies representing the nominee member voted in favor of the scheme, it would count as the nominee member having voted in favor of the scheme. **Reasons for amendment** This would serve the twin purpose of dealing with cases of "share-splitting" and allowing the court latitude to decide who the members are in a particular case. The purpose of the amendment is to prevent the defeat of a member's scheme of arrangement by opposing parties engaged in share-splitting, which involves one or more members transferring small parcel of shares to a large number of other persons who are willing to vote in accordance with the transferors' instructions. Before the amendment, section 210(4), when read literally, empowers the court to grant alteration or set conditions for the compromise or arrangement

	terms of voting rights attaching to share capital, and if the share split had not occurred, the majority of members were in favour of the scheme.	rather than share splitting. Thus, the need for the amendment.
	Currently, the Act does not specify how a nominee member who is represented by proxies is counted for under the schemes of arrangement.	For the purposes of section 210, if a majority in number of proxies and a majority in value of proxies representing the nominee member voted in favor of the scheme, it would count as the nominee member having voted in favor of the scheme. **Reason for amendment** The above reflects how the representation by proxies is done in practice. The amendment serves to provide greater certainty and clarity.
	Definition of "company" The word "company" is defined differently in sections 210(11) and 212(6) of the Companies Act, leading to different scope for each. The inconsistency should be resolved since section 212 is an extension of section 210 in that a scheme approved under section 210 may have to be carried into effect through section 212.	Sections 210 and 212 apply to both "companies" and "foreign companies". **Reason for amendment** Section 212 should be extended to foreign companies in order to facilitate cross-border transactions.

	Binding the offeror Currently section 210 of the Companies Act and the associated provisions do not have binding force on the offeror.	Section 210 and associated provisions are amended to provide for the scheme to be binding on the offeror. **Reason for amendment** Before the amendments, section 210 of the Act and the associated provisions did not have binding force on the offeror. The offeror is not a party to section 210 arrangements and the court's approval does not render it binding on the offeror (although sometimes the offeror does voluntarily appear for court proceedings or agree to be bound). What binds the offeror is only the antecedent implementation agreement between the offeror and the target company. This can cause difficulties. The amendment addresses this problem.
Short-form amalgamation of holding companies with wholly-owned subsidiaries [Amendment of section 215D]	The provisions at sections 215A to 215J of the Companies Act allow amalgamation of companies with shareholder approval and solvency statements of the directors, without the necessity of court approval.	The Amendment Act amends section 215D to provide in subsection (1) that the short form amalgamation under the section applies to an amalgamation of a group of companies where one of the subsidiaries is the surviving amalgamated company. **Reason for amendment** Apart from normal amalgamations, short-form amalgamations involve either

		vertical amalgamation of a holding company and one or more wholly-owned subsidiaries or horizontal amalgamation of two or more wholly-owned subsidiaries. The amendment is intended to clarify that a holding company may amalgamate with its wholly-owned subsidiary by short form if it is the subsidiary which is to be the amalgamated company or whether it is only the holding company which can be the amalgamated company in a short-form amalgamation.