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17 August 2020

Chairperson
Companies Act Working Group
Accounting and Corporate Regulatory Authority (ACRA)
10 Anson Road #05-01/15 International Plaza
Singapore 079903

Via email: ACRA_Public_Consultation@acra.gov.sg

Dear Professor Tan Cheng Han,

Public Consultation on proposed amendments to the Companies Act

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. In Singapore, CPA Australia has around 8,500 members. We make this submission on behalf of our members and in the broader public interest.

We support ACRA's efforts to ensure Singapore's corporate regulatory regime remains competitive, as well as its intention to update regulatory requirements and make compliance easier. We have made comments on Chapter 1 (Digitalisation), Chapter 2 (Types of Companies and Financial Reporting), Chapter 3 (Matters Relating to Directors and Company Secretaries), Chapter 5 (Share Capital and Financial Assistance) and Annex D of the Report of the Companies Act Working Group (the CAWG Report).

In preparing this submission, we have engaged with our members in Singapore as well as drawing on our experience on the matters raised in other jurisdictions. Our responses are included in the **Attachment** to this letter.

If you require further information on the views expressed above, please contact Ram Subramanian on +61 3 9606 9755/ram.subramanian@cpaaustralia.com.au or Melvin Yong on +65 6671 6511/ melvin.yong@cpaaustralia.com.au .

Your sincerely,

Melvin Yong
Country Head, Singapore
CPA Australia

Gary Pflugrath CPA
Executive General Manager
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Attachment

Chapter 1 - Digitalisation:

Questions 1.1 to 1.13 of the Report (Annex C)

CPA Australia supports the recommendations made in the CAWG Report to digitalise certain provisions of the Companies Act and institute the necessary legislative amendments to facilitate or remove impediments to digitalisation. It is very important for underlying regulatory and legislative frameworks, including the Companies Act, to embrace a shift to digitalisation.

As highlighted in the CAWG Report, there are checks and balances built into the Companies Act and supporting regulatory frameworks to ensure the validity, verifiability and authenticity of the activities, documents and transactions related to the provisions being considered for digitalisation. We believe the technology underpinning digital platforms can offer similar checks and balances, that in turn provide greater confidence to the market

We support the approach proposed by the CAWG Report to enable digitalisation of relevant provisions as an option. This allows sufficient time for the companies to identify suitable alternative solutions based on digital platforms.

With respect to question 1.13, for many years the audit profession has been well versed in undertaking audit and assurance engagements covering many aspects of business that are entirely technology driven. There appears to be no obvious impediments to the conduct of audit and assurance engagements with respect to company processes that relate to provisions of the Companies Act. We welcome the recommendation to seek views through public consultation in this regard.

Chapter 2 - Types of Companies and Financial Reporting:

Questions 2.6a and 2.6b of the Report (Annex C)

Question 2.6a

Recommendation 2.6 proposes replacing the concepts of public company and private company with the terms 'publicly accountable company' and 'non-publicly accountable company' respectively.

We do not believe it is appropriate to introduce a new concept of a publicly accountable company into the Companies Act for the following reasons:

- The proposed use of the term "publicly accountable company" in the corporate regulation context risks undermining our understanding of how and for what purpose limited liability companies are formed and operate. The governance and internal management of companies are driven by statute and common law principles around duties of care and due diligence, the fiduciary relationships that exist between different types of company and their stakeholders and acting in good faith in the best interests of the company as a whole. Introducing a new overlay through the proposed term "publicly accountable company" could potentially confuse the fundamental corporate structures established through company law that underpin suitable regulatory regimes. These regimes have been established for different types of company and give rise to the rights and remedies of parties. We believe a disclosure perspective, as envisaged in this recommendation, could conflict with many of the existing corporate law principles that surround the fundamental concepts of company law.
- The terms "public company" and "private company" are well understood both locally and internationally and are used in corporate law settings to commonly denote their respective abilities to raise equity; the former being able to do so from the public whilst the latter being able to do so from a private group of investors. This nature of the two different companies is characterised in section 18 of the Companies Act, which places limits on the number of members of a private company to 50 and restricts the rights to transfer shares. We do not believe the term "publicly accountable company" adequately captures this fundamental difference between public and private companies that is a long-established feature of corporate law in many jurisdictions, including Singapore.
- We note that the Singapore Financial Reporting Standard for Small Entities (SFRS for Small Entities) already uses the term "public accountability" in determining which entities can adopt that standard (that is, entities that are not publicly accountable) and which entities have to adopt Singapore Financial Reporting Standards (that is, entities that are publicly accountable). We believe that introducing a similar term into the Companies Act to determine financial reporting obligations, but with a different definition to the term already used in Accounting Standards, could give rise to potential confusion.

Question 2.6b

The proposed types of company described in recommendation 2.6(a)-(d) would result in a non-listed public company no longer meeting the proposed definition of a publicly accountable company. For the reasons stated in our response to question 2.6a, we do not believe this to be an appropriate outcome.

Questions 2.8a and 2.8b of the Report (Annex C)

Question 2.8a

We support the proposals for micro entities to prepare reduced/simplified financial statements containing certain minimum prescribed information. We believe this will provide a welcome reduction in the compliance obligations for micro-entities. We offer no views on whether the suggested criteria of both total annual revenue and total assets not exceeding $500,000 proposed for determining a micro-entity are appropriate, as no background information has been provided on how this amount has been arrived at in determining the criteria for a micro-entity.

In Australia, most small proprietary companies are not required to lodge financial reports with the Australian Securities and Investments Commission (ASIC). Further, a large proprietary company (and therefore, not a small proprietary company) is defined as one that satisfies at least two of the below criteria:

- the consolidated revenue for the financial year of the company and any entities it controls is A$50 million or more
- the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is A$25 million or more, and
- the company and any entities it controls have 100 or more employees at the end of the financial year.

Question 2.8b

To determine what constitutes sufficient information that micro-entities should prepare and provide to satisfy the information needs of stakeholders, we suggest ACRA works with the Accounting Standards Council (ASC) to develop a suitable financial reporting framework that can be adopted for such reporting. By way of example, we note that the United Kingdom Financial Reporting Council has developed FRS 105 *The Financial Reporting Standard applicable to the Micro-Entities Regime* to allow micro-entities in the United Kingdom to comply with their financial reporting obligations.

Questions 2.11a and 2.11b of the Report (Annex C)

We support the proposal to remove the "small group" concept in the current small company audit exemption provisions. We believe the small company audit exemption criteria can be applied effectively by considering the criteria on a consolidated basis for parent companies. The Corporations Act 2001 in Australia adopts a similar approach when determining whether a company is a small proprietary company, or a large proprietary company, and this approach has operated effectively for a number of years.

Questions 2.12a and 2.12b of the Report (Annex C)

Applying a financial reporting lens to recommendation 2.12 suggests a presumption that a trustee/manager has control over a non-listed business trust, therefore requiring the trustee/manager to consider the applicable criteria on a consolidated basis. In a financial reporting context, we question whether a trustee/manager would always have control over the non-listed business trust that is being managed. The CAWG report does not provide further explanation on why a "look through" basis should be adopted for a trustee/manager. Hence, we offer no further comment on this matter.

Chapter 3 - Matters Relating to Directors and Company Secretaries:

Question 3.5 of the Report (Annex C)

CPA Australia notes the short, though highly significant, discussion contained in Part VI of the section in CAWG Report dealing with directors and company secretaries. The process of striking the correct balance between civil and criminal sanctions under corporate law in Australia was examined in the ASIC Enforcement Review Taskforce Report in 2018. The breadth of issues dealt with can be gauged with reference to the eight areas of concern and 50 associated recommendation of that report.

Potentially, most relevant as a comparative reference point is Position Paper 7, which was released as part of the ASIC Taskforce's consultation. It deals with penalties for corporate and financial sector misconduct. Reference to this Position Paper makes it apparent that the policy matters under review by the CAWG extend well beyond consideration of decriminalisation of what would otherwise be seen as breach of a civil law duty at common law. The matters dealt with ranged from critical issues of principle, such as codifying a suitable objective test of dishonesty, to practical matters such as achieving an appropriate balance between both civil penalty and criminal sanction regimes, commensurate with the underlying duty or obligation and degree of misconduct/ wrongdoing. CPA Australia looks forward to possible engagement with ACRA as developments unfold.

Chapter 5 – Share Capital and Financial Assistance:

Question 5.1 of the Report (Annex C)

CPA Australia supports this recommendation. It is broadly consistent with Australian statutory rules providing protections associated with share capital reductions (Corporations Act Part 2J.1). These rules place limitations on self-acquisition of shares (Corporations Act Part 2J.2), along with judicially developed principles addressing the proper purpose for issuing and allotting shares (see for example *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285). Furthermore, there are important protections afforded shareholders more broadly in Australia under Corporation Act 2001 Part 2.F.1 – Oppressive Conduct of Affairs. Given the complexity of these type of rules, we believe it important for ACRA to monitor the impact of these reforms for any unintended adverse consequences for shareholders and the broader market.

Question 5.3 of the Report (Annex C)

CPA Australia agrees in general terms with Recommendation 5.3 which the CAWG Report observes (Chapter 5 Part III para. 28) would broadly align with the statutory wording in Australia's Corporations Act 2001 Part 2.J.3. This Part of Australia's Corporations Act creates the prohibition of, and exception to, a company financially assisting a person to acquire its shares.

However, we draw ACRA's attention to the discussion of assistance linked to acquisition provided by the authors of *Ford, Austin and Ramsay's Principles of Corporations Law*[1], which at [24.720] (page 1821 -1822) provides analysis of multiple purposes causing the assistance. It notes that notwithstanding the removal in 1998 of the statutory words "or in connection with" (refer current section 260A), there is a strong suggestion that judicial reasoning would still entertain this type of inquiry. Again, we recommend that ACRA monitor the impacts of these proposed amendments as they start to have effect. Regarding subsidiary Question 5.3a, *prima facie* these proposals seem to be consistent, in both effect and associated drafting, with other proposed amendments.

Chapter 6 – Other Recommendations:

Recommendation 6.7 of the Report (Annex C)

CPA Australia acknowledges the rationale outlined in para. 27 – 29 of Chapter 6 of the CAWG Report concerning the recommendation not to adopt a replaceable rule regime, particularly as these are matters of specific jurisdictional regulatory concern, along with associated local economic characteristics.

ACRA's proposed amendments to the Companies Act and subsidiary legislation (Annex D)

We offer the following comments with respect to ACRA's "proposed amendments from other review":

- We have no objection to the proposal to grant the Registrar power to exempt a company from all the requirements in the Accounting Standards (as defined by the Companies Act) and instead require compliance with other accounting standards. We suggest providing clarity around what is meant by "other accounting standards", including whether such standards will be developed and issued by the ASC. We also suggest the Act include guidance as to when the Registrar may exercise this power.
- We agree with the proposal to allow foreign companies to lodge with ACRA, financial statements that are prepared in accordance with accounting standards that are substantially similar to Singapore Accounting Standards. We suggest that when developing the Practice Direction that will define the term "substantially similar", this should include the accounting standards of any jurisdiction that are compliant with International Financial Reporting Standards developed and issued by the International Accounting Standards Board.

[1] Robert P Austin and Ian M Ramsay, *Ford, Austin and Ramsay's Principles of Corporate Law* (2018 17th ed. LexisNexis Butterworths Australia)