

## **MAS' Response to Recommendations by the Corporate Governance Council on the Code of Corporate Governance**

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### **D) Preface**

1 The Code of Corporate Governance (“Code”) was introduced in 2001 to promote a high standard of corporate governance among listed companies in Singapore. The intent was to progressively evolve the Code, and ensure its relevance to a changing investor environment and market developments. The Code was last revised in 2005.

2 The Corporate Governance Council (“Council”) was set up by the Monetary Authority of Singapore (“MAS”) in February 2010, to undertake another comprehensive review of the Code. Strong corporate governance is critical to protecting the interest of the investing public, maintaining confidence in our listed companies and enhancing Singapore’s global reputation as a trusted financial centre.

3 The Council has submitted its recommendations to MAS.<sup>1</sup> The recommendations are focused on the areas of director independence, board composition, director training, multiple directorships, alternate directors, remuneration practices and disclosures, risk management and shareholder rights and roles. In addition, the Council recommended that a transition period be introduced to facilitate compliance with the revised Code.

4 MAS has decided to accept all of the recommendations made by the Council with respect to the Code, with some minor modifications. This paper sets out MAS’ response to the 15 key recommendations put forth by the Council.

5 MAS would like to express its gratitude to the Council for the considerable efforts put into its deliberations, including a careful weighing of all inputs and feedback received as part of the review.

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<sup>1</sup> Please see Annex A for the response paper issued by the Council on 22 November 2011.

## II) Response to Specific Recommendations

### A. Director Independence

#### (i) Director Independence – Relationships with External Organisations

6 The Council recommended including relationships with external organisations as a factor affecting a director's independence. If a director, in the current or immediate past financial year, is/was a substantial shareholder, partner, executive officer, or director of any organisation to which the company or any of its subsidiaries made, or received significant payments or material services in the current or immediate past financial year, he will be deemed non-independent.

#### MAS' Response

7 MAS **accepts** this recommendation. MAS notes that in view of feedback received, Council has modified its initial recommendation to limit its scope to subsidiaries instead of all related corporations.

#### (ii) Director Independence – Relationships with Substantial Shareholders

8 The Council recommended tightening the definition of director independence such that a director who is a substantial shareholder, or an immediate family member of a substantial shareholder, or is/was directly associated with a substantial shareholder in the current or any of the past three years would be considered non-independent.

#### MAS' Response

9 MAS **accepts** this recommendation. MAS notes the different views expressed by various stakeholder groups on this issue, and the extensive consideration the Council gave to these views. For reasons set out in its response paper, the Council has decided to maintain its recommendation.

10 MAS notes that it is increasingly being recognised that director independence, other than addressing the agency problem between shareholders and Management, also acts as a safeguard against dominant shareholders, particularly in jurisdictions with concentrated share ownership models.

11 While the interests of substantial shareholders and other shareholders are usually aligned, the Council has identified extraneous factors that could cause a substantial shareholder's interest to take precedence. Although existing legal remedies under the Companies Act and SGX's listing rules go some way in checking and redressing clear cases of misconduct, these rules remain inadequate substitutes for the presence of independent directors on the Board.

12 The Council has sought a balance in its recommendations. The required proportion of the Board comprising independent directors will be maintained at one-third (apart from the circumstances set out in Guideline 2.2 of the Code, addressed at paragraph 18 below). The recommendation will align Singapore with international best practices, and enhance market confidence in the strength of the governance of listed companies in Singapore.

13 There are valid concerns on the practical impact of this recommendation. MAS is of the view that these are more appropriately dealt with by allowing for a reasonable transition period. Furthermore, MAS has made two modifications aimed at facilitating the implementation of the recommendation.

14 Firstly, **MAS will reduce the look-back period from the proposed three years to the "current or immediate past financial year"**. This is consistent with the period applied to a director's relationship with other provisions dealing with director independence in the Code.

15 Secondly, **MAS will raise the shareholding threshold from the proposed 5% to 10%**. The 5% threshold is adopted for the purposes of notification of substantial shareholdings under the Companies Act and the Securities and Futures Act. However, a 10% shareholding also confers meaningful rights, such as the ability to requisition for a general meeting of the company. There is no single international norm on this issue, with jurisdictions adopting thresholds ranging from 5% to 10%. Given that this is the first time the concept of independence from substantial shareholders is introduced in the Code, MAS considers that a 10% threshold will be appropriate. The threshold can be reviewed in the future should circumstances require. Accordingly, the term "substantial shareholder" will be replaced with "10% shareholder" to avoid confusion with the same term defined under the Companies Act.

(iii) Director Independence – 9-year Period for Board Service

16 The Council has recommended that the independence of any director who had served on the Board beyond nine years from the date of his appointment should be subject to particularly rigorous review. Under such circumstances, the Board should explain why any such director should be considered independent.

MAS' Response

17 MAS **accepts** this recommendation. MAS notes that the Council has considered extensively the feedback received on this recommendation, and has modified its initial recommendation to make clear that a director will not be automatically deemed non-independent once he has served on the Board for more than 9 years. Instead, the director's independence will be subject to particularly rigorous review.

**B. Board Composition**

18 The Council recommended that independent directors should make up at least half of the Board where the Chairman and Chief Executive Officer ("CEO") (i) is the same person; (ii) are immediate family members; (iii) are part of the same management team; or (iv) if the Chairman is not independent. Otherwise, independent directors should make up at least one-third of the Board.

MAS' Response

19 MAS **accepts** this recommendation. MAS agrees with the Council's assessment that there is a need for a stronger element of independence on the Board to safeguard the interests of shareholders in the four specified situations where the possibility of conflict of interest arising is more pronounced.

20 Given that many listed companies in Singapore may need to make changes to their board composition as a result of this recommendation, MAS will provide a longer transition period of five years to allow sufficient time for these changes to be made. As such, board composition changes to comply with this recommendation will only need to be made at the Annual General Meetings ("AGMs") following the financial years commencing from 1 May 2016 onwards.

### **C. Director Training**

21 The Council recommended that companies should be responsible for arranging and funding the training of directors, and the Board should disclose in the Annual Report the induction, orientation and training provided to new and existing directors. In addition, the Council also recommended that the Nominating Committee (“NC”) should make recommendations to the Board on matters relating to the review of training and professional development programmes for the Board.

#### MAS’ Response

22 MAS **accepts** this recommendation.

### **D. Multiple Directorships**

23 The Council recommended for the Code to expressly state that the NC should decide if a director is able to and has been adequately carrying out his duties as a director, taking into consideration the director’s number of listed company board representations and other principal commitments. The Council also recommended that the Board should determine and disclose the maximum number of listed company board representations which any director may hold in the Annual Report.

#### MAS’ Response

24 MAS **accepts** this recommendation. MAS notes that the Council has considered the different views received on this issue and has decided that the recommendation was the most practical way to reconcile the need to ensure directors have the necessary time and capacity to discharge their duties, and the varied needs of companies.

### **E. Alternate Directors**

25 The Council recommended that the Board should generally avoid approving the appointment of alternate directors except for limited periods in exceptional cases such as when a director has a medical emergency. The NC and the Board should also ensure that an alternate director to an independent director would similarly qualify as an independent director.

MAS' Response

26 MAS **accepts** this recommendation.

**F. Remuneration Practices and Disclosure**

(i) Alignment of remuneration with long-term interest and risk policies

27 The Council recommended that the level and structure of remuneration should be aligned with the long-term interest and risk policies of the company, and should be appropriate to attract, retain and motivate directors and key management personnel to provide good stewardship and successfully manage the company respectively.

MAS' Response

28 MAS **accepts** this recommendation.

(ii) Contractual provision to reclaim incentive components of remuneration

29 The Council encouraged companies to consider the use of contractual provisions to allow the company to reclaim incentive components of remuneration from directors and key management personnel in exceptional circumstances involving misstatement of financial results, or misconduct resulting in financial loss to the company.

MAS' Response

30 MAS **accepts** this recommendation.

(iii) Independence of appointed remuneration consultants

31 The Council recommended that the Remuneration Committee should ensure that existing relationships, if any, between the company and its appointed remuneration consultants will not affect the independence and objectivity of the remuneration consultants.

MAS' Response

32 MAS **accepts** this recommendation.

(iv) Disclosure on the link between remuneration and performance

33 The Council recommended that for greater transparency, companies should disclose more information on the link between remuneration paid to executive directors, CEOs and key management personnel, and performance.

MAS' Response

34 MAS **accepts** this recommendation.

(v) Enhanced disclosure of remuneration

35 The Council recommended that a company should fully disclose the remuneration of each individual director and the CEO on a named basis.

36 For the top five key management personnel (who are not directors or the CEO), the Council recommended to maintain the existing requirement of disclosure in bands of S\$250,000 on a named basis. In addition, companies should disclose in aggregate the total remuneration paid to the top five key management personnel.

MAS' Response

37 MAS **accepts** both recommendations. MAS notes that the Council has been mindful of the need to strike a balance between companies' concerns over poaching and upward ratcheting of remuneration, and the need for more detailed disclosure of board and management remuneration. The recommendations, which call for greater disclosure of the remuneration of directors, CEOs, and key management personnel, will serve to enhance accountability to investors, as owners of the company.

**G. Risk Management**

(i) Board oversight on risk management

38 The Council recommended that the Code specify that the Board is responsible for the risk governance of a company and should determine the nature and extent of risks which the company may undertake. The Board should ensure that Management maintains a sound system of risk management and internal controls. The Board should also assess appropriate means to assist it in

carrying out its responsibility of overseeing the company's risk management framework and policies.

MAS' Response

39 MAS **accepts** this recommendation.

(ii) Assurance from CEO and Chief Finance Officer ("CFO")

40 The Council recommended that the Board should comment on whether it has received assurance from the CEO and CFO that the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances; and an effective risk management and internal control system has been put in place.

MAS' Response

41 MAS **accepts** this recommendation. MAS also notes that the recommendation is not intended to derogate from or absolve directors of their statutory obligations under the Companies Act.

## H. Shareholder Rights and Roles

42 The Council recommended introducing a new principle and accompanying guidelines on shareholders' rights to guide companies in their engagement with shareholders. The Council also recommended introducing, as an annexure to the Code, a statement on the role of shareholders in engaging with the companies in which they invest.

43 The Council also recommended that companies should put all resolutions to vote by poll and make an announcement of the detailed results showing the number of votes for and against each resolution and the respective percentages.

MAS' Response

44 MAS **accepts** all of the Council's recommendations in respect of shareholders' rights and roles.



### **III) Conclusion**

45 The revised Code will supersede the existing Code that was issued in July 2005. The revised Code will take effect for companies in respect of Annual Reports relating to financial years commencing from 1 November 2012 onwards. MAS recognises that sufficient time should be given for companies to make board composition changes. Accordingly, the changes (with the exception of changes required as a result of the Chairman of the Board falling within the four circumstances specified in Guideline 2.2) should be made at AGMs following the end of the relevant financial year. A longer transition period will be provided for Guideline 2.2. Board composition changes needed to comply with Guideline 2.2 should be made at the AGMs following the end of financial years commencing on or after 1 May 2016.

46 Please see Annex B for the revised Code.

**CORPORATE GOVERNANCE COUNCIL**

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**RESPONSE TO CONSULTATION FEEDBACK ON  
PROPOSED REVISIONS TO THE CODE OF  
CORPORATE GOVERNANCE  
22 NOVEMBER 2011**

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## I) Preface

### 1 The Corporate Governance Council

<sup>1</sup> (“Council”) conducted a public consultation on proposed revisions to the Code of Corporate Governance (“Code”) from 14 June 2011 to 31 July 2011.

2 A total of 75 responses were received. The Council would like to thank all respondents for their feedback on the proposed revisions to the Code. [Please refer to **Appendix A** for the list of respondents.]

3 The Council has carefully reviewed and considered all feedback received. Respondents were generally supportive of the proposed revisions. Views on certain proposed revisions were divided, with some respondents expressing strong support and others registering objections. The Council has carefully weighed the different perspectives put forward, and revised its recommendations in some areas. This paper summarises the feedback received on the 15 key recommendations and the Council’s response and decision.

4 The Council has finalised its recommendations and submitted its proposed revised Code to the Monetary Authority of Singapore. To facilitate compliance with the revised Code, the Council recommends that a transitional period be introduced such that the Code would only take effect for companies in respect of annual reports relating to financial years commencing from 1 July 2012 onwards. A copy of the Council’s final proposed revisions tracked against the current Code is at **Appendix B**, while **Appendix B1** shows the Council’s final proposed revisions set out against the proposed revised Code that was put forth during consultation.

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<sup>1</sup> The Corporate Governance Council was established by the Monetary Authority of Singapore in February 2010 to promote a high standard of corporate governance in Singapore. One of the Council’s key deliverables was to conduct a comprehensive review of the Code of Corporate Governance, which is applicable to companies listed in Singapore on a ‘comply or explain’ basis.

## II) Director Independence

**Key Proposal 1:** To include in the Code the following relationships as additional instances where a director will be deemed non-independent:

- (i) if the director is or was, in the current or any of the past three financial years, a substantial shareholder, partner, executive officer, or director of organisations to which the company or any of its related corporations made, or received significant payments or material services in the current or immediate past financial year;
- (ii) if the director is a substantial shareholder or an immediate family member of a substantial shareholder of the company;
- (iii) if the director is or has been directly associated with a substantial shareholder of the company in the current or any of the past three financial years; and
- (iv) if the director has served on the Board for more than nine years from the date of his or her first election.

Please refer to proposed amendments to Guidelines 2.3 and 2.4 in Appendix B1.

### (i) Director Independence - Relationships with External Organisations – Guideline 2.3(d) in Appendix B1

5 A few respondents commented that the proposed provision for a three-year cooling off period was unduly restrictive. Two respondents cited the example where a director could be rendered non-independent by transactions occurring while he had no relationship with the external organisation. It was suggested that the time period during which the director was affiliated with the external organisation should be aligned with that of the relevant transaction.

6 Several respondents argued that, with the proposed replacement of the term “subsidiaries” with “related corporations”, the scope of the proposal would be too wide given that all parent and sister company relationships would be captured. They were also of the view that it was difficult in practice for companies to track transactions of fellow subsidiaries or parent companies.

7 On the term “material services”, some respondents suggested that the provision should not extend to such material services while others proposed that a definition of “material services” be provided in the Code. Several respondents also commented on the removal of the phrase “for profit businesses” in the guideline. While one respondent agreed with the proposed removal of the phrase, two respondents disagreed on grounds that directors were unlikely to gain any direct benefit from donations to non-profit organisations.

## Council's Response

8 The intent of introducing the three-year cooling off period was to avoid conflicts of interests which may arise from directors' past affiliation with the external organisations. While the proposed provision could cause a director to be rendered non-independent by transactions occurring while he had no relationship with the organisation, a director's involvement in the deliberations relating to the transactions cannot be entirely ruled out. Nonetheless, the Council agrees that for consistency, the look-back periods for the director's relationship with the external organisation and for the significant payments or material services should be aligned. This period will be the current or immediate past financial year.

9 The Council acknowledges concerns expressed that the proposed replacement of "subsidiaries" with "related corporations" would result in the scope of the provision being too wide, causing implementation difficulties. The presumption that the independence of a director affiliated with an external organisation will be impaired by payments/services made or received by a direct subsidiary would appear more relevant. As such, the Council considers that it would be appropriate to retain the term "subsidiaries" in Guideline 2.3(d).

10 On the definition of "material services", the Council is of the view that the company involved is best placed to determine whether services provided are material, taking into account its particular situation. As for the extension of this provision to include non-profit organisations, the Council's view is that the bearing on a director's independence of any significant relationship with an external organisation should be given similar considerations, whether the organisation is for-profit or non-profit. It would not be prudent to assume that significant payments made to a non-profit organisation to which the director is affiliated will not significantly alter a director's independence.

(ii) & (iii) Director Independence - Relationships with Substantial Shareholders – Guidelines 2.3(e) and 2.3(f)

11 A clear majority of respondents supported the proposal to consider as non-independent a director who is a substantial shareholder, an immediate family member of a substantial shareholder, or is/has been directly associated with a substantial shareholder of the company in the current or any of the past three years. However, a few respondents expressed strong disagreement with the proposal on grounds that (i) directors already have fiduciary duties under the Companies Act to act in the best interests of the company; (ii) the interests of substantial shareholders and other shareholders are almost always aligned and potential abuse of dominance is adequately addressed by relevant provisions in the Companies Act and the Singapore Exchange Listing Manual (“Listing Manual”); and (iii) the 5% threshold for substantial shareholders is too low and may impair the ability of parent companies to control their subsidiaries, possibly leaving minority shareholders in control. Some respondents suggested that a 15% or 20% threshold would be more appropriate. A couple of respondents also commented that the proposal could cause companies to face implementation difficulties in searching for independent directors, when the pool of such directors is already small.

Council’s Response

12 The Council’s acknowledges that there are divided views among companies, corporate leaders and corporate governance advocates on this issue. Objections raised against the tightening of the definition of independence are premised on two main arguments – one based on principle, that the interests of substantial shareholders are aligned with those of the company and any potential abuse should be addressed through other measures; and one based on practicality, that the proposal will cause companies to lose valuable talent on their boards.

13 On the first objection, the Council is of the view that although the interests of substantial shareholders and other shareholders could be aligned in most situations, the possibility of conflict should not be ruled out. For example, an ‘independent’ director as defined under the existing Code may have an agreement to act according to the instructions of a substantial shareholder. Although the director would still be required to fulfil his fiduciary duties to the company, it is questionable whether he should be considered an ‘independent’ director, whose objective judgement would not be in doubt. Indeed, all directors, whether independent or not, owe fiduciary duties to the company. The existence of such duties is not a substitute for the requirement of independence.

14 On the issue of practicality, the Council would like to stress that a director who is not independent of substantial shareholders is not barred from sitting on the Board. He or she can still contribute as a non-independent director. The Council recognises that some changes to the composition of the boards and board committees of a number of companies may be required as a result of this proposal and related proposals in the rest of Key Proposal 1 and Key Proposal 2. However, these are reasons to consider a transition period for implementation rather than reasons for not proceeding with the proposal. The Council encourages companies to look beyond the usual pool of candidates and supports industry efforts in directors training to enhance the skills of directors and widen the pool of suitable candidates.

15 On the appropriateness of the 5% threshold, the Council had deliberated this at length in its earlier discussions and revisited it in view of feedback received. The Council is of the view that a 5% level of control would be appropriate to trigger considerations about the independence of directors. The Council holds the view that thresholds of 15% or 20% may be more relevant in determining effective control. Furthermore, applying the 5% threshold in the Code is consistent with the recognition of the significance of this threshold in relevant provisions in the Companies Act and the Listing Manual<sup>2</sup>.

16 The Council notes that the concept of director independence from substantial shareholders is gaining wide acceptance internationally. While a similar proposal was submitted by the Council on Corporate Disclosure and Governance during the last review of the Code in 2005, the proposal was not adopted. Taking into account the considerations articulated above and international developments on this front, the Council considers it timely for Singapore to adopt this concept into the Code.

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<sup>2</sup> The Listing Manual refers to the definition of “substantial shareholders” under the Companies Act. The Listing Manual places obligations on listed companies to make disclosures on certain situations regarding substantial shareholders (Chapter 7) and requires shareholder approval for issuance to substantial shareholders of shares and other interests in the companies (Chapter 8).

(iii) Director Independence – 9-year period for board service – Guideline 2.4

17 Most respondents agreed that the proposal would help to ensure that the independence of directors would not be compromised after a long period of service due to their friendship and collegiality with management. Respondents who disagreed argued that the 9-year threshold was too arbitrary to serve as a meaningful criterion for determining independence because independence is based on many other factors, and should be left to the Nominating Committee (“NC”) to assess on a case-by-case basis. Furthermore, long-serving directors could provide continuity and stability to the business, as well as valuable experience to the Board. Some respondents also felt that the proposal would exacerbate the shortage of independent directors in Singapore. One respondent suggested that a period of transition be provided for this provision as this would affect a large number of companies.

Council’s Response

18 The Council acknowledges that there is a role for long-serving directors in contributing to the continuity and stability of companies. However, this should be weighed against the risk that the relationship built up with management over the years of service could compromise their independence. On balance, the Council considers that a 9-year period, typically translated into three 3-year terms, sets out a sufficiently long reference period for the Board to reconsider a director’s independence. Considering afresh a director’s status on the Board after a certain length of service would also encourage board refreshing amongst listed companies.

19 Nevertheless, it is not the intention of the Council for a director to be automatically deemed non-independent once he has served beyond the 9-year reference period. The Council has thus modified the drafting of the provision to better reflect that the Board should have the discretion to determine the director’s continued independence, and that the 9-year period should begin from the point of appointment of the director, instead of his election.

20 It should be noted that a director who is deemed by the Board to be non-independent as a result of long tenure can still contribute on the Board, albeit as a non-independent director. The Council’s view on the potential shortage of independent directors is set out at paragraph 14 above.



### III) Board Composition

**Key Proposal 2:** To introduce in the Code a new provision that independent directors should make up at least half of the Board where (i) the Chairman and the Chief Executive Officer (“CEO”) is the same person; (ii) the Chairman and CEO are immediate family members; (iii) the Chairman and CEO are both part of the management team; or (iv) the Chairman is not independent.

Please refer to the proposed amendments to Guideline 2.2 in Appendix B1.

21 A clear majority of the respondents agreed with this proposal. Amongst the few who disagreed, concerns were expressed that the proposal would lead to sub-optimal boards if companies reduced their board size in order to comply. To mitigate this, there were suggestions for the Code to mandate a minimum number of independent directors.

22 There were concerns that the proposal would exacerbate the shortage of independent directors in Singapore, creating practical difficulties for companies in identifying suitable candidates to fill the increased number of independent director positions. One respondent suggested that phased implementation could help to mitigate the lack of independent directors.

23 Another respondent highlighted that the proposal would create difficulties for group companies where the Chairman of subsidiaries is traditionally appointed by the controlling shareholder. The proposal would impair the ability of the controlling shareholder in effectively controlling its group companies, and undermine the rights associated with its controlling stake. It was suggested that there should be a carve-out for listed companies which have more than 50% of its shares held by a group or another company.

#### Council’s Response

24 The Council is of the view that the proposal, which is strongly supported by most respondents, should be retained to ensure that there is a strong element of independence on the Board to safeguard the interests of all shareholders. This is particularly pertinent when the Chairman is non-independent. On the view expressed that the proposal would undermine the rights of a controlling shareholder, the Council considered that a controlling shareholder could retain majority control of the Board by ensuring that an independent Chairman is appointed.

25 The Council does not see the need to mandate a minimum number of independent directors on boards. It is the responsibility of the Board to determine its optimal size, taking into account the needs of the company.

26 The Council's view on the potential shortage of independent directors is set out at paragraph 14 above.

#### IV) Director Training

**Key Proposal 3:** To introduce in the Code new requirements for companies to arrange and fund training for new and existing directors, and disclose the induction, orientation and training provided to new and existing directors in its annual report.

Please refer to the proposed amendments to Guideline 1.6 in Appendix B1.

**Key Proposal 4:** To introduce in the Code a new requirement for the Nominating Committee to review and make recommendations to the Board on training programmes for the Board.

Please refer to the proposed amendments to Guideline 4.2 in Appendix B1.

27 None of the respondents disagreed with the proposals relating to director training, although there were various supplementary suggestions.

28 Some respondents suggested that more areas for director training such as information technology, operational management, environmental and social and sustainability issues should be included. One respondent sought clarification on the definition of "first-time directors". Another respondent proposed that the Code should require mandatory annual training for directors. There was also a suggestion that the proposals relating to director training should be limited to new directors who are appointed to company boards to avoid undue burden on existing directors; director training may apply to all directors only when there had been changes to relevant laws and regulations.

#### Council's Response

29 The Council is of the view that it would not be possible to provide an exhaustive list of areas for director training. NCs are best placed to determine the areas of training that are relevant to their directors. In response to the query on the definition of "first-time directors", the Council intends this to apply to persons who have no prior experience as directors of listed companies.

30 As set out in the consultation paper, it would be impractical for the Code to prescribe mandatory or minimum hours of training for directors given the diversity of listed companies. The Council believes that such requirements may result in compliance in form rather than substance. The Council also considers it essential for all directors to undergo regular training, and not just limit training to occasions when there are changes to relevant laws and regulations, as the quality of directors forms a critical element in good corporate governance.

## V) Multiple Directorships

**Key Proposal 5:** To introduce in the Code a provision that the Nominating Committee should decide if a director is able to and has been adequately carrying out his or her duties as a director, taking into consideration the director's number of listed company board representations and other principal commitments. The Board should further determine the maximum number of listed company board representations which any director may hold, and disclose this in the company's annual report.

Please refer to the proposed amendments to Guideline 4.4 in Appendix B1.

31 A majority of the respondents agreed that there should be a specified maximum number of listed company board representations which a director may hold. However, some respondents were of the view that this maximum number should be stated in the Code rather than left to the NC's determination. Others were concerned that boards would simply fix the maximum to accommodate their existing directors. Suggestions on the maximum that the Code should specify ranged from two to eight. Some respondents suggested setting different limits for directors with no full-time employment and executive directors.

32 To address the issue of 'overboarding', one respondent suggested that the Code require disclosure of details of meeting attendance and set a minimum 75% attendance rate. Some respondents suggested requiring listed companies to disclose how the maximum number is determined while others suggested the alternative approach of requiring NCs and/or the director to provide declarations that the director is able to discharge his duties effectively. There was also a suggestion that the term "principal commitments" should be changed to "major appointments" as the scope of the former was too broad.

### Council's Response

33 The Council notes that the issue of multiple directorships has been widely debated. As mentioned in the consultation paper, the Council was not in favour of setting a maximum number of listed company board directorships in the Code

due to the different demands of each directorship. The Council maintains the view that the NC is the most appropriate body to determine the maximum number of directorships that the directors can hold since the NC's overall mandate is to recommend the appointment of directors who can serve the Board effectively. While the Council acknowledges that companies may choose to peg the number to accommodate the maximum number of directorships actually held by their directors, such a limit would be disclosed and subject to challenge by shareholders. Over time, norms may emerge as a result of this proposal.

34 The Council notes that the Listing Manual already prescribes certain disclosures for meeting attendance rates. Suggestions relating to disclosure of the method for determining the maximum number of directorships and director declarations would be overly prescriptive. The Council also views "principal commitments" as more relevant than "major appointments" in considering if a director can adequately carry out his duties, as the key consideration is that of time commitment.

## **VI) Alternate Directors**

**Key Proposal 6:** To introduce in the Code a provision that directors should not appoint alternate directors except for limited periods in exceptional circumstances.

Please refer to the proposed amendments to Guideline 4.5 in Appendix B1.

35 Respondents generally agreed with the proposal. Those who differed were of the opinion that alternate directors should be disallowed altogether and thus the Code should not provide for it, particularly since appointment of alternate directors did not require shareholder approval.

36 Some respondents suggested that the proposal should only apply to non-executive directors ("NEDs") or independent directors. There were also suggestions that the approval of the NC and the Board should be required for the appointment of alternate directors. One respondent commented that the appointment of alternate directors should not be constrained to a limited time, as the alternate directors need to be familiar with company matters to be able to effectively stand in for the director when required. Therefore, alternate directors should be invited to attend meetings even when the main director is attending.

## Council's Response

37 The Council is of the view that the proposal is useful in providing guidance on this issue given that the appointment of alternate directors is not disallowed by law. In response to the suggestion that the proposal should only apply to NEDs or independent directors, the Council believes that all directors play an equally significant role and hence, the proposal on alternate directors should apply to all. The Council also notes that it is a requirement of the Listing Rules that the articles of association of listed companies should provide for the approval of the appointment of alternates by a majority of the Board. Nonetheless, the Council agrees that it should be specified that the appointment of alternates should be subject to approval of the NC and the Board.

38 The Council is of the view that intended alternates may be invited to attend meetings even when the principal director is attending, but it is not necessary to appoint them as alternates solely for this purpose. Hence, the Council maintains its view that appointment of alternate directors should be for limited periods only.

## VII) Remuneration Practices and Disclosures

**Key Proposal 7:** To include in the Code that the level and structure of remuneration should be aligned with the long-term interests and risk policies of the company. Additional guidance will also be given to companies to consider provisions allowing the company to reclaim incentive components of remuneration from directors and key management personnel in exceptional circumstances of misstatement of financial results, or of misconduct resulting in financial loss to the company.

Please refer to the proposed amendments to Principle 8 and accompanying Guidelines in Appendix B1.

39 Most respondents expressed support for the proposal to align remuneration with the long-term interests and risk policies of the companies. However, a number of respondents argued that long-term incentives were more appropriate for executive directors and key management personnel, as NEDs were often paid fixed fees. One respondent proposed that long-term incentives schemes for executive directors and key management personnel should include performance conditions attached to the vesting of the awards. Some respondents also suggested that listed companies should implement schemes to encourage NEDs to hold shares, so as to align their interests with the companies.

40 Respondents were divided on the proposal relating to clawbacks. While some respondents expressed support for the proposal, others disagreed citing the availability of existing legal remedies. Some respondents also raised concerns about implementation difficulties. Two respondents suggested that clawbacks should only be applicable for executive directors, as NEDs were not usually entitled to incentive components of remuneration.

### Council's Response

41 The Council notes the strong support for the proposal to align remuneration with the long-term interest and risk policies of the companies. Nevertheless, the Council agrees with respondents that long-term incentives should only be applicable for executive directors, CEOs and key management personnel, instead of NEDs and has clarified this point in the revised Code.

42 The Council also agrees that listed companies should implement schemes to encourage NEDs to hold shares to better align their interests with the companies. However, the suggestion for long-term incentives for executive directors and key management personnel to include performance conditions

attached to the vesting of the awards appears too prescriptive, and may cause implementation difficulties.

43 Despite the mixed feedback on the proposal on clawbacks, the Council believes that the proposal will help safeguard the interests of companies and their shareholders against irresponsible remuneration practices, and should be retained. However, the Council recognises that there are various contractual approaches to this issue and to mitigate concerns with implementation difficulties, the provision is redrafted to allow flexibility amongst listed companies in adopting the guideline.

**Key Proposal 8:** To introduce in the Code a provision that the Remuneration Committee should ensure that existing key relationships between the company and its appointed remuneration consultants will not affect the independence and objectivity of the remuneration consultants.

Please refer to the proposed amendments to Guideline 7.3 in Appendix B1.

44 Most respondents agreed with Key Proposal 8 as it provides an additional safeguard in ensuring the independence and objectivity of remuneration consultants. Two respondents sought clarification on the definition of “key relationships”.

#### Council’s Response

45 It is important for listed companies to ensure the independence and objectivity of remuneration consultants, given the critical role they play in providing advice on board and executive remuneration of the companies. As the use of the term “key” could lead to confusion over the type of relationships captured, the Council has decided to delete it. The onus should be on the Remuneration Committee (“RC”) to determine if any relationships compromise the independence of the remuneration consultants.

**Key Proposal 9:** To include in the Code additional guidance that companies should disclose more information on the link between remuneration and performance of directors, CEOs and key management personnel.

Please refer to the proposed amendments to Guideline 9.6 in Appendix B1.

46 Most respondents agreed with Key Proposal 9 to enhance the disclosure of information on the link between remuneration and performance of directors,

CEOs and key management personnel. Two respondents disagreed with the proposal as they felt that disclosure of performance conditions was commercially sensitive while another respondent was of the view that there was little value in the disclosure of such information, given that the Board or RC (which comprise majority independent directors) were already responsible for the remuneration policies. Some respondents suggested clarifying that the proposal should only be applicable for executive directors as NEDs' remuneration are typically retainer-based fees and are usually determined based on other factors such as board and committee positions, and attendance at meetings.

#### Council's Response

47 The lack of transparency of remuneration practices has been cited as a key factor contributing to the global financial crisis. The Council considers that enhanced disclosure of information on the link between remuneration and performance of directors, CEOs and key management personnel is important in ensuring that companies do not adopt remuneration policies which encourage employees to take on excessive risk to the detriment of the long-term interests of companies.

48 The Council agrees with respondents that performance-related remuneration should only apply to executive directors, CEOs and key management personnel. The amendment is reflected in the revised drafting of the Code.

**Key Proposal 10:** To introduce in the Code a provision that companies should fully disclose the remuneration of each individual director and the CEO on a named basis. Companies should disclose in aggregate the total remuneration paid to the top five key management personnel (who are not directors or the CEO).

Please refer to the proposed amendments to Guidelines 9.2 and 9.3 in Appendix B1.

49 The majority of respondents agreed with the proposed full disclosure of remuneration for directors and CEOs, noting that the proposal was in line with other leading jurisdictions such as Australia, Hong Kong, United Kingdom and United States, and would enhance transparency of remuneration. Of those who disagreed, some commented that current requirements for disclosure of remuneration in bands of S\$250,000 were adequate to address shareholders' concerns while others were of the view that full disclosure could encourage undue emphasis on the dollar amount of remuneration, and promote wage



inflation which could result in escalating remuneration costs and increased poaching of talent.

50 Feedback was mixed on the proposal to disclose in aggregate the total remuneration for the top five key management personnel. Among those who disagreed, two respondents called for more stringent requirements as they felt that remuneration of key management personnel would be as important, if not more important, than that of directors. Others who disagreed felt that disclosure of remuneration for key management personnel, even on an aggregate basis, would result in an upward ratcheting of remuneration, and encourage poaching by competitors.

#### Council's Response

51 The Council acknowledges the divergence of views among industry players on this issue. After due consideration of the various opinions expressed, the Council is of the view that Key Proposal 10 presents an appropriate balance between the concerns raised on remuneration escalation and the desire for greater transparency.

52 Greater transparency will help instil market discipline among companies and directors, and enhance accountability. The Council has thus maintained the proposal that companies fully disclose the remuneration of each individual director and CEO on a named basis. Furthermore, as respondents have pointed out, the proposal will align Singapore with other leading jurisdictions in relation to the disclosure of remuneration for directors.

53 On disclosing in aggregate the total remuneration for the top five key management personnel, the Council has carefully considered the possible impact on competition for talent, given the tight labour market in Singapore. Accordingly, the proposal does not call for full disclosure of remuneration paid to each key management personnel. Instead, whilst maintaining the existing requirement of disclosure in bands, the introduction of an additional disclosure of the total remuneration of the top five key management personnel would provide meaningful information on the aggregate remuneration paid to them as a senior management team.

## VIII) Risk Management

**Key Proposal 11:** To introduce in the Code provisions that (i) the Board is responsible for the risk governance of the company and should determine the nature and extent of risks which the company may undertake, and that it should ensure that management maintains a sound system of risk management and internal controls; and (ii) the Board should assess appropriate means to carry out its responsibility of overseeing the company's risk management framework and policies.

Please refer to the proposed amendments to Principle 11 and Guidelines 11.1, 11.2 and 11.4 in Appendix B1.

54 Respondents generally agreed with the proposal. There were some suggestions to enhance the proposal, such as including factors that the Board should take into account when looking at risk governance of the company and drafting clarifications in respect of risk management terms used. Some respondents also requested more guidance on the Board's new responsibility of risk governance. A respondent was concerned that under the proposal, even though a distinction has been made between the Board and the management's responsibilities in respect of the company's risk management, excessive responsibility appeared to have shifted from the management to the Board.

55 Respondents also agreed that boards should assess appropriate means to carry out their responsibility of overseeing companies' risk management framework and policies. Some suggested that the relevant guideline should make it clear that any board risk committee (or other appropriate means established by the Board) should facilitate inquiry by the Board and not result in a delegation of the Board's responsibilities regarding risk management.

### Council's Response

56 The Council agrees that more guidance is required on the Board's new responsibility of risk governance. To this end, the Council intends to issue a Risk Management Guidebook with the assistance of industry practitioners. The Guidebook will provide further guidance on risk management of a company, including factors which the Board should consider, clarification of risk management terms, and the respective Board and management responsibilities for a company's risk management. This Guidebook will be published following the issuance of the revised Code.

57 The Council agrees that the responsibility for risk management remains with the Board, even if the Board sets up a separate board committee to assist it with its risk management responsibilities.

**Key Proposal 12:** To introduce in the Code a provision that the Board should comment on whether it has received assurance from the CEO and CFO that (i) the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances; and (ii) an effective risk management and internal control system has been put in place.

Please refer to the proposed amendments to Guideline 11.3 in Appendix B1.

58 There were differing views on Key Proposal 12. Respondents who supported the proposal commented that it was appropriate for the CEO and CFO to provide assurance on the company's financial records, risk management and internal control system given the important roles they play in the company. Some respondents felt that notwithstanding the proposal, the Board should not be absolved of its responsibility to ensure that management has in place adequate accounting, risk management and internal control systems. There were suggestions that disclosure of the CEO's and CFO's assurance should include information on the basis for the assurance, and details on the company's risk management and internal control system, so as to prevent such disclosure from becoming a boilerplate exercise.

59 On the other hand, respondents who disagreed cited reasons including (i) the proposal could signal that the primary responsibility for true and fair financial statements rests with the CEO and CFO, and directors may seek to be absolved from their statutory obligations under the Companies Act by relying on the assurance given by the CEO and CFO; and (ii) the proposal is overly prescriptive as each company would have its internal process to provide the Board with assurance on the financial records, risk management and internal control systems.

### Council's Response

60 The Council is of the opinion that the proposed assurance from the CEO and CFO does not derogate from or absolve directors of their statutory obligations under the Companies Act. The intent of such assurance is to improve corporate governance, and to provide additional information to the Board (along with information such as the external auditor's sign-off and the internal audit reports) for consideration when it reviews the company's financial records, and risk management and internal control systems.

61 The Council also does not agree that the proposal as it stands is overly prescriptive. However, the Council would not go further to recommend that the assurance should include additional information, such as the basis for the assurance and details of the company's risk management and internal control system. The need for such additional information can be left to the Board to determine.

## IX) Shareholder Rights and Role

**Key Proposal 13:** To introduce in the Code a new principle, and accompanying guidelines, on ‘Shareholder Rights’ to guide companies in their engagement with shareholders.

Please refer to the proposed amendments to Principle 14 and the accompanying Guidelines in Appendix B1.

62 Respondents were generally supportive of the proposal. They viewed it as a timely move given recent global developments with regard to shareholder engagement and stewardship. While most respondents supported the proposal to allow firms that provide nominee or custodial services to appoint more than two proxies as it would enfranchise indirect investors and improve shareholder rights, a few respondents were concerned that the proposal might create administrative problems for the conduct of general meetings. They suggested a cap on the number of proxies that can be appointed.

### Council’s Response

63 The Council notes that it is now widely held that considered exercise of shareholder rights is a key ingredient for responsible ownership. Shareholders can play a role in enhancing corporate governance if they make appropriate use of opportunities provided by general meetings to exercise their rights appropriately. Given that the proposal to allow companies which provide nominee or custodial services to appoint multiple proxies is in line with the recommended changes to the Companies Act, the Council is of the view that a cap should not be imposed on these entities. Allowing the appointment of multiple proxies by such entities would provide greater opportunities to facilitate more substantive and constructive engagement with boards of companies.

**Key Proposal 14:** To introduce as an annexure to the Code a statement on the role of shareholders in engaging with the companies in which they invest.

Please refer to the proposed Annexure to the Code in Appendix B1.

64 Respondents welcomed the inclusion of an annexure on the role of shareholders, as it will generate awareness and encourage greater shareholder participation in corporate governance processes. One respondent highlighted that shareholders’ role is to hold directors accountable for performance and not to over-reach into management discussions. Another respondent suggested that it may be necessary for the relevant authorities in Singapore to work with

investment and financial industry associations to ensure that the statement is taken seriously and implemented.

### Council's Response

65 As mentioned in the consultation paper, the annexure on the role of shareholders is intended to serve only as a general guide for companies in their engagement with their shareholders as there are different groups of shareholders, each with differing investment objectives. The Council encourages relevant organisations such as the Investment Management Association of Singapore and Securities Investors Association (Singapore) to issue guidance on shareholder stewardship. In particular, the Council considers that the formulation of an industry-driven code can strengthen the accountability of institutional investors to their own members and investors. In this context, the Securities Investor Association (Singapore) will be publishing a summary of shareholder rights for retail investors. The summary will be published following the issuance of the revised Code.

66 The Council agrees that shareholders should be cognisant of not over-reaching into management discussions, and will focus the annexure on the relationship between shareholders and company boards.

**Key Proposal 15:** To introduce in the Code a provision that companies should put all resolutions to vote by poll and make an announcement of the detailed results showing the number of votes cast for and against each resolution and the respective percentages.

Please refer to the proposed amendments to Guideline 16.5 in Appendix B1.

67 Most respondents agreed with this proposal as poll voting is widely seen in developed capital markets as integral to improving the governance of listed companies and enhancing board accountability.

68 A few respondents who disagreed with this proposal were concerned that poll voting may impose an administrative and logistics burden on smaller listed companies. A few respondents commented that electronic polling may not be necessary for listed companies with sparse attendance at their general meetings. Rather, it should be left to the companies to decide on the preferred polling method (i.e. electronic or manual). One respondent commented that poll voting may reduce the incentives for minority shareholders to attend and vote at general meetings if the outcome is perceived to be pre-determined. Another respondent suggested that exemptions be given to matters which are procedural and

administrative in nature. However, specific guidance on what constitutes a procedural or administrative matter would have to be provided to avoid misinterpretation. It was also suggested that the Council should consider providing a prescribed format setting out the minimum information about polling procedures and results that the companies should disclose in their announcements.

#### Council's Response

69 The Council considers it appropriate to retain the proposal. Poll voting does not alter the balance of power between major shareholders and minority shareholders which is inherent in the disparity in voting power arising from the size of shareholdings. The proposal is consistent with the fundamental principle of “one share, one vote” and allows for effective discharge of ownership responsibilities. Voting by poll and the disclosure of the results also lead to greater transparency of the level of support for each resolution and encourage greater shareholder participation at general meetings. In response to the suggestion that the Code should provide a prescribed format for the minimum information to be disclosed, the Council notes that the Singapore Exchange has proposed certain information to be announced immediately after each general meeting. The Council wishes to highlight that the Code does not mandate, but merely encourages electronic polling. Companies should assess their own needs and decide on the most cost effective and efficient polling method.

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**CODE OF CORPORATE GOVERNANCE**

**2 MAY 2012**

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## **BOARD MATTERS**

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### **THE BOARD'S CONDUCT OF AFFAIRS**

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#### **Principle:**

- 1 Every company should be headed by an effective Board to lead and control the company. The Board is collectively responsible for the long-term success of the company. The Board works with Management to achieve this objective and Management remains accountable to the Board.

#### **Guidelines:**

- 1.1 The Board's role is to:
  - (a) provide entrepreneurial leadership, set strategic objectives, and ensure that the necessary financial and human resources are in place for the company to meet its objectives;
  - (b) establish a framework of prudent and effective controls which enables risks to be assessed and managed, including safeguarding of shareholders' interests and the company's assets;
  - (c) review management performance;
  - (d) identify the key stakeholder groups and recognise that their perceptions affect the company's reputation;
  - (e) set the company's values and standards (including ethical standards), and ensure that obligations to shareholders and other stakeholders are understood and met; and
  - (f) consider sustainability issues, e.g. environmental and social factors, as part of its strategic formulation.
- 1.2 All directors must objectively discharge their duties and responsibilities at all times as fiduciaries in the interests of the company.
- 1.3 The Board may delegate the authority to make decisions to any board committee but without abdicating its responsibility. Any such delegation should be disclosed.

- 1.4 The Board should meet regularly and as warranted by particular circumstances, as deemed appropriate by the board members. Companies are encouraged to amend their Articles of Association (or other constitutive documents) to provide for telephonic and video-conference meetings. The number of meetings of the Board and board committees held in the year, as well as the attendance of every board member at these meetings, should be disclosed in the company's Annual Report.
- 1.5 Every company should prepare a document with guidelines setting forth:
- (a) the matters reserved for the Board's decision; and
  - (b) clear directions to Management on matters that must be approved by the Board.

The types of material transactions that require board approval under such guidelines should be disclosed in the company's Annual Report.

- 1.6 Incoming directors should receive comprehensive and tailored induction on joining the Board. This should include his duties as a director and how to discharge those duties, and an orientation program to ensure that they are familiar with the company's business and governance practices. The company should provide training for first-time director<sup>1</sup> in areas such as accounting, legal and industry-specific knowledge as appropriate.

It is equally important that all directors should receive regular training, particularly on relevant new laws, regulations and changing commercial risks, from time to time.

The company should be responsible for arranging and funding the training of directors. The Board should also disclose in the company's Annual Report the induction, orientation and training provided to new and existing directors.

- 1.7 Upon appointment of each director, the company should provide a formal letter to the director, setting out the director's duties and obligations.

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<sup>1</sup> A first time director is a director who has no prior experience as a director of a listed company.

## **BOARD COMPOSITION AND GUIDANCE**

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### **Principle:**

- 2 There should be a strong and independent element on the Board, which is able to exercise objective judgement on corporate affairs independently, in particular, from Management and 10% shareholders<sup>2</sup>. No individual or small group of individuals should be allowed to dominate the Board's decision making.

### **Guidelines:**

- 2.1 There should be a strong and independent element on the Board, with independent directors making up at least one-third of the Board.
- 2.2 The independent directors should make up at least half of the Board where:
- (a) the Chairman of the Board (the "**Chairman**") and the chief executive officer (or equivalent) (the "**CEO**") is the same person;
  - (b) the Chairman and the CEO are immediate family<sup>3</sup> members;
  - (c) the Chairman is part of the management team; or
  - (d) the Chairman is not an independent director.
- 2.3 An "independent" director is one who has no relationship with the company, its related corporations<sup>4</sup>, its 10% shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement with a view to the best interests of the company. The Board should identify in the company's Annual Report each director it considers to be independent. The Board should determine, taking into account the views of the Nominating Committee ("**NC**"), whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. Directors should disclose to the Board any such relationship as and when it arises. The Board should state its reasons if it determines that a director

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<sup>2</sup> The term "**10% shareholder**" shall refer to a person who has an interest or interests in one or more voting shares in the company and the total votes attached to that share, or those shares, is not less than 10% of the total votes attached to all the voting shares in the company. "Voting shares" exclude treasury shares.

<sup>3</sup> The term "**immediate family**" shall have the same meaning as currently defined in the Listing Manual of the Singapore Exchange (the "**Listing Manual**"), i.e. the person's spouse, child, adopted child, step-child, brother, sister and parent.

<sup>4</sup> The term "**related corporation**", in relation to the company, shall have the same meaning as currently defined in the Companies Act, i.e. a corporation that is the company's holding company, subsidiary or fellow subsidiary.

is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including the following:

- (a) a director being employed by the company or any of its related corporations for the current or any of the past three financial years;
- (b) a director who has an immediate family member who is, or has been in any of the past three financial years, employed by the company or any of its related corporations and whose remuneration is determined by the remuneration committee;
- (c) a director, or an immediate family member, accepting any significant compensation from the company or any of its related corporations for the provision of services, for the current or immediate past financial year, other than compensation for board service;
- (d) a director:
  - (i) who, in the current or immediate past financial year, is or was; or
  - (ii) whose immediate family member, in the current or immediate past financial year, is or was,
    - a 10% shareholder of, or a partner in (with 10% or more stake), or an executive officer of, or a director of, any organisation to which the company or any of its subsidiaries made, or from which the company or any of its subsidiaries received, significant payments or material services (which may include auditing, banking, consulting and legal services), in the current or immediate past financial year. As a guide, payments<sup>5</sup> aggregated over any financial year in excess of S\$200,000 should generally be deemed significant;
- (e) a director who is a 10% shareholder or an immediate family member of a 10% shareholder of the company; or
- (f) a director who is or has been directly associated with<sup>6</sup> a 10% shareholder of the company, in the current or immediate past financial year.

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<sup>5</sup> Payments for transactions involving standard services with published rates or routine and retail transactions and relationships (for instance credit card or bank or brokerage or mortgage or insurance accounts or transactions) will not be taken into account, unless special or favourable treatment is accorded.

<sup>6</sup> A director will be considered "**directly associated**" with a 10% shareholder when the director is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the 10% shareholder in relation to the corporate affairs of the corporation. A director will not be considered "directly associated" with a 10% shareholder by reason only of his or her appointment having been proposed by that 10% shareholder.

The relationships set out above are not intended to be exhaustive, and are examples of situations which would deem a director to be not independent. If the Board wishes, in spite of the existence of one or more of these relationships, to consider the director as independent, it should disclose in full the nature of the director's relationship and bear responsibility for explaining why he should be considered independent.

- 2.4 The independence of any director who has served on the Board beyond nine years from the date of his first appointment should be subject to particularly rigorous review. In doing so, the Board should also take into account the need for progressive refreshing of the Board. The Board should also explain why any such director should be considered independent.
- 2.5 The Board should examine its size and, with a view to determining the impact of the number upon effectiveness, decide on what it considers an appropriate size for the Board, which facilitates effective decision making. The Board should take into account the scope and nature of the operations of the company, the requirements of the business and the need to avoid undue disruptions from changes to the composition of the Board and board committees. The Board should not be so large as to be unwieldy.
- 2.6 The Board and its board committees should comprise directors who as a group provide an appropriate balance and diversity of skills, experience, gender and knowledge of the company. They should also provide core competencies such as accounting or finance, business or management experience, industry knowledge, strategic planning experience and customer-based experience or knowledge.
- 2.7 Non-executive directors should:
  - (a) constructively challenge and help develop proposals on strategy; and
  - (b) review the performance of Management in meeting agreed goals and objectives and monitor the reporting of performance.
- 2.8 To facilitate a more effective check on Management, non-executive directors are encouraged to meet regularly without the presence of Management.

## **CHAIRMAN AND CHIEF EXECUTIVE OFFICER**

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### **Principle:**

- 3 There should be a clear division of responsibilities between the leadership of the Board and the executives responsible for managing the company's business. No one individual should represent a considerable concentration of power.

### **Guidelines:**

- 3.1 The Chairman and the CEO should in principle be separate persons, to ensure an appropriate balance of power, increased accountability and greater capacity of the Board for independent decision making. The division of responsibilities between the Chairman and the CEO should be clearly established, set out in writing and agreed by the Board. In addition, the Board should disclose the relationship between the Chairman and the CEO if they are immediate family members.
- 3.2 The Chairman should:
- (a) lead the Board to ensure its effectiveness on all aspects of its role;
  - (b) set the agenda and ensure that adequate time is available for discussion of all agenda items, in particular strategic issues;
  - (c) promote a culture of openness and debate at the Board;
  - (d) ensure that the directors receive complete, adequate and timely information;
  - (e) ensure effective communication with shareholders;
  - (f) encourage constructive relations within the Board and between the Board and Management;
  - (g) facilitate the effective contribution of non-executive directors in particular; and
  - (h) promote high standards of corporate governance.

The responsibilities set out above provide guidance and should not be taken as a

comprehensive list of all the duties and responsibilities of a Chairman.

3.3 Every company should appoint an independent director to be the lead independent director where:

- (a) the Chairman and the CEO is the same person;
- (b) the Chairman and the CEO are immediate family members;
- (c) the Chairman is part of the management team; or
- (d) the Chairman is not an independent director.

The lead independent director (if appointed) should be available to shareholders where they have concerns and for which contact through the normal channels of the Chairman, the CEO or the chief financial officer (or equivalent) (the "CFO") has failed to resolve or is inappropriate.

3.4 Led by the lead independent director, the independent directors should meet periodically without the presence of the other directors, and the lead independent director should provide feedback to the Chairman after such meetings.

## **BOARD MEMBERSHIP**

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### **Principle:**

4 There should be a formal and transparent process for the appointment and re-appointment of directors to the Board.

### **Guidelines:**

4.1 The Board should establish a NC to make recommendations to the Board on all board appointments, with written terms of reference which clearly set out its authority and duties. The NC should comprise at least three directors, the majority of whom, including the NC Chairman, should be independent. The lead independent director, if any, should be a member of the NC. The Board should disclose in the company's Annual Report the names of the members of the NC and the key terms of reference of the NC, explaining its role and the authority delegated to it by the Board.

- 4.2 The NC should make recommendations to the Board on relevant matters relating to:
- (a) the review of board succession plans for directors, in particular, the Chairman and for the CEO;
  - (b) the development of a process for evaluation of the performance of the Board, its board committees and directors;
  - (c) the review of training and professional development programs for the Board; and
  - (d) the appointment and re-appointment of directors (including alternate directors, if applicable).

Important issues to be considered as part of the process for the selection, appointment and re-appointment of directors include composition and progressive renewal of the Board and each director's competencies, commitment, contribution and performance (e.g. attendance, preparedness, participation and candour) including, if applicable, as an independent director. All directors should be required to submit themselves for re-nomination and re-appointment at regular intervals and at least once every three years.

- 4.3 The NC is charged with the responsibility of determining annually, and as and when circumstances require, if a director is independent, bearing in mind the circumstances set forth in Guidelines 2.3 and 2.4 and any other salient factors. If the NC considers that a director who has one or more of the relationships mentioned therein can be considered independent, it shall provide its views to the Board for the Board's consideration. Conversely, the NC has the discretion to consider that a director is not independent even if he does not fall under the circumstances set forth in Guideline 2.3 or Guideline 2.4, and should similarly provide its views to the Board for the Board's consideration.
- 4.4 When a director has multiple board representations, he must ensure that sufficient time and attention is given to the affairs of each company. The NC should decide if a director is able to and has been adequately carrying out his duties as a director of the company, taking into consideration the director's number of listed company board representations and other principal commitments<sup>7</sup>. Guidelines should be adopted that address the competing time

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<sup>7</sup> The term "**principal commitments**" shall include all commitments which involve significant time commitment such as full-time occupation, consultancy work, committee work, non-listed company board representations and directorships and involvement in



commitments that are faced when directors serve on multiple boards. The Board should determine the maximum number of listed company board representations which any director may hold, and disclose this in the company's Annual Report.

- 4.5 Boards should generally avoid approving the appointment of alternate directors. Alternate directors should only be appointed for limited periods in exceptional cases such as when a director has a medical emergency. If an alternate director is appointed, the alternate director should be familiar with the company affairs, and be appropriately qualified. If a person is proposed to be appointed as an alternate director to an independent director, the NC and the Board should review and conclude that the person would similarly qualify as an independent director, before his appointment as an alternate director. Alternate directors bear all the duties and responsibilities of a director.
- 4.6 A description of the process for the selection, appointment and re-appointment of directors to the Board should be disclosed in the company's Annual Report. This should include disclosure on the search and nomination process.
- 4.7 Key information regarding directors, such as academic and professional qualifications, shareholding in the company and its related corporations, board committees served on (as a member or chairman), date of first appointment as a director, date of last re-appointment as a director, directorships or chairmanships both present and those held over the preceding three years in other listed companies, and other principal commitments, should be disclosed in the company's Annual Report. In addition, the company's annual disclosure on corporate governance should indicate which directors are executive, non-executive or considered by the NC to be independent. The names of the directors submitted for appointment or re-appointment should also be accompanied by details and information to enable shareholders to make informed decisions. Such information, which should also accompany the relevant resolution, would include:
- (a) any relationships including immediate family relationships between the candidate and the directors, the company or its 10% shareholders;
  - (b) a separate list of all current directorships in other listed companies; and
  - (c) details of other principal commitments.

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non-profit organisations. Where a director sits on the boards of non-active related corporations, those appointments should not normally be considered principal commitments.

## **BOARD PERFORMANCE**

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### **Principle:**

- 5 There should be a formal annual assessment of the effectiveness of the Board as a whole and its board committees and the contribution by each director to the effectiveness of the Board.

### **Guidelines:**

- 5.1 Every Board should implement a process to be carried out by the NC for assessing the effectiveness of the Board as a whole and its board committees and for assessing the contribution by the Chairman and each individual director to the effectiveness of the Board. The Board should state in the company's Annual Report how the assessment of the Board, its board committees and each director has been conducted. If an external facilitator has been used, the Board should disclose in the company's Annual Report whether the external facilitator has any other connection with the company or any of its directors. This assessment process should be disclosed in the company's Annual Report.
- 5.2 The NC should decide how the Board's performance may be evaluated and propose objective performance criteria. Such performance criteria, which allow for comparison with industry peers, should be approved by the Board and address how the Board has enhanced long-term shareholder value. These performance criteria should not be changed from year to year, and where circumstances deem it necessary for any of the criteria to be changed, the onus should be on the Board to justify this decision.
- 5.3 Individual evaluation should aim to assess whether each director continues to contribute effectively and demonstrate commitment to the role (including commitment of time for meetings of the Board and board committees, and any other duties). The Chairman should act on the results of the performance evaluation, and, in consultation with the NC, propose, where appropriate, new members to be appointed to the Board or seek the resignation of directors.

## **ACCESS TO INFORMATION**

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### **Principle:**

- 6 In order to fulfil their responsibilities, directors should be provided with complete, adequate and timely information prior to board meetings and on an on-going basis so as to enable them to make informed decisions to discharge their duties and responsibilities.

### **Guidelines:**

- 6.1 Management has an obligation to supply the Board with complete, adequate information in a timely manner. Relying purely on what is volunteered by Management is unlikely to be enough in all circumstances and further enquiries may be required if the particular director is to fulfil his duties properly. Hence, the Board should have separate and independent access to Management. Directors are entitled to request from Management and should be provided with such additional information as needed to make informed decisions. Management shall provide the same in a timely manner.
- 6.2 Information provided should include board papers and related materials, background or explanatory information relating to matters to be brought before the Board, and copies of disclosure documents, budgets, forecasts and monthly internal financial statements. In respect of budgets, any material variance between the projections and actual results should also be disclosed and explained.
- 6.3 Directors should have separate and independent access to the company secretary. The role of the company secretary should be clearly defined and should include responsibility for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Under the direction of the Chairman, the company secretary's responsibilities include ensuring good information flows within the Board and its board committees and between Management and non-executive directors, advising the Board on all governance matters, as well as facilitating orientation and assisting with professional development as required. The company secretary should attend all board meetings.
- 6.4 The appointment and the removal of the company secretary should be a matter for the Board as a whole.

- 6.5 The Board should have a procedure for directors, either individually or as a group, in the furtherance of their duties, to take independent professional advice, if necessary, and at the company's expense.

## **REMUNERATION MATTERS**

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### **PROCEDURES FOR DEVELOPING REMUNERATION POLICIES**

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#### **Principle:**

- 7 There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his own remuneration.

#### **Guidelines:**

- 7.1 The Board should establish a Remuneration Committee ("**RC**") with written terms of reference which clearly set out its authority and duties. The RC should comprise at least three directors, the majority of whom, including the RC Chairman, should be independent. All of the members of the RC should be non-executive directors. This is to minimise the risk of any potential conflict of interest. The Board should disclose in the company's Annual Report the names of the members of the RC and the key terms of reference of the RC, explaining its role and the authority delegated to it by the Board.
- 7.2 The RC should review and recommend to the Board a general framework of remuneration for the Board and key management personnel<sup>11</sup>. The RC should also review and recommend to the Board the specific remuneration packages for each director as well as for the key management personnel. The RC's recommendations should be submitted for endorsement by the entire Board. The RC should cover all aspects of remuneration, including but not limited to director's fees, salaries, allowances, bonuses, options, share-based incentives and awards, and benefits in kind.
- 7.3 If necessary, the RC should seek expert advice inside and/or outside the company on remuneration of all directors. The RC should ensure that existing relationships, if any, between the company and its appointed remuneration consultants will not affect the independence and objectivity of the remuneration consultants. The company should also disclose the names and firms of the remuneration consultants in the annual remuneration report, and include a statement on whether the remuneration consultants have any such relationships with the company.

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<sup>11</sup> The term "**key management personnel**" shall mean the CEO and other persons having authority and responsibility for planning, directing and controlling the activities of the company.

- 7.4 The RC should review the company's obligations arising in the event of termination of the executive directors' and key management personnel's contracts of service, to ensure that such contracts of service contain fair and reasonable termination clauses which are not overly generous. The RC should aim to be fair and avoid rewarding poor performance.

## **LEVEL AND MIX OF REMUNERATION**

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### **Principle:**

- 8 The level and structure of remuneration should be aligned with the long-term interest and risk policies of the company, and should be appropriate to attract, retain and motivate (a) the directors to provide good stewardship of the company, and (b) key management personnel to successfully manage the company. However, companies should avoid paying more than is necessary for this purpose.

### **Guidelines:**

- 8.1 A significant and appropriate proportion of executive directors' and key management personnel's remuneration should be structured so as to link rewards to corporate and individual performance. Such performance-related remuneration should be aligned with the interests of shareholders and promote the long-term success of the company. It should take account of the risk policies of the company, be symmetric with risk outcomes and be sensitive to the time horizon of risks. There should be appropriate and meaningful measures for the purpose of assessing executive directors' and key management personnel's performance.
- 8.2 Long-term incentive schemes are generally encouraged for executive directors and key management personnel. The RC should review whether executive directors and key management personnel should be eligible for benefits under long-term incentive schemes. The costs and benefits of long-term incentive schemes should be carefully evaluated. In normal circumstances, offers of shares or grants of options or other forms of deferred remuneration should vest over a period of time. The use of vesting schedules, whereby only a portion of the benefits can be exercised each year, is also strongly encouraged. Executive directors and key management personnel should be encouraged to hold their shares beyond the vesting period, subject to the need to finance any cost of acquiring the shares and associated tax liability.

- 8.3 The remuneration of non-executive directors should be appropriate to the level of contribution, taking into account factors such as effort and time spent, and responsibilities of the directors. Non-executive directors should not be over-compensated to the extent that their independence may be compromised. The RC should also consider implementing schemes to encourage non-executive directors to hold shares in the company so as to better align the interests of such non-executive directors with the interests of shareholders.
- 8.4 Companies are encouraged to consider the use of contractual provisions to allow the company to reclaim incentive components of remuneration from executive directors and key management personnel in exceptional circumstances of misstatement of financial results, or of misconduct resulting in financial loss to the company.

## **DISCLOSURE ON REMUNERATION**

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### **Principle:**

- 9 Every company should provide clear disclosure of its remuneration policies, level and mix of remuneration, and the procedure for setting remuneration, in the company's Annual Report. It should provide disclosure in relation to its remuneration policies to enable investors to understand the link between remuneration paid to directors and key management personnel, and performance.

### **Guidelines:**

- 9.1 The company should report to the shareholders each year on the remuneration of directors, the CEO and at least the top five key management personnel (who are not also directors or the CEO) of the company. This annual remuneration report should form part of, or be annexed to the company's annual report of its directors. It should be the main means through which the company reports to shareholders on remuneration matters.

The annual remuneration report should include the aggregate amount of any termination, retirement and post-employment benefits that may be granted to directors, the CEO and the top five key management personnel (who are not directors or the CEO).

- 9.2 The company should fully disclose the remuneration of each individual director and the CEO on a named basis. For administrative convenience, the company may round off the disclosed figures to the nearest thousand dollars. There should be a breakdown (in percentage or dollar terms) of each director's and the CEO's remuneration earned through base/fixed salary, variable or performance-related income/bonuses, benefits in kind, stock options granted, share-based incentives and awards, and other long-term incentives.
- 9.3 The company should name and disclose the remuneration of at least the top five key management personnel (who are not directors or the CEO) in bands of S\$250,000. Companies need only show the applicable bands. There should be a breakdown (in percentage or dollar terms) of each key management personnel's remuneration earned through base/fixed salary, variable or performance-related income/bonuses, benefits in kind, stock options granted, share-based incentives and awards, and other long-term incentives.

In addition, the company should disclose in aggregate the total remuneration paid to the top five key management personnel (who are not directors or the CEO).

As best practice, companies are also encouraged to fully disclose the remuneration of the said top five key management personnel.

- 9.4 For transparency, the annual remuneration report should disclose the details of the remuneration of employees who are immediate family members of a director or the CEO, and whose remuneration exceeds S\$50,000 during the year. This will be done on a named basis with clear indication of the employee's relationship with the relevant director or the CEO. Disclosure of remuneration should be in incremental bands of S\$50,000. The company need only show the applicable bands.
- 9.5 The annual remuneration report should also contain details of employee share schemes to enable their shareholders to assess the benefits and potential cost to the companies. The important terms of the share schemes should be disclosed, including the potential size of grants, methodology of valuing stock options, exercise price of options that were granted as well as outstanding, whether the exercise price was at the market or otherwise on the date of grant, market price on the date of exercise, the vesting schedule, and the justifications for the terms adopted.



- 9.6 For greater transparency, companies should disclose more information on the link between remuneration paid to the executive directors and key management personnel, and performance. The annual remuneration report should set out a description of performance conditions to which entitlement to short-term and long-term incentive schemes are subject, an explanation on why such performance conditions were chosen, and a statement of whether such performance conditions are met.

## **ACCOUNTABILITY AND AUDIT**

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### **ACCOUNTABILITY**

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#### **Principle:**

- 10 The Board should present a balanced and understandable assessment of the company's performance, position and prospects.

#### **Guidelines:**

- 10.1 The Board's responsibility to provide a balanced and understandable assessment of the company's performance, position and prospects extends to interim and other price sensitive public reports, and reports to regulators (if required).
- 10.2 The Board should take adequate steps to ensure compliance with legislative and regulatory requirements, including requirements under the listing rules of the securities exchange, for instance, by establishing written policies where appropriate.
- 10.3 Management should provide all members of the Board with management accounts and such explanation and information on a monthly basis and as the Board may require from time to time to enable the Board to make a balanced and informed assessment of the company's performance, position and prospects.

## **RISK MANAGEMENT AND INTERNAL CONTROLS**

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#### **Principle:**

- 11 The Board is responsible for the governance of risk. The Board should ensure that Management maintains a sound system of risk management and internal controls to safeguard shareholders' interests and the company's assets, and should determine the nature and extent of the significant risks which the Board is willing to take in achieving its strategic objectives.

#### **Guidelines:**

- 11.1 The Board should determine the company's levels of risk tolerance and risk policies, and oversee Management in the design, implementation and monitoring of the risk management and internal control systems.

- 11.2 The Board should, at least annually, review the adequacy and effectiveness of the company's risk management and internal control systems, including financial, operational, compliance and information technology controls. Such review can be carried out internally or with the assistance of any competent third parties.
- 11.3 The Board should comment on the adequacy and effectiveness of the internal controls, including financial, operational, compliance and information technology controls, and risk management systems, in the company's Annual Report. The Board's commentary should include information needed by stakeholders to make an informed assessment of the company's internal control and risk management systems.

The Board should also comment in the company's Annual Report on whether it has received assurance from the CEO and the CFO:

- (a) that the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances; and
  - (b) regarding the effectiveness of the company's risk management and internal control systems.
- 11.4 The Board may establish a separate board risk committee or otherwise assess appropriate means to assist it in carrying out its responsibility of overseeing the company's risk management framework and policies.

## **AUDIT COMMITTEE**

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### **Principle:**

- 12 The Board should establish an Audit Committee ("AC") with written terms of reference which clearly set out its authority and duties.<sup>12</sup>

### **Guidelines:**

- 12.1 The AC should comprise at least three directors, the majority of whom,

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<sup>12</sup> The Board may wish to refer to the sample terms of reference contained in the Guidebook for Audit Committees in Singapore issued by the Audit Committee Guidance Committee which was established on 15 January 2008 by the Monetary Authority of Singapore, the Accounting and Corporate Regulatory Authority and Singapore Exchange Limited to develop practical guidance for audit committees of listed companies.

including the AC Chairman, should be independent. All of the members of the AC should be non-executive directors. The Board should disclose in the company's Annual Report the names of the members of the AC and the key terms of reference of the AC, explaining its role and the authority delegated to it by the Board.

- 12.2 The Board should ensure that the members of the AC are appropriately qualified to discharge their responsibilities. At least two members, including the AC Chairman, should have recent and relevant accounting or related financial management expertise or experience, as the Board interprets such qualification in its business judgement.
- 12.3 The AC should have explicit authority to investigate any matter within its terms of reference, full access to and co-operation by Management and full discretion to invite any director or executive officer to attend its meetings, and reasonable resources to enable it to discharge its functions properly.
- 12.4 The duties of the AC should include:
- (a) reviewing the significant financial reporting issues and judgements so as to ensure the integrity of the financial statements of the company and any announcements relating to the company's financial performance;
  - (b) reviewing and reporting to the Board at least annually the adequacy and effectiveness of the company's internal controls, including financial, operational, compliance and information technology controls (such review can be carried out internally or with the assistance of any competent third parties);
  - (c) reviewing the effectiveness of the company's internal audit function;
  - (d) reviewing the scope and results of the external audit, and the independence and objectivity of the external auditors; and
  - (e) making recommendations to the Board on the proposals to the shareholders on the appointment, re-appointment and removal of the external auditors, and approving the remuneration and terms of engagement of the external auditors.
- 12.5 The AC should meet (a) with the external auditors, and (b) with the internal auditors, in each case without the presence of Management, at least annually.

- 12.6 The AC should review the independence of the external auditors annually and should state (a) the aggregate amount of fees paid to the external auditors for that financial year, and (b) a breakdown of the fees paid in total for audit and non-audit services respectively, or an appropriate negative statement, in the company's Annual Report. Where the external auditors also supply a substantial volume of non-audit services to the company, the AC should keep the nature and extent of such services under review, seeking to maintain objectivity.
- 12.7 The AC should review the policy and arrangements by which staff of the company and any other persons may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The AC's objective should be to ensure that arrangements are in place for such concerns to be raised and independently investigated, and for appropriate follow-up action to be taken. The existence of a whistle-blowing policy should be disclosed in the company's Annual Report, and procedures for raising such concerns should be publicly disclosed as appropriate.
- 12.8 The Board should disclose a summary of all the AC's activities in the company's Annual Report. The Board should also disclose in the company's Annual Report measures taken by the AC members to keep abreast of changes to accounting standards and issues which have a direct impact on financial statements.
- 12.9 A former partner or director of the company's existing auditing firm or auditing corporation should not act as a member of the company's AC: (a) within a period of 12 months commencing on the date of his ceasing to be a partner of the auditing firm or director of the auditing corporation; and in any case (b) for as long as he has any financial interest in the auditing firm or auditing corporation.

## **INTERNAL AUDIT**

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### **Principle:**

- 13 The company should establish an effective internal audit function that is adequately resourced and independent of the activities it audits.

### **Guidelines:**

- 13.1 The Internal Auditor's primary line of reporting should be to the AC Chairman although the Internal Auditor would also report administratively to the CEO.

The AC approves the hiring, removal, evaluation and compensation of the head of the internal audit function, or the accounting / auditing firm or corporation to which the internal audit function is outsourced. The Internal Auditor should have unfettered access to all the company's documents, records, properties and personnel, including access to the AC.

- 13.2 The AC should ensure that the internal audit function is adequately resourced and has appropriate standing within the company. For the avoidance of doubt, the internal audit function can be in-house, outsourced to a reputable accounting/auditing firm or corporation, or performed by a major shareholder, holding company or controlling enterprise with an internal audit staff.
- 13.3 The internal audit function should be staffed with persons with the relevant qualifications and experience.
- 13.4 The Internal Auditor should carry out its function according to the standards set by nationally or internationally recognised professional bodies including the Standards for the Professional Practice of Internal Auditing set by The Institute of Internal Auditors.
- 13.5 The AC should, at least annually, review the adequacy and effectiveness of the internal audit function.

## **SHAREHOLDER RIGHTS AND RESPONSIBILITIES**

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### **SHAREHOLDER RIGHTS**

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#### **Principle:**

- 14 Companies should treat all shareholders fairly and equitably, and should recognise, protect and facilitate the exercise of shareholders' rights, and continually review and update such governance arrangements.

#### **Guidelines:**

- 14.1 Companies should facilitate the exercise of ownership rights by all shareholders. In particular, shareholders have the right to be sufficiently informed of changes in the company or its business which would be likely to materially affect the price or value of the company's shares.
- 14.2 Companies should ensure that shareholders have the opportunity to participate effectively in and vote at general meetings of shareholders. Shareholders should be informed of the rules, including voting procedures, that govern general meetings of shareholders.
- 14.3 Companies should allow corporations which provide nominee or custodial services to appoint more than two proxies so that shareholders who hold shares through such corporations can attend and participate in general meetings as proxies.

## **COMMUNICATION WITH SHAREHOLDERS**

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#### **Principle:**

- 15 Companies should actively engage their shareholders and put in place an investor relations policy to promote regular, effective and fair communication with shareholders.

#### **Guidelines:**

- 15.1 Companies should devise an effective investor relations policy to regularly convey pertinent information to shareholders. In disclosing information,

companies should be as descriptive, detailed and forthcoming as possible, and avoid boilerplate disclosures.

- 15.2 Companies should disclose information on a timely basis through SGXNET and other information channels, including a well-maintained and updated corporate website. Where there is inadvertent disclosure made to a select group, companies should make the same disclosure publicly to all others as promptly as possible
- 15.3 The Board should establish and maintain regular dialogue with shareholders, to gather views or inputs, and address shareholders' concerns.
- 15.4 The Board should state in the company's Annual Report the steps it has taken to solicit and understand the views of the shareholders e.g. through analyst briefings, investor roadshows or Investors' Day briefings.
- 15.5 Companies are encouraged to have a policy on payment of dividends and should communicate it to shareholders. Where dividends are not paid, companies should disclose their reasons.

## **CONDUCT OF SHAREHOLDER MEETINGS**

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### **Principle:**

- 16 Companies should encourage greater shareholder participation at general meetings of shareholders, and allow shareholders the opportunity to communicate their views on various matters affecting the company.

### **Guidelines:**

- 16.1 Shareholders should have the opportunity to participate effectively in and to vote at general meetings of shareholders. Companies should make the appropriate provisions in their Articles of Association (or other constitutive documents) to allow for absentia voting at general meetings of shareholders.
- 16.2 There should be separate resolutions at general meetings on each substantially separate issue. Companies should avoid "bundling" resolutions unless the resolutions are interdependent and linked so as to form one significant proposal.



- 16.3 All directors should attend general meetings of shareholders. In particular, the Chairman of the Board and the respective Chairman of the AC, NC and RC should be present and available to address shareholders' queries at these meetings. The external auditors should also be present to address shareholders' queries about the conduct of audit and the preparation and content of the auditors' report.
- 16.4 Companies should prepare minutes of general meetings that include substantial and relevant comments or queries from shareholders relating to the agenda of the meeting, and responses from the Board and Management, and to make these minutes available to shareholders upon their request.
- 16.5 Companies should put all resolutions to vote by poll and make an announcement of the detailed results showing the number of votes cast for and against each resolution and the respective percentages. Companies are encouraged to employ electronic polling.

## GLOSSARY

The following terms, unless the context requires otherwise, have the following meanings:

<b>Term</b>	<b>Meaning</b>
"AC"	: Audit Committee
"AC Chairman"	: Chairman of the AC
"Board"	: The board of directors of the company
"CEO"	: Chief executive officer or equivalent
"CFO"	: Chief financial officer or equivalent
"Chairman"	: Chairman of the Board
"Companies Act"	: Companies Act (Chapter 50 of the statutes of Singapore)
"directly associated"	: A director will be considered "directly associated" to a 10% shareholder when the director is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the 10% shareholder in relation to the corporate affairs of the corporation. A director will not be considered "directly associated" to a 10% shareholder by reason only of his appointment having been proposed by that 10% shareholder
"immediate family"	: As currently defined in the Listing Manual, to mean the person's spouse, child, adopted child, step-child, brother, sister and parent
"key management personnel"	: The CEO and other persons having authority and responsibility for planning, directing and controlling the activities of the company

"Listing Manual"	:	The listing manual of the Singapore Exchange
"Management"	:	The management of the company
"NC"	:	Nominating Committee
"NC Chairman"	:	Chairman of the NC
"principal commitments"	:	Includes all commitments which involve significant time commitment such as full-time occupation, consultancy work, committee work, non-listed company board representations and directorships and involvement in non-profit organisations. Where a director sits on the Boards of non-active related corporations, those appointments should not normally be considered principal commitments
"related corporation"	:	In relation to the company, as currently defined in the Companies Act, to mean a corporation that is the company's holding company, subsidiary or fellow subsidiary
"RC"	:	Remuneration Committee
"RC Chairman"	:	Chairman of the RC
"10% shareholder"	:	A person who has an interest or interests in one or more voting shares in the company; and the total votes attached to that share, or those shares, is not less than 10% of the total votes attached to all the voting shares in the company. "Voting shares" exclude treasury shares

Reference to any gender shall include reference to any other gender, unless the context otherwise requires.

## **DISCLOSURE OF CORPORATE GOVERNANCE ARRANGEMENTS**

The Listing Manual requires listed companies to describe in their company's Annual Reports their corporate governance practices with specific reference to the principles of the Code, as well as disclose and explain any deviation from any guideline of the Code. Companies should make a positive confirmation at the start of the corporate governance section of the company's Annual Report that they have adhered to the principles and guidelines of the Code, or specify each area of non-compliance. Many of these guidelines are recommendations for companies to disclose their corporate governance arrangements. For ease of reference, the specific principles and guidelines in the Code with *express* disclosure requirements are set out below:

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|--|---------------|
| ● Delegation of authority, by the Board to any board committee, to make decisions on certain board matters   | Guideline 1.3 |
| ● The number of meetings of the Board and board committees held in the year, as well as the attendance of every board member at these meetings   | Guideline 1.4 |
| ● The type of material transactions that require board approval under guidelines   | Guideline 1.5 |
| ● The induction, orientation and training provided to new and existing directors   | Guideline 1.6 |
| ● The Board should identify in the company's Annual Report each director it considers to be independent. Where the Board considers a director to be independent in spite of the existence of a relationship as stated in the Code that would otherwise deem a director not to be independent, the nature of the director's relationship and the reasons for considering him as independent should be disclosed | Guideline 2.3 |
| ● Where the Board considers an independent director, who has served on the Board for more than nine years from the date of his first appointment, to be independent, the reasons for considering him as independent should be disclosed.   | Guideline 2.4 |
| ● Relationship between the Chairman and the CEO where they are immediate family members  | Guideline 3.1 |

<ul style="list-style-type: none"> <li>Names of the members of the NC and the key terms of reference of the NC, explaining its role and the authority delegated to it by the Board</li> </ul>	Guideline 4.1
<ul style="list-style-type: none"> <li>The maximum number of listed company board representations which directors may hold should be disclosed</li> </ul>	Guideline 4.4
<ul style="list-style-type: none"> <li>Process for the selection, appointment and re-appointment of new directors to the Board, including the search and nomination process</li> </ul>	Guideline 4.6
<ul style="list-style-type: none"> <li>Key information regarding directors, including which directors are executive, non-executive or considered by the NC to be independent</li> </ul>	Guideline 4.7
<ul style="list-style-type: none"> <li>The Board should state in the company's Annual Report how assessment of the Board, its board committees and each director has been conducted. If an external facilitator has been used, the Board should disclose in the company's Annual Report whether the external facilitator has any other connection with the company or any of its directors. This assessment process should be disclosed in the company's Annual Report</li> </ul>	Guideline 5.1
<ul style="list-style-type: none"> <li>Names of the members of the RC and the key terms of reference of the RC, explaining its role and the authority delegated to it by the Board</li> </ul>	Guideline 7.1
<ul style="list-style-type: none"> <li>Names and firms of the remuneration consultants (if any) should be disclosed in the annual remuneration report, including a statement on whether the remuneration consultants have any relationships with the company</li> </ul>	Guideline 7.3
<ul style="list-style-type: none"> <li>Clear disclosure of remuneration policies, level and mix of remuneration, and procedure for setting remuneration</li> </ul>	Principle 9
<ul style="list-style-type: none"> <li>Remuneration of directors, the CEO and at least the top five key management personnel (who are not also directors or the CEO) of the company. The annual remuneration report should include the aggregate amount of any termination, retirement and post-employment benefits that may be granted to directors, the CEO and the top five key management personnel (who are not</li> </ul>	Guideline 9.1

directors or the CEO)	
<ul style="list-style-type: none"><li>● Fully disclose the remuneration of each individual director and the CEO on a named basis. There will be a breakdown (in percentage or dollar terms) of each director's and the CEO's remuneration earned through base/fixed salary, variable or performance-related income/bonuses, benefits in kind, stock options granted, share-based incentives and awards, and other long-term incentives</li></ul>	Guideline 9.2
<ul style="list-style-type: none"><li>● Name and disclose the remuneration of at least the top five key management personnel (who are not directors or the CEO) in bands of S\$250,000. There will be a breakdown (in percentage or dollar terms) of each key management personnel's remuneration earned through base/fixed salary, variable or performance-related income/bonuses, benefits in kind, stock options granted, share-based incentives and awards, and other long-term incentives. In addition, the company should disclose in aggregate the total remuneration paid to the top five key management personnel (who are not directors or the CEO). As best practice, companies are also encouraged to fully disclose the remuneration of the said top five key management personnel</li></ul>	Guideline 9.3
<ul style="list-style-type: none"><li>● Details of the remuneration of employees who are immediate family members of a director or the CEO, and whose remuneration exceeds S\$50,000 during the year. This will be done on a named basis with clear indication of the employee's relationship with the relevant director or the CEO. Disclosure of remuneration should be in incremental bands of S\$50,000</li></ul>	Guideline 9.4
<ul style="list-style-type: none"><li>● Details and important terms of employee share schemes</li></ul>	Guideline 9.5
<ul style="list-style-type: none"><li>● For greater transparency, companies should disclose more information on the link between remuneration paid to the executive directors and key management personnel, and performance. The annual remuneration report should set out a description of performance conditions to which entitlement to short-term and long-term incentive schemes are subject, an explanation on why such performance conditions were chosen, and a statement of whether such performance conditions are met</li></ul>	Guideline 9.6

- The Board should comment on the adequacy and effectiveness of the internal controls, including financial, operational, compliance and information technology controls, and risk management systems  
  
The commentary should include information needed by stakeholders to make an informed assessment of the company's internal control and risk management systems  
  
The Board should also comment on whether it has received assurance from the CEO and the CFO: (a) that the financial records have been properly maintained and the financial statements give true and fair view of the company's operations and finances; and (b) regarding the effectiveness of the company's risk management and internal control systems  
  
Guideline 11.3
- Names of the members of the AC and the key terms of reference of the AC, explaining its role and the authority delegated to it by the Board  
  
Guideline 12.1
- Aggregate amount of fees paid to the external auditors for that financial year, and breakdown of fees paid in total for audit and non-audit services respectively, or an appropriate negative statement  
  
Guideline 12.6
- The existence of a whistle-blowing policy should be disclosed in the company's Annual Report  
  
Guideline 12.7
- Summary of the AC's activities and measures taken to keep abreast of changes to accounting standards and issues which have a direct impact on financial statements  
  
Guideline 12.8
- The steps the Board has taken to solicit and understand the views of the shareholders e.g. through analyst briefings, investor roadshows or Investors' Day briefings  
  
Guideline 15.4
- Where dividends are not paid, companies should disclose their reasons.  
  
Guideline 15.5

## **THE ROLE OF SHAREHOLDERS IN ENGAGING WITH COMPANIES IN WHICH THEY INVEST**

The Code on Corporate Governance focuses on providing principles and guidelines to listed companies and their Boards to spur them towards a high standard of corporate governance. To ensure that these standards are achieved and sustained in practice, active and constructive shareholder relations is crucial. Bearing in mind the diversity of shareholders in a listed company and their differing investment objectives, this statement sets out certain broad views on the role of shareholders.

The objective of creating sustainable and financially sound enterprises that offer long-term value to shareholders is best served through a constructive relationship between shareholders and the Boards of companies.

Shareholder inputs on governance matters are useful to strengthen the overall environment for good governance policies and practices, and convey shareholders' expectations to the Board. By constructively engaging with the Board, shareholders can help to set the tone and expectation for governance of the company.

A shareholder's vote at general meetings is a direct way of expressing views and expectations to the Board. Hence, shareholders should exercise their right to attend general meetings and vote responsibly. Where relevant, shareholders should communicate to the Board their reasons for disagreeing with any proposal tabled at a general meeting.

Where appropriate, specific shareholder groups and their associations are encouraged to consider adopting international best practices. Initiatives by relevant industry associations or organisations to develop guidelines on their roles as shareholders of listed companies will be welcomed.

*For the avoidance of doubt, this statement does not form part of the Code of Corporate Governance. It is aimed at enhancing the quality of engagement between shareholders and companies, so as to help drive higher standards of corporate governance and improve long-term returns to shareholders.*