

**Singapore Institute of Legal Education  
Foreign Practitioner Examination 2014  
Corporate Practice Component**

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## Part I: Company Law

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### A. BUSINESS VEHICLES

Woon, Chapter 1. Partnership Act; Limited Partnership Act; Limited Liability Partnerships Act; Companies Act, sections 2, 4, 17, 18, 30-32, 38, 365 - 386

- Registration of businesses
- Partnerships
- Limited liability partnerships
- Unlimited companies
- Private companies and exempt private companies
- Public companies (including companies limited by guarantee)
- Listed companies
- Foreign companies registered in Singapore

### B. INCORPORATION AND ITS CONSEQUENCES

Woon, Chapter 2. Companies Act, sections 5-6, 17-20A.

- Separate entity doctrine
- Definition of related companies
- The concept of a group of companies
- Perpetual succession
- Lifting the veil of incorporation

Selected cases

*Asteroid Maritime Co Ltd v The owners of the Saudi Al Jubail* [1987] SGHC 71

*'The Skaw Prince'* [1994] 3 SLR(R) 146

*Win Line (UK) Ltd v Masterpart (Singapore) Pte Ltd* [1999] 2 SLR(R) 24

*TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR(R) 543

*New Line Productions, Inc and another v Aglow Video Pte Ltd* [2005] 3 SLR(R) 660

*Singapore Tourism Board v Children's Media Ltd* [2008] 3 SLR(R) 981

*Zim Integrated Shipping Services Ltd v Dafni Igal* [2010] 2 SLR 426

### C. THE MEMORANDUM AND ARTICLES OF ASSOCIATION

Woon, Chapter 4. Companies Act, sections 26, 26A, 35-37, 39, Table A

- Effect of Table A
- Contractual effect of the memorandum and articles
- Alteration of the memorandum and articles
- Restrictions on alteration
- Entrenchment provisions
- Shareholders' agreements

#### Selected cases

*Raffles Hotel Ltd v Malayan Banking Ltd* [1965-1967] SLR(R) 161

*Teo Choong Mong Frank v Wilh Schulz GmbH* [1998] 2 SLR(R) 312

### D. CAPACITY AND POWERS OF A COMPANY

Woon, Chapter 3. Companies Act, sections 23-25A

- Objects and powers
- Effect of ultra vires transactions

#### Selected cases

*Banque Bruxelles Lambert v Puvaria Packaging Industries (Pte) Ltd* [1994] 1 SLR(R) 736

### E. AGENCY IN RELATION TO COMPANIES

Woon, Chapter 3. Companies Act, sections 25A, 151

- Express authority
- Implied authority
- Usual authority

- Ostensible authority
- The “indoor management” rule

Selected cases

*Banque Bruxelles Lambert v Puvaria Packaging Industries (Pte) Ltd* [1994] 1 SLR(R) 736

*SPP Ltd v Chew Beng Gim* [1993] 3 SLR(R) 17

*Skandinaviska Enskilda Banken AB v Asia-Pacific Breweries (Singapore) Pte Ltd* [2011] SGCA 22

**F. MEETINGS, RESOLUTIONS AND VOTING**

Woon, Chapters 5, 6. Companies Act, sections 64, 157A, 160-161, 164A, 168, 175-185, 188, 392

ACRA Guidelines on Application for Extension of Time to Hold Annual General Meeting under Section 175 of the Companies Act

- Division of powers between the board and general meeting
- Types of general meetings
- Timelines to hold annual general meetings and extension of time
- Calling of meetings
- Passing of resolutions
- Irregularities

Selected cases

*Credit Development Pte Ltd v IMO Pte Ltd* [1993] 1 SLR(R) 68

*Polybuilding (S) Pte Ltd v Lim Heng Lee* [2001] 2 SLR(R) 12

*Paillart Philippe Marcel Etienne v Eban Stuart Ashley* [2007] 1 SLR(R) 132

*Tong Keng Meng v Inno-Pacific Holdings Ltd* [2001] 3 SLR(R) 311

*Jimat bin Awang v Lai Wee Ngen* [1995] 3 SLR(R) 496

*Golden Harvest Films Distribution (Pte) Ltd v Golden Village Multiplex Pte Ltd* [2007] 1 SLR(R) 940

*The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121

*Thio Keng Poo v Thio Syn Pyn* [2010] 3 SLR 143

*Tang Kin Fei and others v Chang Benety and others* [2011] 1 SLR 568

**G. THE COMPANY SECRETARY**

Companies Act, section 171

- Qualification
- Timeline for appointment

## H. THE BOARD OF DIRECTORS

Woon, Chapter 7. Companies Act, sections 145, 148-149A, 152, 154-155A, 168, 169

- Minimum directorship requirements
- Appointment of directors
- Disqualification of directors
- Removal of directors
- Remuneration of directors
- Directors' meetings

### Selected cases

*Raffles Hotel Ltd v Malayan Banking Ltd* [1965-1967] SLR(R) 161

*Goh Kim Hai Edward v Pacific Can Investment Holdings Ltd* [1996] 1 SLR(R) 540

*Attorney-General v Chong Soon Choy Derrick* [1983-1984] SLR (R) 530

*Quek Leng Chye v Attorney-General* [1985-1986] SLR(R) 282

*Lee Huay Kok v Attorney-General* [2001] 3 SLR(R) 287

*Ong Chow Hong v Public Prosecutor* [2011] SGHC 93

*Cosmic Insurance Corp Ltd v Khoo Chiang Poh* [1979-1980] SLR(R) 703 (Privy Council)  
affirming [1977-1978] SLR(R) 93 (Court of Appeal)

*Goh Kim Hai Edward v Pacific Can Investment Holdings Ltd* [1996] 1 SLR(R) 540

*Heap Huat Rubber Company Sdn Bhd v Kong Choot Sian* [2004] SGCA 12 (Court of Appeal)

*Grinsted Edward John v Britannia Brands (Holding) Pte Ltd* [1996] 1 SLR(R) 742

*SAL Industrial Leasing Ltd v Lin Hwee Guan* [1998] 3 SLR(R) 31

## I. DIRECTORS' DUTIES AND CORPORATE GOVERNANCE

Woon, Chapter 8. Companies Act, sections 156-157, 157B-157C, 162-163, 172, 391; Prevention of Corruption Act (Cap 241), sections 6, 14; Penal Code (Cap 224), sections 405, 406, 408, 409.

- Directors' fiduciary duties
- Directors' statutory duties
- Directors' duties of care, skill and diligence
- Financial relations with the company
- Nominee directors

- Corruption
- Criminal breach of trust

Selected cases

*Townsing Henry George v Jenton Overseas Investment Pte Ltd* [2007] 2 SLR(R) 597

*Cheam Tat Pang v Public Prosecutor* [1996] 1 SLR(R) 161

*Tan Tze Chye v Public Prosecutor* [1997] 1 SLR(R) 876

*Lim Weng Kee v Public Prosecutor* [2002] 2 SLR(R) 848

*Chua Boon Chin v McCormack John Maxwell* [1979-80] SLR(R) 121

*Kumagai-Zenecon Construction Pte Ltd v Low Hua Kin* [1999] 3 SLR(R) 1049 (High Court)  
affirmed [2000] 2 SLR (R) 689 (Court of Appeal)

*Vita Health Laboratories Pte Ltd and Others v Pang Seng Meng* [2004] 4 SLR 162

*W&P Piling Pte Ltd v Chew Yin What* [2007] 4 SLR(R) 218

*Liquidator of Leong Seng Hin Piling Pte Ltd v Chan Ah Lek* [2007] 2 SLR(R) 77

*Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089

*Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064

*Oversea-Chinese Banking Corp Ltd v Justlogin Pte Ltd* [2004] 2 SLR(R) 675

*Caltong (Australia) Pty Ltd v Tong Tien See Construction Pte Ltd* [2002] 2 SLR(R) 94

*Tokuhon (Pte) Ltd v Seow Kang Hong* [2003] 4 SLR(R) 414

*Kea Holdings Pte Ltd v Gan Boon Hock* [2000] 2 SLR(R) 333

*SPP Ltd v Chew Beng Gim* [1993] 3 SLR(R) 17

*Kwee Seng Chio Peter v Biogenics Sdn Bhd* [2003] 2 SLR(R) 482

*Creanovate Pte Ltd v Firstlink Energy Pte Ltd* [2007] 4 SLR(R) 780

*Yeo Geok Seng v Public Prosecutor* [1999] 3 SLR(R) 896

*Dayco Products Singapore Pte Ltd v Ong Cheng Aik* [2004] 4 SLR(R) 318

*Chew Kong Huat v Ricwil (Singapore) Pte Ltd* [1999] 3 SLR(R) 1167

*Mahesan v Malaysian Government Officers' Co-operative Housing Society* [1978] 1 MLJ 149  
(Privy Council on appeal from Malaysia)

*Thahir Kartika Ratna v PT Pertambangan Minyak dan Gas Bumi Negara* [1994] 3 SLR(R) 312

*Leong Wai Kay v Carrefour Singapore Pte Ltd* [2007] 3 SLR(R) 78

*Swiss Butchery Pte Ltd v Huber Ernst* [2010] 3 SLR 813

*Tan Hup Thye v Refco (Singapore) Pte Ltd* [2010] 3 SLR 426

*Dovechem Holdings Pte Ltd (in liquidation) and others v Ng Joo Soon (alias Nga Ju Soon)* [2011] SGCA 35

*Yong Kheng Leong and another v Panweld Trading Pte Ltd and another* [2012] SGCA59

*Scintronix Corp Ltd (formerly known as TTL Holdings Ltd) v Ho Kang Peng and another* [2013] SGHC 34

## J. ACCOUNTS AND AUDIT

Woon, Chapter 10. Companies Act, sections 199-201, 205-209A,

ACRA Guidelines on Application for Extension of Time to Lay Accounts at Annual General Meeting under Section 201 of the Companies Act

ACRA Revised Practice Direction No. 9 of 2005: The Interpretation of Sections 201(3A) and 201(3BA) of the Companies Act

ACRA Practice Direction No. 4 of 2005: Applications for Exemptions under Section 201 and 202 of the Companies Act

- Company accounts and accounting standards
- Appointment, remuneration and removal of auditors
- Timing to appoint auditors and file accounts
- Exemption from filing accounts
- Extension of time
- Auditors' duties
- Auditors' negligence

### Selected cases

*Tarling Richard Charles v Public Prosecutor* [1981-1982] SLR(R) 1

*Khoo Ban Hock v Public Prosecutor* [1988] 3 MLJ 22

*Wuu Kheng Chiang George v ECRC Land Pte Ltd* [1999] 2 SLR(R) 352

*Ikumene Singapore Pte Ltd v Leong Chee Leng* [1993] 2 SLR(R) 480

*JSI Shipping (S) Pte Ltd v Teofoongwonglcloong* [2007] 4 SLR(R) 460

*PlanAssure PAC v Gaelic Inns Pte Ltd* [2007] 4 SLR(R) 513

*Standard Chartered Bank v Coopers & Lybrand* [1993] 3 SLR(R) 29

*Hau Tau Khang v Sanur Indonesian Restaurant Pte Ltd and another (Hau Tau Thong, non-party) and another matter* [2011] 3 SLR 1128

**K. SHAREHOLDERS' REMEDIES**

Woon, Chapter 9; Margaret Chew, *Minority Shareholders' Rights and Remedies* (2ne Edition, LexisNexis, 2007). Companies Act, sections 216-216B, 254(1)(i)

- The oppression remedy
- Winding up on the "just and equitable" ground
- Common law derivative actions
- The statutory derivatice action

Selected cases

*Re S Q Wong Holdings (Pte) Ltd* [1987] SLR(R) 286

*Re Gee Hoe Chan Trading Co Pte* [1991] 2 SLR(R)114

*Re Tri-Circle Investment Pte Ltd* [1993] 1 SLR(R) 441

*Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501

*Low Peng Boon v Low Janie* [1999] 1 SLR(R) 337

*Yeo Hung Kiang v Dickson Investment (Singapore) Pte Ltd* [1999] 1 SLR(R) 773

*Kitnasamy Marudapan v Nagatheran Manogar* [2000] 1 SLR(R) 542

*Ng Sing King v PSA International Pte Ltd* [2005] 2 SLR(R) 56

*Sim Yong Kim v Evenstar Investments Pte Ltd* [2006] 1 SLR(R) 685

*Lim Swee Kiang v Borden Co (Pte) Ltd* [2006] 4 SLR(R) 745

*Summit Co (S) Pte Ltd v Pacific Biosciences Pte Ltd* [2007] 1 SLR(R) 46

*Tan Choon Yong v Goh Jon Keat* [2009] 3 SLR(R) 840

*Over & Over Ltd. v Bonvest Holdings Ltd* [2010] 2 SLR 776

*Thio Keng Poo v Thio Syn Pyn* [2010] 3 SLR 143

*Teo Gek Luang v Ng Ai Tiong* [1998] 2 SLR(R) 426

*Hengwell Development Pte Ltd v Thing Chiang Ching* [2002] 2 SLR(R) 454

*Pang Yong Hock v PKS Contracts Services Pte Ltd* [2004] 3 SLR(R) 1

*Ting Sing Ning v Ting Chek Swee* [2008] 1 SLR(R) 197

*Sinwa SS (HK) Co Ltd v Morten Innhaug* [2010] 4 SLR 1

*Tam Tak Chuen v Eden Aesthetics Pte Ltd* [2010] 2 SLR 667

*Urs Meisterhans v GIP Pte Ltd* [2011] 1 SLR 552

*Tan Chin Hoon and others v Tan Choo Suan and others* [2010] SGHC 340

*Fong Wai Lyn Carolyn v Airtrust (Singapore) Pte Ltd* [2011] SGHC 88

## L. CORPORATE CRIME

Woon, Chapter 3, pp118-124; Yeo, Morgan & Chan *Criminal Law in Malaysia and Singapore* (2007), Chapter 37

- Attribution of mens rea to a company
- Personal liability of directors and managers for crimes
- Punishment

### Selected cases

*Trade Facilities Pte Ltd v Public Prosecutor* [1995] 2 SLR(R) 7

*Tom-Reck Security Services Pte Ltd v Public Prosecutor* [2001] 1 SLR(R) 327

*Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653

*Auston International Group Ltd v Public Prosecutor* [2008] 1 SLR(R) 882

*Lim Kopi Pte Ltd v Public Prosecutor* [2010] 2 SLR(R) 413

## M. SHARES

Woon, Chapter 11. Companies Act, sections 62A, 74, 121, 123, 125-128A

- Types of shares
- No par value shares
- Issue of shares
- Share certificates
- Ownership of shares
- Transfer of shares
- Share transfer restrictions
- Class rights

### Selected cases

*Lian Hwee Choo Phebe v Maxz Universal Development Group Pte Ltd* [2009] 2 SLR(R) 62

*Look Chun Heng v Asia Insurance Co Ltd* [1952] MLJ 33

*EG Tan & Co (Pte) v Lim & Tan (Pte)* [1985-1986] SLR(R) 1081

*Pacrim Investments Pte Ltd v Tan Mui Keow Claire* [2008] 2 SLR(R) 898

*Xiamen International Bank v Sing Eng (Pte) Ltd* [1993] 2 SLR(R) 176

*HSBC (Malaysia) Trustee Bhd v Soon Cheong Pte Ltd* [2007] 1 SLR (R) 65



*Auston International Group Ltd Another v Ng Swee Hua* [2009] 4 SLR(R) 628

## **N. MAINTENANCE AND REDUCTION OF CAPITAL**

Woon, Chapter 12. Companies Act, sections 76-76K, 77A-78K, 403

- Prohibition on return of assets to members
- Financial assistance for the acquisition of shares
- Acquisition of shares by the company
- Reduction of capital
- Payment of dividends

### Selected cases

*Merchant Credit Pte Ltd v Industrial & Commercial Realty Co Ltd* [1983-84] SLR(R) 13

*Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] 3 SLR(R) 1064

*Public Prosecutor v Lew Syn Pau* [2006] 4 SLR(R) 210

*Wu Yang Construction Group Ltd v Mao Yong Hui* [2008] 2 SLR(R) 350

## **O. STRIKING-OFF**

Companies Act, section 344

ACRA Guidelines on Submitting an Application for Striking-off a Company

- Striking off requirements
- Striking off procedure

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## Part II: Corporate Insolvency

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See generally:

- (1) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) (Andrew Chan, Consulting Editor, et al.)
- (2) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) (Andrew Chan, General Editor, et al.)
- (3) *Woon's Corporations Law, Chapters L, M, N and O* (Loose-leaf, Lexis-Nexis) (Gregory Vijayendran, Updating Editor, Wee Meng Seng, Sub-editor)
- (4) *Walter Woon on Company Law* (3rd Rev edn), Chapter 13, 16 and 17 (Tan Cheng Han, General Editor, et al.)

### A. CORPORATE INSOLVENCY- SOURCES OF LAW

See generally:

- (1) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt I]
- (2) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.001 - 150.010]

#### Statutory Materials

##### **Arrangements, reconstructions and amalgamations**

(Part VII, Sections 210 to 216A of the Companies Act)

##### **Receivers and Managers**

(Part VIII, Sections 217 to 227 of the Companies Act)

##### **Judicial Management**

(Part VIIIA, Sections 227A to 227X of the Companies Act) (Section 227X makes applicable or potentially applicable provisions of Part X of the Companies Act)

(Section 227T makes applicable to company in judicial management certain provisions of the Bankruptcy Act, and this should be read with the Companies (Application of Bankruptcy Act Provisions) Regulations)

##### Companies Regulations

*Re Engineering Construction (Pte) Ltd (under judicial management)* [1992] 2 SLR(R) 435

*Chew Eu Hock Construction Co Pte Ltd (under judicial management) v Central Provident Fund Board* [2003] 4 SLR(R) 137

*Hitachi Plant Engineering & Construction Co Ltd and another v Eltraco International Pte Ltd and another appeal* [2003] 4 SLR(R) 384

*Re Wan Soon Construction Pte Ltd* [2005] 3 SLR(R) 375

*Neo Corp Pte Ltd (in liquidation) v Neocorp Innovations Pte Ltd* [2006] 2 SLR(R) 717

*Altus Technologies Pte Ltd (under judicial management) v Oversea-Chinese Banking Corp Ltd* [2009] 4 SLR(R) 296

### **Liquidation**

(Part X, Sections 247 to 354 and 377 of the Companies Act)

Section 327(2) and 329 makes applicable to company in liquidation certain provisions of the Bankruptcy Act. In the case of Section 329, this should be read with the Companies (Application of Bankruptcy Act Provisions) Regulations.

Companies (Winding Up) Rules

Companies Regulations

Civil Law Act: Section 4(1)

*Re City Securities Pte* [1995] 2 SLR(R) 746

*Good Property Land Development Pte Ltd (in liquidation) v Société-Générale* [1996] 1 SLR(R) 884

*Re PCChip Computer Manufacturer (S) Pte Ltd (in compulsory liquidation)* [2001] 2 SLR(R) 180

*Panorama Development Pte Ltd (in liquidation) v Fitzroya Investments Pte Ltd and another* [2003] 1 SLR(R) 93

*Show Theatres Pte Ltd (in liquidation) v Shaw Theatres Pte Ltd and another* [2002] 1 SLR(R) 578

### **Bankruptcy Act/Bankruptcy Rules (as imported)**

Sections 98 to 100 and 103 of the Bankruptcy Act (antecedent transactions)

Note that via Section 4(1) of the Civil Law Act, Section 327(2) of the Companies Act and the bankruptcy provisions, rules relating to rights of creditors, secured and unsecured, proofs of debts, valuation of annuities and set-off may also be imported.

### **Registration of Charges**

Part IV, Division 8 of the Companies Act (Section 131 to 137)

### **Rules of Court**

(Electronic Filing Service provisions, Order 88 rule 2(5) and Order 1 rule 2(4))

*Kuah Kok Kim v Chong Lee Leong Seng Co (Pte) Ltd* [1991] 1 SLR(R) 795

*Tohru Motobayashi v Official Receiver and another* [2000] 3 SLR(R) 435

*Woodcliff Assets Ltd v Reflexology and Holistic Health Academy and Others* [2009] SGHC 162

*Woodcliff Assets Ltd v Reflexology and Holistic Health Academy Pte Ltd and others* [2010] SGHC 315

Inherent jurisdiction

Note: Rules of court generally applicable in judicial management.

### **Practice Circulars/Directions**

See practice circulars issued by Official Receiver, which are available via url: <http://www.ipto.gov.sg/news/announcements/practice-circulars.html> See Supreme Court Practice Directions, which are available via url: <http://app.supremecourt.gov.sg/default.aspx?pgID=1>

## **B. INFORMAL REHABILITATION PROCEDURES IN SINGAPORE**

See generally:

*Law and Practice of Corporate Insolvency (Loose-leaf, LexisNexis)* [Chapt II 1-551]

## **C. WINDING UP – OVERVIEW**

### **Types of Winding-Up**

2 main types of liquidation:

Voluntary Liquidation / Compulsory Liquidation:

#### Voluntary Liquidation

Companies Act (Cap 50): Sections 290(1), Section 291, Section 293 and Section 295(1)

#### Members' Voluntary Winding-Up ("MVL")

Generally, Companies Act Part X and Companies (Winding Up) Rules

Conversion of MVL to CVL: (Companies Act Section 295(1))

#### Creditors' Voluntary Winding-Up ("CVL")

Generally, Companies Act Part X, Companies (Winding Up) Rules and applicable bankruptcy provisions.

#### Compulsory winding up

Generally, Companies Act, Part X, Companies (Winding Up) Rules and applicable bankruptcy provisions.

**(1) Court Winding Up (Procedure)**

**Winding-Up by the Court: Inability of Company to Pay Debts**

Locus Standi to apply for winding up order

Companies Act: Section 253

*Re People's Parkway Development Pte Ltd* [1991] 2 SLR(R) 567

*Stonegate Securities Ltd v Gregory* [1980] 1 All ER 241

*Re Crigglestone Coal Ltd* [1906] 2 Ch. 327

*Miharja Development Sdn Bhd & Ors v Tan Sri Datuk Loy Hean Heong & Ors and another application* [1995] 1 MLJ 101

Inability to pay debts/Tests for insolvency

Companies Act: Sections 254(1)(e) and 254(2)

*Re Great Eastern Hotel (Pte) Ltd* [1988] 2 SLR(R) 276

*Chip Thye Enterprises Pte Ltd v Phay Gi Mo* [2004] 1 SLR(R) 434

*Re Cheyne Finance plc (No 2)* [2007] EWHC 2402 (Ch)

*Cornhill Insurance plc v Improvement Services Ltd* [1986] 1 WLR 114

*Byblos Bank v Al-Khudhairy* [1987] BCLC 232

*BNY Corporate Trustee Services Ltd and others v Eurosail-UK 2007-3BL plc and others* [2013] 1 WLR 1408

Presumption of insolvency

Companies Act: Section 254

*Pac-Asian Services Pte Ltd v European Asian Bank AG* [1987] SLR(R) 6

*Ng Tai Tuan v Chng Gim Huat Pte Ltd* [1990] 2 SLR(R) 231

*Re Dayang Construction and Engineering Pte Ltd* [2002] 2 SLR(R) 197

*BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949

Lee Eng Beng, *Excessive Statutory Demands in Winding Up and Bankruptcy* [1997] SJLS 532

**The Court's Discretion in Making the Winding-Up Order**

Disputing a debt on substantial grounds

Companies Act: Section 257

*BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 94 9

*Mohd Zain bin Abdullah v Chimbusco International Petroleum* [2014] 2 SLR 446

*S E Shipping Lines Pte Ltd v Austral Asia Line Pte Ltd* [2012] SGHC 220  
*Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268

*Re Bentimi Pte Ltd* [2003] SGHC 92

*Re Bayoil SA* [1999] 1 All ER 374

Having regard to the wishes of creditors and contributories and other factors (e.g. employees)

Companies Act: Sections 257 and 325

*BNP Paribas v Jurong Shipyard Pte Ltd* [2009] 2 SLR(R) 949

*Raiffeisen Zentralbank Osterreich AG v Continental Chemical Corp Pte Ltd* [2010] 3 SLR 76

Where company is already in voluntary winding up

Companies Act: Sections 253(2)(d), 255(1)

*Korea Asset Management Corporation v Daewoo Singapore Pte Ltd* [2004] 1 SLR(R) 671

## **(2) Creditor's Voluntary Winding Up**

See generally:

- (1) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) (150.313 – 150.319)
- (2) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) (Chapter VI, 2701-2951)
- (3) *Woon's Corporations Law*, (Loose-leaf, Lexis-Nexis) (Chapter O; 3304-3403)
- (4) *Walter Woon on Company Law* (3rd Rev edn) (page 742-745)

*Korea Asset Management Corp v Daewoo Singapore Pte Ltd (in liquidation)* [2004] 1 SLR(R) 671

*Seagate Technology Pte Ltd and anor v. Goh Han Kim* [1994] 3 SLR(R) 836

*Re Lehman Brothers Finance Asia Pte Ltd (in creditors' voluntary liquidation)* [2013] 1 SLR 64

## **(3) Effect Of Winding Up (Including Commencement Of Winding Up)**

See generally:

*Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore), [150.376 - 150.380] and [150.424 - 150.428]

*Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt VI 753-801] and [Chapt VI 1402 to 1552]

*Woon's Corporations Law* (Loose-leaf, Lexis-Nexis) Chapter O, [951 to 954 and 1504]

### **Commencement of Winding Up**

Companies Act: Sections 255, 291(6)

### **Effect of the Winding up**

#### Where beneficial interest in assets lie

*Ayerst v C & K (Construction) Ltd* [1976] AC 167 (HL)

*Ng Wei Teck Michael v OCBC Ltd* [1998] 1 SLR(R) 778

*Power Knight Pte Ltd v Natural Fuel Pte Ltd* [2010] 3 SLR 82

#### Moratorium on legal and enforcement proceedings

Companies Act: Sections 258, 259, 260, 262(3), 299, 334, 334

*Re Tiong Polestar Engineering Pte Ltd* [2003] 4 SLR(R) 1

*Re Wan Soon Construction Pte Ltd* [2005] 3 SLR(R) 375

*Excalibur Group Pte Ltd v Goh Boon Kok* [2012] 2 SLR 999

#### Principles applicable in court granting leave to commence or continue proceedings

*Hull 308, The* [1991] 2 SLR(R) 643

*Jumabhoy Rafiq v Scotts Investment (Singapore) Pte Ltd (in compulsory liquidation)* [2003] 2 SLR(R) 422

#### Effect on contracts

Companies Act: Sections 294(2), 297(4)

*Harrick Engineering Pte Ltd and another v Singapore Finance Ltd and another action* [1997] 2 SLR(R) 609

*Larsen Oil and Gas Pte Ltd v Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore)* [2011] 3 SLR 414

Meng Seng Wee '*Insolvency and the Survival of Contracts*' [2005] JBL 494

### **(4) Substantive Consequences Following Winding Up**

See generally:

- (1) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore), (Chapter 6)

- (2) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt VII]
- (3) *Woon's Corporations Law* (Loose-leaf, Lexis-Nexis) [Chapter O, 5753 – 6151]
- (4) *Goode, Principles of Corporate Insolvency Law* (3rd edn, 2005) 175 – 188

### **Disclaimer of onerous properties**

See generally:

*Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore), [150.445] and [150.445]

*Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt VII 2455] and [Chapt VII 2355-2700]

*Woon's Corporations Law* (Loose-leaf, Lexis-Nexis) [Chapter O, 6102-6151]

### **Statutory materials**

Companies Act: Sections 332(1)(c), 277, 278, 298 and 332

#### Quasi-security and other proprietary interests

*Re David Lloyd & Co* (1877) 6 ChD 339

*Aluminium Industrie Vaasen BV v Romalpa Aluminium* [1976] 2 All ER 552

*Barclays Bank v Quistclose Investments* [1970] AC 567

*Re Kayford Ltd* [1975] 1 All ER 604

*MacJordan Construction Ltd v Brookmont Erostin* [1992] BCLC 350

#### Anti-Deprivation Rule

*Belmont Park Investments PTY Limited v BNY Corporate Trustee Services Limited and Lehman Brothers Special Financing Inc* [2011] 3 WLR 521

#### Avoidance Provisions

See generally:

- (1) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt VII 401-2351]
- (2) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore), [150.701 - 150.785]
- (3) *Woon's Corporations Law* [Chapter O, 5753 – 6101]

#### Registrable but unregistered charges

Companies Act: Section 131

*Dresdner Bank v Ho Mun-Tuke Don* [1992] 3 SLR(R) 307



*Ng Wei Teck v OCBC* [1998] 1 SLR(R) 778

*Smith v Bridgend CBC* [2001] 3 WLR 1347

*Lee Eng Beng, Unregistered Creditor versus Unregistered Charge* (1998) 10 SAcLJ 241

#### Transactions at an undervalue

Bankruptcy Act: Sections 98, 100 and 102

Companies (Application of Bankruptcy Act Provisions) Regulations

Companies Act: Section 329 and 331

Bankruptcy Act: Section 98

*Re MC Bacon Ltd* [1990] BCLC 324

*Agricultural Mortgage Corporation v Woodward* [1995] 1 BCLC 1

*Phillips v Brewin Dolphin Bell Lawrie Ltd* [2001] 1 All ER 673

*Show Theatres Pte Ltd (in liquidation) v Shaw Theatres Pte Ltd and another application* [2002] 1 SLR(R) 578 (reversed on appeal on another point- *Show Theatres Pte Ltd (in liquidation) v Shaw Theatres Pte Ltd and another* [2002] 2 SLR(R) 1143)

*Leun Wah Electric Co (Pte) Ltd v Sigma Cable Co (Pte) Ltd* [2006] 3 SLR(R) 227

*Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542

*Re Sonatacus Ltd* [2007] EWCA Civ 31

#### Unfair preferences

Bankruptcy Act: Sections 99, 100 and 102

Companies (Application of Bankruptcy Act Provisions) Regulations

Companies Act: Section 329

*Re MC Bacon Ltd* [1990] BCLC 324

*Re Sonatacus Ltd* [2007] EWCA Civ 31

*Leun Wah Electric Co (Pte) Ltd v Sigma Cable Co (Pte) Ltd* [2006] 3 SLR(R) 227

*Chee Yoh Chuang v Progen Holdings Ltd* [2010] 4 SLR 1089

*Coöperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International, Singapore Branch) v Jurong Technologies Industrial Corp Ltd (under judicial management)* [2011] 4 SLR 977

*DBS Bank Ltd v Tam Chee Chong and another (judicial managers of Jurong Hi-Tech Industries Pte Ltd (under judicial management))* [2011] 4 SLR 948

Extortionate credit transactions

Bankruptcy Act: Section 103

Companies Act: Section 329 and Companies (Application of Bankruptcy Act Provisions) Regulations

Post-application dispositions

Companies Act: Section 259

*Re Wiltshire Iron Co Ltd* (1868) 3 Ch App 443

*Coutts & Co v Stock* [2000] 1 WLR 906

*Hollcourt (Contracts) Ltd v Bank of Ireland* [2001] Ch 555

*QCD (M) Sdn Bhd v Wah Nam Plastic Industry Pte Ltd* [1997] 1 SLR(R) 270

*Kong Swee Eng v Rolles Rudolf Jurgen August* [2011] 1 SLR 873

Floating charges for past value

Companies Act: Section 330

*Re Orleans Motor Co Ltd* [1911] 2 Ch 41

*Re Yeovil Glove Ltd* [1965] Ch 148

*Re G T Whyte & Co Ltd* [1983] BCLC 311

*Mace Builders (Glasgow) Ltd v Lunn* [1987] Ch 191

*Power v Sharp Investments Ltd* [1994] 1 BCLC 111

*Jurong Data Centre Development Pte Ltd (provisional liquidator appointed) (receivers and managers appointed) v M+W Singapore Pte Ltd and others* [2011] 3 SLR 337

Conveyances defrauding creditors

Conveyancing and Law of Property Act: Section 73B

*Ng Bok Eng Holdings Pte Ltd and another v Wong Ser Wan* [2005] 4 SLR(R) 561

Distributing the Proceeds of Recovery

*Re Yagerphone* [1935] Ch 392

*Re Asiatic Electric Co Pty Ltd* [1970] 2 NSW 612

*Re Oasis Merchandising Services Ltd (in liq) Ward v Aitken and others* [1998] Ch 170

Common law protection of creditors

*Chip Thye Enterprises Pte Ltd (in liquidation) v Phay Gi Mo and Others* [2004] 1 SLR(R) 434

Additional statutory protection of creditors

Companies Act: Sections 339 and 340

*Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict (No 2)* [2005] 3 SLR(R) 263

*Liquidator of Leong Seng Hin Piling Pte Ltd v Chan Ah Lek* [2007] 2 SLR(R) 77

The treatment of delinquent directors

Companies Act: Sections 149, 341

*Re Kie Hock Shipping (1971) Pte Ltd* [1983-1984] SLR(R) 796

*Tay Beng Chuan v Official Receiver and Liquidator of Kie Hock Shipping (1971) Pte Ltd*  
[1987] SLR(R) 123

*Re Lo-Line Electric Motors Ltd* [1988] Ch 477

*Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164

**(5) Powers Of The Liquidator**

See generally:

- (1) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapter VI 3154- 3306]
- (2) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.459 and 150.491-150.494]
- (3) Companies Act: Sections 268, 269, 272, 305, 306 and 310
- (4) *Nova Leisure Pte Ltd v Dynasty Theatre Nite-Club KTV & Lounge Pte Ltd* [2005] 1 SLR(R) 466
- (5) *Edenote Ltd, Re; Tottenham Hotspur plc v Ryman* [1996] 2 BCLC 389

**Remuneration of liquidator**

Companies Act: Section 268 and Section 272

*Re Econ Corp Ltd (in provisional liquidation)* [2004] 2 SLR(R) 264

**The Estate costs rule**

*Chee Kheong Mah Chaly v. Liquidators of Baring Futures (Singapore) Pte Ltd* [2003] 2 SLR(R) 571

*Ho Wing On Christopher v. ECRC Land Pte Ltd* [2006] 4 SLR(R) 817

### **Dissolution and discharge of liquidator**

- (1) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapter VI 2603-2700]
- (2) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.475-150.479 and 150.496 – 150.700]
- (3) *Woon's Corporations Law* (Loose-leaf, Lexis-Nexis)[Chapter O, 2351 to 2403]
- (4) *Walter Woon on Company Law* (3rd Rev edn) (page 789)

Companies Act: Sections 275-276 and 343-349

### **(6) Claims Against The Company**

See generally:

- (1) *Goode Principles of Corporate Insolvency Law (3rd edn, 2005)* 189 – 207, 210 – 211, 213 – 237
- (2) *Goode Principles of Corporate Insolvency Law (2nd edn, 1997)* 194 – 199
- (3) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore), [150.434 - 150.441 and 150.446 to 150.448]
- (4) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt VI 1752-2254]

### **Provable Debts**

Bankruptcy Act (Cap 20): Section 87

Companies Act: Section 327

Civil Law Act: Section 4(1)

*Wight & Ors v Eckhardt Marine GmbH* [2004] 1 AC 147

*Re Berkeley Securities (Property) Ltd* [1980] 3 All ER 513

*Re Islington Metal & Plating Works Ltd* [1983] 3 All ER 218

*Vasudevan v Icab Pte Ltd* [1987] SLR(R) 46

*Re Lehman Brothers Finance Asia Pte Ltd (in creditors' voluntary liquidation)* [2013] 1 SLR 64

*Fustar Chemicals Ltd (Hong Kong) v Liquidator of Fustar Chemicals Pte Ltd* [2009] 4 SLR(R) 458

Lee Eng Beng, *Claims for Interest in Winding Up and Bankruptcy* (1997) 9 SAcLJ 51 at 69-75

### **Procedure for Proof**

Companies Act: Sections 283(1), 288(e)

Companies (Winding Up) Rules: Rules 79 – 95 and 101

Bankruptcy Act: Rules 87(3), 88, 94 and 181

Statement of affairs: Companies Act: Sections 269, 270, 271, 280(1), 288(b), 323 and 342

Companies Regulations: Second Schedule, Form 77

*Teo Han Tong v Tecta Pacific (S) Pte Ltd* [1997] 3 SLR(R) 312

## **(7) The Pari Passu Principle of Distribution**

See generally:

- (1) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore), [150.456 - 150.457]
- (2) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt VI 2301]
- (3) *Vanessa Finch, Corporate Insolvency Law : Perspectives and Principles* (2nd edn, 2009) Chapter 14

### **Statutory materials**

Companies Act: Section 262(4), 300

*British Eagle International Airlines v Air France* [1975] 2 All ER 390

*Hull 308, The* [1991] 2 SLR(R) 643

*Joo Yee Construction Pte Ltd (in liquidation) v Diethelm Industries Pte Ltd and others* [1990] 1 SLR(R) 171

### Exceptions to pari passu principle

See generally:

- (1) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore), [150.458 - 150.472];
- (2) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt VI 2255 - 2602]

### **Preferential creditors**

Companies Act: Section 328

*Re Portbase Clothing Ltd* [1993] Ch 388

### **Insurance and rights of indemnity**

Companies Act: Section 328(6)

Third Parties (Rights Against Insurers) Act (Cap 395)

### **Statutory subordination**

Companies Act: Section 250(1)(g)

*Soden v British and Commonwealth Holdings plc* [1996] 3 All ER 951

### **Consensual subordination**

Goode, Commercial Law, Chap 22 at 614 - 616

*Re Maxwell Communications Corporation plc (No 3)* [1994] 1 All ER 737

*Low Gim Har v Low Gim Siah* [1992] 1 SLR(R) 970

### **Flawed Assets / Anti-deprivation rule**

*Belmont Park Investments Pty Ltd and others v BNY Corporate Trustee Services Ltd and another (Revenue and Customs Comrs and another intervening)* [2012] 1 AC 383

## **(8) Insolvency Set-Off**

See generally:

- (1) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapt VI 1905 - 2101]
- (2) *Set-Off Law and Practice: An International Handbook* (Oxford University Press 2006) (William Johnston, Thomas Werlen General Eds) (Singapore chapter by Andrew Chan)
- (3) Lee Eng Beng, *Security Deposit Arrangements in Insolvency* [1996] SAclJ 458 at 477-487
- (4) Lee Eng Beng, *Trust Funds, Ascertainability of Beneficial Interest and Insolvency Set-Off* [1996] SAclJ 489

### **Conditions for insolvency set-off**

Companies Act: Section 327(2)

Bankruptcy Act: Section 88

*NatWest Bank v Halesowan Presswork & Assemblies* [1972] AC 785

*Stein v Blake* [1996] A.C. 243

*Good Property Land Development Pte Ltd (in liquidation) v Société-Générale* [1996] 1 SLR(R) 884

*BCCI SA (in liq) v Al-Saud* [1997] 1 BCLC 457

*Re BCCI (No. 8)* [1998] AC 214

*Panorama Development Pte Ltd v Fitzroya Investments Pte Ltd* [2003] 1 SLR(R) 93

## D. JUDICIAL MANAGEMENT

See generally:

- (1) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.042 to 150.084]
- (2) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) (Chapter IV)
- (3) *Woon's Corporations Law*, Chapter N (Loose-leaf, Lexis-Nexis)

### Statutory materials

Companies Act: Part VIIIA

#### (1) Initiating Judicial Management And The Court's Jurisdiction To Make A Judicial Management Order

Companies Act: Section 227A and 227B

*Re Genesis Technologies International* [1994] 2 SLR(R) 298

*Re Structures & Computers Ltd* [1998] 1 BCLC 292

*Re Colt Telecom Group plc* [2002] EWHC 2815

*Deutsche Bank AG v. Asia Pulp & Paper Co. Ltd* [2003] 2 SLR(R) 320

*Re Cosmotron Electronics (Singapore) Pte Ltd* [1989] 1 SLR(R) 121

*Re Bintan Lagoon Resort Ltd* [2005] 4 SLR(R) 336

#### (2) Limits To The Court's Jurisdiction To Make A Judicial Management Order

Companies Act: Sections 227(B)(5), 227(B)(6) and 227(B)(7)

*Re Bintan Lagoon Resort Ltd* [2005] 4 SLR(R) 336

#### (3) Effect Of A Judicial Management Order

### Statutory moratorium

Companies Act: Section 227C and 227D

*Wellworth Cash & Carry (North Shields) Ltd v. North Eastern Electricity Board* (1986) 2 BCC 99

*Bristol Airport plc v. Powdrill* [1990] Ch 744

*Re Atlantic Computer Systems (No.1)* [1992] Ch 505

*Re Olympia & York Canary Wharf Ltd* [1993] BCLC 453

*Electro Magnetic (S) Ltd v. DBS Ltd* [1994] 1 SLR 734

*Re Lomax Leisure Ltd* [1999] 3 All ER 22

**Leave to proceed with action prohibited by moratorium**

*Re Atlantic Computer Systems* [1992] Ch 505

*Hinckley Singapore Trading Pte Ltd v Sogo Department Stores (S) Pte Ltd (under judicial management)* [2001] 3 SLR(R) 119

**Moratorium does not extinguish right of interest**

*Re Boonann Construction Pte Ltd* [2000] 2 SLR(R) 399

**Judicial manager to exercise the powers of management, and displacement of management**

Companies Act Section 227G(2); 11th Schedule of the Companies Act

**Judicial manager barred from repayment of debts to which company was subject unless sanctioned by court or towards discharging security etc.**

Companies Act Section 227G(6)

**(4) The Judicial Manager**

**Eligibility**

Companies Act Section 227B(3); Section 227F

**Duties and liabilities of the judicial manager**

Companies Act: Sections 227E, 227G; 227H, 227I, Section 227R and 11th Schedule

*Cendekia Candranegara Tjiang v Yin Kum Choy and others* [2002] 2 SLR(R) 283

*Kotjo Johanes Budisutrisno v Ng Wei Teck Michael and others* [2001] 2 SLR(R) 784

Lee Eng Beng, "Personal Liability Of Judicial Managers and Receivers under the Companies Act" [1996] 8 SAcLJ 249

**General powers**

Companies Act Section 227G and 11th Schedule of the Companies Act

*Re Atlantic Computer Systems PLC* [1992] Ch 505

*Re Baring Futures (Singapore) Pte Ltd; Director of the Serious Fraud Office v Judicial Managers of Baring Futures (Singapore) Pte Ltd* [1995] 2 SLR(R) 757

**Access to information**

Companies Act Sections 227K, 227L and 227W



### **Power to challenge prior and other transactions**

Companies Act Section 227T and 227X(b)

Sections 98 to 100 and 103 of the Bankruptcy Act (antecedent transactions)

*Re Wan Soon Construction Pte Ltd* [2005] 3 SLR(R) 375

*Altus Technologies Pte Ltd v OCBC Ltd* [2009] 4 SLR(R) 296

*Neo Corp Pte Ltd v Neocorp Innovations Pte Ltd* [2006] 2 SLR(R) 717

*Attorney-General v. Wan Soon Construction* [2005] SGDC 6

See further Companies (Application of Bankruptcy Act Provisions) Regulations.

See further discussion above at part III (D)

### **Meeting to consider the judicial manager's proposals**

Companies Act: Section 227M and 227N

Companies Regulations: Regulations 55 to 77

*Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.076 to 150.081]

*Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapter IV 2453]

*Woon's Corporations Law*, Chapter N [1052-1201]

*Re Engineering Construction (Pte) Ltd (under judicial management)* [1992] 2 SLR(R) 435

## **(5) Discharge From Judicial Management**

### **Duty to apply to court for discharge if the purposes specified in the order has been achieved or is incapable of achievement**

Companies Act Section 227Q; Section 227R(3)(d)

### **Failure of creditor's meeting to approve judicial manager's statement of proposals**

Companies Act Section 227N(4)

## **(6) Remuneration And Termination Of Judicial Manager/Management**

See generally:

- (1) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapter IV 2501 - 2603]
- (2) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.058 and 150.072 to 150.075]
- (3) Companies Act: Sections 227B, 227J, 227Q

### **Remuneration of judicial manager**

*Re Econ Corp Ltd (in provisional liquidation)* [2004] 2 SLR(R) 264

### **Termination of the office of judicial manager**

Termination via order of Court: Companies Act Section 227J(1)

Resignation: Companies Act: Companies Act Section 227J(1)

Cessation of status as approved company auditor: Companies Act Section 227J(2)

Discharge of Order: Companies Act Sections 227Q(1) and 227Q(2)

Expiry of judicial management order: Companies Act Sections 227B(8) and 227J(2)

Requirement to vacate office upon discharge of judicial management order and notify registrar/apply to court for order of discharge: Companies Act: Sections 227J(2) and 227Q(3)

## **E. RECEIVERSHIP**

See generally:

- (1) *Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.088 to 150.300]
- (2) *Woon's Corporations Law, Chapter M* (Loose-leaf, Lexis-Nexis)
- (3) *Saheran Suhendran bin Abdullah, Lim Tian Huat, Edwin Chew, Corporate Receivership: The Law and Practice in Malaysia and Singapore* (Butterworths, 1997)

### **Statutory materials**

Companies Act: Part VIII

Companies Act: Section 131

Conveyancing and Law of Property Act: Sections 24(1)(c), 24(2), 25, 26 and 29

Section 4(10) of the Civil Law Act and Item 5 of the First Schedule of the Supreme Court of Judicature Act.

#### **(1) Appointment Of A Receiver**

*Cryne v. Barclays Bank plc* [1987] BCLC 548

*Re Jaffe Ltd (in liq) v Jaffe (No 2)* [1932] NZLR 195

*Bank of Baroda v. Panessar* [1986] 3 All ER 751

*Roberto Building Material Pte Ltd v. OCBC Ltd* [2003] 3 SLR(R) 217

*Sheppard & Cooper Ltd v. TSB Bank plc (No 2)* [1996] 2 All ER 654

**(2) Duties Of Debenture Holder When Deciding Whether To Exercise Power Of Appointment**

*Roberto Building Material Pte Ltd v. OCBC Ltd* [2003] 3 SLR(R) 217

*Re Potters Oils Ltd (No 2)* [1986] 1 All ER 890

**(3) Effect Of Appointment Of Receiver**

*Moss Steamship Company Limited v. Whinney* [1912] A.C. 254

*Haw Par Brothers International Ltd v Overseas Textiles Co Ltd* [1977-1978] SLR(R) 352

**(4) Qualifications Of Receiver**

Companies Act: Section 217

**(5) Receiver's Status**

*Gebrueder Buehler AG v Chi Man Kwong Peter and others* [1988] 1 SLR(R) 185

*Gomba Holdings UK Ltd v Minorities Finance Ltd* [1989] 1 All ER 261

Companies Act: Section 4(1)

**(6) Powers Of Receiver**

Statutory: Companies Act: Section 223 and 224

Conveyancing and Law of Property Act: Section 29

**(7) Duties Of Receiver**

See generally:

Companies Act: Sections 218, 219, 221-226

*Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) [Chapter V: 1203-1704]

*Halsbury's Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.130-150-148]

*Woon's Corporations Law, Chapter M* (Loose-leaf, Lexis-Nexis)

*Medforth v Blake* [2000] Ch 86

*R A Price Securities Ltd v. Henderson* [1989] 2 NZLR 257

*Downsview Nominees v First City Corp Ltd* [1993] AC 295

*Roberto Building Material Pte Ltd v. OCBC Ltd* [2003] 3 SLR(R) 217

*Wee, "Duties of a Mortgagee and a Receiver: Where Singapore Should and Should Not Follow English Law"* (2008) 20 SAclJ 559

**No duty in timing power of sale**

*Den Norske Bank ASA v Acemex Management Co Ltd* [2003] EWCA Civ 1559

**Liabilities in relation to pre-appointment contracts**

*Gosling v Gaskell* [1897] AC 575

*Welsh Development Agency v Export Finance Co* [1992] BCLC 148

*Re Diesels & Components Pty Ltd* (1985) 9 ACLR 825

*Freevale Ltd v Metrostore (Holdings) Ltd* [1984] Ch 199

**Liabilities in relation to post-appointment contracts**

Companies Act (Cap 50): Section 218

*Chin Bobby v Hong Lam Marine Pte Ltd* [1999] 3 SLR(R) 907

Lee Eng Beng, “*Personal Liability Of Judicial Managers and Receivers under the Companies Act*” [1996] 8 SAcLJ 249

**Duty to Pay Preferential Debts**

Companies Act (Cap 50): Section 226 read with 328

*IRC v Goldblatt* [1972] Ch 498

**Effect of Liquidation**

*QCD (M) Sdn Bhd v Wah Nam Plastic Industry Pte Ltd* [1997] 1 SLR(R) 270

*Harrick Engineering Pte Ltd v Singapore Finance Ltd* [1997] 2 SLR(R) 609

**Termination of receivership**

*Rottenberg v Monjack* [1993] BCLC 374

**F. SCHEMES OF ARRANGEMENT (WITHIN AND OUTSIDE JUDICIAL MANAGEMENT)**

See generally:

- (1) *Halsbury’s Laws of Singapore on Insolvency*, Volume 13 (2011, LexisNexis Singapore) [150.011 to 150.040]
- (2) *Law and Practice of Corporate Insolvency* (Loose-leaf, LexisNexis) (Chapter III)
- (3) *Woon’s Corporations Law, Chapter L* (Loose-leaf, Lexis-Nexis)
- (4) *Walter Woon on Company Law* (3rd Rev edn) (Chapter 11- page 663 to 670)

## **Statutory materials**

Companies Act: Part VII

Companies Act: Section 227X

### **(1) Scope And Purpose Of Scheme Of Arrangement**

*Re TPC Korea* [2010] 2 SLR 617

*Daewoo Singapore Pte Ltd v CEL Tractors Pte Ltd* [2001] 2 SLR(R) 791

### **(2) Who Can Apply To Court For Convening Of Scheme Meetings**

Company: Companies Act Section 210(1)

Judicial Manager: Companies Act Section 227B(1)(b)(ii) read with Section 227X(a)

Liquidator: Companies Act Section 210(1)

### **(3) Convening Of Scheme Meetings And Stay Of Proceedings**

*Re Ng Huat Foundations Pte Ltd* [2005] SGHC 112

*Sri Hartamas Development Sdn Bhd v MBf Finance Bhd* [1990] 2 MLJ 31

*Hitachi Plant Engineering & Construction Co Ltd v Eltraco International Pte Ltd* [2003] 4 SLR(R) 384

*UDL Argos Engineering & Heaving Industries Co Ltd v Li Oi Lin* (2001) 4 HKCFAR 358

*Re Kuala Lumpur Industries Bhd* [1990] 2 MLJ 180

*Re Gae Pty Ltd* [1962] VR 252

*McVeigh & Anor v Linen House Pty Ltd and Anor (No 2)* (2000) 1 VR 31

*Re Reid Murray Acceptance Ltd* [1964] VR 82

*In re Savoy Hotel Ltd* [1981] Ch 351

*Re TPC Korea* [2010] 2 SLR 617

*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213

### **(4) Classification Of Creditors**

*SAAG Oilfield Engineering (S) Pte Ltd (formerly known as Derrick Services Singapore Pte Ltd) v Shaik Abu Bakar bin Abdul Sukol and another and another appeal* [2012] 2 SLR 189

*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213

*UDL Argos Engineering & Heavy Industries Co Ltd v Li Oi Lin* [2001] HKCFA 19

*Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd* [2003] 3 SLR(R) 629 (applied UDL Argos)

*Sovereign Life Assurance Co v. Dodd* [1892] 2 QB 573

*Re Horizon Knowledge Solutions Pte Ltd* [2004] SGHC 270

*Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd* [2003] 3 SLR(R) 629

## **(5) Transparency And Provision Of Information**

Companies Act: Section 211

*Re Halley's Departmental Store Pte Ltd* [1996] 1 SLR(R) 81

*Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd* [2003] 3 SLR(R) 629

*Re Econ Corp* (in provisional liquidation) [2004] 2 SLR(R) 264

*Re Heron International NV* [1994] 1 BCLC 667

*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 2 SLR 213

*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 4 SLR 1182

## **(6) Court Discretion To Approve Scheme**

*Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd* [2003] 3 SLR(R) 629

*Re Halley's Departmental Store Pte Ltd* [1996] 1 SLR(R) 81

*Daewoo Singapore Pte Ltd v CEL Tractors Pte Ltd* [2001] 2 SLR(R) 791

## **(7) Implementation Of Scheme**

Companies Act: Section 212

*Hitachi Plant Engineering & Construction Co Ltd and another v Eltraco International Pte Ltd and another appeal* [2003] 4 SLR(R) 384

*Chew Eu Hock Construction Co Pte Ltd (under judicial management) v Central Provident Fund Board* [2003] 4 SLR(R) 137

*The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] 3 SLR(R) 121

**(8) Remuneration of Scheme Manager / Disclosure**

*The Royal Bank of Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd and another appeal* [2012] 4 SLR 1182

**G. INSOLVENCY OF OTHER SELECTED ENTITIES**

**Banks**

See generally:

Banking Act (Cap. 19): Sections 2, 7, 48, 55, 61, 62, 62A and 79 of the BA

**Business Trusts**

See generally:

Business Trusts Act (Cap 31A): Sections 28, 32(2), 52, 103 and Part VII

Rules of Court: Order 80

**Insurance Companies**

Insurance Act: Sections 17, 18, 41, Part IIIAA (Division 5)

**Limited Liability Partnerships**

See generally:

Limited Liability Partnerships Act (Cap. 163A): Sections 24, 30(1), 34 and Fifth Schedule

Limited Liability Partnerships (Winding Up) Rules

**H. CROSS-BORDER RESCUE AND INSOLVENCY**

*Rubin and another v Eurofinance; Re New Cap Reinsurance Corpn Ltd* [2012] UKSC 46

*Beluga Chartering GmbH v Beluga Projects* [2014] SGCA 14

*Singularis Holdings Limited v PricewaterhouseCoopers* [2014] UKPC 36

*Manharlal Trikamdas Mody v Sumikin Bussan International (HK)* [2014] 3 SLR 1161

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## Part III: Joint Ventures

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### A. CHOOSING THE LEGAL FORM

#### (1) Contractual Joint Ventures

- Common law partnerships

#### (2) Equity Joint Ventures

- Companies
- Limited Liability Partnerships

#### Recommended Text

*Joint Ventures (4th Edition, Ian Hewitt, Thomson Sweet & Maxwell 2008) ("Hewitt"), Chapters 3, 4 and 5*

*Walter Woon on Company Law, (3rd Edition, Tan Cheng Han SC (editor), Thomson Sweet & Maxwell 2009) ("Walter Woon"), Chapter 1*

#### Statutes

*Companies Act, Chapter 50 of Singapore ("Companies Act")*

*Limited Liability Partnerships Act, Chapter 163A of Singapore*

*Partnership Act, Chapter 391 of Singapore*

### B. CONTRACTUAL JOINT VENTURES

#### (1) Uses:

- R&D/Technology Collaborations
- Works Project Joint Ventures
- Joint Operating Agreements
- Property Development Joint Ventures

#### (2) Key Matters for Consideration:

- Objectives
- Responsibilities/Contributions
- Governance
- Operational management
- Allocation of Costs
- Sharing of Profits/Income



- Ownership of Intellectual Property Rights
- Sharing of liabilities/indemnities
- Term and termination
- Consequences of termination
- Restrictive Covenants
- Anti-Trust/Competition Issues
- Confidentiality
- Governing law and dispute resolution

Recommended Text

*Hewitt, Chapter 4*

**C. EQUITY JOINT VENTURES**

**(1) Capitalisation/Funding**

- Ordinary and Preference Shares
- Cash Injection
- Contribution in Kind
- Shareholder Loans
- Security from Shareholders
- Future Financing Commitments
- Profit Distribution/Dividend Policy

Recommended Text

*Hewitt, Chapter 7*

Statutes

*Sections 4, 64, 70, 75, 161, 180 and 403, Companies Act*

**(2) Governance and Management**

- Composition of Board of Directors/Managers
- Control and Decision Making
- Operational Management (eg. CEO, CFO, COO)
- Rights and Obligations of Shareholders/Partners
- Obligations and Liabilities of Nominee Directors

Recommended Text

*Hewitt, Chapter 8*

*Walter Woon, Chapter 8*

Statutes

*Sections 157, 157A, 157C and 158, Companies Act*

*Selected Cases*

*Boulting v Association of Cinematograph, Television and Allied Technicians [1963] 2 QB 606*

*Oversea-Chinese Banking Corp Ltd and another v Justlogin Pte Ltd and another [2004] 2 SLR(R) 675*

*Kumagai Gumi Co Ltd v Zenecon Pte Ltd [1995] 2 SLR(R) 304*

**(3) Minority Investment and Protection**

- Voting Rights at the Board and Shareholder Level
- Reserved Matters
- Remedies for Minority Oppression under Sections 216 and 216A of the Companies Act

Recommended Text

*Hewitt, Chapter 9*

Statutes

*Matters which, under the Companies Act, would require a special resolution by a company: Sections 17(7), 18(4), 26(1), 28, 29(3), 30, 31, 33, 34, 37, 65(2), 76(10), 76D, 76DA, 78, 78B, 78C, 78G, 168(5)(b), 170, 174(9), 215C, 215D, 232, 254, 290, 294(3), 305, 306, 309*

*Matters which, under the Companies Act, would require an ordinary resolution unless the Articles of Association require a special resolution: Sections 71(1), 76C, 76E, 96(1)(b), 152(1) read with (2), 153(6), 160(1), 161(1), 162(1)(c), 162, 168(1), 169, 174(9), 205(4), 205(4), 205(7)(b), 205(16)(a), 210, 210(8)(a), 227B(1), 278(6), 290(1)(a), 294(1), 294(2), 294(4), 297(1), 298(1), 320(3)(b)*

*Sections 26A, 39, 184, 216 and 216A, Companies Act*

*Selected Cases & Articles*

*Russell v Northern Bank Development Corp Ltd [1992] 1 W.L.R. 588*

*Giora Shapira, "Voting Agreements and Corporate Statutory Powers" (1993) 109 LQR 210; B J Davenport, "What Did Russell v. Northern Bank Development Corporation Ltd. Decide?" (1993) 109 LQR 553*

**(4) Transfers of Shares**

- Transfer Restrictions
- Right of First Offer / Right of First Refusal

- Tag Along / Drag Along Clauses
- Intra-group Transfers

Recommended Text

*Hewitt, Chapter 12*

**(5) Deadlock**

**Management Structures to Avoid Deadlock**

- Independent Director's Swing Vote
- Casting Vote
- Chairman Rotation

**Deadlock Resolution Mechanisms:**

- Referral to shareholders/ parties' chairmen or chief executives
- Referral to mediation/expert/arbitration
- Voluntary Winding Up
- Put and Call Options
- Shoot-Out Procedures, eg. Russian Roulette, Texas Shoot-Out, Sealed Bids

Recommended Text

*Hewitt, Chapter 10*

**(6) Termination**

- Fixed Term Joint Venture
- IPO
- Termination by mutual agreement
- Termination for cause (e.g. default, change in control)
- Insolvency of Joint Venture
- Consequences of Termination (put/call at premium/discount, winding up of joint venture)

Recommended Text

*Hewitt, Chapter 13*

**(7) Other Considerations**

- Restrictive Covenants
- Anti-Trust/ Competition Issues
- Confidentiality

- Joint Venture Articles of Association
- Governing law and dispute resolution

Recommended Text

*Hewitt, Chapters 11 and 14*

Statutes

*Section 54, Competition Act, Chapter 50B of Singapore*

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## Part IV: Take-Overs and Mergers Syllabus

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### A. INTRODUCTION

#### (1) Legal and regulatory framework

- Securities and Futures Act (Chapter 289)
- Companies Act (Chapter 50)
- Competition Act (Chapter 50B)
- Singapore Code on Take-overs and Mergers (the “Take-over Code”)
- Listing Rules of the Mainboard of the Singapore Exchange Securities Trading Limited (the “SGX-ST Listing Manual”)

#### (2) The Take-over Code

- Objective of the Take-over Code
- Legal effect of the Take-over Code
- The Take-over Code is administered by the Securities Industry Council (the “SIC”)
- Entities which are subject to the Take-over Code

#### (3) Means of effecting control of public entities: The common methods to take-over or acquire securities of a target entity so that the target entity becomes a subsidiary of the acquiring entity includes:

- Offer of cash, shares or other securities (or a mixture of any of these) for a take-over bid
- Reverse take-overs
- Scheme of arrangement
- Amalgamation
- Voluntary delisting

### B. TAKE-OVER OFFERS

#### (1) Making An Offer

- Concept of “acting in concert” in ascertaining whether take-over offers have to be made
- Secrecy
- Equal treatment of shareholders
- Irrevocable undertakings
- Announcement / withdrawal of offer
- Acceptance of offer

**(2) Types Of Take-Over Offers**

- Mandatory offer
  - What triggers a mandatory offer
  - Conditions attached to the offer
  - Minimum offer price
  - Threshold for acceptance
  - Nature of consideration
  - Chain principle
  - Whitewash
- Voluntary offer
  - Conditions attached to the offer
  - Minimum offer price
  - Threshold for acceptance
  - Nature of consideration
- Partial offer
  - Approval by the SIC

**(3) Regulator's Consents**

- SIC
- SGX-ST
- Regulators of specific industry
- Competition Commission of Singapore – Merger control

**(4) Merger Control**

- The Competition Act sets out the competition law regime in Singapore
- The Competition Commission of Singapore (the "CCS") administers and enforces the Competition Act. The CCS website ([www.ccs.gov.sg](http://www.ccs.gov.sg)) contains useful information on the competition law regime and guidelines issued by the CCS to supplement the provisions in the Competition Act.
- Merger control regime: Prohibition under section 54 of the Competition Act (substantial lessening of competition within any market for goods or services in Singapore)
  - Elements and scope of the "section 54 prohibition"
  - Types of merger that falls within the scope of section 54
  - Self-assessment and voluntary notification: CCS Guidelines on Merger Procedures, CCS Guidelines on the Substantive Assessment of Mergers and CCS Guidelines on Market Definition
  - Effect of contravening section 54

**(5) Some Key Issues Relating To Take-Over Offers**

- Prohibitions against financial assistance
- Break fees
- Timetable – prescribed in the Take-over Code
- Documentation – accuracy of statement
- Duties of directors and controlling shareholders of target company
- Shareholder disclosure obligations during offer period
- Financial disclosures
- Dealing restrictions / insider dealing
- Non selective disclosure of information to shareholders, analysts or stockbrokers
- Suspension of trading and compulsory acquisition of minority shareholdings

**(6) Threshold For Triggering Compulsory Acquisition**

- Compulsory acquisition procedures under section 215 of the Companies Act

**C. REVERSE TAKE-OVERS**

**(1) Legal Framework**

- Rule 1015 of the SGX-ST Listing Manual (very substantial acquisitions or reverse take-overs)
- Take-over Code – Appendix 1

**(2) Requirements Under Rule 1015 Of The SGX-ST Listing Manual**

- When an acquisition is subject to Rule 1015 of the SGX-ST Listing Manual
- Approval of the SGX-ST
- Convening a general meeting and obtaining shareholders' approvals for the acquisition
- Shareholders entitled to vote on the acquisition
- Required majority for approving the acquisition
- Requirements to be satisfied by the enlarged group
- Disclosure requirements to applicable to the announcement of the acquisition and the shareholder circular

**D. SCHEMES OF ARRANGEMENT**

**(1) Legal framework**

- Section 210 of the Companies Act

- Take-over Code – Exemption from full compliance

**(2) Requirements under section 210 of the Companies Act**

- Types of entities subject to the provisions on schemes of arrangement
- Application to court to convene a scheme meeting:
  - Who may initiate a scheme
- Convening a scheme meeting and obtaining shareholders' approvals for a scheme
  - Shareholders entitled to vote on a scheme
  - Required majority for approving a scheme
- Applying for court order to sanction a scheme

**E. ALMAGAMATION**

**(1) Legal Framework**

- Sections 215A to 215J of the Companies Act – amalgamation without court order
- Take-over Code – Exemption from full compliance

**(2) Requirements Under Sections 215A To 215J Of The Companies Act**

- Who may make use of the amalgamation process
- **Types of amalgamation process:** Full and short-form amalgamation
- Full amalgamation process
  - Requirements on the amalgamation proposal
  - Duty on board of directors of amalgamating company:
    - Board resolutions
    - Solvency statements
    - Director's declaration
  - Shareholders' approval of amalgamation proposal
  - Notification to secured creditors and other relevant parties
  - Registration of amalgamation
- Short-form amalgamation process
  - Duty on board of directors of amalgamating company:
  - Solvency statements
  - Director's declaration
  - Shareholders' approval of amalgamation proposal
  - Notification to secured creditors
  - Registration of amalgamation
- Court intervention in amalgamation process



**F. VOLUNTARY DELISTING**

**(1) Legal Framework**

- Rules 1307 and 1309 of the SGX-ST Listing Manual
- Take-over Code – Exemption from full compliance

**(2) Requirements Under Rules 1307 And 1309 Of The SGX-ST Listing Manual**

- Approval of the SGX-ST
- Convening a delisting meeting and obtaining shareholders' approvals for the delisting proposal
  - Shareholders entitled to vote on a delisting proposal
  - Required majority for approving a delisting proposal
- Reasonable exit alternative/offer for the shareholders
  - Nature of consideration
  - Compliance with Take-over Code
- Appointment of an independent financial adviser to advise on exit offer

**TAKE-OVERS AND MERGERS READING LIST**

Text books

*Mergers and Acquisitions in Singapore: Law and Practice* by Wan Wai Yee and Umakanth Varottil, 2013 (LexisNexis)

*Take-overs and Mergers* (2nd Ed) by Chandrasegar Chidambaram, 2010 (LexisNexis)

*Corporate Acquisitions and Mergers, Volume 3 (Singapore Chapter)*, April 2013 – (Looseleaf) by Peter FC Begg (Editor-in-Chief), Singapore Chapter, by Sunit Chhabra, Andrew M Lim, Lim Mei, Lim Pek Bur, Steven Seow, Daren Shiau and Tang Siau Yan (Wolsters Kluwer)

*Woon's Corporations Law, Volume 2*, December 2013 – (Looseleaf), Chapter Q on Code on Take-overs and Mergers, by FarhanaSiddiqui (LexisNexis)

*Walter Woon on Company Law* (3rd Ed) by Prof Tan Cheng Han (General Editor), 2009 (Sweet & Maxwell)

*Merger Control in Singapore: Law and Practice* by Daren Shiau and Elsa Chen, 2011 (LexisNexis)

### Articles

*Mergers and Acquisitions (public): Singapore*, PLC Cross-border M&A Handbook(Country Q&A), Practical Law Company (1 March 2012) by Andrew Ang and Milton Toon, WongPartnership LLP (<http://crossborder.practicallaw.com>)

*Amalgamation – New Method to Merge and Take-over Companies* [2008] 20 SAclJ 135 by Wee Meng Seng, Assistant Professor, Faculty of Law, National University of Singapore

*Effecting Compulsory Acquisition via the Amalgamation Procedure in Singapore*[2007] 2 SJLS 323 by Wan Wai Yee, Assistant Professor, School of Law, Singapore Management University

*Competition: Singapore*, International Joint Ventures (Country Q&A), Practical Law Company (21 August 2014) by Daren Shiau and Lim Yenn Weii, Allen & Gledhill LLP (<http://crossborder.practicallaw.com>)

### Statutes

Companies Act (Chapter 50), sections 76 and 76A (prohibition against financial assistance), 79 to 92 (substantial shareholding disclosure requirements), 210 to 212 (schemes of arrangement), 215 (compulsory acquisition) and 215A to 215J (amalgamation)

Competition Act (Chapter 50B), sections 54 to 60 (merger control)

Securities and Futures Act (Chapter 289), Part VII, sections 130 to 137ZG (substantial shareholding and unitholding disclosure requirements), 138 (Securities Industry Council), 139 (Take-over Code) and 140 (Offence relating to take-over offers)

### Code, rules and practice notes issued by SIC

Singapore Code on Take-overs and Mergers available at [www.mas.gov.sg/sic](http://www.mas.gov.sg/sic)

SIC Practice Statements and Guidelines available at MAS website at [www.mas.gov.sg/sic](http://www.mas.gov.sg/sic)

### Listing rules

Listing Rules of the Mainboard of the Singapore Exchange Securities Trading Limited available at [rulebook.sgx.com](http://rulebook.sgx.com)

### Competition Commission of Singapore (CCS) Guidelines

CCS Guidelines relating to the merger control regime available at CCS website at [www.ccs.gov.sg](http://www.ccs.gov.sg)