Bills Committee on Companies Bill
Follow-up actions to be taken by the Administration
for the meeting on 8 July 2011 in relation to Part 5

Purpose

This paper sets out the Administration's response to the following issue raised by Members at the Bills Committee meeting on 8 July 2011 relating to Part 5:-

> **<u>Part 5 – Transactions in relation to Share Capital</u>**
>
> The difference between the buy-back out of capital provisions in the Companies Bill (CB) and the UK Companies Act 2006 (UKCA 2006) regarding the treatment of "revaluation reserve".

Administration's response

<u>Part 5 – Transactions in relation to Share Capital</u>

The difference between the buy-back out of capital provisions in the CB and the UKCA 2006 regarding the treatment of "revaluation reserve"

<u>UKCA 2006</u>

2. Under the UKCA, the relevant provision is section 734(3), which reads as (emphasis added):-

> "If the permissible capital payment[1] is greater than the nominal amount of the shares redeemed or purchased—

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[1] The extent of any payment out of capital is restricted to what is described as "the permissible capital payment". In gist, the rule is that any distributable profits and any proceeds of fresh issue made for the purpose of the redemption or buy-back must first be used before resort may be had to a payment out of capital. See the 2nd paragraph in page 334 of Paul Davies, *Gower and Davies' Principles of Modern Company Law* (8th edition, 2008).

(a) the amount of any capital redemption reserve, share premium account or fully paid share capital of the company, and

(b) any amount representing unrealised profits of the company for the time being standing to the credit of any <u>revaluation reserve</u> maintained by the company,

may be reduced by a sum not exceeding (or by sums not in total exceeding) the amount by which the permissible capital payment exceeds the nominal amount of the shares."

<u>CB</u>

3. Under the CB, clause 264(2) sets out that:-

"On redemption or buy-back of its own shares, a company must—

(a) reduce the amount of its share capital if the shares were redeemed or bought back out of capital;

(b) reduce the amount of its profits if the shares were redeemed or bought back out of profits; or

(c) reduce the amount of its share capital and profits proportionately if the shares were redeemed or bought back out of both capital and profits,

by the total amount of the price paid by the company for the shares."

<u>UKCA 2006 *vs* CB</u>

4. When comparing section 734(3) of the UKCA 2006 with clause 264(2) of the CB, the main difference is that under the CB, a buy-back may only be paid out of capital but not the unrealised revaluation reserve.

5. Clause 264(2) of the CB is based on section 76G of the Singapore Companies Act[2] (SCA). We have adapted section 76G to the CB because it is clear and straightforward. Also, section 76G does not make any reference to "capital redemption reserve", "nominal amount" and "share premium" given a mandatory no-par regime is being adopted in the SCA. Therefore, section 76G is more relevant in the context of the CB as a mandatory no-par regime is proposed to be adopted in the CB.

Financial Services and the Treasury Bureau
Companies Registry
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[2] Section 76G of the SCA is as follows:-

Reduction of capital or profits or both on cancellation of repurchased shares

76G. Where under section 76C, 76D, 76DA or 76E, shares of a company are purchased or acquired, and cancelled under section 76B (5), the company shall —

(a) reduce the amount of its share capital where the shares were purchased or acquired out of the capital of the company;

(b) reduce the amount of its profits where the shares were purchased or acquired out of the profits of the company; or

(c) reduce the amount of its share capital and profits proportionately where the shares were purchased or acquired out of both the capital and the profits of the company,

by the total amount of the purchase price paid by the company for the shares cancelled.