

16. EXPERTS' REPORTS ON THE PREVAILING REGULATIONS ON THE REPATRIATION OF PROFITS AND THE RELEVANT LAWS AND REGULATIONS (*Cont'd*)
(Prepared for inclusion in this Prospectus)

CitiLegal LLC

mTouche Technology Berhad
17 June 2005

(v) **Charges on the property of the Company**

Under Section 131 of the Companies Act (Cap. 50) ("**the Act**"), where a company creates certain types of charges over its property, the company must register these charges with the ACRA.

(vi) **Alteration of Share Capital**

Section 71 of the Act provides that a company, if so authorised by its articles, may in general meeting alter the conditions of its memorandum in any one or more of the following ways:

- (a) increase its share capital by the creation of new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination;
- (d) subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum, so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled.

(vii) **Purchase by a company of its own shares**

A company is generally prohibited from acquiring its own shares (amongst other things) under Section 76 of the Act. However, this general prohibition is subject to any other express provisions of the Act which may allow such an acquisition in certain circumstances.

Section 76(5) of the Act provides that if a company contravenes the abovementioned prohibition, the company shall not be guilty of an offence, notwithstanding Section 407 of the Act, but each officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 years or to both.

(viii) **Appointment and duties of directors**

Part V Division 2 of the Act sets out the various provisions relating to directors, including, amongst others, appointment of directors, directors' qualifications, duties and powers, dealings with directors and keeping of records relating to directors.

Section 145(1) of the Act provides that every company shall have at least one director who is ordinarily resident in Singapore and, where the company only has one member, that sole director may also be the sole member of the company.

The directors of a company have certain duties, both prescribed by the Act, as well as in common law. These include, amongst others, the broad categories of a duty of good faith and a duty to exercise care and skill. The former includes a duty to act in the best interests of the company and a duty of disclosure.

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(ix) Conduct of Meetings and Proceedings of a company

Part V Division 3 of the Act sets out rules and procedures for the convening of meetings of the shareholders of a company and the proceedings thereof.

(x) Loan to directors

Section 162(1) of the Act prohibits a company (other than an exempt private company) from making a loan to a director of the company or of a company which by virtue of section 6 of the Act is deemed to be related to that company, or entering into any guarantee or providing any security in connection with a loan made to such a director by any other person, subject to the exceptions in Section 162(1)(a) to (d). The reference to a director above includes a reference to such director's spouse, son, adopted son, step-son, daughter, adopted daughter and step-daughter.

Notwithstanding the above, a company shall not make any loan, or enter into any guarantee, or the provision of any security pursuant to Section 162(1)(a) or (b) unless the conditions of Section 162(2) are satisfied.

Subject to the other provisions of or exceptions in the Act, Section 163 of the Act also prohibits a company (other than an exempt private company) from

- (a) making a loan to another company; or
- (b) entering into any guarantee or providing any security in connection with a loan made to another company by a person other than the first-mentioned company, if a director or directors of the first-mentioned company is or together are interested in shares in the other company of a nominal value equal to 20% or more of the nominal value of its equity share capital.

(xi) Shareholders Rights and Obligations

Being a shareholder does not make such person a member of a company, and a shareholder who is not a member is not entitled to exercise any of the rights of membership. A person who agrees to become a member of a company and whose name is entered in the register of members shall be a member of the company.

Members are conferred certain rights under the Act, the Articles and/or general law. These include, amongst others, the right

- (a) to have the memorandum and articles observed,
- (b) to have access to the company's records and have certain information provided to them,
- (c) to attend and vote at general meetings, and
- (d) to be treated fairly.

Conversely, members have obligations to the other members of the company to act in accordance with the rights which such other members are entitled to. Generally, members also have various obligations to the company, its directors and other parties under the Act and general law.

(xii) Protection of Minority Shareholders

Remedies available to minority shareholders are found in the Act as well as under general law (including case law on the subject).

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Generally, the principal remedies of a minority shareholder would include: -

- (a) Derivative actions by a shareholder: This is an action brought by a member in his own name, but to enforce the company's rights, and must fall within one of the exceptions to the *Foss v Harbottle* rule.
- (b) Section 216 of the Act may be invoked where there is oppression of a member, where a member's interests are disregarded, or where an act or resolution unfairly discriminates against or is prejudicial to the member.

Apart from the above, there are also various other more specific protections under the Act and/or general law, including

- the right of a minority shareholder to block a variation or abrogation of their class rights in accordance with Section 74 of the Act, or
- the right to petition for a winding up of the company on the grounds it is just and equitable to do so under Section 254(1)(i) of the Act.

(xiii) Securities Offering

The provisions relating to offers of securities under the Act have been migrated to the Securities and Futures Act (Cap. 289) ("SFA").

A company which wishes to offer its shares to the public must comply with, inter alia, the provisions of SFA, the regulations issued pursuant to the SFA, the Act and the Singapore Exchange Securities Trading Ltd's ("SGX-ST") Listing Manual.

(xiv) Takeovers and Mergers

The rules and regulation governing take over offers that were previously set out in the Act and the Securities Industries Act (Cap. 289) are now consolidated and migrated to the SFA. The SFA provisions are to be read together with its regulations and codes enacted from time to time, as well as the Act.

Relevant codes and regulations would include the Singapore Code on Takeovers and Mergers issued by the Monetary Authority of Singapore and (where applicable) the SGX-ST's Listing Manual.

(xv) Arrangements and reconstructions

Part VII of the Act sets out (i) the provisions on a company's power to compromise with its creditors and members and (ii) the provisions for facilitating reconstructions and amalgamation of companies.

(xvi) Accounting records

Under the Act, every company and the directors and managers thereof shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.

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(xvii) Filing/keeping and inspection of corporate records

The Act provides that a company must maintain certain registers (amongst other things) and such registers include a register of members, register of substantial shareholders, register of directors, managers, secretaries and auditors, register of directors's shareholdings and register of charges.

The Act also provides for certain returns to be lodged or filed with the Registrar at the ACRA and for penalties for failure to file or the late filing thereof.

Section 12(2) of the Act provides that any person may, on payment of the prescribed fee, inspect any document filed or lodged with the Registrar or a copy thereof. Members also have rights of inspection on certain records and information of a company.

We have not addressed any requirements of a company to maintain and/or keep certain records, documents or information pursuant to other specific legislation that may apply to the Company, such as the Income Tax Act (Cap. 134).

(xviii) Accounts, consolidated accounts and directors report

The Act provides that the directors of every company shall, at a date not later than 18 months after the incorporation and subsequently at least once in every calendar year at intervals of not more than 15 months, lay before the company at its annual general meeting a profit and loss account for the period since the preceding account (or in the case of the first account, since the incorporation of the company) made up to the relevant date.

The directors of a company shall take reasonable steps to ensure that the accounts are audited as required by Part VI of the Act not less than 14 days before the annual general meeting of the company and shall cause to be attached to those accounts the auditors' report that is furnished to the directors under Section 207(1A) of the Act.

(xix) Winding-up procedures

Part X of the Act provides that the winding up of a Singapore company may either be:

- (a) by the Court; or
- (b) voluntary.

A voluntary winding up may be either a members' voluntary winding up or a creditors' voluntary winding up, depending on whether a declaration of solvency in accordance with Section 293 of the Act is made.

(xx) Goods and Services Tax

Under the Goods and Services Tax Act ("GST Act") (Cap. 117A), goods and services tax is charged on the supply of goods and services in Singapore (including anything treated as such supply) and on the importation of goods into Singapore, in accordance with the provisions of the GST Act.