

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 6. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

#### 6.2 Basis of preparation of audited Combined Financial Statements (cont'd)

##### **Basis of preparation under common control business combination and subsidiaries**

A business combination involving entities under common control is a business combination in which all the combining entities or business are ultimately controlled by the same party or parties both before and after the business combination, and that control is not transitory. The Acquisition resulted in a business combination involving common control entities, and accordingly the accounting treatment is outside the scope of IFRS 3 Business Combination. For such common control business combinations, the merger accounting principles are applied to include the assets, liabilities, results, changes in equity and cash flows of the combining entities in the audited Combined Financial Statements.

In applying merger accounting, components of financial statements of the combining entities or businesses for the reporting period in which the common control combination occurs are included in the audited Combined Financial Statements of the combined entity as if the combination had occurred from the date when the combining entities or businesses first came under the control of the controlling party or parties.

A single uniform set of accounting policies is adopted by the combined entity. Therefore, the combined entity recognised the assets, liabilities and equity of the combining entities or businesses at the carrying amounts recognised previously in the audited Combined Financial Statements of the controlling party or parties prior to the common control combination. The carrying amounts are included as if such audited Combined Financial Statements had been prepared by the controlling party or parties, including adjustments required to conform to the combined entity's accounting policies and applying those policies to all periods presented.

There is no recognition of any goodwill or excess of the acquirer's interest in the net fair value of the acquiree's identifiable assets, liabilities and contingent liabilities over cost at the time of the common control combination. The effects of all transactions between the combining entities or businesses, whether occurring before or after the combination, are eliminated in preparing the audited Combined Financial Statements of the combined entity.

Subsidiaries are entities controlled by the Group. Control exists when the Group has the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities. The existence and effect of potential voting rights that are currently exercisable or convertible are considered when assessing whether the Group control another entity.

Shares in subsidiaries are stated at cost less accumulated impairment losses, if any, on an individual subsidiary basis.

For acquisition of subsidiaries under common control, the identifiable assets and liabilities were accounted for at their carrying values, in a manner similar to the pooling-of-interest method of consolidation.

In preparing the audited Combined Financial Statements, transactions, balances and unrealised gains on transactions between the combining entities are eliminated. Unrealised losses are also eliminated but are considered an impairment indicator of the assets transferred.

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 6. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

#### 6.2 Basis of preparation of audited Combined Financial Statements (cont'd)

##### Property, plant and equipment

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses, if any. The cost of an asset comprises its purchase price and any directly attributable costs of bringing the asset to the working condition and location for its intended use. Expenditure incurred after property, plant and equipment has been put into operation, such as repairs and maintenance, is normally charged to the income statement in the period in which it is incurred. In situations where it can be clearly demonstrated that the expenditure has resulted in an increase in the future economic benefits expected to be obtained from the use of the property, plant and equipment, and the expenditure of the item can be measured reliably, the expenditure is capitalised as an additional cost of that asset.

Depreciation is calculated on the straight-line basis to write off the cost of property, plant and equipment, less any estimated residual values, over the following estimated useful lives:

Plant and machinery	5 - 10 years
Office equipment	5 years
Moulding equipment	3 - 5 years
Motor vehicle	3 years

If there is a change in the level of usage and technological developments affecting the useful lives and the residual values of these assets, the residual values, useful lives and depreciation method will be reviewed and adjusted as appropriate at each balance sheet date.

For acquisition and disposal during the year, depreciation is provided from the month of acquisition and to the month before disposal respectively. Fully depreciated property, plant and equipment are retained in the books of accounts until they are no longer in use.

The gain or loss on disposal or retirement of an item of property, plant and equipment recognised in the combined income statement is the difference between the net sales proceeds and the carrying amount of the asset.

##### Impairment of non-financial assets

An assessment is made at each balance sheet date of whether there is any indication of impairment of the Group's property, plant and equipment and land use rights, or whether there is any indication that an impairment loss previously recognised for an asset in prior years may no longer exist or may have decreased. If any such indication exists, the asset's recoverable amount is estimated. An asset's recoverable amount is calculated as the higher of the asset's value in use or its net selling price.

An impairment loss is recognised only if the carrying amount of an asset exceeds its recoverable amount. An impairment loss is charged to the combined income statement in the period in which it arises.

A previously recognised impairment loss is reversed only if there has been a change in the estimates used to determine the recoverable amount of an asset, and to the extent that the carrying amount does not exceed the carrying amount that would have been determined, had no impairment loss been recognised for the asset in prior years.

A reversal of an impairment loss is credited to the combined income statement in the period in which it arises.

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 6. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

#### 6.2 Basis of preparation of audited Combined Financial Statements (cont'd)

##### **Financial assets**

Financial assets which are within the scope of IAS 39, other than hedging instruments, are classified as either financial assets at fair value through income statement, loans and receivables, held-to-maturity investments, or available-for-sale financial assets. Financial assets which are initially recognised at fair value are assigned to the different categories by management on initial recognition, depending on the purpose for which the assets were acquired.

The designation of financial assets is re-evaluated and classification may be changed at the reporting date with the exception that the designation of financial assets at fair value through income statement is not revocable.

All financial assets are recognised when, and only when, the Group becomes a party to the contractual provisions of the instrument. When financial assets are recognised initially, they are measured at fair value, plus directly attributable transaction costs.

De-recognition of financial assets occurs when the rights to receive cash flows from the assets expire or are transferred and substantially all of the risks and rewards of ownership have been transferred. At each of the balance sheet date, financial assets are reviewed to assess whether there is objective evidence of impairment. If any such evidence exists, impairment loss is determined and recognised. At the balance sheet date, the Group carries only loan and receivables on its balance sheet.

##### Loan and receivables

Loan and receivables are measured initially at fair value, and are subsequently measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in the combined income statement when there is objective evidence that the asset is impaired. The allowance recognised is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

##### **Financial liabilities**

The Group's financial liabilities include trade payables, accrued liabilities, bills payable and other payables, amount due to shareholders and borrowings. Financial liabilities are recognised when the Group becomes a party to the contractual provisions of the financial instrument.

##### Trade payables, accrued liabilities, bills payable and other payables

Trade payables, accrued liabilities, bills payable and other payables are initially measured at fair value, and subsequently measured at amortised cost, using the effective interest rate method.

##### Borrowings

Borrowings are recognised initially at fair value of proceeds received less attributable transaction costs, if any. Borrowings are subsequently carried at amortised cost. Any difference between the proceeds (net of transaction costs) and the redemption value is recognised in the income statement over the period of the borrowings using the effective interest method.

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 6. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

#### 6.2 Basis of preparation of audited Combined Financial Statements (cont'd)

##### Inventories

Inventories are valued at the lower of cost and net realisable value. Cost incurred in bringing each product to its present location and conditions are accounted for as follows:

- (a) Raw materials at purchase cost on a weighted average basis; and
- (b) Finished goods and work in progress at cost of direct materials and labour and a proportion of manufacturing overheads based on normal operating capacity.

Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs necessary to make the sale.

##### Provisions

Provisions are recognised when present obligations will probably lead to an outflow of economic resources from the Group which can be estimated reliably. Timing or amount of the outflow may still be uncertain. A present obligation arises from the presence of a legal or constructive commitment that has resulted from past events.

Provisions are measured at the estimated expenditure required to settle the present obligation, based on the most reliable evidence available at the balance sheet date, including the risks and uncertainties associated with the present obligation. Any reimbursement expected to be received in the course of settlement of the present obligation is recognised as a separate asset, not exceeding the amount of the related provision. Where there are a number of similar obligations, the likelihood that an outflow of economic resources will be required in settlement of the obligations is determined by considering the class of obligations as a whole. In addition, long term provisions are discounted to their present values, where the effect of the time value of money is material.

All provisions are reviewed at the balance sheet date and adjusted to reflect the current best estimates.

In cases where the possible outflow of economic resources as a result of present obligations is considered impossible or remote, or the amount to be provided for cannot be measured reliably, no liability is recognised in the balance sheet, unless assumed in the course of a business combination.

##### Recognition of revenue

Revenue is recognised when it is probable that the economic benefits will flow to the Group and when the revenue can be measured reliably. Revenue is measured at the fair value of the consideration received or receivable and represents amounts receivable for goods and services provided in the normal course of business, net of trade discounts, sales rebates and sales related taxes on the following bases:

- (i) Revenue from the sale of goods is recognised when the significant risks and rewards of ownership have been transferred to the buyer, provided that the Group maintains neither managerial involvement to the degree usually associated with ownership, nor effective control over the goods sold; and
- (ii) Interest income is recognised on a time-proportion basis, taking into account the principal outstanding and the effective interest rate applicable.

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 6. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

#### 6.2 Basis of preparation of audited Combined Financial Statements (cont'd)

##### Income tax

###### Current tax

Current tax is the expected tax payable on the taxable income for the year, using tax rates enacted at the balance sheet date, and any adjustment to tax payable in respect of previous years. PRC corporate income tax is provided at rates applicable to an enterprise in the PRC on income for financial reporting purpose, adjusted for income and expenses items which are not assessable or deductible for income tax purposes.

###### Deferred tax

Deferred tax is the tax expected to be payable or recoverable on differences between the carrying amounts of assets and liabilities in the audited Combined Financial Statements and the corresponding tax bases used in the computation of taxable profit, and is accounted for using the balance sheet liability method. Deferred tax liabilities are generally recognised for all taxable temporary differences, and deferred tax assets are recognised to the extent that it is probable that taxable profits will be available against which deductible temporary differences can be utilised. Such assets and liabilities are not recognised if the temporary difference arises from the initial recognition of other assets and liabilities in a transaction that is not a business combination and that affects neither the tax profit nor the accounting profit.

The carrying amount of deferred tax assets is reviewed at the balance sheet date and reduced to the extent that it is no longer probable that sufficient taxable profits will be available to allow all or part of the asset to be recovered. Any such reduction is reversed to the extent that it becomes probable that sufficient taxable profit will be available.

Deferred tax assets and liabilities are not discounted. Deferred tax is calculated at the tax rates that are expected to apply in the year when the liability is settled or the asset realised. Deferred tax is charged or credited to the income statement, except when it relates to items charged or credited directly to equity, in which case the deferred tax is also dealt with in equity.

###### Value-added tax

The Group's sale of goods in the PRC are subjected to Value-added tax ("VAT") at the applicable tax rate of 17% for PRC domestic sales. Input VAT on purchases can be deducted from output VAT. The net amount of VAT recoverable from, or payable to, the taxation authority is included as part of "other receivables" or "other payables" in the balance sheet respectively.

Revenues, expenses and assets are recognised net of the amount of VAT except where:

- VAT incurred on the purchase of assets or services is not recoverable from the taxation authority, in which case VAT is recognised as part of the cost of acquisition of the asset or as part of the expense item as applicable; and
- Receivables and payables are stated with the amount of VAT included.

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 6. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

#### 6.2 Basis of preparation of audited Combined Financial Statements (cont'd)

##### Retirement benefits scheme

Pursuant to the relevant regulations of the PRC government, the Group participates in a local municipal government retirement benefits scheme (the "Scheme"), whereby the subsidiaries of the Company in the PRC are required to contribute a certain percentage of the basic salaries of its employees to the Scheme to fund their retirement benefits. The local municipal government undertakes to assume the retirement benefits obligations of all existing and future retired employees of the subsidiaries of the Company. The only obligation of the Group with respect to the Scheme is to pay the ongoing required contributions under the Scheme mentioned above. Contributions under the Scheme are charged to the income statement as incurred. There are no provisions under the Scheme whereby forfeited contributions may be used to reduce future contributions.

##### Foreign currencies

###### (i) Functional and presentation currency

Items included in the financial statements of each of the Group's entities are measured using the currency of the primary economic environment in which the entity operates (the "functional currency"). The financial statements are presented in Renminbi and Ringgit Malaysia.

###### (ii) Transactions and balances

Foreign currency transactions are translated to the functional currencies of the entities using the exchange rates prevailing at the dates of the transactions. Monetary assets and liabilities denominated in foreign currencies are translated at the closing rates ruling at the respective balance sheet dates. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at year-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in the income statement.

Non-monetary items that are measured in terms of historical cost in a foreign currency are translated using the exchange rates as at the dates of the initial transactions. Non-monetary items measured at fair value in a foreign currency are translated using the exchange rates at the date when the fair value was determined.

###### (iii) Group companies

The results and financial positions of the Group entities that have functional currencies different from the presentation currency are translated into the presentation currency as follows:

- (1) Assets and liabilities for each balance sheet presented are translated at the closing rate at the date of that balance sheet;
- (2) Income and expenses for each income statement are translated at average exchange rates (unless this average is not a reasonable approximation of the cumulative effect of the rates prevailing on the transaction dates, in which case income and expenses are translated at the dates of the transactions); and
- (3) All resulting exchange differences are recognised as a separate component of equity.

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 6. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

#### 6.2 Basis of preparation of audited Combined Financial Statements (cont'd)

##### Related parties

A party is considered to be related to the Group if:

- (i) directly, or indirectly through one or more intermediaries, the party (1) controls, is controlled, or is under common control with, the Company/Group; (2) has an interest in the Company that gives it significant influence over the Company/Group; or (3) has joint control over the Company/Group;
- (ii) the party is an associate;
- (iii) the party is a jointly-controlled entity;
- (iv) the party is a member of the key management personnel of the Company or its parent;
- (v) the party is a close member of the family of any individual referred to in (i) or (iv);
- (vi) the party is an entity that is controlled, jointly controlled or significantly influenced by, or for which significant voting power in such entity resides with, directly or indirectly, any individual referred to in (iv) or (v); or
- (vii) the party is a post-employment benefit plan for the benefit of employees of the Company/Group, or of any entity that is a related party of the Company/Group.

##### Key management personnel

Key management personnel are those persons having the authority and responsibility for planning, directing and controlling the activities of the combined entity. Directors and certain general managers are considered as key management personnel.

##### Operating leases

Leases where substantially all the risks and rewards of ownership of assets remain with the lessor are accounted for as operating leases. Annual rentals applicable to such operating leases are charged to the combined income statement on a straight-line basis over the lease terms except where an alternative basis is more representative of the pattern of benefits to be derived from the leased assets. Lease incentives received are recognised in the combined income statement as an integral part of the aggregate net lease payments made. Contingent rentals are charged to the combined income statement in the accounting period in which they are incurred.

##### Financial instruments

The recognition methods adopted of financial assets and liabilities are disclosed in the individual policy statements associated with each item. These instruments are recognised when contracted for.

##### Segment reporting

A operating segment is a distinguishable component of the Group that engages in business activities from which it may earn revenues and incur expenses (including revenues and expenses relating to transactions with other components of the same entity), whose operating results are regularly reviewed by the entity's chief operating decision maker to make decisions about resources to be allocated to the segment and assess its performance, and for which discrete financial information is available.

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 6. SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

#### 6.2 Basis of preparation of audited Combined Financial Statements (cont'd)

##### Equity

Ordinary shares are classified as equity. Share capital is determined using the nominal value of shares that have been issued. Any transaction costs associated with the issuing of shares are deducted from the proceeds (net of any related income tax benefits) to the extent that they are incidental costs directly attributable to the equity transaction.

Retained earnings include all current and prior period results as determined in the combined income statement.

##### Cash and cash equivalents

For the purpose of the combined cash flow statement and balance sheet classification, cash and cash equivalents comprise cash on hand and in banks and deposit pledged.

##### Land use rights

Land use rights are stated at cost less accumulated amortisation and impairment losses, if any. Amortisation is charged so as to write off the cost of land use rights, using the straight-line method, over the period of the grant of 50 years, which is the lease term.

### 7. HISTORICAL FINANCIAL INFORMATION

#### (a) Summarised income statements

The following tables set out the summary of the financial results based on the audited Combined Financial Statements of Multi Sports Group for the past three (3) FYE 31 December 2006 to 2008 and the FPE 31 March 2009.

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Revenue	214,771	114,580	306,630	163,587	385,310	205,563	81,577	43,521
Gross profit	57,401	30,623	85,298	45,506	115,649	61,699	27,157	14,488
Profit before depreciation, amortisation, interest expenses and taxation	55,399	29,555	85,125	45,414	114,605	61,142	26,598	14,190
Depreciation	(6,883)	(3,672)	(8,961)	(4,781)	(9,383)	(5,006)	(2,067)	(1,103)
Amortisation	-	-	-	-	(24)	(13)	(24)	(13)
Interest expenses	-	-	-	-	-	-	(229)	(122)
Profit before taxation but after depreciation, amortisation and interest expenses	48,516	25,883	76,164	40,633	105,198	56,123	24,278	12,952
Taxation	-	-	-	-	(13,018)	(6,945)	(3,036)	(1,619)
Profit after taxation	48,516	25,883	76,164	40,633	92,180	49,178	21,242	11,333
Gross profit margin (%)	26.73	26.73	27.82	27.82	30.01	30.01	33.29	33.29
Pre-tax profit margin (%)	22.59	22.59	24.84	24.84	27.30	27.30	29.76	29.76
Effective tax rate (%)	-	-	-	-	12.37	12.37	12.51	12.51
Gross Earnings Per Share ("EPS")* (RMB/RM)	0.16	0.09	0.25	0.13	0.35	0.19	0.32^	0.17^
Net EPS* (RMB/RM)	0.16	0.09	0.25	0.13	0.30	0.16	0.28^	0.15^



## 10. ACCOUNTANTS' REPORT (Cont'd)



### 7. HISTORICAL FINANCIAL INFORMATION (CONT'D)

#### (a) Summarised income statements (cont'd)

- There were no exceptional or extraordinary items in all the financial years and period under review.
- There were no accounting policies which were peculiar to Multi Sports Group as a result of the nature of business or industry it was involved in that would affect the determination of Multi Sports Group's income or financial position.
- \* Based on enlarged share capital of 302,400,000 ordinary shares (number of shares assumed to be issued upon completion of the Consolidation and Increase in Authorised Share Capital and Acquisitions).
- ^ Annualised to 12 months for comparison purpose.

#### (b) Summarised balance sheets

The following table sets out the summary of balance sheets based on the audited Combined Financial Statements of Multi Sports Group for the FYE 31 December 2006 to 2008 and FPE 31 March 2009.

Years/Period ended	Note	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
		RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Share capital		11	6	11	6	11	6	11	6
Reserves		42,142	22,482	53,307	28,438	55,489	29,602	76,731	40,935
Shareholders' equity		42,153	22,488	53,318	28,444	55,500	29,608	76,742	40,941
<b>Non-current assets</b>									
Property, plant and equipment	(i)	40,268	21,483	42,107	22,464	39,360	20,999	37,881	20,210
Land use rights	(ii)	-	-	-	-	4,719	2,518	4,695	2,505
		40,268	21,483	42,107	22,464	44,079	23,517	42,576	22,715
<b>Current assets</b>									
Inventories	(iii)	8,205	4,377	9,477	5,056	10,988	5,862	10,494	5,599
Trade receivables	(iv)	25,302	13,499	33,608	17,930	37,736	20,132	36,938	19,706
Other receivables	(v)	244	130	1,024	546	2,626	1,401	4,638	2,474
Cash and bank balances	(vi)	16,926	9,030	23,930	12,767	29,943	15,975	52,409	27,960
		50,677	27,036	68,039	36,299	81,293	43,370	104,479	55,739
<b>Current liabilities</b>									
Trade payables	(vii)	17,705	9,446	24,590	13,119	24,336	12,983	18,360	9,795
Other payables	(viii)	31,087	16,585	32,238	17,200	41,648	22,222	33,217	17,722
Interest-bearing bank borrowings	(ix)	-	-	-	-	-	-	15,700	8,376
Income tax payable		-	-	-	-	3,888	2,074	3,036	1,620
		48,792	26,031	56,828	30,319	69,872	37,279	70,313	37,513
Net current assets		1,885	1,005	11,211	5,980	11,421	6,091	34,166	18,226
Net tangible assets ("NTA")		42,153	22,488	53,318	28,444	55,500	29,608	76,742	40,941
NTA per share* (RMB/RM)		0.14	0.07	0.18	0.09	0.18	0.10	0.25	0.14

- \* Based on enlarged share capital of 302,400,000 ordinary shares (number of shares assumed to be issued upon completion of the Consolidation and Increase in Authorised Share Capital and Acquisitions).

10. ACCOUNTANTS' REPORT (Cont'd)



7. HISTORICAL FINANCIAL INFORMATION (CONT'D)

(b) Summarised balance sheets (cont'd)

(i) Details disclosure on property, plant and equipment are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Net carrying amount								
Plant and machinery	22,734	12,129	20,650	11,017	19,488	10,397	18,682	9,967
Office equipment	229	122	209	111	180	96	168	90
Mould equipment	17,305	9,232	21,248	11,336	19,468	10,386	18,704	9,979
Motor vehicle	-	-	-	-	224	120	327	174
Total	40,268	21,483	42,107	22,464	39,360	20,999	37,881	20,210

All property, plant and equipment held by the Group are located in the PRC.

(ii) Details disclosure on land use rights are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Net carrying amount	-	-	-	-	4,719	2,518	4,695	2,505

The land use rights of the Group refer to land located in the PRC and are pledged to a bank as securities for a banking facility granted to the Group.

(iii) Details disclosure on inventories are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Raw materials	4,805	2,563	5,430	2,897	5,924	3,160	6,642	3,544
Work in progress	1,370	731	1,557	831	1,877	1,001	1,319	704
Finished goods	2,016	1,076	2,473	1,319	3,182	1,698	2,527	1,348
Consumables	14	7	17	9	5	3	6	3
	8,205	4,377	9,477	5,056	10,988	5,862	10,494	5,599
Costs of sales	157,370	83,957	221,332	118,081	269,661	143,864	54,420	29,033
% of inventories to cost of sales #	4.04	4.04	3.99	3.99	3.79	3.79	4.93^	4.93^
Inventories turnover period (month) #	0.48	0.48	0.48	0.48	0.46	0.46	0.59^	0.59^

# Based on average inventories balances.

^ Annualised to 12 months for comparison purposes.

10. ACCOUNTANTS' REPORT (Cont'd)



7. HISTORICAL FINANCIAL INFORMATION (CONT'D)

(b) Summarised balance sheets (cont'd)

(iv) Details disclosure on trade receivables are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Trade receivables	25,302	13,499	33,608	17,930	37,736	20,132	36,938	19,706
Revenue	214,771	114,580	306,630	163,587	385,310	205,563	81,577	43,521
% of trade receivables to revenue #	10.47	10.47	9.61	9.61	9.26	9.26	11.44^	11.44^
Trade receivables' turnover period (month) #	1.26	1.26	1.15	1.15	1.11	1.11	1.37^	1.37^

# Based on average trade receivables balances.

^ Annualised to 12 months for comparison purposes.

Ageing analysis of trade receivables as at 31 March 2009:

No. of days	Within credit period		Exceeding credit period of 60 days				Total
	0-30 days	31-60 days	61-90 days	91-180 days	181-365 days	More than 365 days	
	'000	'000	'000	'000	'000	'000	
Trade receivables (RMB)	36,938	-	-	-	-	-	36,938
Trade receivables (RM)	19,706	-	-	-	-	-	19,706
% of trade receivables	100.00	-	-	-	-	-	100.00

Trade receivables are non-interest bearing, have credit terms ranging from 30 to 40 days and are denominated in RMB.

(v) Details disclosure on other receivables are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Prepaid listing expenses	-	-	-	-	2,109	1,125	2,928	1,562
Advances to a supplier	-	-	-	-	-	-	1,193	636
Amount owing by a related party	-	-	-	-	273	146	273	146
Prepayment Amount owing by a director	244	130	244	130	244	130	244	130
	-	-	780	416	-	-	-	-
	244	130	1,024	546	2,626	1,401	4,638	2,474

The carrying amounts of other receivables are denominated in RMB.

10. ACCOUNTANTS' REPORT (Cont'd)



7. HISTORICAL FINANCIAL INFORMATION (CONT'D)

(b) Summarised balance sheets (cont'd)

(vi) Details disclosure on cash and bank balances are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Cash on hand	63	34	69	37	97	52	67	36
Cash at bank	16,863	8,996	23,861	12,730	29,846	15,923	51,142	27,284
Fixed deposit - pledged	-	-	-	-	-	-	1,200	640
	16,926	9,030	23,930	12,767	29,943	15,975	52,409	27,960

The Renminbi is not freely convertible into foreign currencies under the PRC Foreign Exchange Regulations and Administration of Settlement Sales and Payment of Foreign Exchange Regulations, the Group is permitted to exchange Renminbi for foreign currencies through banks that are authorised to conduct foreign exchange business.

The cash at bank bears effective interest rates of 0.60%, 0.64%, 0.60% and 0.36% per annum during the FYE 31 December 2006, 2007, 2008 and FPE 31 March 2009 respectively.

Fixed deposit is pledged with a financial institutions to secure bills payable. It bears interest rates of 0.36% per annum.

The carrying amounts of cash and bank balances are substantially denominated in RMB.

(vii) Details disclosure on trade payables are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Trade payables	17,705	9,446	24,590	13,119	24,336	12,983	18,360	9,795
Cost of sales	157,370	83,957	221,332	118,081	269,661	143,864	54,420	29,033
% of trade payables to cost of sales #	9.89	9.89	9.55	9.55	9.07	9.07	9.81^	9.81^
Trade payables' turnover period (month) #	1.19	1.19	1.15	1.15	1.09	1.09	1.18^	1.18^

# Based on average trade payables balances.

^ Annualised to 12 months for comparison purposes.

Ageing analysis of trade payables as at 31 March 2009:

No. of days	Within credit period		Exceeding credit period of 60 days				Total
	0-30 days	31-60 days	61-90 days	91-180 days	181-365 days	More than 365 days	
	'000	'000	'000	'000	'000	'000	'000
Trade payables (RMB)	18,360	-	-	-	-	-	18,360
Trade payables (RM)	9,795	-	-	-	-	-	9,795
% of trade payables	100.00	-	-	-	-	-	100.00

Trade payables generally have credit terms of 30 to 40 days and are denominated in RMB.

10. ACCOUNTANTS' REPORT (Cont'd)



7. HISTORICAL FINANCIAL INFORMATION (CONT'D)

(b) Summarised balance sheets (cont'd)

(viii) Details disclosure on other payables are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Amounts owing to a related party	14,329	7,645	829	442	-	-	-	-
Amount due to a shareholder	7,044	3,758	18,795	10,027	17,735	9,462	17,723	9,456
Amount owing to a director	-	-	-	-	9,433	5,032	-	-
Accrued liabilities	7,055	3,764	9,338	4,983	11,466	6,120	8,573	4,574
VAT payables	1,909	1,018	2,173	1,159	3,004	1,603	2,911	1,553
Advances to suppliers	742	396	1,094	584	-	-	-	-
Bills payable	-	-	-	-	-	-	4,000	2,134
Others	8	4	9	5	10	5	10	5
	31,087	16,585	32,238	17,200	41,648	22,222	33,217	17,722

The carrying amount of other payables are denominated in RMB except for amount due to a shareholder is denominated in Hong Kong Dollar.

Bills payable are interest free and secured by fixed deposits pledged with a financial institution.

Amount due to a shareholder is unsecured, interest free and without fixed term of repayment.

(ix) Details disclosure on interest-bearing bank borrowings are as below:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Current:-								
Bank loans	-	-	-	-	-	-	15,700	8,376

The Group interest-bearing bank borrowings are guaranteed by external parties and secured on the Group's land use rights.

Bank borrowings bear effective interest rate of 6.90% per annum and is payable within the next 12 months of the balance sheet date.

The carrying amounts of interest-bearing bank borrowings are denominated in RMB.

10. ACCOUNTANTS' REPORT (Cont'd)



7. HISTORICAL FINANCIAL INFORMATION (CONT'D)

(c) Summarised cash flow statements

The following table set out the summary of the cash flows based on the audited Combined Financial Statements of Multi Sports Group for the FYE 31 December 2006 to 2008 and FPE 31 March 2009:

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
<b>Cash flows from operating activities</b>								
Profit before taxation	48,516	25,883	76,164	40,633	105,198	56,123	24,278	12,952
<b>Adjustments for:</b>								
Depreciation of property, plant and equipment	6,883	3,672	8,961	4,781	9,383	5,006	2,067	1,103
Amortisation of land use rights	-	-	-	-	24	13	24	13
Currency translation difference	-	-	1	1	2	1	-	-
Interest expenses	-	-	-	-	-	-	229	122
Interest income	(112)	(60)	(134)	(72)	(239)	(128)	(38)	(20)
Operating profit before working capital changes	55,287	29,495	84,992	45,343	114,368	61,015	26,560	14,170
(Increase)/Decrease in inventories	(3,703)	(1,976)	(1,272)	(679)	(1,511)	(806)	494	263
Decrease in trade and other receivables	(5,648)	(3,013)	(9,086)	(4,847)	(5,730)	(3,057)	(1,214)	(648)
Increase/(Decrease) in trade and other payables	9,327	4,976	9,785	5,220	1,612	860	(4,962)	(2,647)
Cash generated from operations	55,263	29,482	84,419	45,037	108,739	58,012	20,878	11,138
Income tax paid	(2,677)	(1,428)	-	-	(9,131)	(4,872)	(3,888)	(2,074)
Interest paid	-	-	-	-	-	-	(229)	(122)
Interest received	112	60	134	72	239	128	38	20
Net cash generated from operating activities	52,698	28,114	84,553	45,109	99,847	53,268	16,799	8,962
<b>Cash flows from investing activities</b>								
Acquisition of property, plant and equipment	(14,129)	(7,538)	(10,800)	(5,762)	(6,636)	(3,540)	(588)	(314)
Acquisition of land use rights	-	-	-	-	(4,743)	(2,530)	-	-
Net cash used in investing activities	(14,129)	(7,538)	(10,800)	(5,762)	(11,379)	(6,070)	(588)	(314)
<b>Cash flows from financing activities</b>								
Payment of dividends	(15,000)	(8,003)	(65,000)	(34,677)	(90,000)	(48,015)	-	-
Advances to related parties	(15,000)	(8,003)	(13,500)	(7,202)	-	-	-	-
Advances from/(to) a director	-	-	-	-	9,433	5,033	(9,433)	(5,033)
Bank loan obtained	-	-	-	-	-	-	15,700	8,376
Deposit pledged with bank	-	-	-	-	-	-	(1,200)	(640)
Repayment of advances from related parties	-	-	-	-	(828)	(442)	-	-
Exchange difference arising from shareholder's loan	(252)	(134)	(1,111)	(593)	(1,060)	(566)	(12)	(6)
Advances from shareholders	3	2	12,862	6,862	-	-	-	-
Net cash (used in)/generated from financing activities	(30,249)	(16,138)	(66,749)	(35,610)	(82,455)	(43,990)	5,055	2,697
Net increase in cash and cash equivalents	8,320	4,438	7,004	3,737	6,013	3,208	21,266	11,345
Cash and cash equivalents at beginning of the financial years/period	8,606	4,592	16,926	9,030	23,930	12,767	29,943	15,975
Cash and cash equivalents at end of the financial years/period	16,926	9,030	23,930	12,767	29,943	15,975	51,209	27,320

## 10. ACCOUNTANTS' REPORT (Cont'd)



### 7. HISTORICAL FINANCIAL INFORMATION (CONT'D)

#### (d) Summarised statements of changes in equity

The following table sets out the summary of changes in equity based on the audited Combined Financial Statements of Multi Sports Group for the FYE 31 December 2006 to 2008 and FPE 31 March 2009:

Years/Period ended	Share capital		Statutory reserve		Currency translation reserve		Retained earnings		Total equity	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Balance at 1 January 2006	11	6	848	452	-	-	7,778	4,150	8,637	4,608
Net profit for the year	-	-	-	-	-	-	48,516	25,883	48,516	25,883
Transfer to statutory reserves	-	-	4,827	2,575	-	-	(4,827)	(2,575)	-	-
Dividend paid	-	-	-	-	-	-	(15,000)	(8,003)	(15,000)	(8,003)
Balance at 31 December 2006	11	6	5,675	3,027	-	-	36,467	19,455	42,153	22,488
Currency translation reserve	-	-	-	-	1	1	-	-	1	1
Net profit for the year	-	-	-	-	-	-	76,164	40,633	76,164	40,633
Transfer to statutory reserves	-	-	7,509	4,006	-	-	(7,509)	(4,006)	-	-
Dividend paid	-	-	-	-	-	-	(65,000)	(34,678)	(65,000)	(34,678)
Balance at 31 December 2007	11	6	13,184	7,033	1	1	40,122	21,404	53,318	28,444
Currency translation reserve	-	-	-	-	2	1	-	-	2	1
Net profit for the year	-	-	-	-	-	-	92,180	49,178	92,180	49,178
Dividend paid	-	-	-	-	-	-	(90,000)	(48,015)	(90,000)	(48,015)
Balance at 31 December 2008	11	6	13,184	7,033	3	2	42,302	22,567	55,500	29,608
Transfer to retained earnings	-	-	-	-	(3)	(2)	3	2	-	-
Net profit for the period	-	-	-	-	-	-	21,242	11,333	21,242	11,333
Balance at 31 March 2009	11	6	13,184	7,033	-	-	63,547	33,902	76,742	40,941

**10. ACCOUNTANTS' REPORT (Cont'd)**



**7. HISTORICAL FINANCIAL INFORMATION (CONT'D)**

**(e) Dividend records**

The following table set out the summary of dividend records prepared based on the audited Combined Financial Statements of Multi Sports for the FYE 31 December 2006 to 2008 and the FPE 31 March 2009.

Years/Period ended	31/12/2006		31/12/2007		31/12/2008		31/3/2009	
	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000	RMB'000	RM'000
Dividend paid	15,000	8,003	65,000	34,678	90,000	48,015	-	-
Gross dividend rate (%) *	14.52	14.52	62.91	62.91	87.11	87.11	-	-

\* Based on enlarged share capital of 302,400,000 ordinary shares (number of shares to be issued upon completion of the Consolidation and Increase in Authorised Share Capital and Acquisitions).

**8. SIGNIFICANT EVENTS SUBSEQUENT TO THE BALANCE SHEET DATE**

Other than the approval obtained from the SC, completion of the Shares Consolidation and Increase in Authorised Share Capital and Acquisition as mentioned in section 2.1.1, the following are the significant events subsequent to 31 March 2009:

- (a) On 30 April 2009, Jinjiang Baixing enter a loan agreement with 中国工商银行股份有限公司晋江支行 to obtain a bank loan amounting to RMB4,300,000. The bank loan is pledged by a related party's land use right and property.
- (b) On 12 May 2009, Paksing enters into an investment agreement with Guoline Capital Limited to issue Redeemable Convertible Loan Stocks ("RCLS") amounting to USD 7,094,010.
- (c) On 9 June 2009, Pak Sing increased its authorised share capital from HK\$10,000 to HK\$15,000 by the creation of 5,000 shares of HKD 1 each.



10. **ACCOUNTANTS' REPORT (Cont'd)**



9. **AUDITED COMBINED FINANCIAL STATEMENTS**

No audited Combined Financial Statements have been prepared in respect of any period subsequent to 31 March 2009.

Yours faithfully,

A handwritten signature in black ink, appearing to be "SJ Grant Thornton", written over a horizontal line.

**SJ GRANT THORNTON**  
Firm Number: AF 0737  
Chartered Accountants

A handwritten signature in black ink, appearing to be "Dato N.K. Jasani", written over a horizontal line.

**DATO N.K. JASANI**  
Approval Number: 708/03/10 (J/PH)  
Partner of the Firm

10. ACCOUNTANTS' REPORT (Cont'd)

APPENDIX I  
Page 1 of 4

**Multi Sports Holdings Ltd and its subsidiary  
Financial statements for the year ended 31 December 2006, 2007 and 2008**

REPORT FROM THE INDEPENDENT AUDITORS FOR THE FINANCIAL YEARS ENDED 31 DECEMBER  
2006, 2007 AND 2008

The Board of Directors  
Multi Sports Holdings Ltd.  
Clarendon House,  
2 Church Street,  
Hamilton HM 11,  
Bermuda

Dear Sirs

We have audited the accompanying combined financial statements of the Company and its subsidiaries (collectively the "Group"), as set out in on pages 3 to 34, which comprises the Combined Balance Sheets of the Group as at 31 December 2006, 2007 and 2008, the Combined Income Statements, Combined Statements of Changes in Equity and Combined Cash Flow Statements of the Group for each of the years ended 31 December 2006, 2007 and 2008 (the "Relevant Periods") and a summary of significant accounting policies and other explanatory notes (the "Combined Financial Statements"). The Combined Financial Statements, which have been prepared in accordance with International Financial Reporting Standards ("IFRS"), are the responsibility of the management of the Company. Our responsibility is to express an opinion on the Combined Financial Statements based on our audit.

Management's responsibility for the Combined Financial statements

Management is responsible for the preparation and fair presentation of this Combined Financial Statements in accordance with IFRS. This responsibility include: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the Combined Financial Statements that are free from material misstatements, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditors' responsibility

Our responsibility is to express an opinion on the Combined Financial Statements based on our audit. We conducted our audit in accordance with International Standards of Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance as to whether the Combined Financial Statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Combined Financial Statements. The procedures selected depend on the auditors' judgement, including the assessment of the risks of material misstatement of the Combined Financial Statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and fair presentation of the Combined Financial Statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the Combined Financial Statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

10. ACCOUNTANTS' REPORT (Cont'd)

APPENDIX I  
Page 2 of 4

**Multi Sports Holdings Ltd and its subsidiary  
Financial statements for the year ended 31 December 2006, 2007 and 2008**

REPORT FROM THE INDEPENDENT AUDITORS FOR THE FINANCIAL YEARS ENDED 31 DECEMBER  
2006, 2007 AND 2008 (Continued)

Opinion

In our opinion, the Combined Financial Statements, for the purpose of this report and prepared on the basis set out in Note 2 of this report, presents fairly, in all material respects, the Group's combined results, combined statements of changes in equity and combined cash flow statements for the Relevant Periods, and of the Group's financial positions as at 31 December 2006, 2007 and 2008 and have been properly prepared in accordance with IFRS.

Without qualifying our opinion, we draw attention that at the date of this report, the Combined Financial Statements did not incorporate the financial statements of Multi Sports Holdings Ltd, the proposed listed company. Multi Sports Holdings Ltd was not included in the Combined Financial Statements as the reorganisation exercise (Note 2) has not been completed at the date of this report.

Yours faithfully



Foo Kon Tan Grant Thornton  
Public Accountants and Certified Public Accountants  
Singapore 13 APR 2009

Partner: Wong Kian Kok

10. ACCOUNTANTS' REPORT (Cont'd)

APPENDIX I  
Page 3 of 4

**Multi Sports Holdings Ltd and its subsidiary  
Financial statements for the period ended 31 March 2009**

REPORT FROM THE INDEPENDENT AUDITORS FOR THE THREE MONTHS PERIOD ENDED 31 MARCH 2009

The Board of Directors  
Multi Sports Holdings Ltd.  
Clarendon House,  
2 Church Street,  
Hamilton HM 11,  
Bermuda

Dear Sirs

We have audited the accompanying combined financial statements of the Company and its subsidiaries (collectively the "Group"), as set out in on pages 3 to 41, which comprises the Combined Statement of Financial Position of the Group as at 31 March 2009, the Combined Statement of Comprehensive Income, Combined Statement of Changes in Equity and Combined Statement of Cash Flows of the Group for the period ended 31 March 2009 and a summary of significant accounting policies and other explanatory notes (the "Combined Financial Statements"). The Combined Financial Statements, which have been prepared in accordance with International Financial Reporting Standards ("IFRS"); are the responsibility of the management of the Company. Our responsibility is to express an opinion on the Combined Financial Statements based on our audit.

Management's responsibility for the Combined Financial statements

Management is responsible for the preparation and fair presentation of these Combined Financial Statements in accordance with IFRS. This responsibility include: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the Combined Financial Statements that are free from material misstatements, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditors' responsibility

Our responsibility is to express an opinion on the Combined Financial Statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance as to whether the Combined Financial Statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Combined Financial Statements. The procedures selected depend on the auditors' judgement, including the assessment of the risks of material misstatement of the Combined Financial Statements, whether due to fraud or error. In making those risk assessments, the auditors consider internal control relevant to the entity's preparation and fair presentation of the Combined Financial Statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the Combined Financial Statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

10. ACCOUNTANTS' REPORT (Cont'd)

APPENDIX I  
Page 4 of 4

**Multi Sports Holdings Ltd and its subsidiary  
Financial statements for the period ended 31 March 2009**

REPORT FROM THE INDEPENDENT AUDITORS FOR THE THREE MONTHS PERIOD ENDED 31  
MARCH 2009 (Continued)

Opinion

In our opinion, the Combined Financial Statements, for the purpose of this report are prepared on the basis set out in Note 2 of this report, presents fairly, in all material respects, the Group's combined results, combined statement of changes in equity and combined statement of cash flows for the period ended 31 March 2009, and of the Group's financial position as at 31 March 2009 have been properly prepared in accordance with IFRS.

Without qualifying our opinion, we draw attention that at the date of this report, the Combined Financial Statements did not incorporate the financial statements of Multi Sports Holdings Ltd, the proposed listed company and the event as stated in Note 2(e) as the said reorganisation exercise has not been completed as at 31 March 2009.



Foo Kon Tan Grant Thornton  
Public Accountants and Certified Public Accountants  
Singapore

Partner: Wong Kian Kok

09 JUL 2009

## 11. INDEPENDENT MARKET RESEARCH REPORT

*(Prepared for inclusion in this Prospectus)*



**VITAL FACTOR CONSULTING**  
Creating Winning Business Solutions

**Vital Factor Consulting Sdn Bhd**  
(Company No.: 266797-T)  
75C & 77C Jalan SS22/19  
Damansara Jaya  
47400 Petaling Jaya  
Selangor Darul Ehsan, Malaysia  
Tel: (603) 7728-0248  
Fax: (603) 7728-7248  
Email: [enquires@vitalfactor.com](mailto:enquires@vitalfactor.com)  
Website: [www.vitalfactor.com](http://www.vitalfactor.com)

8 July 2009

The Board of Directors  
Multi Sports Holdings Ltd  
Level 18, The Gardens North Tower  
Mid Valley City, Lingkaran Syed Putra  
59200 Kuala Lumpur

Dear Sirs and Madam

### **Independent Assessment of the Footwear Industry Focusing on Manufacture of Sports Shoe Soles in China**

The following is an independent assessment of the footwear industry focusing on the manufacture of sports shoe soles in China prepared by Vital Factor Consulting Sdn Bhd for inclusion in the prospectus of Multi Sports Holdings Ltd (herein together with all or any one or more of its subsidiaries will be referred as Multi Sports Group or the Group) in relation to its listing on the Main Market of Bursa Malaysia Securities Berhad.

#### **1. BACKGROUND**

- The core business activity of Multi Sports Group is in design, development and manufacture of sports shoe soles. The Group operates in Jinjiang City within Fujian Province in China, primarily servicing customers in the same area. Jinjiang City has the largest concentration of footwear manufacturing and supporting industries in China.
- For the financial year ended 31 December 2008, the total revenue of Multi Sports Group amounted to RMB385.3 million.
- As Multi Sports Group's core activity is in the manufacture of sports shoe soles, references to shoes made in this report are for sports shoes only, unless mentioned otherwise. This report refers to footwear for humans only.
- All figures converted from USD to RMB is based on an exchange rate of USD1 = RMB6.8415 as at 18 March 2009.

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)

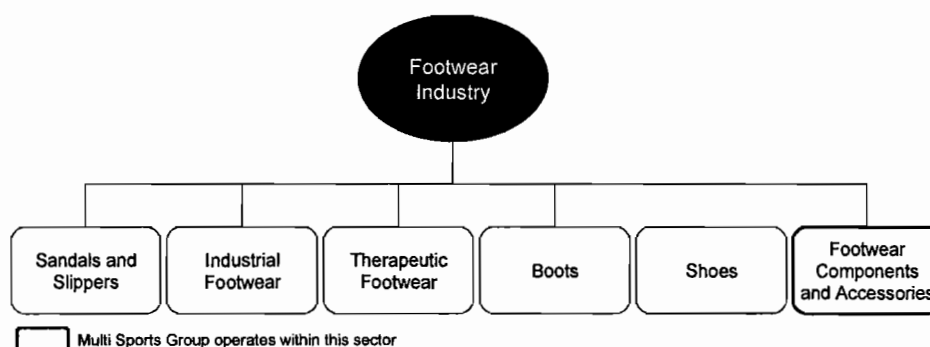


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### 2. OVERALL INDUSTRY STRUCTURE

#### 2.1 Structure of the Footwear Industry

- In general, the Footwear Industry comprises six segments as depicted in the figure below:



**Figure 1 Structure of the Footwear Industry**

- **Sandals** are a type of open footwear comprising a sole, which is fastened to the foot by straps or bands.
- **Slippers** are a type of low footwear that can be slipped on or off easily.
- **Industrial footwear** focuses on protecting the feet and providing safety for the wearer for use in a working environment.
- **Therapeutic footwear** focuses on corrective and health promoting functions for the foot.
- **Boots** are a type of protective or fashionable footwear covering the foot and part of the legs. Examples include dress boots, galoshes, Wellington boots, riding boots, ski boots and cowboy boots.
- **Shoes** are a type of footwear commonly covering the foot and not extending beyond the ankle. Examples include sports shoes (sometimes referred to as athletic shoes or sneakers), dress shoes, climbing shoes, clogs and loafers.
- **Components** of footwear include soles, heels and grommets (eyelets).
- **Accessories** of footwear include adornments, shoe polishes, shoehorn and others. Socks are commonly classified under apparels.
- Multi Sports Group operates within the footwear component sector of the overall Footwear Industry focusing on sports shoe soles.

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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#### 2.2 Components of Sports Shoe Soles

- Sports shoes are primarily protective footwear commonly made of soft and flexible material for the upper part of the shoe (called an upper) and relatively harder materials for the soles. It is designed for sporting and physical activities and differs from dress shoe in construction, design and style. Sports shoes are commonly used in sporting activities including running, walking, cross-training, hiking, basketball, volleyball, tennis, badminton, squash and other physical activities like ballet. However, it does not include football boots, ski boots and other sports shoes that require special fittings like spikes or cleats, or professional sports shoes which requires special certification from the China government.
- A sports shoe typically comprises two parts:
  - Upper;
  - Sole.
- A sports shoe sole comprises three parts:
  - Insole (sometimes referred to as inner sole) a thin layer of material that comes into contact with the sole of the foot, providing cushioning, comfort and hygiene to the wearer and is sometimes removable and washable.
  - Midsole is the middle layer of a sole often designed to provide cushioning and stability to the foot.
  - Outsole comes into direct contact with the ground and is often made of high wear resistance as well as good traction materials
- Multi Sports Group manufactures midsoles and outsoles for sports shoes.

#### 2.3 Common Materials for Sports Shoe Soles

- **Insole:** As the objective of the insole is to provide cushioning, comfort and hygiene, insoles can be made from a variety of materials including, among others, the following:
  - mixture of cellulose material and rubber
  - woven materials primarily textile
  - microcellular polyurethane
  - non-woven, low density felt impregnated with rubber
  - latex sponge
  - EVA foam.
- **Midsole:** The midsoles of sports shoes are commonly made of Phylon, Polyurethane (PU), Phylite and Ethylene-Vinyl Acetate copolymer (EVA):
  - **Phylon** is a lightweight material made of EVA foam pellets that are compressed, expanded using heat and then allowed to cool in a mould.



## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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- **PU** is a dense and heavy material used for midsoles. Its high density makes it the most durable material for midsoles.
- **Phylite** is made with a combination of 60% Phylon and 40% Rubber. Phylite is heavier than Phylon and lighter than rubber and can be used in midsoles and outsoles.
- **EVA** is light, soft and flexible. It is often used in running shoes due to its great combination of shock absorption and light-weight properties. Over time, EVA will compress and becomes flat as the air trapped inside is squeezed out. EVA compresses faster than most midsole materials.

Commonly, some of these materials are manufactured to have microcellular structures to provide better cushioning. For example, solid EVA is specially formed using an inert gas under high pressure to create small cells with diameter of approximately 10 microns but typically between 0.1 micron and 100 microns.

- **Outsole:** As the outsole comes into contact with the ground, materials used are expected to be lightweight, durable, provides traction and abrasion resistant. Common materials used to make outsoles for sports shoes include the following:
  - **Latex Rubber:** It can be synthetic or natural. Latex rubber provides great flexibility and durability as well as excellent bounce. It has good shock absorption and excellent surface grip. Some of the most common latex rubber compounds used for outsole include the following:
    - **Carbon Rubber:** A synthetic rubber with added carbon black. The combination of these two materials creates a highly durable outsole. However, as the carbon does not bond with the synthetic rubber, it often leaves black marks on the floor.
    - **Solid Rubber:** This is a blend of natural and synthetic rubber and is the most common outsole material. It offers high durability and good traction, although not as durable as Durable Rubber Compound, and as such, is particularly suited to indoor surfaces.
    - **Durable Rubber Compound:** This is a heavy and dense material made from a blend of natural and synthetic rubber with special additives to make it more durable and abrasion resistant.

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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**Duralon:** This is a lightweight material made from blown synthetic rubber compound that creates tiny air pockets that provides cushioning. As it is soft, it is not as durable as other outsole materials and is mainly used for the forefoot area of running shoes.

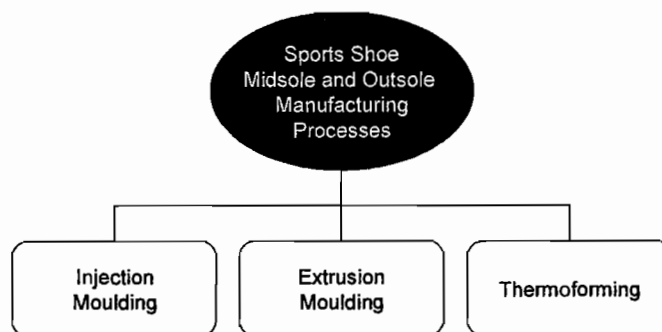
**Gum Rubber:** This is a combination of natural and synthetic rubber, which is soft and provides very good traction. However its softness reduces its durability and is particularly suited for indoor court surfaces.

- **Thermoplastic Rubber (TPR):** This is a material based on styrene-butadiene-styrene (synthetic rubber) block copolymers. Thermoplastic rubber displays rubber like properties and appearance. It is recyclable, lightweight, provides good traction and functions well under low temperature.

- Multi Sports Group mainly uses Latex Rubber in the form of solid rubber, durable rubber compound and TPR, and EVA and Phylon as the raw materials for the manufacturing of sports shoe soles.

### 2.4 Manufacturing Methods

- The most common methods for the manufacture of midsoles and outsoles are depicted in the figure below:



**Figure 2 Common Manufacturing Processes for Sports Shoe Midsoles and Outsoles**

- **Injection moulding** is a process whereby the moulding material is heated to a liquid state and is injected into the cavity of a mould where it is cooled and hardened to the shape and pattern of the mould.
- **Extrusion moulding** is a process whereby the moulding material is heated into a liquid form and forced through a shaped die and then passed through a series of cooling trays and jigs to produce a continuous shape and constant cross-section profile.

11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)

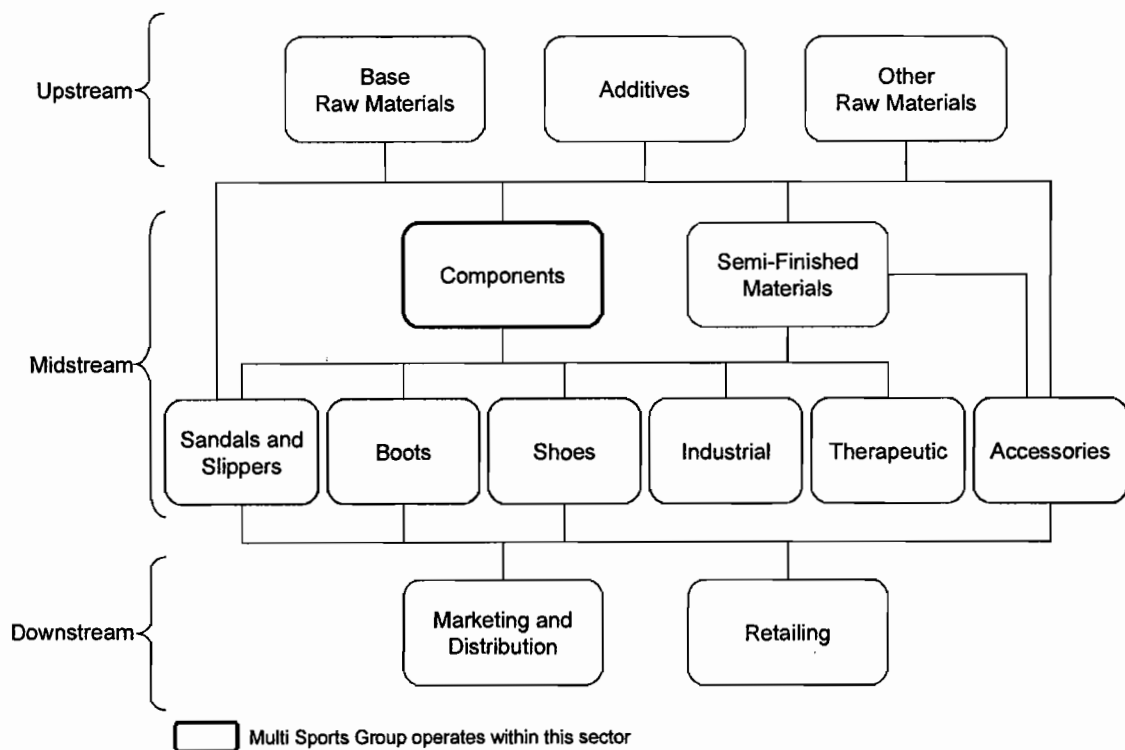


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- **Thermoforming** is a process of forming or moulding a heated plastic sheet placed over the mould. The application of vacuum or air pressure pushes the heated sheet against the wall of the mould such that the heated sheet conforms to the contour of the mould.
- Multi Sports Group uses Injection Moulding and Thermoforming processes for the manufacture of midsoles and outsoles.

**2.6 Vertical Structure of the Footwear Industry**

- The Footwear Industry can also be vertically extended to include upstream, midstream and downstream activities. These are as depicted in the diagram below:



**Figure 3 Vertical Structure of the Footwear Industry**

- The manufacturing of footwear can be segmented into the following:
  - Upstream activities;
  - Midstream activities;
  - Downstream activities.
- Multi Sports Group is involved in midstream activities in the manufacturing of footwear components, namely sports shoe soles.

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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#### Upstream

- Upstream activities primarily involve the supply of raw materials including:
  - Base raw materials for example:
    - Natural rubber such as ribbed smoke sheer and pale crepe;
    - Synthetic rubber including styrene butadiene rubber (SBR), butadiene acrylonitrile, polychloroprene, polyisoprene and polybutadiene;
    - Leather (not commonly used for sports shoes);
    - Textiles (not commonly used for sports shoes);
    - Ethylene vinyl acetate copolymer (EVA);
    - Polyvinyl chloride (PVC) (not commonly used for sports shoes);
    - Polyurethane (PU);
    - Thermoplastic Rubber (TPR).
  - Additives are used to improve mechanical and physical properties, as well as appearance. Some examples of additives include fillers, pigments, accelerator, activator, antioxidant, plasticiser, blowing agent, stabiliser, vulcanising agent, dusting agent, catalyst, cross linking, chain extending agents, colorants, flame retardant and smoke suppressant.
  - Other raw materials include threads, adhesives, metal and other processing aids like lubricants used during compounding of base raw materials.

#### Midstream

- Midstream activities involve the manufacturing of footwear components such as soles, heels and grommets (eyelets).
- Midstream activities also include the manufacturing of semi-finished footwear materials such as semi-finished leather and semi-finished textile cloth.
- Midstream activities also involve the manufacturing of finished products such as sandals, slippers, boots, shoes, industrial footwear, therapeutic footwear and footwear accessories.

#### Downstream

- Downstream activities involve the marketing, distribution and retailing of footwear. Marketing and distribution activities are usually undertaken by agents, importers, exporters, stockists and wholesalers.

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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#### 3. SUBSTITUTE PRODUCTS

- There are no substitutes for sports shoe soles, as they are an integral part of sports shoes.
- Nevertheless, there are many alternative materials, methods of manufacturing, construction and design, thus providing choices in types, properties, characteristics and aesthetics of sports shoe soles.
  - Besides ethylene vinyl acetate (EVA), rubber (RB) and thermoplastic rubber (TPR) and polyurethane (PU) are common materials used in the manufacturing of sports shoe soles.
  - PU based sports shoe soles provide good dimension stability, durability, flexibility, shock absorption and cushioning. They are also highly resistant to abrasion, weather and temperature. However, it is also one of the most expensive materials used in the production of sports shoe soles.
  - EVA based sports shoe soles are lightweight, resistant to wear and tear, and dimensionally stable with adequate cushioning.
  - TPR based sports shoe soles are very lightweight, durable and flexible. They also provide good traction even under cold conditions.
  - RB based sports shoe soles are one of the cheapest materials. They are highly resistant to wear and tear, and possess the highest tensile strength. However, they provide less dimensional stability, cushioning and shock absorption capability compared to other materials.

#### 4. GOVERNMENT REGULATIONS, POLICIES AND INCENTIVES

##### 4.1 Business Licence

- Application of a business licence with the Administration of Industry and Commerce is required for establishing an enterprise in China.
- Multi Sports Group's subsidiary, Jinjiang Baixing Shoes Materials Co Ltd has obtained a business licence from the Quanzhou Administration of Industry and Commerce in China, which is valid from 28 May 2004 until 27 May 2034.

##### 4.3 Environmental Regulations

- As part of the process of manufacturing sports shoe soles, Multi Sports Group creates waste in the form of off-cuts. These off-cuts are then collected and sold to external parties for recycling purposes.

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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#### 5. SUPPLY

##### 5.1 Production

- Between 2003 and 2007, the gross output value of the manufacture of textile wearing apparel, footwear and caps in China increased at an average annual rate of 22.0%. In 2007, the gross output value of the manufacture of textile wearing apparel, footwear and caps grew by 23.4% to reach RMB760.0 billion.
- Between 2003 and 2007, the total sales value for the wholesale of textiles, garments and daily consumer articles in China increased at an average annual rate of 21.2%. In 2007, the total wholesale value of textiles, garments and daily consumer articles in China grew by 15.3% to reach RMB744.8 billion.
- The production statistics on rubber shoes include, among others, sports shoes but exclude professional sports shoes, which require special certification from the Government of China. Between 2002 and 2006, the production quantity of rubber shoes (including sports shoes) in China grew at an average annual rate of 13.5%. In 2006, the production quantity of rubber shoes in China increased by 28.7% to reach 1.6 billion pairs.
- Between 2002 and 2006, the production quantity of leather shoes in China increased at an average annual rate of 18.5%. In 2006, the production quantity of leather shoes in China grew by 18.9% to reach 3.0 billion pairs.  
(Source: National Bureau of Statistics of China)

##### 5.2 Imports

- Between 2004 and 2007, the import value of footwear, gaiters and the like increased at an average annual rate of 12.4%. In 2007, the import value of footwear, gaiters and the like grew by 14.5% to reach RMB5.6 billion.  
(Source: National Bureau of Statistics of China)
- Between 2004 and 2008, the import value of rubber and plastic outer soles and heels decreased at an average annual rate of 2.1%. In 2008, import value of rubber and plastic outer soles and heels declined by 5.0% to USD71.8 million (equivalent to RMB491.4 million). In 2008, China's major sources of rubber and plastic outer soles and heels include Taiwan, Korea, Vietnam, Italy, Japan and United States. (Source: China Customs)

#### 6. SUPPLY DEPENDENCIES – RAW MATERIALS

- The major raw materials used in the manufacture of sports shoe soles include:
  - Plastic resins and materials such as PVC, PU, TPR, TPNR, EVA and phylon;
  - Natural rubber such as ribbed smoke sheer and pale crepe;

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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- Synthetic rubber such as styrene butadiene rubber (SBR), butadiene acrylonitrile, polychloroprene, polyisoprene and polybutadiene.
- Between 2003 and 2007, the production quantity of primary plastics in China increased at an average annual rate of 17.8%. In 2007, the production quantity of primary plastics in China registered a growth rate of 22.4% to reach 31.8 million tonnes. Manufacturers of shoe soles are able to source these primary plastics from various locations within China, including Jiangsu, Shanghai, Guangdong, Shandong, Zhejiang, Tianjin, Beijing, Liaoning, Heilongjiang, Gansu, Xinjiang, Henan and others.
- Between 2003 and 2007, the production quantity of ethylene in China increased at an average annual rate of 13.8%. In 2007, the production quantity of ethylene in China grew by 9.3% to reach 10 million tonnes. Manufacturers of shoe soles can source ethylene from various locations within China, including Guangdong, Shanghai, Jiangsu, Beijing, Jilin, Shandong and others.

*(Source: National Bureau of Statistics of China)*

- In addition to local production, some of the sources of raw materials that are required for the production of sports shoe soles are also available through imports as indicated by the following statistics:
  - Between 2003 and 2007, the import value of natural rubber (including latex) registered an average annual growth rate of 29.6%. In 2007, the import value of natural rubber (including latex) grew by 7.5% to reach USD3.3 billion (equivalent to RMB22.6 billion).
  - Between 2003 and 2007, the import value of synthetic rubber (including latex) registered an average annual growth rate of 25.3%. In 2007, the import value of synthetic rubber (including latex) grew by 19.9% to reach USD2.8 billion (equivalent to RMB19.2 billion).
  - Between 2003 and 2007, the import value of polyethylene in primary forms in China increased at an average annual rate of 12.6%. In 2007, the import value of polyethylene (PE) in primary forms in China decreased by 3.4% to USD3.9 billion (equivalent to RMB26.7 billion).
  - Between 2003 and 2007, the import value of polystyrene (PS) in primary forms in China increased at an average annual rate of 14.5%. In 2007, the import value of polystyrene in primary forms in China grew by 22.9% to reach USD5.9 billion (equivalent to RMB40.4 billion).

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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- Between 2003 and 2007, the import value of ABS copolymers in China grew at an average annual rate of 17.7%. In 2007, the import value of ABS copolymers in China increased by 25.0% to reach USD3.6 billion (equivalent to RMB24.6 billion).

*(Source: National Bureau of Statistics of China)*

## 7. DEMAND

### Consumption

- Between 2004 and 2007, the retail value of clothing, shoes, hats and textiles grew at an average annual rate of 20.4%. In 2007, the retail value of clothing, shoes, hats and textiles increased by 25.5% to reach RMB302.4 billion.
- Between 2003 and 2007, per capita annual purchase of shoes by urban households in China grew at an average annual rate of 1.5%. In 2007, per capita annual purchase of shoes by urban households in China increased by 4.2% to reach 2.74 pairs.
- Between 2003 and 2007, per capita annual consumption expenditure on shoes by urban households in China increased at an average annual rate of 15.0%. In 2007, per capita annual consumption expenditure on shoes by urban households in China grew by 17.9% to reach RMB242.6.

*(Source: National Bureau of Statistics of China)*

### Exports

- Between 2004 and 2007, the export value of footwear, gaiters and the like, and parts of such articles increased at an average annual rate of 15.6%. In 2007, the export value of these articles grew by 11.2% to reach RMB194.3 billion.
- Between 2004 and 2008, the export value of rubber and plastic outer soles and heels increased at an average annual rate of 39.3%. In 2008, the export value of rubber and plastic outer soles and heels grew by 54.4% to reach USD583.9 million (RMB4.0 billion). In 2008, China's export markets for rubber and plastic outer soles and heels include, among others, Russia, United States, Hong Kong, Japan, Vietnam, Malaysia, India, Germany, United Arab Emirates, Indonesia, Singapore, the United Kingdom and Spain.
- Between 2003 and 2007, the export value of leather shoes increased at an average annual rate of 15.6%. In 2007, the export value of leather shoes grew by 9.0% to reach USD8.8 billion (equivalent to RMB60.2 billion).



## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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- Between 2003 and 2007, the export value of cloth shoes with outer of rubber or artificial plastic materials (including gym shoes) grew at an average annual rate of 21.1%. In 2007, the export value of cloth shoes with outer of rubber or artificial plastic materials increased by 20.6% to reach USD3.4 billion (equivalent to RMB23.3 billion)

(Source: National Bureau of Statistics of China and China Customs)

## 8. DEMAND DEPENDENCIES

- As Multi Sports Group's market is mainly focused on China, demand dependencies will be based on factors impacting on the consumption of sports shoes in China including the following:
  - Population growth in China;
  - Growth in household disposable income;
  - Increase in consumption expenditure.
- Between 2003 and 2007, the population of China increased at an average annual rate of 0.6%. In 2007, the population of China grew by 0.5% to reach 1.3 billion persons.
- Between 2003 and 2007, the annual per capita disposable income of urban households in China increased at an average annual rate of 12.9%. In 2007, the annual per capita disposable income of urban households in China grew by 17.2% to reach RMB13,785.8.
- Between 2003 and 2007, the annual per capita consumption expenditure of urban households in China increased at an average annual rate of 11.3%. In 2007, the annual per capita consumption expenditure of urban households in China grew by 15.0% to reach RMB9,997.5.

(Source: National Bureau of Statistics of China)

## 9. COMPETITION

### 9.1 Nature of Competition in the Industry

- Manufacturers of sports shoe soles in China operate under normal competitive conditions similar to a free enterprise environment where there are no undue government regulations or licensing requirements and operators may freely enter or leave the industry.

### 9.2 Factors of Competition

- As with most free enterprise environment, the factors used to compete and to differentiate one operator from another include the following:
  - product quality;
  - cost competitiveness;

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- design capabilities;
- research and development;
- track record.

#### 9.3 Impact of Factors of Competition on Multi Sports Group

- **Product Quality**

Product quality is important as sports shoe soles are regarded as critical components of sports shoes. Sports shoe soles have specific functions, which contributes to the overall performance of the shoe. For example, the midsole provides cushioning and stability to the foot, while the outsole is designed to provide traction and abrasion resistance. As such, quality of materials used and design of the soles are critical to the finished products.

Manufacturers with stringent quality assurance programmes and certifications in place with in-house quality tests and inspections will be in a better position to compete effectively and win new customers.

In 2008, the Group's subsidiary, Jinjiang Baixing Shoes Materials Co Ltd has been accredited with 'Quality Reliable Products' award by China Industry Product Guarantee Centre. The quality award of Multi Sports Group is an endorsement of the quality assurance system that is in place for the manufacturing of sports shoe soles. This award provides customers with the assurance of Multi Sports Group's product quality. In addition, Multi Sports Group has also implemented rigorous process of quality assurance, checks and inspections starting from in-coming raw materials through to the various production processes and finished products.

- **Cost Competitiveness**

Manufacturers that are able to provide cost competitive solutions would have a significant competitive advantage. The need for cost competitive manufacturers is partly driven by the rising cost of raw materials used in producing shoes coupled with the competition from other manufacturers.

Multi Sports Group is able to provide cost competitive sports shoe soles based on economies of scale derived from its large volume production. For the financial year ended 31 December 2008, the Group produced approximately 22 million pairs of sports shoe soles. The large volume production enables the Group to buy raw materials at competitive costs, and also spread its fixed costs over a larger number of units of output.

- **Design Capabilities**

Design of shoe soles requires a certain level of technical skills, expertise, and specialised systems. For example, the design phase would require experience, skills and expertise in conceptualising desirable designs based on existing or emerging trends. These are then translated into shoe sole designs using computer aided design (CAD) systems. This would allow the

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manufacturer to create two and three dimension computer generated solid state prototypes to facilitate dimensioning, multizoning and accurate scaling, and colour and material combinations. Designing of shoe sole is essential, especially for sports shoes as it affects the shoe style, ergonomics, function, durability and customer acceptance.

As such, a sports shoe soles manufacturer with in-house design facilities and capabilities would serve as an essential value-adding to their customers who are mainly sports shoe manufacturers.

The Group has made significant investments in design facilities including CAD systems as well as design personnel. As at 20 June 2009, Multi Sports Group has six personnel involved in the design of sports shoe soles.

- **Research and Development**

There are three main drivers of sports shoes that make research and development an important competitive factor, namely:

- Sports shoes are fashion items;
- Sports shoes provide support and protection for the feet and legs;
- Competition continuously place pressure on costs.

These three drivers, among others, have necessitated research and development of sports shoes, including soles. Research and development is essential in creating new designs and using new materials that meet customer needs for fashion, function, ergonomics and cost considerations.

As such, sports shoe soles manufacturers with in-house research and development facilities and capabilities would be in a better position to continuously come out with better and more desirable products that meet the changing needs of customers.

In this respect, Multi sports Group has in-house research and development facilities and capabilities to design as well as manufacture sports shoe soles to meet the requirements of its customers.

- **Track Record**

Customers would normally select manufacturers with a strong track record. This is particular critical, as customers would normally place large orders to be delivered in a relatively short period of time. As such, manufacturers that are able to deliver on time, on budget and providing quality products would have a significant advantage.

Multi Sports Group has a track record of approximately 16 years in providing sports shoe soles to sports shoe manufacturers. Over the years, the Group has undertaken manufacturing of sports shoe soles for manufacturers including Guohui, 361° and Xdlong. Its track record combined with its reference site of customers would provide the Group with a competitive advantage to win new customers.

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#### 9.4 Competitive Intensity

- Competition among manufacturers of sports shoe soles within the Footwear Industry in China is based on the following observations:

- Competition primarily comes from other manufacturers of shoe soles in China, particularly in Jinjiang City within Fujian province. This is because Jinjiang is regarded as the centre of footwear manufacturing in China, and Multi Sports Group's manufacturing operations are located in Jinjiang City. In Jinjiang City., there are an estimated 3,000 shoe manufacturing companies producing an estimated 700 million pairs of shoes per year (*Source: China Leather Industry Association*).
- A large and growing market of footwear manufacturers would be able to accommodate a relatively large number of manufacturers of sports shoe soles within the industry. This may somewhat mitigate the competitive intensity.

In 2007, the gross industrial output value of the manufacture of textile wearing apparel, footwear and caps in China amounted to RMB760.0 billion. (*Source: National Bureau of Statistics of China*)

The production statistics on rubber shoes includes among others, sports shoes but excludes professional sports shoes, which requires special certification from the Government of China. Between 2002 and 2006, the production quantity of rubber shoes (including sports shoes) in China grew at an average of 13.5%. In 2006, the production quantity of rubber shoes in China increased by 28.7% to reach 1.6 billion pairs.

Multi Sports Group is located in Jinjiang City within Fujian Province. In Jinjiang, there are an estimated 3,000 shoe manufacturers producing an estimated 700 million pairs of shoes per year. (*Source: China Leather Industry Association*) This provides significant opportunities for shoe soles manufacturers in Jinjiang to service a large user industry.

Between 2002 and 2006, the production of leather shoes in China grew at an average annual rate of 18.5%. In 2006, the production of leather shoes in China increased by 18.9% to reach 3.0 billion pairs. (*Source: National Bureau of Statistics of China*)

- Technical skills and knowledge required also forms a barrier to entry, therefore this somewhat reduces the competitive intensity.

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- Competition also comes from imports of shoe soles. In 2008, import value of rubber and plastics outer soles and heels amounted to USD71.8 million (equivalent to RMB491.4 million). In 2008, China imports its rubber and plastics outer soles and heels from Taiwan, Korea, Vietnam, Italy, Japan, United States and other overseas countries. (Source: China Customs) Nevertheless, imports are relatively small and as such competition from imports is minimal.

#### 9.5 Players in the Industry

- Some of the players within the manufacturing of shoe soles in China include the following (in alphabetical order):
  - Chengdu Yaxi Shoes Material Co Ltd
  - DongguanHuangjiang Baotai Shoe Material Factory
  - Fujian Longsheng Light Industry Co Ltd
  - Fujian Jinjiang Henghui Shoes & Plastics Co Ltd
  - Fujian Suoli Shoes Co. Ltd
  - Fujian Qingmei Shoe Material Development Co. Ltd
  - Fujian Hongwei Shoe Plastics Co Ltd
  - Fute (QZ) Shoe Material Co Ltd
  - Huizhou Hongfu Shoe Material Manufacturing Factory
  - Jinjiang Taiya Shoes Development Co Ltd
  - Jinjiang Tengda Soles Factory
  - Jinjiang Yili Shoes Material Co Ltd
  - Julong (Quanzhou) Light Industry Co Ltd
  - Multi Sports Group (through its subsidiary Jinjiang Baixing Shoes Materials Co. Ltd)
  - Putian Hanjiang Dayun Shoes Materials Co. Ltd
  - Qingdao Hong'an Shoes Co. Ltd
  - Wenzhou Jiashun Shoes Material Co. Ltd
  - Wenzhou Longwan Haibing Xiulong Shoe Soles Factory
  - Zhangjiagang Yingsheng Rubber & Plastic Co. Ltd
  - Zhejiang Huadong Rubber Co. Ltd
  - Quanzhou Xinxiezhishi Shoes & Plastic Co Ltd
  - Quanzhou Youcheng Plastics Co Ltd
  - Quansheng Industry Co. Ltd

*Note: This is a not an exhaustive list.*

*(Source: Primary Market Research undertaken by Vital Factor Consulting Sdn Bhd)*

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#### 10. BARRIERS TO ENTRY

##### 10.1 Capital and Set-up Costs

- The barrier to entry into the manufacture of sports shoe soles within the Footwear Industry is moderate from the capital and set-up cost perspective.
- The capital cost of setting-up a small-scale manufacturing plant in China to produce sports shoe soles would be approximately RMB30 million (excluding land and building). This would include:
  - One line of injection moulding machinery and equipment and one line of thermoforming machinery and equipment for approximately RMB20 million;
  - Working capital of approximately RMB10 million.

With this capital set-up cost, the small-scale manufacturing plant would be capable of producing approximately 300,000 pairs of sports shoe soles per year and the revenue generated from this plant is estimated at RMB3 million per year.

(Source: Multi Sports Group)

- At this level of entry, which is small, the manufacturing plant is restricted in terms of capacity. Capital costs would start to escalate for those who want to generate a higher volume of output to achieve economies of scale.
- Smaller manufacturers would also find it difficult to compete with larger manufacturers as they are unable to fulfil larger volume orders within a short period of time.

##### 10.2 Technical Expertise

- Technical skills and knowledge are required in design, research and development, and manufacturing of sports shoe soles.
- Designs of shoe soles are essential and covers functionality, ergonomics, style, aesthetics and ultimately customer acceptance. Having in-house design capabilities would provide a significant complementary value-adding function to sports shoe manufacturers. Larger and more established manufacturers are more likely to have in-house design development capabilities compared to smaller manufacturers.
- Technical skills to undertake research and development are also essential to keep ahead of the competition. This is particularly important in keeping up with fashion trends, improvements in ergonomic designs and using new materials to continuously come up with better and more desirable products.
- Manufacturing expertise such as those required in injection moulding and thermoforming also play major roles in ensuring products meet specified properties and features including density, elongation, microcellular structures, anti-abrasion, dimensional stability, and toughness.

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- Technical expertise in selecting the choice of raw materials, and using improved materials for sports shoe soles is also very important to the saleability of the product. This is due to the significant amount of developments in materials used to provide better and sometimes cheaper materials for the manufacture of sports shoe soles.
- Sports shoe sole is a critical component of the total sports shoe, particularly due to the importance in providing comfort, safety, ergonomics, cushioning against the jarring impact of walking or running, and the requirement for withstanding wear and tear due to the abrasive action of coming into direct contact with the ground. In addition, sports shoe soles play a key part in the overall aesthetics and fashion trend of sports shoe.
- Technical expertise, skills and knowledge from design, manufacturing and use of raw materials are key in creating a quality and desirable product, and thus could pose as a barrier to entry for new entrants.

#### 10.3 Track Record

- Track record forms one of the barriers to entry for new entrants. It would be difficult for a new entrant to compete effectively in the market.
- A manufacturer with a track record as a reliable supplier providing consistently high quality products would be in a significant better position in winning sales compared to new entrants.

#### 10.4 Product Quality

- As sports shoe soles are key components of the total sports shoes, the quality of the soles is critical.
- Quality of sports shoe soles is critical as they are subjected to continuous vigorous action and significant wear and tear, while at the same time expected to provide comfort, safety and protection to the feet, ankles and knees of wearers.
- As such, manufacturers that have stringent quality assurance programmes in place and compliance to standards are important factors in securing sales orders. Manufacturers that able to continuously meet quality expectations of customers are in a stronger position to compete effectively.

### 11. RELIANCE ON AND VULNERABILITY TO IMPORTS

- Generally, manufacturers of sports shoe soles in China source a significant proportion of their raw materials locally in China. Some of the major raw materials used for the manufacture of sports shoe soles include:
  - Plastic resins and additives such as PU, EVA and phylon;
  - Natural rubber in the form of ribbed smoke sheet and pale crepe;

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- Synthetic rubber such as styrene butadiene rubber, acrylonitrile butadiene, styrene-butadiene-styrene synthetic rubber block copolymer (TPR), chloroprene, polyisoprene and polybutadiene.
- Multi Sports Group mainly uses natural rubber in the form of solid rubber and durable rubber compound, synthetic rubber in the form of TPR, and plastic resins and additives in the form of EVA and phylon.
- Raw materials particularly in the form of plastic resins and synthetic rubber can be sourced locally in China. This is supported by the following observations:
  - In 2007, China's production of primary plastics increased by 22.4% to reach 31.8 million tonnes. Manufacturers of sports shoe soles can source these primary plastics from various locations within China, including Jiangsu, Shanghai, Guangdong, Shandong, Zhejiang, Tianjin, Beijing, Liaoning, Heilongjiang, Gangsu, Xinjiang, Henan and others.
- Nevertheless, China also imports a significant amount of raw materials to meet its overall manufacturing needs. In 2007, import statistics of some of the selected primary plastics in China are as follows:
  - Imports of polyethylene (PE) in primary forms in China amounted to USD3.9 billion (equivalent to RMB26.7 billion).
  - Import value of polystyrene (PS) in primary forms in China amounted to USD5.9 billion (equivalent to RMB40.4 billion).
  - Import value of ABS copolymers in China amounted to USD3.6 billion (equivalent to RMB24.6 billion).

*(Source: National Bureau of Statistics of China)*

## 12. INDUSTRY OUTLOOK

### General Overview

- In light of the current global financial crisis that has affected China economy, the outlook of the Footwear Industry in China may be challenging for the short to medium term.
- Worsening global economic conditions resulted in slower growth for the China economy during the fourth quarter of 2008. Real GDP growth slowed to 6.8% during the fourth quarter of 2008 bringing the overall 2008 GDP growth to 9.0%, the lowest in seven years. This is low in comparison to the previous year where GDP grew by 17.9%.
- A slowdown in the global and China economies may lead to a slowdown in the footwear including the Sports Shoe Industry.



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- Nevertheless, the outlook for the Footwear Industry in China is expected to improve when China and global economies rebound. This is primarily predicated by the position of China as the world's manufacturing source of footwear, and is further substantiated by the following observations during normal economic conditions:

#### Production

- Between 2003 and 2007, the gross output value of the manufacture of textile wearing apparel, footwear and caps in China increased at an average annual rate of 22.0%. In 2007, the gross output value of this sector grew by 23.4% to reach RMB760.0 billion.
- The production statistics on rubber shoes includes among others, sports shoes but excludes professional sports shoes, which requires special certification from the Government of China.
- Between 2002 and 2006, the production quantity of rubber shoes (including sports shoes) in China grew at an average of 13.5%. In 2006, the production quantity of rubber shoes in China increased by 28.7% to reach 1.6 billion pairs.

(Source: National Bureau of Statistics of China)

#### Demand

- Between 2004 and 2007, the retail value of clothing, shoes, hats and textiles grew at an average annual rate of 20.4%. In 2007, the retail value of clothing, shoes, hats and textiles increased by 25.5% to reach RMB302.4 billion.
- Between 2003 and 2007, per capita annual purchase of shoes by urban households in China grew at an average annual rate of 1.5%. In 2007, per capita annual purchase of shoes by urban households in China increased by 4.2% to reach 2.74 pairs.
- Between 2003 and 2007, per capita annual consumption expenditure on shoes by urban households in China increased at an average annual rate of 15.0%. In 2007, per capita annual consumption expenditure on shoes by urban households in China grew by 17.9% to reach RMB242.6.

(Source: National Bureau of Statistics of China)

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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#### Exports

- Between 2004 and 2007, the export value of footwear, gaiters and the like, and parts of such articles increased at an average annual rate of 15.6%. In 2007, the export value of these articles grew by 11.2% to reach RMB194.3 billion.
- Between 2004 and 2008, the export value of rubber and plastic outer soles and heels increased at an average annual rate of 39.3%. In 2008, export value of rubber and plastic outer soles and heels grew by 54.4% to reach USD583.9 million (RMB4.0 billion). In 2008, China's export markets for rubber and plastic outer soles and heels include, among others, Russia, United States, Hong Kong, Japan, Vietnam, Malaysia, India, Germany, United Arab Emirates, Indonesia, Singapore, the United Kingdom and Spain.

(Source: National Bureau of Statistics of China and China Customs)

#### Economic Conditions in China relative to Global Conditions

- Despite experiencing a slow down in GDP in 2008, China's GDP continues to be relatively more robust at 9.0% growth compared to the GDP growth of some of the more advanced economies, for example:
  - USA = 1.6%
  - UK = 1.0%
  - Japan = 0.5%(Source: International Monetary Fund).
- For the first quarter of 2009, China's GDP registered a growth of 6.1% compared to the same period in 2008. China is forecasted to achieve a continuing growth of 8.3% in 2009 while many more advanced countries expect very low or negative GDP growth for 2009, for example:
  - USA = 0.1%
  - UK = -0.1%
  - Japan = 0.5%(Source: International Monetary Fund).
- In addition, with an economic slowdown, there is a possibility that consumers in China would trade down from buying overseas branded sports shoes to buying lower cost branded sports shoes.
- As such, manufacturers whose main markets are in China would be in a better position to ride through the current global economic slowdown. The relatively better outlook is further boosted by the large population of China, which registered 1.3 billion persons in 2007 (Source: National Bureau of Statistics of China).

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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#### 13. THREATS AND RISKS ANALYSIS

##### 13.1 Dependency on Supply of Raw Materials

- The manufacture of sports shoe soles is ultimately dependent on the availability of major raw materials such as plastics, and natural and synthetic rubber. Shortage in the supply of any one of these major raw materials may lead to a disruption in the manufacturing operations.

##### Mitigating Factors

- China has a significant oil and gas production industry, which serves as the feedstock for the manufacture of plastic resins and synthetic rubber. Between 2003 and 2007, China's production of primary plastics grew at an average annual rate of 17.8%. In 2007, China's production of primary plastics increased by 22.4% to reach 31.8 million tonnes. (Source: National Bureau of Statistics of China)
- Plastic resins and synthetic rubber are commodities and are easily available in the world market. In 2007, China's import of plastics and articles amounted to USD45.3 billion (equivalent to RMB347.7 billion). This includes imports of primary products such as PE, PS, PP and PVC in primary forms, and ABS copolymer, and other plastic based products. (Source: National Bureau of Statistics of China)
- China also produces its own natural rubber and ranks fifth in the world for the production of natural rubber. Nevertheless, due to its large manufacturing base, China supplements its requirements for natural rubber through imports from Indonesia, Thailand and Malaysia, the world's top three largest producer of natural rubber.
- Thus, as the main raw materials are commodities and are readily available in China and elsewhere in the world, the threat from shortage of supply of key raw materials is minimised.

##### 13.2 Fluctuation in Prices of Raw Materials and Petroleum

- Petroleum products are the major feedstock for plastic resins and synthetic rubber used in the manufacture of sports shoe soles. Thus, the prices of plastic resins and synthetic rubber, including EVA, PU and TPR are therefore dependent on the price of petroleum.
- Plastic resins and synthetic rubber are commodities and they are also subjected to fluctuations in world prices.
- In some situations, increases in the price of raw materials are not easily passed onto customers. This could have an impact on margins. Alternatively, if the increase in cost is passed onto customers, the manufacturer may not be price competitive.

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



### VITAL FACTOR CONSULTING

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#### Mitigating Factors

- Manufacturers with strong financial strength may be able to purchase and maintain stocks of key raw materials to create some cushion against price fluctuations, especially in the short term.
- In addition, as these raw materials are commodities and therefore subjected to world prices, all manufacturers that use these materials are affected equally.

#### 13.3 Global Financial Crisis

- Any prolonged and/or widespread downturn such as those of the recent global financial turmoil has affected China and the global economies. Shoes are consumer-based products and any downturn in China and global economies will reduce disposable income and consumer confidence.
- A slowdown in China and global economies is likely to reduce demand for a wide range of products, including shoes, which would have an impact on manufacturers of sports shoe soles.

#### Mitigating Factors

- As shoes are regarded as necessity products, it is likely that consumer spending on these products will still continue, albeit at a lower expenditure level during an economic slowdown.
- In 2008, China experienced real GDP growth of 9.0% and is forecasted to grow by 8.3% in 2009. In contrast, many advanced economies experienced very low or negative GDP growth in 2008, and 2009 is expected to be similar (Source: Chinese Academy of Social Science and International Monetary Fund). As such, China's economy is expected to be better off compared to many of the more advanced economies.
- Manufacturers with strong product quality, financial stability, and diverse range of products and designs would be in a better position to withstand the impact of a slowdown in China and global economies.

#### 13.4 Competition from Imports

- Imported shoe soles into China from overseas countries including Korea, Taiwan, Italy, and Vietnam would increase competition for manufacturers of sports shoe soles in China.
- In 2008, import value of rubber and plastic outer soles and heels amounted to USD71.8 million (equivalent to RMB491.4 million). (Source: China Customs)

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## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)

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### VITAL FACTOR CONSULTING

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#### Mitigating Factors

- China is one of the world's largest manufacturers of sports shoes. The sports shoe industry has matured significantly for China to meet the world's needs for sports shoes. This is substantiated by the fact that global prominent brands have significant proportions of their sports shoes manufactured in China to service the world market. As such, China is a key and net exporter of sports shoes. Thus imports do not pose as a major threat to China's footwear industry in general and specifically sports shoes and sports shoe soles. In addition, the amount of imports of shoe soles is relatively low to be a significant threat.

## 14. AREAS OF GROWTH AND OPPORTUNITIES

### 14.1 Product Diversification

- Product diversification presents opportunities for manufacturers to enlarge its customer base and more importantly, enable manufacturers to minimise risk of over dependency on certain products.
- Manufacturers who produce a diverse product range and applications are in a stronger position to sustain the business during the economic slowdown.

### 14.2 Use of New Materials for Sports Shoe Soles

- Developments in materials for sports shoe soles have been very significant over the years providing consumers with a wide range of materials to meet the functional, ergonomics and fashion requirements of sports shoes.
- Development of materials has moved from the use of natural rubber to incorporate engineered plastics and thermoplastic rubber. The introduction of microcellular structures in sports shoe soles is another example of innovations in enhancing the properties of raw materials to increase comfort, protection and stability for wearers.
- As such, there are significant opportunities in development of new or modified materials for sports shoe soles to continuously create excitement and demand for sports shoes.

### 14.3 Export Markets

- There are significant opportunities for manufacturers of sports shoe soles to expand into export markets. In 2008, export value of rubber and plastic outer soles and heels amounted to USD583.9 million (RMB4.0 billion). (*Source: China Customs*)

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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- In 2008, China's export markets for rubber and plastic outer soles and heels include, among others, Russia, United States, Hong Kong, Japan, Vietnam, Malaysia, India, Germany, United Arab Emirates, Indonesia, Singapore, the United Kingdom and Spain. (Source: China Customs)
- The United States is regarded as one of the highest consumer of shoes on a per capita basis. Between 2004 and 2006, per capita expenditure on shoes in the United States increased at an average annual rate of 5.9% amounting to USD58.20 (equivalent to RMB398.20) in 2006. (Source: U.S Census Bureau)
- Exports into overseas countries will open up a significantly larger market for sports shoes as well as sports shoe sole manufacturers in China

#### 14.3 China Market

- There continues to be opportunities in the China market for shoes as indicated by the comparison of per capita expenditure of shoes in China compared to the United States:
  - In 2006, per capita annual expenditure of shoes in the United States amounted to USD58.20 (equivalent to RMB398.20), which is about two times higher than China's per capita annual expenditure by urban households at RMB205.8.
- As a country's per capita GDP increases, expenditure on shoes are likely to increase as shoes become fashion accessories to more affluent people in contrast to shoes being a functional item to protect the feet.

## 15. CRITICAL SUCCESS FACTORS

Critical success factors for manufacturers of sports shoe soles include the following:

- **Commitment to High Quality:** To ensure optimal performance and reliability of products, manufacturers must be committed to deliver consistently high quality products to customers. Manufacturers of sports shoe soles who adopt stringent controls in their manufacturing processes and have obtained recognised quality accreditations and awards to reflect their commitment to excellence are in the better position to meet customers' requirements.
- **Established Track Record:** The manufacture of sports shoe soles in China is a competitive industry with many operators. Manufacturers of sports shoe soles service a relatively large market of shoe manufacturers in China. This is particularly true in Jinjiang within the Fujian province in China where there are an estimated 3,000 manufacturers of footwear. As such, other than possessing design, research and development, and manufacturing capabilities, a reputable track record is key in securing sales orders, particularly from new customers.

## 11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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- **Financial Stability:** Manufacturers in a healthy financial position are more likely to retain and attract new customers. Potential customers would emphasise financial stability as a key criterion in the evaluation of a prospective supplier as they would not want any disruption in the supply of sports shoe soles. In addition, a financially strong manufacturer would be in a better position to upgrade its manufacturing capabilities, if necessary, to keep abreast with technology, changes in production or to meet demand for increased capacity.

## 16. MARKET SIZE AND SHARE

### 16.1 Market Size

- In 2008, the market size of the footwear industry in China was estimated at **10 billion pairs** based on production. (*Source: China Leather Industry Association*)
- In 2008, the market size of the rubber/plastic shoes (include, among others, sports shoes) industry in China was estimated at **2.1 billion pairs** based on production. Rubber/plastic shoes are a sub-sector of the total footwear industry in China. (*Source: National Bureau of Statistics of China and computed by Vital Factor Consulting Sdn Bhd*)

### 16.2 Market Share

- In 2008, Multi Sports Group had a market share of approximately **0.2%** of the footwear soles sector in China based on its production output of 22 million pairs of sports shoe soles.
- In 2008, Multi Sports Group had a market share of approximately **1%** of the rubber/plastic shoe soles sector in China based on its production output of 22 million pairs of sports shoe soles.

*(Note: The term "footwear" covers all types of footwear including sandals, slippers, industrial footwear, therapeutic footwear, boots, and shoes. Multi Sports Group only manufactures sports shoe soles.)*

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11. **INDEPENDENT MARKET RESEARCH REPORT (Cont'd)**

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**VITAL FACTOR CONSULTING**

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Vital Factor Consulting Sdn Bhd has prepared this report in an independent and objective manner and has taken all reasonable consideration and care to ensure the accuracy and completeness of the report. It is our opinion that the report represents a true and fair assessment of the industry within the limitations of, among others, secondary statistics and information, and primary market research. Our assessment is for the overall industry and may not necessarily reflect the individual performance of any company. We do not take any responsibilities for the decisions or actions of readers of this document. This report should not be taken as a recommendation to buy or not to buy the shares of any company.

Yours sincerely



Wooi Tan  
Managing Director



## 12. DIRECTORS' REPORT

*(Prepared for inclusion in this Prospectus)*

### MULTI SPORTS HOLDINGS LTD

(Bermuda Company No. 42425) (Malaysian Foreign Company Registration No. 995199-H)

#### Bermuda Registered Office

Clarendon House  
2 Church Street  
Hamilton HM11  
Bermuda  
Tel : +1 (441) 295 1422  
Fax : +1 (441) 292 4720

#### Head Office

Yanshang Industry Zone, Chendai Town  
Jinjiang City  
Fujian Province  
People's Republic of China  
Tel : +86 (595) 8205 8888  
Fax : +86 (595) 8508 3788

#### Registered Office in Malaysia

Level 18, The Gardens North Tower  
Mid Valley City, Lingkaran Syed Putra  
59200 Kuala Lumpur  
Malaysia  
Tel : +6 (03) 2264 8888  
Fax : +6 (03) 2282 2733

28 JUL 2009

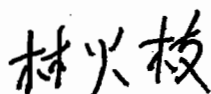
The Shareholders of  
**MULTI SPORTS HOLDINGS LTD**

Dear Sir / Madam,

On behalf of the Board of Directors of Multi Sports Holdings Ltd ("**Multi Sports**" or "**Company**"), I wish to report after due enquiry by the Board of Directors of Multi Sports, that between the period from 31 March 2009 (being the date to which the last audited combined financial statements of the Company and its subsidiaries ("**Group**") has been made up) to the date of this letter (being a date not earlier than 14 days before the issue of this Prospectus), that: -

- (a) the business of our Group has, in the opinion of the Directors, been satisfactorily maintained;
- (b) in the opinion of the Directors, no circumstances have arisen since the last audited combined financial statements of our Group, which have adversely affected the trading or the value of the assets of our Group;
- (c) the current assets of our Group appear in the books at values, which are believed to be realisable in the ordinary course of business;
- (d) save as disclosed in this Prospectus, there are no contingent liabilities by reason of any guarantees or indemnities given by our Group;
- (e) there has been, since the latest audited combined financial statements of our Group, no default or any known event that could give rise to a default situation, in respect of payments of either interest and / or principal sums in relation to any borrowings, in which the Directors are aware of; and
- (f) save as disclosed in this Prospectus, there has been, since the last audited combined financial statements of our Group, no material changes in the published reserves or any unusual factors affecting the profits of our Group.

Yours faithfully,  
For and on behalf of the Board of Directors of  
**MULTI SPORTS HOLDINGS LTD**



**Lin Huozhi**  
Executive Chairman and Chief Executive Officer

### **13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION**

#### **13.1 SHARE CAPITAL**

- (a) No shares will be allocated or issued on the basis of this Prospectus later than twelve (12) months after the date of issue of this Prospectus.
- (b) We only have one (1) class of shares in our Company, namely ordinary shares of US\$0.05 each, all of which rank pari passu with one another.
- (c) Save as disclosed in Section 2.3, Section 4.1.4 and Section 4.1.5 of this Prospectus, no shares, debentures, warrants, options, convertible securities or uncalled capital of our Company and our subsidiaries have been issued or are proposed to be issued as fully or partly paid-up in cash or otherwise, within the two (2) years immediately preceding the date of this Prospectus.
- (d) There is currently no scheme for or involving our Directors or employees in the capital of our Company or any of our subsidiaries.
- (e) Neither our Company nor our subsidiaries have any capital that is under option, or agreed conditionally or unconditionally to be put under option as at the date of this Prospectus.
- (f) Neither our Company nor our subsidiaries have any outstanding convertible debt securities as at the date of this Prospectus.

#### **13.2 SUMMARY OF MEMORANDUM OF ASSOCIATION AND SELECTED BYE-LAWS OF OUR COMPANY**

The following provides information about certain provisions of our Memorandum of Association and Bye-laws, and Bermuda company law. The description below is only a summary and is qualified in its entirety by reference to our Memorandum of Association and Bye-laws and the Bermuda Companies Act: -

**(i) Registration number and Memorandum of Association**

The registration number with which the Company was incorporated is 42425.

Our Memorandum of Association states, inter alia, that the liability of the members of our Company is limited to the amount, if any, for the time being unpaid on the shares respectively held by them and that our Company is to be an exempted company as defined by the Bermuda Companies Act. Paragraph 6 of the Memorandum of Association states that the objects for which our Company was formed and incorporated are unrestricted. Paragraph 7 of the Memorandum of Association provides, inter alia, that the Company may do all such things as are incidental or conducive to the attainment of its objects and shall have the capacity, rights, powers and privileges of a natural person.

In accordance with and subject to sections 42A and 42B of the Bermuda Companies Act, the Memorandum of Association of our Company empowers it to purchase its own shares for cancellation and also to purchase its own shares to be held as treasury shares and these powers are exercisable by the Board of Directors upon such terms and subject to such conditions as it thinks fit in accordance with the Bye-laws.

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### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (*Cont'd*)

#### (ii) Directors

##### (a) *Ability of interested directors to vote (Bye-laws 101 and 102)*

A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract or arrangement is first considered, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested.

A Director shall not vote on any resolution of the Board in respect of any contract or arrangement or proposed contract or arrangement in which he has directly or indirectly a personal material interest. However, the interested Director need not be excluded from being counted in the quorum for the meeting at which such contract or arrangement or proposed contract or arrangement is considered. Certain matters in which a Director will not be considered to have a personal material interest are set out in the Bye-laws.

A Director, whose remuneration (including pension or other benefits) for himself is the subject of a resolution tabled at a meeting of the Board, shall not be entitled to vote on the resolution as he shall be taken to have a personal material interest in the matter. Other Directors of the Company will not be prohibited by the Bye-laws from voting on that resolution so long as they do not have any direct or indirect personal material interest in the subject matter of the said resolution.

##### (b) *Remuneration (Bye-laws 90, 95, 97(1) and 98)*

The fees of the Directors shall from time to time be determined by the Company in general meeting, shall not be increased except pursuant to an ordinary resolution passed at a general meeting where notice of the proposed increase shall have been given in the notice convening the general meeting, and shall (unless otherwise directed by the resolution by which it is voted) be divided amongst the Board in such proportions and in such manner as the Board may agree or, failing agreement, equally, except that any Director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for a proportion of remuneration related to the period during which he has held office.

Any Director who, by request, goes or resides abroad for any purpose of the Company or who performs services which in the opinion of the Board go beyond the ordinary duties of a Director may be paid such extra remuneration (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine and such extra remuneration shall be in addition to or in substitution for any ordinary remuneration provided for by or pursuant to any other Bye-law. A Director appointed to be a managing director, joint managing director, deputy managing director or other executive officer shall receive such remuneration (whether by way of salary, commission, participation in profits or otherwise or by all or any of those modes) and such other benefits (including pension and/or gratuity and/or other benefits on retirement) and allowances as the Board may from time to time determine, and either in addition to or in lieu of his remuneration as a Director, but he shall not in any circumstances be remunerated by a commission on or a percentage of turnover.

### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (*Cont'd*)

Payments to any director or past director of the Company or of a subsidiary of the Company of any sum by way of compensation for loss of office or as consideration for or in connection with his retirement from office (not being a payment to which the Director is contractually entitled) must be approved by the Company in general meeting.

(c) *Borrowing powers (Bye-law 109)*

The Board may exercise all the powers of the Company to raise or borrow money and to mortgage or charge all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company and, subject to the Bermuda Companies Act, to issue debentures, bonds and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

These powers conferred on the Board may be varied by amending the relevant Bye-laws of the Company.

(d) *Retirement age limit*

There are no provisions relating to retirement of Directors upon reaching any age limit.

(e) *Shareholding qualification (Bye-law 85(3))*

Neither a Director nor an alternate Director is required to hold any shares of the Company by way of qualification.

(iii) **Share rights and restrictions**

The Company currently has only one class of shares, namely ordinary shares.

(a) *Dividends and distributions (Bye-laws 15A(2), 17(2), 135, 136, 137, 138, 139, 141 and 142)*

Notwithstanding any provision in the Bye-laws to the contrary, a Depositor (as defined in the Bye-laws) whose name appears in the Register of Members of the Company (which includes, where applicable, any branch register of members of the Company kept pursuant to the Bermuda Companies Act) (the "Register") shall be entitled to all rights (including voting and other rights), benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such deposited security (as defined in the Bye-laws) registered in the Depositor's name (whether conferred or imposed by the Bermuda Companies Act, the memorandum of association of the Company or the Bye-laws, or otherwise) as if such Depositor is the sole holder of such deposited security. Notwithstanding that the Depository (as defined in the Bye-laws) is named in the Register as the joint holder of any deposited security, the Depository shall not be entitled to any rights (including voting and other rights), benefits, powers and privileges in respect of, or arising from, such deposited security and nor shall the Depository be subject to any liabilities, duties and obligations in respect of, or arising from, such deposited security.

Where a share stands in the names of two or more persons, the person first named in the Register shall as regards service of notices and, subject to the provisions of these Bye-laws, all or any other matters connected with the Company, except the transfer of the shares, be deemed the sole holder thereof, save that in respect of any deposited security which is jointly held by the Depository and a Depositor, the Depositor named in the Register as the joint holder of the deposited security shall as regards service of notices and, subject to the provisions of the Bye-laws, all or any other matters connected with the Company, be deemed to be the sole holder thereof.

### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)

Holders of shares (other than the Depository) shall be entitled to share in the Company's profits by way of dividends declared or distributions approved by the Board or the Company in general meeting in accordance with the Bye-laws and the Bermuda Companies Act.

Subject to the Bermuda Companies Act and the Bye-laws, the Board may from time to time declare a dividend or other distribution in any currency to be paid to the members and such dividend or distribution may be in cash or wholly or partly in specie. Subject to the Bermuda Companies Act and the Bye-laws, the Company in general meeting may also from time to time declare dividends or other distributions to be paid to the members but no dividend or distribution shall be declared in excess of the amount recommended by the Board.

If at any time the share capital of the Company is divided into different classes, the Board may pay such dividends in respect of those shares in the capital of the Company which confer on the holders thereof deferred or non-preferential rights as well as in respect of those shares which confer on the holders thereof preferential rights with regard to dividends.

No dividend shall be paid or distribution made if to do so would render the Company unable to pay its liabilities as they become due or the realisable value of its assets would thereby become less than the aggregate of its liabilities and its issued share capital and share premium accounts.

Except in so far as the rights attaching to, or the terms of issue of, any share otherwise provide (i) all dividends shall be declared and paid according to the amounts paid up on the shares in respect of which the dividend is paid, but no amount paid up on a share in advance of calls shall be treated as paid up on the share; and (ii) all dividends shall be apportioned and paid pro rata according to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid. The Board may deduct from any dividend or other moneys payable to a member by the Company on or in respect of any shares all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.

Subject to Bye-law 141(2) of the Bye-laws, any dividend, interest or other sum payable in cash to the holder of shares may be paid by cheque or warrant sent through the post addressed to the holder at his registered address or, in the case of joint holders, addressed to the holder whose name stands first in the Register in respect of the shares at his address as appearing in the Register or addressed to such person and at such address as the holder or joint holders may in writing direct. Subject to Bye-law 141(2), every such cheque or warrant shall, unless the holder or joint holders otherwise direct, be made payable to the order of the holder or, in the case of joint holders, to the order of the holder whose name stands first on the Register in respect of such shares, and shall be sent at his or their risk and payment of the cheque or warrant by the bank on which it is drawn shall constitute a good discharge to the Company notwithstanding that it may subsequently appear that the same has been stolen or that any endorsement thereon has been forged. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable or property distributable in respect of the shares held by such joint holders.

Bye-law 141(2) of the Bye-laws provides that any dividend, interest or other sum payable in cash to the holder of any deposited security which is jointly held by the Depository and a Depositor may be paid by cheque or warrant sent through the post addressed to the Depositor at his address as appearing in the Register in respect of such deposited security. Every such cheque or warrant shall, unless the Depositor otherwise directs, be made payable to the Depositor and shall be sent at his or their risk and payment of the cheque or warrant by the bank on which it is drawn shall constitute a good discharge to

### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (*Cont'd*)

the Company notwithstanding that it may subsequently appear that the same has been stolen or that any endorsement thereon has been forged. A Depositor may give effectual receipts for any dividends or other moneys payable or property distributable in respect of the deposited security held by such Depositor.

All dividends or bonuses unclaimed for one year after having been declared may be disposed off in accordance with the provisions of the Unclaimed Moneys Act 1965 of Malaysia, which shall apply, mutatis mutandis, to the Company.

(b) *Voting rights (Bye-laws 15A(2), 58(5), 65, 73, 77(1) and 85(7))*

Bye-law 15A(2) of the Bye-laws provides that notwithstanding any provision in the Bye-laws to the contrary, a Depositor whose name appears in the Register shall be entitled to all rights (including voting and other rights), benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such deposited security registered in the Depositor's name (whether conferred or imposed by the Bermuda Companies Act, the memorandum of association of the Company or the Bye-laws, or otherwise) as if such Depositor is the sole holder of such deposited security. Notwithstanding that the Depository is named in the Register as the joint holder of any deposited security, the Depository shall not be entitled to any rights (including voting and other rights), benefits, powers and privileges in respect of, or arising from, such deposited security and nor shall the Depository be subject to any liabilities, duties and obligations in respect of, or arising from, such deposited security.

Bye-law 58(5) of the Bye-laws provides, inter alia, that in respect of each general meeting, the Company shall request the Depository in accordance with the rules of the Depository, to issue a Record of Depositors (as defined in the Bye-laws) as at the latest date which is reasonably practicable which shall in any event be not less than three (3) clear market days before that general meeting ("General Meeting Record of Depositors"). Subject to the Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996 of Malaysia as amended from time to time, notwithstanding any other provision of the Bye-laws, a Depositor shall not be entitled to attend any general meeting and to speak and vote thereat unless his name appears in the relevant General Meeting Record of Depositors.

Subject to Bye-law 15A(2), Bye-law 58(5) and Bye-law 73(2) and any special rights or restrictions as to voting for the time being attached to any shares by or in accordance with the Bye-laws, at any general meeting (i) on a show of hands every member present in person (or being a corporation, is present by a representative duly authorised under section 78 of the Bermuda Companies Act) or by proxy shall have one vote and the chairman of the meeting shall determine which proxy shall be entitled to vote where a member (other than Bursa Depository) is represented by two proxies, and (ii) on a poll every member present in person or by proxy or, in the case of a member being a corporation, by its duly authorised representative shall have one vote for every fully paid share of which he is the holder or which he represents and in respect of which all calls due to the Company have been paid, but so that no amount paid up or credited as paid up on a share in advance of calls or instalments is treated for the foregoing purposes as paid up on the share.

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**13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)**

Subject to Bye-law 73(2) of the Bye-laws, where there are joint holders of any share, any one of such joint holder may vote, either in person or by proxy, in respect of such share as if he were solely entitled thereto, but if more than one of such joint holders be present at any meeting the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding.

Bye-law 73(2) of the Bye-laws provides that where the Depository is a joint holder of any deposited security with a Depositor, only the Depositor may vote, either in person or by proxy, in respect of such deposited security as if he were the sole holder thereof.

Any member entitled to attend and vote at a meeting of the Company who is the holder of two or more shares shall be entitled to appoint not more than two proxies to attend and vote instead of him at the same general meeting, provided that if the member is an authorised nominee as defined under the Securities Industry (Central Depositories) Act 1991 of Malaysia as amended from time to time (the "Central Depositories Act"), it may appoint at least one (1) proxy to attend and vote at the same general meeting in respect of each Securities Account (as defined in the Bye-laws) it holds with ordinary shares of the Company standing to the credit of that Securities Account.

The Bye-laws provide that the appointment of each Director shall be voted on individually except in the election of two or more Directors by ballot or poll.

(c) *Share in surplus upon liquidation (Bye-laws 15A(2) and 163)*

Bye-law 15A(2) of the Bye-laws provides that notwithstanding any provision in the Bye-laws to the contrary, a Depositor whose name appears in the Register shall be entitled to all rights (including voting and other rights), benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such deposited security registered in the Depositor's name (whether conferred or imposed by the Bermuda Companies Act, the memorandum of association of the Company or the Bye-laws, or otherwise) as if such Depositor is the sole holder of such deposited security. Notwithstanding that the Depository is named in the Register as the joint holder of any deposited security, the Depository shall not be entitled to any rights (including voting and other rights), benefits, powers and privileges in respect of, or arising from, such deposited security and nor shall the Depository be subject to any liabilities, duties and obligations in respect of, or arising from, such deposited security.

Members (other than the Depository) are entitled to the surplus assets of the Company in the event that it is wound up. If the Company shall be wound up (whether the liquidation is voluntary or by the court) the liquidator may, with the authority of a special resolution and any other sanction required by the Bermuda Companies Act, divide among the members (other than the Depository) in specie or kind the whole or any part of the assets of the Company and whether or not the assets shall consist of properties of one kind or shall consist of properties to be divided as aforesaid of different kinds, and may for such purpose set such value as he deems fair upon any one or more class or classes of property and may determine how such division shall be carried out as between the members (other than the Depository) or different classes of members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of the members (other than the Depository) as the liquidator with the like authority shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no contributory shall be compelled to accept any shares or other property in respect of which there is a liability.

**13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)**

Subject to the Bermuda Companies Act, on the voluntary liquidation of the Company, no commission or fee shall be paid to a liquidator unless it has been approved by the members in general meeting. The amount of such payment shall be notified to all members (other than the Depository) at least seven (7) days prior to the meeting at which the commission or fee is to be considered.

(d) *Redemption provisions*

The shares do not have redemption rights.

(e) *Sinking fund*

The Bye-laws do not contain sinking fund provisions.

(f) *Calls on shares (Bye-laws 25, 26, 28 and 33)*

Subject to the Bye-laws and to the terms of allotment, the Board may from time to time make calls upon the members (other than the Depository) in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium). A call may be made payable either in one lump sum or by instalments. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the amount unpaid from the day appointed for payment thereof to the time of actual payment at such rate (not exceeding twenty per cent. (20%) per annum) as the Board may determine, but the Board may in its absolute discretion waive payment of such interest wholly or in part. The Board may, if it thinks fit, receive from any member willing to advance the same, and either in money or money's worth, all or any part of the moneys uncalled and unpaid or instalments payable upon any shares held by him and upon all or any of the moneys so advanced (until the same would, but for such advance, become presently payable) pay interest at such rate (if any) as the Board may decide.

The Memorandum of Association states that the liability of members of the Company is limited to the amount, if any, for the time being unpaid on the shares respectively held by them.

(g) *Discriminatory provisions against substantial shareholder (Bye-law 167)*

The Bye-laws do not contain any provisions discriminating against any existing or prospective holder of shares as a result of such shareholder owning a substantial number of shares save that for so long as the shares of the Company are listed on the Designated Stock Exchange (which includes the Bursa Malaysia Securities Berhad), a substantial shareholder (having the meaning ascribed to it in the Malaysian Companies Act) has to disclose and, where applicable, has to procure its relevant beneficial owners having and interest in the Company within the meaning of Section 6A of the Malaysian Companies Act to disclose particulars of their interest in the Company and of any change in the percentage level of such interest. Such requirement to disclose does not apply to the Depository. See also Section 13.2(vii) of this Prospectus (below) for details on shareholding disclosure requirements.

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**13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)**

**(iv) Variation of rights of existing shares or classes of shares (Bye-law 10)**

Subject to the Bermuda Companies Act, the special rights attached to any class of shares may be varied or abrogated either with the consent in writing of the holders of three-quarters in nominal value of the issued shares of the class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class (but not otherwise) and may be so repaid, varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding-up. To every such separate general meeting and all adjournments thereof all the provisions of the Bye-laws relating to general meetings of the Company and to the proceedings thereat shall mutatis mutandis apply, except that the necessary quorum (other than at an adjourned meeting) shall be two persons at least holding or representing by proxy at least one-third in nominal value of the issued shares of the class and at any adjourned meeting of such holders, two holders present in person or by proxy (whatever the number of shares held by them) shall be a quorum and that any holder of shares of the class present in person or by proxy may demand a poll and that every such holder shall on a poll have one vote for every share of the class held by him.

The Memorandum of Association and Bye-laws do not impose more significant conditions than the Bermuda Companies Act in this regard.

**(v) General meetings (Bye-laws 15A(2), 29, 55, 56, 57, 73(2), 75, 79 and 126)**

Under Bermuda law, an annual general meeting of members must be convened every calendar year. All general meetings other than the annual general meeting shall be called special general meetings.

Bye-law 55 provides that an annual general meeting of the Company shall be held in each year (within a period of not more than eighteen (18) months from the date of incorporation and thereafter within a period of not more than fifteen (15) months after the holding of the last preceding annual general meeting unless a longer period would not infringe the listing requirements of the Designated Stock Exchange, if applicable). In addition, for so long as the shares of the Company are listed on the Designated Stock Exchange (which includes the Bursa Malaysia Securities Berhad), the interval between the close of the Company's financial year and the date of the Company's annual general meeting shall not exceed six (6) months or such other period as may be prescribed or permitted by the Designated Stock Exchange.

For so long as the shares of the Company are listed on the Bursa Securities Malaysia Berhad, all general meetings of the Company shall be held in Malaysia.

The Directors may, whenever they think fit, convene a general meeting. In addition, subject to section 74 of the Bermuda Companies Act, in certain circumstances, members of the Company may requisition a special general meeting. Under that section, members holding at the date of deposit of the requisition not less than one-tenth of the paid up capital of the Company carrying the right of voting at general meetings of the Company shall at all times have the right, by written requisition to the Company deposited at the registered office of the Company, to require a special general meeting to be called by the Board for the transaction of any business specified in such requisition. If the Directors do not within 21 days from the date of deposit of the requisition proceed duly to convene the meeting, the requisitionists themselves may do so but any meeting so convened shall not be held after the expiration of three months from the said date.

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### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)

Bye-law 15A(2) of the Bye-laws provides that notwithstanding any provision in the Bye-laws to the contrary, a Depositor whose name appears in the Register shall be entitled to all rights (including voting and other rights), benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such deposited security registered in the Depositor's name (whether conferred or imposed by the Bermuda Companies Act, the memorandum of association of the Company or the Bye-laws, or otherwise) as if such Depositor is the sole holder of such deposited security. Notwithstanding that the Depository is named in the Register as the joint holder of any deposited security, the Depository shall not be entitled to any rights (including voting and other rights), benefits, powers and privileges in respect of, or arising from, such deposited security and nor shall the Depository be subject to any liabilities, duties and obligations in respect of, or arising from, such deposited security.

Bye-law 73(2) of the Bye-laws provides that where the Depository is a joint holder of any deposited security with a Depositor, only the Depositor may vote, either in person or by proxy, in respect of such deposited security as if he were the sole holder thereof.

Subject to Bye-law 15A(2) and Bye-law 73, no member shall, unless the Directors otherwise determine, be entitled to attend and vote and to be reckoned in a quorum at any general meeting unless he is duly registered and all calls or other sums presently payable by him in respect of shares in the Company have been paid. Further, Bye-law 126 (in accordance with the Bermuda Companies Act) provides that the resident representative is also entitled to attend and be heard at all general meetings of the Company. The Bermuda Companies Act does not contain provisions as to any documentary evidence to be produced by proxies and corporate representatives. However, such provisions may be contained in the Bye-laws. Where, for example, it is stated that the instrument of proxies must be deposited a specified number of hours before the meeting (see Bye-law 79), proxies deposited after that time cannot be admitted.

Corporate representatives are different from proxies and unless specifically required by the Bye-laws, a letter of appointment does not need to be lodged before the meeting. There are currently no such provisions in the Bye-laws.

**(vi) Limitations on non-Bermuda shareholders**

There are no limitations, either under Bermuda law or the Bye-laws, on the rights of owners of shares in the Company to hold or vote their shares solely by reason that they are non-Bermudians.

**(vii) Shareholding disclosure requirement (Bye-law 167)**

The Bermuda Companies Act does not require disclosure of shareholder ownership beyond any specified threshold. However, Bye-law 167 contains provisions to the effect that for so long as the shares of the Company are listed on the Designated Stock Exchange (which includes the Malaysia Securities Berhad), each Director shall, upon his appointment to the Board, give an undertaking to the Company that, for so long as he remains a Director, he shall forthwith notify the secretary of the Company of the particulars of the shares beneficially owned by him at the time of his appointment and of any change in such particulars, and each member shall, (a) upon becoming a substantial shareholder of the Company, (b) for so long as he remains a substantial shareholder of the Company, upon a change in the percentage level of his interest or interests in the Company and (c) upon ceasing to be a substantial shareholder of the Company, give and, where applicable, shall procure its relevant beneficial owners having an interest in the Company within the meaning of Section 6A of the Malaysian Companies Act, to give to the Company (through its Secretary) pursuant to the provisions of Division 3A of Part IV of the Malaysian Companies Act, and to the SC pursuant to the provisions of the Securities Industry (Reporting of Substantial Shareholding) Regulations 1998 of Malaysia (as amended or substituted from time to time), a notice in writing of (i) the particulars of the shares beneficially

**13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)**

owned by him, or (ii) the particulars of the change in interests (including the date of change and the circumstances by reason of which that change has occurred), or (iii) the particulars of the date and circumstances of the cessation of substantial shareholding, as the case may be, within seven (7) days after (aa) becoming a substantial shareholder, (bb) the date of change in the percentage level of his interests, or (cc) the date of cessation, as the case may be. For the purposes of Bye-law 167(2), the term "substantial shareholder" shall have the same meaning ascribed to it in Section 69D of the Malaysian Companies Act, the term "interest" or "interests" shall have the same meaning ascribed to it in Section 6A of the Malaysian Companies Act. Bye-law 167 does not apply to the Bursa Depository.

For so long as the shares of the Company are listed on the Designated Stock Exchange (which includes the Bursa Malaysia Securities Berhad), the provisions of Section 69O of the Malaysian Companies Act, giving the Company power to require disclosure of beneficial interest in its shares, shall apply.

**(viii) Changes in capital (Bye-laws 2, 4 and 6)**

Under the Bermuda Companies Act, changes in the capital structure of the Company require shareholder approval at general meetings.

The Bye-laws contain a distinction between a "special resolution" and an "ordinary resolution", a distinction which is not made in the Bermuda Companies Act. Under Bye-law 4, an ordinary resolution is required for certain changes to the Company's share capital such as an increase, consolidation or sub-division. An ordinary resolution is passed by a simple majority of votes cast by members, being entitled so to do, at general meetings.

With regard to a reduction of share capital or share premium account, Bye-law 6 requires a special resolution. A special resolution is one which has been passed by a majority of not less than 75 per cent (75%) of votes cast by members, being entitled so to do, present and voting at a general meeting.

**(ix) Take-overs (Bye-law 168)**

For so long as the shares of the Company are listed on the Designated Stock Exchange (which includes the Bursa Malaysia Securities Berhad), the provisions of Division 2 of Part IV of the Malaysian Securities Commission Act 1993 and the Malaysian Code on Take-Overs and Mergers 1998 (or their respective statutory modification or re-enactment or successor for the time being in force) shall apply, mutatis mutandis, to all take-over offers for the Company. The provisions of Division 2 of Part IV of the Malaysian Securities Commission Act 1993 and the Malaysian Code on Take-overs and Mergers 1998 or their respective statutory modification or re-enactment or successor for the time being in force shall not apply to the Depository.

**(x) Transfer of Shares (Bye-laws 46 to 51)**

Transfers of securities in exempted companies involving non-residents of Bermuda for exchange control purposes must receive prior approval from the Bermuda Monetary Authority. However, the Bermuda Monetary Authority has granted to all Bermuda companies with voting shares listed on an appointed stock exchange (which includes the Bursa Securities) a general permission for the issue and subsequent transfer of any securities of such companies from and/or to a non-resident of Bermuda for so long as any voting shares of such companies remain so listed.

The transfer of any listed securities or class of listed securities of the Company shall be made by way of book entry by the Bursa Depository in accordance with the rules of the Bursa Depository for the time being (the "Rules"), and the Company shall be precluded from effecting any transfer of listed securities other than through the Bursa Depository in accordance with the Rules. Instruments of transfer of any deposited security may be in the form of electronic records of the Bursa Depository relating to such transfers.

### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)

Subject to the Bye-laws, a member may transfer all or any of his shares (other than deposited securities) by an instrument of transfer in the form acceptable to the board of directors provided always that the Company shall accept for registration an instrument of transfer in a form approved by the board of directors.

Save as provided in the Bye-laws, there shall be no restriction on the transfer of fully paid up shares (except where required by law or the Listing Requirements (as defined in the Bye-laws)). The Bye-laws provide that no transfer shall be made to an infant or to a person of unsound mind or under other legal disability. In addition, save in respect of any deposited securities, the board of directors may, in its absolute discretion and without giving any reason therefor, refuse to register a transfer of any share (not being a fully paid up share) to a person of whom it does not approve, or any share issued under any share incentive scheme for employees upon which a restriction on transfer imposed thereby still subsists, and it may also, without prejudice to the foregoing generality, refuse to register a transfer of any share (not being a fully paid up share) on which the Company has a lien or, except in the case of a transfer to executors, administrators or trustees of the estate of a deceased member, a transfer of any share to more than three (3) joint holders. Further, the board of directors may decline to recognise any instrument of transfer (in respect of shares other than deposited securities) unless: -

- (a) a fee of such sum (not exceeding three Ringgit (RM3.00) or such other maximum sum as the Designated Stock Exchange may determine to be payable) as the Board may from time to time require is paid to the Company in respect thereof;
- (b) the instrument of transfer is in respect of only one class of share;
- (c) the instrument of transfer is lodged at the Office or such other place in Bermuda at which the register of members is kept in accordance with the Bermuda Companies Act or the Registration Office (as defined in the Bye-laws), as the case may be, accompanied by the relevant share certificate(s) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do); and
- (d) if applicable, the instrument of transfer is duly and properly stamped.

If the board of directors refuses to register a transfer of any share (other than deposited securities), it shall, within one (1) month after the date on which the transfer was lodged with the Company, send to each of the transferor and transferee notice of the refusal.

The registration of transfers of shares or of any class of shares may, after notice has been given by advertisement in an appointed newspaper and in accordance with the requirements of the Designated Stock Exchange (as defined in the Bye-laws and which include the Bursa Securities) be suspended at such times and for such periods (not exceeding in the whole thirty (30) days in any year) as the Board may determine.

#### 13.3 DIRECTORS AND SUBSTANTIAL SHAREHOLDERS

- (a) The names, addresses and occupations of the Directors of our Company are set out in the "Corporate Directory" Section of this Prospectus.
- (b) A Director is not required to hold any qualification share in our Company unless otherwise so fixed by our Company in general meeting.

### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)

- (c) Save as disclosed in Sections 2.3 and 2.7 of this Prospectus, no commission, discounts, brokerages or other special terms have been paid, granted or are payable by our Company or our subsidiaries within the two (2) years immediately preceding the date of this Prospectus for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or debentures of our Company or our subsidiaries or in connection with the issue or sale of any capital of our Company or any of our subsidiaries and none of our Directors, proposed Directors, promoters or experts is or are entitled to receive any such payment.
- (d) Other than salary and employment related benefits as disclosed in Section 5.3.4 of this Prospectus, no amount or benefit has been paid or given within the two (2) years immediately preceding the date of this Prospectus, nor is it intended to be so paid or given, to any of our Directors.

Save and except for the dividends as detailed in Sections 9.6 and 10 of this Prospectus, and the remuneration and benefits for services rendered in all capacities to our Group as detailed in Section 5.3.4 of this Prospectus, there are no other amounts or benefits paid or intended to be paid or given to any of our Promoters, substantial shareholders or Directors, within the two (2) years immediately preceding the date of this Prospectus.

- (e) Save as disclosed in Section 7.1 of this Prospectus, none of our Directors and / or substantial shareholders has interest in any subsisting contract or arrangement, which is significant to the business of our Company or our Group taken as a whole.
- (f) Except as disclosed in Sections 5.1 and 5.2 of this Prospectus, our Directors and substantial shareholders are not aware of any persons who are able, directly or indirectly, jointly or severally, to exercise control over our Company and our subsidiaries.

#### 13.4 MATERIAL CONTRACTS

Save as disclosed below, as at the date of this Prospectus, there are no other material contracts (including contracts not reduced into writing), not being contracts entered into in the ordinary course of business which have been entered into by our Company and our subsidiaries within two (2) years preceding the date of this Prospectus: -

- (i) A Maximum Line Guarantee Contract dated 3 August 2007 between Baixing and Quanzhou Business Bank Jinjiang Branch for a guarantee of a loan up to RMB13,000,000 borrowed by Huoxing. Quanzhou Business Bank Jinjiang Branch had issued a letter dated 15 October 2008 proving that the guarantee has been discharged.
- (ii) A Contract for Assignment of the Right to the Use of State-Owned Land for Construction dated 18 September 2008 between Baixing and Hui-an State-owned Land Resource Bureau for the purchase of land known as Longgang Salt Yard, Shanxia Town, Hui-an County, Quanzhou City, Fujian Province, PRC for a land price of RMB4,610,000. The purchase consideration was satisfied in cash.
- (iii) Agreement on Equity Transfer dated 8 April 2008 between Lin Huozhi, Fortune United Investment Limited and Baixing for issuing 3.75% of the total initial public offering shares in a public-listed company i.e. Multi Sports to Fortune United Investment Limited in cash consideration of S\$1,500,000.00 paid to Lin Huozhi.
- (iv) Agreement on Equity Transfer dated 21 April 2008 between Lin Huozhi, Lim Geok Tin and Baixing for issuing 4.75% of the total initial public offering shares in a public-listed company i.e. Multi Sports to Lim Geok Tin in cash consideration of S\$1,900,000.00 paid to Lin Huozhi.

### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)

- (v) Agreement on Equity Transfer dated 21 April 2008 between Lin Huozhi, Houton Limited and Baixing for issuing 1.5% of the total initial public offering shares in a public-listed company i.e. Multi Sports to Houton Limited in cash consideration of S\$600,000.00 paid to Lin Huozhi.
- (vi) Agreement on Equity Transfer dated 21 April 2008 between Lin Huozhi, Supreme Business Investments Limited and Baixing for issuing 3.0% of the total initial public offering shares in a public-listed company i.e. Multi Sports to Supreme Business Investment Limited in cash consideration of S\$1,200,000.00 paid to Lin Huozhi.
- (vii) Supplementary Agreement to Workshop Lease Agreement dated 24 February 2009 between JHX and Baixing for granting Baixing an option to lease for further 2 years commencing 30 June 2013 and to purchase the property at Yanshang Village, Chendai Town, Jinjiang City, Fujian Province, PRC within the lease tenure.
- (viii) Share Sale Agreement dated 6 April 2009 and Supplemental Agreement dated 29 May 2009 made between Lin Huozhi and Leung Sing Kit ("the Vendors") and Multi Sports ("the Purchaser") ("SSA") in relation to the sale and purchase of 10,000 ordinary shares of HK\$1.00 each in the capital of Paksing, which represents 82.14% of the issued and paid-up share capital of Paksing, for a purchase consideration of US\$12,420,063.65 which was satisfied by the Purchaser issuing and allotting 248,401,273 ordinary shares of US\$0.05 each in the Purchaser to persons nominated by the Vendors.
- (ix) Investment Agreement dated 12 May 2009 between GuoLine Capital Limited, Paksing, Multi Sports, Lin Huozhi and Leung Sing Kit, ("the Investment Agreement"), and novated pursuant to a Novation Agreement dated 21 May 2009 made between GuoLine Capital Limited ("Assignor"), GGMC ("Assignee"), Paksing, Multi Sports, Lin Huozhi and Leung Sing Kit in which the Assignee subscribed for Redeemable Convertible Loan Stocks in Paksing for an aggregate sum of US\$7,094,010 which was subsequently converted into 2,175 ordinary shares of HK\$1.00 each in Paksing prior to the Acquisition Of Paksing based on the terms and conditions of the said agreements.
- (x) Underwriting Agreement dated 3 July 2009 between the Company and AmlInvestment Bank as the Sole Underwriter for the underwriting of 18,000,000 Public Issue Shares ("Underwritten Shares") at an underwriting commission of 3.25% of the IPO price of RM0.85 per Share and upon the terms and conditions contained therein.

#### 13.5 MATERIAL LITIGATION / ARBITRATION

As at the LPD, neither our Company nor any of our subsidiaries is engaged in any material litigation and arbitration, either as plaintiff or defendant, which has a material effect on the financial position of our Company or our subsidiaries and our Directors are not aware of any proceedings pending or threatened or of any facts likely to give rise to any proceedings which might materially and adversely affect the financial position or business of our Company or our subsidiaries.

#### 13.6 GENERAL INFORMATION

During the last financial year and the current financial year to date, there were no:-

- (a) public take-over offers by third parties in respect of our Company's Shares; and
- (b) public take-over offers by our Company in respect of other companies' shares.

### **13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)**

#### **13.7 CONSENTS**

The respective written consents of the Adviser, Sole Underwriter, Sole Placement Agent, Company Secretary, Company Agent in Malaysia, Principal Bankers, Solicitors for the Listing, Legal Advisers to the Company on Bermuda Law, Legal Advisers to the Company on PRC Law, Legal Advisers to the Company on Hong Kong Law, Auditors, Reporting Accountants, Registrars in Malaysia, Bermuda Share Registrars, Independent Market Research Consultants, and Issuing House to the inclusion in this Prospectus of their names in the form and context in which such names appear have been given before the issue of this Prospectus and have not subsequently been withdrawn.

The written consent of the Reporting Accountants to the inclusion in this Prospectus of their names, Accountants' Report and letters relating to the proforma consolidated financial information in the form and context in which they are contained in this Prospectus has been given before the issue of this Prospectus and has not subsequently been withdrawn.

The written consent of the Independent Market Research Consultants to the inclusion in this Prospectus of their names and Independent Market Research Report in the form and context in which they are contained in this Prospectus has been given before the issue of this Prospectus and has not subsequently been withdrawn.

The written consent of the Legal Advisers to the Company on Bermuda Law to the inclusion in this Prospectus of their name, Comparison Of Bermuda Company Law And Malaysian Company Law, and the legal opinions in Section 16 of this Prospectus headed "Opinion From Conyers Dill & Pearman Pte. Ltd. On Foreign Investment Policy, Taxation, Foreign Exchange Control And Repatriation Of Profits Out Of Bermuda, Ownership Of Title To Equity Interest / Assets In Bermuda, Enforceability Of Agreements, Representations And Undertakings Under The Law Of Bermuda" in the form and context in which they are contained in this Prospectus has been given before the issue of this Prospectus and has not subsequently been withdrawn.

The written consent of the Legal Advisers to the Company on Hong Kong Law to the inclusion in this Prospectus of their name and Opinion From Gallant Y.T. Ho & Co. On Foreign Investment Policy, Taxation, Foreign Exchange Control And Repatriation Of Profits Out Of Hong Kong And Ownership Of Title To The Securities / Assets In Hong Kong Under Hong Kong Law, and Opinion From Gallant Y.T. Ho & Co. On Enforceability Of The Agreements Under Hong Kong Law in the form and context in which they are contained in this Prospectus has been given before the issue of this Prospectus and has not subsequently been withdrawn.

The written consent of the Legal Advisers to the Company on PRC Law to the inclusion in this Prospectus of their name and Opinion From Grandall Legal Group (Guangzhou) On Foreign Investment Policy, Taxation, Foreign Exchange Control And Repatriation Of Profits Out Of PRC, Ownership Of Title To Equity Interest / Assets In PRC, Enforceability Of Agreements, Representations And Undertakings Under The Law Of PRC in the form and context in which they are contained in this Prospectus has been given before the issue of this Prospectus and has not subsequently been withdrawn.

#### **13.8 DOCUMENTS FOR INSPECTION**

Copies of the following documents may be inspected at our registered office in Malaysia during normal business hours for a period of twelve (12) months from the date of this Prospectus: -

- (a) the Memorandum of Association and Bye-laws of our Company;
- (b) the material contracts referred to in Section 13.4 of this Prospectus;
- (c) the Directors' Report and Accountants' Report as included herein;

### 13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)

- (d) the Reporting Accountants' letters relating to the proforma consolidated financial information as included herein;
- (e) the audited combined financial statements of our Company and our subsidiaries for the past three (3) financial years up to FYE 31 December 2008 and for 1Q 2009;
- (f) the Independent Market Research Report prepared by Vital Factor Consulting Sdn Bhd as set out in Section 11 of this Prospectus;
- (g) the opinions / reports / letters as set out in Sections 16, 17 and 18 of this Prospectus;
- (h) the letters of consent referred to in Section 13.7 of this Prospectus;
- (i) the service agreement referred to in Section 5.9 of this Prospectus; and
- (j) the confidentiality and non-competition agreements referred to in Section 5.10 of this Prospectus.

In addition, our registered office in Malaysia shall maintain records of all constituent documents (originals / certified true copies, as the case may be) of our Company, including, but not limited to the following: -

- (a) the Memorandum of Association and Bye-laws of our Company;
- (b) the certificate of incorporation of our Company;
- (c) licenses of our Company, if any;
- (d) the register of Shareholders of our Company;
- (e) transfers of shares of our Company; and
- (f) secretarial filings and returns made to the Registrar of Companies in Bermuda.

### 13.9 RESPONSIBILITY STATEMENTS

This Prospectus has been seen and approved by our Directors, Promoters and Offerors and they collectively and individually accept full responsibility for the accuracy of the information contained herein and confirm that, after having made all reasonable enquiries, to the best of their knowledge and belief, there are no false or misleading statements or other facts the omission of which would make any statement herein false or misleading.

AmInvestment Bank acknowledges that, based on all available information and to the best of their knowledge and belief, this Prospectus constitutes a full and true disclosure of all material facts concerning the IPO.

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## 14. SUMMARY OF LAW

### 14.1 SUMMARY OF BERMUDA COMPANY LAW

Our Company is incorporated in Bermuda and, therefore, operates subject to Bermuda law. We have been designated by the Bermuda Monetary Authority as non-resident for Bermuda exchange control purposes. Set out below is a summary of certain provisions of Bermuda company law, although this does not purport to contain all applicable qualifications and exceptions or to be a complete review of all matters of Bermuda company law and taxation, which may differ from equivalent provisions in jurisdictions with which interested parties may be more familiar: -

#### 14.1.1 Share capital

The Companies Act 1981 of Bermuda (the “**Bermuda Companies Act**”) provides that where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to an account, to be called the “share premium account”, to which the provisions of the Bermuda Companies Act relating to a reduction of share capital of a company shall apply as if the share premium account were paid up share capital of the company except that the share premium account may be applied by the company: -

- (i) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares;
- (ii) in writing off:
  - (aa) the preliminary expenses of the company; or
  - (bb) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or
- (iii) in providing for the premiums payable on redemption of any shares or of any debentures of the company.

In the case of an exchange of shares the excess value of the shares acquired over the nominal value of the shares being issued may be credited to a contributed surplus account of the issuing company.

The Bermuda Companies Act permits a company to issue preference shares and subject to the conditions stipulated therein to convert those preference shares into redeemable preference shares.

The Bermuda Companies Act includes certain protections for holders of special classes of shares, requiring their consent to be obtained before their rights may be varied. Where provision is made by the memorandum of association or bye-laws of a company authorising the variation of rights attached to any class of shares in the company, the consent of the specified proportions of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares is required. The holders of not less in the aggregate than ten per cent (10%) of the issued shares of that class may apply to a Bermuda court to have the variation cancelled and, where such application is made, the variation shall not have effect unless and until it is confirmed by the court. Where no provision for varying such rights is made in the memorandum of association or bye-laws and nothing therein precludes a variation of such rights, the rights attached to any class of shares may, unless otherwise provided by the terms of issue of that class, be varied with the written consent of the holders of three-fourths of the issued shares of that class or the sanction of a resolution passed as aforesaid.

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## **14. SUMMARY OF LAW (Cont'd)**

### **14.1.2 Membership**

Under the Bermuda Companies Act, only those persons who agree to become members of a Bermuda company and whose names are entered on the register of members of such a company are considered members. A Bermuda company is also not bound to see to the execution of any trust, whether express, implied or constructive, to which any of its shares are subject and whether or not the company had notice of such trust. Accordingly, persons holding shares through a trustee, nominee or depository will not be recognised as members of a Bermuda company under Bermuda law and may only have the benefit of rights attaching to the shares or remedies conferred by law on members through or with the assistance of the trustee, nominee or depository.

### **14.1.3 Financial assistance to purchase shares of a company or its holding company**

A company is prohibited from providing financial assistance directly or indirectly for the purpose of an acquisition of its own or its holding company's shares unless there are reasonable grounds for believing that the company is, and would after the giving of such financial assistance be, able to pay its liabilities as they become due. In certain circumstances, the prohibition against giving financial assistance may be excluded such as where the assistance is only an incidental part of a larger purpose of the company or the assistance is of an insignificant amount such as the payment of minor costs. In addition, the Bermuda Companies Act expressly permits the grant of financial assistance where (i) the financial assistance does not reduce the company's net assets or, to the extent the net assets are reduced, such financial assistance is provided for out of funds of the company which would otherwise be available for dividend or distribution; (ii) an affidavit of solvency is sworn by the directors of the company; and (iii) the financial assistance is approved by resolution of shareholders of the company.

### **14.1.4 Purchase of shares and warrants by a company and its subsidiaries**

A company may, if authorised by its memorandum of association or bye-laws, purchase its own shares. Shares repurchased may be cancelled or held as treasury shares. Such purchases may only be effected out of the capital paid up on the purchased shares or out of the funds of the company otherwise available for dividend or distribution or out of the proceeds of a fresh issue of shares made for the purpose. Any premium payable on a purchase over the par value of the shares to be purchased must be provided for out of funds of the company otherwise available for dividend or distribution or out of the company's share premium account. Any amount due to a shareholder on a purchase by a company of its own shares may (i) be paid in cash; (ii) be satisfied by the transfer of any part of the undertaking or property of the company having the same value; or (iii) be satisfied partly under (i) and partly under (ii). Any purchase by a company of its own shares may be authorised by its board of directors or otherwise by or in accordance with the provisions of its bye-laws. Such purchase may not be made if, on the date on which the purchase is to be effected, there are reasonable grounds for believing that the company is, or after the purchase would be, unable to pay its liabilities as they become due. The shares so purchased may either be cancelled (in which event, the company's issued, but not its authorised, capital will be diminished accordingly) or may be held as treasury shares. Under the laws of Bermuda, if a company holds shares as treasury shares, the company shall be entered in the register of members as the member holding the shares but the company is not permitted to exercise any rights in respect of those shares and no dividend or other distribution (whether in cash or otherwise) shall be paid or made to the company in respect of such shares.

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## **14. SUMMARY OF LAW (Cont'd)**

A company is not prohibited from purchasing and may purchase its own warrants subject to and in accordance with the terms and conditions of the relevant warrant instrument or certificate. There is no requirement under Bermuda law that a company's memorandum of association or its bye-laws contain a specific provision enabling such purchases and the directors of a company may rely upon the general power contained in its memorandum of association to buy and sell and deal in personal property of all kinds.

Under Bermuda law, a subsidiary may hold shares in its holding company and in certain circumstances, may acquire such shares. The holding company is, however, prohibited from giving financial assistance for the purpose of the acquisition, subject to certain circumstances provided by the Bermuda Companies Act. A company, whether a subsidiary or a holding company, may only purchase its own shares for cancellation if it is authorised to do so in its memorandum of association or bye-laws pursuant to section 42A of the Bermuda Companies Act.

### **14.1.5 Dividends and distributions**

A company may not declare or pay a dividend, or make a distribution out of contributed surplus, if there are reasonable grounds for believing that (i) the company is, or would after the payment be, unable to pay its liabilities as they become due; or (ii) the realisable value of the company's assets would thereby be less than the aggregate of its liabilities and its issued share capital and share premium accounts. Contributed surplus is defined for purposes of section 54 of the Bermuda Companies Act to include the proceeds arising from donated shares, credits resulting from the redemption or conversion of shares at less than the amount set up as nominal capital and donations of cash and other assets to the company.

### **14.1.6 Protection of minorities**

Class actions and derivative actions are generally not available to shareholders under the laws of Bermuda. The Bermuda courts, however, would ordinarily be expected to permit a shareholder to commence an action in the name of a company to remedy a wrong done to the company where the act complained of is alleged to be beyond the corporate power of the company or is illegal or would result in the violation of the company's memorandum of association and bye-laws. Furthermore, consideration would be given by the Bermuda court to acts that are alleged to constitute a fraud against the minority shareholders or, for instance, where an act requires the approval of a greater percentage of the company's shareholders than actually approved it.

Any member of a company who complains that the affairs of the company are being conducted or have been conducted in a manner oppressive or prejudicial to the interests of some part of the members, including himself, may petition the Bermuda court which may, if it is of the opinion that to wind up the company would unfairly prejudice that part of the members but that otherwise the facts would justify the making of a winding up order on just and equitable grounds, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future or for the purchase of shares of any members of the company by other members of the company or by the company itself and in the case of a purchase by the company itself, for the reduction accordingly of the company's capital, or otherwise. Bermuda law also provides that the company may be wound up by the Bermuda court, if the court is of the opinion that it is just and equitable to do so. Both these provisions are available to minority shareholders seeking relief from the oppressive conduct of the majority, and the Bermuda court has wide discretion to make such orders as it thinks fit.

Except as mentioned above, claims against a company by its shareholders must be based on the general laws of contract or tort applicable in Bermuda.

## **14. SUMMARY OF LAW (Cont'd)**

A statutory right of action is conferred on subscribers of shares in a company against persons, including directors and officers, responsible for the issue of a prospectus in respect of loss or damage suffered by reason of an untrue statement therein, but this confers no right of action against the company itself. In addition, such company, as opposed to its shareholders, may take action against its officers including directors, for breach of their statutory and fiduciary duty to act honestly and in good faith with a view to the best interests of the company.

The Bermuda Companies Act also provides that the Minister of Finance of Bermuda may at any time appoint one or more inspectors to investigate the affairs of an exempted company and to report on them in such manner as the Minister may direct. The inspector shall, on the completion of his investigation, report to the Minister and shall send copies of such reports to the company. However, no other person shall be informed of the nature or contents of the report save at the request of the company or on the direction of the Minister. Upon receiving the inspector's report, the Minister may require the company to take such measures as he may consider necessary in relation to its affairs or direct the Registrar of Companies in Bermuda to petition the Bermuda court for the winding up of the company.

### **14.1.7 Management**

The Bermuda Companies Act contains no specific restriction on the power of directors to dispose of assets of a company, although it specifically requires that every officer of a company, which includes a director, managing director and secretary, in exercising his powers and discharging his duties must act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Furthermore, the Bermuda Companies Act requires that every officer should comply with the Bermuda Companies Act, regulations passed pursuant to the Bermuda Companies Act and the bye-laws of the company.

The Bermuda Companies Act contains no specific provision in respect of the establishment or composition of audit committees or similar committees of the board of directors of a company.

### **14.1.8 Accounting and auditing requirements**

The Bermuda Companies Act requires a company to cause proper records of account to be kept with respect to (i) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases of goods by the company and (iii) the assets and liabilities of the company.

Furthermore, it requires that a company keeps its records of account at the registered office of the company or at such other place as the directors think fit and that such records must at all times be open to inspection by the directors or the resident representative of the company. If the records of account are kept at some place outside Bermuda, there must be kept at the office of the company in Bermuda such records as will enable the directors or the resident representative of the company to ascertain with reasonable accuracy the financial position of the company at the end of each three month period, except that where the company is listed on an appointed stock exchange (as defined in the Bermuda Companies Act), there must be kept such records as will enable the directors or the resident representative of the company to ascertain with reasonable accuracy the financial position of the company at the end of each six month period.

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## 14. SUMMARY OF LAW (Cont'd)

The Bermuda Companies Act requires that the directors of the company must, at least once a year, lay before the company in general meeting financial statements for the relevant accounting period signed on the balance sheet page by two directors of the company; however, this requirement may be waived if all of the members and all of the directors, either in writing or at a general meeting, agree that in respect of a particular interval no financial statements or auditor's report thereon need be laid before a general meeting. Further, the company's auditor must audit the financial statements so as to enable him to report to the members. Based on the results of his audit, which must be made in accordance with generally accepted auditing standards, the auditor must then make a report to the members. The generally accepted auditing standards may be those of a country or jurisdiction other than Bermuda or such other generally accepted auditing standards as may be appointed by the Minister of Finance of Bermuda under the Bermuda Companies Act; and where the generally accepted auditing standards used are other than those of Bermuda, the report of the auditor must identify the generally accepted auditing standards used. Subject to certain exceptions provided in the Bermuda Companies Act, the company must send to every member a copy of financial statements, prepared in accordance with generally accepted accounting principles and containing all such information and documents as required by the Bermuda Companies Act ("**Financial Statements**"), at least five days before the general meeting of the company at which the Financial Statements are to be tabled.

A company listed on an appointed stock exchange may send to its members summarised financial statements derived from the Financial Statements for the relevant period instead of the Financial Statements. The summarised financial statements must include a summarised report of the Financial Statements and be accompanied by the auditor's report. The summarised financial statements must be sent to members not less than 21 days before the general meeting at which the Financial Statements are to be tabled, and a copy of the summarised financial statements must be made available for inspection by the public at the company's registered office in Bermuda. The company must also make a copy of the full Financial Statements available for inspection by the public at the company's registered office. Summarised financial statements must be accompanied by a notice informing members how they may elect to receive the company's Financial Statements.

### 14.1.9 Auditors

At each annual general meeting, a company must appoint an auditor to hold office until the close of the next annual general meeting; however, this requirement may be waived if all of the members and all of the directors, either in writing or at the general meeting, agree that no auditor shall be appointed to the close of the next annual general meeting.

A person, other than an incumbent auditor, is not capable of being appointed auditor at an annual general meeting unless notice in writing of an intention to nominate that person to the office of auditor has been given not less than 21 days before the annual general meeting. The company must send a copy of such notice to the incumbent auditor and give notice thereof to the members not less than seven days before the annual general meeting. An incumbent auditor may, however, by notice in writing to the secretary of the company waive the foregoing requirements.

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## 14. SUMMARY OF LAW (Cont'd)

An auditor appointed to replace another auditor must, before accepting the appointment or consenting to be appointed, seek from the former auditor a written statement as to the circumstances of the latter's replacement. If the former auditor does not respond within 15 days, the new auditor may act in any event. An appointment as auditor of a person who has not requested a written statement from the former auditor is voidable by a resolution of the shareholders at a general meeting. An auditor who has resigned or been removed, or whose term of office has expired or is about to expire, or who has vacated office, is entitled to attend the general meeting of the company at which he is to be removed or his successor is to be appointed; to receive all notices of, and other communications relating to, that meeting which a member is entitled to receive; and to be heard at that meeting on any part of the business of the meeting that relates to his duties as auditor or former auditor.

### 14.1.10 Exchange control

Exchange control is operated under the Exchange Control Act 1972 of Bermuda (and the regulations made thereunder) and is administered by the Bermuda Monetary Authority. Generally, any payment by a person resident in Bermuda to or for the credit of a person resident outside Bermuda will require prior approval from the Bermuda Monetary Authority.

Exempted companies are normally designated non-resident for exchange control purposes and are able to conduct their day-to-day operations free of exchange control formalities. Such companies are able to pay dividends, distribute capital, open and maintain bank accounts in any foreign currency and to acquire assets and meet all liabilities without reference to the Bermuda Monetary Authority.

Issues and transfers of securities in exempted companies involving non-residents for exchange control purposes must receive prior approval from the Bermuda Monetary Authority. However, the Bermuda Monetary Authority has granted to all Bermuda companies with voting shares listed on an appointed stock exchange a general permission for the issue and subsequent transfer of any securities of such companies from and/or to a non-resident of Bermuda for so long as any voting shares of such companies remain so listed.

### 14.1.11 Taxation

Under present Bermuda law, no Bermuda withholding tax on dividends or other distributions, or any Bermuda tax computed on profits or income or on any capital asset, gain or appreciation will be payable by an exempted company or its operations, and there is no Bermuda tax in the nature of estate duty or inheritance tax applicable to shares, debentures or other obligations of the company held by non-residents of Bermuda. Furthermore, a company may apply to the Minister of Finance of Bermuda for an assurance, under the Exempted Undertakings Tax Protection Act 1966 of Bermuda, that no such taxes shall be so applicable to it or any of its operations until 28 March 2016, although this assurance will not prevent the imposition of any Bermuda tax payable in relation to any land in Bermuda leased or let to the company or to persons ordinarily resident in Bermuda.

### 14.1.12 Stamp duty

An exempted company is exempt from all stamp duties except on transactions involving "Bermuda property". This term relates, essentially, to real and personal property physically situated in Bermuda, including shares in local companies (as opposed to exempted companies). Transfers of shares and warrants in all exempted companies are exempt from Bermuda stamp duty.

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## **14. SUMMARY OF LAW (Cont'd)**

### **14.1.13 Loans to directors**

Bermuda law prohibits a company from (i) making loans to any of its directors (or any directors of its holding company) or to their spouse or children or to companies (other than a company which is a holding company or a subsidiary of the company making the loan) in which they own or control directly or indirectly more than a twenty per cent. (20%) interest, or (ii) entering into any guarantee or providing any security in connection with a loan made to such persons as aforesaid by any other person, without the consent of any member or members holding in aggregate not less than nine-tenths of the total voting rights of all members having the right to vote at any meeting of the members of the company. These prohibitions do not apply to anything done to provide a director with funds to meet the expenditure incurred or to be incurred by him for the purposes of the company, provided that the company gives its prior approval at a general meeting or, if not, the loan, guarantee or security is made or given on condition that it will be repaid or discharged, as the case may be, within six months from the conclusion of the next following annual general meeting if the loan, guarantee or security is not approved at or before such meeting. If the approval of the company is not given for the loan, guarantee or security as aforesaid, the directors who authorised it will be jointly and severally liable to indemnify the company for any loss arising therefrom.

### **14.1.14 Inspection of corporate records**

Members of the general public have the right to inspect the public documents of a company available at the office of the Registrar of Companies in Bermuda which will include the company's certificate of incorporation, its memorandum of association (including its objects and powers) and any alteration to the company's memorandum of association. The members of the company have the additional right to inspect the bye-laws of a company, minutes of general meetings and the company's audited financial statements, which must be presented to the annual general meeting. Minutes of general meetings of a company are also open for inspection by directors of the company without charge for not less than two hours during business hours each day.

Except when the register of members is closed under the provisions of the Bermuda Companies Act, the register of members of a company shall during business hours (subject to such reasonable restrictions as the company may impose so that not less than two hours in each day be allowed for inspection) be open for inspection by members of the general public without charge. A company may on giving notice by advertisement in an appointed newspaper close the register of members for any time or times not exceeding in the whole thirty days in a year. A company is required to maintain its register of members in Bermuda but may, subject to the provisions of the Bermuda Companies Act, establish a branch register outside Bermuda. Any branch register of members established by the company is subject to the same rights of inspection as the principal register of members of the company in Bermuda. Any member of the public may require a copy of the register of members or any part thereof which must be provided within 14 days of a request on payment of the appropriate fee prescribed in the Bermuda Companies Act. Bermuda law does not, however, provide a general right for members to inspect or obtain copies of any other corporate records.

A company is required to maintain a register of directors and officers at its registered office in Bermuda and such register must during business hours (subject to such reasonable restrictions as the company may impose, so that not less than two hours in each day be allowed for inspection) be open for inspection by members of the public without charge. Any member of the public may require a copy of the register of directors and officers, or any part of it, on payment of the appropriate fee prescribed in the Bermuda Companies Act.

## **14. SUMMARY OF LAW (Cont'd)**

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Where a company, the shares of which are listed on an appointed stock exchange, sends its summarised financial statements its members pursuant to section 87A of the Bermuda Companies Act, a copy of the full financial statements (as well as the summarised financial statements) must be made available for inspection by the public at the company's registered office in Bermuda.

### **14.1.15 Winding up**

A company may be wound up by the Bermuda court on application presented by the company itself, its creditors or its contributories. The Bermuda court has authority to order winding up in a number of specified circumstances including where it is, in the opinion of the Bermuda court, just and equitable to do so.

A company may be wound up voluntarily when the members so resolve in general meeting, or, in the case of a limited duration company, when the period fixed for the duration of the company by its memorandum expires, or the event occurs on the occurrence of which the memorandum provides that the company is to be dissolved. In the case of a voluntary winding up, such company is obliged to cease to carry on its business from the time of passing the resolution for voluntary winding up or upon the expiry of the period or the occurrence of the event referred to above. Upon the appointment of a liquidator, the responsibility for the company's affairs rests entirely in his hands and no future executive action may be carried out without his approval.

Where, on a voluntary winding up, a majority of directors make a statutory declaration of solvency, the winding up will be a members' voluntary winding up. In any case where such declaration has not been made, the winding up will be a creditors' voluntary winding up.

In the case of a members' voluntary winding up of a company, the company in general meeting must appoint one or more liquidators within the period prescribed by the Bermuda Companies Act for the purpose of winding up the affairs of the company and distributing its assets. If the liquidator at any time forms the opinion that such company will not be able to pay its debts in full in the period stated in the directors' declaration of solvency, he is obliged to summon a meeting of creditors and lay before the meeting a statement of the assets and liabilities of the company.

As soon as the affairs of the company are fully wound up, the liquidator must make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon call a general meeting of the company for the purposes of laying before it the account and giving an explanation thereof. This final general meeting requires at least one month's notice published in an appointed newspaper in Bermuda.

In the case of a creditors' voluntary winding up of a company, the company must call a meeting of creditors of the company to be summoned for the day, or the next day following the day, on which the meeting of the members at which the resolution for voluntary winding up is to be proposed is held. Notice of such meeting of creditors must be sent at the same time as notice is sent to members. In addition, such company must cause a notice to appear in an appointed newspaper on at least two occasions.

The creditors and the members at their respective meetings may nominate a person to be liquidator for the purposes of winding up the affairs of the company provided that if the creditors and the members nominate different persons, the person nominated by the creditors shall be the liquidator. If no person is nominated by the creditors, the person (if any) nominated by the company shall be liquidator. The creditors at the creditors' meeting may also appoint a committee of inspection consisting of not more than five persons.



## 14. SUMMARY OF LAW (Cont'd)

If a creditors' winding up continues for more than one year, the liquidator is required to summon a general meeting of the company and a meeting of the creditors at the end of each year and must lay before such meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year. As soon as the affairs of the company are fully wound up, the liquidator must make an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before such meetings and giving an explanation thereof. This meeting requires at least one month's notice published in an appointed newspaper in Bermuda.

Within one week after the date of the meetings, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator is required to send to the Registrar of Companies in Bermuda a copy of the account and make a return in accordance with the Bermuda Companies Act. The company will be deemed to be dissolved on the expiration of three months from the registration by the Registrar of Companies in Bermuda of the account and the return. However, a Bermuda court may, on the application of the liquidator or of some other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

### 14.2 SUMMARY OF PRC LAW

#### 14.2.1 PRC Legal System

The PRC legal system is based on the PRC Constitution and is made up of written laws, regulations and directives. Decided court cases do not constitute binding precedents. The National People's Congress of the PRC ("NPC") and the Standing Committee of the NPC are empowered by the PRC Constitution to exercise the legislative power of the state. The NPC has the power to amend the PRC Constitution and to enact and amend primary laws governing the state organs, civil and criminal matters. The Standing Committee of the NPC is empowered to interpret, enact and amend laws other than those required to be enacted by the NPC. The State Council of the PRC is the highest organ of state administration and has the power to enact administrative rules and regulations. Ministries and commissions under the State Council of the PRC are also vested with the power to issue orders, directives and regulations within the jurisdiction of their respective departments. Administrative rules, regulations, directives and orders promulgated by the State Council and its ministries and commissions must not be in conflict with the PRC Constitution or the national laws and, in the event that any conflict arises, the Standing Committee of the NPC has the power to annul such administrative rules, regulations, directives and orders.

At the regional level, the people's congresses of provinces and municipalities and their standing committees may enact local rules and regulations and the people's government may promulgate administrative rules and directives applicable to their own administrative area. These local laws and regulations may not be in conflict with the PRC Constitution, any national laws or any administrative rules and regulations promulgated by the State Council. Rules, regulations or directives may be enacted or issued at the provincial or municipal level or by the State Council of the PRC or its ministries and commissions in the first instance for experimental purposes. After sufficient experience has been gained, the State Council may submit legislative proposals to be considered by the NPC or the Standing Committee of the NPC for enactment at the national level.

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## 14. SUMMARY OF LAW (Cont'd)

The power to interpret laws is vested by the PRC Constitution in the Standing Committee of the NPC. According to the Decision of the Standing Committee of the NPC Regarding the Strengthening of Interpretation of Laws (全国人民代表大会常务委员会关于加强法律解释工作的决议) passed on 10 June 1981, the Supreme People's Court has the power to give general interpretation on application of laws in judicial proceedings apart from its power to issue specific interpretation in specific cases. The State Council and its ministries and commissions are also vested with the power to give interpretation of the rules and regulations which they promulgated. At the regional level, the power to give interpretation of regional laws is vested in the regional legislative and administration organs which promulgate such laws. All such interpretations carry legal effect.

### 14.2.2 Judicial System

The People's Courts are the judicial organs of the PRC. Under the PRC Constitution (中华人民共和国宪法) and the Law of Organisation of the People's Courts of the People's Republic of China (中华人民共和国人民法院组织法), the People's Courts comprise the Supreme People's Court, the local people's courts, military courts and other special people's courts. The local people's courts are divided into three levels, namely, the basic people's courts, intermediate people's courts and higher people's courts. The basic people's courts are divided into civil, criminal, administrative and economic divisions. The intermediate people's courts have divisions similar to those of the basic people's courts and, where the circumstances so warrant, may have other special divisions (such as intellectual property divisions). The judicial functions of people's courts at lower levels are subject to supervision of people's courts at higher levels. The people's procuratorates also have the right to exercise legal supervision over the proceedings of people's courts of the same and lower levels. The Supreme People's Court is the highest judicial organ of the PRC. It supervises the administration of justice by the people's courts of all levels.

The people's courts adopt a two-tier final appeal system. A party may before the taking effect of a judgment or order appeal against the judgment or order of the first instance of a local people's court to the people's court at the next higher level. Judgments or orders of the second instance at the next higher level are final and binding. Judgments or orders of the first instance of the Supreme People's Court are also final and binding. If, however, the Supreme People's Court or a people's court at a higher level finds an error in a final and binding judgment which has taken effect in any people's court at a lower level, or the presiding judge of a people's court finds an error in a final and binding judgment which has taken effect in the court over which he presides, a retrial of the case may be conducted according to the judicial supervision procedures.

The PRC civil procedures are governed by the Civil Procedure Law of the People's Republic of China (中华人民共和国民事诉讼法) (the "Civil Procedure Law") adopted on 9 April 1991 and amended on 28 October 2007. The Civil Procedure Law contains regulations on the institution of a civil action, the jurisdiction of the people's courts, the procedures in conducting a civil action, trial procedures and procedures for the enforcement of a civil judgment or order. All parties to a civil action conducted within the territory of the PRC must comply with the Civil Procedure Law. A civil case is generally heard by a court located in the defendant's place of domicile. The jurisdiction may also be selected by express agreement by the parties to a contract provided that the jurisdiction of the people's court selected has some actual connection with the dispute, that is to say, the plaintiff or the defendant is located or domiciled, or the contract was executed or implemented in the jurisdiction selected, or the subject-matter of the proceedings is located in the jurisdiction selected. A foreign national or foreign enterprise is accorded the same litigation rights and obligations as a citizen or legal person of the PRC. If any party to a civil action refuses to comply with a judgment or order made by a people's court or an award made by an arbitration body in the PRC, the aggrieved party may apply to the people's court to enforce the judgment, order or award. There are time limits on the right to apply for such enforcement. Where at least one of the parties to the dispute is an individual, the time limit is one year. If both parties to the dispute are legal persons or other

## 14. SUMMARY OF LAW (Cont'd)

entities, the time limit is six months. According to the amendment dated 28 October 2007, the time limit for application of enforcement by both individuals and entities will be unified to two years with effect from 1 April 2008.

A party seeking to enforce a judgment or order of a people's court against a party who or whose property is not within the PRC may apply to a foreign court with jurisdiction over the case for recognition and enforcement of such judgment or order. A foreign judgment or ruling may also be recognised and enforced according to PRC enforcement procedures by the people's courts in accordance with the principle of reciprocity or if there exists an international or bilateral treaty with or acceded to by the foreign country that provides for such recognition and enforcement, unless the people's court considers that the recognition or enforcement of the judgment or ruling will violate fundamental legal principles of the PRC or its sovereignty, security or social or public interest.

### 14.2.3 Arbitration And Enforcement Of Arbitral Awards

The Arbitration Law of the PRC (中华人民共和国仲裁法) (the "**Arbitration Law**") was promulgated by the Standing Committee of the NPC on 31 August 1994 and came into effect on 1 September 1995. It is applicable to, among other matters, trade disputes involving foreign parties where the parties have entered into a written agreement to refer the matter to arbitration before an arbitration committee constituted in accordance with the Arbitration Law. Under the Arbitration Law, an arbitration committee may, before the promulgation by the PRC Arbitration Association of arbitration regulations, formulate interim arbitration rules in accordance with the Arbitration Law and the PRC Civil Procedure Law. Where the parties have by an agreement provided arbitration as a method for dispute resolution, the parties are not permitted to institute legal proceedings in a people's court.

Under the Arbitration Law, an arbitral award is final and binding on the parties and if a party fails to comply with an award, the other party to the award may apply to the people's court for enforcement. A people's court may refuse to enforce an arbitral award made by an arbitration committee if there were mistakes, an absence of material evidence or irregularities over the arbitration proceedings, or the jurisdiction or constitution of the arbitration committee. A party seeking to enforce an arbitral award of a foreign affairs arbitration body of the PRC against a party who or whose property is not within the PRC may apply to a foreign court with jurisdiction over the case for enforcement. Similarly, an arbitral award made by a foreign arbitration body may be recognised and enforced by the PRC courts in accordance with the principles of reciprocity or any international treaty concluded or acceded to by the PRC.

In respect of contractual and non-contractual commercial-law-related disputes which are recognised as such for the purposes of PRC law, the PRC has acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Award ("**New York Convention**") adopted on 10 June 1958 pursuant to a resolution of the Standing Committee of the NPC passed on 2 December 1986. The New York Convention provides that all arbitral awards made by a state which is a party to the New York Convention shall be recognised and enforced by other parties to the New York Convention subject to their right to refuse enforcement under certain circumstances including where the enforcement of the arbitral award is against the public policy of the state to which the application for enforcement is made. It was declared by the Standing Committee of the NPC at the time of the accession of the PRC that (1) the PRC would only recognise and enforce foreign arbitral awards on the principle of reciprocity and (2) the PRC would only apply the New York Convention in disputes considered under PRC laws to be arising from contractual and non-contractual mercantile legal relations.

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## 14. SUMMARY OF LAW (Cont'd)

### 14.2.4 Company Law

On December 29, 1993, the Standing Committee of the Eighth National People's Congress adopted the Company Law, which came into effect on July 1, 1994 and was amended for the first time on December 25, 1999, the second time on August 28, 2004 and the third time on October 27, 2005. The newly amended Company Law of PRC (hereinafter referred to as the "Company Law") has been promulgated and became effective from January 1, 2006.

"Company" is a corporate legal person, which possesses the status of a legal person in PRC and be liable for its debts to the extent of all its assets. The term "company" as mentioned in the PRC Company Law refers to a limited liability company (the "LLC") or a joint stock limited company (the "JSLC"). For a LLC, the shareholders bear the responsibility to the company within the capital contributions they have paid. For a JSLC, whose registered capital is divided into shares of equal par value, the shareholders bear responsibility to the shares held by them.

#### (i) Incorporation

The minimum registered capital for a LLC is RMB30,000 while the registered capital threshold for setting up a JSLC is RMB 5 million. However, if any specific laws or regulations other than the Company Law prescribe a relatively higher amount of minimum registered capital, such provisions shall prevail.

The amount of the initial capital contributions made by all shareholders shall be no less than 20% of the registered capital (provided that the first capital contribution for a LLC cannot be less than the required minimum registered capital (i.e. RMB30,000)) and the rest shall be paid off by the shareholders within 2 years as of the incorporation day; as for an investment company, it may be paid off within 5 years.

A shareholder may make capital contributions in currency, in kind or intellectual property right, land use right or other "non-cash assets" that are transferable and can be monetarily valued. The amount of the capital contributions in currency shall be no less than 30% of the registered capital of the LLC.

#### (ii) Corporate Governance

The shareholders' meeting, which comprises all the shareholders, is the authority of the company and is the meeting of the company's shareholders to elect the company's directors and supervisors, or review reports on the company's business results, prospects, and plans. Generally, the shareholders exercise their voting rights at the shareholders' meeting based on the shares held by them.

The Board of Directors is a body of elected or appointed persons who jointly oversee the activities of a company and is responsible for the shareholders' meeting. As for a LLC with relatively few shareholders or is relatively small, it may have an executive director assuming the duties of the board to replace the Board of Directors. The executive director may concurrently hold the post of the company's manager.

The Board of Supervisors is a body of elected or appointed persons who jointly check the financial affairs of the company and supervise the acts of the directors and senior managers. No director or senior manager is permitted to concurrently hold the post as a supervisor. The board of supervisors shall include representatives of shareholders and representatives of the employees. A LLC, which has relatively few shareholders or is relatively small, may have 1 or 2 supervisors, and does not have to establish a Board of Supervisors.

## 14. SUMMARY OF LAW (Cont'd)

Directors, supervisors, and senior managers shall owe the company a duty of care and loyalty. Directors and senior managers should not, by taking advantage of their powers, accept bribes or other unlawful incomes, or misappropriate the company's property. Further, directors, supervisors and senior managers would be liable for compensation, if they violate PRC laws and regulations or the company's articles of association in performance of their duties and thus cause loss to the company.

(iii) Financial Allocations

Pursuant to the Company Law, the company's profit, after paying enterprise income tax and allocating 10% of after-tax profits to the statutory reserve, are available for profits distribution. The allocation may cease when the statutory reserve exceeds 50% of registered capital. The profit distribution shall not be conducted unless the losses of previous fiscal years have been made up.

(iv) Protection of Shareholders

The Company Law aims to enhance the protection of shareholders, especially minority shareholders. Set out below is a brief summary of certain provisions with regard to the rights and remedies of shareholders.

(v) Company's Books and Records

Shareholders are entitled to check and copy the company's articles of association, financial reports, minutes of the shareholders' meetings, and resolutions of the board of directors and the supervisory board. Shareholders of a LLC are also entitled to inspect the company's accounting books and records.

(vi) Shareholders' Meetings and Resolutions

Shareholders holding at least 10% of the voting rights of the company are entitled to convene a shareholders' meeting themselves if both the board and the supervisory board are unable to convene such a meeting or if they fail to do so. The Company Law also grants the shareholders the right to revoke any shareholders' or board resolution by an application to the court if either (i) the convening procedures or voting methods adopted in the relevant meeting violate the law or the company's articles of association; or (ii) the resolution itself runs counter to the company's articles of association.

(vii) Exit right of LLC Shareholders

The Company Law makes it much easier for a shareholder of a LLC to transfer his or her share to an external party. Such shareholder is only required to obtain consent from 50% of the existing shareholders. Other shareholders who do not respond within 30 days are deemed to have agreed on the share transfer. If over 50% of the rest of the shareholders disagree with the share transfer, those disagreeing shareholders would need to purchase the shares. If the disagreeing shareholders refuse the share purchase, they will be deemed to have agreed on the transfer.

On the other hand, shareholders of LLC are entitled to ask the company to repurchase their shares at a reasonable price if they oppose: (i) the company's decision not to distribute dividends for five consecutive profit-making years; (ii) any merger or spin-off of the company or the disposition of the company's major assets; or (iii) the renewal of the company's term of operation upon its expiration or the amendment to the company's articles of association upon the occurrence of any reason for dissolution as specified in the articles.

## 14. SUMMARY OF LAW (Cont'd)

(viii) Right to dissolve a company

When a company meets serious difficulty during its operation, if the continued existence of the difficulty will cause heavy loss to shareholder's interest, and such difficulty cannot be solved by other means, the shareholders holding at least 10% of the voting rights of the company are entitled to plead the court for dissolving the company.

(ix) Derivative Suits

Any shareholder of a LLC or shareholders of a JSLC holding more than 1% of the shares for more than 180 consecutive days may bring legal proceedings in their own name on behalf of the company against (i) directors, supervisors, or senior managers who fail to comply with the laws and regulations or the company's articles of association in the course of performing their duties, causing loss to the company; or (ii) third parties infringing the company's rights and interests, causing loss to the company.

### 14.2.5 Labour Law

We are subject to the Labour Law of the PRC (中华人民共和国劳动法), pursuant to which companies must enter into employment contracts with their employees, based on the principles of equality, consent and agreement through consultation. Companies must establish and effectively implement a system of ensuring occupational safety and health, educate employees on occupational safety and health, preventing work-related accidents and reducing occupational hazards. Companies must also pay for their employees' social insurance premium.

The principal regulations governing the employment contract is the PRC Employment Contracts Law (中华人民共和国劳动合同法) (the "**Employment Contracts Law**"), which was promulgated by the Standing Committee of the NPT on 29 June 2007 and came into effect on 1 January 2008. Pursuant to the Employment Contracts Law employers shall establish employment relationship with employees on the date that they start employing the employees. To establish employment, a written employment contract shall be concluded, or employers will be liable for the illegal actions. Furthermore, the probation period and liquidated damages shall restricted by the law to safeguard employees' rights and interests.

### 14.2.6 Environmental Protection Regulations

Pursuant to the Environmental Protection Law of the PRC (中华人民共和国环境保护法) adopted by the Standing Committee of the NPC on 26 December 1989, the Administration Supervisory Department of Environmental Protection of the State Council sets the national guidelines for the discharge of pollutants. The provincial and municipal governments of provinces, autonomous regions and municipalities may also set their own guidelines for the discharge of pollutants within their own provinces or districts in the event that the national guidelines are inadequate.

Any company or enterprise which causes environmental pollution and discharges polluting materials that endanger the public should implement environmental protection methods and procedures into their business operations. This may be achieved by setting up a system of accountability within the company's business structure for environmental protection; adopting effective procedures to prevent environmental hazards such as waste gases, water and residues, dust powder, radioactive materials and noise arising from production, construction and other activities from polluting and endangering the environment. The environmental protection system and procedures should be implemented simultaneously with the commencement of and during the operation of construction, production and other activities undertaken by the company. Any company or enterprise which discharges environmental pollutants should report and register such discharge with the Administration Supervisory Department of Environmental Protection and pay any fees

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**14. SUMMARY OF LAW (Cont'd)**

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imposed for the discharge. A fee may also be imposed on the company for the cost of any work required to restore the environment to its original state. Companies which cause severe pollution to the environment are required to restore the environment or remedy the effects of the pollution within a prescribed time limit.

If a company fails to report and/or register the environmental pollution caused by it, it will receive a warning or be penalised. Companies which fail to restore the environment or remedy the effects of the pollution within the prescribed time will either be penalised or have their business licences terminated. Companies or enterprises which have polluted and endangered the environment must bear the responsibility for remedying the danger and effects of the pollution, as well as to compensate for any losses or damages suffered as a result of such environmental pollution.

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**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW**

(Prepared for inclusion in this Prospectus)

The following table sets out a summary of certain differences between the provisions of the laws of Bermuda applicable to our Company (including the Companies Act 1981 of Bermuda (the "Act") and the Bye-laws of the Company) (the "Bermuda Company Law") and the laws applicable to Malaysian companies (the references to Malaysian company being to a company as defined by Section 4(1) of the Malaysian Companies Act under the Malaysian Companies Act, but excluding references to Table A of the Malaysian Companies Act) (the "Malaysian Company Law") and their shareholders. Certain other Malaysian legislation including the Securities Industry (Central Depositories) Act 1991 may also contain provisions of a Malaysian Company Law nature. Malaysia also has a separate company law regime pertaining to Labuan offshore companies under the Offshore Companies Act 1990 of Malaysia. The Securities Industry (Central Depositories) Act 1991 and the Offshore Companies Act 1990 of Malaysia together with Malaysian common law and securities law affecting Malaysian companies are not included in the summary of differences unless expressly stated otherwise. The summaries below are not to be regarded as advice on the Bermuda Company Law or the differences between it and the laws of any jurisdiction, including, without limitation, the Malaysian Company Law. References to the Comments on differences below do not purport to be complete and exhaustive and in any event are (unless expressly stated otherwise) based only on a general comparison on a non-exhaustive basis as to whether there are equivalent provisions in respect of the expressed provisions of the Act relative to the Malaysian Companies Act and comments on such differences do not take into account any common law or judicial interpretations affecting the Act and the Malaysian Companies Act. The summaries below do not purport to be a comprehensive description of all of the rights and privileges of shareholders conferred by the Bermuda Company Law as compared to the Malaysian Company Law that may be relevant to prospective investors. The summaries below do not purport to be complete and are qualified in their entirety by reference to the Act, the Bye-laws of the Company and the Malaysian Company Law. In addition, it should also be noted that the laws applicable to Malaysian companies and Bermuda exempted companies may change, whether as a result of proposed legislative reforms to the Malaysian Company Law or the Bermuda Company Law, as the case may be, or otherwise. In addition, the summaries below do not describe the regulations and requirements prescribed by the Listing Requirements of Bursa Malaysia Securities Berhad ("Bursa Securities") ("Listing Requirements"). Among others, in regard to the Malaysian Company Law, various changes have been proposed by the Corporate Law Reform Committee of Malaysia in the Review of Companies Act, 1965 – Final Report which, if implemented, would result in some of the provisions referred to below in the Malaysian Companies Act being modified. Prospective investors are advised to seek independent legal advice.

If you intend to have a detailed review of the relevant laws and regulations of Bermuda, or a detailed explanation on the comparability and/or discrepancy of the relevant laws and regulations between Bermuda and Malaysia or any other jurisdiction, you are recommended to seek independent legal advice. Please note that definitions used in the Malaysian Companies Act, the Act and/or the Bye-laws follow that of the Malaysian Companies Act, the Act and the Bye-laws respectively.

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p><b>DIRECTOR'S POWER TO VOTE ON A PROPOSAL, ARRANGEMENT OR CONTRACT IN WHICH HE IS INTERESTED; CONFLICTS OF INTEREST AND OTHER TRANSACTIONS WITH DIRECTORS</b></p> <p><i>Directors' Disclosure of Interest in Contracts with the Issuer</i></p> <p>Section 131 of the Malaysian Companies Act: Every director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon as practicable after the relevant facts have come to his knowledge, declare the nature of his interest at a meeting of the directors of the company.</p>	<p>Section 97(4) of the Act: Without in any way limiting the generality of section 97(1) of the Act, an officer of a company shall be deemed not to be acting honestly and in good faith if -</p> <p>(a) he fails on request to make known to the auditors of the company full details of -</p>	<p>The Malaysian Companies Act refers to 'Every director of a company' and the Act refers to 'an officer of a company'. However, the Act defines "officer" in relation to a body corporate, as including director and secretary.</p> <p>In addition, Bye-laws 100 and 101 expressly refer to directors.</p>



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>Every director of a company who holds any office or possesses any property whereby whether directly or indirectly duties or interests might be created in conflict with his duties or interests as director shall declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.</p>	<p>(i) any emolument, pension or other benefit that he has received or it is agreed that he should receive from the company or any of the company's subsidiaries, or</p> <p>(ii) any loan he has received or is to receive from the company or any of its subsidiaries;</p> <p>(b) he fails to disclose at the first opportunity at a meeting of directors or by writing to the directors -</p> <p>(i) his interest in any material contract or proposed material contract with the company or any of its subsidiaries;</p> <p>(ii) his material interest in any person that is a party to a material contract or proposed material contract with the company or any of its subsidiaries.</p> <p>Section 97(5) of the Act: For the purposes of section 97 of the Act -</p> <p>(a) a general notice to the directors of a company by an officer of the company declaring that he is an officer of or has a material interest in a person and is to be regarded as interested in any contract with that person is a sufficient declaration of interest in relation to any such contract;</p> <p>(b) the word material in relation to a contract or proposed contract shall be construed as relating to the materiality of that contract or proposed contract in relation to the business of the company to which disclosure must be made;</p> <p>(c) an interest occurring by reason of the ownership or direct or indirect control of not more than ten</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>per centum of the capital of a person shall not be deemed material.</p> <p>Section 97(7) of the Act: Nothing in section 97 of the Act shall be taken to prejudice any rule of law or any bye-law restricting officers of a company from having any interest in contracts with the company.</p> <p>Bye-law 100: Subject to the Act, the Listing Requirements and to the Bye-laws, no Director or proposed or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or place of profit or as vendor, purchaser or in any other manner whatever, nor shall any such contract or any other contract or arrangement in which any Director is in any way interested be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company or the Members for any remuneration, profit or other benefits realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established provided that such Director shall disclose the nature of his interest in any contract or arrangement in which he is interested in accordance with Bye-law 101 herein.</p> <p>Bye-law 101: A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract or arrangement is first considered, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested. For the purposes of Bye-law 101, a general Notice to the</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>Board by a Director to the effect that:-</p> <p>(a) he is a member or officer of a specified company or firm and is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with that company or firm; or</p> <p>(b) he is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with a specified person who is connected with him;</p> <p>shall be deemed to be a sufficient declaration of interest under Bye-law 101 in relation to any such contract or arrangement, provided that no such Notice shall be effective unless either it is given at a meeting of the Board or the Director takes reasonable steps to secure that it is brought up and read at the next Board meeting after it is given.</p>	
<p><i>Interested Director Not to Participate or Vote in Board's Proceedings</i></p> <p>Section 131A(1) of the Malaysian Companies Act states that subject to Section 131, a director of a company who is in any way, whether directly or indirectly, interested in a contract entered into or proposed to be entered into by the company, unless the interest is one that need not be disclosed under Section 131 of the Malaysian Companies Act, shall be counted only to make the quorum at the board meeting but shall not participate in any discussion while the contract or proposed contract is being considered at the board meeting and shall not vote on the contract or proposed contract.</p>	<p>Not provided in the Act.</p> <p>Bye-law 102(1): A Director shall not vote on any resolution of the Board in respect of any contract or arrangement or proposed contract or arrangement in which he has directly or indirectly a personal material interest. Matters in which he shall not be considered to have a personal material interest shall include the following:-</p> <p>(a) any contract or arrangement for the giving to such Director any security or indemnity in respect of money lent by him or obligations incurred or undertaken by him at the request of or for the</p>	<p>The Act does not have a provision that expressly prohibits or restricts an interested director from participating or voting in board proceedings.</p> <p>In this connection, Bye-law 102(1) prohibits a director from voting in respect of any contract or arrangement or proposed contract or arrangement in which he has personal material interest, whether directly or indirectly, except for certain circumstances provided in Bye-law 102(1) which are not regarded as contract or arrangement or proposed contract or arrangement in which such director has a personal material interest ("Exemptions"). However, one should note that the</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>However, Section 131A(1) above shall not apply to:-</p> <p>(a) a private company unless it is a subsidiary to a public company;</p> <p>(b) a private company which is a wholly-owned subsidiary of a public company, in respect of any contract or proposed contract to be entered into by the private company with the holding company or with another wholly-owned subsidiary of that same holding company;</p> <p>(c) any contract or proposed contract of indemnity against any loss which any director may suffer by reason of becoming or being a surety for a company;</p> <p>(d) any contract or proposed contract entered into or to be entered into by a public company or a private company which is subsidiary of a public company, with another company in which the interest of the director consists solely of -</p> <p>(i) in him being a director of the company and the holder of shares not more than the number or value as is required to qualify him for the appointment as a director; or</p> <p>(ii) in him having an interest in not more than five per centum of its paid up capital.</p>	<p>benefit of the Company or any of its subsidiaries;</p> <p>(b) any contract or arrangement for the giving of any security or indemnity to a third party in respect of a debt or obligation of the Company or any of its subsidiaries for which the Director has himself assumed responsibility in whole or in part whether alone or jointly under a guarantee or indemnity or by the giving of security;</p> <p>(c) any contract or arrangement in which he is interested in the same manner as other holders of shares or debentures or other securities of the Company or any of its subsidiaries by virtue only of his interest in shares or debentures or other securities of the Company;</p> <p>(d) any contract or arrangement concerning any other company in which he is interested only, whether directly or indirectly, as an officer or executive or a shareholder other than a company in which the Director together with any of his associates (as defined by the rules or regulations, where applicable, of the Designated Stock Exchange) is beneficially interested in (other than through his interest (if any) in the Company) five (5) per cent or more of the issued shares or of the voting rights of any class of shares of such company (or any third company through which his interest is derived); or</p> <p>(e) any proposal concerning the adoption, modification or operation of a share option scheme, a pension fund or retirement, death or disability benefits scheme or other arrangement which relates both to directors and employees of the Company or of any of its subsidiaries and</p>	<p>Exemptions are wider than those provided for in Section 133A of the Malaysian Companies Act.</p> <p>For example, Bye-law 102 (1) (a) extends the circumstances in which a director is not regarded as being interested in to, amongst others, any arrangement giving such Director any security or indemnity in respect of money lent by him or obligations incurred or undertaken by him at the request of or for the benefit of the Company or any of its subsidiaries, whereas, section 131A(1) of the Malaysian Companies Act is limited to propose contract of indemnity against any loss which any director may suffer by reason of becoming or being a surety for a company.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Director's Fiduciary Duties</i></p> <p>Every director by virtue of his office occupies a fiduciary position with respect to the company. The fiduciary relationship is similar to that of a principal and agent relationship. This relationship arises from the fact that a company being an artificial person can only act through the agency of natural persons. Such being the case, a company can only act through agents, i.e., its individual directors and its board of directors, and it is the duty of the "agents" to act in the best interest of the company. Accordingly, a director is not permitted to place himself in a situation where his interests conflict with his duty. Duties are imposed upon any person who becomes a director of a company and breaches of these duties may lead to criminal or civil liabilities. Such duties are governed by statute and common law. Such duties include (without limitation) duties of care and skill and duties to act in good faith in the best interest of the company, as well as the statutory duty under the Section 132 of the Malaysian Companies Act to exercise his powers for a proper purpose and in good faith and in the best interest of the company. A director shall exercise reasonable care, skill and diligence with:</p> <p>(a) the knowledge, skill and experience which may reasonably be expected of a director having the same responsibilities; and</p> <p>(b) any additional knowledge, skill and experience</p>	<p>does not provide in respect of any Director as such any privilege or advantage not accorded to the employees to which such scheme or fund relates.</p> <p>Section 97(1) of the Act: Every officer of a company in exercising his powers and discharging his duties shall -</p> <p>(a) act honestly and in good faith with a view to the best interests of the company; and</p> <p>(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.</p> <p>Section 97(5A) of the Act: An officer is not liable under section 97(1) of the Act if he relies in good faith upon -</p> <p>(a) financial statements of the company represented to him by another officer of the company; or</p> <p>(b) a report of an attorney, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.</p> <p>Bye-law 99: A Director may:-</p> <p>(a) hold any other office or place of profit with the Company (except that of Auditor) in conjunction with his office of Director for such period and, subject to the relevant provisions of the Act, upon such terms as the Board may determine. Any remuneration (whether by way of salary, commission, participation in profits or otherwise) paid to any Director in respect of any such other</p>	<p>The Act and Bye-laws do not provide any express provisions in respect of the responsibility of a "nominee director" as provided for under section 132(1E) of the Malaysian Companies Act. Under the Act, "director" is defined to include inter alia "any person occupying the position of director by whatever name called".</p> <p>There is also the prohibition against the improper use of company's property, position, corporate opportunity or competing with the company under section 132(2) of the Malaysian Companies Act in respect of which there is no equivalent express provisions in the Act or Bye-laws.</p> <p>The Malaysian provisions in section 132(2) are based on a restatement of the common law fiduciary duties of a director. The duties and obligations of a director of a Bermuda company comprise not only those in the Act but also those found in common law.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>which the director in fact has.</p> <p>Under Section 132 (1B) of the Malaysian Companies Act, a director who makes a business judgement is deemed to meet the requirements of the duty above and the equivalent duties under the common law and in equity if the director:</p> <p>(a) makes the business judgement in good faith for a proper purpose;</p> <p>(b) does not have a material personal interest in the subject matter of the business judgement;</p> <p>(c) is informed about the subject matter of the business judgement.</p> <p>In Section 132(1C) of the Malaysian Companies Act, a director, in exercising his duties as a director may rely on information, professional or expert advice, opinions, reports or statements including financial statements and other financial data, prepared, presented or made by -</p> <p>(a) any officer of the company whom the director believes on reasonable grounds to be reliable and competent in relation to matters concerned;</p> <p>(b) any other person retained by the company as to matters involving skills or expertise in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence;</p> <p>(c) another director in relation to matters within the director's authority; or</p>	<p>office or place of profit shall be in addition to any remuneration provided for by or pursuant to any other Bye-law; and/or</p> <p>(b) act by himself or his firm in a professional capacity for the Company (otherwise than as Auditor) and he or his firm may be remunerated for professional services as if he were not a Director; and/or</p> <p>(c) continue to be or become a director, managing director, joint managing director, deputy managing director, executive director, manager or other officer or member of any other company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and (unless otherwise agreed) no such Director shall be accountable for any remuneration, profits or other benefits received by him as a director, managing director, joint managing director, deputy managing director, executive director, manager or other officer or member of or from his interests in any such other company. Subject as otherwise provided by the Bye-laws or the Listing Requirements, the Directors may exercise or cause to be exercised the voting powers conferred by the shares in any other company held or owned by the Company, or exercisable by them as directors of such other company in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them directors, managing directors, joint managing directors, deputy managing directors, executive directors, managers or other officers of such company) or voting or providing for the payment of remuneration to the director, managing director,</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(d) any committee to the board of directors on which the director did not serve in relation to matters within the committee's authority.</p> <p>Section 132(1D) of the Malaysian Companies Act states that the director's reliance made under Section 132D(1C) is deemed to be made on reasonable grounds if it was made</p> <p>(a) in good faith; and</p> <p>(b) after making an independent assessment of the information or advice, opinions, reports or statements, including financial statements and other financial data, having regard to the director's knowledge of the company and the complexity of the structure and operation of the company.</p> <p>Section 132 (1E) of the Malaysian Companies Act provides that a director, who was appointed by virtue of his position as an employee of a company, or who was appointed by or as a representative of a shareholder, employer or debenture holder, shall act in the best interest of the company and in the event of any conflict between his duty to act in the best interest of the company and his duty to his nominator, he shall not subordinate his duty to act in the best interest of the company to his duty to his nominator.</p> <p>Section 132(2) of the Malaysian Companies Act provides a director or officer of a company shall not, without the consent or ratification of a general meeting</p> <p>(a) use the property of the company;</p>	<p>joint managing director, deputy managing director, executive director, manager or other officers of such other company and any Director may vote in favour of the exercise of such voting rights in manner aforesaid notwithstanding that he may be, or about to be, appointed a director, managing director, joint managing director, deputy managing director, executive director, manager or other officer of such a company, and that as such he is or may become interested in the exercise of such voting rights in manner aforesaid.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(b) use any information acquired by virtue of his position as a director or officer of the company;</p> <p>(c) use his position as such director or officer;</p> <p>(d) use any opportunity of the company which he became aware of, in the performance of his functions as the director or officer of the company; or</p> <p>(e) engage in business which is in competition with the company,</p> <p>to gain directly or indirectly, a benefit for himself or any other person, or cause detriment to the company.</p>		
<p><i>Related Party Transactions</i></p> <p>Section 132E of the Malaysian Companies Act: A company shall not carry into effect any arrangement or transaction where a director or a substantial shareholder of the company or its holding company, or a person connected with such a director or substantial shareholder—</p> <p>(a) acquires or is to acquire shares or non-cash assets of the requisite value, from the company; or</p> <p>(b) disposes of or is to dispose of shares or non-cash assets of the requisite value, to the company.</p> <p>(2) An arrangement or transaction which is carried into effect in contravention of subsection (1) shall be void, unless there is prior approval of the arrangement or transaction—</p>	<p>Not provided for in the Act.</p> <p>Bye-law 169(A):</p> <p>(1) For so long as the shares of the Company are listed on the Designated Stock Exchange, the Company shall not carry into effect any arrangement or transaction where a director or a substantial shareholder of the Company or its holding company, or a person connected with such a director or substantial shareholder:-</p> <p>(a) acquires or is to acquire shares or non-cash assets of the requisite value, from the Company; or</p> <p>(b) disposes of or is to dispose of shares or non-cash assets of the requisite value, to the Company,</p>	<p>Related party transaction is not provided for in the Act.</p> <p>In this regard, Bye-law 169(A) makes similar provision to section 132E of the Malaysian Companies Act except section 132E (5) and (6). Section 132E (5) of the Malaysian Companies Act is procedural in nature and provides for an application to court by a member and section 132E (6) of the Malaysian Companies Act imposes a penalty on the director or substantial shareholder who contravened the section.</p>



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(a) by a resolution of the company at a general meeting; or</p> <p>(b) by a resolution of the holding company at a general meeting, if the arrangement or transaction is in favour of a director or substantial shareholder of its holding company or person connected with such director or substantial shareholder.</p> <p>(3) The resolution of the company or its holding company at the general meeting of the company or its holding company to consider the arrangement or transaction shall be subject to the director, substantial shareholder or person connected with such director or substantial shareholder, as the case may be, abstaining from voting on the resolution whether or not to approve the arrangement or transaction.</p> <p>(4) Where an arrangement or transaction is carried into effect by a company in contravention of subsections (1) and (2) that director, substantial shareholder or person connected with such director or substantial shareholder and any director who knowingly authorized the arrangement or transaction shall, in addition to any other liability, be liable -</p> <p>(a) to account to the company for any gain which he had made directly or indirectly by the arrangement or transaction; and</p> <p>(b) jointly and severally with any person liable under this subsection, to indemnify the company for any loss or damage resulting from the arrangement or transaction.</p>	<p>unless there is prior approval of the arrangement or transaction:-</p> <p>(a) by a resolution of the Company in general meeting; or</p> <p>(b) by a resolution of the Company's holding company in general meeting, if the arrangement or transaction is in favour of a director or substantial shareholder of its holding company or person connected with such director or substantial shareholder.</p> <p>(2) The resolution of the Company or its holding company at the general meeting of the Company or its holding company to consider the arrangement or transaction shall be subject to the director, substantial shareholder or person connected with such director or substantial shareholder, as the case may be, abstaining from voting on the resolution whether or not to approve the arrangement or transaction.</p> <p>(3) Where an arrangement or transaction is carried into effect by the Company in contravention of Bye-laws 169A(1) and (2), that director, substantial shareholder or person connected with such director or substantial shareholder and any director who knowingly authorised the arrangement or transaction shall, in addition to any other liability, be liable-</p> <p>(a) to account to the Company for any gain which he had made directly or indirectly by the arrangement or transaction; and</p> <p>(b) jointly and severally with any person liable under</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(5) The Court may, on the application of any member or director of the company, restrain the company from carrying into effect an arrangement or transaction in contravention of subsection (1).</p> <p>(6) A director or substantial shareholder of a company or its holding company, or a person connected with such director or substantial shareholder, in whose favour the company carries into effect an arrangement or transaction and who knows that such arrangement or transaction is carried into effect by a company in contravention of this section, or a director who knowingly authorized the company to carry into effect such arrangement or transaction, in contravention of this section, shall be guilty of an offence against the Malaysian Companies Act.</p> <p>(7) For the purposes of subsection (1) -</p>	<p>Bye-law 169A(4), to indemnify the Company for any loss or damage resulting from the arrangement or transaction.</p> <p>(4) For the purposes of Bye-law 169A(1): -</p> <p>(a) a person shall be connected with a director or substantial shareholder if he is:-</p> <p>(i) a member of that director's or substantial shareholder's family. "A member of that director's or substantial shareholder's family" shall include his spouse, parent, child (including adopted child and stepchild), brother, sister and the spouse of his child, brother or sister; or</p> <p>(ii) a body corporate which is associated with that director or substantial shareholder. A body corporate is associated with a director if:-</p>	
<p>(a) "person connected with a substantial shareholder" shall have the same meaning as that assigned to a "person connected with a director" in section 122A save that all references therein to a director shall be read as a reference to a substantial shareholder;</p> <p>(b) "requisite value", in the case of a company where all or any of its shares are listed for quotation on the official list of a Stock Exchange as defined under the Securities Industry Act 1983 of Malaysia, shall be the same value as the value prescribed by the provisions in the listing requirements of the Exchange -</p>	<p>(I) the body corporate is accustomed or is under an obligation, whether formal or informal, or its directors are accustomed, to act in accordance with the directions, instructions or wishes of that director or substantial shareholder; or</p> <p>(II) that director or substantial shareholder has a controlling interest in the body corporate; or</p> <p>(III) that director or substantial shareholder or persons connected with him, or that director or substantial shareholder and persons connected with him, are entitled to</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(i) which relates to acquisitions or disposals by a company or its subsidiaries to which such provision applies; and</p> <p>(ii) which would require the approval of shareholders at a general meeting in accordance with the provisions of such listing requirements;</p> <p>(c) in the case of any company other than a company to which paragraph (b) is applicable, non-cash asset is of the requisite value if, at the time of the transaction, its value exceeds two hundred and fifty thousand ringgit or, if its value does not exceed two hundred and fifty thousand ringgit but exceeds ten per centum of the company's asset value provided it is not less than ten thousand ringgit, where -</p> <p>(i) the value of the company's assets is determined by reference to the accounts prepared and laid under Part VI in respect of the last financial year prior to the arrangement or transaction; or</p> <p>(ii) no accounts have been so prepared and laid before that time, the amount of the company's called up share capital.</p> <p>(8) In this section -</p> <p>(a) a reference to the acquisition or disposal of a noncash asset includes the creation or extinction of an estate or interests in, or a right over, any property and also the discharge of any person's</p>	<p>exercise, or control the exercise of, not less than fifteen per centum of the votes attached to voting shares in the body corporate; or</p> <p>(IV) a trustee of a trust (other than a trustee for an employee share scheme or pension scheme) under which that director or substantial shareholder or a member of his family is a beneficiary; or</p> <p>(V) a partner of that director or substantial shareholder or a partner of a person connected with that director or substantial shareholder;</p> <p>(b) a company shall be a "holding company" of another corporation in accordance with the following provisions:-</p> <p>(i) if the company:</p> <p>(I) controls the composition of the board of directors of the second-mentioned company;</p> <p>(II) controls more than half of the voting power of the second-mentioned company;</p> <p>(III) holds more than half of the issued share capital of the second-mentioned corporation (excluding any part thereof which consists of preference shares); or</p> <p>(ii) if the second-mentioned company is a subsidiary</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>liability, other than liability for a liquidated sum;</p> <p>(b) "cash" includes foreign currency;</p> <p>(c) "director" includes the chief executive officer, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of a company, by whatever name called;</p> <p>(d) "non-cash asset" means any property or interest in property other than cash."</p>	<p>of any corporation which is that other corporation's subsidiary;</p> <p>(iii) the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors, and for the purpose of Bye-law 169A, that other corporation shall be deemed to have power to make such an appointment if:-</p> <p>(I) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or</p> <p>(II) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.</p> <p>(iv) in determining whether a corporation is the holding company of another corporation:-</p> <p>(I) any shares held or power exercisable by that corporation in a fiduciary capacity shall be treated as not held or exercisable by it;</p> <p>(II) subject to sub-paragraphs (III) and (IV) below, any shares held or power exercisable:</p> <p>(A) by any person as a nominee for that</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>corporation (except where that corporation is concerned only in a fiduciary capacity); or</p> <p>(B) by or by a nominee for, a subsidiary of that corporation not being a subsidiary which is concerned only in a fiduciary capacity;</p> <p>shall be treated as held or exercisable by that corporation;</p> <p>(III) any shares held or power exercisable by any person by virtue of the provision of any debentures of the second-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and</p> <p>(IV) any shares held or power exercisable by, or by a nominee for, that corporation or its subsidiary (not being held or exercisable as mentioned in sub-paragraph III above) shall be treated as not held or exercisable by that corporation if the ordinary business of that corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.</p> <p>(c) "requisite value", in the case where all or any of the shares of the Company are listed for quotation on the Designated Stock Exchange, shall be the same value as the value prescribed by the</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>provisions in the Listing Requirements:</p> <p>(i) which relates to acquisitions or disposals by a company or its subsidiaries to which such provision applies; and</p> <p>(ii) which would require the approval of Members in general meeting in accordance with the provisions of such Listing Requirements.</p> <p>(5) In this Bye-law 169A:-</p> <p>(a) a reference to the acquisition or disposal of a non-cash asset includes the creation or extinction of an estate or interests in, or a right over, any property and also the discharge of any person's liability, other than liability for a liquidated sum;</p> <p>(b) "cash" includes foreign currency;</p> <p>(c) "director" includes the chief executive officer, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of the Company, by whatever name called;</p> <p>(d) "non-cash asset" means any property or interest in property other than cash.</p>	
<p><i>Loans to Directors</i></p> <p>Section 133 of the Malaysian Companies Act: A company (other than an exempt private company) shall</p>	<p>Section 96(1) to (5) of the Act:</p>	<p>Save for the circumstances provided in Section 96(1)(a) - (c) of the Act, the Act prohibits loans to its directors</p>

15. **COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>not make a loan to a director of the company or of a company which by virtue of section 6 is deemed to be related to that company, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person but nothing in this section shall apply—</p> <p>(a) subject to subsection (2), to anything done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;</p> <p>(b) to anything done to provide such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or</p> <p>(c) to any loan made to such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, where the company has at a general meeting approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme.</p> <p>(2) Subsection (1)(a) or (b) shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security except—</p> <p>(a) with the prior approval of the company given at general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed;</p>	<p>(1) Without the consent of any member or members holding in the aggregate not less than nine-tenths of the total voting rights of all the members having the right to vote at any meeting of the members of the company it shall not be lawful for a company to make a loan to any person who is its director or a director of its holding company, or to enter into any guarantee or provide any security in connection with a loan made to such person as aforesaid by any other person:</p> <p>Provided that nothing in section 96 of the Act shall apply -</p> <p>(a) subject to section 96(2) of the Act, to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;</p> <p>(b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business; or</p> <p>(c) to any advance of moneys by a company to an officer or auditor under section 98(2)(c) of the Act.</p> <p>(2) Proviso (a) to section 96(1) of the Act shall not authorise the making of any loan, or the entering into any guarantee, or the provision of any security, except either -</p>	<p><u>Comments on differences</u></p> <p>without the consent of member(s) holding in the aggregate not less than nine-tenths of the total voting rights of all the members having the right to vote at any general meeting of the members. The Malaysian Companies Act prohibits loan to a director except in circumstances mentioned in section 133(1)(a)-(c) of the Malaysian Companies Act.</p> <p>The Malaysian Companies Act also allows for loan to be made to its directors with consent of members in a general meeting, for purchasing a home whereas the Act contains no such provisions.</p> <p>The Act allows for advances to be made by a company to its officers or auditor for costs, charges and expenses incurred by the officer or auditor in defending any civil or criminal proceedings against them, on condition that the officer or auditor shall repay the advance if any allegation of fraud or dishonesty is proved against them. A similar provision in the Malaysian Companies Act can be found in section 140(2).</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.</p>	<p>(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or</p>	
<p>(3) Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.</p>	<p>(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.</p>	
<p>In Section 133A of the Malaysian Companies Act, a company (other than an exempt private company) shall not—</p>	<p>(3) Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan, or the entering into the guarantee, or the provision of the security, shall be jointly and severally liable to indemnify the company against any loss arising therefrom.</p>	
<p>(a) make a loan to any person connected with a director of the company or of its holding company;</p>		
<p>(b) enter into any guarantee or provide any security in connection with a loan made to such person by any other person.</p>	<p>(4) A loan shall be deemed to be a loan to a director if it is made to -</p>	
<p>(2) This section shall not apply—</p>	<p>(a) the spouse or children of a director; or</p>	
<p>(a) to anything done by a company where the loan is made, or the guarantee or security is provided in relation to a loan made, to a subsidiary or holding company or a subsidiary of its holding company;</p>	<p>(b) to a company (other than a company which is a holding company or a subsidiary of the company making the loan) which a director, his spouse or children own or control directly or indirectly more than twenty per cent of the capital or loan debt.</p>	
<p>(b) to a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, or to anything done by the company in the</p>	<p>(5) For the purposes of section 96 of the Act a loan shall not be deemed to have been made in the</p>	



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>ordinary course of that business, if the activities of that company are regulated by any written law relating to banking, finance companies or insurance or are subject to supervision by Bank Negara Malaysia; or</p> <p>(c) to any loan made to a person connected with a director who is engaged in the full-time employment of a company or its related corporation, as the case may be—</p> <p>(i) for the purpose of meeting expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or</p> <p>(ii) in accordance with a scheme for the making of loans to employees approved by the company in general meeting.</p> <p>Section 122 A of the Malaysian Act :</p> <p>(1) For the purposes of this Division a person shall be deemed to be connected with a director if he is --</p> <p>(a) a member of that director's family;</p> <p>(b) a body corporate which is associated with that director;</p> <p>(c) a trustee of a trust (other than a trustee for an employee share scheme or pension scheme) under which that director or a member of his family is a beneficiary; or</p> <p>(d) a partner of that director or a partner of a person connected with that director.</p> <p>(2) In paragraph (1) (a), "a member of that director's family" shall include his spouse, parent, child (including adopted child and step-child), brother, sister and the spouse of his child, brother or sister.</p>	<p>ordinary course of business of a company if it has not been made on normal commercial terms in respect of interest rates, repayment terms and security.</p> <p>Section 98(2)(c) of the Act:</p> <p>(2) Any provision, whether contained in the bye-laws of a company or in any contract or arrangement between the company and any officer, or any person employed by the company as auditor, exempting such officer or person from, or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any fraud or dishonesty of which he may be guilty in relation to the company shall be void.</p> <p>Provided that -</p> <p>(c) notwithstanding anything in this section, a company may advance moneys to an officer or auditor for the costs, charges and expenses incurred by the officer or auditor in defending any civil or criminal proceedings against them, on condition that the officer or auditor shall repay the advance if any allegation of fraud or dishonesty is proved against them.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(3) For the purposes of paragraph (1) (b), a body corporate is associated with a director if -</p> <p>(a) the body corporate is accustomed or is under an obligation, whether formal or informal, or its directors are accustomed, to act in accordance with the directions, instructions or wishes of that director;</p> <p>(b) that director has a controlling interest in the body corporate; or</p> <p>(c) that director or persons connected with him, or that director and persons connected with him, are entitled to exercise, or control the exercise of, not less than fifteen per centum of the votes attached to voting shares in the body corporate.</p> <p>Section 140 of the Malaysian Act :</p> <p>(1) Any provision, whether contained in the articles or in any contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying him against, any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust, of which he may be guilty in relation to the company, shall be void.</p> <p>(2) Notwithstanding anything in this section a company may pursuant to its articles or otherwise indemnify any officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation thereto in which relief is under this Act granted to him by the Court.</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><b>DIRECTOR'S POWER TO VOTE ON REMUNERATION (INCLUDING PENSION OR OTHER BENEFITS) FOR HIMSELF OR FOR ANY OTHER DIRECTOR; AND WHETHER THE QUORUM AT A MEETING OF THE BOARD OF DIRECTORS MAY INCLUDE THE DIRECTOR WHOSE REMUNERATION IS THE SUBJECT OF THE VOTE</b></p>		
<p><i>Remuneration of Directors</i></p> <p>A director may not receive remuneration except as authorised by the Memorandum and Articles of Association of a company.</p> <p>Section 137(1) of the Malaysian Companies Act: it shall not be lawful -</p> <p>(a) for a company to make to any director any payment by way of compensation for loss of office as an officer of that company or of a subsidiary of that company or as consideration for or in connection with his retirement from any such office; or</p> <p>(b) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,</p> <p>unless particulars with respect to the proposed payment (including the amount thereof) have been disclosed to the members of the company and the proposal has been approved by the company in general meeting and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the company.</p> <p>Section 128(7) of the Malaysian Companies Act: nothing in subsections (1) to (6) shall be taken as depriving a person removed thereunder of compensation or damages payable to him in respect of the termination of his appointment as director or of any</p>	<p>Not provided for in the Act.</p> <p>Bye-law 95: The ordinary remuneration of the Directors shall from time to time be determined by the Company in general meeting, shall not be increased except pursuant to an ordinary resolution passed at a general meeting where notice of the proposed increase shall have been given in the notice convening the general meeting, and shall (unless otherwise directed by the resolution by which it is voted) be divided amongst the Board in such proportions and in such manner as the Board may agree or, failing agreement, equally, except that any Director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for a proportion of remuneration related to the period during which he has held office. Such remuneration shall be deemed to accrue from day to day.</p> <p>Bye-law 96: Each Director shall be entitled to be repaid or prepaid all travelling, hotel and incidental expenses reasonably incurred or expected to be incurred by him in attending meetings of the Board or committees of the Board or general meetings or separate meetings of any class of shares or of debentures of the Company or otherwise in connection with the discharge of his duties as a Director.</p> <p>Bye-law 97(1) and (2):</p>	<p>Remuneration of directors is not provided for in the Act.</p> <p>Malaysian Companies Act does not provide any restriction or limitation to the remuneration of directors. There are however, requirements for general meeting approval in relation to compensation for loss of office. The Bye-laws as well as the Listing Requirements contain provisions relating to remuneration and compensation for loss of office of directors of the Company and its subsidiaries.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.</p>	<p>(1) Any Director who, by request, goes or resides abroad for any purpose of the Company or who performs services which in the opinion of the Board go beyond the ordinary duties of a Director may be paid such extra remuneration (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine and such extra remuneration shall be in addition to or in substitution for any ordinary remuneration provided for by or pursuant to any other Bye-law.</p> <p>(2) The remuneration (including any remuneration under Bye-law 97(1) above) in the case of a Director other than an executive Director shall be payable by a fixed sum and shall not at any time be by commission on or percentage of the profits or turnover, and no Director whether an executive Director or otherwise shall be remunerated by a commission on or percentage of turnover.</p> <p>Bye-law 98: The Board shall obtain the approval of the Company in general meeting before making any payment to any Director or past Director of the Company or of a subsidiary of the Company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office (not being payment to which the Director is contractually entitled).</p> <p>Bye-law 90: Notwithstanding Bye-laws 95, 96, 97 and 98, an executive director appointed to an office under Bye-law 89 hereof shall receive such remuneration (whether by way of salary, commission, participation in profits or otherwise or by all or any of those modes) and such other benefits (including pension and/or gratuity and/or other benefits on retirement) and allowances as the Board may from time to time</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>No such provisions save that the business of a company shall be managed by or under the direction of the directors. The directors may exercise all the powers of a company except any power that the Malaysian Companies Act or the memorandum and articles of the company require the company to exercise in general meeting.</p> <p>Section 52 of the Malaysian Companies Act provides as follows:-</p> <p>(1) Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares or has issued a prospectus pursuant to the Securities Commission Act 1993 in relation to its shares the company shall not commence any business or exercise any borrowing powers -</p> <p>(a) if any money is or may become liable to be repaid to applicants for any shares or debentures offered for public subscription by reason of any failure to apply for or obtain permission for listing for quotation on any Stock Exchange; or</p> <p>(b) unless -</p> <p>(i) shares held subject to the payment of the</p>	<p>determine, and either in addition to or in lieu of his remuneration as a Director, but he shall not in any circumstances be remunerated by a commission on or a percentage of turnover.</p> <p>Not provided for in the Act save that section 91(1) of the Act states (inter alia) that the affairs of the company shall be managed by not less than two directors who shall be individuals and section 91(5) of the Act states that the directors may, subject to the bye-laws of the company, exercise all the powers of the company except those powers that are required by the Act or the bye-laws to be exercised by the members of the company.</p> <p>Bye-law 103(1): The business of the Company shall be managed and conducted by the Board, which may pay all expenses incurred in forming and registering the Company and may exercise all powers of the Company (whether relating to the management of the business of the Company or otherwise) except powers that by the Statutes or by the Bye-laws are required to be exercised by the Company in general meeting. The general powers given by Bye-law 103 shall not be limited or restricted by any special authority or power given to the Board by any other Bye-law.</p> <p>Bye-law 109: The Board may exercise all the powers of the Company to raise or borrow money and to mortgage or charge all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company and, subject to the Act, to issue debentures, bonds and other securities, whether outright or as collateral security for any debt, liability</p>	<p>Both the Malaysian Companies Act and the Act do not have any express direct provisions on the borrowing powers exercisable by directors but both the Malaysian Companies Act and the Act provide that directors may exercise all the powers of the company except those that are required by the respective Acts and the Memorandum and Articles of Association/Bye-laws to be exercised by members of the company.</p> <p>The Listing Requirements provide that the scope of the borrowing powers of the board of directors shall be expressed. The Bye-laws contains provisions on the borrowing powers of the directors.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription;</p> <p>(ii) every director has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and</p> <p>(iii) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form verifying that the above conditions have been complied with.</p>	<p>or obligation of the Company or of any third party.</p> <p>Bye-law 165: No Bye-law shall be rescinded, altered or amended and no new Bye-law shall be made until the same has been approved by a resolution of the Board and confirmed by a special resolution of the Members. A special resolution shall be required to alter the provisions of the memorandum of association or to change the name of the Company. For this purpose, "special resolution" refers to a resolution which has been passed by a majority of not less than three-fourths of votes cast by Members, being entitled so to do, voting in person or, in the case of Members being corporations, by their respective duly authorised representatives or, where proxies are allowed, by proxy.</p>	
<p>(2) Where a public company having a share capital has not issued a prospectus inviting the public to subscribe for its shares or has not issued a prospectus pursuant to the Securities Commission Act 1993 the company shall not commence any business or exercise any borrowing power unless -</p>		
<p>(a) there has been lodged with the Registrar a statement in lieu of prospectus which complies with the Malaysian Companies Act ;</p>		
<p>(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>payable in cash; and</p> <p>(c) there has been lodged with the Registrar a statutory declaration by the secretary or one of the directors of the company in the prescribed form verifying that paragraph (b) has been complied with.</p>		
<b>QUALIFICATION, APPOINTMENT AND RETIREMENT OR NON-RETIREMENT OF DIRECTORS UNDER AN AGE LIMIT REQUIREMENT</b>		
<p>Section 122 of the Malaysian Companies Act: Every company shall have at least two directors, who each has his principal or only place of residence within Malaysia.</p> <p>(2) No person other than a natural person of full age shall be a director of a company.</p> <p>Section 126 of the Malaysian Companies Act: The appointment of directors at a general meeting of a public company as defined in Section 4(c) of the Malaysian Companies Act must generally be voted on individually. This provision does not apply to election of two or more directors by ballot or poll.</p> <p>In addition, Section 129 of the Malaysian Companies Act provides that, notwithstanding anything in the memorandum or articles of association, no person of or over the age of 70 years shall be appointed as a director of a public company or of a subsidiary of a public company, unless by a resolution of which no shorter notice than that required to be given to the members of the company of an annual general meeting has</p>	<p>Section 91(1) of the Act: The affairs of the company shall be managed by not less than two directors who shall be individuals elected in the first place at the statutory meeting and thereafter at each annual general meeting of the company or elected or appointed by the members in such other manner and for such term as may be provided in the bye-laws.</p> <p>Section 91(1A) of the Act: A maximum number of directors may be determined by the members at a general meeting of the company or in such other manner as may be provided in the bye-laws.</p> <p>Section 91(2) of the Act: Where a maximum number of directors has been determined in accordance with section 91(1A) of the Act, a general meeting of a company may authorise the directors of the company to elect or appoint on their behalf an individual or individuals to act as additional directors up to such maximum.</p> <p>Section 91(3) of the Act: So long as a quorum of directors remains in office, unless the bye-laws of a company otherwise provide, any vacancy occurring in the board of directors may be filled by such directors</p>	<p>The Malaysian Companies Act provides that every company shall have at least 2 directors who each has his principal or place of residence within Malaysia.</p> <p>However, pursuant to paragraph 4A.09 (b) of the Listing Requirements, a foreign corporation with a primary listing on Bursa Securities, which has predominantly foreign based operation must have at least one director whose principal or only place of residence is within Malaysia. This is provided for in Bye-law 85.</p> <p>The general principles relating to the effect of appointment, retirement and age limit are similar.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>been duly given, passed by a majority of not less than three-fourths of such members of the company as being entitled so to do vote in person or, where proxies are allowed, by proxy, at a general meeting of that company, be appointed or reappointed as a director of that company to hold office until the next annual general meeting of the company or be authorized to continue in office as a director until the next annual general meeting of the company.</p>	<p>as remain in office. If no quorum of directors remains the vacancy shall be filled by a general meeting of members.</p> <p>Section 130(1) of the Act: Subject to section 130(2) of the Act, every exempted company shall -</p> <p>(a) have a minimum of two directors, other than alternate directors, ordinarily resident in Bermuda; or</p> <p>(b) have a secretary who is ordinarily resident in Bermuda and a director, other than an alternate director, who is ordinarily resident in Bermuda; or</p> <p>(c) have a secretary who is ordinarily resident in Bermuda and a resident representative; or</p> <p>(d) in the case of a company the shares of which are listed on an appointed stock exchange, have a resident representative.</p> <p>Bye-law 85:</p> <p>(1) The Company may from time to time by ordinary resolution, determine the maximum number of directors and increase or reduce the number of Directors but so that the number of Directors shall never be less than four (4) and provided always that for so long as the shares of the Company are listed on the Bursa Securities, at least one (1) Director (or such other number of Directors as required from time to time by the Designated Stock Exchange) shall have his principal or only place of residence within Malaysia. All Directors shall be natural persons of full age. The Directors shall be elected or appointed in the first place at</p>	



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>the statutory meeting of Members and thereafter the Company may by ordinary resolution appoint any person to be a Director either as an additional Director or to fill a casual vacancy.</p> <p>(2) The Board shall have the power from time to time and at any time to appoint any person as a Director either to fill a casual vacancy or, where a maximum number of Directors has been determined by the Members and the Members have authorised the Board to appoint additional Directors, as an additional Director.</p> <p>(3) Neither a Director nor an alternate Director shall be required to hold any shares of the Company by way of qualification and a Director or alternate Director (as the case may be) who is not a Member shall be entitled to receive notice of and to attend and speak at any general meeting of the Company and of all classes of shares of the Company.</p> <p>(6) Any Director appointed by the Board shall retire at the next annual general meeting of the Company shall then be eligible for re-election at that meeting.</p> <p>(7) The appointment of each Director shall be voted on individually except in the election of two (2) or more Directors by ballot or poll.</p> <p>Bye-law 86(1): Subject to the provisions of Bye-law 86, at each annual general meeting of the Company, an election of Directors shall take place whereby one-third of the Directors for the time being, or if their number is not three or a multiple of three (3), the</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>In Section 124 of the Malaysian Companies Act, without affecting the operation of any of the preceding provisions of this Division, every director, who is by the articles required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within two months after his appointment or such shorter period as is fixed by the articles. A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification. For the number of shares, if any, required for the qualification of Director, unless the articles otherwise provide, the candidate need not hold shares in the company to qualify for appointment.</p>	<p>number nearest to but not less than one-third, shall retire from office and shall be eligible for re-election thereat.</p> <p>Bye-law 86(2): The Directors to retire in each year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot provided always that each Director shall retire at least once every three (3) years. Notwithstanding the foregoing, a Director who is over the age of 70 years shall retire from office in every year but may be re-elected by way of special resolution in general meeting.</p>	
<b>NUMBER OF SHARES, IF ANY, REQUIRED FOR THE QUALIFICATION OF DIRECTOR</b>		
<p>In Section 124 of the Malaysian Companies Act, without affecting the operation of any of the preceding provisions of this Division, every director, who is by the articles required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within two months after his appointment or such shorter period as is fixed by the articles. A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification. For the number of shares, if any, required for the qualification of Director, unless the articles otherwise provide, the candidate need not hold shares in the company to qualify for appointment.</p>	<p>Not provided for in the Act.</p> <p>Bye-law 85(3): Neither a Director nor an alternate Director shall be required to hold any shares of the Company by way of qualification and a Director or alternate Director (as the case may be) who is not a Member shall be entitled to receive notice of and to attend and speak at any general meeting of the Company and of all classes of shares of the Company.</p>	<p>The Act does not provide any provision relating to share qualification and under the Malaysian Companies Act, director's share qualification, if any is subjected to the Articles of Association. The Bye-laws expressly states that the Director and the alternate Director are not required to have any share qualification.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<b>DISQUALIFICATION, RESIGNATION AND REMOVAL OF DIRECTORS</b>		
<p><i>Disqualification of Directors</i></p> <p>In Section 125 of the Malaysian Companies Act, a person who is an undischarged bankrupt shall not take part in or be concerned in the management of a corporation without the leave of the Malaysian Court.</p> <p>Section 130 provides that where a person is convicted whether within or outside Malaysia of any offence in connection with the promotion formation or management of a corporation or of any offence involving fraud dishonesty punishable on conviction with imprisonment for three months or more or of any offence under Sections 132 or 303 of the Malaysian Companies Act, that person cannot be a director or promoter of or be in any way whether directly or indirectly concerned or take part in the management in Malaysia of the corporation without leave of the Malaysian courts.</p> <p>Section 130A of the Malaysian Companies Act provides that where on an application under this section it appears to the Court -</p>	<p>Section 94(1) and (2) of the Act:</p> <p>(1) If any person being an undischarged bankrupt in any country acts as director of, or directly or indirectly takes part in or is concerned in the management of, any company except with the leave of the Court, he shall be liable on conviction on indictment to imprisonment for a term of two years, or on summary conviction to imprisonment for a term of six months or to a fine of five hundred dollars or to both such imprisonment and fine:</p> <p>Provided that a person shall not be guilty of an offence under section 94 of the Act by reason that he, being an undischarged bankrupt, has acted as director of, or taken part or been concerned in the management of, a company, if he was on the appointed day acting as a director of that company or taking part or being concerned in its management.</p> <p>(2) The leave of the Court for the purposes of section 94 of the Act shall not be given unless notice of intention to apply therefor has been served on the Official Receiver, and it shall be the duty of the Official Receiver, if he is of opinion that it is contrary to the public interest that any such application should be granted, to attend on the hearing of and oppose the granting of the application.</p>	<p>The possible disqualifications of directors as specified in both the Malaysian Companies Act and the Listing Requirements appear to be provided for substantively in the Bye-laws.</p>
<p>(a) that a person -</p> <p>(i) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or subsequently) and was insolvent at that time; and</p> <p>(ii) is or has been a director of such other company which has gone into liquidation</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>within five years of the date on which the first-mentioned company went into liquidation, and</p> <p>(b) that his conduct as director of any of those companies makes him unfit to be concerned in the management of a company,</p> <p>the Court may make an order that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period beginning on the date of the order and not exceeding five years as may be specified in the order.</p>	<p>Section 95(1) to (4) of the Act:</p> <p>(1) Where any court convicts any person of an offence relating to the affairs of a company which, in the opinion of such court, involves dishonesty it may order that such person shall not directly or indirectly take part in or be concerned in the management of any company without leave of the Supreme Court.</p> <p>(2) Section 94(2) of the Act shall apply to any application for leave under section 95(1) of the Act.</p> <p>(3) The same right of appeal shall lie in respect of an order made under section 95(1) of the Act as it does from a sentence of imprisonment.</p> <p>(4) Any person who contravenes an order of a court made under section 95(1) of the Act shall be liable to the punishments set out in section 94(1) of the Act.</p> <p>Bye-law 88: The office of a Director shall be vacated if the Director:-</p> <p>(1) resigns his office by notice in writing delivered to the Company at the Office or tendered at a meeting of the Board;</p> <p>(2) becomes of unsound mind or dies;</p> <p>(3) is absent (without special leave of absence from the Board) for more than 50% of the total Board of Directors' meetings held during a financial year, and his alternate Director, if any, shall not</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>during such period have attended in his stead and the Board resolves that his office be vacated;</p> <p>(4) becomes bankrupt during his term of office (and is not otherwise discharged from bankruptcy) or has a receiving order made against him or suspends payment or compounds with his creditors;</p> <p>(5) is convicted:</p> <p>(i) of any offence in connection with the promotion formation or management of a corporation, whether within or outside Malaysia; or</p> <p>(ii) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more, whether within or outside Malaysia; or</p> <p>(iii) of any offence under sections 132 or 303 of the Malaysian Companies Act; or</p> <p>(iv) of any offence under the Securities Laws;</p> <p>(6) has been compounded for an offence under section 373 of the Capital Markets and Services Act 2007 of Malaysia;</p> <p>(7) has had any action taken against him or her under the Securities Laws;</p> <p>(8) is a person who:</p> <p>(i) is or has been a director of a company which has at any time gone into liquidation</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>(whether while he was a director or subsequently) and was insolvent at that time; and</p> <p>(ii) is or has been a director of such other company which has gone into liquidation within five years of the date on which the first-mentioned company went into liquidation; and</p> <p>his conduct as director of any of those companies makes him unfit to be concerned in the management of a company and a court of competent jurisdiction ("Court") has ordered that that person shall not, without the leave of the Court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for such period beginning on the date of the order and not exceeding five years as may be specified in the order;</p> <p>(9) is prohibited by law from being a Director; or</p> <p>(10) ceases to be a Director by virtue of any provision of the Statutes or is removed from office pursuant to these Bye-laws.</p> <p>For the purposes of Bye-law 88, the term "Securities Laws" means the Securities Commission Act 1993, the Securities Industry (Central Depositories) Act 1991 and the Capital Markets and Services Act 2007 of Malaysia as amended from time to time.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Resignation of Directors</i></p> <p>Section 122(6) of the Malaysian Companies Act provides that a director of a company cannot resign or vacate his office, if by his resignation or vacation from office, the number of directors of the company is reduced below the minimum of two directors who each has his principal or only place of residence within Malaysia, and any purported resignation or vacation of office in breach of this provision is deemed to be invalid.</p>	<p>Not provided for in the Act.</p> <p>Bye-law 88(1): The office of a Director shall be vacated if the Director resigns his office by notice in writing delivered to the Company at the Office or tendered at a meeting of the Board.</p> <p>Bye-law 116: The continuing Directors or a sole continuing Director may act notwithstanding any vacancy in the Board provided that if the number of Directors is reduced below the minimum number fixed by or in accordance with these Bye laws, the continuing Directors or Director, notwithstanding that the number of Directors is below the number fixed by or in accordance with these Bye laws or that there is only one continuing Director may, except in an emergency, act only for the purpose of increasing the number of Directors to such minimum number, or summoning a general meeting of the Company. If there be no Directors or Director able or willing to act, then any two (2) Members may summon a general meeting for the purpose of appointing Directors.</p>	<p>The Act does not contain similar provisions to Section 122(6) of the Malaysian Companies Act.</p> <p>The Bye-laws allow the resignation of a director by notice in writing delivered to the Company at the Office or tendered at a meeting of the Board regardless that the remaining number of directors of the company may fall below the minimum number of two directors provided in the Act or other greater number provided in the Bye-laws. The continuing director(s) may act to increase the number of directors to such minimum number. Where there are no directors or none willing to act, then any two members may summon a general meeting for the purpose of appointing (additional) directors.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Removal of Directors</i></p> <p>According to Section 128 of the Malaysian Companies Act, a public company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its memorandum or articles or in any agreement between it and him but where any director so removed was appointed to represent the interests of any particular class of shareholders or debenture holders the resolution to remove him shall not take effect until his successor has been appointed.</p> <p>(2) Notwithstanding anything to the contrary in the memorandum or articles of the company, special notice shall be required of any resolution to remove a director or to appoint some person in place of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.</p> <p>Subject to the provisions of the Malaysian Companies Act, the articles of association of a company may prescribe the manner in which a director may be removed from office before the expiration of his term of office.</p> <p>(5) A vacancy created by the removal of a director if not filled at the meeting at which he is removed, may be filled as a casual vacancy.</p> <p>(7) Nothing in subsections (1) to (6) shall be taken as depriving a person removed thereunder of</p>	<p>Section 93(1) and (2) of the Act:</p> <p>(1) Subject to its bye-laws the members of a company may at a special general meeting called for that purpose remove a director:</p> <p>Provided that notice of any such meeting shall be served on the director concerned not less than fourteen days before the meeting and he shall be entitled to be heard at such meeting:</p> <p>Provided further that nothing in section 93 of the Act shall have effect to deprive any person of any compensation or damages which may be payable to him in respect of the termination of his appointment as a director or of any other appointment with the company.</p> <p>(2) A vacancy created by the removal of a director at a special general meeting may be filled at that meeting by the election of another director in his place or in the absence of any such election by the other directors.</p> <p>Bye-law 85(4): Subject to any provision to the contrary in the Bye-laws the Members may, at any general meeting convened and held in accordance with the Bye-laws, by ordinary resolution remove a Director at any time before the expiration of his period of office notwithstanding anything in the Bye-laws or in any agreement between the Company and such Director (but without prejudice to any claim for damages under any such agreement) provided that the Notice of any</p>	<p>Both the Act and the Malaysian Companies Act allow the removal of directors in a general meeting.</p> <p>The Malaysian Companies Act requires a special notice. According to section 153 of the Malaysian Companies Act, notice shall be given by the company to its members at the same time and in the same manner as it gives notice of the meeting, or if that is not practicable may be given in any manner allowed by the articles, not less than fourteen days before the meeting.</p> <p>This is similar to Bye-law 85(4) which provides that at least fourteen (14) days' notice of a general meeting shall be given to each member entitled to attend and vote thereat.</p>



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director or as derogating from any power to remove a director which may exist apart from this section.</p> <p>Section 153 of the Malaysian Companies Act provides where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the articles, not less than fourteen days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.</p>	<p>such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than fourteen (14) days before the meeting and at such meeting such Director shall be entitled to be heard on the motion for his removal.</p> <p>Bye-law 85(5): A vacancy on the Board created by the removal of a Director under the provisions of Bye-law 85(4) above may be filled by the election or appointment by the Members at the meeting at which such Director is removed or, in the absence of such election or appointment, such general meeting may authorise the Board to appoint a Director to fill any vacancy in the number left unfilled.</p>	
<b>RIGHTS, PREFERENCES AND RESTRICTIONS ATTACHING TO EACH CLASS OF SHARES</b>		
<p><i>Notice of Meetings and Business to be Concluded Thereat</i></p> <p>In Section 145 of the Malaysian Companies Act, a meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than fourteen days or such longer period as is provided in</p>		<p>The Act requires 'at least five days notice' to be given for a statutory meeting of a company and other general meetings of a company, whereas the Malaysian Companies Act requires a notice in writing of not less than fourteen days.</p>

15. **COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>the articles.</p> <p>Notwithstanding subsection (2), the annual general meeting of a public company shall be called by a notice in writing of not less than twenty-one days before the annual general meeting or such longer period as is provided in the articles.</p> <p>(3) A meeting shall, notwithstanding that it is called by notice shorter than is required by subsection (2) or (2A) be deemed to be duly called if it is so agreed—</p> <p>(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; or (b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, together represents not less than ninety-five per centum of the total voting rights at that meeting of all the members.</p> <p>(4) So far as the articles do not make other provision in that behalf notice of every meeting shall be served on every member having a right to attend and vote thereat in the manner in which notices are required to be served by Table A of the Fourth Schedule.</p> <p><i>*equity share is defined in Section 4(1) of the Malaysian Companies Act as any share which is not a preference share.</i></p>	<p>meeting is intended to be held, and shall state that at the meeting the members present or represented by proxy will elect the first board of directors.</p> <p>Section 71(3) of the Act: Notice of all general meetings shall specify the place, the day and hour of the meeting, and, in case of special general meetings, the general nature of the business to be considered.</p> <p>Section 75(1) and (2) of the Act :</p> <p>(1) Notwithstanding any provision in the bye-laws of a company at least five days notice shall be given of a meeting of a company, other than an adjourned meeting.</p> <p>(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in section 75(1) of the Act be deemed to have been duly called if it is so agreed -</p> <p>(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and</p> <p>(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent in nominal value of the shares giving a right to attend and vote at the meeting, or, in the case of a company not having a share capital, together representing not less than ninety-five per cent of the total voting rights at that meeting of all the members.</p> <p>Bye-law 17(2): Where a share stands in the names of two or more persons, the person first named in the</p>	<p>Bye-law 58 provides that 'at least fourteen days' notice' of a general meeting to be given to each Member.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>Register shall as regards service of notices and, subject to the provisions of the Bye-laws, all or any other matters connected with the Company, except the transfer of the shares, be deemed the sole holder thereof, save that in respect of any deposited security which is jointly held by the Depository and a Depositor, the Depositor named in the Register as the joint holder of the deposited security shall as regards service of notices and, subject to the provisions of the Bye-laws, all or any other matters connected with the Company, be deemed to be the sole holder thereof.</p> <p>Bye-law 58:                      (1) At least fourteen (14) days' Notice of a general meeting shall be given to each Member entitled to attend and vote thereat. A general meeting at which the passing of a special resolution is to be considered or an annual general meeting shall be called by not less than twenty-one (21) days' Notice. A general meeting, whether or not a special resolution will be considered at such meeting, may be called by shorter notice if it is so agreed:-</p> <p>(a) in the case of a meeting called as an annual general meeting, by all the Members entitled to attend and vote thereat; and</p> <p>(b) in the case of any other meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. (95%) in nominal value of the issued shares giving that right.</p> <p>(2) For so long as the shares of the Company are listed on the Designated Stock Exchange, at least</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>fourteen (14) days' notice of any general meeting or twenty-one (21) days' notice in the case where any special resolution is proposed or where it is an annual general meeting shall be given by advertisement in at least one (1) nationally-circulated Bahasa Malaysia or English daily newspaper in circulation in Malaysia and in writing to the Designated Stock Exchange.</p> <p>(3) The period of notice shall be exclusive of the day on which it is served or deemed to be served and exclusive of the day on which the meeting is to be held, and the Notice shall specify the day, time and place of the meeting and, in case of special business, the general nature of the business. Any Notice of a general meeting to consider special business shall be accompanied by a statement regarding the effect of any proposed resolution on the Company in respect of such special business. The Notice convening an annual general meeting shall specify the meeting as such. Notice of every general meeting shall be given to all Members other than to such Members as, under the provisions of the Bye-laws or the terms of issue of the shares they hold, are not entitled to receive such notices from the Company, to all persons entitled to a share in consequence of the death or bankruptcy or winding-up of a Member and to each of the Directors and the Auditors.</p> <p>(4) The Secretary may postpone any general meeting called in accordance with the provisions of the Bye-laws (other than a meeting requisitioned under the Bye-laws) provided that notice of postponement is given to each Member entitled to such notice before the time for such meeting. Fresh notice of the date, time and place for the</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>postponed meeting shall be given to each such Member in accordance with the provisions of the Bye-laws.</p> <p>(5) In accordance with the Rules, the Company shall inform the Depository of the dates of general meetings of the Company and the Company shall request the Depository to issue a Record of Depositors to whom notices of general meetings shall be given by the Company. In addition, in respect of each general meeting, the Company shall request the Depository in accordance with the Rules, to issue a Record of Depositors as at the latest date which is reasonably practicable which shall in any event be not less than three (3) clear market days before that general meeting ("General Meeting Record of Depositors"). Subject to the Regulations, notwithstanding any other provision of these Bye-laws, a Depositor shall not be entitled to attend any general meeting and to speak and vote thereat unless his name appears in the relevant General Meeting Record of Depositors.</p> <p>Bye-law 59: The accidental omission to give Notice of a meeting or (in cases where instruments of proxy are sent out with the Notice) to send such instrument of proxy to, or the non-receipt of such instrument of proxy, or the non-receipt of such Notice or such instrument of proxy by, any person entitled to receive such Notice shall not invalidate any resolution passed or the proceedings at that meeting.</p> <p>Bye-law 60(2): All business shall be deemed special that is transacted at a special general meeting, and also all business that is transacted at an annual general meeting, with the exception of declaring a dividend, the reading, considering and adopting of the accounts</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>and balance sheet and the reports of the Directors and Auditors and other documents required to be annexed to the balance sheet, the election of Directors and appointment of Auditors and other officers in the place of those retiring, the fixing of the remuneration of the Auditors, and the voting of remuneration or extra remuneration to the Directors.</p> <p>Bye-law 157: Any notice from the Company to a Member shall be given in writing or by cable, telex or by electronic means (including facsimile and electronic mail) and any such notice and (where appropriate) any other document may be served or delivered by the Company on or to any Member either personally or by sending it through the post in a prepaid envelope addressed to such Member at his registered address as appearing in the Register or at any other address supplied by him to the Company for the purpose or, as the case may be, by transmitting it by electronic means (including facsimile and electronic mail) to any such address or number supplied by him to the Company for the giving of notice to him, or in accordance with Bye-law 158, or may also be served by advertisement in appointed newspapers (as defined in the Act) or in newspapers published daily and circulating generally in the territory of and in accordance with the requirements of the Designated Stock Exchange. In the case of joint holders of a share all notices shall be given to that one of the joint holders whose name stands first in the Register and notice so given shall be deemed a sufficient service on or delivery to all the joint holders, save that in respect of any deposited security which is jointly held by the Depository with a Depositor, all notices shall be given to the Depositor named in the Register as the joint holder of such deposited security and notice so given shall be deemed a sufficient service on or delivery to all the joint</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Venues and technology for company meetings.</i></p> <p>Section 145A of the Malaysian Companies Act provides that:-</p> <p>A company shall hold all meetings of its members within Malaysia and may hold a meeting of its members within Malaysia at more than one venue using any technology that allows all members a reasonable opportunity to participate.</p>	<p>holders.</p> <p>Section 75A of the Act: Unless the bye-laws otherwise provide, a meeting of directors or of a committee of directors or of the members or any class thereof may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.</p> <p>Bye-law 56: Each general meeting, other than an annual general meeting, shall be called a special general meeting. General meetings may be held in any part of the world as may be determined by the Board, provided always that for so long as the shares of the Company are listed on the Bursa Securities, all general meetings of the Company shall be held in Malaysia.</p> <p>Bye-law 60(1): Members may participate in any general meeting by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.</p>	<p>Both the Act and the Malaysian Companies Act have similar provisions allowing company meetings to be held by telephonic or electronic means.</p> <p>In addition, Bye-law 56 provides that general meetings shall be held in Malaysia for so long as the shares of the company are listed on Bursa Securities and Bye-law 60(1) allows members to participate in general meetings by means of communication facilities.</p>
<p><i>Rights attaching to shares</i></p> <p>Section 55 of the Malaysian Companies Act provides that:-</p> <p>Notwithstanding any provisions in the Malaysian</p>	<p>Please refer to Section 77(6) of the Act as set out under <i>Right to Attend Meeting and Vote.</i></p> <p>Section 42(1) of the Act: Subject to section 42 of the</p>	<p>The Act and the Bye-laws do not provide for the provisions in section 61 (5), (6), (7) and (8), section 65(2) and 66 of the Malaysian Companies Act.</p>

15. **COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>Companies Act or in the memorandum or articles of a company to which this section applies, each equity share* issued by such a company after the commencement of this Act shall confer the right at a poll at any general meeting of the company (subject as provided in subsection 148 (1)) to one vote, and, to one vote only for each ringgit or part of a ringgit that has been paid up on that share.</p> <p>(2) Where any company to which this section applies has, prior to the commencement of the Malaysian Companies Act, or, while it was a company to which this section did not apply, issued any equity share* which does not comply with subsection (1), the company shall not issue any invitation to subscribe for or to purchase any shares or debentures of the company until the voting rights attached to each share of that company have been duly varied so as to comply with subsection (1).</p> <p>(3) For the purposes of this section any alteration of the rights of issued preference shares so that they become equity shares* shall be deemed to be an issue of equity shares*.</p> <p>(4) The Yang di-Pertuan Agong may by proclamation published in the <i>Gazette</i> declare that subsection (1) shall apply to all or any equity shares* or any class of equity shares* which have been issued before the commencement of this Act by a company to which this section applies and which is specified in the declaration and thereupon that subsection shall apply to such equity shares* so issued by the company from such date as is specified in the declaration being a date not less than one year after the making of the</p>	<p>Act, a company limited by shares, or other company having a share capital, may issue preference shares which-</p> <p>(i) if so authorized by its bye-laws, are, or at the option of the company are, liable to be redeemed;</p> <p>(ii) if so authorized by its memorandum at the option of the holder are to be liable to be redeemed:</p> <p>Provided that -</p> <p>(a) no such shares shall be redeemed except out of the capital paid up thereon or out of the funds of the company which would otherwise be available for dividend or distribution or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and</p> <p>(b) the premium, if any, payable on redemption, is provided for out of funds of the company which would otherwise be available for dividend or distribution or out of the company's share premium account before the shares are redeemed.</p> <p>Section 42(2) of the Act: Subject to section 42 of the Act, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by or determined in accordance with the bye-laws of the company; however, no redemption of preference shares may be effected if, on the date on which the redemption is to be effected, there are reasonable grounds for believing that the company is, or after the redemption would be, unable to pay its liabilities as they become due.</p> <p>Section 42(3) of the Act: The redemption of preference shares under section 42 of the Act shall not</p>	<p>Bye-law 11 provides that special rights conferred upon the holders shall not be deemed to be varied, by the creation or issue of further shares ranking pari passu, unless otherwise expressly provided in the terms of issue of such shares, whereas section 65(6) of the Malaysian Companies Act provides that the issuance of preference shares ranking pari passu shall be deemed to be a variation of the rights attached to those shares unless authorised by the terms of issue of the existing preference shares or by the articles of association. Section 65(7) of the Malaysian Companies Act provides that any alteration to the articles of association which affects the rights attaching to the shares shall be deemed to be a variation.</p> <p>Bye-law 10 provides that any preference capital other than redeemable preference capital may be repaid and the special rights attached to any class may be varied either with the consent in writing of the holders or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class.</p> <p>The Bye-laws provides additional provisions on the Depository as joint holder.</p>



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>proclamation.</p> <p>(5) This section applies to -                      (a) a public company having a share capital; and                      (b) a subsidiary of such a public company.</p> <p>(6) A person shall not make any invitation to the public in breach of subsection (2).</p> <p>Section 61 of the Malaysian Companies Act stipulates as follows:-</p> <p>Subject to this section a company having a share capital may, if so authorized by its articles, issue preference shares which are, or at the option of the company are to be, liable to be redeemed and the redemption shall be effected only on such terms and in such manner as is provided by the articles.</p> <p>(2) The redemption shall not be taken as reducing the amount of authorized share capital of the company.</p> <p>(3) The shares shall not be redeemed -</p> <p>(a) except out of profits which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and</p> <p>(b) unless they are fully paid up.</p> <p>(4) The premium, if any, payable on redemption shall be provided for out of profits or the share premium account before the shares are redeemed.</p>	<p>be taken as reducing the amount of the company's authorised share capital.</p> <p>Section 42(4) of the Act: On the redemption of preference shares under section 42 of the Act, any amount due to a shareholder may -</p> <p>(a) be paid in cash;</p> <p>(b) be satisfied by the transfer of any part of the undertaking or property of the company having the same value or;</p> <p>(c) be satisfied partly under paragraph (a) and partly under paragraph (b).</p> <p>Section 43 of the Act: A company limited by shares, or other company having a share capital, may by resolution at a general meeting convert any preference shares into redeemable preference shares:</p> <p>Provided that -</p> <p>(a) the consent in writing has first been obtained of the holders of three-fourths of such shares that have been issued;</p> <p>(b) at a date not more than thirty days and not less than fifteen days before the date it is proposed to convert the shares the company shall cause a notice to be published in an appointed newspaper stating the intention to convert the shares and the date on which the conversion is to take place;</p> <p>(c) on the date on which the conversion is to take place an affidavit shall be sworn by at least two directors of the company declaring either that on that date the company is solvent or that all the creditors of the company on that date have expressed in writing their concurrence in the</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(5) Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve called the "capital redemption reserve" a sum equal to the nominal amount of the shares redeemed, and the provisions of the Malaysian Companies Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve were paid-up share capital of the company.</p>	<p>conversion; and</p> <p>(d) the provisions of section 42(1) of the Act shall apply to such shares.</p> <p>Section 47(1) of the Act: If in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or bye-laws for authorizing the variation of rights attached to any class of shares in the company, subject to the consent of any specified proportions of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than ten percent of the issued shares of that class, may apply to the Court to have the variation cancelled, and, where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.</p>	
<p>(6) Where in pursuance of Section 61, a company has redeemed or is about to redeem any preference shares, it may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any fee under the Malaysian Companies Act be deemed to be increased by such issue but where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to any fee under the Malaysian Companies Act, be deemed to have been issued in pursuance of this subsection unless the old shares have been redeemed within one month after the issue of the new shares.</p>	<p>Section 47(2) of the Act: An application under section 47 of the Act must be made within twenty-eight days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.</p>	
<p>(7) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.</p>	<p>Section 47(3) of the Act: On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the</p>	
<p>(8) If a company redeems any redeemable preference</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>shares it shall within fourteen days after so doing give notice thereof to the Registrar specifying the shares redeemed.</p> <p>Section 65 of the Malaysian Companies Act provides that if in the case of a company the share capital of which is divided into different classes of shares provision is made by the memorandum or articles for authorizing the variation or abrogation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied or abrogated, the holders of not less in the aggregate than ten per centum of the issued shares of that class may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court.</p> <p>(2) An application shall not be invalid by reason of the applicants or any of them having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any material fact was not disclosed by the company to those applicants before they so consented or voted.</p> <p>(3) The application shall be made within one month after the date on which the consent was given or the resolution was passed or such further time as the Court allows, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they</p>	<p>shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.</p> <p>Section 47(4) of the Act: The decision of the Court on any such application shall be final.</p> <p>Section 47(5) of the Act: The company shall within twenty-one days after the making of an order by the Court on any such application forward a copy of the order to the Registrar, and, if default is made in complying with this provision, the company and every officer of the company who is in default shall be liable to a default fine.</p> <p>Section 47(6) of the Act: Nothing in section 47 of the Act shall be deemed to modify the rights of any member of a company under section 111 of the Act.</p> <p>Section 47(7) of the Act: If the memorandum or bye-laws of a company with share capital which is divided into different classes of shares makes no provision for varying the rights attached to any class of share and nothing in the memorandum or bye-laws precludes a variation of such rights, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of the bye-laws or other rules of the company relating to general meetings shall apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of</p>	

15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>appoint in writing.</p> <p>(4) On the application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, may, if satisfied having regard to all the circumstances of the case that the variation or abrogation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation or abrogation as the case may be and shall, if not so satisfied, confirm it, and the decision of the Court shall be final.</p> <p>(5) The company shall within fourteen days after the making of an order by the Court on any such application lodge an office copy of the order with the Registrar and if default is made in complying with this provision the company and every officer of the company who is in default shall be guilty of an offence against the Malaysian Companies Act.</p> <p>(6) The issue by a company of preference shares ranking <i>pari passu</i> with existing preference shares issued by the company shall be deemed to be a variation of the rights attached to those existing preference shares unless the issue of the first-mentioned shares was authorized by the terms of issue of the existing preference shares or by the articles of the company in force at the time the existing preference shares were issued.</p> <p>(7) For the purposes of this section the alteration of any provision in the memorandum or articles of a company which affects or relates to the manner in which the rights attaching to the shares of any</p>	<p>the class and that any holder of shares of the class present in person or by proxy may demand a poll; however, in the case of a company having only one member, one member present in person or by proxy constitutes the necessary quorum.</p> <p>Section 47(8) of the Act: The expression "variation" in section 47 of the Act includes abrogation and the expression "varied" shall be construed accordingly.</p> <p>Bye-law 9(1): In the event of preference shares being issued, the preference shareholders shall have the same rights as ordinary shareholders as regards receiving of notices, reports and audited accounts, and attending general meetings of the Company, and preference shareholders shall also have the right to vote at any meeting convened for the purpose of reducing the capital or on a proposal to wind-up the Company or during the winding-up of the Company (subject to the Act) or sanctioning a sale of the whole of the Company's property, business and undertaking or where the proposition to be submitted to the meeting directly affects their rights and privileges or when the dividend on the preference shares is more than six (6) months in arrear.</p> <p>Bye-law 9(2): Subject to Sections 42 and 43 of the Act, any preference shares may be issued or converted into shares that, at a determinable date or at the option of the Company or the holder if so authorised by its memorandum of association, are liable to be redeemed on such terms and in such manner as the Company before the issue or conversion may by ordinary resolution of the Members determine.</p> <p>Bye-law 9(3): The Company has power to issue further preference capital ranking equally with, or in priority</p>	

15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>class may be varied or abrogated shall be deemed to be a variation or abrogation of the rights attached to the shares of that class.</p> <p>(8) This section shall not operate so as to limit or derogate from the rights of any person to obtain relief under section 181 of the Malaysian Companies Act.</p> <p>Section 66 of the Malaysian Companies Act provides that no company shall allot any preference shares or convert any issued shares into preference shares unless there is set out in its memorandum or articles the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting, and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.</p>	<p>to, preference shares already issued.</p> <p>Bye-law 10: Whenever the share capital of the Company is divided into different classes of shares, subject to the provisions of the Statutes, preference capital other than redeemable preference capital may be repaid and the special rights attached to any class may be varied or abrogated either with the consent in writing of the holders of three-quarters in nominal value of the issued shares of the class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class (but not otherwise) and may be so repaid, varied or abrogated either whilst the Company is a going concern or during or in contemplation of a winding-up. To every such separate general meeting and all adjournments thereof all the provisions of the Bye-laws relating to general meetings of the Company and to the proceedings thereat shall <i>mutatis mutandis</i> apply, except that the necessary quorum (other than at an adjourned meeting) shall be two persons at least holding or representing by proxy at least one-third in nominal value of the issued shares of the class and at any adjourned meeting of such holders, two holders present in person or by proxy (whatever the number of shares held by them) shall be a quorum and that any holder of shares of the class present in person or by proxy may demand a poll and that every such holder shall on a poll have one vote for every share of the class held by him, provided always that where the necessary majority for such a special resolution is not obtained at such general meeting, consent in writing if obtained from the holders of three-quarters in nominal value of the issued shares of the class concerned within two months of such general meeting shall be as valid and effectual as a special resolution carried at such general meeting. The foregoing provisions of Bye-law</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>10 shall apply to the variation or abrogation of the special rights attached to some only of the shares of any class as if each group of shares of the class differently treated formed a separate class the special rights whereof are to be varied.</p> <p>Bye-law 11: The special rights conferred upon the holders of any shares or class of shares shall not, unless otherwise expressly provided in the rights attaching to or the terms of issue of such shares, be deemed to be varied, modified or abrogated by the creation or issue of further shares ranking pari passu therewith.</p> <p>Bye-law 15A(1): Subject to the Listing Requirements (if applicable), for so long as the shares of the Company are listed on the Bursa Securities, all deposited securities of a Depositor shall be held jointly by the Depository and the said Depositor. The Depositor shall be named in the Register as the first holder and the Depository named as the second or junior holder (as the case may be) thereof.</p> <p>Bye-law 15A(2): Notwithstanding any provision in these Bye-laws to the contrary, a Depositor whose name appears in the Register shall be entitled to all rights (including voting and other rights), benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such deposited security registered in the Depositor's name (whether conferred or imposed by the Act, the memorandum of association of the Company or these Bye-laws, or otherwise) as if such Depositor is the sole holder of such deposited security. Notwithstanding that the Depository is named in the Register as the joint holder of any deposited security, the Depository shall not be entitled to any rights (including voting and other</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>rights), benefits, powers and privileges in respect of, or arising from, such deposited security and nor shall the Depository be subject to any liabilities, duties and obligations in respect of, or arising from, such deposited security.</p> <p>Bye-law 15A(3): The share certificate in respect of any deposited security held jointly by a Depositor and the Depository shall be issued in the name of, and delivered to, the Depository as joint holder and the Company shall not be bound to issue any certificate therefor to the Depositor. A Depositor shall not be entitled to withdraw any deposited security held jointly with the Depository for so long as the shares of the Company are listed on the Designated Stock Exchange.</p> <p>Bye-law 17(2): Where a share stands in the names of two or more persons, the person first named in the Register shall as regards service of notices and, subject to the provisions of these Bye-laws, all or any other matters connected with the Company, except the transfer of the shares, be deemed the sole holder thereof, save that in respect of any deposited security which is jointly held by the Depository and a Depositor, the Depositor named in the Register as the joint holder of the deposited security shall as regards service of notices and, subject to the provisions of these Bye-laws, all or any other matters connected with the Company, be deemed to be the sole holder thereof.</p>	<p>rights), benefits, powers and privileges in respect of, or arising from, such deposited security and nor shall the Depository be subject to any liabilities, duties and obligations in respect of, or arising from, such deposited security.</p> <p>Bye-law 15A(3): The share certificate in respect of any deposited security held jointly by a Depositor and the Depository shall be issued in the name of, and delivered to, the Depository as joint holder and the Company shall not be bound to issue any certificate therefor to the Depositor. A Depositor shall not be entitled to withdraw any deposited security held jointly with the Depository for so long as the shares of the Company are listed on the Designated Stock Exchange.</p> <p>Bye-law 17(2): Where a share stands in the names of two or more persons, the person first named in the Register shall as regards service of notices and, subject to the provisions of these Bye-laws, all or any other matters connected with the Company, except the transfer of the shares, be deemed the sole holder thereof, save that in respect of any deposited security which is jointly held by the Depository and a Depositor, the Depositor named in the Register as the joint holder of the deposited security shall as regards service of notices and, subject to the provisions of these Bye-laws, all or any other matters connected with the Company, be deemed to be the sole holder thereof.</p>	
<p><i>Resolutions requiring Special Notice</i></p> <p>According to Section 153 of the Malaysian Companies Act, where a special notice is required of a resolution,</p>	<p>Section 89(3) of the Act: A person, other than an incumbent auditor, shall not be capable of being</p>	<p><u>Appointment/Removal of Auditor</u>                      The Act and the Bye-laws provide that notice of</p>

15. **COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the articles, not less than fourteen days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.</p> <p><i>Provisions in the Malaysian Companies Act requiring special notice to be provided are as follows:</i></p> <p>Section 172(2) of the Malaysian Companies Act provides that a company shall at each annual general meeting of the company appoint a person or persons to be the auditor or auditors of the company, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the next annual general meeting of the company and Section 172 (4) of the Malaysian Companies Act states that an auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.</p> <p>Section 258 (3) of the Malaysian Companies Act, states that a company may, in general meeting convened by any contributory by special resolution of which special notice has been given to the creditors and the liquidators, remove any liquidator but no such</p>	<p>appointed auditor at an annual general meeting unless notice in writing of an intention to nominate that person to the office of auditor has been given not less than twenty-one days before the annual general meeting; and the company shall send a copy of any such notice to the incumbent auditor, and shall give notice thereof to the members, either by advertisement in an appointed newspaper or in any other mode provided by the bye-laws of the company, not less than seven days before the annual general meeting:</p> <p>Provided that an incumbent auditor may by notice in writing to the secretary of the company waive the requirements of section 89(3) of the Act which shall then not have effect.</p> <p>Section 89(5) of the Act: The members, by a resolution passed by at least two-thirds of the votes cast at a general meeting of which notice specifying the intention to pass such resolution was given, may remove any auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term:</p> <p>Provided that, not less than twenty-one days before the date of the meeting, notice in writing of the proposed resolution is given to the incumbent auditor and to the auditor proposed to be appointed.</p> <p>Please also refer to section 93 of the Act as set out under the heading "Removal of Directors".</p> <p>Bye-law 84(3): Notwithstanding any provisions contained in the Bye-laws, a resolution in writing shall not be passed for the purpose of removing a Director before the expiration of his term of office under</p>	<p>intention to nominate a person as the new auditor must be given not less than twenty-one (21) days before the annual general meeting, and the company is to send a copy of the said notice to the members and to the incumbent auditor not less than seven (7) days before the annual general meeting. In respect of removal of auditors, not less than twenty-one (21) days' written notice of the proposed resolution is to be given to the incumbent auditor and the auditor proposed to be appointed.</p> <p>For the provision on special notice under the Malaysian Companies Act, please see the comments in the <i>Removal of Director</i>.</p> <p><u>Removal of Director</u>                      Please see comments in the <i>Removal of Director</i>.</p>



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>resolution shall be effective to remove a liquidator if the Court on the application of the liquidator or a creditor has ordered that the liquidator be not removed.</p> <p>Please also refer to Section 128 of the Malaysian Companies Act as set out in Removal of Directors and Section 129 of the Malaysian Companies Act as set out in Qualification, Appointment and Retirement or Non-retirement of Directors under an Age Limit Requirement.</p>	<p>Bye-law 85(4) or for the purposes set out in Bye-law 151(3) relating to the removal and appointment of the Auditor.</p> <p>Bye-law 85(4): Subject to any provision to the contrary in the Bye-laws the Members may, at any general meeting convened and held in accordance with the Bye-laws, by ordinary resolution remove a Director at any time before the expiration of his period of office notwithstanding anything in the Bye-laws or in any agreement between the Company and such Director (but without prejudice to any claim for damages under any such agreement) provided that the Notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director fourteen (14) days before the meeting and at such meeting such Director shall be entitled to be heard on the motion for his removal.</p> <p>Bye-law 151(2): Subject to Section 89 of the Act, a person, other than an incumbent Auditor, shall not be capable of being appointed Auditor at an annual general meeting unless notice in writing of an intention to nominate that person to the office of Auditor has been given not less than twenty-one (21) days before the annual general meeting and furthermore, the Company shall send a copy of any such notice to the Auditor.</p>	
<u>Quorum for Meetings</u>		
<p>Section 147 of the Malaysian Companies Act: So far as the articles do not make other provision in that behalf and subject to section 55, (a) two members of the company, personally present shall be a quorum; (b)</p>	<p>Section 13(2)(f) of the Act: A company limited by shares, or other company having a share capital, shall in its bye-laws make provision for the number of members required to constitute a quorum at any</p>	<p>The Act does not provide for quorum of general meetings (other than for the statutory meeting).                      The quorum for the Malaysian Companies Act is two</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>any member elected by the members present at a meeting may be chairman thereof; (c) in the case of a company having a share capital- (i) on a show of hands each member who is personally present and entitled to vote shall have one vote; and (ii) on a poll each member shall have one vote in respect of each share held by him and where all or part of the share capital consists of stock or units of stock each member shall have one vote in respect of the stock or units of stock held by him which is or are or were originally equivalent to one share; and (d) in the case of a company not having a share capital every member shall have one vote.</p>	<p>general meeting of the members of the company.</p> <p>Section 70(5) of the Act: The quorum for a statutory meeting called under section 70 of the Act shall be a majority of the members of the company present in person or by proxy.</p> <p>Section 71(5) of the Act: Where the bye-laws so provide, a general meeting of the members of the company may be held with only one individual present if the requirement for a quorum is satisfied and, where a company has only one shareholder or only one holder of any class of shares, the shareholder present in person or by proxy constitutes a general meeting.</p>	<p>members. However, this is subject to the articles of association not making other provision in that behalf.</p> <p>In this regard, the Bye-laws provides that two members are required to form a quorum provided that if the company has only one member then the quorum shall be one member.</p>
	<p>Bye-law 60(3): No business, other than the appointment of a chairman of a meeting, shall be transacted at any general meeting unless a quorum of Members entitled to attend the meeting is present at the time when the meeting proceeds to business. Except as herein otherwise provided, two (2) Members present in person shall form a quorum, provided that if the Company shall at any time have only one Member, one Member present in person or by proxy, or being a corporation by its representative duly authorized, shall form a quorum for the transaction of business at any general meeting of the Company held during such time. For the purposes of Bye-law 60(3), "Member" includes a person attending as a proxy or as a duly authorised representative of a corporation which is a Member.</p>	
	<p>Bye-law 61: If within thirty (30) minutes (or such longer time not exceeding one hour as the chairman of the meeting may determine to wait) after the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of Members,</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board may determine. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the meeting shall be dissolved.</p> <p>Bye-law 29: No Member shall be entitled to receive any dividend or bonus or to be present and vote (save as proxy for another Member) at any general meeting either personally or by proxy, or be reckoned in a quorum, or exercise any other privilege as a Member until all calls or instalments due by him to the Company, whether alone or jointly with any other person, together with interest and expenses (if any) shall have been paid.</p> <p>Bye-law 75: Subject to Bye-law 15A(2) and Bye-law 73, no Member shall, unless the Board otherwise determines, be entitled to attend and vote and to be reckoned in a quorum at any general meeting unless he is duly registered and all calls or other sums presently payable by him in respect of shares in the Company have been paid.</p> <p>Please also refer to Bye-law 10 as set out under the heading "Changes in the respective rights of the various classes of shares including the action necessary to change the rights", and the provisions set out under the heading "Right to Attend Meeting and Vote".</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Annual General Meetings</i></p> <p>In Section 143 of the Malaysian Companies Act, a general meeting of every company to be called the "annual general meeting" shall in addition to any other meeting be held once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting, but so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.</p> <p>Section 152A Malaysian Companies Act provides the following:-</p> <p>(1) Notwithstanding anything to the contrary in the Malaysian Companies Act or the articles of the company, a resolution in writing signed by or on behalf of all persons for the time being entitled to receive notice of, and to attend and vote at general meetings of a company shall, for the purposes of the Malaysian Companies Act and the articles of the company, be treated as a resolution duly passed at a general meeting of the company and, where relevant, as a special resolution so passed.</p> <p>(2) Any such resolution shall be deemed to have been passed at a meeting held at the registered office on the date on which it was signed by the last member.</p> <p>(3) This section shall not be construed as requiring that the persons signing a resolution under this section shall sign the same document containing the resolution; but where two or more documents are used for the purpose of obtaining signatures under</p>	<p>Section 71(1) of the Act: A meeting of members of a company shall be convened at least once in every calendar year; this meeting shall be referred to as the annual general meeting.</p> <p>Section 70(6) of the Act: A statutory meeting called under section 70(1) of the Act shall be deemed to be the annual general meeting for the year in which it is convened.</p> <p>Bye-law 55: An annual general meeting of the Company shall be held in each year other than the year in which its statutory meeting is convened at such time (within a period of not more than eighteen (18) months from the date of incorporation and thereafter within a period of not more than fifteen (15) months after the holding of the last preceding annual general meeting unless a longer period would not infringe the Listing Requirements, if applicable) and (subject to Bye-law 56 below) at such place as may be determined by the Board. In addition, for so long as the shares of the Company are listed on the Designated Stock Exchange, the interval between the close of the Company's financial year and the date of the Company's annual general meeting shall not exceed six (6) months or such other period as may be prescribed or permitted by the Designated Stock Exchange.</p> <p>Please also refer to section 77A of the Act and Bye-law 84 as set out under the heading "Shareholders' Action by Written Consent".</p> <p>Bye-law 60(1): Members may participate in any</p>	<p>The Act and Bye-laws contain provisions on annual general meetings.</p> <p>It is uncertain as to whether section 152A of the Malaysian Companies Act can apply to an annual general meeting.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>this section in respect of any resolution, each such document shall be certified in advance by the secretary of the company as containing the true and correct version of the proposed resolution.</p> <p>Section 147(6) of the Malaysian Companies Act provides that where a holding company is beneficially entitled to the whole of the issued shares of a subsidiary and a minute is signed by a representative of the holding company authorized pursuant to subsection (3) stating that any act, matter, or thing, or any ordinary or special resolution, required by the Malaysian Companies Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at an ordinary general meeting or an extraordinary general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing, or resolution shall, for all purposes, be deemed to have been duly made, performed, or passed by or at an ordinary general meeting, or as the case requires, by or at an extraordinary general meeting of the subsidiary.</p>	<p>general meeting by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.</p> <p>Bye-law 60(3): No business, other than the appointment of a chairman of a meeting, shall be transacted at any general meeting unless a quorum of Members entitled to attend the meeting is present at the time when the meeting proceeds to business. Except as herein otherwise provided, two (2) Members present in person shall form a quorum, provided that if the Company shall at any time have only one Member, one Member present in person or by proxy, or being a corporation by its representative duly authorized, shall form a quorum for the transaction of business at any general meeting of the Company held during such time. For the purposes of this Bye-law, "Member" includes a person attending as a proxy or as a duly authorised representative of a corporation which is a Member.</p>	
<p><i>Special Resolutions</i></p> <p>In Section 152 (1) of the Malaysian Companies Act, a resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of such members as being entitled so to do vote in person or, where proxies are allowed, by proxy, at a general meeting of which not less than twenty-one days' notice specifying the intention to propose the resolution as a special resolution has been duly given.</p>	<p>Not provided for in the Act.</p> <p>Bye-law 2(h): In the Bye-laws, unless there be something within the subject or context inconsistent with such construction, a resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of votes cast by Members, being entitled so to do, voting in person or, in the case of Members being corporations, by their respective duly authorised representatives or, where proxies are</p>	<p>The Bye-laws contain a distinction between a "special resolution" and an "ordinary resolution", a distinction which is not made in the Act.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>Notwithstanding Section 152(1), if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority which together holds not less than ninety-five per centum in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represents not less than ninety-five per centum of the total voting rights that could be exercised at that meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.</p>	<p>allowed, by proxy.</p> <p>Please also refer to Bye-law 58(1) and (2), as set out under the heading "Notice of Meetings and Business to be Concluded Thereat".</p>	
<p><i>Convening of General Meetings on Requisition</i></p>		
<p>In accordance with Section 144 of the Malaysian Companies Act:</p> <p>(1) The directors of a company, notwithstanding anything in its articles, shall on the requisition of members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital as at the date of the deposit carries the right of voting at general meetings or, in the case of a company not having a share capital, of members representing not less than one-tenth of the total voting rights of all members having at that date a right to vote at general meetings, forthwith proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two months after the receipt by the company of the requisition.</p> <p>(2) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the</p>	<p>Section 74(1) to (5) of the Act:</p> <p>(1) The directors of a company, notwithstanding anything in its bye-laws shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, members of the company representing not less than one-tenth of the total voting rights of all the members having at the said date a right to vote at general meetings of the company, forthwith proceed duly to convene a special general meeting of the company.</p> <p>(2) The requisition must state the purposes of the meeting, and must be signed by the requisitionists and deposited at the registered office of the</p>	<p>The general principle of these provisions in the Act is similar to those in the Malaysian Companies Act.</p>

15. **COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>company, and may consist of several documents in like form each signed by one or more requisitionists.</p> <p>(3) If the directors do not within twenty-one days after the date of the deposit of the requisition proceed to convene a meeting the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by directors convene a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.</p> <p>(4) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting shall be paid to the requisitionists by the company, and any sum so paid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.</p> <p>(5) A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice thereof as is required by this Malaysian Companies Act in the case of special resolutions.</p> <p>In Section 151 (1) of the Malaysian Companies Act, a company shall on the requisition in writing of such number of members of the company as is specified in subsection (2) and (unless the company otherwise resolves) at the expense of the requisitionists-(a) give</p>	<p>company, and may consist of several documents in like form each signed by one or more requisitionists.</p> <p>(3) If the directors do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.</p> <p>(4) A meeting convened under section 74 of the Act by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.</p> <p>(5) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such directors as were in default.</p> <p>Section 79(1) to (3) of the Act:</p> <p>(1) Subject to the following provisions of section 79 of the Act it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified, at the expense of the requisitionists unless the company otherwise resolves -</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>to the members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting; and (b) circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.</p> <p>(2) The number of members necessary for a requisition under Section 151(1) shall be- (a) any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or (b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than five hundred ringgit.</p> <p>(3) Notice of a resolution referred to in subsection (1) shall be given, and any statement so referred to shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each member in any manner permitted for service of notice of the meeting, and notice of the resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company, and the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or</p>	<p>(a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;</p> <p>(b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.</p> <p>(2) The number of members necessary for a requisition under section 79(1) of the Act shall be -</p> <p>(a) either any number of members representing not less than one-twentieth of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or</p> <p>(b) not less than one hundred members.</p> <p>(3) Notice of any such intended resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting, and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him notice of meetings of the company.</p> <p>Provided that the copy shall be served, or notice of the</p>	



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>given as soon as practicable thereafter.</p> <p>(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—</p> <p>(a) a copy of the requisition signed by the requisitionists (or two or more copies which between them contain the signatures of all the requisitionists) is deposited at the registered office of the company- (i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and (ii) in the case of any other requisition, not less than one week before the meeting; and (b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto, but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.</p>	<p>effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.</p> <p>Section 80 of the Act: A company shall not be bound under section 79 of the Act to give notice of any resolution or to circulate any statement unless -</p> <p>(a) a copy of the requisition signed by the requisitionists, or two or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the company -</p> <p>(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting; and</p> <p>(ii) in the case of any other requisition, not less than one week before the meeting; and</p> <p>(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:</p> <p>Provided that if, after a copy of the requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date six weeks or less after the copy has been deposited, the copy though not deposited within the time required by section 80 of the Act shall be deemed to have been properly deposited for the purposes thereof.</p> <p>Bye-law 57: The Board may whenever it thinks fit call</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>In Section 148 of the Malaysian Companies Act, unless the articles provide that the right of holders of preference shares to attend and vote at a general meeting of the company may be suspended upon such conditions as may be specified every member shall notwithstanding any provision in the memorandum or articles have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting: Provided that the company's articles may provide that a member shall not be entitled to vote unless all calls or other sums personally payable by him in respect of shares in the company have been paid.</p>	<p>special general meetings, and, subject to the Act, Members holding at the date of deposit of the requisition not less than one-tenth of the paid up capital of the Company carrying the right of voting at general meetings of the Company shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require a special general meeting to be called by the Board for the transaction of any business specified in such requisition; and such meeting shall be held within two (2) months after the deposit of such requisition. If within twenty-one (21) days of such deposit the Board fails to proceed to convene such meeting the requisitionists themselves may do so in accordance with the provisions of Section 74(3) of the Act.</p>	
<p><i>Right to Attend Meeting and Vote</i></p> <p>In Section 148 of the Malaysian Companies Act, unless the articles provide that the right of holders of preference shares to attend and vote at a general meeting of the company may be suspended upon such conditions as may be specified every member shall notwithstanding any provision in the memorandum or articles have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting: Provided that the company's articles may provide that a member shall not be entitled to vote unless all calls or other sums personally payable by him in respect of shares in the company have been paid.</p>	<p>Section 77(1) of the Act: Subject to the provisions of section 77 of the Act, the bye-laws of the company and to any rights or restrictions lawfully attached to any class of shares, at any general meeting each member of the company shall be entitled in the case of a company limited by shares, or other company having a share capital, to one vote for each share held by him and in the case of a company limited by guarantee one vote; such votes may be given in person or by proxy.</p> <p>Bye-law 15A(1): Subject to the Listing Requirements (if applicable), for so long as the shares of the Company are listed on the Bursa Securities, all deposited securities of a Depositor shall be held jointly by the Depository and the said Depositor. The Depositor shall be named in the Register as the first holder and the Depository named as the second or junior holder (as the case may be) thereof.</p>	<p>The Act and the Malaysian Companies Act are similar in relation to the rights of members to attend and vote. The Bye-laws further provide for deposited securities of a Depositor to be held jointly by the Depository and the said Depositor and the manner in which the Depositor and Depository are to be named in the Register.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>Bye-law 15A(2): Notwithstanding any provision in these Bye-laws to the contrary, a Depositor whose name appears in the Register shall be entitled to all rights (including voting and other rights), benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such deposited security registered in the Depositor's name (whether conferred or imposed by the Act, the memorandum of association of the Company or these Bye-laws, or otherwise) as if such Depositor is the sole holder of such deposited security. Notwithstanding that the Depository is named in the Register as the joint holder of any deposited security, the Depository shall not be entitled to any rights (including voting and other rights), benefits, powers and privileges in respect of, or arising from, such deposited security and nor shall the Depository be subject to any liabilities, duties and obligations in respect of, or arising from, such deposited security.</p> <p>Bye-law 29: No Member shall be entitled to receive any dividend or bonus or to be present and vote (save as proxy for another Member) at any general meeting either personally or by proxy, or be reckoned in a quorum, or exercise any other privilege as a Member until all calls or instalments due by him to the Company, whether alone or jointly with any other person, together with interest and expenses (if any) shall have been paid.</p> <p>Bye-law 58(5): In accordance with the Rules, the Company shall inform the Depository of the dates of general meetings of the Company and the Company shall request the Depository to issue a Record of Depositors to whom notices of general meetings shall be given by the Company. In addition, in respect of</p>	

15. **COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>In Section 147 of the Malaysian Companies Act, so far as the articles do not make other provision in that behalf and subject to section 55-</p> <p>(a) in the case of a company having a share capital—</p> <p>(i) on a show of hands each member who is personally present and entitled to vote shall have one vote; and</p> <p>(ii) on a poll each member shall have one vote in respect of each share held by him and where all or part of the share capital consists of stock or units of stock each member shall have one vote in respect of the stock or units of stock held by him which is or are or were originally equivalent to one share.</p>	<p>each general meeting, the Company shall request the Depository in accordance with the Rules, to issue a Record of Depositors as at the latest date which is reasonably practicable which shall in any event be not less than three (3) clear market days before that general meeting ("General Meeting Record of Depositors"). Subject to the Regulations, notwithstanding any other provision of these Bye-laws, a Depositor shall not be entitled to attend any general meeting and to speak and vote thereat unless his name appears in the relevant General Meeting Record of Depositors.</p> <p>Bye-law 75: Subject to Bye-law 15A(2) and Bye-law 73, no Member shall, unless the Board otherwise determines, be entitled to attend and vote and to be reckoned in a quorum at any general meeting unless he is duly registered and all calls or other sums presently payable by him in respect of shares in the Company have been paid.</p>	
	<p>Section 77(3) of the Act: Subject to section 77(5) of the Act, it shall be lawful for any question proposed for consideration at a general meeting of a company to be decided on a show of hands or by a count of votes received in the form of electronic records and in any such case, and subject to any rights or restrictions for the time being lawfully attached to any class of shares, every member present in person or by proxy at such meeting shall be entitled to one vote and shall cast such vote by raising his hand or by communicating their vote in the form of an electronic record.</p> <p>Section 77(5) of the Act: Notwithstanding section 77(3) of the Act, at any general meeting of a company, it shall be lawful, in respect of any question proposed</p>	<p>The provisions in the Act and Bye-laws are generally similar to the Malaysian Companies Act. Further, the Bye-laws contain provisions relating to voting rights of the Depositor and the Depository.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>Please also see Section 55 of the Malaysian Companies Act as set out under <i>Rights Attaching to Shares</i>.</p> <p>Section 146(1) of the Malaysian Companies Act provides Any provision contained in a company's articles shall be void so far as it would have the effect -</p> <p>(a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;</p> <p>(b) of making ineffective a demand for a poll on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting that is made -</p> <p>(i) by not less than five members having the right to vote at the meeting;</p> <p>(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or</p> <p>(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right; or</p> <p>(c) of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy to be received by the company or any other person more than forty eight hours before a meeting or adjourned</p>	<p>for the consideration of the members, whether before or on the declaration of the result of a show of hands or of a count of votes received in the form of electronic records as provided for in subsection (3) for a poll to be demanded by any of the following persons-</p> <p>(a) the Chairman of such meeting; or</p> <p>(b) at least three members present in person; or represented by proxy; or</p> <p>(c) any member or members present in person or represented by proxy and holding between them not less than one-tenth of the total voting rights of all the members having the right to vote at such meeting; or</p> <p>(d) a member or members present in person or represented by proxy holding shares in such company conferring the right to vote at such meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all such shares conferring such right.</p> <p>Section 77(6) of the Act: Where, in accordance with section 77(5) of the Act, a poll is demanded, and subject to any rights or restrictions for the time being lawfully attached to any class of shares, every member present in person or by proxy at such meeting shall have one vote for each share of which he is the holder or for which he holds a proxy or in the case of a company limited by guarantee he shall have one vote for himself and one vote for each member for whom he holds a proxy and such votes shall be counted in such manner as the bye-laws of the company may provide or, in default of such provision, as the chairman may</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>meeting in order that the appointment may be effective thereat.</p>	<p>direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands.</p> <p>Section 77(8) of the Act: In the case of an equality of votes, whether on a show of hands or by a count of votes received in the form of electronic records or on a poll, the chairman of the meeting at which such show of hands or count of votes takes place, or at which such poll is demanded, shall unless the bye-laws of the company otherwise provide, be entitled to a second or casting vote.</p> <p>Section 77(9) of the Act: Nothing contained in section 77 of the Act shall be construed as prohibiting a member who is the holder of two or more shares from appointing more than one proxy to represent him and vote on his behalf, whether on a show of hands or by a count of votes received in the form of electronic records or on a poll, at a general meeting of the company or at a class meeting.</p> <p>Bye-law 65: Subject to Bye-law 15A(2), Bye-law 58(5) and Bye-law 73(2) and any special rights or restrictions as to voting for the time being attached to any shares by or in accordance with the Bye-laws, at any general meeting (i) on a show of hands every Member present in person (or being a corporation, is present by a representative duly authorised under Section 78 of the Act), or by proxy shall have one vote and the chairman of the meeting shall determine which proxy shall be entitled to vote where a Member is represented by two proxies, and (ii) on a poll every Member present in person or by proxy or, in the case of a Member being a corporation, by its duly</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>authorised representative shall have one vote for every fully paid share of which he is the holder or which he represents and in respect of which all calls due to the Company have been paid, but so that no amount paid up or credited as paid up on a share in advance of calls or instalments is treated for the foregoing purposes as paid up on the share. In the event that a Member participates in a general meeting by telephone or electronic means or other communication facilities, the chairman of the meeting shall direct the manner in which such Member may cast his vote on a show of hands or by poll, as the case may be. A resolution put to the vote of a meeting shall be decided on a show of hands unless (before or on the declaration of the result of the show of hands or on the withdrawal of any other demand for a poll) a poll is demanded by persons permitted to do so, as set out in Bye-law 65.</p> <p>Bye-law 72: In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of such meeting shall be entitled to a second or casting vote in addition to any other vote he may have.</p> <p>Bye-law 73(1): Subject to Bye-law 73(2) below, where there are joint holders of any share, any one of such joint holder may vote, either in person or by proxy, in respect of such share as if he were solely entitled thereto, but if more than one of such joint holders be present at any meeting the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding. Several executors or administrators of a deceased Member in whose name any share stands shall for the purposes of this Bye-law be deemed joint holders thereof.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>Bye-law 73(2): Where the Depository is a joint holder of any deposited security with a Depositor, only the Depositor may vote, either in person or by proxy (or in the case of such Depositor being a corporation, by its duly authorised representative), in respect of such deposited security as if he or it were the sole holder thereof.</p> <p>Bye-law 15A(2): Notwithstanding any provision in these Bye-laws to the contrary, a Depositor whose name appears in the Register shall be entitled to all rights (including voting and other rights), benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of, or arising from, such deposited security registered in the Depositor's name (whether conferred or imposed by the Act, the memorandum of association of the Company or these Bye-laws, or otherwise) as if such Depositor is the sole holder of such deposited security. Notwithstanding that the Depository is named in the Register as the joint holder of any deposited security, the Depository shall not be entitled to any rights (including voting and other rights), benefits, powers and privileges in respect of, or arising from, such deposited security and nor shall the Depository be subject to any liabilities, duties and obligations in respect of, or arising from, such deposited security.</p> <p>Bye-law 58(5): In accordance with the Rules, the Company shall inform the Depository of the dates of general meetings of the Company and the Company shall request the Depository to issue a Record of Depositors to whom notices of general meetings shall be given by the Company. In addition, in respect of each general meeting, the Company shall request the Depository in accordance with the Rules, to issue a</p>	



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Shareholders' Action by Written Consent</i></p> <p>Please refer to Sections 152A and 147(6) of the Malaysian Companies Act as set out under <i>Annual General Meeting</i></p>	<p>Record of Depositors as at the latest date which is reasonably practicable which shall in any event be not less than three (3) clear market days before that general meeting ("General Meeting Record of Depositors"). Subject to the Regulations, notwithstanding any other provision of these Bye-laws, a Depositor shall not be entitled to attend any general meeting and to speak and vote thereat unless his name appears in the relevant General Meeting Record of Depositors.</p> <p>Section 77A(1) of the Act: Subject to section 77A(6) of the Act and the bye-laws of the company, anything which may be done by resolution of a company in general meeting or by resolution of a meeting of any class of the members of a company, may be done by resolution in writing.</p> <p>Section 77A(1A) of the Act: Subject to the bye-laws of the company, notice of any resolution to be made under section 77A(1) shall be given, and a copy of the resolution shall be circulated, to all members who would be entitled to attend a meeting and vote on the resolution in the same manner as that required for a notice of a meeting of members at which the resolution could have been considered, except that any requirement in the Act or in the bye-laws as to the length of the period of notice shall not apply.</p> <p>Section 77A(1B) of the Act: Subject to section 77A(1C), a resolution in writing is passed when it is signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of the Act, on behalf of—</p>	<p>There is no provision exactly like section 147(6) of the Malaysian Companies Act in the Act.</p> <p>The Act and Bye-laws provide for resolutions to be passed by a company in general meeting or resolution in writing. The Act and Bye-laws provide that a resolution is passed when it is signed by the members of the company who at the date of the notice represent such majority of votes as would be required if the resolution had been voted on at a meeting of members; or all the members of the company or such other majority of members as may be provided by the Bye-laws of the company. However, the Malaysian Companies Act provides that a resolution signed by or on behalf of all persons for the time being shall be treated as a resolution duly passed at a general meeting.</p> <p>Please also refer to comments in the <i>Annual General Meetings</i>.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>(a) the members of the company who at the date of the notice represent such majority of votes as would be required if the resolution had been voted on at a meeting of members; or</p> <p>(b) all the members of the company or such other majority of members as may be provided by the bye-laws of the company.</p> <p>Section 77A(1C) of the Act: The accidental omission to give notice to, or the non-receipt of a notice by, any person entitled to receive notice of a resolution does not invalidate the passing of a resolution.</p> <p>Section 77A(2) of the Act: A resolution in writing may be signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of the Act, on behalf of, the members of a company, or any class thereof, in as many counterparts as may be necessary.</p> <p>Section 77A(3) of the Act: For the purposes of section 77A of the Act, the date of the resolution is the date when the resolution is signed by, or, in the case of a member that is a corporation whether or not a company within the meaning of the Act, on behalf of, the last member to sign and any reference in any enactment to the date of passing of a resolution is, in relation to a resolution made in accordance with section 77A of the Act, a reference to such date.</p> <p>Section 77A(4) of the Act: A resolution in writing made in accordance with section 77 of the Act is as valid as if it had been passed by the company in general meeting or by a meeting of the relevant class of members of the company, as the case may be; and</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.</p> <p>Section 77A(4A) of the Act: A resolution in writing made in accordance with section 77A of the Act shall constitute the holding of a meeting where so required by the Act and the date of such meeting shall be the date of the resolution determined in accordance with section 77A(3) of the Act.</p> <p>Section 77A(4B) of the Act: A resolution in writing made in accordance with section 77A of the Act receiving, accepting, adopting or approving financial statements or any other document shall be deemed to be the laying of such statements or other documents before the company in general meeting.</p> <p>Section 77A(6) of the Act: Section 77A of the Act shall not apply to:</p> <ul style="list-style-type: none"> <li>(a) a resolution passed pursuant to section 89(5) of the Act; or</li> <li>(b) a resolution passed for the purpose of removing a director before the expiration of his term of office under section 93 of the Act.</li> </ul> <p>Bye-law 84(1): Subject to the Bye-laws, anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Members may, without a meeting be done by written resolution in accordance with Bye-law 84.</p> <p>Bye-law 84(2): Notice of a written resolution shall be given, and a copy of the resolution shall be circulated to all Members who would be entitled to attend a</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>meeting and vote thereon. The accidental omission to give notice to, or the non-receipt of a notice by, any Member does not invalidate the passing of a resolution. A resolution in writing signed (in such manner as to indicate, expressly or impliedly, unconditional approval) by or on behalf of Members who at the date that the notice is given represent such majority of votes as would be required if the resolution was voted on at a meeting of Members at which all Members entitled to attend and vote thereat were present and voting, shall, for the purposes of the Bye-laws, be treated as a resolution duly passed at a general meeting of the Company and, where relevant, as a special resolution so passed. For the purposes of Bye-law 84, the effective date of the resolution is the date when the resolution is signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, the last Member whose signature results in the necessary voting majority being achieved and any reference in any Bye-law to the date of passing of a resolution is, in relation to a resolution made in accordance with Bye-law 84, a reference to such date. Where the resolution states a date as being the date of his signature thereof by any Member the statement shall be prima facie evidence that it was signed by him on that date. Such a resolution may consist of several documents in the like form, each signed by one or more relevant Members.</p> <p>Bye-law 84(3): Notwithstanding any provisions contained in the Bye-laws, a resolution in writing shall not be passed for the purpose of removing a Director before the expiration of his term of office under Bye-law 85(4) or for the purposes set out in Bye-law 151(3) relating to the removal and appointment of the Auditor.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Proxies</i></p> <p>Section 149 (1) of the Malaysian Companies Act, a member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting, but unless the articles otherwise provide—</p> <p>(a) a proxy shall not be entitled to vote except on a poll;</p> <p>(b) a member shall not be entitled to appoint a person who is not a member as his proxy unless that person is an advocate, an approved company auditor or a person approved by the Registrar in a particular case;</p> <p>(c) a member shall not be entitled to appoint more than two proxies to attend and vote at the same meeting; and</p> <p>(d) where a member appoints two proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy</p>	<p>Please refer to Section 77 of the Act set out under the heading "Right to Attend Meeting and Vote".</p> <p>Bye-law 77(1): Any Member entitled to attend and vote at a meeting of the Company who is the holder of two or more shares shall be entitled to appoint not more than two proxies to attend and vote instead of him at the same general meeting, provided that if the Member is an authorised nominee as defined under the Central Depositories Act, it may appoint at least one (1) proxy to attend and vote at the same general meeting in respect of each Securities Account it holds with ordinary shares of the Company standing to the credit of that Securities Account.</p> <p>Bye-law 77(2): In any case where an instrument of proxy appoints more than one proxy, the proportion of the shareholding concerned to be represented by each proxy shall be specified in the instrument of proxy.</p> <p>Bye-law 77(3): A proxy need not be a Member. In addition, subject to Bye-law 77(1), a proxy or proxies representing either a Member who is an individual or a Member which is a corporation shall be entitled to exercise the same powers on behalf of the Member which he or they represent as such Member could exercise, including, notwithstanding Bye-law 65, the right to vote individually on a show of hands on any question or resolution at any general meeting. On a poll, a proxy need not use all the votes he is entitled to cast or cast all such votes in the same way.</p> <p>Bye-law 78: The instrument appointing a proxy shall be in writing under the hand of the appointor or of his</p>	<p>Both the Act and the Malaysian Companies Act provide for proxies.</p> <p>The Bye-laws do not apply the restrictions on proxies in section 149(1)(a) and (b) of the Malaysian Companies Act which provisions are allowed to be excluded in the articles of associations of a Malaysian company.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>attorney duly authorised in writing or, if the appointor is a corporation, either under its seal or under the hand of an officer, attorney or other person authorised to sign the same. In the case of an instrument of proxy purporting to be signed on behalf of a corporation by an officer thereof it shall be assumed, unless the contrary appears, that such officer was duly authorised to sign such instrument of proxy on behalf of the corporation without further evidence of the fact.</p> <p>Bye-law 79: The instrument appointing a proxy and (if required by the Board) the power of attorney or other authority (if any) under which it is signed on behalf of the appointor, or a certified copy of such power or authority, shall be delivered to such place or one of such places (if any) as may be specified for that purpose in or by way of note to or in any document accompanying the notice convening the meeting (or, if no place is so specified at the Registration Office or the Office, as may be appropriate) not less than forty-eight (48) hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll taken subsequently to the date of a meeting or adjourned meeting, not less than twenty-four (24) hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date named in it as the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve (12) months from such date. Delivery of an instrument appointing a proxy shall not preclude a Member from attending and voting in person at the meeting convened and in such event, the instrument</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Transfer of Shares</i></p> <p>Shares are transferred by the execution and delivery of a proper instrument of transfer to the company, which will be registered by the company.</p> <p>On the request in writing of the transferor of any share, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.</p> <p>According to Section 104 of the Malaysian Companies Act, on the request in writing of the transferor of a share or debenture the company shall by notice in writing require the person having the possession, custody or control of the share certificate or debenture and the instrument of transfer thereof or either of them to bring the same into the office of the company within a stated period, being not less than seven and not more</p>	<p>appointing a proxy shall be deemed to be revoked.</p> <p>Bye-law 80: Instruments of proxy shall be in any usual or common form or in such other form as the Board may approve (provided that this shall not preclude the use of the two-way form) and the Board may, if it thinks fit, send out with the notice of any meeting forms of instrument of proxy for use at the meeting. The instrument of proxy shall be deemed to confer authority to demand or join in demanding a poll and to vote on any amendment of a resolution put to the meeting for which it is given as the proxy thinks fit. The instrument of proxy shall, unless the contrary is stated therein, be valid as well for any adjournment of the meeting as for the meeting to which it relates.</p>	<p>Both the Act and the Malaysian Companies Act provide for transfer of shares. The Bye-laws further provide for transfer of listed securities.</p>
	<p>Section 48(1) of the Act: Subject to any other enactment the shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the bye-laws of the company.</p> <p>Section 48(2) of the Act: Notwithstanding anything in the bye-laws of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.</p> <p>Provided that nothing in section 48 of the Act shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.</p> <p>Section 19(2) of the Act: Every other person who</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>than twenty-eight days after the date of the notice, to have the share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.</p> <p>Section 107B of the Malaysian Companies Act provides that :-</p> <p>(1) Notwithstanding section 100, a depositor whose name appears in the record of depositors maintained by the central depository pursuant to section 34 of the Securities Industry (Central Depositories) Act 1991 in respect of the securities of a company which have been deposited with the central depository shall be deemed to be a member, debenture holder, interest holder or option holder, as the case may be, of the company, and shall, subject to the provisions of the Securities Industry (Central Depositories) Act 1991 of Malaysia and any regulations made thereunder, be entitled to the number of securities stated in the record of depositors and all rights, benefits, powers and privileges and be subject to all liabilities, duties and obligations in respect of or arising from, such securities (whether conferred or imposed by the Malaysian Companies Act or the memorandum or articles of association of the company).</p> <p>(2) Nothing in this Division shall be construed as affecting the obligation of the company to keep a register of its members under section 158, a register of holders of debentures under section 70, a register of interest holders under section 92 and a register of option holders under section 68A and to open them for inspection in accordance with the</p>	<p>agrees to become a member of a company, and whose name is entered in its register of members (which includes any branch register kept under section 65 of the Act), shall be a member of the company.</p> <p>Bye-law 46(1): The transfer of any listed securities or class of listed securities of the Company shall be made by way of book entry by the Depository in accordance with the Rules, and the Company shall be precluded from effecting any transfer of listed securities other than through the Depository in accordance with the Rules. Instruments of transfer of any deposited security may be in the form of electronic records of the Depository relating to such transfers. The Record of Depositors received from the Depository shall be entered in the Company's Register. For so long as the shares of the Company are listed on the Bursa Securities, the Company shall procure from the Depository a copy of the Record of Depositors as at the close of each market day and entered in the Company's Register upon receipt of the same.</p> <p>Bye-law 46(2): Subject to these Bye-laws, any Member may transfer all or any of his shares (other than deposited securities) by an instrument of transfer in the form acceptable to the Board provided always that the Company shall accept for registration an instrument of transfer in a form approved by the Board.</p> <p>Bye-law 48(3): The Board in so far as permitted by any applicable law may, in its absolute discretion, at any time and from time to time transfer any share upon the Register to any branch register or any share on any branch register to the Register or any other branch register. In the event of any such transfer, the shareholder requesting such transfer shall bear the cost</p>	



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>provisions of the Malaysian Companies Act except that the company shall not be obliged to enter in such registers the names and particulars of depositors who are deemed to be members, debenture holders, interest holders or option holders.</p>	<p>of effecting the transfer unless the Board otherwise determines.</p>	
<p>(3) Notwithstanding any other provision of this of the Malaysian Companies Act, a depositor shall not be regarded as a member of a company entitled to attend any general meeting and to speak and vote thereat unless his name appears on the record of depositors not less than three market days before the general meeting.</p>	<p>Bye-law 48(4): Unless the Board otherwise agrees (which agreement may be on such terms and subject to such conditions as the Board in its absolute discretion may from time to time determine, and which agreement the Board shall, without giving any reason therefor, be entitled in its absolute discretion to give or withhold), no shares upon the Register shall be transferred to any branch register nor shall shares on any branch register be transferred to the Register or any other branch register and all transfers and other documents of title shall be lodged for registration, and registered, in the case of any shares on a branch register, at the relevant Registration Office, and, in the case of any shares on the Register, at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act.</p>	
<p>(4) The record of depositors shall be <i>prima facie</i> evidence of any matters inserted therein as required or authorized by the Malaysian Companies Act.</p>	<p>Bye-law 58(5): In accordance with the Rules, the Company shall inform the Depository of the dates of general meetings of the Company and the Company shall request the Depository to issue a Record of Depositors to whom notices of general meetings shall be given by the Company. In addition, in respect of each general meeting, the Company shall request the Depository in accordance with the Rules, to issue a Record of Depositors as at the latest date which is reasonably practicable which shall in any event be not less than three (3) clear market days before that general meeting ("General Meeting Record of Depositors"). Subject to the Regulations, notwithstanding any other provision of these Bye-laws, a Depositor shall not be entitled to attend any general meeting and to speak and vote thereat unless his name appears in the relevant General Meeting Record of</p>	
<p>(5) For the purpose of this section, "market day" means any day between Mondays and Fridays which is not a market holiday of the stock exchange or public holiday.</p>		
<p>Section 107C(1) of the Malaysian Companies Act stipulates that on or after the coming into operation of this section, the transfer of any securities or class of securities of a company whose securities or any class of whose securities have been deposited with a central depository shall be by way of book entry by the central depository in accordance with the rules of the central depository and, notwithstanding sections 103 and 104, such company shall be precluded from registering and effecting any transfer of securities or class of securities</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>which have been deposited.</p> <p>However, Section 107C(1) shall not apply to a transfer of securities to a central depository or its nominee company as set out under Section 107C(2) of the Malaysian Companies Act.</p> <p><i>Refusal to Register Transfer</i></p> <p>Section 105 of the Malaysian Companies Act:</p> <p>If a company refuses to register a transfer of any share, debentures or other interests in the company it shall, within one month after the date on which the transfer was lodged with it, send to the transferor and to the transferee notice of the refusal.</p>	<p>Depositors.</p> <p>Section 50(1) of the Act: If a company refuses to register a transfer of any shares or debentures, the company shall, within three months after the date on which the transfer was lodged with the company, send to the transferor and transferee notice of the refusal.</p> <p>Bye-law 48(1): Save in respect of any deposited securities, the Board may, in its absolute discretion and without giving any reason therefor, refuse to register a transfer of any share (not being a fully paid up share) to a person of whom it does not approve, or any share issued under any share incentive scheme for employees upon which a restriction on transfer imposed thereby still subsists, and it may also, without prejudice to the foregoing generality, refuse to register a transfer of any share (not being a fully paid up share) on which the Company has a lien or, except in the case of a transfer to executors, administrators or trustees of the estate of a deceased Member, a transfer of any share to more than three (3) joint holders.</p> <p>Bye-law 48(2): No transfer shall be made to an infant or to a person of unsound mind or under other legal disability.</p> <p>Bye-law 48(5): Save as provided in the Bye-laws, there shall be no restriction on the transfer of fully paid up shares (except where required by law or the Listing</p>	<p>The Act provides for "three months" after the date on which the transfer was lodged with the company for the company to send to the transferor and transferee notice of the refusal whereas the Malaysian Companies Act only requires "one month".</p> <p>The Bye-laws provides additional provisions on the registration of transfer of shares.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>Requirements).</p> <p>Bye-law 49: Without limiting the generality of Bye-law 48, the Board may decline to recognise any instrument of transfer (in respect of shares other than deposited securities) unless:-</p> <p>(a) a fee of such sum (not exceeding three Ringgit (RM3.00) or such other maximum sum as the Designated Stock Exchange may determine to be payable) as the Board may from time to time require is paid to the Company in respect thereof;</p> <p>(b) the instrument of transfer is in respect of only one class of share;</p> <p>(c) the instrument of transfer is lodged at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act or the Registration Office (as the case may be) accompanied by the relevant share certificate(s) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do); and</p> <p>(d) if applicable, the instrument of transfer is duly and properly stamped.</p> <p>Bye-law 50: If the Board refuses to register a transfer of any share (other than deposited securities), it shall, within one (1) month after the date on which the transfer was lodged with the Company, send to each of the transferor and transferee notice of the refusal.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Issue of Certificates</i></p> <p>Section 107 of the Malaysian Companies Act: Every company shall within 2 months after allotment of any of its shares or debentures, and within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with it, complete and have ready for delivery the appropriate certificates and debentures in connection with the allotment or transfer.</p>	<p><u>Bye-law 51</u>: The registration of transfers of shares or of any class of shares may, after notice has been given by advertisement in an appointed newspaper and in accordance with the requirements of the Designated Stock Exchange be suspended at such times and for such periods (not exceeding in the whole thirty (30) days in any year) as the Board may determine.</p>	
<p>Section 107 of the Malaysian Companies Act: Every company shall within 2 months after allotment of any of its shares or debentures, and within one month after the date on which a transfer (other than such a transfer as the company is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with it, complete and have ready for delivery the appropriate certificates and debentures in connection with the allotment or transfer.</p>	<p>Section 51(1) of the Act: Every company shall, so soon as practicable after the allotment of any of its shares, or debentures and in any case within two months after a demand for a certificate of such shares or debentures has been made by the person to whom they have been allotted, complete and have ready for delivery such certificates unless the conditions of issue of the shares or debentures otherwise provide.</p> <p><u>Bye-law 15A(3)</u>: The share certificate in respect of any deposited security held jointly by a Depositor and the Depository shall be issued in the name of, and delivered to, the Depository as joint holder and the Company shall not be bound to issue any certificate therefor to the Depositor. A Depositor shall not be entitled to withdraw any deposited security held jointly with the Depository for so long as the shares of the Company are listed on the Designated Stock Exchange.</p> <p><u>Bye-law 17(1)</u>: In the case of a share held jointly by several persons, the Company shall not be bound to issue more than one certificate therefor and delivery of a certificate to one of several joint holders shall be sufficient delivery to all such holders, provided that for so long as the shares of the Company are listed on the</p>	<p>The Malaysian Companies Act provides that the certificates shall be delivered within 2 months after allotment and the Act provides that the share certificates are to be delivered as soon as practicable after allotment of the shares and in any case within two months after a demand has been made.</p> <p>The Malaysian Companies Act further provides that the company shall within one month after the date on which a transfer of any shares or debentures is lodged with it, complete and have the certificate ready for delivery.</p> <p>The Bye-laws contain additional provisions on share certificates in relation to shares held by the Depository as joint holder.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>Bursa Securities the share certificate in respect of any deposited security held jointly by a Depositor and the Depository shall be issued in the name of, and delivered to, the Depository only.</p> <p>Bye-law 17(2): Where a share stands in the names of two or more persons, the person first named in the Register shall as regards service of notices and, subject to the provisions of these Bye-laws, all or any other matters connected with the Company, except the transfer of the shares, be deemed the sole holder thereof, save that in respect of any deposited security which is jointly held by the Depository and a Depositor, the Depositor named in the Register as the joint holder of the deposited security shall as regards service of notices and, subject to the provisions of these Bye-laws, all or any other matters connected with the Company, be deemed to be the sole holder thereof.</p> <p>Bye-law 17(3): Where a share stands in the names of two or more persons, any request relating to cancellation or issue of share certificates may be made by any one of the registered joint holders, save that for so long as the shares of the Company are listed on the Bursa Securities any request relating to cancellation or issue of share certificates in respect of any deposited security held jointly by a Depositor and the Depository may only be made by the Depository.</p> <p>Bye-law 18(1): Other than a Depositor, every person whose name is entered as a Member in the Register shall be entitled, without payment, to receive one certificate for all shares of any one class or several certificates each for one or more of such shares of such class upon payment for every certificate after the first of such fee as is provided in Bye-law 18(2). Any</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>certificates issued in respect of deposited securities may be issued in the name of the Depository as joint holder and a bare trustee for the relevant Depositors. In such case, the Depository shall be entitled, without payment, to receive any reasonable number of such certificates.</p> <p>Bye-law 18(2): The fee payable in respect of share certificates referred to in this Bye-law and Bye-law 19 shall be an amount not exceeding three Ringgit (RM3.00) per certificate or such other maximum amount as the Board may from time to time determine and which the Company may be permitted to charge by applicable law or by the Designated Stock Exchange (if applicable) plus any stamp duty levied from time to time. Subject to the foregoing, the Board may at any time waive such fee or determine a lower amount for such fee.</p> <p>Bye-law 19(1): Upon every transfer of shares (which are not deposited securities) the certificate held by the transferor shall be given up to be cancelled, and shall forthwith be cancelled accordingly, and a new certificate shall be issued to the transferee in respect of the shares transferred to him.</p> <p>Bye-law 19(2): Where a Member (who is not a Depositor holding deposited security) transfers part only of the shares comprised in a certificate or where a Member requires the Company to cancel any certificate or certificates and issue new certificates for the purpose of subdividing his holding in a different manner the old certificate or certificates shall be cancelled and a new certificate or certificates for the balance of such shares issued in lieu thereof and such Member shall pay all or any part of the stamp duty payable (if any) on each share certificate prior to the</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Power of Directors to Dispose of the Issuer's or any of its Subsidiaries' Assets</i></p> <p>Section 132C of the Malaysian Companies Act provides the following:-</p> <p>Notwithstanding anything in the memorandum or articles of association of the company, the directors shall not carry into effect any arrangement or transaction for -</p> <p>(a) the acquisition of an undertaking or property of a substantial value; or</p> <p>(b) the disposal of a substantial portion of the company's undertaking or property, unless the arrangement or transaction has been approved by</p>	<p>delivery thereof which the Board in its absolute discretion may require and such fee as is provided in Bye-law 18(2).</p> <p>Bye-law 20: Subject to the payment of all or any part of the stamp duty payable (if any) on each share certificate prior to the delivery thereof which the Board in its absolute discretion may require, every person (other than a Depositor) whose name is entered as a Member in the Register shall be entitled to receive within ten (10) market days of the date of allotment (or such other period as may be approved by the Designated Stock Exchange) or within ten (10) market days after the date of lodgement of a registrable transfer (or such other period as may be approved by the Designated Stock Exchange) share certificates in reasonable denominations for the shares so allotted or transferred.</p>	
<p>Section 132C of the Malaysian Companies Act provides the following:-</p> <p>Notwithstanding anything in the memorandum or articles of association of the company, the directors shall not carry into effect any arrangement or transaction for -</p> <p>(a) the acquisition of an undertaking or property of a substantial value; or</p> <p>(b) the disposal of a substantial portion of the company's undertaking or property, unless the arrangement or transaction has been approved by</p>	<p>Not provided for in the Act save that section 91(1) of the Act states (inter alia) that the affairs of the company shall be managed by not less than two directors who shall be individuals and section 91(5) of the Act states that the directors may, subject to the bye-laws of the company, exercise all the powers of the company except those powers that are required by the Act or the bye-laws to be exercised by the members of the company.</p> <p>Bye-law 103(1): The business of the Company shall be managed and conducted by the Board, which may pay all expenses incurred in forming and registering the Company and may exercise all powers of the Company (whether relating to the management of the business of</p>	<p>Bye-law 169B does not permit the acquisition of an undertaking or property of substantial value and the disposal of a substantial portion of the Company's undertaking unless with the approval of members in general meeting.</p> <p>However, the term 'substantial value' or 'substantial portion' defined in the Malaysian Companies Act is not adopted. Instead reference is made to the Listing Requirements.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>the company in a general meeting.</p> <p>(1A) For the purpose of subsection (1), in the case of a company where all or any of its shares are listed for quotation on the official list of a Stock Exchange as defined in the Securities Industry Act 1983, the term 'substantial value' or 'substantial portion' shall mean the same value prescribed by the provisions in the listing requirements of the Exchange -</p> <p>(a) which relates to acquisitions or disposals by a company or its subsidiaries to which such provision applies; and</p> <p>(b) which would require the approval of shareholders at a general meeting in accordance with the provisions of such listing requirements.</p> <p>(1B) In the case of any company other than a company to which subsection (1A) is applicable, an undertaking or property shall be considered to be of a substantial value and a portion of the company's undertaking or property shall be considered to be a substantial portion if -</p> <p>(a) its value exceeds twenty-five per centum of the total assets of the company;</p> <p>(b) the net profits (after deducting all charges except taxation and excluding extraordinary items) attributed to it amounts to more than twenty-five per centum of the total net profit of the company; or</p>	<p>the Company or otherwise) except powers that by the Statutes or by the Bye-laws are required to be exercised by the Company in general meeting. The general powers given by Bye-law 103 shall not be limited or restricted by any special authority or power given to the Board by any other Bye-law.</p> <p>Bye-law 169B:</p> <p>(1) For so long as the shares of the Company are listed on the Designated Stock Exchange, the Directors shall not carry into effect any arrangement or transaction for: -</p> <p>(a) the acquisition of an undertaking or property of a substantial value; or</p> <p>(b) the disposal of a substantial portion of the Company's undertaking or property,</p> <p>unless the arrangement or transaction has been approved by the Company in general meeting.</p> <p>(2) For the purposes of Bye-law 169B(1), where all or any of the shares of the Company are listed for quotation on the Designated Stock Exchange, the term "substantial value" or "substantial portion" shall mean the same value prescribed by the provisions in the Listing Requirements: -</p> <p>(a) which relates to acquisitions or disposals by a company or its subsidiaries to which such provision applies; and</p> <p>(b) which would require the approval of shareholders in general meeting in accordance with the provisions of such Listing Requirements.</p>	



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(c) its value exceeds twenty-five per centum of the issued share capital of the company, whichever is the highest.</p> <p>(2) The Court may, on the application of any member of the company, restrain the directors from entering into a transaction in contravention of subsection (1).</p> <p>(3) Where an arrangement or transaction is carried into effect in contravention of subsection (1), the arrangement or transaction shall be void except in favour of any person dealing with the company for valuable consideration and without actual notice of the contravention.</p> <p>(4) This section shall not apply to proposals for disposing of the whole or substantially the whole of the company's undertaking or property made by a receiver and manager of any part of the undertaking or property of the company appointed under a power contained in any instrument or by a liquidator of a company appointed in a voluntary winding up.</p> <p>(5) Any director who contravenes this section shall be guilty of an offence against the Malaysian Companies Act.</p> <p>(6) In this section, "director" includes the chief executive officer, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of a company, by whatever</p>	<p>(3) Bye-law 169B shall not apply to proposals for disposing of the whole or substantially the whole of the Company's undertaking or property made by a receiver and manager of any part of the undertaking or property of the Company appointed under a power contained in any instrument or by a Court or a liquidator of the Company appointed in a voluntary winding up.</p> <p>(4) In Bye-law 169B, "Director" includes the chief executive officer, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of the Company, by whatever name called.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
name called.		
<p><i>Alterations of Memorandum and Articles of Association/Constituent Documents</i></p> <p>Section 21(1A) of the Malaysian Companies Act provides that notwithstanding subsection (1) and subject to section 33 and section 181, if a provision of the memorandum of a company could lawfully have been contained in the articles of the company, the company may, by special resolution, alter the memorandum:-                      (a) by altering; or                      (b) by deleting,                      the provision, unless the memorandum itself prohibits the alteration or deletion of that provision.</p> <p>Section 28 of the Malaysian Companies Act, a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company. As for the articles, a company may by special resolution alter or add to its articles subject to the Malaysian Companies Act and to any conditions in the company's memorandum of association</p> <p>Section 62(1) of the Malaysian Companies Act provides as follows:-                      (1) A company if so authorized 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;</p>	<p>Section 12(1) of the Act: Subject to the provisions of section 12 of the Act, a company may, by resolution passed at a general meeting of members of which due notice has been given, alter the provisions of its memorandum.</p> <p>Section 13(5) of the Act: The directors of a company may after its registration amend the bye-laws but any such amendment shall be submitted to a general meeting of the company, and shall become operative only to such extent as they are approved at such meeting.</p> <p>Bye-law 165: No Bye-law shall be rescinded, altered or amended and no new Bye-law shall be made until the same has been approved by a resolution of the Board and confirmed by a special resolution of the Members. A special resolution shall be required to alter the provisions of the memorandum of association or to change the name of the Company.</p> <p>Section 45 (1) to (4) of the Act provides:                      (1) A company limited by shares, or other company having a share capital, if authorized by a general meeting and by its bye-laws, may alter the conditions of its memorandum as follows, that is to say, it may --                      (a) increase its share capital by new shares of such amount as it thinks</p>	<p>The Malaysian Companies Act requires the company to alter the memorandum of association by way of special resolution. The Act provides that alteration of provisions of the memorandum of association of a company requires a resolution passed at a general meeting of members.</p> <p>Bye-law 165 permits the company to alter the Bye-laws with approval from the Board and confirmed by a special resolution of the members. It further states that special resolution is required for alteration of provisions of memorandum of association or to change the name of the company.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;</p>	<p>expedient;</p>	
<p>(c) convert all or any of its paid-up shares into stock and re-convert that stock into paid-up shares of any denomination;</p>	<p>(b) divide its shares into several classes and attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions;</p>	
<p>(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; or</p>	<p>(c) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;</p>	
<p>(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 and diminish the amount of its share capital by the amount of the shares so cancelled.</p>	<p>(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;</p>	
	<p>(dd) change the currency denomination of its share capital;</p>	
	<p>(e) make provision for the issue and allotment of shares which do not carry any voting rights; and</p>	
	<p>(f) 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, and diminish the amount</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>of its share capital by the amount of the shares so cancelled.</p> <p>(2) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.</p> <p>(3) Whenever a company alters the conditions of its memorandum under subsection (1)(a), (dd) or (f), then within thirty days thereafter the company shall file a memorandum with the Registrar setting out the altered conditions.</p> <p>(4) If any company fails to file a memorandum in accordance with subsection (3) it shall be liable to a default fine.</p>	
<p><i>Giving of Financial Assistance to Purchase the Issuer's or its Holding Company's Shares.</i></p> <p>According to Section 67 of the Malaysian Companies Act, except as is otherwise expressly provided by this Act no company shall give, whether directly or indirectly and whether by means of a loan, guarantee or the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person or for any shares in the company or, where the company is a subsidiary, in its holding company or in any way purchase, deal in or lend money on its own shares.</p> <p>(2) Nothing in subsection (1) shall prohibit—</p> <p>(a) where the lending of money is part of the ordinary business of a company, the lending of money by the company in the ordinary course of its business;</p>	<p>Section 39(1) of the Act: Subject to sections 39A to 39C (inclusive) of the Act, where a person is acquiring or is proposing to acquire shares in a company, it shall not be lawful for the company or any of its subsidiaries to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place.</p> <p>Section 39A(1) of the Act: Section 39(1) of the Act does not prohibit a company from giving financial assistance for the purpose of an acquisition of shares in it or in its holding company if—</p> <p>(a) the company's principal purpose in giving that assistance is not to give it for the purpose of any such acquisition, or the giving of the assistance for that purpose is but an incidental part of some larger purpose of the company, and</p>	<p>Both the Act and the Malaysian Companies Act prohibit the giving of financial assistance in connection with the acquisition of a company's own shares or that of its holding company. The exceptions to the provisions in this regard in the Malaysian Companies Act are found particularly in section 67(2) and 67A and in sections 39A and 39B of the Act.</p> <p>Unlike the Malaysian Companies Act, the Act permits a company to give financial assistance if the company can meet a solvency test.</p> <p>The Bye-laws contain provisions similar to Section 67(2) of the Malaysian Companies Act.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully-paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company or a subsidiary of the company, including any director holding a salaried employment or office in the company or a subsidiary of the company; or</p> <p>(c) the giving of financial assistance by a company to persons, other than directors, bona fide in the employment of the company or of a subsidiary of the company with a view to enabling those persons to purchase fully-paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.</p> <p>Section 67A of the Malaysian Companies Act provides that :-</p> <p>(1) Notwithstanding the provisions of section 67, a public company with a share capital may, if so authorised by its articles, purchase its own shares.</p> <p>(2) A company shall not purchase its own shares, unless-</p> <p>(a) it is solvent at the date of the purchase and will not become insolvent by incurring the debts involved in the obligation to pay for the shares so purchased;</p> <p>(b) the purchase is made through the Stock Exchange on which the shares of the company are quoted</p>	<p>(b) the assistance is given in good faith in the interests of the company.</p> <p>Section 39A(2A) of the Act: Section 39 of the Act shall only prohibit a company from giving financial assistance if, on the date from which the financial assistance is to be given, there are reasonable grounds for believing that the company is, or after the giving of such financial assistance would be, unable to pay its liabilities as they become due.</p> <p>Section 39A(3) of the Act: Section 39 of the Act does not prohibit any transaction which is permitted by the Act or any other statutory provision including –</p> <p>(a) a distribution of a company's assets out of funds of the company which would otherwise be available for dividend or distribution;</p> <p>(b) a distribution made in the course of the company's winding up;</p> <p>(c) the allotment of bonus shares;</p> <p>(d) a reduction of capital made in accordance with the provisions of the Act;</p> <p>(e) a redemption or purchase of shares made in accordance with the provisions of the Act.</p> <p>Section 39A(4) of the Act: Section 39 of the Act does not prohibit –</p> <p>(a) where the lending of money is part of the ordinary business of the company, the lending of money by the company in the ordinary course of its business;</p> <p>(b) the provision by a company in accordance with an employees' share scheme of money for the acquisition of fully or partly paid shares in the</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>and in accordance with the relevant rules of the Stock Exchange; and</p> <p>(c) the purchase is made in good faith and in the interests of the company.</p> <p>(3) Notwithstanding section 60, the company may apply its share premium account to provide the consideration for the purchase of its own shares.</p> <p>(3A) Where a company has purchased its own shares, the directors of the company may resolve-</p> <p>(a) to cancel the shares so purchased;</p> <p>(b) to retain the shares so purchased in treasury (in the Malaysian Companies Act referred to as "treasury shares"); or</p> <p>(c) to retain part of the shares so purchased as treasury shares and cancel the remainder.</p> <p>(3B) The directors of the company may-</p> <p>(a) distribute the treasury shares as dividends to shareholders, such dividends to be known as "share dividends"; or</p> <p>(b) resell the treasury shares on the market of the Stock Exchange on which the shares are quoted, in accordance with the relevant rules of the Stock Exchange.</p> <p>(3C) While the shares are held as treasury shares, the</p>	<p>company or any holding company; and for the purposes of the Act, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of the bona fide employees or former employees (including, notwithstanding section 96 of the Act, any such bona fide employee or former employee who is or was also a director) of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company, or the wives, husbands, widows, widowers or children or step-children under the age of eighteen of such employees or former employees;</p> <p>(c) the making by a company, the company's subsidiary or holding company or a subsidiary of the company's holding company of loans to persons (including, notwithstanding section 96 of the Act, any such bona fide employee or former employee who is or was also a director) employed in good faith by the company with a view to enabling those persons to acquire fully or partly paid shares in the company or its holding company to be held by them by way of beneficial ownership.</p> <p>In addition, the Act expressly permits the grant of financial assistance where (i) the financial assistance does not reduce the company's net assets or, to the extent the net assets are reduced, such financial assistance is provided for out of funds of the company which would otherwise be available for dividend or distribution; (ii) an affidavit of solvency is sworn by the directors of the company before the financial assistance is given; and (iii) the financial assistance is approved by resolution of shareholders of the company in general meeting.</p>	

15. **COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>rights attached to them as to voting, dividends and participation in other distribution and otherwise are suspended and the treasury shares shall not be taken into account in calculating the number or percentage of shares or of a class of shares in the company for any purposes including, without limiting the generality of this provision, the provisions of any law or requirements of the articles of association of the company or the listing rules of a Stock Exchange on substantial shareholding, takeovers, notices, the requisitioning of meetings, the quorum for a meeting and the result of a vote on a resolution at a meeting.</p> <p>(3D) Where the directors decide to distribute the treasury shares as share dividends, the costs of the shares on the original purchase shall be applied in the reduction of either the share premium account or the funds otherwise available for distribution as dividends or both.</p> <p>(3E) Where the directors resolve to cancel the shares so purchased, or cancel any treasury shares, the issued capital of the company shall be diminished by the shares so cancelled and the amount by which the company's issued capital is diminished shall be transferred to the capital redemption reserve.</p> <p>(4) The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.</p> <p>(5) A cancellation of shares made pursuant to subsection (3E) shall not be deemed to be a</p>	<p>Bye-law 3(3): Neither the Company nor any of its subsidiaries shall give, whether directly or indirectly, whether by means of loan, guarantee, provision of security or otherwise, any financial assistance for the purpose of the acquisition or proposed acquisition by any person of any shares in the Company, save for the following transactions:</p> <p>(a) where the lending of money is part of the ordinary business of the Company, the lending of money by the Company in the ordinary course of its business;</p> <p>(b) the provision by the Company, in accordance with any employees' share scheme for the time being in force, of money for the purchase of or subscription for fully or partly paid shares in the Company or its holding company; and for the purposes of this Bye-law, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in the Company by or for the benefit of the bona fide employees or former employees (including any such employee or former employee who is or was also a director) of the Company, the Company's subsidiary or holding company or a subsidiary of the Company's holding company, or the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees; or</p> <p>(c) the giving of financial assistance by the Company to persons, other than Directors, <i>bona fide</i> in the employment of the Company with a view to enabling those persons to purchase fully or partly paid shares in the Company or its holding</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>reduction of share capital within the meaning of the Malaysian Companies Act.</p> <p>(6) A company shall, within fourteen days after the shares are purchased, lodge with the Registrar and the Stock Exchange a notice in the prescribed form.</p> <p>(7) If default is made in complying with this section, the company, every officer of the company and any other person or individual who is in default shall be guilty of an offence against the Malaysian Companies Act.</p>	<p>company to be held by them by way of beneficial ownership.</p>	
<p><i>Accounts and Audit</i></p> <p>According to Section 167 of the Malaysian Companies 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.</p> <p>In Section 169 of the Malaysian Companies Act, the directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year at intervals of not more than fifteen months lay before the company at its annual general meeting a duly audited profit and loss account and</p>	<p>Section 83(1) of the Act: Every company shall cause to be kept proper records of account with respect to –</p> <p>(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;</p> <p>(b) all sales and purchases of goods by the company;</p> <p>(c) the assets and liabilities of the company.</p> <p>Bye-law 148: The Board shall cause to be kept proper records of account with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place; all sales and purchases of goods by the Company; the assets and liabilities of the Company; and all other matters required by the Act or necessary to give a true and fair view of the Company's affairs and to explain its transactions.</p>	<p>Both the Act and the Malaysian Companies Act provide for proper record of accounts to be kept.</p> <p>The Bye-laws further requires financial statements to include documents and information as required by the Listing Requirements.</p>



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>balance sheet for the period since the preceding account (or in the case of the first account, since the incorporation of the company) made up to a date not more than six months before the date of the meeting, unless extended by the Registrar as thought fit on application by the company.</p> <p>A copy of every profit and loss account and balance sheet (including every document required by law to be attached thereto) which is to be laid before a company in general meeting accompanied, by a copy of the auditor's report thereon, shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notice of general meeting of the company provided that if the copies of the documents aforesaid are sent less than fourteen days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by all the members entitled to attend and vote at the meeting. Any member of a company (whether he is or is not entitled to have sent to him copies of the profit and loss accounts and balance sheets) to whom copies have not been sent and any holder of a debenture shall, on a request being made by him to the company, be furnished by the company without charge with a copy of the last profit and loss account and balance sheet of the company (including every document required by the Malaysian Companies Act to be attached thereto) together with a copy of the auditors' report thereon.</p> <p>According to Section 172 of the Malaysian Companies Act, at any time before the first annual general meeting of a company the directors of the company may appoint or (if the directors do not make an appointment) the company at a general meeting may appoint, a person or persons to be the auditor or auditors of the company, and any auditor or auditors so</p>	<p>Section 84(1) of the Act: The directors of every company shall subject to section 88 of the Act at such intervals and for such period as the Act and the bye-laws of the company provide lay before the company in general meeting –</p> <p>(a) financial statements for the period, which shall include –</p> <p>(i) a statement of the results of operations for the period;</p> <p>(ii) a statement of retained earnings or deficit;</p> <p>(iii) a balance sheet at the end of such period;</p> <p>(iiiA) a statement of changes in financial position or cash flows for the period;</p> <p>(iv) notes to the financial statements and the notes thereto shall be in accordance with section 84(1A) of the Act;</p> <p>(v) such further information as required by the Act and the company's own Act of incorporation or its memorandum, and its bye-laws; and</p> <p>(b) the report of the auditor as set out in section 90(2) of the Act, in respect of the financial statements described in section 84(1)(a) of the Act.</p> <p>Section 84(2) of the Act: Financial statements shall before being laid before a general meeting of a company be signed on the balance sheet page by two directors of the company.</p> <p>Section 84(3) of the Act: Notwithstanding the provisions of section 84(1) of the Act if at a general meeting at which financial statements should be laid the statements have not been so laid, it shall be lawful</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>appointed shall, subject to this section, hold office until the conclusion of the first annual general meeting. A company shall at each annual general meeting of the company appoint a person or persons to be the auditor or auditors of the company, and any auditor or auditors so appointed shall, subject to this section, hold office until the conclusion of the next annual general meeting of the company.</p>	<p>for the Chairman to adjourn the meeting for a period of up to ninety days or such longer period as the members may agree.</p> <p>Section 87(1) of the Act: Subject to sections 87A and 87B of the Act, a copy of the financial statements of a company, including every document required by law or the bye-laws of the company shall be made available to every member of the company and if such financial statements and other documents are not sent to each member five days before the general meeting any member may move a resolution at the general meeting that it be adjourned for five days.</p> <p>Provided that section 87(1) of the Act shall not require the making available of the financial statements and other documents to -</p> <ul style="list-style-type: none"> <li>(a) any person not entitled to receive notices of general meetings;</li> <li>(b) more than one of the joint holders of any shares or debentures;</li> <li>(c) any person whose address is not known to the company.</li> </ul> <p>Section 87A(1) of the Act: A company, the shares of which are listed on an appointed stock exchange need not send financial statements as required by section 87(1) of the Act to members, but may instead send them summarised financial statements.</p> <p>Section 87A(2) of the Act: The company shall make a copy of the summarised financial statements available for inspection by the public at the company's registered office in Bermuda.</p> <p>Section 88(1) of the Act: Notwithstanding sections</p>	

15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

Malaysian Company Law	Bermuda Company Law	Comments on differences
	<p>13(c) and (d), 84, 87 and 89 of the Act if all members and directors of a company, either in writing or at a general meeting, agree that in respect of a particular interval no financial statements or auditor's report thereon need be laid before a general meeting or that no auditor shall be appointed to the close of the next annual general meeting then there shall be no obligation to lay financial statements for such period or to appoint an auditor until the close of the next annual general meeting, as the case may be.</p> <p>Section 89(1) of the Act: The members of a company at the statutory meeting shall subject to section 88 of the Act appoint one or more auditors to hold office until the close of the next annual general meeting, and, if the members fail to do so, the directors shall forthwith make such appointment or appointments.</p> <p>Section 89(2) of the Act: The members of a company at each annual general meeting shall appoint one or more auditors to hold office until the close of the next annual general meeting, and, if an appointment is not so made, the auditor in office shall continue in office until a successor is appointed.</p> <p>Section 90(1) of the Act: The auditor shall audit any financial statements to be laid pursuant to section 84 of the Act as will enable him to report to the members.</p> <p>Section 90(2) of the Act: Based on the results of his audit under section 90(1) of the Act which audit shall be made in accordance with generally accepted auditing standards, the auditor shall make a report to the members.</p> <p>Section 90(3) of the Act: The generally accepted auditing standards referred to in section 90(2) of the Act may be those of Bermuda or a country or jurisdiction other than Bermuda or such other</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>generally accepted auditing standards as may be appointed by the Minister under section 90(4) of the Act for the purpose of section 90(3) of the Act; and where the generally accepted auditing standards used are other than those of Bermuda, the report of the auditor shall identify the generally accepted auditing standards used.</p> <p>Bye-law 150:                      (1) Subject to Section 87A of the Act, a copy of the financial statements which is to be laid before a general meeting of the Company, made up to the end of the applicable financial year and including every document and all information as required by the Act and the Listing Requirements ("Financial Statements"), together with a copy of the Auditors' report, shall be issued not more than four (4) months from the close of a financial year (or such other period as may be prescribed or permitted by the Designated Stock Exchange) and a copy of each such documents shall be sent to each person entitled thereto (the "Entitled Persons") at least twenty-one (21) days before the date of the general meeting provided that Bye-law 150 shall not require a copy of those documents to be sent to any person whose address the Company is not aware of or to more than one of the joint holders of any shares or debentures.</p> <p>(2) Subject to compliance with Sections 87A and 87B of the Act and the rules or regulations of the Designated Stock Exchange, the Company may send to Entitled Persons summarised financial statements, derived from the Financial Statements for the relevant period, instead of the Financial Statements. The summarised financial statements</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>shall be accompanied by the Auditors' report and shall be sent to Entitled Persons not less than twenty-one (21) days before the general meeting at which the Financial Statements are to be laid. Entitled Persons who receive the summarised financial statements may elect, by notice in writing to the Company, to receive the Financial Statements. Financial Statements shall be sent within seven (7) days of receipt of the Entitled Person's election to receive the Financial Statements.</p> <p>By-law 151(1): At each annual general meeting, the Members shall appoint an auditor to hold office until the close of the next annual general meeting, and if an appointment is not so made, the Auditor in office shall continue in office until a successor is appointed. Such auditor may be a Member but no Director or officer or employee of the Company shall, during his continuance in office, be eligible to act as an auditor of the Company.</p> <p>By-law 152: The financial statements of the Company shall be audited at least once in every year.</p> <p>By-law 156: The financial statements of the Company shall be examined by the Auditor and compared by him with the books, accounts and vouchers relating thereto; and he shall make a written report thereon stating whether such financial statements are drawn up so as to present fairly the financial position of the Company and the results of its operations for the period under review and, in case information shall have been called for from Directors or officers of the Company, whether the same has been furnished and has been satisfactory. The financial statements of the Company shall be audited by the Auditor in accordance with generally accepted auditing standards.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p><i>Inspection of Register of Members and Minute Books</i></p> <p>In Section 160 (3) of the Malaysian Companies Act, any member or other person may request the company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of one ringgit or such less sum as the company requires for every hundred words or fractional part thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of twenty-one days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the company.</p> <p>Section 157 (1) of the Malaysian Companies Act states that the books containing the minutes of proceedings of any general meeting shall be kept by the company at the registered office of the company, and shall be open to the inspection of any member without charge.</p> <p>(2) Any member shall be entitled to be furnished within fourteen days after he has made a request in writing in that behalf to the company with a copy</p>	<p>The Auditor shall make a written report thereon in accordance with generally accepted auditing standards and the report of the Auditor shall be submitted to the Members in general meeting. The generally accepted auditing standards referred to herein may be those of a country or jurisdiction other than Bermuda. If so, the financial statements and the report of the Auditor should disclose this fact and name such country or jurisdiction.</p>	
<p>Section 66(1) of the Act: Except when the register of members is closed under the provisions of the Act, the register of the members of a company shall during business hours (subject to such reasonable restrictions as the company may impose, so that not less than two hours in each day be allowed for inspection) be open for inspection by members of the public without charge.</p> <p>Section 66(2) of the Act: Any member of the public may require a copy of the register, or of any part thereof, on payment of the appropriate fee prescribed in the Fourth Schedule to the Act.</p> <p>Section 66(5) of the Act: A company may on giving notice by advertisement in an appointed newspaper close the register of members for any time or times not exceeding in the whole thirty days in a year.</p> <p>Section 66(6) of the Act: Section 66 of the Act applies to a branch register kept under section 65 of the Act except that in relation to a branch register section 66(5) of the Act shall have effect as if for reference to an appointed newspaper there were substituted reference</p>	<p>Both the Act and the Malaysian Companies Act allow for the inspection of the Register of Members and Minute Books.</p> <p>In addition, the Bye-laws makes provisions for minutes to be entered in books provided for the purpose and to be kept by the Secretary at the Office.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>of any minutes specified in subsection (1) at a charge not exceeding one ringgit for every hundred words thereof.</p>	<p>to a national newspaper in the jurisdiction in which the branch register is kept.</p> <p>Bye-law 44: The Register and branch register of Members, as the case may be, shall be open to inspection between 10.00 a.m. and 12.00 noon on every business day by members of the public without charge at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act or, if appropriate, at the Registration Office or at the office of a share transfer agent of the Company. Any member of the public may require a copy of the Register and branch register of Members, or of any part thereof, on payment of the appropriate fee prescribed under the Act and a copy so requested shall be sent within fourteen (14) days from the Company's receipt of a written request for the same. The Register including any overseas or local or other branch register of Members may, after notice has been given by advertisement in an appointed newspaper and in accordance with the requirements of the Designated Stock Exchange and any other applicable laws or regulations, or by any electronic means as may be accepted by the Designated Stock Exchange, be closed at such times or for such periods not exceeding in the whole thirty (30) days in each year as the Board may determine and either generally or in respect of any class of shares.</p> <p>Section 82(1) of the Act: Minutes of general meetings of a company shall be open for inspection by any member or director of the company without charge for not less than two hours during business hours each day subject to such reasonable restrictions as the company may impose.</p> <p>Section 82(2) of the Act: Any member or director</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>shall be entitled to be furnished within seven days after he has made a request in that behalf to the company with a copy of any such minutes on the payment of a reasonable charge.</p> <p>Bye-law 131(1): The Board shall cause Minutes to be duly entered in books provided for the purpose:-</p> <p>(a) of all elections and appointments of officers;</p> <p>(b) of the names of the Directors present at each meeting of the Board and of any committee appointed by the Board;</p> <p>(c) of all resolutions and proceedings of each general meeting of the Members and meetings of the Board.</p> <p>Bye-law 131(2): Minutes prepared in accordance with the Act and the Bye-laws shall be kept by the Secretary at the Office.</p>	
<p><i>Inspection of Register of Directors</i></p> <p>Section 141(5) of the Malaysian Companies Act provides that the register shall be open to the inspection of any member of the company without charge and of any other person on payment of two ringgit, or such less sum as the company requires, for each inspection.</p>	<p>Section 92A(3) of the Act: The register of directors and officers shall during business hours (subject to such reasonable restrictions as the company may impose, so that not less than two hours in each day be allowed for inspection) be open for inspection by members of the public without charge.</p> <p>Section 92A(3A) of the Act: Any member of the public may require a copy of the register, or any part of it, on payment of the appropriate fee prescribed in the Eighth Schedule to the Act.</p>	<p>Both the Act and the Malaysian Companies Act allow for the inspection of the Register of Directors.</p>
<p><i>Disclosure of Substantial Shareholders and Director's shareholdings</i></p>		



15. **COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>Section 69E (1) of the Malaysian Companies Act provides that a person who is a substantial shareholder in a company shall give notice in writing to the company stating his name, nationality and address and full particulars of the voting shares in the company in which he has an interest (including, unless the interest cannot be related to a particular share, the name of the person who is registered as the holder) and full particulars of each such interest and of the circumstances by reason of which he has that interest.</p> <p>(2) The notice shall be given:-</p> <p>(a) if the person was a substantial shareholder on the date on which this Division (<i>meaning Division 3A of Part IV of the Malaysian Companies Act</i>) came into operation – within one month after that date; or</p> <p>(b) if the person became a substantial shareholder after that date – within seven days after becoming a substantial shareholder.</p> <p>Section 69D of the Malaysian Companies Act defines substantial shareholdings and substantial shareholders as follows:</p> <p>(1) For the purposes of this Division, a person has a substantial shareholding in a company if he has an interest in one or more voting shares in the company and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than five per centum of the aggregate of the nominal amounts of all the voting shares in the company.</p> <p>(2) For the purposes of this Division, a person has a substantial shareholding in a company, being a company the share capital of which is divided into two or more classes of the shares, if he has an interest in</p>	<p>Not provided for in the Act</p> <p>Bye-law 167(1): For so long as the shares of the Company are listed on the Designated Stock Exchange, each Director shall, upon his appointment to the Board, give an undertaking to the Company that, for so long as he remains a Director, he shall forthwith notify the Secretary of the particulars of the shares beneficially owned by him at the time of his appointment and of any change in such particulars.</p> <p>Bye-law 167(2): For so long as the shares of the Company are listed on the Designated Stock Exchange, each Member shall (a) upon becoming a substantial shareholder of the Company, (b) for so long as he remains a substantial shareholder of the Company, upon a change in the percentage level of his interest or interests in the Company and (c) upon ceasing to be a substantial shareholder of the Company, give and, where applicable, shall procure its relevant beneficial owners having an interest in the Company within the meaning of Section 6A of the Malaysian Companies Act, to give to the Company (through its Secretary) pursuant to the provisions of Division 3A of Part IV of the Malaysian Companies Act, and to the Securities Commission of Malaysia pursuant to the provisions of the Securities Industry (Reporting of Substantial Shareholding) Regulations 1998 (as amended or substituted from time to time), a notice in writing of (i) the particulars of the shares beneficially owned by him, or (ii) the particulars of the change in interests (including the date of change and the circumstances by reason of which that change has occurred), or (iii) the particulars of the date and circumstances of the cessation of substantial shareholding, as the case may be, within seven (7) days after (aa) becoming a substantial shareholder,</p>	<p>The Act does not require the disclosure of shareholder ownership beyond any specified threshold. However, the Bye-laws have provided for shareholding disclosure to be made by directors and substantial shareholders.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<b>Malaysian Company Law</b>	<b>Bermuda Company Law</b>	<b>Comments on differences</b>
<p>one or more voting shares included in one of those classes and the nominal amount of that share, or the aggregate of the nominal amounts of those shares, is not less than five per centum of the aggregate of the nominal amounts of all the voting shares included in that class.</p> <p>(3) For the purposes of this Division, a person who has a substantial shareholding in a company is a substantial shareholder in that company.</p> <p>Further, Section 69F of the Malaysian Companies Act sets out the requirement for a substantial shareholder to notify the company of any changes to his shareholding interest in the company and Section 69G of the Malaysian Companies Act provides that a substantial shareholder ceasing to be a substantial shareholder shall notify the company accordingly.</p> <p>Section 134 of the Malaysian Companies Act,</p> <p>(1) A company shall keep a register showing with respect to each director of the company particulars of -</p> <p>(a) shares in the company or in a related corporation being shares in which the director has an interest and the nature and extent of that interest;</p> <p>(b) debentures of or participatory interests made available by the company or a related corporation being debentures or participatory interests in which the director has an interest and the nature and extent of that interest;</p> <p>(c) rights or options of the director or of the director</p>	<p>(bb) the date of change in the percentage level of his interests, or (cc) the date of cessation, as the case may be. For the purposes of this Bye-law and Bye-law 169A, the term "substantial shareholder" shall have the same meaning ascribed to it in Section 69D of the Malaysian Companies Act, the term "interest" or "interests" shall have the same meaning ascribed to it in Section 6A of the Malaysian Companies Act. The requirement to give notice under Bye-law 167(2) shall not apply to the Depository.</p> <p>Bye-law 167(3): For so long as the shares of the Company are listed on the Designated Stock Exchange, the provisions of Section 690 of the Malaysian Companies Act, giving the Company power to require disclosure of beneficial interest in its shares, shall apply.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>and other person or persons in respect of the acquisition or disposal of shares in, debentures of or participatory interests made available by the company or a related corporation; and</p> <p>(d) contracts to which the director is a party or under which he is entitled to a benefit being contracts under which a person has a right to call for or to make delivery of shares in, debentures of or participatory interests made available by the company or a related corporation.</p>		
<p><i>Power to Require Disclosure of Auditors' Remuneration</i></p>		
<p>Section 173 of the Malaysian Companies Act, if a company is served with a notice sent by or on behalf of—</p> <p>(a) at least five per centum of the total number of members of the company; or</p> <p>(b) the holders in aggregate of not less than five per centum in nominal value of the company's issued share capital, requiring particulars of all emoluments paid to or receivable by the auditor of the company or any person who is a partner or employer or employee of the auditor, by or from the company or any subsidiary in respect of services other than auditing services rendered to the company, the company shall forthwith—</p> <p>(c) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for</p>	<p>Not provided for in the Act.</p> <p>Bye-law 153(1): The remuneration of the Auditor shall be fixed by the Company in general meeting or in such manner as the Members may determine.</p> <p>Bye-law 153(2): If the Company is served with a notice sent by or on behalf of—</p> <p>(a) at least five per centum (5%) of the total number of Members; or</p> <p>(b) the holders in aggregate of not less than five per centum (5%) in nominal value of the Company's issued share capital, requiring particulars of all emoluments paid to or receivable by the auditor of the Company or any person who is a partner or employer or employee of the auditor, by or from the Company or any subsidiary in respect of services other than auditing services rendered to the Company, the Company shall</p>	<p>The Act does not have provisions requiring disclosure of Auditors' remuneration.</p> <p>In this regard, Bye-law 153(2) provides similar provisions to section 173 of the Malaysian Companies Act.</p> <p>Bye-law 153(1) further provides for the remuneration of the Auditor to be fixed by the company in general meeting or in such manner as the members may determine.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>the financial year immediately preceding the service of the notice;</p> <p>(d) forward a copy of the statement to all persons entitled to receive notice of general meetings of the company; and</p> <p>(e) lay the statement before the company in general meeting.</p>	<p>forthwith:-</p> <p>(i) prepare or cause to be prepared a statement showing particulars of all emoluments paid to the auditor or other person and of the services in respect of which the payments have been made for the financial year immediately preceding the service of the notice;</p> <p>(ii) forward a copy of the statement to all persons entitled to receive notice of general meetings of the Company; and</p> <p>(iii) lay the statement before the Company in general meeting.</p>	
<p><i>Mergers and Similar Arrangements</i></p> <p>In Section 176 of the Malaysian Companies Act, where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them the Court may, on the application in a summary way of the company or of any creditor or member of the company, or in the case of a company being wound up of the liquidator, order a meeting of the creditors or class of creditors, or the company or class of members to be summoned in such manner as the Court directs.</p> <p>A meeting held pursuant to an order of the Court made under Section 176(1) may be adjourned from time to time if the resolution for adjournment is approved by a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or</p>	<p>Section 99(1) to (4) of the Act:</p> <p>(1) Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.</p> <p>(2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement</p>	<p>Both the Act and the Malaysian Companies Act allow for an application to the court by the company for a compromise or arrangement between the company and its members or creditors.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>by proxy at the meeting.</p> <p>Section 176(3) of the Malaysian Companies Act stipulates that if a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting or the adjourned meeting agrees to any compromise or arrangement the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors or class of creditors or on the members or class of members (as the case may be) and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.</p>	<p>shall if sanctioned by the Court, be binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.</p> <p>(3) An order made under section 99(2) of the Act shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made.</p>	
<p>Section 176(10) of the Malaysian Companies Act stipulates that where no order has been made or resolution passed for the winding up of a company and any such compromise or arrangement has been proposed between the company and its creditors or any class of those creditors, the Court may, in addition to any of its powers, on the application in a summary way of the company or of any member or creditor of the company restrain further proceedings in any action or proceeding against the company except by leave of the Court and subject to such terms as the Court imposes.</p> <p>Section 176(10A) of the Malaysian Companies Act sets out the following :-</p> <p>The Court may grant a restraining order under subsection (10) to a company for a period of not more than ninety days or such longer period as the Court may for good reason allow if and only if-</p>	<p>(4) If a company makes default in complying with section 99(3) of the Act, the company and every officer of the company who knowingly or wilfully authorizes or permits the default shall be liable to a fine of ten dollars for each copy in respect of which default is made.</p> <p>Section 101(1) of the Act: Where an application is made to the Court under section 99 of the Act for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in section 101 of the Act referred to as "a transferor company") is to be transferred to another company (in section 101 of the Act referred to as "the transferee company"), the Court may, subject to section 101(2) of the Act, either by the order</p>	
<p>(a) it is satisfied that there is a proposal for a scheme</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>of compromise or arrangement between the company and its creditors or any class of creditors representing at least one-half in value of all the creditors;</p> <p>(b) the restraining order is necessary to enable the company and its creditors to formalise the scheme of compromise or arrangement for the approval of the creditors or members pursuant to subsection (1);</p> <p>(c) a statement in the prescribed form as to the affairs of the company made up to a date not more than three days before the application is lodged together with the application; and</p> <p>(d) it approves the person nominated by a majority of the creditors in the application by the company under subsection (10) to act as a director or if that person is not already a director, notwithstanding the provisions of the Malaysian Companies Act or the memorandum and articles of the company, appoints the person to act as a director.</p> <p>Section 178 of the Malaysian Companies Act states that where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as the "transferor company") is to be transferred to another</p>	<p>sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:</p> <p>(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;</p> <p>(b) the allocation or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;</p> <p>(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;</p> <p>(d) the dissolution, without winding up, of any transferor company;</p> <p>(e) the provision to be made for any persons, who within such time and in such manner as the Court directs, dissents from the compromise or arrangement;</p> <p>(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.</p> <p>Section 101(2) of the Act: No order shall be made under section 101(1) of the Act for the transfer to the transferee company of the whole or any part of the undertaking or of the property or liabilities of any transferor company unless notice of the application for the sanctioning of the compromise or arrangement of which the order is to form a part is given in writing to the Minister and an affidavit signifying the consent of</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>company (in this section referred to as the "transferee company"), the Court may either by the order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:</p> <p>(a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;</p> <p>(b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;</p> <p>(c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;</p> <p>(d) the dissolution, without winding up, of the transferor company;</p> <p>(e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and</p> <p>(f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.</p> <p>(2) Where an order made under this section provides</p>	<p>the Minister to the making of the order has been lodged with the Court.</p> <p>Section 101(3) of the Act: Where an order under section 101 of the Act provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any charge which is by virtue of the compromise or arrangement to cease to have effect.</p> <p>Section 101(4) of the Act: Where an order is made under section 101 of the Act, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with section 101(4) of the Act, the company and every officer of the company who knowingly or wilfully authorises or permits the default shall be liable to a fine of two hundred dollars.</p> <p>Section 101(5) of the Act: In section 101 of the Act the expression "property" includes all assets, rights and powers of every description, and the expression "liabilities" includes duties.</p> <p>Section 102(1) of the Act: Where a scheme or contract involving the transfer of shares or any class of shares in a company (in section 102 of the Act referred to as "the subject company") to another company, whether a company within the meaning of the Act or not (in section 102 of the Act referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved,</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>for the transfer of property or liabilities, then by virtue of the order that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company, free in the case of any particular property if the order so directs, from any change which is by virtue of the compromise or arrangement to cease to have effect.</p> <p>(3) Where an order is made under this section every company in relation to which the order is made shall lodge within seven days of the making of the order -</p> <p>(a) an office copy of the order with the Registrar; and</p> <p>(b) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,</p> <p>and every company which makes default in complying with this section and every officer of the company who is in default shall be guilty of an offence against the Malaysian Companies Act.</p> <p>Penalty: Two thousand ringgit. Default penalty.</p> <p>(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.</p>	<p>other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary, the transferee company may, at any time within two months beginning with the date on which such approval is obtained, give notice to any dissenting shareholder that it desires to acquire his shares, and when such a notice is given the transferee company shall, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.</p> <p>Provided that where shares in the subject company of the same class or classes as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of their value and that of the shares, other than those already held as aforesaid, whose transfer is involved, the foregoing provisions of section 102(1) of the Act shall not apply unless -</p> <p>(a) the transferee company offers the same terms to all holders of the shares, other than those already held as aforesaid, whose transfer is involved, or, where those shares include shares of different classes, of each class of them; and</p> <p>(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares, other than those already held as aforesaid, whose transfer is involved, are not less than three-fourths in number of the holders of those shares.</p> <p>Section 102(2) of the Act: Where, in pursuance of any</p>	



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(5) In this section -</p> <p>"liabilities" includes duties;</p> <p>"property" includes property rights and powers of every description.</p> <p>(6) Notwithstanding subsection 176 (11) "company" in this section does not include any company other than a company as defined in section 4.</p>	<p>such scheme or contract as aforesaid, shares in a company are transferred to another company or its nominee, and those shares together with any other shares in the first-mentioned company held by, or by a nominee for, the transferee company or its subsidiary at the date of the transfer comprise or include nine-tenths in value of the shares in the first-mentioned company or of any class of those shares, then -</p> <p>(a) the transferee company shall within one month from the date of the transfer, unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement, give notice of that fact to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and</p> <p>(b) any such holder may within three months from the giving of the notice to him, himself give notice requiring the transferee company to acquire the shares in question,</p> <p>and where a shareholder gives notice under section 102(2)(b) of the Act with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.</p> <p>Section 104(1) of the Act: Two or more companies which are registered in Bermuda may subject to section 4A of the Act amalgamate and continue as one company:</p> <p>Provided that if the amalgamated company is to be a</p>	

15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	local company it shall comply with the Third Schedule to the Act.	
<p><i>Shareholders' Suits and Protection of Minority Shareholders</i></p> <p>In Section 181 of the Malaysian Companies Act, any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister, may apply to the Court for an order under this section on the ground—</p> <p>(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or</p> <p>(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).</p> <p>(2) If on such application the Court is of the opinion that either of those grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the order may—</p> <p>(a) direct or prohibit any act or cancel or vary any transaction or resolution;</p> <p>(b) regulate the conduct of the affairs of the company</p>	<p>Section 110(1) of the Act: Subject to section 110(10) of the Act the Minister may, at any time of his own volition or on the application of that proportion of the members of a company, as in his opinion warrants the application, based in respect of a company limited by shares, or other company having a share capital, on their shareholding, appoint one or more inspectors to investigate the affairs of the company and to report thereon in such manner as he may direct.</p> <p>Section 111(1) to (4) of the Act.</p> <p>(1) Any member of a company who complains that the affairs of the company are being conducted or have been conducted in a manner oppressive or prejudicial to the interests of some part of the members, including himself, or where a report has been made to the Minister under section 110 of the Act the Registrar on behalf of the Minister, may make an application to the Court by petition for an order under section 111 of the Act.</p> <p>(2) If on any such petition the Court is of opinion -</p> <p>(a) that the company's affairs are being conducted or have been conducted as aforesaid; and</p> <p>(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,</p>	<p>Both the Act and the Malaysian Companies Act provide for remedies for oppression.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>in future;</p> <p>(c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;</p> <p>(d) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or</p> <p>(e) provide that the company be wound up.</p> <p>(3) Where an order that the company be wound up is made pursuant to paragraph (2)(e) the provisions of the Malaysian Companies Act relating to winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made upon a petition duly presented to the Court by the company.</p> <p>In addition, a member of a company who is seeking relief for damage done to the company may bring a common law derivative action in certain circumstances against the persons who have done wrong to the company.</p> <p>Section 181A of the Malaysian Companies Act provides the following:-</p> <p>(1) A complainant may, with the leave of the Court, bring, intervene in or defend an action on behalf of the company.</p> <p>(2) Proceedings brought under this section shall be brought in the company's name.</p> <p>(3) The right of any person to bring, intervene in, defend or discontinue any proceedings on behalf</p>	<p>the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.</p> <p>(3) Where an order under section 111 of the Act makes an alteration in or addition to any company's memorandum or bye-laws, then, notwithstanding anything in any other provision but subject to the provisions of the order, the company concerned shall not have power without the leave of the Court to make further alteration in or addition to the memorandum or bye-laws as so altered or added to accordingly.</p> <p>(4) An office copy of any order under section 111 of the Act altering or adding to, or giving leave to alter or add to, a company's memorandum or bye-laws shall, within fourteen days after the making thereof, be delivered by the company to the Registrar for registration; and if a company makes default in complying with section 111(4) of the Act, the company and every officer of the company who is in default shall be liable to a default fine.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>of a company at common law is not abrogated.</p> <p>(4) For the purposes of this section and sections 181B and 181E, "complainant" means -</p> <p>(a) a member of a company, or a person who is entitled to be registered as member of a company;</p> <p>(b) a former member of a company if the application relates to circumstances in which the member ceased to be a member;</p> <p>(c) any director of a company; or</p> <p>(d) the Registrar, in case of a declared company under Part IX.</p> <p>Section 368A of the Malaysian Companies Act provides as follows:</p> <p>(1) Where a person has engaged, is engaging or intends to engage in conduct that constituted, constitutes or would constitute -</p> <p>(a) a contravention of the Malaysian Companies Act;</p> <p>(b) an attempt to contravene the Malaysian Companies Act;</p> <p>(c) an attempt that aids, abets, advises or procures a person to contravene the Malaysian Companies Act;</p> <p>(d) an attempt to induce, whether by threats, promises</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>or otherwise, a person to contravene the Malaysian Companies Act;</p> <p>(e) an attempt by which any person would be in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the Malaysian Companies Act; or</p> <p>(f) an attempt of conspiracy with others to contravene the Malaysian Companies Act, the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.</p>		
<p>(2) Where a person has refused or failed, is refusing or failing, or is intending to refuse or fail, to do an act or thing that the person is required by the Malaysian Companies Act to do, the Court may, on the application of the Registrar or any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing, grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.</p> <p>(3) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised whether or not -(a) it appears to the Court that the person intends to engage again</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>or to continue to engage, in conduct of that kind;</p> <p>(b) the person has previously engaged in conduct of that kind; or</p> <p>(c) there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.</p> <p>(4) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised whether or not -</p> <p>(a) it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;</p> <p>(b) the person has previously refused or failed to do that act or thing; or</p> <p>(c) there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing. (5) Where the Registrar applies to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.</p> <p>(6) Where an application for an injunction under subsection (1) or (2), has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the Court is satisfied</p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>that that subsection applies.</p> <p>(7) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).</p> <p>(8) The Court may revoke or vary an injunction granted under subsection (1), (2) or (7).</p> <p>(9) In granting an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.</p>		
<b>CHANGES IN CAPITAL</b>		
<i>Power of Directors to Allot and Issue Shares</i>		
<p>Section 132D of the Malaysian Companies Act provides that:-</p> <p>(1) Notwithstanding anything in a company's memorandum or articles of association, the directors shall not, without the prior approval of the company in general meeting, exercise any power of the company to issue shares.</p> <p>(2) Approval for this purpose may be confined to a particular exercise of that power or may apply to the exercise of that power generally; and any such approval may be unconditional or subject to conditions.</p> <p>Such approval shall continue in force until:-</p>	<p>Not provided for in the Act.</p> <p>Bye-law 12:</p> <p>(1) Subject to the Act and to the Listing Requirements (if applicable), no shares may be issued by the Board without the prior approval of the Company in general meeting but subject thereto and to the Bye-laws and without prejudice to any special rights or restrictions for the time being attached to any shares or any class of shares, the unissued shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the Board, which may offer, allot, grant options over or otherwise dispose of them to such persons, at</p>	<p>The Malaysian Companies Act and the Bye-laws provide that the directors may only allot and issue shares with the prior approval of the company in general meeting. There is no similar requirement under the Act.</p> <p>The Bye-laws contain additional provisions referring to the Listing Requirements in respect of issuance of shares.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(a) the conclusion of the annual general meeting commencing next after the date on which the approval was given; or</p> <p>(b) the expiration of the period within which the next annual general meeting after that date is required by law to be held,</p> <p>whichever is the earlier, but approval may be previously revoked or varied by the company in general meeting.</p> <p>The directors may issue shares notwithstanding that an approval for such purpose has ceased to be in force if the shares are issued in pursuance of an offer, agreement or option made or granted by them while the approval was in force and they were authorised by the approval to make or grant an offer, agreement or option which would or might require shares to be issued after the expiration of the approval.</p>	<p>such times and for such consideration and upon such terms and conditions as the Board may in its absolute discretion determine but so that no shares shall be issued at a discount.</p> <p>Neither the Company nor the Board shall be obliged, when making or granting any allotment of, offer of, option over or disposal of shares, to make, or make available, any such allotment, offer, option or shares to Members or others with registered addresses in any particular territory or territories being a territory or territories where, in the absence of a registration statement or other special formalities, this would or might, in the opinion of the Board, be unlawful or impracticable. Members affected as a result of the foregoing sentence shall not be, or be deemed to be, a separate class of members for any purpose whatsoever.</p>	
<p>Section 132D (6A) of the Malaysian Companies Act provides that notwithstanding section 132D(1), the directors of a company shall not be required to obtain the prior approval of the company in a general meeting to issue shares where the said shares are to be issued as consideration or part consideration for the acquisition of shares or assets by the company and members of the company have been notified of the intention to issue the said shares at least fourteen days before the date of issue of the said shares.</p> <p>In Section 132D(6B), for the purpose of Section 132D(6A), members of the company are deemed to have been notified of the intention to issue shares of the company if-</p>	<p>(2) Subject to any direction to the contrary that may be given by the Company in general meeting or except as permitted under the Listing Requirements, all new shares or other convertible securities shall before issue be offered to such persons who as at the date of the offer are entitled to receive notices from the Company of general meetings in proportion, as far as the circumstances admit, to the amount of the existing shares or securities to which they are entitled. The offer shall be made by notice specifying the number of shares or securities offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined. After the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept</p>	



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>(a) a copy of the statement explaining the purpose of the intended issue of shares has been sent to every member at his last known address according to the register of members; and</p> <p>(b) the copy of the statement has been advertised in a national language and an English language newspaper circulating generally throughout Malaysia</p>	<p>the shares or securities offered, the Board may dispose of those shares or securities in such manner as it thinks most beneficial to the Company. The Board may likewise so dispose of any new shares or securities which (by reason of the ratio which the new shares or securities bear to shares or securities held by persons entitled to an offer of new shares or securities) cannot, in the opinion of the Board, be conveniently offered under Bye-law 12(2).</p>	
	<p>(3) Notwithstanding Bye-law 12(2) above but subject to the Statutes and the Listing Requirements (if applicable), the Company in general meeting may by ordinary resolution grant to the Directors a general authority, either unconditionally or subject to such conditions as may be specified in the said ordinary resolution (including but not limited to the aggregate number of Shares which may be issued and the duration of the general authority), to issue shares in the capital of the Company whether by way of rights, bonus or otherwise; and/or make or grant offers, agreements or options (collectively, "Instruments") that might or would require shares to be issued, including but not limited to the creation and issue of (as well as adjustments to) warrants, debentures or other instruments convertible into shares; Provided that unless otherwise specified in the ordinary resolution or required by any applicable Listing Requirements, such general authority will continue (notwithstanding the authority conferred by the said ordinary resolution may have ceased to be in force) in relation to the issue of shares pursuant to any Instrument made or granted by the Directors while the said ordinary resolution was in force.</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>(4) The Board may issue warrants conferring the right upon the holders thereof to subscribe for any class of shares or securities in the capital of the Company on such terms as it may from time to time determine, Provided that such issue must be specifically approved by the Company in general meeting if required by the Listing Requirements.</p> <p>(5) Subject to the Listing Requirements (if applicable), the Company may issue its shares in fractional denominations and deal with such fractions to the same extent as its whole shares and shares in fractional denominations shall have in proportion to the respective fractions represented thereby all of the rights of whole shares including (but without limiting the generality of the foregoing) the right to vote, to receive dividends and distributions and to participate in a winding-up.</p> <p>(6) Subject to the Listing Requirements, no Director shall participate in a share scheme for employees unless the specific allotment to be made to such Director has been approved by the Company in general meeting.</p>	
<p><i>Powers of Issuer to Purchase its Own Shares</i></p> <p>Please refer to Section 67A of the Malaysian Companies Act as set out under <i>Giving of Financial Assistance to Purchase the Issuer's or its Holding Company's Shares</i>.</p>	<p>Section 42A(1) of the Act: Subject to the following provisions of section 42A of the Act, a company limited by shares, or other company having a share capital, may, if authorized to do so by its memorandum or bye-laws, purchase its own shares.</p>	<p>Both the Act and the Malaysian Companies Act provide for purchase by the company of its own shares. The shares so purchased may be cancelled or held as treasury shares. However, while the Malaysian Companies Act expressly allows such treasury shares</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>Section 42A(4) of the Act: A purchase by a company of its own shares may be authorised by its board of directors or otherwise by or in accordance with the provisions of its bye-laws.</p> <p>Section 42A(5) of the Act: No purchase by a company of its own shares may be effected if, on the date on which the purchase is to be effected, there are reasonable grounds for believing that the company is, or after the purchase would be, unable to pay its liabilities as they become due.</p> <p>Section 42A(6) of the Act: Shares purchased under section 42A of the Act shall be treated as cancelled and the amount of the company's issued capital shall be diminished by the nominal value of those shares accordingly; but the purchase of shares under section 42A shall not be taken as reducing the amount of the company's authorised capital.</p> <p>Section 42A(6A) of the Act: On the purchase of its own shares under section 42A of the Act, any amount due to a shareholder may –</p> <p>(a) be paid in cash;</p> <p>(b) be satisfied by the transfer of any part of the undertaking or property of the company having the same value; or</p> <p>(c) be satisfied partly under paragraph (a) and partly under paragraph (b).</p> <p>Section 42A(7) of the Act: Where a company agrees, or is obliged, to purchase any of its shares then –</p> <p>(a) the company shall not be liable in damages in respect of any failure to purchase any of the shares;</p> <p>(b) the court shall not grant an order for specific</p>	<p>to be distributed as dividends to shareholders or resell the treasury shares on the market of the Stock Exchange, the Act provides that the company may hold all or any of the treasury shares or dispose or transfer all or any of them for cash or other consideration or cancel all or any of the treasury shares.</p> <p>The Act allows for bonus shares to be issued out of the treasury shares whereas the Malaysian Companies Act allows for fully paid bonus shares to be issued through application from the capital redemption reserve.</p> <p>The Bye-laws provide for the company to purchase its own shares according to the Act and the Listing Requirements.</p>

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>performance of the purchase if the company shows that to do so would render it insolvent or cause it to breach the provisions of any Act, regulations or license;</p> <p>(c) on a liquidation, other shares which carry rights whether as to capital or income which are preferred to the rights attaching to the shares agreed to be purchased, shall be paid in priority to the purchase price.</p> <p>Section 42B(2) of the Act: Subject to section 42B of the Act, a company limited by shares, or other company having a share capital, may, if authorised to do so by its memorandum or bye-laws, acquire its own shares, to be held as treasury shares, for cash or any other consideration.</p> <p>Section 42B(4) of the Act: A company may not acquire its own shares to be held as treasury shares if, as a result of the acquisition, all of the company's issued shares, other than the shares to be held as treasury shares, would be non-voting shares.</p> <p>Section 42B(5) of the Act: An acquisition by a company of its own shares to be held as treasury shares may be authorised by its board of directors or otherwise by or in accordance with its bye-laws.</p> <p>Section 42B(6) of the Act: No acquisition by a company of its own shares to be held as treasury shares may be effected if, on the date on which the acquisition is to be effected, there are reasonable grounds for believing that the company is, or after the acquisition would be, unable to pay its liabilities as they become due.</p> <p>Section 42B(7) of the Act: A company that acquires its own shares to be held as treasury shares may-</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>(a) hold all or any of the shares;</p> <p>(b) dispose of or transfer all or any of the shares for cash or other consideration;</p> <p>(c) cancel all or any of the shares.</p> <p>Section 42B(8) of the Act: If shares are cancelled under section 42B of the Act, the amount of the company's issued share capital shall be diminished by the nominal value of those shares, but the cancellation of shares shall not be taken as reducing the amount of the company's authorised share capital.</p> <p>Section 42B(9) of the Act: If a company holds shares as treasury shares, the company shall be entered in the register of members under section 65 of the Act as the member holding the shares.</p> <p>Section 42B(10) of the Act: A company that holds shares as treasury shares shall not exercise any rights in respect of those shares, including any right to attend and vote at meetings, including a meeting under section 99 of the Act, and any purported exercise of such a right is void.</p> <p>Section 42B(11) of the Act: No dividend shall be paid to the company in respect of shares held by the company as treasury shares and no distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up) shall be made to the company in respect of shares held by the company as treasury shares.</p> <p>Section 42B(12) of the Act: Nothing in section 42B of the Act shall prevent a company from -</p> <p>(a) making an allotment of shares as fully paid bonus shares in respect of shares held by the company as treasury shares; or</p>	

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>(b) paying any amount payable on the redemption of shares held by the company as treasury shares (if they are redeemable shares).</p> <p>Section 42B(13) of the Act: Any shares allotted by a company as fully paid bonus shares in respect of shares held by the company as treasury shares shall be treated for the purposes of the Act as if they had been acquired by the company at the time they were allotted.</p> <p>Section 42B(14) of the Act: Where a company agrees or is obliged to acquire any of its shares to be held as treasury shares –</p> <p>(a) the company shall not be liable in damages in respect of any failure to acquire any of the shares;</p> <p>(b) the Court shall not grant an order for specific performance of the acquisition if the company shows that to do so would render it insolvent or cause it to breach the provisions of any Act, regulation or licence; and</p> <p>(c) on a liquidation, other shares that carry rights, whether as to capital or income, that are preferred to the rights attaching to the shares agreed or obliged to be acquired, shall be paid in priority to the cash or other consideration to be paid for the shares agreed or obliged to be acquired.</p> <p>Section 42B(15) of the Act: Shares held by a company as treasury shares shall be excluded from the calculation, under sections 12(4), 47(1), 47(7), 89(5), 96(1), 99(2), 102, 103 and 113(1)(c) of the Act, of any percentage or fraction of the share capital, or shares, of the company or of any class of share capital, or shares, of the company.</p> <p>Section 42B(16) of the Act: For the purposes of</p>	

15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>Section 17 of the Malaysian Companies Act states that:</p> <p>(1) a corporation cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void.</p> <p>(2) Subsection (1) shall not apply where the</p>	<p>section 79(2)(b) of the Act, a company that holds shares as treasury shares is not a member of the company.</p> <p>Bye-law 3(2): The Company may purchase its own shares for cancellation or acquire them as Treasury Shares in accordance with the Act and the Listing Requirements on such terms as the Board shall think fit. Any power of the Company to purchase or otherwise acquire its own shares shall be exercisable by the Board in accordance with and subject to the Act, the Listing Requirements, the Company's memorandum of association and, if required by the Listing Requirements, the prior approval of the Members in general meeting. Such approval of the Members shall remain in force for such maximum period allowed by the Listing Requirements, unless it is revoked or varied by ordinary resolution of the Company in general meeting, and may thereafter be renewed by the Members in general meeting. For so long as the shares of the Company are listed on the Designated Stock Exchange, the Company shall make such announcements to the Designated Stock Exchange of any purchase or acquisition by the Company of its own shares as may be required by the Listing Requirements.</p>	<p>There is no prohibition under the Act against a subsidiary holding shares in its own parent company. Generally, there is such a prohibition in the Malaysian Companies Act save for circumstances mentioned in Section 17(2)-(8) of the Malaysian Companies Act.</p>
<p><i>Power for any Subsidiary of the Issuer to own shares in its Parent Company</i></p>		

**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.</p> <p>Section 17(3) This section shall not prevent a subsidiary which is, at the commencement of the Malaysian Companies Act , a member of its holding company, from continuing to be a member but, subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.</p> <p>(4) This section shall not prevent a subsidiary from continuing to be a member of its holding company if, at the time when it becomes a subsidiary thereof, it already holds shares in that holding company, but -</p> <p>(a) subject to subsection (2), the subsidiary shall have no right to vote at meetings of the holding company, or any class of members thereof; and</p> <p>(b) the subsidiary shall, within the period of twelve months or such longer period as the Court may allow after becoming the subsidiary of its holding company dispose of all of its shares in the holding company.</p> <p>(5) Subject to subsection (2), subsections (1), (3) and (4) thereof shall apply in relation to a nominee for</p>		



**15. COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)**

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
<p>a corporation which is a subsidiary as if references in those subsections to such a corporation included references to a nominee for it.</p> <p>(6) This section shall not operate to prevent the allotment of shares in a holding company to a subsidiary which already lawfully holds shares in the holding company if the allotment is made by way of capitalization of reserves of the holding company and is made to all members of the holding company on a basis which is in direct proportion to the number of shares held by each member in the holding company.</p> <p>(7) Where but for this section a subsidiary would have been entitled to subscribe for shares in the holding company the holding company may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.</p> <p>(8) In relation to a holding company that is either a company limited by guarantee or an unlimited company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.</p>		
<p><i>Power to Issue Shares at a Discount</i></p> <p>Section 59 of the Malaysian Companies Act states that a company may issue shares at a discount of a class already issued if—</p> <p>(a) the issue of the shares at a discount is authorized</p>		<p>Bermuda law does not permit a company to issue shares at a discount to the par value of the said shares.</p> <p>The Malaysian Companies Act only permits issuance of shares at a discount if it is confirmed by an order of</p>