
11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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- 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)

10. COMPETITION

10.1 Nature of Competition in the Industry

- Operators in the sports shoe industry in China face normal competitive conditions, which is similar to a free enterprise environment where there are no undue government regulations or licensing requirements, there are many operators, operators may enter and leave the industry with relative ease, and no one operator is large enough to dictate product pricing. In such an environment, the industry is also subjected to normal supply and demand conditions moderated by the price mechanism. Operators compete on product and service differentiations, and other factors of competition.

10.2 Factors of Competition

- As with most free enterprise environment, the factors that are used to compete and to differentiate one operator from another include the following:
 - branding;
 - marketing;
 - quality of products and services;
 - design capabilities;
 - research and development;
 - distribution coverage;
 - track record.

10.3 Impact of Factors of Competition on XiDeLang Group

- **Branding**

Branding is an important competitive factor in the marketing of many consumer products, including sports shoes. As such, a strong brand that appeals to its target group will have more loyal customers, higher market awareness to attract new customers, and the ability to command higher pricing compared to unbranded or less prominent branded products.

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



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XiDeLang Group has successfully created its own brand "XiDeLang". A strong proprietary brand of sports shoes allows the Group to gain significantly higher margins in comparison to contract manufacturers who manufacture sports shoes under the principals' brand name. The capability of the Group to create its own brand differentiates it from other manufacturers that rely on third party brands.

- **Marketing**

There are many manufacturers of sports shoes in China, hence marketing is critical to generate awareness of XiDeLang Group's products, increase brand popularity and sales of the products in the market. XiDeLang Group has built significant equity for its own brand through strong investments and efforts in advertising and promotions.

For the financial year ended 31 December 2008, XiDeLang Group spent approximately RMB15 million on marketing and branding building. (*Source: XiDeLang Group*) Such investments help in building brand equity to further reinforce brand presence and other brand attributes among consumers.

Furthermore, the Group's products are available in retail locations comprising concept stores and retail counters in departmental stores. In this manner, all the retail locations would be reinforcing XiDeLang Group's branding through their presence in the market place. In addition, the Group also provides marketing support to its retailers by reimbursing part of their expenses on advertising and promotions activities on an ongoing basis.

- **Quality of Products and Services**

Quality products and services are important to buyers and users, especially where there is a wide range of choices. Quality will also need to commensurate with price points, for example, good quality sports shoes may feature good cushioning system to give better shock absorption and to provide comfort for the feet, support and stability, which also limits excessive pronation to prevent injuries. Other product quality factors include flexural resistance, anti-yellowing for white coloured sports shoes, seam construction, adhesion strength, materials used, breathability, durability, weight and others.

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

11. INDEPENDENT MARKET RESEARCH REPORT (Cont'd)



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XiDeLang Group has always placed continuous emphasis on product quality where extensive quality checks are done on in-coming materials, through each level of the manufacturing process and the final products. The Group's emphasis on quality management is attested by the fact that the Group has a State Inspection Exempted Product Certification by the PRC Quality Surveillance and Inspection Bureau and the Group is ISO 9001:2000 certified. The quality awards of XiDeLang Group are endorsements of the quality assurance system that is in place for the manufacturing of sports shoes. This also provides customers with the assurance of XiDeLang Group's product quality.

- **Design Capabilities**

Design of sports shoes requires a certain level of technical skills, expertise, and specialised systems, for example, the design phase would require experience, skills and expertise in conceptualising contemporary and desirable designs based on existing or emerging trends. These are then translated into shoe designs using computer aided design (CAD) systems. This would allow the manufacturer to create two and three dimension computer generated solid state prototypes to facilitate the functional tests and dimensioning, scaling, and colour and material combinations and modifications, as well as analysing the movement, position and impact on certain parts of the sports shoes. Designing is essential as it affects the shoe style, ergonomics, function, durability and customer acceptance. As such, a company in the manufacturing and marketing of sports shoes with in-house design facilities and capabilities would serve as an essential value-adding component to its customers.

XiDeLang Group has in-house design capabilities and facilities, and has made significant investments in CAD systems as well as design personnel. As at 31 August 2009, XiDeLang Group has 17 personnel involved in the design of sports shoes.

- **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. 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 shoes 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.

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



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In this respect, XiDeLang Group has in-house research and development facilities and capabilities to design as well as manufacture sports shoes to meet market requirements.

- **Distribution Coverage**

As sports shoes are primarily consumer products, retail coverage is essential to reach as many consumers as possible. In this respect, XiDeLang Group uses intermediaries comprising distributors and retailers providing approximately 2,200 retail locations spread across 20 provinces and four municipalities in China for the sales of its products.

- **Track Record**

Customers would normally select suppliers with a strong track record in supply as well as product branding. This is particularly critical, as customers would normally place large orders to be delivered within a relatively short period of time. In addition, the success or failure of retail businesses is also attributed to the track record and reputation of the brand.

XiDeLang Group has a track record of approximately 16 years in the marketing of sports shoes (since the commencement of the Group's manufacturing operations in China in 1993). Over the years, XiDeLang Group has successfully established a reputable track record associated with the Group's product and service quality and reliability. This is further demonstrated by the fact that the Group has obtained various brand recognition awards and certification from authorities including State Inspection Exempted Product Certification by the PRC Quality Surveillance and Inspection Bureau, and Fujian Famous Brand by Fujian Administration for Industry and Commerce.

An established market reputation and track record will provide the Group with a competitive advantage to win new customers.

10.4 Competitive Intensity

- Competition among operators of sports shoes within the Footwear Industry in China is based on the following observations:
 - Competition primarily comes from other manufacturers of sports shoes in China, particularly in Jinjiang in the Fujian province. This is because Jinjiang is regarded as the centre of footwear manufacturing in China, and XiDeLang Group's manufacturing operations are located in Jinjiang. In Jinjiang, there are an estimated 3,000 shoe manufacturing companies producing an estimated 700 million pairs of shoes per year.
 - Branding could also help to reduce the competitive intensity in the consumer market. Operators who develop their own brands and focus on promotions and marketing to gain brand recognition will be in a better position to compete in this industry.

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- Capital requirements for setting-up a small size manufacturing facility cost about RMB20 million, including machinery and equipment, and working capital.
- Technical skills and knowledge also form barriers to entry, therefore reducing the competitive intensity.
- A relatively large and growing retailing market in China and export market for footwear including sports shoes would be able to accommodate a relatively large number of manufacturers of sports shoes in the industry (see section 8 for details). This may somewhat mitigate the competitive intensity.

10.5 Players in the Industry

- In Jinjiang, there are an estimated 3,000 shoe manufacturing companies, some of which are also brand owners and marketers in their own rights.

10.6 Competition from Global Brands

- In the marketing of sports shoes, competition also comes from global brands such as, among others, Nike, Reebok, Puma, ASICS, and Adidas. These global brands have extensive marketing power and their brands are available in many countries, including China. They have also built their brands such that to some people, it is a status symbol to own them. Their strong branding has enabled them to charge premium pricing.
- As such, global brands also place competitive pressure in the sports shoe market in China.

11. BARRIERS TO ENTRY

11.1 Set-up Costs

- The barrier to entry into the manufacture of sports shoes within the Footwear Industry is moderate from the set-up cost perspective.
- The cost of setting-up a small-scale manufacturing plant in China to produce sports shoes would be approximately RMB20 million (excluding land and building). This would include machinery and equipment incorporating sewing and stitching, cutting machinery and one line of assembly facilities, and working capital of three to four months' raw materials and finished products.

This size of establishment would be capable of producing approximately 370,000 pairs of sports shoes per year and the revenue generated from this plant is estimated at RMB20 million per year (Source: XiDeLang Group)

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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. Larger operations are necessary to meet the demands in China and export markets.

Smaller manufacturers would also find it difficult to compete with larger manufacturers, as they are able to fulfil larger volume orders within a shorter period of time.

11.2 Cost of Building Brands

- An established brand may provide a significant competitive advantage to the brand owner. This is mainly attributed to the fact that sports shoes are primarily a consumer item. As such, high brand equity is paramount in winning new customers as well as being able to price products at a premium.
- The cost of building a brand requires constant investments in above and below the line advertisements, promotions and public relations. As such, the cost of building a brand name poses a form of barrier to entry for new entrants.

11.3 Distribution Coverage

- As with any consumer items, extensive retail distribution coverage is important in ensuring that a brand owner or manufacturer's products reach the end-consumers. As for sports shoes in China, it is common for retailers to display sports shoes in department, specialty or concept stores. Consumer products that are available at these retail locations will have an advantage in being able to obtain higher brand visibility.
- Distribution coverage could form a major barrier to entry for new entrants who may have difficulties in displaying their products at various types of retail locations such as departmental stores and specialty stores.

11.4 Technical Expertise

- Technical skills and knowledge are required in design, research and development, and manufacturing of sports shoes.
- Designs of sports shoes are essential as it covers functionality, ergonomics, style, aesthetics and ultimately customer acceptance. Larger and more established manufacturers are more likely to have in-house design 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, biomechanical and kinetic adaptation, and using new and innovative materials to continuously come up with better and more desirable products.

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- Manufacturing expertise such as those required in sewing, stitching, assembly and bonding also play major roles in ensuring products meet specified properties and features including cushioning, support and stability, anti-abrasion, anti-flex, anti-yellowing, breathability, weight, fitting, bursting strength and durability.
- Technical expertise in selecting the choice of raw materials, and using improved and innovative materials for sports shoes is also very important to the saleability of the product. This is due to the significant amount of development in materials used to provide better and sometimes cheaper materials for the manufacture of sports shoes.
- Sports shoes are used to perform physical sports activities, which are subjected to heavy duty use. As such, the overall function of the product is important, particularly in providing comfort, ergonomics and cushioning against the jarring impact of walking or running, support and stability to limit excessive pronation to prevent injuries, and the requirements for withstanding wear and tear due to the abrasive action of coming into direct contact with the ground.
- Technical expertise, skills and knowledge from design, manufacturing and use of raw materials are key in creating a quality and desirable product, and thus this would pose a barrier to entry for new entrants.

11.5 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 without a track record, either in terms of being a manufacturer or a brand owner in marketing to end-consumers.
- A manufacturer with a track record as a reliable supplier of consistently high quality products would be in a significantly better position in winning sales compared to a new entrant.
- Additionally, a new brand entering the market is likely to have some difficulties in finding acceptance by retailers to carry its stocks. Usually a new brand will also experience low brand awareness, thus making it difficult to generate sales.
- As such, track record would pose some barriers to entry for new entrants, as they may face some difficulties in gaining immediate access into the market.

11.6 Product Quality

- Quality is a critical factor in ensuring the ability to continually secure sales in the sports shoes industry. The success of a manufacturer depends on its ability to meet the quality standards and expectation of consumers and commercial customers.

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- As with most consumer items, proven fashion trends, ergonomic designs and durability of products are also important. There is also an expectation that the products are subjected to continuous vigorous action and significant wear and tear, while at the same time provide comfort, safety and protection to the feet.
- As such, manufacturers that have stringent quality assurance programmes in place with 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.

12. RELIANCE ON AND VULNERABILITY TO IMPORTS

- Generally, manufacturers of sports shoes in China source a significant proportion of their raw materials and components locally in China. Some of the major raw materials used in the manufacture of sports shoes include:
 - shoe soles including insoles, midsoles and outsoles;
 - upper materials including those made of leather, composition of leather, textile materials, as well as plastics and synthetic materials.
- Shoe soles represents about one third of XiDeLang Group's total purchases. The Group sources all of its shoe soles from suppliers in China.
- Raw materials in the forms of shoe soles and semi-finished materials that made of leather, textile, plastics and synthetic materials can be sourced in China. This is supported by the following observations in China:
 - In 2006, there were an estimated 13,504 enterprises operating in the manufacture of plastics. The gross industrial output value of the manufacture of plastics increased by 27.3% to reach RMB812.0 billion in 2007.
 - In 2006, there were an estimated 3,353 enterprises operating in the manufacture of rubber. The gross industrial output value of the manufacture of rubber increased by 26.7% to reach RMB346.2 billion in 2007.
 - In 2006, the production of plastic products increased by 27.4% to 28.0 million tonnes. Manufacturers can source plastic related products from various locations within China including Guangdong, Zhejiang, Jiangsu, Shandong, Hebei, Liaoning, Henan and others.
 - In 2006, there were an estimated 25,345 enterprises in the manufacture of textiles. The gross industrial output value of manufacture of textiles increased by 22.3% to reach RMB1,873 billion in 2007.
 - In 2007, the gross industrial output value of manufacture of leather, fur, feather and related products increased by 24.2% to reach RMB515.3 billion.

(Source: National Bureau of Statistics of China)

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- Nevertheless, China also imports raw materials to meet its overall manufacturing needs:
 - In 2008, import value of rubber and plastics outsoles and heels declined by 5.0% to US\$71.8 million (equivalent to RMB490.7 million). In the same year, China imported its rubber and plastic outer soles and heels from Taiwan, Korea, Vietnam, Italy, Japan, United States and other overseas countries.
 - In 2008, the import value of rawhides and skins (other than fur skins) and leather decreased by 5.5% to US\$5.6 billion (equivalent to RMB38.5 billion).
 - In 2007, imports of textile and textile articles decreased by 5.3% to reach RMB195.0 billion.
 - In 2008, the import value of man-made filaments and man-made shorts fibre (including woven fabric made of synthetic materials) (a sub-sector of textile and textile articles) amounted to US\$6.2 billion (equivalent to RMB42.2 billion).
 - In 2007, imports of chemicals and related products in China amounted to USD107.6 billion (equivalent to RMB736.1 billion). Of this, imports of plastics and articles amounted to USD45.3 billion (equivalent to RMB309.7 billion).

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

13. INDUSTRY OUTLOOK

General Overview

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

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

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.

Demand

- Between 2004 and 2007, the retail value of shoes and hats grew at an average annual rate of 21.3%. In 2007, the retail value of shoes and hats increased by 23.2% to reach RMB55.6 billion.
- 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%.
- Between 2004 and 2007, the export value of shoes with outer of rubber or artificial plastic materials (including sports shoes) grew at an average annual rate of 22.6%. In 2007, export value of this category increased by 20.6% to reach USD3.4 billion (equivalent to RMB23.4 billion).

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

Economic Conditions in China relative to Global Conditions

- Despite experiencing a slowdown 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 half of 2009, China's GDP registered a growth of 7.1% 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%

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(Source: National Bureau of Statistics of China, Chinese Academy of Social Science and 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, operators whose main markets are in China would be in a better position to ride through the current slowdown in China and global economies. China's prospects in terms of outlook are further boosted by the large population of China, which registered at 1.3 billion persons in 2008 *(Source: National Bureau of Statistics of China).*

14. THREATS AND RISKS ANALYSIS

14.1 Dependency on Supply of Raw and Semi-Finished Materials

- The manufacture of sports shoes is ultimately dependent on the availability of major raw materials including semi-finished materials such as shoe soles, textile materials, plastic and composition of synthetic materials. Shortage in the supply of one of these major materials may lead to a disruption in the manufacturing operations.

Mitigating Factors

- Generally, manufacturers of sports shoes source most of their materials from suppliers and manufacturers in China. In 2006, there were an estimated 25,345 enterprises operating in the manufacture of textiles, 13,504 enterprises operating in the manufacture of plastics and 3,353 enterprises operating in the manufacture of rubber in China. *(Source: National Bureau of Statistics of China)*
- In addition, these materials are widely produced and can be sourced from overseas countries, if required. Therefore, any possible interruptions in the supply are minimised.

14.2 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 shoe soles and the upper part of sports shoes. Thus, the prices of plastic based materials and synthetic rubber are therefore dependent on the price of petroleum.
- 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.

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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.

14.3 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 the economy is likely to impact on consumer spending and confidence.
- A slowdown in China and global economies is likely to reduce demand for a wide range of products, including sports shoes, which would have an impact on operators within the sports shoe industry.

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 a 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.
- Operators with strong product quality, financial stability, and a diverse range of products and designs would be in a better position to withstand the impact of a slowdown in China and global economies.

15. AREAS OF GROWTH AND OPPORTUNITIES

15.1 Building Brand Equity

- Branding and development of brand equity are important in the sports shoes industry for brand owners who wish to command a premium for their products. Apart from product design and quality, branding is important in enabling operators to distinguish themselves from competitors and to cultivate customer loyalty.
- There are opportunities for operators in China to build strong brand equity by focusing on marketing, promotions and brand development.

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15.2 Product Diversification

- Product diversification presents opportunities for operators to enlarge their customer base and more importantly, enable them to minimise risk of over dependency on a narrow range of products.
- Operators who supply a diverse product range and applications are in a stronger position to sustain the business during the economic slowdown.

15.3 Export Markets

- There are opportunities for manufacturers of sports shoes to expand into export markets.
 - In 2008, the export value of footwear with outsoles of rubber, plastics, leather or composition leather and uppers of textile materials grew by 14.7% to reach US\$4.0 billion (equivalent to RMB27.2 billion).
 - In 2008, China's export markets for sports footwear, tennis shoes, basketball shoes, gym shoes, training shoes and the like with outsoles of rubber or plastics included, among others, the United States, Japan, Hong Kong, France, Belgium, Holland, Germany, Brazil and Korea.

(Source: China Customs)

- Exports into overseas countries will open up a larger market for sports shoe operators in China.

15.4 China Market

- There continues to be opportunities in the China market for sports shoes as indicated by the comparison of per capita expenditure of shoes in China 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.

15.5 Use of New and Innovative Materials for Sports Shoes

- Developments in materials for sports shoes 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.
- The development of materials have moved from the use of textile, leather and rubber to incorporate composite materials made from a combination of two or more materials, which exhibit different mechanical properties. The new and

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innovative materials are used to satisfy criteria such as strength and pliability, resistance to changes in shape and size, elasticity of materials and its ability to bend and flex under force and to regain its shape, density and weight of the material, and the cushioning system of sports shoes.

- As such, there are significant opportunities in the development of new or innovative materials for sports shoes to continuously create excitement and demand for sports shoes.

16. CRITICAL SUCCESS FACTORS

Critical success factors for operators in the Sports Shoes Industry include the following:

- **Branding** is critical to the success of consumer-based products such as sports shoes. Operators that have their own brands have better control of their business directions and at the same time create customer loyalty to sustain and grow the business. Brand owners also have the full freedom to expand their presence in China as well as overseas, without any constraints or the need to pay any royalty to third parties. This is also where continuing investment in marketing and promotions are important to facilitate brand awareness, recognition and brand loyalty.
- **Wide Distribution and Retail Coverage:** As sports shoes are regarded as consumer-based products, extensive distribution coverage is critical to ensure that the products reach the end-consumers. Operators with a wide and diversified distribution coverage including departmental, specialty and concept stores will have a stronger market presence which is critical for continuing sales and growth.
- **Diverse Range of Products:** Operators with a diverse range of products are in a better position to provide convenience to their customers through a one-stop centre concept for sports shoes including casual sports shoes, running shoes and court sports shoes and others. The diversity of products will also provide opportunities for cross-selling thereby earning higher sales as well as reducing unit costs of marketing and distribution.
- **In-house Design Centre** is a critical success factor that enables operators to have control of the creation of new and innovative designs to compete effectively as well as meet consumer preferences. Having in-house design capabilities and facilities also enable operators to react quickly to changing market forces and consumer preferences.
- **Commitment to High Quality:** To ensure optimal performance and reliability of products, manufacturers must commit to high product quality. Manufacturers of sports shoes who adopt stringent controls in their manufacturing processes with recognised quality accreditations and awards to reflect their commitment to product quality and excellence are in a better position to meet customers' requirements.

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- **Established Track Record:** The sports shoes market in China is a competitive industry with many operators. 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.
- **Financial Stability:** Operators who are in a healthy financial position are more likely to retain and attract new customers. In manufacturing, financial stability will ensure uninterrupted supply to customers. 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. In marketing, financial stability will ensure sufficient resources are channelled to brand development and marketing functions.

17. MARKET SIZE AND SHARE

17.1 Market Size

Production

- 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 (including sports shoes) industry in China was estimated at **2.1 billion pairs** based on production. Rubber/plastic shoes is 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*)

Wholesale Value

- In 2008, the market size of the footwear industry in China was estimated at **RMB48 billion** based on wholesale value. (Source: *National Bureau of Statistics of and computed by Vital Factor Consulting Sdn Bhd*)

17.2 Market Share

Production

- In 2008, XiDeLang Group had a market share of approximately **0.04%** of the footwear industry in China based on the Group's production output of 4.4 million pairs of sports shoes.
- In 2008, XiDeLang Group had a market share of approximately **0.2%** of the rubber/plastic (including sports shoes) shoes industry in China based on the Group's production output of 4.4 million pairs of sports shoes.

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Wholesale Value

- In 2008, XiDeLang Group had a market share of approximately 1% of the footwear industry in China based on wholesale prices.

(Note: The term "footwear" covers all types of footwear including sandals, slippers, industrial footwear, therapeutic footwears, boots and shoes. XiDeLang Group focuses only on sports shoes.)

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

Wong Wai Ling
Director

12. DIRECTORS' REPORT

(Prepared for inclusion in this Prospectus)

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16 OCT 2009

The Shareholders of
XIDELANG HOLDINGS LTD

Dear Sir / Madam,

On behalf of the Board of Directors of XiDeLang Holdings Ltd ("**XiDeLang**" or "**Company**"), I wish to report after due enquiry by the Board of Directors of XiDeLang, that between the period from 30 June 2009 (being the date to which the last audited financial statements of the Company and its subsidiaries ("**Group**") have 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 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 last audited 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 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
XIDELANG HOLDINGS LTD

Ding PengPeng
Managing Director and Chief Executive Officer

13. FURTHER STATUTORY AND OTHER GENERAL INFORMATION

13.1 SHARE CAPITAL

- (i) 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.
- (ii) We only have one (1) class of shares in our Company, namely ordinary shares of US\$0.10 each, all of which rank pari passu with one another.
- (iii) There is currently no scheme for or involving our Directors or employees in the capital of our Company or any of our subsidiaries.
- (iv) 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.

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 43136.

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.

(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.

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

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 an 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.

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 an 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 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.

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.

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

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.

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.

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

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.

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

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 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 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.

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

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.

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.

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

(c) *Share in surplus upon liquidation (Bye-law 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.

Shareholders (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 (other than the Depository). 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.

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.

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

(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 Securities), 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 an 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 Bursa Depository. Please refer to Section 13.2(vii) of this Prospectus (below) for details on shareholding disclosure requirement.

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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 rights attached to any class of shares may be varied or abrogated with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class 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, provided always that where the necessary majority for such 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.

(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 rules or regulations 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 Securities), 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.

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 rights 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.

General meetings may be held in any part of the world as may be determined by the board of directors, provided always that for so long as the shares of the Company are listed on the Bursa Securities, all general meeting of the Company shall be held in Malaysia.

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.

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

(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 Bursa Securities), 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 Securities Commission of Malaysia 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 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 Securities), 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.

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

(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 Securities), the provisions of Division 2 of Part IV of the Malaysian Securities Commission Act 1993 and the Malaysian Code (or their respective statutory modification or re-enactment or successor for the time being in force) including but not limited to the promulgated Division IV of Part VI of the CMSA, 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 (or their respective statutory modification or re-enactment or successor for the time being in force) including but not limited to the promulgated Division IV of Part VI of the CMSA shall not apply to the Depository.

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

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 for the time being, 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.

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;

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

- (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

- (i) The names, addresses and occupations of the Directors of our Company are set out in the "Corporate Directory" Section of this Prospectus.
- (ii) A Director is not required under the Bermuda Companies Act and our Bye-laws to hold any qualification share in our Company.
- (iii) Save as disclosed in Sections 2.7 and 2.9 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, Promoters or experts is or are entitled to receive any such payment.
- (iv) Other than salary and employment related benefits as disclosed in Section 6.3.4 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 6.3.4 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.

- (v) Except as disclosed in Sections 6.1 and 6.2 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. FURTHER STATUTORY AND OTHER GENERAL INFORMATION (Cont'd)

13.4 MATERIAL CONTRACTS

Save as disclosed below, as at LPD, 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 the Company and our subsidiaries within two (2) years preceding the date of this Prospectus:-

- (i) Share Sale Agreement dated 30 April 2009 made between Ding LiHong, Ding JiaXing as vendors and HongPeng (Fujian) as purchaser, in relation to the sale and purchase of the entire registered capital of HongPeng Footwear for a purchase consideration of RMB37 million.
- (ii) Share Sale Agreement dated 30 April 2009 made between Ding PengPeng, Ding JiaXing as vendors and HongPeng (Fujian) as purchaser, in relation to the sale and purchase of the entire registered capital of XiDeLang Sports Goods for a purchase consideration of RMB36 million.
- (iii) Conditional Share Sale Agreement dated 18 May 2009 made between Ding PengPeng as vendor and the Company as purchaser, in relation to the sale and purchase of 10,000 ordinary shares of HK\$1.00 each in the capital of XinYuanChan which represents the entire issued and paid-up share capital of XinYuanChan for a purchase consideration of US\$29,999,999 which shall be satisfied entirely by the issuance of an aggregate of 299,999,990 new Shares in the Company, credited as fully paid at par value of US\$0.10 per share.
- (iv) Underwriting Agreement dated 25 September 2009 between the Company, and AmInvestment Bank and OSK as the Underwriters for the underwriting of 10,000,000 Public Issue Shares ("**Underwritten Shares**") at an underwriting commission of 3% of the IPO price of RM0.58 per Share and upon the terms and conditions contained therein.
- (v) Share Transfer Agreement dated 10 July 2008 between XiDeLang Sports Goods and Yuen Cheng as vendors and XinYuanChan as purchaser, in relation to the sale and purchase of the entire registered capital of HongPeng (Fujian) for a purchase consideration of RMB8,500,000.
- (vi) Trademark License Agreement dated 1 January 2008 between HongPeng (Fujian) and XiDeLang Sports Goods in which XiDeLang Sports Goods grants HongPeng (Fujian) the right to use the trademarks registered under the registration nos. 745795, 3381945, 3638915, 3299241, and 1938370, as set out in Section 4.14 of this Prospectus, without consideration, commencing from 1 January 2008 until the expiration of the respective trademarks.

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.

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

13.6 GENERAL INFORMATION

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

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

13.7 CONSENTS

The respective written consents of the Adviser, Managing Underwriter, Underwriters, Lead Placement Agent, Placement Agents, Company Secretary, Company Agent in Malaysia, Principal Bankers, Solicitors for the Listing and Legal Advisers to the Company on Malaysian Law, 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, Registrar in Malaysia, Bermuda Share Registrar, 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 Summary of Bermuda Company Law 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 Summary of Hong Kong Law 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 Summary of PRC Law 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 issue of this Prospectus:-

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

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

- (iv) the Reporting Accountants' letters relating to the proforma consolidated financial information as included herein;
- (v) the audited financial statements of HongPeng (Fujian) group for 1H 2009;
- (v) the audited financial statements of HongPeng (Fujian) for FYE 2006, FYE 2007 and FYE 2008;
- (vi) the audited financial statements of HongPeng Footwear for FYE 2006, FYE 2007 and FYE 2008;
- (vii) the audited financial statements of XiDeLang Sports Goods for FYE 2006, FYE 2007 and FYE 2008;
- (viii) the Independent Market Research Report prepared by Vital Factor Consulting Sdn Bhd as set out in Section 11 of this Prospectus; and
- (ix) the letters of consent referred to in Section 13.7 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:-

- (i) the Memorandum of Association and Bye-laws of our Company;
- (ii) the certificate of incorporation of our Company;
- (iii) licenses of our Company, if any;
- (iv) the register of Shareholders of our Company;
- (v) transfers of Shares of our Company; and
- (vi) 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 and Promoters 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 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.

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.

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.

14. SUMMARY OF LAW (Cont'd)

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.

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.

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14. SUMMARY OF LAW (Cont'd)

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.

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 (the "**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.

14. SUMMARY OF LAW (Cont'd)

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.

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.

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14. SUMMARY OF LAW (Cont'd)

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.

14.1.13 Repatriation of capital and profits

There are no exchange control restrictions or sanctions presently in effect in Bermuda that would, in the ordinary circumstances, prevent the repatriation of funds (regardless of whether they are profits or capital in nature) in a foreign currency from Bermuda to any country by a Bermuda exempted company designated as a non-Bermuda resident for exchange control purposes (the "**Bermuda Company**").

Under the Bermuda Companies Act, a company shall 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. For this purpose, contributed surplus is defined in the Bermuda Companies Act to include 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.

There is neither any Bermuda regulatory or legal restrictions against repatriation of capital paid on shares of a Bermuda Company in a foreign currency or remittance of profits by way of dividends in a foreign currency, by or to a Bermuda Company to Malaysia nor any legislation in Bermuda which would affect the timing of such repatriation.

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14. SUMMARY OF LAW (Cont'd)

14.1.14 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.

14.1.15 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.

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14. SUMMARY OF LAW (Cont'd)

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.

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.

14.1.16 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.

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14. SUMMARY OF LAW (Cont'd)

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.

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.

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14. SUMMARY OF LAW (Cont'd)

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 (中华人民共和国全国人民代表大会) ("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.

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.

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14. SUMMARY OF LAW (Cont'd)

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 made in respect of appeals of the second instance by courts of the same level or 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 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.

14. SUMMARY OF LAW (Cont'd)

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 (the "**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.

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 (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.

14. SUMMARY OF LAW (Cont'd)

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.

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.

14. SUMMARY OF LAW (Cont'd)

(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.

(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 Taxation

The applicable income tax laws, regulations, notices and decisions (collectively the "**Applicable Foreign Enterprises Tax Law**") related to FIEs and their investors include the follows:-

Income Tax Law of the PRC on Foreign Investment Enterprises and Foreign Enterprises (中华人民共和国外商投资企业和外国所得税法) adopted by the NPC on 9 April, 1991, which had been abolished on 1 January 2008 after the new Enterprise Income Tax Law of the PRC (中华人民共和国企业所得税法) went into force on the same date;

14. SUMMARY OF LAW (Cont'd)

Implementing Rules of the Income Tax Law of the PRC on Foreign Investment Enterprises and Foreign Enterprises (中华人民共和国外商投资企业和外国企业所得税法实施细则) promulgated by the State Council, which came into effect on 1 July, 1991, which had been abolished on 1 January 2008 and replaced with the new Implementing Rules of the Enterprise Income Tax Law of PRC (中华人民共和国企业所得税法实施细则) effective from 1 January 2008;

Notice Relating to taxes Applicable to Foreign Investment Enterprises / Foreign Enterprises and Foreign Nationals in Relation to Dividends and Gains obtained from Holding and Transferring of Shares (国家税务总局关于外商投资企业、外国企业和外籍个人取得股票(股权)转让收益和股息所得 税收问题的通知) promulgated by State Tax Bureau on 21 July 1993;

Income Tax Law Applicable to Individuals of PRC (中华人民共和国个人所得税法) promulgated by Standing Committee of NPC on 10 September 1980 and last amended on 29 December 2007; and

Notice on Relevant Policies Concerning Individual Income Tax (关于个人所得税若干政策问题的通知) issued by Ministry of Finance and the State Tax Bureau on 13 May 1994.

14.2.6 Enterprise income tax

(a) Taxpayer

The taxpayer of the income tax of the Foreign Investment Enterprise and Foreign Enterprise refers to Chinese-foreign equity joint ventures; Chinese-foreign contractual joint ventures and foreign-capital enterprises that are established in the PRC.

(b) Rate of Tax

In accordance with the Enterprise Income Tax Law which was adopted by the NPC on 16 March 2007 and went into effect on 1 January 2008, a unified Enterprise Income Tax rate of 25.0% and unified tax deduction standards will be applied equally to both domestic-invested enterprises and foreign-invested enterprises. In accordance with the Notice concerning Implementation of Preference Policy of Enterprise Income Tax in Transition Period issued by the State Council of the PRC on 26 December 2007, the Enterprise Income Tax rate applicable to foreign-invested enterprises which are currently subject to a deducted rate will be gradually increased up to 25.0% within five years commencing from 1 January 2008.

(c) Preferential treatment

The income tax on enterprises with foreign investment established in Special Economic Zones, foreign enterprises which have establishments or places in Special Economic Zones engaged in production or business operations, and on enterprises with foreign investment of a production nature in Economic and Technological Development Zones, shall be levied at the reduced rate of 15.0%.

14. SUMMARY OF LAW (Cont'd)

The income tax on enterprises with foreign investment of a production nature established in coastal economic open zones or in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located, shall be levied at the reduced rate of 24.0%.

The income tax on enterprises with foreign investment in coastal economic open zones, in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located or in other regions defined by the State Council, within the scope of energy, communications, harbour, wharf or other projects encouraged by the State, may be levied at the reduced rate of 15.0%.

Any enterprise with foreign investment of a production nature scheduled to operate for a period of not less than 10 years shall, from the year beginning to make profit, be entitled to be exempted from income tax in the first and second years and allowed a 50.0% reduction in the third to fifth years. However, the exemption from or reduction of income tax on enterprises with foreign investment engaged in the exploitation of resources such as petroleum, nature gas, rare metals, and precious metals shall be regulated separately by the State Council. Enterprises with foreign investment which have actually operated for a period of less than 10 years shall repay the amount of income tax exempted or reduced already. Any enterprise with foreign investment which is engaged in agriculture, forestry or animal husbandry and any other enterprise with foreign investment which is established in remote underdeveloped areas may, upon approval by the competent department for tax affairs under the State Council of an application filed by the enterprise, be allowed a 15.0% to 30.0% reduction of the amount of income tax payable for a period of another 10 years following the expiration of the period for tax exemption or reduction as provided for in the preceding two paragraphs.

Losses incurred in a tax year by any enterprise with foreign investment and by an establishment or a place set up in the PRC by a foreign enterprise to engage in production or business operations may be made up by the income of the following tax years. Should the income of the following tax year be insufficient to make up for the said losses, the balance may be made up by its income of the further subsequent year, and so on, over a period not exceeding five years.

Any enterprise with foreign investment shall be allowed, when filing a consolidated income tax return, to deduct from the amount of tax payable the foreign income tax already paid abroad in respect of the income derived from sources outside the PRC. The deductible amount shall, however, not exceed the amount of income tax otherwise payable under this Law in respect of the income derived from sources outside the PRC.

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14. SUMMARY OF LAW (Cont'd)

Pursuant to the Enterprise Income Tax Law (企业所得税法), the “**Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises**” and its Implementing Rules shall be abolished, and the rate of enterprise income tax applicable to all resident enterprises, including foreign investment enterprises and domestic companies in the PRC shall be at a uniform rate of 25.0% in five years. According to the Enterprise Income Tax Law, any enterprise established prior to the promulgation of the Enterprise Income Tax Law and is currently enjoying tax incentives, shall be entitled to continue to enjoy such incentives till the date of expiry. In the case of an enterprise that has been established before the Enterprise Income Tax Law, but has not declared its first profitable year, the term of any entitlement to tax incentives shall commence from 1 January 2008 for a transition period of five years.

According to the Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax (国务院 关于实施企业所得税过渡优惠政策的通知) which was promulgated and came into effect on 26 December 2007. As of 1 January 2008, enterprises that previously enjoy the preferential policies of low tax rates shall be gradually transitioned to enjoy the statutory tax rate within 5 years after the implementation of the EITL. Among them, the enterprises that enjoy the enterprise income tax rate of 15% shall be subject to the enterprise income tax rate of 18% in 2008, 20% in 2009, 22% in 2010, 24% in 2011 and 25% in 2012. The enterprises that previously enjoy the tax rate of 24% shall be subject to the tax rate of 25% as of 2008. As of 1 January 2008, the enterprises that previously enjoy “2-year exemption and 3-year half payment”, “5-year exemption and 5-year half payment” of the enterprise income tax and other preferential treatments in the form of periodic tax deductions and exemptions may, after the implementation of the New EIT Law, continue to enjoy the relevant preferential treatments under the preferential measures and the time period prescribed in the former tax law, administrative regulations and relevant documents until the expiration of the said time period. However, if such an enterprise has not enjoyed the preferential treatments yet because of its failure to make profits, its preferential time period shall be calculated from 2008. The expression “enterprises enjoying the preferential policies” as mentioned above refers to the enterprises established and registered in the industrial and commercial administrative department and in other registration administrative departments prior to 16 March 2007.

14.2.7 Value added tax

The Provisional Regulations of the People’s Republic of China Concerning Value Added Tax (中华人民共和国增值税暂行条例) promulgated by the State Council came into effect on 1 January 1994 and was revised on 1 January 2009. Under these regulations and the Implementing Rules of the Provisional Regulations of the People’s Republic of China Concerning Value Added Tax (中华人民共和国增值税暂行条例实施细则), value added tax is imposed on goods sold in or imported into the PRC and on processing, repair and replacement services provided within the PRC.

14. SUMMARY OF LAW (Cont'd)

The value-added tax rates shall be as follows:-

- (i) The tax rate for goods sold or imported by taxpayers other than the goods set forth in Items 2 and 3 below shall be 17.0%;
- (ii) The tax rate for sale or import of the following goods by taxpayers shall be 13.0%:-
 - (a) grain, edible vegetable oil;
 - (b) tap water, central heating, air-conditioning, hot water, coal gas, liquid petroleum gas, natural gas, methane, and coal products for use by residents;
 - (c) books, newspapers, magazines;
 - (d) feed, chemical fertiliser, agrochemicals, agricultural machinery, agricultural film; and
 - (e) other goods specified by the State Council;
- (iii) The tax rate for goods exported by taxpayers shall be zero, except where otherwise determined by the State Council; and
- (iv) The tax rate for processing and repair and replacement services provided by taxpayers shall be 17.0%.

14.2.8 Business tax

The PRC Business Tax Tentative Regulation promulgated by the State Council came into effect on 1 January 1994 and was revised on 1 January 2009. According to the regulation, businesses that provide services (including entertainment business), assign intangible assets or sell immovable property are liable to business tax at a rate ranging from 3.0% to 20.0%, of the charges of the services provided, intangible assets assigned or immovable property sold, as the case may be. The formula for calculation of the amount of tax payable is set forth below:-

Amount of tax payable = amount of business × tax rate

The amount of tax payable shall be calculated in RMB. Taxpayers that settle their amounts of business income in foreign exchange shall convert the amounts into RMB at the foreign exchange market rate. The new revision specifies that organizations or individuals outside PRC are also subject to business tax when they provide services, assign intangible assets or sell immovable property in the PRC.

14.2.9 PRC custom duties

According to the Customs Law of the PRC, the consignee of the imports, the consignor of exports and the owner of the imports and the exports are the persons obligated to pay customs duties (generally speaking, exports are not subject to customs duties). The Customs is the authorities in charge of the collection of customs duties.

14. SUMMARY OF LAW (Cont'd)

The customs duties in the PRC mainly fall under ad valorem duties, i.e. the price of import / export commodities is the basis for the calculation of the duties. When calculating the customs duties, import / export commodities shall be classified under appropriate tax items in accordance with the category provisions of the Customs Import and Export Tariff and shall be subject to tax levies pursuant to relevant tax rates.

Under the laws of the PRC, raw materials, supplementary materials, parts, components, accessories and packing materials imported for processing and assembling finished products for foreign parties or for manufacturing products for export shall be exempt from import duties pursuant to the actual amount of goods processed for export; or import duties may be levied upfront on import materials and parts and subsequently refunded pursuant to the actual amount of goods processed for export.

To encourage the introduction of foreign investment, as of 1992, the PRC exercised exemption and reduction of customs duties on the import of machinery, equipment, parts and other materials within the total investment of foreign investment companies. But after the adjustment of policies as of 1 April 1996, such exemption and reduction has been terminated, while the foreign investment companies incorporated before then can still continue to enjoy such preferential treatment within the grace period.

As from 1 January 1998, according to the Notice of the State Council regarding the Adjustment of Taxation Policy of Import Equipment, in respect of the foreign investment projects that fall under Encouraging Category and Restricted B Category of the Industrial Guidance Catalogue of Foreign Investment and also involve the transfer of technology, the equipment imported for its own use within the total investment can be exempt from the customs duties, except for the commodities listed in the Catalogue of the Non-tax-exemption Import Commodity of Foreign Investment Projects.

14.2.10 Tax on dividends from PRC enterprise with foreign investment

According to the Applicable Foreign Enterprises Tax Law, income such as dividends and profits distribution from the PRC derived from a foreign enterprise which has no establishment in the PRC is subject to a 10.0% withholding tax, subject to reduction as provided by any applicable double taxation treaty, unless the relevant income is specifically exempted from tax under the Applicable Foreign Enterprises Tax Law. The profit derived by a foreign investor from a PRC enterprise with foreign investment is exempted from PRC tax according to the Applicable Foreign Enterprises Tax Law. However, following the enforcement of the Enterprise Income Tax Law from 1 January 2008, dividends of the year 2008 and the years afterwards distributed from foreign investment enterprises to foreign investors shall be subject to the Enterprise Income Tax. Profits accumulated by foreign investment enterprises before 1 January 2008 but distributed to foreign investors after 1 January 2008 are exempted from the Enterprise Income Tax.

The Arrangement Between Mainland China and Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income and Prevention of Tax Evasion (the "**Arrangement for Avoidance of Double Taxation**") (内地和香港特别行政区关于对所得避免双重征税和防止偷漏税的安排) was signed by Mainland China and the Hong Kong Special Administrative Region on 21 August 2006. According to the new Arrangement for Avoidance of Double Taxation, the top rates for withholding tax for dividends a Hong Kong resident receives from mainland investments will be cut to 10% while the rates for dividends a Hong Kong business receives will fall to 5% if the Hong Kong business holds at least 25% of the capital of the enterprise in the mainland.

14. SUMMARY OF LAW (Cont'd)

14.2.11 Exchange control

Major reforms have been introduced on the foreign exchange control system of the PRC since 1993.

The People's Bank of China (the "PBOC"), with the authorities of the State Council, issued on 28 December 1993, the Notice on the Further Reform of the Foreign Exchange Control System (中国人民银行关于进一步改革外汇管理体制的通知) and on 26 March 1994 the Provisional Regulations on the Settlement, Sale and Payment of Foreign Exchange (结汇、售汇及付汇管理暂行规定) which came into effect on 1 April 1994 respectively. On 29 January 1996, the State Council promulgated the PRC Foreign Exchange Administration Regulations (中华人民共和国外汇管理条例) which took effect on 1 April 1996 and was revised on 14 January 1997 and 1 August 2008. On 20 June 1996, the PBOC issued the Administration Regulations on the Settlement, Sale and Payment of Foreign Exchange (结汇、售汇及付汇管理规定) instead of the above Provisional Regulations, which took effect on 1 July 1996. On 25 October 1998, the PBOC and the State Administration for Foreign Exchange issued a Joint Announcement on Abolishment of Foreign Exchange Swap Business which stated that from 1 December 1998, all foreign exchange transactions for FIEs may only be conducted through authorised banks.

These regulations contain detailed provision regulating the holding, sale and purchase of foreign exchange by individuals, enterprises, economic bodies and social organisations in the PRC.

On 21 July, 2005, the Public Announcement of the PBOC on Reforming the RMB Exchange Rate Regime (the "Announcement") (完善人民币汇率形成机制改革有关事宜公告) was promulgated by PBOC. In accordance with the Announcement, the PRC government has reformed the RMB exchange rate regime into a managed floating exchange rate regime based on market supply and demand with reference to a basket of currencies, giving more flexibility as compared with the former system in which the RMB was pegged to the US dollar. Under such reformed system, the PBOC announces the closing price of a foreign currency traded against the RMB in the inter-bank foreign exchange market after the closing of the market on each working day, and will make it the central parity for trading against the RMB on the following working day. PRC banks licensed to engage in foreign exchange transactions use the closing price announced by the PBOC as a basis and decide a rate of their own to enter into foreign exchange sale and purchase transactions with customers, such rate shall be within a specified floating band around the central parity which may be adjusted by the PBOC from time to time according to the economic and financial condition in the PRC.

In general, all organisations and individuals within the PRC can remit their foreign exchange earnings back to the PRC or deposit them abroad. The terms and conditions for such remittance / deposit are prescribed by for the foreign exchange administration authorities of the State Council in accordance with the PRC's international balance of payments and foreign exchange management needs. In relation to PRC enterprises, their recurrent foreign exchange earnings can be retained or exchanged through financial institutions that have foreign exchange settlement, sale and payment operations.

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14. SUMMARY OF LAW (Cont'd)

In general, all organisations and individuals within the PRC, including FIEs, are required to remit their foreign exchange earning back to the PRC. In relation to PRC enterprises, their recurrent foreign exchange earnings are generally required to be sold to designated banks unless specifically approved otherwise. Foreign investment enterprises (including sino-foreign equity joint ventures, Sino-foreign co-operative joint ventures and wholly foreign owned enterprises), on the other hand, are permitted to retain certain percentage of their recurrent foreign exchange earnings and the sums retained may be deposited into foreign exchange bank accounts maintained with designated banks. Capital foreign exchange earnings must be deposited into foreign exchange bank accounts maintained with designated banks and can generally be retained in such accounts.

At present, control on the purchase of foreign exchange is being relaxed. Enterprises which require foreign exchange for their current activities such as trading activities and payment of staff remuneration may purchase foreign exchange from foreign exchange settlement and sales operations of financial institutions, subject to the production of relevant supporting documents without the need for any prior approvals of the State Administration of Foreign Exchange.

In addition, where an enterprise requires any foreign exchanges for the payment of dividends that are payable in foreign currencies under applicable regulations, such as the distribution of profits by a foreign investment enterprise to its foreign investment party, then subject to the due payment of tax on such dividends the amount required may be withdrawn from funds in foreign exchange accounts maintained with designated banks, and where the amount of the funds in foreign exchange is insufficient, the enterprise may purchase additional foreign exchange from financial institutions that have foreign exchange settlement, sale and payment operations upon the presentation of the resolutions of the board of directors on the profit distribution plan of the enterprise.

Despite the relaxation of foreign exchange control over current account transaction, the approval of the foreign exchange administration authority is still required before a PRC enterprise may borrow a loan in foreign currency or provide any foreign exchange guarantee. To make any direct investment outside of the PRC or engage in business of distribution and trading for securities and derivative products outside PRC, registration is required from the foreign exchange administration authorities of the State Council. Further, the approval from the relevant authorities may be required before registration can be made effective with the foreign exchange administration authorities.

When conducting actual foreign exchange transactions, the designated banks may, based on the exchange rate published by the PBOC and subject to certain limits, freely determine the applicable exchange rate.

The China Foreign Exchange Trading Centre (中国外汇交易中心) (the "CFETC") was formally established and came into operation in April 1994. CFETC has set up a computerised network with sub-centres in several major cities, thereby forming an interbank market in which designated PRC banks can trade in foreign exchange and settle their foreign currency obligations. Prior to 1 December 1998, enterprises with foreign investment may at their own choice enter into exchange transactions through Swap Centre or through designated PRC banks. From 1 December 1998 onwards, exchange transactions will have to be conducted through designated banks. Swap Centres became restricted to conducting foreign exchange transaction between authorised banks and inter-bank leading between PRC banks.

14. SUMMARY OF LAW (Cont'd)

14.2.12 WFOE

WFOEs are governed by the Law of the People's Republic of China Concerning Enterprises with Sole Foreign Investments, which was promulgated on 12 April 1986 and amended on 31 October 2000, and its Implementation Regulations promulgated on 12 December 1990 which was amended on 12 April 2001 (collectively the "**Foreign Enterprises Law**"). HongPeng (Fujian) is a WFOE and is therefore governed by the Foreign Enterprise Law.

(a) Procedures for establishment of a WFOE

The establishment of a WFOE will have to be approved by the Ministry of Commerce (the "**MOFCOM**") (or its delegated authorities). If two (2) or more foreign investors jointly apply for the establishment of a WFOE, a copy of the contract between the parties must also be submitted to MOFCOM (or its delegated authorities) for its record. A WFOE must also obtain a business licence from SAIC (or its delegated authorities) before it can commence business.

(b) Nature

A WFOE is a limited liability company under the Foreign Enterprise Law. It is a legal person which may independently assume civil obligations, enjoy civil rights and has the right to own, use and dispose of property. It is required to have a registered capital contributed by the foreign investor(s). The liability of the foreign investor(s) is limited to the amount of registered capital contributed. A foreign investor may make its contributions by instalments and the registered capital must be contributed within the period as approved by MOFCOM (or its delegated authorities) in accordance with relevant regulations.

(c) Repatriation of Profits

The Foreign Enterprise Law provides that after payment of taxes, a WFOE must make contributions to a reserve fund. At least 10.0% of the after tax profits must be allocated to the reserve fund. If the cumulative total of allocated reserve funds reaches 50.0% of an enterprise's registered capital, the enterprise will not be required to make any additional contribution. The enterprise is prohibited from distributing dividends unless the losses (if any) of previous years have been made up.

Subject to compliance with relevant exchange rules and regulations, a WFOE may remit out of the PRC profits that are lawfully earned in the PRC by our subsidiaries.

14.2.13 Securities Law

The Securities Law of the PRC, which was revised and adopted at the 18th Meeting of the Standing Committee of the 10th National People's Congress of the People's Republic of China on October 27, 2005 were promulgated and implemented as of January 1, 2006. The Law shall be applied to the issuance and transaction of stocks, corporate bonds as well as any other securities as lawfully recognized by the State Council within the territory of the PRC.

14. SUMMARY OF LAW (Cont'd)

Only Chinese institutions, organizations or individuals, not including Taiwan, Hong Kong, Macao investors can subscribe for and market in Chinese RMB the common stocks issued by the domestic enterprises listed in mainland Chinese stock exchanges.

The Regulations of The State Council on Foreign Capital Stocks Listed in China by Joint-Stock Companies was adopted at the 37th Meeting of the State Council on November 2 1995 and was promulgated on December 25 1995. With the approval of the Securities Commission of the State Council, joint-stock companies may issue foreign capital stocks to be listed in China. Investors in foreign capital stocks listed in China shall be limited to: (1) natural persons, legal persons and other organizations from foreign countries; (2) natural persons, legal persons or other organizations from the Chinese regions of Hong Kong · Macau and Taiwan; (3) Chinese citizens living abroad; and (4) other investors in foreign capital stocks prescribed by the Securities Commission of the State Council. Investors in foreign capital stocks listed in China shall produce valid instruments as testimony to their identity and qualification as investors when they subscribe for or market foreign capital stocks. Stockholders who hold the same category of foreign capital stocks listed in China or internal stocks shall enjoy equal rights and interests and perform equal duties according to the Company Law. Companies may make specific stipulations in the company constitution concerning stockholders' rights and duties.

14.2.14 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 NPC 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 be restricted by the law to safeguard employees' rights and interests.

14.2.15 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.

14. SUMMARY OF LAW (Cont'd)

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 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.

Under the Prevention of Water Pollution Law, companies which discharge pollutants directly or indirectly into bodies of water must register with the environmental protection department of the local government at county level or above in the area where they are situated. Such companies must provide information on their facilities which discharge such pollutants, their treatment plants, the type, amount and concentration of the pollutants discharged under normal business operations, in accordance with regulations set by the Administration Supervisory Department of Environmental Protection of the State Council. If there are significant changes to the type, amount or concentration of pollutants being discharged, such changes must be reported immediately. The dismantling or non-usage of pollution treatment plants also require the approval of the environmental protection department of the local government at county level or above.

The Law of the PRC on the Prevention and Control of the Atmospheric Pollution (中华人民共和国大气污染防治法) (the "**Atmospheric Pollution Prevention Law**") promulgated by the NPC on 5 September 1987, which was last revised on 29 April 2000, established the provisions of the prevention, treatment and management of the atmospheric pollution. New construction project, expansion, or reconstruction project that discharges pollutions into the air shall comply with the Atmospheric Pollution Prevention Law and other relevant regulations on environmental protection. Enterprises that discharge pollutants into the atmosphere must report to the local administrative department of environmental protection its existing discharge and treatment facilities for pollutants and the categories, quantities and concentrations of pollutants discharged under normal operation conditions and submit to the same department relevant technical data concerning the prevention and control of atmospheric pollution.

14. SUMMARY OF LAW (Cont'd)

The Laws of the PRC on the Prevention and Control of the Noise Pollution (中华人民共和国环境噪声污染防治法) (the "**Noise Pollution Prevention Law**") promulgated by the Standing Committee of NPC on 29 October 1996 established the provisions of the prevention, treatment and management of noise pollution. New construction project, expansion, or reconstruction project that discharges noise which may disturb the surrounding living environment shall comply with the Noise Pollution Prevention Law. Enterprises that make noise pollution must report to the local administration department of environmental protection the categories and quantities of its existing facilities which create and abate noise and the noise level emitted under normal operation conditions, and also submit to the same department relevant technical data concerning the prevention and control of noise pollution.

The Laws of the PRC on the Prevention and Control of the Solid Waste Pollution (中华人民共和国固体废物污染环境防治法) (the "**Solid Waste Pollution Prevention Law**") promulgated by the Standing Committee of NPC on 30 October 1995 and revised on 29 December 2004, establishes the provisions of the prevention, treatment and management of solid pollution within the Chinese territory. New construction project, expansion, or reconstruction project that discharges solid pollutants shall comply with the Solid Waste Pollution Prevention Law and other state regulations on environmental protection. Enterprises that discharge solid pollutants must report to the local administration department of environmental protection its existing discharge and treatment facilities for pollutants and the categories, quantities and concentrations of pollutants discharged under normal operation conditions and submit to the same department relevant technical data concerning the prevention and control of solid waste pollution.

14.2.16 Particular legal issues concerning our Group

(a) Business license

Under PRC Law, a business license is required for the establishment of our subsidiaries and to enable it to commence business.

Upon the expiration of the business license, our Directors understand that the business license will be renewed if, at the time of application for renewal, the PRC subsidiaries of our Group are in compliance with the applicable regulations governing the renewal of business license. Presently, our Directors believe that the PRC subsidiaries are in compliance with such regulations, and expected to conduct the business of our Group in a manner that is in accordance with such regulations.

(b) Enterprise income tax

As a FIE of a production nature with a term of actual operation over ten years, our subsidiaries is exempted from enterprise tax in the first two (2) profitable years of operation, commencing from its first profit-making year, and is also entitled to a 50.0% relief from the prevailing rate of enterprise tax for the next three (3) years.

In the event that the actual operation term of the foreign-invested company is less than ten (10) years when it is terminated, the above exempted part of tax treatment it has enjoyed shall be refunded to the state tax administration.

14. SUMMARY OF LAW (Cont'd)

(c) Foreign exchange registration

The Notice On Issues Concerning Foreign Exchange Management in Financing By PRC Residents By Overseas Special Purpose Vehicle (the "SPV") and Return-Investments (国家外汇管理局关于境内居民通过境外特殊目的公司融资及返程投资外汇管理有关问题的通知) (the "Notice 75") promulgated by SAFE which came into force on 1 November 2005 also applies to the repatriation of revenues by HongPeng (Fujian) to our Company in the form of dividend income or otherwise. Pursuant to Notice 75, SPVs are foreign companies that are established by or controlled by PRC residents for raising financing outside of the PRC by way of equity issue or convertible debt. Such PRC residents (the "Relevant PRC Residents") are required to file an "overseas investment foreign exchange registration" before the establishment of such SPV and subsequently, to update such registration on the occurrence of specified events (the "Specified Events") such as (i) the injection of assets or shares of a PRC domestic company into the SPV; (ii) a subsequent equity financing by such SPV outside of the PRC; (iii) any capital reduction; and (iv) share transfers or share swaps. Subject to completion of the aforesaid registration, payment of dividends, profits and other payments to such SPV will be permitted.

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14. SUMMARY OF LAW (Cont'd)

14.3 SUMMARY OF HONG KONG LAW

14.3.1 Policies and law on Foreign Investments

There are no restrictions in Hong Kong on investments inward or outward, and there are no nationality restrictions on corporate or sectoral ownership.

Article 105 of the Basic Law of Hong Kong provides:

"The ownership of enterprises and the investments from outside [Hong Kong] shall be protected by law."

There are no limitations imposed by law or by the constituent documents of XinYuanChan on the right to own securities of XinYuanChan, including the right of non-Hong Kong resident or foreign shareholders to hold or exercise voting rights on the securities, save that the Articles of Association of XinYuanChan have the following relevant provisions:-

Article 2 thereof provides as follows:-

"The Company is a private company, and accordingly:-

...

(b) the number of the members of the Company (not including persons who are in the employment of the Company, and persons who, having been formerly in the employment of the Company were, while in that employment, and have continued after the determination of that employment to be, members of the Company) shall be limited to fifty ... ; and

(c) the right to transfer the shares of the Company shall be restricted in manner hereinafter appearing."

Article 7 thereof provides as follows:-

"The Directors may in their absolute discretion and without assigning any reason therefor, refuse to register a transfer of any share [of the Company]..."

14.3.2 Taxation

- (1) Hong Kong adopts a territorial source principle of taxation. Only profits which have a source in Hong Kong are taxable in Hong Kong. Profits sourced elsewhere are not subject to Hong Kong profits tax.

Consequently, if a Hong Kong company derives profits from business activities outside Hong Kong, no Hong Kong tax will be levied on such profits.

The profits tax rate in Hong Kong is the same for foreign and local companies, which is currently at 16.5 percent (16.5%) for corporations.

- (2) Dividends received from corporations are not subject to tax in Hong Kong.

In Hong Kong, there is no capital gains tax, or withholding tax on dividends and interest.

- (3) The salaries tax rate in Hong Kong is currently at a maximum rate of 15 percent (15%), imposed only on all salary income of individuals derived in or from Hong Kong.

14. SUMMARY OF LAW (Cont'd)

- (4) The property tax in Hong Kong applies to owners of land or buildings situated in Hong Kong. It is currently 15 percent (15%) of the rental income from the land or buildings and an allowance of 20 percent (20%) is permitted for repairs and maintenance.
- (5) There is no sales tax or VAT in Hong Kong.
- (6) (i) In Hong Kong, stamp duty is payable on certain types of documents, which are mainly as follows:
- (a) Conveyance on sale (i.e. Assignment);
 - (b) Agreement for sale of residential property;
 - (c) Lease of immovable property (i.e. Tenancy Agreement); and
 - (d) Transfer of Hong Kong stock.

(ii) In the case of conveyances of immovable property, stamp duty is charged at rates which vary with the amount or value of the consideration as follows:

Amount or value of the consideration		Rate
Exceeds	Does not exceed	
	HK\$2,000,000	HK\$100
HK\$2,000,000	HK\$2,351,760	HK\$100 + 10% of excess over HK\$2,000,000
HK\$2,351,760	HK\$3,000,000	1.5%
HK\$3,000,000	HK\$3,290,320	HK\$45,000 + 10% of excess over HK\$3,000,000
HK\$3,290,320	HK\$4,000,000	2.25%
HK\$4,000,000	HK\$4,428,570	HK\$90,000 + 10% of excess over HK\$4,000,000
HK\$4,428,570	HK\$6,000,000	3%
HK\$6,000,000	HK\$6,720,000	HK\$180,000 + 10% of excess over HK\$6,000,000
HK\$6,720,000		3.75%

(iii) Stamp duty on contract notes (i.e. bought and sold notes) for transfer of Hong Kong stock is 0.2 % of the consideration or its value.

- (7) For a Hong Kong company, capital fee is payable at the rate of HK\$1 for every or part of HK\$1,000 of the nominal share capital, subject to a maximum fee of HK\$30,000 per case.

14.3.3 Foreign Exchange control

There are no foreign exchange controls in Hong Kong.

Article 112 of the Basic Law of Hong Kong provides that:

"No foreign exchange control policies shall be applied in the Hong Kong Special Administrative Region. The Hong Kong dollar shall be freely convertible. Markets for foreign exchange, gold, securities, futures and the like shall continue.

14. SUMMARY OF LAW (Cont'd)

The Government of the Hong Kong Special Administrative Region shall safeguard the free flow of capital within, into and out of the Region.”

14.3.4 Repatriation of capital and profits

There are no restrictions on repatriation of profits in Hong Kong.

There is a free flow of funds from outside into Hong Kong and freedom of repatriation of funds on profits made.

There are no restrictions imposed by governmental laws or regulations of Hong Kong on the following:-

- (a) the repatriation of capital and the remittance of profit by or to XinYuanChan;
- (b) the availability of cash and cash equivalents for use by XinYuanChan; and
- (c) the remittance of dividends, interest or other payments to shareholders of XinYuanChan.

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

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 ("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. Among others, in regard to the Malaysian Company Law, various changes would 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. NOTE: References at this time to the Bye-laws of our Company shall refer to Bye-laws proposed to be adopted before registration of the Prospectus.

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
DIRECTOR'S POWER TO VOTE ON A PROPOSAL, ARRANGEMENT OR CONTRACT IN WHICH HE IS INTERESTED; CONFLICTS OF INTEREST AND OTHER TRANSACTIONS WITH DIRECTORS		
<i>Directors' Disclosure of Interest in Contracts with the Issuer</i>		
Section 131(1) of the Malaysian Companies Act: Subject to this section 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	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 – (a) he fails on request to make known to the auditors of	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. In addition, Bye-laws 100 and 101 expressly refer

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

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>of the directors of the company.</p> <p>Section 131(3) of the Malaysian Companies Act: A director of a company shall not be deemed to be interested or to have been at any time interested in any contract or proposed contract by reason only –</p> <p>(a) in a case where the contract or proposed contract relates to any loan to the company – that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or</p> <p>(b) in a case where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 6 is deemed to be related to the company – that he is a director of that corporation,</p> <p>and this subsection shall have effect not only for the purposes of the Malaysian Companies Act but also for the purposes of any other law, but shall not affect the operation of any provision in the articles of the company.</p> <p>Section 131(4) of the Malaysian Companies Act: For the purposes of subsection (1), a general notice given to the directors of a company by a director to the effect that he is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that corporation or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made if it specifies the nature and extent of his interest in the specified corporation or firm and his interest is not different in nature or greater in extent than the nature and extent so specified in the general notice at the time any contract is so made, but no such notice shall be of effect unless either it is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.</p> <p>Section 131(5) of the Malaysian Companies Act: Every</p>	<p>the company full details of –</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 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</p>	<p>to directors.</p>

15. SUMMARY 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>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>Section 131(6) of the Malaysian Companies Act: The declaration shall be made at the first meeting of the directors held –</p> <p>(a) after he becomes a director; or</p> <p>(b) (if already a director) after he commenced to hold the office or to possess the property,</p> <p>as the case requires.</p> <p>Section 131(8) of the Malaysian Companies Act: Except as provided in subsection (3) this section shall be in addition to and not in derogation of the operation of any rule of law or any provision in the articles restricting a director from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his duties or interests as a director.</p>	<p>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 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</p>	

15. SUMMARY 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>Interested Director Not to Participate or Vote in Board's Proceedings</i></p> <p>Section 131A(1) of the Malaysian Companies Act: 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>Section 131A(2) of the Malaysian Companies Act: Subsection (1) 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</p>	<p>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>Not provided in the Act.</p> <p>Bye-law 102: 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 an interest.</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 prohibits a director from voting in respect of any contract or arrangement or proposed contract or arrangement in which he has, directly or indirectly, an interest. Unlike the Malaysian Companies Act, the Bye-laws do not provide for circumstances which a director is regarded as being interested.</p>

15. SUMMARY 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>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><i>Director's Fiduciary Duties and Conflicts of Interest</i></p>		
<p>Section 132(1) of the Malaysian Companies Act: A director of a company shall at all times exercise his powers for a proper purpose and in good faith in the best interest of the company.</p> <p>Section 132 (1A) of the Malaysian Companies Act: A director of a company 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 which the director in fact has.</p> <p>Section 132 (1B) of the Malaysian Companies Act: A director who makes a business judgement is deemed to meet the requirements of the duty under subsection (1A) 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>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 Bermuda Companies Act: An officer is not liable under section 97(1) of the Bermuda Companies 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 Bermuda Companies Act, upon such terms as the Board may determine. Any</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 essentially 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. SUMMARY 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) is informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and</p> <p>(d) reasonably believes that the business judgment is in the best interest of the company.</p> <p>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>(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: The director's reliance made under subsection (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>remuneration (whether by way of salary, commission, participation in profits or otherwise) paid to any Director in respect of any such other 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, 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</p>	

15. SUMMARY 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 132 (1E) of the Malaysian Companies Act: 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: A director or officer of a company shall not, without the consent or ratification of a general meeting –</p> <ul style="list-style-type: none"> (a) use the property of the company; (b) use any information acquired by virtue of his position as a director or officer of the company; (c) use his position as such director or officer; (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 (e) engage in business which is in competition with the company, <p>to gain directly or indirectly, a benefit for himself or any other person, or cause detriment to the company.</p>	<p>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>	
<p><i>Related Party Transactions</i></p> <p>Section 132E of the Malaysian Companies Act:(1) Subject to subsection (2) and section 132F, 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> <ul style="list-style-type: none"> (a) acquires or is to acquire shares or non-cash 	<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</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</p>

15. SUMMARY 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>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>(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</p>	<p>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, 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 Bye-law 169A(4), to indemnify the Company for any loss or damage resulting from the arrangement or transaction.</p>	<p>(6) of the Malaysian Companies Act imposes a penalty on the director or substantial shareholder who contravened the section.</p>

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

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>loss or damage resulting from the arrangement or transaction.</p> <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>(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 (please refer to the summary of Section 122A in the section on "Loans to Directors" below) 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) 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</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>(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 exercise, or control the exercise of, not less than fifteen per cent (15%) 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>	

15. SUMMARY 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>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 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 a company, by whatever name called;</p> <p>(d) "non-cash asset" means any property or interest in property other than cash.</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 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</p>	

15. SUMMARY 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>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 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 provisions in the Listing</p>	

15. SUMMARY 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>(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>Loans to Directors</p> <p>Section 133 of the Malaysian Companies Act:</p> <p>(1) A company (other than an exempt private company) shall 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</p>	<p>Section 96(1) to (5) of the Act:</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>Save for the circumstances provided in Section 96(1)(a) - (c) of the Act, the Act prohibits loans to its directors 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>

15. SUMMARY 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>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) Paragraph (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>(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>(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</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 96(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>(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>(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>(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</p>	<p>The Malaysian Companies Act also allows for loan to be made by a company to its directors engaged in the full time employment of the company or its holding company 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. SUMMARY 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>jointly and severally liable to indemnify the company against any loss arising therefrom.</p> <p>(4) Where a company contravenes this section any director who authorizes the making of any loan, the entering into of any guarantee or the providing of any security contrary to this section shall be guilty of an offence against the Malaysian Companies Act.</p> <p>(5) Nothing in this section shall operate to prevent the company from recovering the amount of any loan or amount for which it becomes liable under any guarantee entered into or in respect of any security given contrary to this section.</p> <p>Section 133A(1) of the Malaysian Companies Act: a company (other than an exempt private company) shall not</p>	<p>against any loss arising therefrom.</p> <p>(4) A loan shall be deemed to be a loan to a director if it is made to –</p> <p>(a) the spouse or children of a director; or</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>(5) For the purposes of section 96 of the Act a loan shall not be deemed to have been made in the 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>(a) make a loan to any person connected with a director of the company or of its holding company; or</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>Section 133A(2) of the Malaysian Companies Act: This section shall not apply –</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 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 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>(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: 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. SUMMARY 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) 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> <ul style="list-style-type: none"> (i) for the purpose of meeting expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or (ii) in accordance with a scheme for the making of loans to employees approved by the company in general meeting. <p>Section 122A of the Malaysian Companies 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> <ul style="list-style-type: none"> (a) a member of that director's family; or (b) a body corporate which is associated with that director; or (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 (d) a partner of that director or a partner of a person connected with that director. <p>(2) In paragraph (1)(a), "a member of that director's family" shall include his spouse, parent, child (including adopted child and stepchild), brother, sister and the spouse of his child, brother or sister.</p> <p>(3) For the purposes of paragraph (1)(b), a body corporate is associated with a director if –</p> <ul style="list-style-type: none"> (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 		

15. SUMMARY 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>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 Companies 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>		
<p>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</p>		
<p><i>Remuneration of Directors</i></p>		
<p>Section 137 of the Malaysian Companies Act:</p> <p>(1) It shall not be lawful –</p> <p>(a) for a company to make to any director 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</p>	<p>Remuneration of directors is not provided for in the Act.</p> <p>There are requirements for general meeting</p>

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

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>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>(2) Where such a payment is to be made to a director in connection with the transfer to any person, as a result of an offer made to shareholders, of all or any of the shares in the company, that director shall take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders, unless those particulars are furnished to the shareholders in accordance with the relevant law applicable to takeovers.</p> <p>(3) A director who fails to comply with subsection (2) and a person who has been properly required by a director to include in or send with any notice under this section the particulars required by that subsection and who fails so to do, shall be guilty of an offence against the Malaysian Companies Act, and if the requirements of that subsection are not complied with any sum received by the director on account of the payment shall be deemed to have been received by him in trust</p>	<p>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>(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 or percentage of the profits or turnover, and no Director</p>	<p>approval in relation to compensation for loss of office of directors under the Malaysian Companies Act. 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. SUMMARY 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 any person who has sold his shares as a result of the offer made.</p> <p>(4) If in connection with any such transfer the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of the like shares or any valuable consideration is given to any such director, the excess or the money value of the consideration, as the case may be, shall, for the purposes of this section, be deemed to have been a payment made to him by way of compensation for loss of office or as consideration for or in connection with his retirement from office.</p> <p>As to payments to directors</p> <p>(5) Any reference in this section to payments to any director of a company by way of compensation for loss of office or as consideration for or in connection with his retirement from office shall not include –</p> <p>(a) any payment under an agreement entered into before the commencement of the relevant repealed written laws;</p> <p>(b) any payment under an agreement, particulars whereof have been disclosed to and approved by special resolution of the company;</p> <p>(c) any <i>bona fide</i> payment by way of damages for breach of contract;</p> <p>(d) any <i>bona fide</i> payment by way of pension or lump sum payment in respect of past services, including any superannuation or retiring allowance, superannuation, gratuity or similar payment, where the value or amount of the pension or payment (except so far as it is attributable to contributions made by the director) does not exceed the total emoluments of the director in the</p>	<p>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 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>	

15. SUMMARY 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>three years immediately preceding his retirement or death; or</p> <p>(e) any payment to a director pursuant to an agreement made between the company and him before he became a director of the company as the consideration or part of the consideration for the director agreeing to serve the company as a director.</p> <p>(6) This section shall be in addition to and not in derogation of any rule of law requiring disclosure to be made with respect to any such payments or any other like payment.</p> <p>(7) In this section "director" includes any person who has at any time been a director of the company or of a corporation which is by virtue of section 6 deemed to be related to the company.</p>		
BORROWING POWERS EXERCISABLE BY DIRECTORS AND HOW SUCH POWERS MAY BE VARIED		
<p>There are no provisions specifically vesting the directors with borrowing powers under the Malaysian Companies Act save for the broad stipulation under Section 131B of the Malaysian Companies Act that the business and affairs of a company must be managed by, or under the direction of, the board of directors and the board of directors has all the powers necessary for managing and for directing and supervising the management of the business and affairs of the company subject to any modification, exception or limitation contained in the Malaysian Companies Act or in the memorandum or articles of association of the company.</p> <p>There are however, restrictions on the exercise of borrowing and other powers in certain circumstances prescribed under the Malaysian Companies Act.</p> <p>Section 52(1) of the Malaysian Companies Act: Where a company having a share capital has issued a prospectus inviting the public to subscribe for its shares or has issued</p>	<p>Not provided for in the Act save that section 91(1) of the 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</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. SUMMARY COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>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 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>Section 52(2) of the Malaysian Companies Act: 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</p>	<p>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 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, a "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>	

15. SUMMARY 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>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 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>		
QUALIFICATION, APPOINTMENT AND RETIREMENT OR NON-RETIREMENT OF DIRECTORS UNDER AN AGE LIMIT REQUIREMENT		
<p>Section 122(1) 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>Section 122 (2) of the Malaysian Companies Act: No person other than a natural person of full age shall be a director of a company.</p> <p>Section 122(6) of the Malaysian Companies Act: Notwithstanding anything contained in the Malaysian Companies Act or in the memorandum or articles of a company or in any agreement with a company, a director of a company shall not 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 number required by subsection (1) and any purported resignation or vacation of office is contravention of this section shall be deemed to be invalid.</p> <p>Section 122(7) of the Malaysian Companies Act: Subsection (6) shall not apply where a director of a company is required to resign or vacate his office if he has not within the period referred to in subsection 124(1) obtained his qualification or by virtue of his disqualification under the Malaysian Companies Act or any other written law.</p> <p>Section 126 of the Malaysian Companies Act:</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 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: Every exempted company shall</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. SUMMARY 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>(1) At a general meeting of a public company, a motion for the appointment of two or more persons as directors by a single resolution shall not be made unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.</p> <p>(2) A resolution passed in pursuance of a motion made in contravention of this section shall be void, whether or not its being so moved was objected to at the time.</p> <p>Section 129 of the Malaysian Companies Act:</p> <p>(1) Subject to this section but notwithstanding anything in the memorandum or articles of the company no person or over the age of seventy years shall be appointed or act as a director of a public company or of a subsidiary of a public company.</p> <p>(2) The office of a director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual general meeting commencing next after he attains the age of seventy years or if he has attained the age of seventy years before the commencement of the Malaysian Companies Act at the conclusion of the annual general meeting commencing next after the commencement of the Malaysian Companies Act.</p> <p>(3) Any Act done by a person as director shall be valid notwithstanding that it is afterwards discovered that there was a defect in his appointment or that his appointment had terminated by virtue of subsection (2).</p> <p>(4) Where the office of a director has become vacant by virtue of subsection (2) no provision for the automatic reappointment of retiring directors in default of another appointment shall apply in relation to that director.</p> <p>(5) If any such vacancy has not been filled at the meeting at which the office became vacant the office may be</p>	<p>have –</p> <p>(a) a minimum of one director, other than an alternate director, who is ordinarily resident in Bermuda; or</p> <p>(b) a secretary that is -</p> <p>(i) an individual who is ordinarily resident in Bermuda; or</p> <p>(ii) a company which is ordinarily resident in Bermuda; or</p> <p>(c) a resident representative that is -</p> <p>(i) an individual who is ordinarily resident in Bermuda; or</p> <p>(ii) a company which is ordinarily resident in Bermuda.</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 two (2) 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 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</p>	

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

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>filled as a casual vacancy.</p> <p>(6) Notwithstanding anything in this section a person of or over the age of seventy years may 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 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>(7) The provisions of section 147 of the Malaysian Companies Act relating to the demanding of a poll and the holding of a poll shall apply to a resolution under this section.</p> <p>(8) Nothing in this section shall limit or affect the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his office at any age less than seventy years.</p> <p>(9) The provisions of the articles of a company relating to the rotation and retirement of directors shall not apply to a director who is appointed or reappointed pursuant to this section but such provisions of the articles shall continue to apply to all other directors of the company.</p>	<p>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 and 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 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>	
NUMBER OF SHARES, IF ANY, REQUIRED FOR THE QUALIFICATION OF DIRECTOR		
<p>Section 124(1) of the Malaysian Companies Act: Without affecting the operation of any of the preceding provisions of</p>	<p>Not provided for in the Act.</p> <p>Bye-law 85(3): Neither a Director nor an alternate Director</p>	<p>The Act does not provide any provision relating to share qualification and under the Malaysian</p>

15. SUMMARY 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 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.</p> <p>Section 124(3) of the Malaysian Companies Act: 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.</p> <p>Section 124(4) of the Malaysian Companies Act: A person vacating office under this section shall be incapable of being reappointed as director until he has obtained his qualification.</p> <p>Unless the articles otherwise provide, however, a director need not hold shares in the company to qualify for appointment.</p>	<p>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>Companies Act, director's share qualification, if any, is subject 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>
DISQUALIFICATION, RESIGNATION AND REMOVAL OF DIRECTORS		
<i>Disqualification of Directors</i>		
<p>Section 125 of the Malaysian Companies Act:</p> <p>(1) Every person who being an undischarged bankrupt acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation except with the leave of the Court shall be guilty of an offence against the Malaysian Companies Act.</p> <p>(2) The Court shall not give leave under this section unless notice of intention to apply therefor has been served on the Minister and on the Official Receiver and the Minister and the Official Receiver or either of them may be represented at the hearing of and may oppose the granting of the application.</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</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>

15. SUMMARY 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 130 of the Malaysian Companies Act:</p> <p>(1) Where a person is convicted whether within or outside Malaysia –</p> <p>(a) of any offence in connection with the promotion formation or management of a corporation;</p> <p>(b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or</p> <p>(c) of any offence under sections 132, 132A or 303, and that person, within a period of five years after his conviction or, if he is sentenced to imprisonment, after his release from prison, without the leave of the Court is a director or promoter of or is in any way whether directly or indirectly concerned or takes part in the management in Malaysia of a corporation he shall be guilty of an offence against the Malaysian Companies Act.</p> <p>Section 130A(1) of the Malaysian Companies Act: Where on an application under this section it appears to the Court –</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 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,</p>	<p>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>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>	

15. SUMMARY 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>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>(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 during such period have attended in his stead and the Board resolves that his office be vacated; or</p> <p>(4) becomes bankrupt during his term of office 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 (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 (5) years of the date on which the first-mentioned</p>	

15. SUMMARY 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>Resignation of Directors</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>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 (5) 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>	<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</p>
<p>Resignation of Directors</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</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</p>

15. SUMMARY 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>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>meeting for the purpose of appointing (additional) directors.</p>
<p><i>Removal of Directors</i></p> <p>Section 128(1) 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>Section 128(2) of the Malaysian Companies Act: 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>Section 128(5) of the Malaysian Companies Act: 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>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</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 such meeting convened for the</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 (14) 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. SUMMARY COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>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 128(8) of the Malaysian Companies Act: A director of a public company shall not be removed by, or be required to vacate his office by reason of, any resolution, request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.</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>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 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>	
<p>RIGHTS, PREFERENCES AND RESTRICTIONS ATTACHING TO EACH CLASS OF SHARES</p>		
<p><i>Notice of Meetings and Business to be Concluded Thereat</i></p>		
<p>Section 145 of the Malaysian Companies Act:</p> <p>(1) Two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per centum in number of the members of the company or such lesser number as is provided by the articles may call a meeting of the company.</p>	<p>Section 70(2) of the Act: At least five days' notice in writing of the statutory meeting (being the first general meeting of the members of a company) shall be given to each member of the company unless the members unanimously agree to waive such notice; the notice shall specify the place, date and hour at which the 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>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 (14) days.</p> <p>Bye-law 58 provides that 'at least fourteen (14) days' notice' of a general meeting to be given to</p>

15. SUMMARY 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>(2) 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 the articles.</p> <p>(2A) 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</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 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.</p> <p>(5) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate proceedings at a meeting.</p> <p>Section 145A of the Malaysian Companies Act: A company shall hold all meetings of its members within Malaysia and</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 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</p>	<p>each Member.</p>

15. SUMMARY 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>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>Company, be deemed to be the sole holder thereof. 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:- (a) in the case of a meeting called as an annual general meeting, by all the Members entitled to attend and vote thereat; and (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. (2) For so long as the shares of the Company are listed on the Designated Stock Exchange, at least 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. (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</p>	

15. SUMMARY 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 proposed resolution 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 before the time for such meeting. Fresh notice of the date, time and place for the postponed meeting shall be given to each 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</p>	

15. SUMMARY 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>out with the Notice) to send such instrument of proxy to, 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 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</p>	

15. SUMMARY 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>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 holders.</p>	
<p><i>Venues and technology for company meetings</i></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>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:</p> <p>(1) Notwithstanding any provisions in the Malaysian Companies Act or in the memorandum or articles of a</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 Act, a</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. SUMMARY 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 to which this section applies, each equity share* issued by such a company after the commencement of the Malaysian Companies 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 the Malaysian Companies 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 proclamation.</p> <p>(5) This section applies to –</p> <p>(a) a public company having a share capital; and</p> <p>(b) a subsidiary of such a public company.</p>	<p>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 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>Bye-law 11 provides that 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 rights attached to any class may be varied or abrogated 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. SUMMARY COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>(6) A person shall not make any invitation to the public in breach of subsection (2).</p> <p>* "equity share" is defined in Section 4(1) of the Malaysian Companies Act as any share which is not a preference share.</p> <p>Section 61 of the Malaysian Companies Act:</p> <p>(1) 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>(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>(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 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</p>	

15. SUMMARY 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>(6) Where in pursuance of this section, 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>(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>(8) If a company redeems any redeemable preference 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:</p> <p>(1) 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</p>	<p>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>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>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 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</p>	

15. SUMMARY 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>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 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</p>	<p>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 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 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</p>	

15. SUMMARY 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>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 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(1) of the Malaysian Companies Act: 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>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 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 rights attached to any class may only be varied or abrogated with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class 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</p>	

15. SUMMARY 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 shall be as valid and effectual as a special resolution carried at such general meeting. The foregoing provisions of Bye-law 10 shall apply to the variation or abrogation of the 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 rights whereof are to be varied.</p> <p>Bye-law 11: The 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 <i>pari passu</i> 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 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 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>	

15. SUMMARY 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>Resolutions requiring Special Notice</p> <p>Section 153 of the Malaysian Companies Act: Where by the Malaysian Companies 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</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>Appointment/Removal of Auditor</p> <p>The Act and the Bye-laws provide that notice of 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</p>	<p>Section 89(3) 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 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</p>	

15. SUMMARY 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 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 (4) of the Malaysian Companies Act: 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: The 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 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>Section 128(2) of the Malaysian Companies Act: 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>Section 129(6) of the Malaysian Companies Act: Notwithstanding anything in this section a person of or over the age of seventy years may 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 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,</p>	<p>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 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</p>	<p>Malaysian Companies Act, please see the comments in the Removal of Director.</p> <p>Removal of Director</p> <p>Please see comments in the Removal of Director.</p>

15. SUMMARY 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>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><i>Quorum for Meetings</i></p> <p>Section 147(1) 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) two members of the company, personally present shall be a quorum;</p> <p>(b) any member elected by the members present at a meeting may be chairman thereof;</p> <p>(c) 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; and</p> <p>(d) in the case of a company not having a share capital every member shall have one vote.</p>	<p>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> <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 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>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 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</p>	<p>The Act does not provide for quorum of general meetings (other than for the statutory meeting).</p> <p>The quorum for the Malaysian Companies Act is two (2) 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 (2) members are required to form a quorum provided that if the company has only one (1) member then the quorum shall be one (1) member.</p>

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

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>proxy or as a duly authorized 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, 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 held by him 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>	
<i>Annual General Meetings</i>		
Section 143(1) of the Malaysian Companies Act: A general meeting of every company to be called the "annual general	Section 71(1) of the Act: A meeting of members of a company shall be convened at least once in every calendar	The Act and Bye-laws contain provisions on annual

15. SUMMARY 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" 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 145A of the Malaysian Companies Act: 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>Section 152A of the Malaysian Companies Act:</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 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: Where a</p>	<p>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) 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 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)</p>	<p>general meetings.</p>

15. SUMMARY 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>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>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>Special Resolutions</p> <p>Section 152 of the Malaysian Companies Act:</p> <p>(1) 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>(2) Notwithstanding subsection (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>(3) At any meeting at which a special resolution is</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 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>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. SUMMARY 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>submitted a declaration of the chairman that the resolution is carried shall unless a poll is demanded be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.</p> <p>(4) At any meeting at which a special resolution is submitted a poll shall be deemed to be effectively demanded if demanded –</p> <p>(a) by such number of members for the time being entitled under the articles to vote at the meeting as is specified in the articles, but it shall not in any case be necessary for more than five members to make the demand;</p> <p>(b) if no such provision is made by the articles, by three members so entitled, or by one member or two members so entitled, if that member holds or those two members together hold not less than ten per centum of the paid-up share capital of the company or if that member represents or those two members together represent not less than one-tenth of the total voting rights of all the members having a right to vote at the meeting.</p> <p>(5) In computing the majority on a poll demanded on the question that a special resolution be passed reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by the Malaysian Companies Act or the articles of the company.</p>		
<i>Convening of General Meetings on Requisition</i>		
<p>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</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</p>	<p>The general principle of these provisions in the Act is similar to those in the Malaysian Companies Act.</p>

15. SUMMARY 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 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 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 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 the Malaysian Companies Act in the</p>	<p>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 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</p>	

15. SUMMARY 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>case of special resolutions.</p> <p>Section 151 of the Malaysian Companies Act:</p> <p>(1) Subject to this section 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-</p> <p>(a) give 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</p> <p>(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; and</p> <p>(2) The number of members necessary for a requisition under subsection (1) shall be-</p> <p>(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</p> <p>(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</p>	<p>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> <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 effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same</p>	

15. SUMMARY 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>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 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–</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>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>(5) The company shall not be bound under this section to circulate any statement if, on the application either of</p>	<p>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 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)</p>	

15. SUMMARY 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 or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter and the Court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.</p>	<p>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>Section 148 of the Malaysian Companies Act:</p> <p>(1) Subject to subsection (2), 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:</p> <p>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>(2) Notwithstanding subsection (1), the articles may 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:</p> <p>Provided that any preference shares issued after the commencement of the Malaysian Companies Act shall carry the right to attend any general meeting and in a poll thereat to at least one vote for each ringggit or part of a ringggit that is paid up on each share –</p> <p>(a) during such period as the preferential dividend or any part thereof remains in arrear and unpaid, such period starting from a date not more than twelve months, or such lesser period as the</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 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</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. SUMMARY 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>articles may provide, after the due date of the dividend;</p> <p>(b) upon any resolution which varies the rights attached to such shares; or</p> <p>(c) upon any resolution for the winding up of the company.</p> <p>(3) For the purposes of subsection (2), a dividend shall be deemed to be due on the date appointed in the articles for the payment of the dividend for any year or other period, or if no such date is appointed, upon the day immediately following the expiration of the year or other period and whether or not such dividend shall have been earned or declared.</p>	<p>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 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>	

15. SUMMARY 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 147(1) 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) two members of the company, personally present shall be a quorum;</p> <p>(b) any member elected by the members present at a meeting may be chairman thereof;</p> <p>(c) 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>(d) in the case of a company not having a share capital every member shall have one vote.</p> <p>Section 147(2) of the Malaysian Companies Act: On a poll taken at a meeting a person entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.</p> <p>Section 147(3) of the Malaysian Companies Act: A corporation may by resolution of its directors or other governing body -</p> <p>(a) if it is a member of a company, authorize such person as it thinks fit to act as its representative, either at a particular meeting or at all meetings of the company or of any class of members; or</p> <p>(b) if it is a creditor (including a holder of debentures) of a company, authorize such person as it thinks fit to act</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 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</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. SUMMARY 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>as its representative either at a particular meeting or at all meetings of any creditors of the company,</p> <p>and a person so authorized shall, in accordance with his authority and until his authority is revoked by the corporation be entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual member, creditor or holder of debentures of the company.</p> <p>Section 147(4) of the Malaysian Companies Act: Where –</p> <p>(a) a person present at a meeting is authorized to act as the representative of a corporation at the meeting by virtue of an authority given by the corporation under subsection (3); and</p> <p>(b) the person is not otherwise entitled to be present at the meeting,</p> <p>the corporation shall, for the purposes of subsection (1), be deemed to be personally present at the meeting.</p> <p>Section 146(1) of the Malaysian Companies Act: 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>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 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</p>	

15. SUMMARY 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>(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 meeting in order that the appointment may be effective thereat.</p>	<p><u>Bermuda Company Law</u></p> <p>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. 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> <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</p>	

15. SUMMARY 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>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 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>	

15. SUMMARY 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>Section 152A of the Malaysian Companies Act:</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 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>Please also refer to Section 147(6) of the Malaysian Companies Act as set out under "Annual General Meeting".</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>(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</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. SUMMARY 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>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 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> <p>(a) a resolution passed pursuant to section 89(5) of the Act; or</p> <p>(b) a resolution passed for the purpose of removing a director before the expiration of his term of office</p>	

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

<u>Malaysian Company Law</u>	<u>Bermuda Company Law</u>	<u>Comments on differences</u>
	<p>under section 93 of the Act.</p> <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 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</p>	

15. SUMMARY 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><u>Proxies</u></p> <p>Section 149 (1) of the Malaysian Companies Act:</p> <p>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 or persons (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>Section 149(2) of the Malaysian Companies Act: In every notice calling a meeting of a company or a meeting of any class of members of a company there shall appear with reasonable prominence a statement as to the rights of the member to appoint proxies to attend and vote instead of the member, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting, every officer of the company who is</p>	<p>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>	
<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 credit of that Securities Account.</p> <p>Bye-law 77(2): In any case where an instrument of proxy appoints more than one (1) 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 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</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. SUMMARY 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 default shall be guilty of an offence against the Malaysian Companies Act.</p> <p>Section 149(5) of the Malaysian Companies Act: Any person who authorizes or permits an invitation to appoint as proxy a person or one of a number of persons specified in the invitation to be issued or circulated shall be guilty of an offence against the Malaysian Companies Act unless the invitation is accompanied by a form of proxy which shall entitle the member to direct the proxy to vote either for or against the resolution.</p>	<p>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 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</p>	

15. SUMMARY 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>Section 98 of the Malaysian Companies Act: The shares or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles, and shall not be of the nature of immovable property.</p> <p>Section 100(1) of the Malaysian Companies Act: A certificate under the common or official seal of a company specifying any shares held by any member of the company shall be <i>prima facie</i> evidence of the title of the member to the shares.</p> <p>Section 100(2) of the Malaysian Companies Act: Every share certificate shall be under the common seal of the company or (in the case of a share certificate relating to shares on a branch register) the common or official seal of the company and shall state as at the date of the issue of the certificate –</p> <p>(a) the name of the company and the authority under which the company is constituted;</p> <p>(b) the address of the registered office of the company in Malaysia, or where the certificate is issued by a branch office, the address of that branch office; and</p> <p>(c) the nominal value and the class of the shares and the extent to which the shares are paid up.</p> <p>Section 103 of the Malaysian Companies Act:</p> <p>(1) Notwithstanding anything in its articles, a company shall not register a transfer of shares or debentures unless a</p>	<p>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>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 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</p>	<p>Both the Act and the Malaysian Companies Act provide for transfer of shares. The Bye-laws further provide for transfer of deposited securities.</p>

15. SUMMARY 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>proper instrument of transfer in the prescribed form has been delivered to the company, but this subsection shall not prejudice any power to register as a 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>(1A) Nothing in this section shall be construed as affecting the validity of any instrument which would be effective to transfer shares or debentures apart from this section; and any instrument purporting to be made in any form which was common or usual in use, or in any other form authorized or required for that purpose apart from this section before the commencement of the Malaysian Companies Act, shall be sufficient, whether or not it is completed in accordance with the prescribed form, if it complies with the requirements as to execution and contents which apply to a transfer:</p> <p>Provided that a company shall be precluded from registering a transfer of shares or debentures, the title of which is evidenced by a certificate that is issued on or after the date of coming into operation of this subsection unless a proper instrument of transfer in the prescribed form has been delivered to the company.</p> <p>Section 104(1) of the Malaysian Companies Act: On the request in writing of the transferor of any share, debenture or other interest in a company, 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>Section 104(2) 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 than twenty-eight days after the date</p>	<p>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 of effecting the transfer unless the Board otherwise determines.</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>Bye-law 58(5): In accordance with the Rules, the Company shall inform the Depository of the dates of general</p>	

15. SUMMARY 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 the notice, to have the share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.</p> <p>Section 106(1) of the Malaysian Companies Act: The certification by a company of any instrument of transfer of shares debentures or other interests in the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show a <i>prima facie</i> title to the shares, debentures or other interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or other interests.</p> <p>Section 107B of the Malaysian Companies Act:</p>	<p>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>(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</p>		

15. SUMMARY 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>holders under section 68A and to open them for inspection in accordance with the 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>(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>(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>(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: 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 which have been deposited.</p> <p>Section 107C(2) of the Malaysian Companies Act: Subsection (1) shall not apply to a transfer of securities to a central depository or its nominee company.</p>		

15. SUMMARY 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>Refusal to Register Transfer</i></p> <p>Section 105(1) of the Malaysian Companies Act: 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>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 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>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. SUMMARY 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 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> <p>Bye-law 51: 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><u>Issue of Certificates</u></p> <p>Section 107(1) of the Malaysian Companies Act: Every company shall within two months after the 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 the company, complete and have ready for delivery all the appropriate certificates and debentures in</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</p>	<p>The Malaysian Companies Act provides that the certificates shall be delivered within two (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 (2) months after a demand has been made.</p>

15. SUMMARY 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>connection with the allotment or transfer.</p>	<p>otherwise provide.</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(1): 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 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</p>	<p>The Malaysian Companies Act further provides that the company shall within one (1) 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. SUMMARY 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 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 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 share 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</p>	

15. SUMMARY 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>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 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><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:</p> <p>(1) 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 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</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 (2) 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</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. SUMMARY COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>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>(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</p>	<p>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, 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> <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</p>	

15. SUMMARY 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>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 Court or 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 name called.</p>	<p>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><i>Alterations of Memorandum and Articles of Association/Constituent Documents</i></p>		
<p>Section 21(1) of the Malaysian Companies Act: The memorandum of a company may be altered to the extent and in the manner provided by the Malaysian Companies Act but not otherwise.</p> <p>Section 21(1A) of the Malaysian Companies Act: 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:-</p> <p>(a) by altering; or</p> <p>(b) by deleting,</p> <p>the provision, unless the memorandum itself prohibits the alteration or deletion of that provision.</p> <p>Section 21(1B) of the Malaysian Companies Act: Nothing in</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>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. SUMMARY 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>subsection (1A) permits the alteration or deletion of a provision of the memorandum that relates to rights to which only members included in a particular class of members are entitled.</p> <p>Section 28 of the Malaysian Companies Act:</p> <p>(1) Subject to this section a company may by special resolution alter the provisions of its memorandum with respect to the objects of the company.</p> <p>(2) Where a company proposes to alter its memorandum, with respect to the objects of the company it shall give by post twenty-one days' written notice specifying the intention to propose the resolution as a special resolution and to submit it for passing to a meeting of the company to be held on a day specified in the notice.</p> <p>(3) The notice shall be given to all members, and to all trustees for debenture holders and if there are no trustees for any class of debenture holders to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.</p> <p>Section 31 of the Malaysian Companies Act:</p> <p>(1) Subject to the provisions of the Malaysian Companies Act and to any conditions in its memorandum, a company may by special resolution alter or add to its articles.</p> <p>(2) Any alteration or addition so made in the articles shall, subject to the Malaysian Companies Act, on and from the date of the special resolution or such later date as is specified in the resolution, be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.</p> <p>Section 62(1) of the Malaysian Companies Act:</p> <p>(1) A company if so authorized by its articles may in</p>	<p>Section 45 (1) to (4) of the Act provides:</p> <p>(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 –</p> <p>(a) increase its share capital by new shares of such amount as it thinks expedient;</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>(c) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;</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</p>	

15. SUMMARY 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>general meeting alter the conditions of its memorandum in any one or more of the following ways:</p> <p>(a) increase its share capital by the creation of new shares of such amount as it thinks expedient;</p> <p>(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;</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>(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>(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>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 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>Section 67(1) of the Malaysian Companies Act: Except as is otherwise expressly provided by the Malaysian Companies 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>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</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</p>

15. SUMMARY 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 67(2) of the Malaysian Companies Act: 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>(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:</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 and in accordance with the relevant rules of the Stock Exchange; and</p>	<p>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>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>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. SUMMARY 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) 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 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>(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 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 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> <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</p>	

15. SUMMARY 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>(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 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>or otherwise, any financial assistance for the purpose of the acquisition, subscription or proposed acquisition or proposed subscription by any person of any shares in the Company or in any way purchase, deal in or lend money on its own shares, 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 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 its subsidiary, including any Director holding a salaried employment or office in the Company or its subsidiary; and for the purposes of this Bye-law, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares 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 holding a salaried employment or office) of the Company, the Company's subsidiary or holding company or a subsidiary of the Company's holding company; 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 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 them by way of beneficial ownership.</p>	

15. SUMMARY 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>Accounts and Audit</i></p> <p>Section 167(1) 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>Section 167(1A) of the Malaysian Companies Act: Every company and the directors and managers thereof shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which they relate.</p> <p>Section 167(2) of the Malaysian Companies Act: The company shall retain the records referred to in subsection (1) for seven years after the completion of the transactions or operations to which they respectively relate.</p> <p>Section 167(3) of the Malaysian Companies Act: The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place in Malaysia as the directors think fit and shall at all times be open to inspection by the directors.</p> <p>Section 167(4) of the Malaysian Companies Act: Notwithstanding the provisions in subsection (3), the accounting and other records of operations outside Malaysia may be kept by the company at a place outside Malaysia and there shall be sent to and kept at a place in Malaysia and be at all times open to inspection by the directors, such statements and returns with respect to the business dealt with in the records so kept as will enable to be prepared true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto.</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>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> <ul style="list-style-type: none"> (i) a statement of the results of operations for the period; (ii) a statement of retained earnings or deficit; (iii) a balance sheet at the end of such period; (iiiA) a statement of changes in financial position or cash flows for the period; (iv) notes to the financial statements and the notes thereto shall be in accordance with section 84(1A) of the Act; 	<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. SUMMARY 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 167(5) of the Malaysian Companies Act: If any accounting and other records are kept at a place outside Malaysia pursuant to subsection (4), the company shall, if required by the Registrar to produce those records at a place in Malaysia, comply with the requirements.</p> <p>Section 166A of the Malaysian Companies Act:</p> <p>(1) In this Part unless the contrary intention appears, "approved accounting standards" shall have the meaning assigned thereto in section 2 of the Financial Reporting Act 1997 [Act 558].</p> <p>(2) The approved accounting standards shall apply to the accounts of a company or the consolidated accounts of a holding company if, at the time when the accounts or consolidated accounts are made out, the approved accounting standards –</p> <p>(a) apply in relation to the financial year of the company or the holding company to which the accounts or consolidated accounts relate; and</p> <p>(b) are relevant to those accounts or consolidated accounts.</p> <p>(3) Without prejudice to the generality of the provisions of this Division, the directors of a company shall ensure that the accounts of the company and, if the company is a holding company for which consolidated accounts are required, the consolidated accounts of the company, laid before the company at its annual general meeting are made out in accordance with the applicable approved accounting standards.</p> <p>(4) Notwithstanding subsection (3), the directors of a company or holding company shall not be required to ensure that the accounts or consolidated accounts, as the case may be, are made out in accordance with a particular approved accounting standard if they are of the opinion that making out the accounts or consolidated accounts in accordance with the</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 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> <p>(a) any person not entitled to receive notices of general meetings;</p> <p>(b) more than one of the joint holders of any shares or debentures;</p> <p>(c) any person whose address is not known to the company.</p> <p>Section 87A(1) of the Act: A company, the shares of which</p>	

15. SUMMARY 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>approved accounting standard would not give a true and fair view of the matters required by section 169 to be dealt with in the accounts or consolidated accounts or a true and fair view of the results of the business and the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated accounts.</p> <p>(5) Where the accounts or consolidated accounts of a company are not made out in accordance with a particular approved accounting standard under subsection (4), the directors of the company shall –</p> <p>(a) disclose by way of a note on the accounts their reason for not making out the accounts or consolidated accounts in accordance with the approved accounting standard; and</p> <p>(b) give particulars in the note of the quantified financial effect on the accounts or consolidated accounts if the relevant approved accounting standard was complied with.</p> <p>Section 169 of the Malaysian Companies Act:</p> <p>(1) 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 profit and loss account for the period since the preceding account (or in the case of the first account, since the incorporation of the company) made up to a date not more than six months before the date of the meeting.</p> <p>(2) Notwithstanding subsection (1) the Registrar on application by the company, if for any special reason he thinks fit so to do, may extend the periods of eighteen months and fifteen months referred to in that subsection and with respect to any year extend the period of six months referred to in that subsection,</p>	<p>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 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</p>	

15. SUMMARY 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 that period is so extended beyond the calendar year.</p> <p>(3) The directors of every company shall cause to be made out, and to be laid before the company at its annual general meeting with the profit and loss account required by subsection (1) a balance sheet as at the date to which the profit and loss account is made up.</p> <p>(4) The profit and loss account and the balance sheet of a company shall be duly audited before they are laid before the company at its annual general meeting as required by this section.</p> <p>(5) The directors of a company shall cause to be attached to every balance sheet made out under subsection (3) a report made in accordance with a resolution of the directors and signed by not less than two of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year and if the company is a holding company also a report with respect to the state of affairs of the holding company and all its subsidiaries.</p> <p>(6) Each report to which subsection (5) relates shall state with appropriate details –</p> <p>(a) the names of the directors in office since the date of the last report;</p> <p>(b) the principal activities of the company in the course of the financial year and any significant change in the nature of those activities during the period;</p> <p>(c) the net amount of the profit or loss of the company for the financial year after provision for income tax;</p> <p>(d) the amounts and particulars of any material</p>	<p>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 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:</p> <p>(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 Directors' and 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 of 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</p>	

15. SUMMARY 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>transfer to or from reserves or provisions;</p> <p>(e) where, during the financial year, the company has issued and shares or debentures — the purposes of the issue, the classes of shares or debentures issued, the number of shares of each class and the amount of debentures of each class, and the terms of issue of the shares and debentures of each class;</p> <p>(f) whether at the end of that financial year —</p> <p>(i) there subsist arrangements to which the company is a party, being arrangements with the object of enabling directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate; or</p> <p>(ii) there have, at any time in that year, subsisted such arrangements as aforesaid to which the company was a party, and if so the report shall contain a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the company and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements;</p> <p>(g) in respect of each person who, at the end of the financial year, was a director of the company—</p> <p>(i) whether or not (according to the register kept by the company for the purposes of section 134 relating to the obligation of a director of a company to notify such company of his interests in shares in, or debentures of, the company and of every other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company) he was at the end of that year, interested in shares in, or debentures of</p>	<p>financial statements 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>Bye-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>Bye-law 152: The financial statements of the Company shall be audited at least once in every year.</p> <p>Bye-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. 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</p>	

15. SUMMARY 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 or any other such body corporate and, if he was so interested, the number and amount of shares in, and debentures of, each body (specifying it) in which, according to that register, he was then interested;</p> <p>(ii) whether or not, according to that register, he was, at the beginning of that year (or, if he was not then a director), when he became a director, interested in shares in, or debentures of, the company or any other such body corporate and, if he was so interested, the number and amount of shares in, and debentures of, each body (specifying it) in which according to that register, he was interested at the beginning of that year or, as the case may be, when he became a director; and</p> <p>(iii) the total number of shares in or debentures of the company or any other such corporate bought and sold by him during that financial year;</p> <p>(h) the amount, if any, which the directors recommended should be paid by way of dividend, and any amounts which have been paid or declared by way of dividend since the end of the previous financial year, indicating which of those amounts, if any, have been shown in a previous report under this subsection or under a corresponding repealed provision of the Malaysian Companies Act;</p> <p>(i) whether the directors (before the profit and loss account and balance sheet were made out) took reasonable steps to ascertain what action had been taken in relation to the writing off of bad debts and the making of provision for doubtful debts, and satisfied themselves that all known bad</p>	<p>statements and the report of the Auditor should disclose this fact and name such country or jurisdiction.</p>	

15. SUMMARY 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>debts had been written off and that adequate provision had been made for doubtful debts;</p> <p>(j) whether at the date of the report the directors are aware of any circumstances which would render the amount written off for bad debts or the amount of the provision for doubtful debts inadequate to any substantial extent and, if so, giving particulars of the circumstances;</p> <p>(k) whether the directors (before the profit and loss account and balance sheet were made out) have taken reasonable steps to ensure that any current assets which were unlikely to be realized in the ordinary course of business including their value as shown in the accounting records of the company have been written down to an amount which they might be expected so to realize;</p> <p>(l) whether at the date of the report the directors are aware of any circumstances –</p> <p>(i) which would render the values attributed to current assets in the accounts misleading; and</p> <p>(ii) which have arisen which render adherence to the existing method of valuation of assets or liabilities of the company misleading or inappropriate;</p> <p>and, if so, giving particulars of the circumstances;</p> <p>(m) whether there exists at the date of the report –</p> <p>(i) any charge on the assets of the company which has arisen since the end of the financial year which secures the liabilities of any other person and, if so, giving particulars of any such charge and, so far as practicable, of the amount secured; and</p> <p>(ii) any contingent liability which has arisen since</p>		

15. SUMMARY 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 end of the financial year and, if so, stating the general nature thereof and, so far as practicable, the maximum amount, or an estimate of the maximum amount, for which the company could become liable in respect thereof;</p> <p>(n) whether any contingent or other liability has become enforceable, or likely to become enforceable, within the period of twelve months after the end of the financial year which, in the opinion of the directors, will or may affect the liability of the company to meet its obligations when they fall due and, if so, giving particulars of any such liability;</p> <p>(o) whether at the date of the report the directors are aware of any circumstances not otherwise dealt with in the report or accounts which would render any amount stated in the accounts misleading and, if so, giving particulars of the circumstances;</p> <p>(p) whether the results of the company's operations during the financial year were, in the opinion of the directors, substantially affected by any item, transaction or event of a material and unusual nature and, if so, giving particulars of that item, transaction or event and the amount or the effect thereof, if known or reasonably ascertainable; and</p> <p>(q) whether there has arisen in the interval between the end of the financial year and the date report any item, transaction or event of a material and unusual nature likely, in the opinion of the directors, to affect substantially the results of the company's operations for the financial year in which the report is made and, if so, giving particulars of the item, transaction or event.</p> <p>(7) In subsection (6) of this section, the expression "any item, transaction or event of a material and unusual</p>		

15. SUMMARY 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>nature" includes but is not limited to –</p> <p>(a) any change in accounting policies adopted since the last report;</p> <p>(b) any material change in the method of valuation of the whole or any part of the trading stock;</p> <p>(c) any material item appearing in the accounts or consolidated accounts for the first time or not usually included in the accounts or consolidated accounts; and</p> <p>(d) any absence from the accounts or consolidated accounts of any material item usually included in the accounts or consolidated accounts.</p> <p>(8) The directors of a company shall state in the report whether a director of the company has since the end of the previous financial year received or become entitled to receive a benefit (other than a benefit included in the aggregate amount of emoluments received or due and receivable by the directors shown in the accounts or the fixed salary of a full-time employee of the company) by reason of a contract made by the company or a related corporation with the director or with a firm of which he is a member, or with a company in which he has a substantial financial interest, and, if so, the general nature of the benefit.</p> <p>(9) Every statement, report or other document relating to the affairs of a company or any of its subsidiaries attached to, or included with, a report of the directors laid before the company at its general meeting or sent to the members under section 170 (not being a statements, report or document required by the Malaysian Companies Act to be laid before the company in general meeting) shall, for the purposes of section 364 be deemed to be part of that last-mentioned report.</p> <p>(10) Where at the end of a financial year a company is the</p>		

15. SUMMARY 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 of another corporation, the directors of the company shall state in, or in a note as a statement annexed to, the company's accounts laid before the company at its annual general meeting the name of the corporation regarded by the directors as being the company's ultimate holding company and if known to them the country in which it is incorporated.</p> <p>(11) Where any option has been granted during the period covered by the profit and loss account to take up unissued shares of a company the report required by subsection (5) shall state –</p> <ul style="list-style-type: none"> (a) the name of the person to whom the option has been granted; (b) the number and class of shares in respect of which the option has been granted; (c) the date of expiration of the option; (d) the basis upon which the option may be exercised; and (e) whether the person to whom the option has been granted has any right to participate by virtue of the option in any share of any other company. <p>(12) Each report required by subsection (5) shall specify –</p> <ul style="list-style-type: none"> (a) particulars of shares issued during the period to which the report relates by virtue of the exercise of options to take up unissued shares of the company, whether granted before or during that period; and (b) the number and class of unissued shares of the company under option as at the end of that period, the price, or method of fixing the price, of issue of those shares, the date of expiration of the option and the rights, if any, of the persons to whom the options have been granted to participate by virtue of the options in any share issue of any other 		

15. SUMMARY 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;</p> <p>(13) Paragraph (1)(a) shall not apply in any case where the option to take up shares of the company has been conferred generally on all the holders of a class of shares or debentures of the company.</p> <p>(14) Every balance sheet referred to in subsection (3) shall give a true and fair view of the state of affairs of the company as at the end of the period to which it relates and every profit and loss account referred to in subsection (1) shall give a true and fair view of the profit or loss of the company for the period of accounting as shown in the accounting and other records of the company, and without affecting the generality of the foregoing, every such balance sheet and profit and loss account shall comply with the requirements of the Ninth Schedule so far as applicable thereto.</p> <p>(15) The directors of a company shall cause to be attached to every balance sheet and profit and loss account laid before the company in general meeting (including any consolidated balance sheet and consolidated profit and loss account of a holding company) a statement made in accordance with a resolution of the directors and signed by at least two directors stating whether, in the opinion of the directors –</p> <p>(a) the profit and loss account and, where applicable, the consolidated profit and loss account, is or are drawn up so as to give a true and fair view of the results of the business of the company and, if applicable, of all the companies the accounts of which are dealt with in the consolidated profit and loss account for the period covered by the account;</p> <p>(b) the balance sheet, and where applicable the consolidated balance sheet, is or are drawn up so as to give a true and fair view of the state of affairs</p>		

15. SUMMARY 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 the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated balance sheet as at the end of that period; and</p> <p>(c) the accounts, and where applicable the consolidated accounts, have been made out in accordance with the applicable approved accounting standards.</p> <p>(16) Every balance sheet and profit and loss account of a company laid before the company in general meeting (including any consolidated balance sheet and consolidated profit and loss account annexed to the balance sheet and profit and loss account of a holding company) shall be accompanied by a statutory declaration by a director or where that director is not primarily responsible for the financial management of the company by the person so responsible setting forth his opinion as to the correctness or otherwise of the balance sheet and profit and loss account and, where applicable, the consolidated balance sheet and consolidated profit and loss account.</p> <p>Section 170(1) of the Malaysian Companies Act: 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 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 notice of general meeting of the company.</p> <p>Section 170(2) of the Malaysian Companies Act: 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</p>		

15. SUMMARY 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>document required by the Malaysian Companies Act to be attached thereto) together with a copy of the auditor's report thereon.</p> <p>Section 172(1) 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 appointed shall, subject to this section, hold office until the conclusion of the first annual general meeting.</p> <p>Section 172(2) of the Malaysian Companies Act: 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><i>Inspection of Register of Members and Minute Books</i></p> <p>Section 156(1) of the Malaysian Companies Act: Every company shall cause –</p> <p>(a) minutes of all proceedings of general meetings and of meetings of its directors and of its managers, if any, to be entered in books kept for that purpose within fourteen days of the date upon which the relevant meeting was held; and</p> <p>(b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.</p> <p>Section 156(2) of the Malaysian Companies Act: Any minute so entered that purports to be signed as provided in subsection (1) shall be evidence of the proceedings to which it relates.</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</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. SUMMARY 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 160 of the Malaysian Companies Act:</p> <p>(1) A company may, on giving not less than fourteen days notice to the Registrar, close the register of members or any class of members for any time, but so that no part of the register shall be closed for more than thirty days in the aggregate in any calendar year.</p> <p>(2) The register and index shall be open to the inspection of any member without charge and of any other person on payment for each inspection of one ringgit or such less sum as the company requires.</p> <p>(3) 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: 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>Section 157(2) of the Malaysian Companies Act: 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 of any minutes specified in subsection (1) at a charge not exceeding one ringgit for every hundred words thereof.</p>	<p>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 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 shall be entitled to be furnished within seven days after he has</p>	

15. SUMMARY 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 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>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>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> <p>Section 69E 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</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</p>	<p>The Act does not require the disclosure of shareholder ownership beyond any specified threshold.</p> <p>However, the Bye-laws have provided for shareholding disclosure to be made by directors</p>

15. SUMMARY 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>(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>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 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</p>	<p>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, (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>and substantial shareholders.</p>

15. SUMMARY 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>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 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><u>Bye-law 167(3)</u>: For so long as the shares of the Company are listed on the Designated Stock Exchange, 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.</p>	
<p><i>Power to Require Disclosure of Auditors' Remuneration</i></p> <p>Section 172(16) of the Malaysian Companies Act: The fees and expenses of an auditor of a company –</p> <p>(a) in the case of an auditor appointed by the company at a general meeting — shall be fixed by the company in general meeting or, if so authorized by the members at the last preceding annual general meeting, by the directors; and</p>	<p>Not provided for in the Act.</p> <p><u>Bye-law 153(1)</u>: 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><u>Bye-law 153(2)</u>: If the Company is served with a notice sent by or on behalf of –</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</p>

15. SUMMARY 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) in the case of an auditor appointed by the directors or by the Registrar — may be fixed by the directors or by the Registrar, as the case may be and, if not so fixed, shall be fixed as provided in paragraph (a) as if the auditor had been appointed by the company.</p> <p>Section 173(1) 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,</p> <p>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 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 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>(a) at least five per cent (5%) of the total number of Members; or</p> <p>(b) the holders in aggregate of not less than five per cent (5%) in nominal value of the Company's issued share capital,</p> <p>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>(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>company in general meeting or in such manner as the members may determine.</p>
<i>Mergers and Similar Arrangements</i>		
<p>Section 176 sub-sections (1) to (4) of the Malaysian Companies Act:</p> <p>(1) Where a compromise or arrangement is proposed</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</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</p>

15. SUMMARY 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>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 of the members of the company or class of members to be summoned in such manner as the Court directs.</p> <p>(2) A meeting held pursuant to an order of the Court made under subsection (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 by proxy at the meeting.</p> <p>(3) If a majority in number representing three-fourths in value of the creditors or class of creditors or members present and voting either in person or by proxy at the meeting.</p> <p>(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.</p> <p>Section 176(10) of the Malaysian Companies Act: 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</p>	<p>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 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>(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</p>	<p>creditors.</p>

15. SUMMARY 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>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 sub-sections (10A) to 10(C) of the Malaysian Companies Act:</p> <p>(10A) 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>(a) it is satisfied that there is a proposal for a scheme 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>(10B) The person approved or appointed by the Court to act as a director of the company under subsection (10A) shall have a right of access at all reasonable times to the accounting and other records (including registers)</p>	<p>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 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</p>	

15. SUMMARY 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 the company, and is entitled to require from any officer of the company such information and explanation as he may require for the purposes of his duty.</p> <p>(10C) Any disposition of the property of the company, including things in action and any acquisition of property by the company, other than those made in the ordinary course of business, made after the grant of the restraining order by the Court shall, unless the Court otherwise orders, be void.</p> <p>Section 178 of the Malaysian Companies Act:</p> <p>(1) 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 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</p>	<p>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 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, other than shares already held</p>	

15. SUMMARY 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 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 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>(4) No vesting order referred to in this section shall have any effect or operation in transferring or otherwise</p>	<p>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 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</p>	

15. SUMMARY 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>vesting land until the appropriate entries are made with respect to the vesting of that land by the appropriate authority.</p> <p>(5) In this section – "liabilities" includes duties; "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>Section 180 of the Malaysian Companies Act:</p> <p>(1) Where a scheme or contract involving the transfer of all of the shares or all of the shares in any particular class in a company (in this section referred to as the "transferor company") to another company or corporation (in this section 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 as to the shares or as to each class of shares whose transfer is involved by the holders of not less than nine-tenths in nominal value of those shares or of the shares of that class (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 after the offer has been so approved give notice in the prescribed manner 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 or within seven days of a statement being supplied to a dissenting shareholder pursuant to subsection (2) (whichever is the later) the Court thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms which,</p>	<p>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 local company it shall comply with the Third Schedule to the Act.</p>	

15. SUMMARY 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>under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company or if the offer contained two or more alternative sets of terms upon the terms which were specified in the offer as being applicable to dissenting shareholders.</p> <p>(2) Where a transferee company has given notice to any dissenting shareholder that it desires to acquire his shares the dissenting shareholder shall be entitled to require the company by a demand in writing served on that company within one month from the date on which the notice was given to supply him with a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members and the transferee company shall not be entitled or bound to acquire the share of the dissenting shareholders until fourteen days after the posting of the statement of those names and addresses to the dissenting shareholder.</p> <p>(3) Where in pursuance of any such scheme or contract, 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 ninetenths in nominal 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 in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class who have not assented to the scheme or contract; and</p> <p>(b) any such holder may within three months from the</p>		

15. SUMMARY 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>giving of the notice to him require the transferee company to acquire the shares in question,</p> <p>and where a shareholder gives notice under paragraph (b) 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 are agreed or as the Court on the application of either the transferee company or the shareholder thinks fit to order.</p> <p>(4) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall, after the expiration of one month after the date on which the notice has been given or, after fourteen days after a statement has been supplied to a dissenting shareholder pursuant to subsection (2) or if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed, on behalf of the shareholder by any person appointed by the transferee company, and on its own behalf by the transferee company, and pay, allot or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.</p>		
<p><i>Shareholders' Suits and Protection of Minority Shareholders</i></p>		
<p>Section 161 of the Malaysian Companies Act: (1) Any member or holder of a debenture of a company or,</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</p>	<p>Both the Act and the Malaysian Companies Act provide for remedies for oppression.</p>

15. SUMMARY 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 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 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>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>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</p>	

15. SUMMARY 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>(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:</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 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:</p> <p>(1) Where a person has engaged, is engaging or intends</p>	<p>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. SUMMARY 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 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 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>		

15. SUMMARY 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) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised whether or not –</p> <p>(a) it appears to the Court that the person intends to engage again 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 that that subsection applies.</p> <p>(7) Where in the opinion of the Court it is desirable to do</p>		

15. SUMMARY 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>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>		
CHANGES IN CAPITAL		
<i>Power of Directors to Allot and Issue Shares</i>		
<p>Section 132D of the Malaysian Companies Act:</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 the purposes of this section 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>(3) Any approval for the purposes of this section shall continue in force until –</p> <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</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 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 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>(1A) 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</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. SUMMARY 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>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>(4) The directors may issue shares notwithstanding that an approval for the purposes of this section 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>(5) Section 154 shall apply to any resolution whereby an approval is given for the purposes of this section.</p> <p>(6) Any issue of shares made by a company in contravention of this section shall be void and consideration given for the shares shall be recoverable accordingly.</p> <p>(6A) Notwithstanding subsection (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 shares at least fourteen days before the date of the issue of the said shares.</p> <p>(6B) For the purpose of subsection (6A) members of the company are deemed to have been notified of the intention to issue shares of the company if-</p> <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</p>	<p>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>(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 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 also 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</p>	

15. SUMMARY 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 national language and an English language newspaper circulating generally throughout Malaysia</p> <p>(7) Any director who knowingly contravenes, or permits or authorizes the contravention of, this section with respect to any issue of shares shall be liable to compensate the company and the person to whom the shares were issued for any loss, damages or costs which the company or that person may have sustained or incurred thereby; but no proceedings to recover any such loss, damages or costs shall be commenced, notwithstanding the provisions of the Malaysian Limitation Act 1953, after the expiration of three years from the date of the issue.</p>	<p>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> <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</p>	

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

Malaysian Company Law	Bermuda Company Law	Comments on differences
	the specific allotment to be made to such Director has been approved by the Company in general meeting.	
<i>Powers of Issuer to Purchase its Own Shares</i>		
<p>Section 67A of the Malaysian Companies Act:</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 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>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>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>Both the Act and the Malaysian Companies Act provide for purchase by the company of its own shares.</p> <p>The shares so purchased may be cancelled or held as treasury shares. However, while the Malaysian Companies Act expressly allows such treasury shares 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. SUMMARY COMPARISON OF BERMUDA COMPANY LAW AND MALAYSIAN COMPANY LAW (Cont'd)

Malaysian Company Law	Bermuda Company Law	Comments on differences
<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 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>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 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>	

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

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>(5) A cancellation of shares made pursuant to subsection (3E) shall not be deemed to be a reduction of share capital within the meaning of the Malaysian Companies Act.</p>	<p>Section 42B(7) of the Act: A company that acquires its own shares to be held as treasury shares may-</p> <ul style="list-style-type: none"> (a) hold all or any of the shares; (b) dispose of or transfer all or any of the shares for cash or other consideration; (c) cancel all or any of the shares. <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> <ul style="list-style-type: none"> (a) making an allotment of shares as fully paid bonus shares in respect of shares held by the company as treasury shares; or (b) paying any amount payable on the redemption of 	

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

Malaysian Company Law	Bermuda Company Law	Comments on differences
	<p>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 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</p>	

15. SUMMARY 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:</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 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>(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</p>	<p>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><i>Power for any Subsidiary of the Issuer to own shares in its Parent Company</i></p>	<p>There is no provision in the Act prohibiting a subsidiary from holding shares in its own parent company.</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>

15. SUMMARY 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 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 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</p>		

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

Malaysian Company Law	Bermuda Company Law	Comments on differences
<p>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:</p> <p>(1) Subject to this section 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 by resolution passed in general meeting of the company, and is confirmed by order of the Court;</p> <p>(b) the resolution specifies the maximum rate of discount at which the shares are to be issued;</p> <p>(c) at the date of the issue not less than one year has elapsed since the date on which the company was entitled to commence business; and</p> <p>(d) the shares are issued within one month after the date on which the issue is confirmed by order of the Court or within such extended time as the Court allows.</p> <p>(2) The Court, if having regard to all the circumstances of the case it thinks proper to do so, may make an order confirming the issue on such terms and conditions as it thinks fit.</p> <p>(3) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed or of so much of that discount as has not been written off at the date of the issue of the prospectus.</p> <p>(4) Notwithstanding any provision of its articles, a company shall not issue at a discount shares of any class unless it first offers the shares to every holder of shares of that class in the company proportionately to the number of those shares held by him.</p> <p>(5) Every such offer shall be made by notice specifying the</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>Section 38(1) of the Act: It shall be lawful for a company to pay a reasonable commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional for any shares in the company.</p> <p>Section 38(2) of the Act: Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.</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 the Court.</p>

15. SUMMARY 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>number of shares to which the member is entitled and limiting a time not being less than twenty-one days within which the offer may be accepted.</p> <p>(6) If any such offer is not accepted within the time limited by the notice the shares may be issued on terms not more favourable than those offered to the shareholders.</p> <p>Section 58(1) of the Malaysian Companies Act: A company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if -</p> <p>(a) the payment is authorized by the articles;</p> <p>(b) the commission does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorized by the articles, whichever is the less;</p> <p>(c) the amount or rate of the commission is -</p> <p>(i) in the case of shares of an unlisted recreational club which are offered to the public for subscription or in the case of shares other than of an unlisted recreational club which are offered for subscription or purchase pursuant to a prospectus that is registered under the Securities Commission Act 1993, disclosed in the prospectus; and</p> <p>(ii) in the case of shares not so offered, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and lodged before the payment of the commission with the Registrar, and, where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice; and</p> <p>(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the</p>		

15. SUMMARY 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>like manner.</p> <p>(2) Except as provided in subsection (1) no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company, whether the shares or money are so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase money or contract price or otherwise.</p>		
<p><i>Power to Issue Shares at a Premium</i></p> <p>Section 60(2) of the Malaysian Companies Act: Where a company issues shares for which a premium is received by the company whether in cash or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called the "share premium account" and the provisions of the Malaysian Companies Act relating to the reduction of the share capital of a company shall subject to this section apply as if the share premium account were paid-up share capital of the company.</p> <p>Section 60(3) of the Malaysian Companies Act: The share premium account may be applied –</p> <p>(a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares;</p> <p>(b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company;</p> <p>(c) in the payment of dividends if such dividends are</p>	<p>Section 40(1) of the Act: 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 shall be transferred to an account, to be called "the share premium account", and the provisions of the Act relating to the reduction of the share capital of a company shall, except as provided in section 40 of the Act, apply as if the share premium account were paid-up share capital of the company.</p> <p>Provided that 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.</p> <p>Section 40(2) of the Act: The share premium account may, notwithstanding anything in section 40(1) of the Act be applied by the company –</p> <p>(a) in paying up unissued shares of the company to be issued to members of the company as fully paid bonus</p>	<p>Both the Act and the Malaysian Companies Act contain provisions relating to issuance of shares at a premium and the application of premiums received.</p> <p>However, the Act provides that in relation to an exchange of shares where there is an excess value of shares acquired over the nominal value of the shares being issued, such excess value may be credited to a contributed surplus account instead. There is no 'contributed surplus account' in the Malaysian Companies Act. Premiums in relation to a share issue (including, any arising from a share exchange) are required to be credited to the share premium account under section 60 of the Malaysian Companies Act.</p>

15. SUMMARY 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>satisfied by the issue of shares to members of the company;</p> <p>(d) in the case of a company which carries on insurance business in Malaysia, by appropriation or transfer to any statutory fund established and maintained pursuant to any law of Malaysia relating to insurance;</p> <p>(e) in writing off –</p> <p>(i) the preliminary expenses of the company; or</p> <p>(iii) the expenses of, or the commission or brokerage paid or discount allowed on, any duty, fee or tax payable on or in connection with, and issue of shares of the company; or</p> <p>(f) in providing for the premium payable on redemption of redeemable preference shares.</p>	<p>shares;</p> <p>(b) in writing off –</p> <p>(i) the preliminary expenses of the company; or</p> <p>(ii) the expenses of, or the commission paid or discount allotted on, any issue of shares or debentures of the company; or</p> <p>(c) in providing for the premiums payable on redemption of any shares or of any debentures of the company.</p>	
<p><i>Redeemable preference shares</i></p> <p>Section 61 of the Malaysian Companies Act:</p> <p>(1) 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</p>	<p>Please refer to sections 42 and 43 of the Act as set out under the heading <i>Rights attaching to shares</i>.</p>	<p>Both the Act and the Malaysian Companies Act contain provisions relating to issuance and redemption of redeemable preference shares.</p> <p>Under the Act, no such redemption 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 debts as they become due.</p>

15. SUMMARY 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>provided for out of profits or the share premium account before the shares are redeemed.</p> <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>(6) Where in pursuance of this section a company has redeemed or is about to redeem any preferences 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>(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 60(3)(f) of the Malaysian Companies Act: The share premium account may be applied in providing for the premium payable on redemption of redeemable preference shares.</p>		

15. SUMMARY 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 company to alter its share capital</i></p> <p>Section 62 of the Malaysian Companies Act:</p> <p>(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:</p> <p>(a) increase its share capital by the creation of new shares of such amount as it thinks expedient;</p> <p>(b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;</p> <p>(c) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination;</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>(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>(2) A cancellation of shares under this section shall not be deemed to be a reduction of share capital within the meaning of the Malaysian Companies Act.</p>	<p>Section 45(1) to (4) of the Act:</p> <p>(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 –</p> <p>(a) increase its share capital by new shares of such amount as it thinks expedient;</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>(c) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;</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 of its share capital by the amount of the shares so cancelled.</p> <p>(2) A cancellation of shares in pursuance of section 45 of the Act shall not be deemed to be a reduction of share capital within the meaning of the Act.</p> <p>(3) Whenever a company alters the conditions of its</p>	<p>Both the Act and the Malaysian Companies Act allow a company to alter its share capital.</p>

15. SUMMARY 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>memorandum under section 45(1)(a), (dd) or (f) of the Act, 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 section 45(3) of the Act it shall be liable to a default fine.</p> <p>Bye-law 4: The Company may from time to time by ordinary resolution in accordance with Section 45 of the Act:-</p> <p>(a) increase its capital by such sum, to be divided into shares of such amounts, as the resolution shall prescribe;</p> <p>(b) consolidate and divide all or any of its capital into shares of larger amount than its existing shares;</p> <p>(c) divide its shares into several classes and without prejudice to any rights previously conferred on the holders of existing shares attach thereto respectively any preferential, deferred, qualified or special rights, privileges, conditions or such restrictions which in the absence of any such determination by the Company in general meeting, as the Directors may determine provided always that where the Company issues shares which do not carry voting rights, the words "non-voting" shall appear in the designation of such shares and where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words "restricted voting" or "limited voting";</p> <p>(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association (subject, nevertheless, to the Act), and may by such resolution determine that, as between the holders of the shares resulting from such sub-division, one or more of the shares may have any such preferred rights or be subject to any such</p>	

15. SUMMARY 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>Reduction of capital</i></p> <p>Section 64(1) of the Malaysian Companies Act: Subject to confirmation by the Court a company may, if so authorized by its articles, by special resolution reduce its share capital in any way and in particular, without limiting the generality of the foregoing, may do all or any of the following:</p> <p>(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid-up;</p> <p>(b) cancel any paid-up share capital which is lost or unrepresented by available assets; or</p> <p>(c) pay off any paid-up share capital which is in excess of the needs of the company,</p> <p>and may so far as necessary alter its memorandum by reducing the amount of its share capital and of its shares accordingly.</p> <p>Section 64(2) of the Malaysian Companies Act: Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs –</p> <p>(a) every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that</p>	<p>restrictions as compared with the other or others as the Company has power to attach to unissued or new shares;</p> <p>(e) change the currency denomination of its share capital;</p> <p>(f) make provision for the issue and allotment of shares which do not carry any voting rights; and</p> <p>(g) cancel any shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person, and diminish the amount of its capital by the amount of the shares so cancelled.</p>	
<p>Section 64(1) of the Malaysian Companies Act: Subject to confirmation by the Court a company may, if so authorized by its articles, by special resolution reduce its share capital in any way and in particular, without limiting the generality of the foregoing, may do all or any of the following:</p> <p>(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or</p> <p>(b) either with or without extinguishing or reducing liability on any of its shares cancel any paid up capital that is lost or unrepresented by available assets; or</p> <p>(c) either with or without extinguishing or reducing liability of any of its shares and either with or without reducing the number of such shares pay off any paid up capital that is in excess of the requirements of the company.</p> <p>Section 46(2) of the Act: No company shall reduce the amount of its share capital –</p> <p>(a) unless, at a date not more than thirty days and not less than fifteen days before the date on which the reduction of the share capital is to have effect, the</p>	<p>Section 46(1) of the Act: A company having share capital if authorized in a general meeting may subject to any order made by the Minister under section 6(4) of the Act and to its memorandum and bye-laws on such terms as it may decide reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, by –</p> <p>(a) extinguishing or reducing the liability on any of its shares in respect of capital not paid up; or</p> <p>(b) either with or without extinguishing or reducing liability on any of its shares cancel any paid up capital that is lost or unrepresented by available assets; or</p> <p>(c) either with or without extinguishing or reducing liability of any of its shares and either with or without reducing the number of such shares pay off any paid up capital that is in excess of the requirements of the company.</p> <p>Section 46(2) of the Act: No company shall reduce the amount of its share capital –</p> <p>(a) unless, at a date not more than thirty days and not less than fifteen days before the date on which the reduction of the share capital is to have effect, the</p>	<p>While there is a need for a special resolution and a confirmation from the court for the reduction of capital under the Malaysian Companies Act, the Act requires the approval of the company in general meeting to reduce the share capital of a company and for a notice of the proposed capital reduction to be published in an appointed newspaper in Bermuda. Further, the company must also satisfy the solvency test.</p> <p>The Bye-laws provide for a special resolution subject to any confirmation or consent required by law.</p>

15. SUMMARY 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>date were the commencement of the winding up of the company, would be admissible in proof against the company shall be entitled to object to the reduction;</p> <p>(b) the Court, unless satisfied on affidavit that there are no such creditors, shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered; and</p> <p>(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs --</p> <p>(i) if the company admits the full amount of the debt or claim or though not admitting it is willing to provide for it, the full amount of the debt or claim; or</p> <p>(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.</p> <p>Section 64(4) of the Malaysian Companies Act: The Court, if satisfied with respect to every creditor who under subsection (2) is entitled to object, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured may make an order confirming the reduction on such terms and conditions as it thinks fit.</p> <p>Section 61(5) of the Malaysian Companies Act: Where any such shares are redeemed otherwise than out of the</p>	<p>company causes a notice to be published in an appointed newspaper stating --</p> <p>(i) the amount of the share capital as last determined by the company;</p> <p>(ii) the amount to which the share capital is to be reduced; and</p> <p>(iii) the date on which the reduction is to have effect; and</p> <p>(b) if, on the date the reduction is to be effected, there are reasonable grounds for believing that the company is, or after the reduction would be, unable to pay its liabilities as they become due.</p> <p>Section 46(5) of the Act: Where a company having share capital reduces the amount of its share capital, then within thirty days after the date as from which the reduction has effect the company shall file a memorandum, with a copy of the notice referred to in Section 46(2)(a) of the Act, in the office of the Registrar stating that the provisions of Section 46 of the Act have been duly complied with.</p> <p>Please also refer to section 40 of the Act as set out under the heading <i>Power to Issue Shares at a Premium</i>, section 42 of the Act as set out under the heading <i>Rights attaching to shares</i> and sections 42A and 42B of the Act as set out under the heading <i>Powers of Issuer to Purchase its Own Shares</i>.</p> <p>Bye-law 6: The Company may from time to time by special resolution, subject to any confirmation or consent required by law, reduce its authorised or issued share capital or any share premium account or other undistributable reserve in any manner permitted by the laws of Bermuda.</p>	

15. SUMMARY 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>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>CHANGES IN THE RESPECTIVE RIGHTS OF THE VARIOUS CLASSES OF SHARES INCLUDING THE ACTION NECESSARY TO CHANGE THE RIGHTS</p>		
<p>Section 65(1) of the Malaysian Companies 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 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>Section 65(4) of the Malaysian Companies Act: 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>Please refer to section 47 of the Act, Bye-law 10 and Bye-law 11 as set out under the heading <i>Rights attaching to shares</i>.</p>	<p>Please refer to the comments under <i>Rights attaching to shares</i>.</p>

15. SUMMARY 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 65(6) of the Malaysian Companies Act: 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>Section 65(7) of the Malaysian Companies Act: 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 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>		
DIVIDENDS		
<i>Dividends and Other Methods of Distribution</i>		
<p>Section 365 of the Malaysian Companies Act:</p> <p>(1) No dividend shall be payable to the shareholders of any company except out of profits or pursuant to Section 60.</p> <p>(2) Every director or manager of a company who wilfully pays or permits to be paid any dividend out of what he knows is not profits except pursuant to section 60—</p> <p>(a) shall without prejudice to any other liability be guilty of an offence against the Malaysian Companies Act.</p> <p>(b) shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits and that amount may be recovered by the creditors or</p>	<p>Section 54 of the Act:</p> <p>(1) A company shall not declare or pay a dividend, or make a distribution out of contributed surplus, if there are reasonable grounds for believing that —</p> <p>(a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or</p> <p>(b) 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.</p> <p>(2) For the purposes of section 54 of the Act, "contributed surplus" includes 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</p>	<p>The Malaysian Companies Act expressly provide for dividend to be payable only out of profits of the company. Under the Act, a company may declare or pay a dividend or make a distribution so long as it can satisfy the solvency test set out in Section 54(1) of the Act.</p>

15. SUMMARY 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 liquidator suing on behalf of the creditors.</p> <p>(3) If the whole amount is recovered from one director or from the manager he may recover contribution against any other person liable who has directed or consented to the payment.</p> <p>(4) No liability by this section imposed on any person shall on the death of the person extend or pass to his executors or administrators nor shall the estate of any such person after his decease be made liable under this section.</p> <p>(5) In this section "dividend" includes bonus and payment by way of bonus.</p> <p>Section 60(3)(c) of the Malaysian Companies Act: The share premium account may be applied in the payment of dividends if such dividends are satisfied by the issue of shares to members of the company.</p> <p>Section 67A(3B)(a) of the Malaysian Companies Act: The directors of the company may distribute the treasury shares as dividends to shareholders, such dividends to be known as "share dividends".</p>	<p>assets to the company.</p> <p>Bye-law 135: The Board may, subject to the Bye-laws and in accordance with the Act, declare a dividend in any currency to be paid to the Members and such dividend may be paid in cash or wholly or partly in specie in which case the Board may fix the value for distribution in specie of any assets. The Board may declare and make such other distributions (in cash or in specie) to the Members as may be lawfully made out of the assets of the Company. The Company in general meeting may also, subject to the Bye-laws and in accordance with the Act, declare a dividend or such other distribution to be paid to the Members but no dividend or distribution shall be declared by the Company in general meeting in excess of the amount recommended by the Board.</p> <p>Bye-law 136: Without prejudice to the generality of the above Bye-law 135 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 dividend and provided that the Board acts bona fide the Board shall not incur any responsibility to the holders of shares conferring any preference for any damage that they may suffer by reason of the payment of any dividend on any shares having deferred or non-preferential rights and may also pay periodically any fixed dividend which is payable on any shares of the Company.</p> <p>Bye-law 137: 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.</p> <p>Bye-law 15A(2): Notwithstanding any provision in these</p>	

15. SUMMARY 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-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 141(1): Subject to Bye-law 141(2), 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</p>	

15. SUMMARY 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>holders.</p> <p>Bye-law 141(2): 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 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. A Depositor may give effectual receipt for any dividends or other moneys payable or property distributable in respect of the deposited security held by such Depositor.</p>	
<p><i>Time limit after which a dividend entitlement will lapse and an indication of the party in whose favour this entitlement then operates</i></p> <p>There is no such provision in the Malaysian Companies Act which provides for this.</p>	<p>Not provided for in the Act.</p> <p>Bye-law 142: All dividends or bonuses unclaimed for one (1) year after having been declared may be disposed in accordance with the provisions of the Unclaimed Moneys Act 1965 of Malaysia, which shall apply, <i>mutatis mutandis</i>, to the Company.</p>	<p>The Bye-laws provide for the application of the Malaysian Unclaimed Moneys Act 1965.</p>
WINDING-UP		
<p>Section 211 of the Malaysian Companies Act: The winding up a company may be either – (a) by the Court; or (b) voluntary.</p> <p>Section 217(1) of the Malaysian Companies Act: A</p>	<p>Section 157 of the Act: The winding up of a company may be either by the Court or voluntary and the Act, subject to any other Act, shall be applied to the winding up of a company by either of these modes.</p> <p>Section 161 of the Act: In addition to any other provision in the Bermuda Companies Act or any other Act prescribing</p>	<p>Both the Act and the Malaysian Companies Act provide the mode for the winding up of a company to be either by the Court or voluntary.</p>

15. SUMMARY 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 (whether or not it is being wound up voluntarily) may be wound up under an order of the Court on the petition of –</p> <p>(a) the company;</p> <p>(b) any creditor, including a contingent or prospective creditor, of the company;</p> <p>(c) a contributory or any person who is the personal representative of a deceased contributory or the trustee in bankruptcy or the Official Assignee of the estate of a bankrupt contributory;</p> <p>(d) the liquidator;</p> <p>(e) the Minister pursuant to section 205 or on the ground specified in paragraph 218(1)(d);</p> <p>(f) in the case of a company which is a licensed institution, or a scheduled institution in respect of which the Minister charged with responsibility for finance has made an order under subsection 24(1) of the Malaysian Banking and Financial Institutions Act 1989 (Act 327) or a non-scheduled institution in respect of which such Minister has made an order under subsection 93(1) of that Act, Bank Negara Malaysia;</p> <p>(g) in the case of a company which is licensed under the Malaysian Insurance Act 1996, Bank Negara Malaysia;</p> <p>(h) the Registrar on the ground specified in paragraph 218(1)(m) or (n);</p> <p>(i) in the case of a member institution under the Malaysia Deposit Insurance Corporation Act 2005 [Act 642], the Malaysia Deposit Insurance Corporation under section 71 of that Act,</p> <p>or of any two or more of those parties.</p> <p>Section 218(1) of the Malaysian Companies Act:</p>	<p>for the winding up of a company a company may be wound up by the Court if –</p> <p>(a) the company has by resolution resolved that the company be wound up by the Court;</p> <p>(b) subject to section 88 of the Act, default is made in holding the statutory meeting or failing to comply with section 84 or section 89 of the Act;</p> <p>(c) the company does not commence its business within a year of its incorporation or suspends its business for a whole year;</p> <p>(ca) the company carries on any restricted business activity in contravention of section 4A of the Act;</p> <p>(d) the company engages in a prohibited business activity in contravention of section 4B of the Act;</p> <p>(e) the company is unable to pay its debts;</p> <p>(f) the consent by the Minister, where under the Act such consent was required, was obtained as a result of a material misstatement in the application for consent; or</p> <p>(g) the Court is of the opinion that it is just and equitable that the company should be wound up.</p> <p>Section 162 of the Act: A company shall be deemed to be unable to pay its debts –</p> <p>(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred dollars then due has served on the company, by leaving it at the registered office of the company, a demand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or</p> <p>(b) if the execution or other process issued on a judgement, decree or order of any court in favour of a creditor of the company is returned unsatisfied in</p>	

15. SUMMARY 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>(1) The Court may order the winding-up if –</p> <p>(a) the company has by special resolution resolved that it be wound-up by the Court;</p> <p>(b) default is made by the company in lodging the statutory report or in holding the statutory meeting;</p> <p>(c) the company does not commence business within a year from its incorporation or suspends its business for a whole year;</p> <p>(d) the number of members is reduced in the case of a company (other than a company the whole of the issued shares in which are held by a holding company) below two;</p> <p>(e) the company is unable to pay its debts;</p> <p>(f) the directors have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever which appears to be unfair or unjust to other members;</p> <p>(g) an inspector appointed under Part IX has reported that he is of opinion –</p> <p>(i) that the company cannot pay its debts and should be wound up; or</p> <p>(ii) that it is in the interest of the public or of the shareholders or of the creditors that the company should be wound up.</p> <p>(h) when the period, if any, fixed for the duration of the company by the memorandum or articles expires or the event, if any, occurs on the occurrence of which the memorandum or articles provide that the company is to be dissolved;</p> <p>(i) the Court is of the opinion that it is just and equitable that the company be wound up;</p>	<p>whole or in part; or</p> <p>(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts; in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.</p> <p>Section 163(1) of the Act: An application to the Court for the winding up of a company shall be by petition, presented either by the company or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributories, or by all of those parties, together or separately:</p> <p>Provided that –</p> <p>(a) a contributory shall not be entitled to present a winding up petition unless the shares in respect of which he is a contributory, or some of them, either were allotted to him or have been held by him and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder; and</p> <p>(b) a winding up petition shall not, if the ground of the petition is default in holding the statutory meeting, be presented by any person except a member, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and</p> <p>(c) the Court shall not give a hearing to a winding up petition presented by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a prima facie case for winding up has been established to the satisfaction of the Court; and</p> <p>(d) in a case falling within section 161(g) of the Act the winding up petition may be presented by the Registrar.</p> <p>Section 163(2) of the Act: When a company is being wound</p>	

15. SUMMARY 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>(j) the company has held a licence under the Malaysian Banking and Financial Institutions Act 1989 (Act 372) or the Malaysian Islamic Banking Act 1983 (Act 276) and that licence has been revoked or surrendered;</p> <p>(k) the company has carried on Islamic banking business, licensed business, or scheduled business, or it has accepted, received or taken deposits in Malaysia, in contravention of the Malaysian Banking and Financial Institutions Act 1989 or the Malaysian Islamic Banking Act 1983, as the case may be;</p> <p>(l) the company has held a licence under the Malaysian Insurance Act 1996 and</p> <p>(i) that licence has been revoked;</p> <p>(ii) Bank Negara Malaysia has petitioned for its winding up under subsection 58(4) of the Malaysian Insurance Act 1996; or</p> <p>(iii) An order under the paragraph 59(4)(b) of the Malaysian Insurance Act 1996 has been made in respect of it;</p> <p>(m) the company is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia; or</p> <p>(n) the company is being used for any purpose prejudicial to national security or public interest.</p> <p>Definition of inability to pay debts</p> <p>(2) A company shall be deemed to be unable to pay its debts if –</p> <p>(a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five hundred ringgit then due has served on the company by leaving at the registered office a</p>	<p>up voluntarily a winding up petition may be presented by the Official Receiver as well as by any other person authorised in that behalf under section 163 of the Act, but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interest of the creditors or contributories.</p> <p>Section 201 of the Act: A company shall be wound up voluntarily –</p> <p>(a) when the company resolves in general meeting that the company be wound up voluntarily; or</p> <p>(b) pursuant to section 201A of the Act.</p> <p>Section 201A of the Act: A company shall be wound up voluntarily upon the expiration of the period fixed for the duration of the company by its incorporating Act or its memorandum or upon the occurrence of the event on the occurrence of which its incorporating Act or its memorandum provides that the company is to be dissolved and thereafter the company shall be dissolved in accordance with Part XIII of the Act.</p> <p>Section 202(1) of the Act: Where a company is being wound up voluntarily, then within twenty-one days after –</p> <p>(a) the expiration of the period fixed for the duration of the company by its incorporating Act or memorandum;</p> <p>(b) the occurrence of the event, on the occurrence of which the incorporating Act or memorandum provides that the company is to be dissolved; or</p> <p>(c) the passing of the resolution that the company be wound up voluntarily,</p> <p>the company shall give notice thereof by advertisement in an appointed newspaper.</p> <p>Section 203 of the Act: A voluntary winding up shall be deemed to commence-</p>	

15. SUMMARY 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>demand under his hand or under the hand of his agent thereunto lawfully authorized requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;</p> <p>(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or</p> <p>(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.</p> <p>Section 219 of the Malaysian Companies Act:</p> <p>(1) Where before the presentation of the petition a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and, unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.</p> <p>(1) In any other case the winding up shall be deemed to have commenced at the time of the presentation of the petition for the winding up.</p> <p>Section 254(1) of the Malaysian Companies Act: A company may be wound up voluntarily –</p> <p>(a) when the period, if any, fixed for the duration of the company by the memorandum or articles expires, or in the event, if any, occurs, on the occurrence of which the memorandum or articles provide that the company is to be dissolved and the company in general meeting</p>	<p><u>Bermuda Company Law</u></p> <p>(a) on the expiration of the period, if any, fixed in the incorporating Act or the memorandum for the duration of a company;</p> <p>(b) on the occurrence of the event, if any, on the occurrence of which it is provided in the incorporating Act or the memorandum that a company is to be dissolved; or</p> <p>(c) at the time of the passing of the resolution for voluntary winding up.</p> <p>Section 206(1) of the Act: Where it is proposed to wind up a company voluntarily, the majority of the directors, shall each make a statutory declaration to the effect that they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.</p> <p>Section 206(4) of the Act: A winding up in the case of which a declaration has been made and delivered in accordance with section 206 of the Act is in the Act referred to as "a member's voluntary winding up", and a winding up in the case of which a declaration has not been made and delivered as aforesaid is in the Act referred to as "a creditors' voluntary winding up".</p> <p>Bye-law 162:</p> <p>(1) The Board shall have power in the name and on behalf of the Company to present a petition to the court for the Company to be wound up.</p> <p>(2) A resolution that the Company be wound up by the court or be wound up voluntarily shall be a special resolution.</p> <p>Bye-law 163(1): 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 Act, divide among the Members (other than the Depository) in specie or kind the</p>	

15. SUMMARY 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>has passed a resolution requiring the company to be wound up voluntarily; or</p> <p>(b) if the company so resolves by special resolution.</p> <p>Section 254(2) of the Malaysian Companies Act: A company shall –</p> <p>(a) within seven days after the passing of a resolution for voluntarily winding up lodge a printed copy of the resolution with the Registrar, and</p> <p>(b) within ten days after the passing of the resolution give notice of the resolution in a newspaper circulating generally throughout Malaysia.</p> <p>Section 255(6) of the Malaysian Companies Act: A voluntary winding up shall commence –</p> <p>(a) where a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in subsection (1) was lodged with the Registrar; and</p> <p>(b) in any other case, at the time of the passing of the resolution for voluntary winding up.</p> <p>Section 257(1) of the Malaysian Companies Act: Where it is proposed to wind up a company voluntarily the directors of the company, or in the case of a company having more than two directors, the majority of the directors may, before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a written declaration to the effect that they have made an inquiry into the affairs of the company, and that at a meeting of directors have formed the opinion that the company will be able to pay its debts in full within a period not exceeding twelve months after the commencement of the winding up.</p> <p>Section 181(2) of the Malaysian Companies Act: If on such application the Court is of the opinion that either of those grounds is established the Court may, with the view to</p>	<p>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.</p>	

15. SUMMARY 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>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 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>Section 181(3) of the Malaysian Companies Act: 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><i>Limitations on the right to own shares of the company, including limitations on rights of shareholders regarded as non-resident or foreign shareholders to own or vote of their shares</i></p>		
<p>There are no such provisions in the Malaysian Companies Act which provide for this.</p> <p>However, there are guidelines in force established under the Malaysian Government's New Economic Policy which regulate the extent of non-Bumiputera and foreign ownership and control in Malaysian companies, which fall under the purview of the Foreign Investment Committee of the Prime Minister's Department of Malaysia.</p>	<p>There is no limitation, either under Bermuda law or the Bye-laws, on the right of owners of the Company's shares to hold or vote their shares solely by reason that they are non-Bermudians.</p>	<p>Both the Act and the Malaysian Companies Act do not contain limitations on this matter.</p>

15. SUMMARY 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>Take-over provisions</i></p> <p>Division 2 of Part IV of the Malaysian Securities Commission Act 1993 and the Malaysian Code on Take-overs and Mergers 1998</p>	<p>Bye-law 168: For so long as the shares of the Company are listed on the Designated Stock Exchange, 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 including but not limited to promulgated Division IV of Part VI of the CMSA 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 including but not limited to promulgated Division IV of Part VI of the CMSA shall not apply to the Depository.</p>	<p>There are presently no Bermuda laws or regulations of general application which will require persons who acquire significant holdings in the Company's shares to make take-over offers for the Company's shares.</p> <p>In this regard, Bye-law 168 provides for the application, mutatis mutandis, of the Malaysian take-over laws, to all take-over offers for the Company.</p>

16. PROCEDURES FOR APPLICATION AND ACCEPTANCE

16.1 OPENING AND CLOSING OF APPLICATION LISTS

Applications will be accepted from 10.00 a.m. on 23 October 2009 and will remain open until 5.00 p.m. on 30 October 2009 or for such further period or periods as our Directors and Promoters together with the Underwriters in their absolute discretion may mutually decide.

In the event the closing date for the Applications is extended, you will be notified of the change in a widely circulated daily Bahasa Malaysia and English newspaper in Malaysia. **Late Applications will not be accepted.**

16.2 METHODS OF APPLICATIONS

Applications for the subscription of the Public Issue Shares may be made using any of the following ways:-

- (a) Application Forms; or
- (b) Electronic Share Applications; or
- (c) Internet Share Applications.

16.3 PROCEDURES FOR APPLICATIONS

The Applications shall be made in connection with and subject to the terms of this Prospectus and our Memorandum and Bye-laws.

The following relevant Application Forms issued with the notes and instructions printed therein are enclosed and issued together with this Prospectus and form an integral part of this Prospectus:-

16.3.1 Applications by the Malaysian Public

Applications for the subscription of the Public Issue Shares made available to the Malaysian Public must be made on the **White Application Forms** provided or by way of Electronic Share Application or Internet Share Application. A corporation or institution cannot apply for subscription of the Shares by way of Electronic Share Application or Internet Share Application.

16.3.2 Applications by selected investors for private placement

Selected investors being allocated the 90,000,000 Public Issue Shares by way of private placement will be contacted directly by the Placement Agents and are to follow the instructions as communicated by the Placement Agents.

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16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

16.4 APPLICATIONS USING APPLICATION FORMS

The following relevant Application Forms issued with their notes and instructions are enclosed with this Prospectus:-

- (a) **White** Application Forms for application by Malaysian citizens, companies, societies, co-operatives and institutions.

White Application Forms together with copies of this Prospectus may be obtained, subject to availability, from AmInvestment Bank, member companies of Bursa Securities, members of the Association of Banks in Malaysia, members of the Malaysian Investment Banking Association and MIDFCCS.

The submission of an Application Form does not necessarily mean that the application will be successful.

Directors and employees of MIDFCCS and their immediate families are strictly prohibited from applying to subscribe for and / or purchase of the Public Issue Shares.

Only one (1) Application Form from each applicant will be considered and applications must be for 100 Shares or multiples thereof. Multiple applications will not be accepted. A person who submit multiple applications in his own name or by using the name of others, with or without their consent, commits an offence under Section 179 of the CMSA and if convicted, may be punished with a minimum fine of RM1,000,000 and to a jail term of up to ten (10) years under Section 182 of the CMSA.

Persons submitting applications by way of Application Forms or Electronic Share Applications or Internet Share Applications must have a CDS account.

The amount payable in full on application is RM0.58 per Share. Persons submitting applications by way of Applications Forms may not submit applications by way of Electronic Share Applications or Internet Share Applications and vice versa. A corporation or institution cannot apply for subscription and / or purchase of the Shares by way of Electronic Share Application or Internet Share Application.

IN THE CASE OF AN INDIVIDUAL APPLICANT OTHER THAN A MEMBER OF THE ARMED FORCES OR POLICE, THE NAME AND NATIONAL REGISTRATION IDENTITY CARD (NRIC) NUMBER OF THE APPLICANT MUST BE EXACTLY THE SAME AS STATED IN:

- (a) (i) THE APPLICANT'S NRIC;
- (ii) ANY VALID TEMPORARY IDENTITY DOCUMENT AS ISSUED BY THE NATIONAL REGISTRATION DEPARTMENT FROM TIME TO TIME; OR
- (iii) THE APPLICANT'S RESIT PENGENALAN SEMENTARA ("KPPK 09") ISSUED PURSUANT TO PERATURAN 5(5), PERATURAN-PERATURAN PENDAFTARAN NEGARA 1990; AND
- (b) THE RECORDS OF BURSA DEPOSITORY.

WHERE THE APPLICANT IS A MEMBER OF THE ARMED FORCES OR POLICE, THE NAME AND THE ARMED FORCES OR POLICE PERSONNEL NUMBER, AS THE CASE MAY BE, OF THE APPLICANT MUST BE EXACTLY THE SAME AS THAT STATED IN HIS / HER AUTHORITY CARD.

16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

IN THE CASE OF A CORPORATE / INSTITUTIONAL APPLICANT, THE NAME AND THE CERTIFICATE OF INCORPORATION NUMBER OF THE APPLICANT MUST BE EXACTLY THE SAME AS THAT STATED IN THE APPLICANT'S CERTIFICATE OF INCORPORATION.

No acknowledgement of the receipt of the Application Form or Application monies will be made by us and / or MIDFCCS.

16.4.1 Terms and Conditions

Applications by way of White Application Forms shall be made on, and subject to, the terms and conditions set out below:-

- (a) Applicant who is an individual must be a Malaysian citizen residing in Malaysia, with a CDS account and a Malaysian address.
- (b) Applicant that is a corporation / institution incorporated in Malaysia must have a CDS account and be subject to the following:-
 - if the corporation / institution has a share capital, more than half of the issued share capital (excluding preference share capital) is held by Malaysian citizens; and
 - there is a majority of Malaysian citizens on the board of Directors / trustee.
- (c) Applicant that is a superannuation, provident or pension fund must be established or operating in Malaysia and have a CDS account.
- (d) Applications will not be accepted from trustees, any person under 18 years of age, sole proprietorships, partnerships or other incorporated bodies or associations, other than corporations / institutions referred to in Sections 16.4.1(b) and (c) above or the trustees thereof.
- (e) Application for the Shares must be made on the respective Application Forms issued together with this Prospectus and must be completed in accordance with the notes and instructions printed on the reverse side of the Application Form and this Prospectus. In accordance with Section 232 of the CMSA, the Application Form together with the notes and instructions printed therein is accompanied by this Prospectus. Applications, which **do not STRICTLY** conform to the terms of this Prospectus or Application Form or notes and instructions printed therein or which are illegible will not be accepted.
- (f) EACH COMPLETED APPLICATION FORM MUST BE ACCOMPANIED BY REMITTANCE IN RINGGIT MALAYSIA FOR THE FULL AMOUNT PAYABLE BY EITHER:-
 - BANKER'S DRAFT OR CASHIER'S ORDER PURCHASED WITHIN MALAYSIA ONLY AND DRAWN ON A BANK IN KUALA LUMPUR; OR
 - MONEY ORDER OR POSTAL ORDER (FOR APPLICANTS FROM SABAH AND SARAWAK ONLY); OR
 - GUARANTEED GIRO ORDER (GGO) FROM BANK SIMPANAN NASIONAL MALAYSIA BERHAD; OR
 - ATM STATEMENT OBTAINED ONLY FROM:-

16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

- AFFIN BANK BERHAD;
- ALLIANCE BANK MALAYSIA BERHAD;
- AMBANK (M) BERHAD;
- CIMB BANK BERHAD;
- EON BANK BERHAD;
- HONG LEONG BANK BERHAD;
- MALAYAN BANKING BERHAD;
- PUBLIC BANK BERHAD; OR
- RHB BANK BERHAD;

AND MUST BE MADE OUT IN FAVOUR OF "MIDF SHARE ISSUE ACCOUNT NO. 628" AND CROSSED "A/C PAYEE ONLY" (EXCLUDING ATM STATEMENTS) AND ENDORSED ON THE REVERSE SIDE WITH THE NAME AND ADDRESS OF THE APPLICANT.

APPLICATIONS ACCOMPANIED BY MODE OF PAYMENT OTHER THAN IN THE MANNER STATED ABOVE OR WITH EXCESS OR INSUFFICIENT REMITTANCES OR INAPPROPRIATE BANKER'S DRAFTS / CASHIER'S ORDERS / MONEY ORDERS OR POSTAL ORDER / ATM STATEMENT / GGO WILL NOT BE ACCEPTED. DETAILS OF REMITTANCES MUST BE COMPLETED IN THE APPROPRIATE BOXES PROVIDED ON THE APPLICATION FORMS.

- (g) AN APPLICANT MUST STATE HIS CDS ACCOUNT NUMBER IN THE SPACE PROVIDED IN THE APPLICATION FORM AND HE SHALL BE DEEMED TO HAVE AUTHORISED BURSA DEPOSITORY TO DISCLOSE INFORMATION PERTAINING TO THE CDS ACCOUNT TO MIDFCCS / COMPANY.
- (h) THE NAME AND ADDRESS OF THE APPLICANT MUST BE WRITTEN ON THE REVERSE SIDE OF THE BANKER'S DRAFT, CASHIER'S ORDER, ATM STATEMENT, MONEY ORDER OR POSTAL ORDER OR GGO FROM BANK SIMPANAN NASIONAL MALAYSIA BERHAD.
- (i) Our Board reserves the right to require any successful applicant to appear in person at the registered office of MIDFCCS within fourteen (14) days of the date of the notice issued to him to ascertain the regularity or propriety of the Application. Our Board shall not be responsible for any loss or non-receipt of the said notice nor shall they be accountable for any expenses incurred or to be incurred by the successful applicant for the purpose of complying with this provision.
- (j) MIDFCCS on the authority of our Board reserves the right to reject Applications which do not conform to these instructions or which are illegible or which are accompanied by remittances improperly drawn.
- (k) MIDFCCS on the authority of our Board reserves the right not to accept any Application or accept any Application in part only without assigning any reason therefor. Due consideration will be given to the desirability of allotting the Shares to a reasonable number of applicants with a view to establishing an adequate market for the Shares.

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16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

- (l) Where an Application is not accepted or accepted in part only, the full amount or the balance of the Application monies, as the case may be, without interest, will be returned and despatched to the applicant within ten (10) Market Days from the date of the final ballot of the Applications lists by registered post or ordinary post at the applicant's address last maintained with Bursa Depository or where the application is not accepted due to the applicant not having provided a CDS account, to the address per the National Registration Identity Card or "Resit Pengenalan Sementara (KPPK 09)" or any valid temporary identity document as issued by the National Registration Department from time to time.
- (m) The applicant shall ensure that his / her personal particulars stated in the Application Form are identical with the records maintained by Bursa Depository. The applicant must inform Bursa Depository promptly of any change in address failing which the notification letter of successful allotment will be sent to his / her registered or correspondence address last maintained with Bursa Depository.
- (n) MIDFCCS on the authority of our Board reserves the right to bank in all Application monies from unsuccessful applicants and partially successful applicants, which would subsequently be refunded without interest by registered post or ordinary post.
- (o) Each completed Application Form accompanied by the appropriate remittance and legible photocopy of the relevant documents must be despatched by **ORDINARY POST** in the official envelopes provided, to the following address:-

MIDF Consultancy and Corporate Services Sendirian Berhad
Level 8, Menara MIDF
82 Jalan Raja Chulan,
50200 Kuala Lumpur
P.O.Box 11122
50736 Kuala Lumpur

or **DELIVERED BY HAND AND DEPOSITED** in the Drop-in Boxes provided at the Ground Floor of Menara MIDF, 82 Jalan Raja Chulan, 50200 Kuala Lumpur, so as to arrive not later than 5.00 p.m. on 30 October 2009 or such other later date or dates as our Board, Promoters and the Underwriters in their absolute discretion may decide.
- (p) Directors and employees of MIDFCCS and their immediate families are strictly prohibited from applying for the Shares.
- (q) **PLEASE DIRECT ALL ENQUIRIES IN RESPECT OF THE WHITE APPLICATION FORM TO MIDFCCS.**

16.5 APPLICATIONS USING ELECTRONIC SHARE APPLICATION

16.5.1 Steps for Electronic Share Application through a Participating Financial Institution's ATM

- (a) Applicant must have an account with a Participating Financial Institution (as detailed in Section 16.5.2(o) of this Prospectus) and an ATM card issued by that Participating Financial Institution to access the account.
- (b) Applicant must have a CDS account.

16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

- (c) Applicant is to apply for the Shares, via the ATM of the Participating Financial Institution by choosing the Electronic Share Application option. Mandatory statements required in the application are set out in Section 16.5.2 of this Prospectus under the Terms and Conditions for Electronic Share Application. Applicant is to enter at least the following information through the ATM where the instructions on the ATM screen at which he enters his Electronic Share Application requires him to do so:-
- Personal Identification Number (PIN);
 - MIDF Share Issue Account Number 628;
 - CDS Account Number;
 - number of Shares applied for and / or the Ringgit Malaysia amount to be debited from the account; and
 - confirmation of several mandatory statements.

16.5.2 Terms and Conditions for Electronic Share Application

The procedures for Electronic Share Application at ATMs of the Participating Financial Institutions are set out on the ATM screens of the relevant Participating Financial Institutions (the "Steps"). For illustration purposes, the procedures for Electronic Share Application at ATMs are set out in "Steps for Electronic Share Application through a Participating Financial Institution's ATM" in Section 16.5.1 of this Prospectus. The Steps set out the actions that the applicant must take at the ATM to complete an Electronic Share Application. Please read carefully the terms of this Prospectus, the Steps and the terms and conditions for Electronic Share Application set out below before making an Electronic Share Application.

Only an applicant who is an individual with a CDS Account is eligible to utilise the facility.

The applicant must have an existing bank account with, and be an ATM cardholder of, one (1) of the Participating Financial Institutions before he can make an Electronic Share Application at an ATM of that Participating Financial Institutions. An ATM card issued by one (1) of the Participating Financial Institutions cannot be used to apply for shares at an ATM belonging to other Participating Financial Institutions. Upon completion of his Electronic Share Application transaction, the applicant will receive a computer-generated transaction slip (Transaction Record), confirming the details of his Electronic Share Application. The Transaction Record is only a record of the completed transaction at the ATM and not a record of the receipt of the Electronic Share Application or any data relating to such an Electronic Share Application by our Company or MIDFCCS. The Transaction Record is for retention by the applicant and should not be submitted with any Application Form.

Upon the closing of the offer for the Application for the Public Issue Shares, on 30 October 2009, at 5.00 p.m. ("**Closing Date and Time**"), the Participating Financial Institution shall submit a magnetic tape containing its respective customers' applications for the Public Issue Shares to MIDFCCS as soon as practicable but not later than 12.00 p.m. of the second (2nd) business day after the Closing Date and Time.

An applicant will be allowed to make an Electronic Share Application for shares via an ATM that accepts the ATM cards of the Participating Financial Institution with which he has an account and its branches, subject to the applicant making only one (1) Application. An applicant who has a bank account with a Participating Financial Institution and has been issued an ATM card will be allowed to apply for shares via an ATM of that Participating Financial Institution which is situated in another country or place outside of Malaysia, subject to the applicant making only one (1) Application.

16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

AN APPLICANT MUST ENSURE THAT HE USES HIS OWN CDS ACCOUNT NUMBER WHEN MAKING AN ELECTRONIC SHARE APPLICATION. AN APPLICANT OPERATING A JOINT ACCOUNT WITH ANY PARTICIPATING FINANCIAL INSTITUTION MUST ENSURE THAT HE ENTERS HIS OWN CDS ACCOUNT NUMBER WHEN USING AN ATM CARD ISSUED TO HIM IN HIS OWN NAME. HIS APPLICATION WILL BE REJECTED IF HE FAILS TO COMPLY WITH THE FOREGOING.

The Electronic Share Application shall be made on, and subject to, the terms and conditions contained herein as well as the terms and conditions set out below:-

- (a) The Electronic Share Application shall be made in connection with and subject to the terms of this Prospectus and our Memorandum and Bye-laws.
- (b) The Applicant is required to confirm the following statement (by depressing pre-designated keys or buttons on the ATM keyboard) and undertake that the following information given is true and correct:
- I have attained 18 years of age as at the Closing Date of the Share Application;
 - I am a Malaysian citizen residing in Malaysia;
 - I have read the relevant Prospectus and understood and agreed with the terms and conditions of this Application;
 - this is the only Application that I am submitting; and
 - I hereby give consent to the Participating Financial Institution and Bursa Depository to disclose information pertaining to myself and my account with the Participating Financial Institution and Bursa Depository to MIDFCCS and other relevant authorities.

The Application will not be successfully completed and cannot be recorded as a completed transaction at the ATM unless the applicant completes all the steps required by the Participating Financial Institution. By doing so, the applicant shall be treated as signifying his confirmation of each of the above statements as well as giving consent in accordance with the relevant laws of Malaysia including Section 97 of the Banking and Financial Institutions Act, 1989 and Section 45 of the Securities Industry (Central Depositories) Act, 1991 to the disclosure by the relevant Participating Financial Institution or Bursa Depository, as the case may be, of any of the Applicant's particulars to MIDFCCS, or any relevant regulatory bodies.

- (c) THE APPLICANT CONFIRMS THAT HE IS NOT APPLYING FOR OUR SHARES AS NOMINEE OF ANY OTHER PERSONS AND THAT ANY ELECTRONIC SHARE APPLICATION THAT HE MAKES IS MADE BY HIM AS BENEFICIAL OWNER. THE APPLICANT SHALL ONLY MAKE ONE (1) ELECTRONIC SHARE APPLICATION AND SHALL NOT MAKE ANY OTHER APPLICATION FOR OUR SHARES WHETHER AT THE ATMS OF ANY PARTICIPATING FINANCIAL INSTITUTION OR ON THE PRESCRIBED APPLICATION FORMS OR VIA INTERNET SHARE APPLICATION.

16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

- (d) The applicant must have sufficient funds in his account with the relevant Participating Financial Institution at the time he makes his Electronic Share Application, failing which his Electronic Share Application will not be completed. Any Electronic Share Application which does not strictly conform to the instructions set out on the screens of the ATM through which the Electronic Share Application is being made will be rejected.
- (e) The applicant agrees and undertakes to subscribe for and to accept the number of Public Issue Shares applied for as stated on the Transaction Record or any lesser number of Public Issue Shares that may be allotted to him in respect of his Electronic Share Application. In the event that our Company decides to allot any lesser number of Public Issue Shares or not to allot any Public Issue Shares to the applicant, the applicant agrees to accept any such decision as final. If the applicant's Electronic Share Application is successful, his confirmation (by his action of pressing the designated key or button on the ATM) of the number of Public Issue Shares applied for shall signify, and shall be treated as, his acceptance of the number of Public Issue Shares that may be allotted to him and to be bound by the Memorandum and Bye-laws of our Company.
- (f) MIDFCCS on the authority of the Directors of our Company reserves the right to reject any Electronic Share Application or accept any Electronic Share Application in part only without assigning any reason therefor. Due consideration will be given to the desirability of allotting the Shares to a reasonable number of applicants with a view to establishing an adequate market for the Shares.
- (g) Where an Electronic Share Application is not successful or successful in part only, the relevant Participating Financial Institution will be informed of the non-successful or partially successful Applications. Where the Electronic Share Application is not successful, the relevant Participating Financial Institution will credit the full amount of the Application monies without interest into the applicant's account with that Participating Financial Institution within two (2) market days after the receipt of confirmation from MIDFCCS. MIDFCCS shall inform the Participating Financial Institutions of the non-successful or partially successful Applications within two (2) market days after the balloting date. The applicants may check their accounts on the fifth (5th) market day from the balloting day.

Where an Electronic Share Application is accepted in part only, the relevant Participating Financial Institution will credit the balance of the application monies without interest into the applicant's account with the Participating Financial Institution within two (2) market days after the receipt of confirmation from MIDFCCS. A number of Applications will, however, be held in reserve to replace any successfully balloted Applications which are subsequently rejected. For such Applications which are subsequently rejected, the Application monies without interest will be refunded to applicants by MIDFCCS by way of cheques issued by MIDFCCS. The cheques will be issued to the applicants not later than ten (10) Market Days from the day of the final ballot of the Application list. Should applicants encounter any problems in their Applications, they may refer to the Participating Financial Institutions.

16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

- (h) The applicant requests and authorises our Company:-
- to credit the Public Issue Shares allotted to the applicant into the CDS account of the applicant; and
 - to issue share certificate(s) representing such Public Issue Shares allotted in the name of Bursa Malaysia Depository Nominees Sdn Bhd and send the same to Bursa Depository.
- (i) The applicant, acknowledging that his Electronic Share Application is subject to the risks of electrical, electronic, technical and computer-related faults and breakdowns, fires and other events beyond the control of our Company, MIDFCCS or the Participating Financial Institution, irrevocably agrees that if:-
- our Company or MIDFCCS does not receive the applicant's Electronic Share Application; or
 - data relating to the applicant's Electronic Share Application is wholly or partially lost, corrupted or not otherwise accessible, or not transmitted or communicated to our Company or MIDFCCS,
- the applicant shall be deemed not to have made an Electronic Share Application and the applicant shall not claim whatsoever against our Company, MIDFCCS or the Participating Financial Institutions for the shares applied for or for any compensation, loss or damage.
- (j) All particulars of the applicant in the records of the relevant Participating Financial Institution at the time he makes his Electronic Share Application shall be deemed to be true and correct and our Company, MIDFCCS and the relevant Participating Financial Institution shall be entitled to rely on the accuracy thereof.
- (k) The applicant shall ensure that his personal particulars as recorded by both Bursa Depository and relevant Participating Financial Institution are correct and identical. Otherwise, his Electronic Share Application is liable to be rejected. The applicant must inform Bursa Depository promptly of any change in address failing which the notification letter of successful allotment or allocation will be sent to his registered or correspondence address last maintained with Bursa Depository.
- (l) By making and completing an Electronic Share Application, the applicant agrees that:-
- in consideration of our Company agreeing to allow and accept the making of any Application for Shares via the Electronic Share Application facility established by the Participating Financial Institutions at their respective ATMs, his Electronic Share Application is irrevocable;
 - our Company, the Participating Financial Institutions, Bursa Depository and MIDFCCS shall not be liable for any delays, failures or inaccuracies in the processing of data relating to his Electronic Share Application to our Company due to a breakdown or failure of transmission or communication facilities or to any cause beyond their control;

16. PROCEDURES FOR APPLICATION AND ACCEPTANCE (Cont'd)

- notwithstanding the receipt of any payment by or on behalf of our Company, the acceptance of the offer made by the applicant to subscribe for Public Issue Shares for which the applicant's Electronic Share Application has been successfully completed shall be constituted by the issue of notices of successful allotment for prescribed securities, in respect of the said Shares;
 - the applicant irrevocably authorises Bursa Depository to complete and sign on his behalf as transferee or renounee any instrument of transfer and / or other documents required for the issue of the Public Issue Shares allotted to the Applicant; and
 - our Company agrees that, in relation to any legal action or proceedings arising out of or in connection with the contract between the parties and / or the Electronic Share Application and / or any terms herein, all rights, obligations and liabilities shall be construed and determined in accordance with the laws of Malaysia and with all directives, rules, regulations and notices from regulatory bodies and that our Company irrevocably submits to the jurisdiction of the courts of Malaysia.
- (m) Our Board reserves the right to require any successful applicant to appear in person at the registered office of MIDFCCS within fourteen (14) days of the date of the notice issued to him to ascertain the regularity or propriety of the Application. Our Board shall not be responsible for any loss or non-receipt of the said notice nor shall they be accountable for any expenses incurred or to be incurred by the successful applicant for the purpose of complying with this provision.
- (n) MIDFCCS on the authority of our Board reserves the right to reject Applications that do not conform to these instructions.
- (o) Electronic Share Applications may be made through an ATM of the following Participating Financial Institutions and their branches:-
- AFFIN BANK BERHAD; OR
 - AMBANK (M) BERHAD; OR
 - BANK MUAMALAT MALAYSIA BERHAD; OR
 - CIMB BANK BERHAD; OR
 - EON BANK BERHAD; OR
 - HSBC BANK MALAYSIA BERHAD; OR
 - MALAYAN BANKING BERHAD; OR
 - OCBC BANK (MALAYSIA) BERHAD; OR
 - RHB BANK BERHAD; OR
 - STANDARD CHARTERED BANK MALAYSIA BERHAD (at selected branches only).
- (p) Except for Affin Bank Berhad, a surcharge of RM2.50 per Electronic Share Application will be charged by the respective Participating Financial Institution.

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