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A Favorable Climate for Foreign Investment in Singapore: Recent Changes in the Companies Act Hold Directors to Strict Standards of Accountability†

I. Singapore's Attractive Investment Climate

Since its independence in 1965 Singapore has successfully practiced an open-door policy towards foreign investment. From a dearth of international investment in the 1960s, Singapore became a major regional manufacturing and financial center with more than 60,000 companies, domestic and foreign, officially registered by the early 1980s.[1]

The modern city of Singapore was founded on February 6, 1819, when Sir Stamford Raffles concluded a treaty of friendship and alliance with the rulers of the island to establish a "factory" for the British East India Company.[2] By treaty of 1824 the island completely surrendered to the Company and recognized the British right to occupation. In 1826 the British Crown issued Letters Patent, called the "Second Charter of Jus-

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The author wishes to thank Miss Catherine Tay Swee Kian of Singapore for reading the manuscript.

†The Editorial Reviewer for this article is James A. DeMent, Jr.

1. *See Strait from the Top*, BUSINESS TRAVELLER, July 1985, at 57-58. Prior to independence, Singapore was already an important entrepot and functioned as a base for the British Armed Forces.

2. For history, see Bartholomew, *The Singapore Legal System*, in SINGAPORE: SOCIETY IN TRANSITION 84-112 (R. Hassan ed. 1976).

tice," creating Singapore's first formal judicial system.[3] In 1867 the Colony of the Straits Settlement was organized, consisting of Singapore, Penang, and Malacca.[4] Apart from the Japanese occupation from 1942 to 1945, Singapore's status as a British Crown Colony lasted until 1959, when it became self-governing.[5] Following a short alliance with the Federation of Malaysia from 1963 to 1965, Singapore proclaimed itself an independent republic in 1965.[6] Today, Singapore, along with Malaysia, is a member of the Association of South-East Asian Nations (ASEAN).[7]

Singapore experienced uninterrupted growth for over twenty-five years until the decline of growth during the mid-1980s. Its attractiveness to foreign investment has many roots. Foremost is the country's location. Surrounded by deep waters, at the crossroads of air and sea routes between Europe, the Middle East, Japan, and Australia, Singapore developed naturally into a major regional entrepot and port. By 1983, its harbor was the world's second-busiest, shipping Southeast Asian oil, rubber, and manufactured goods throughout the world.[8]

Singapore also has an excellent infrastructure. It has a sophisticated telecommunications system and a good network of roads throughout the island. The country is within easy reach by air or sea and, with only 226 square miles and 2.4 million people, it is of a more manageable size than its larger neighbors.[9] Its size also forced Singapore to concentrate on exports, a policy that has reaped many rewards.[10]

The characteristics of Singapore's residents contribute further to Singapore's development. Singaporeans are predominantly Chinese (76 per-

3. P. PILLAI, STATE ENTERPRISE IN SINGAPORE: LEGAL IMPORTATION AND DEVELOPMENT 24 (1983).

4. Penang and Malacca are now part of Malaysia.

5. In 1946 the Straits Settlement was dissolved, and Singapore became a separate Crown Colony.

6. The bond with Malaysia fell apart mainly because the Chinese, who were the dominant group in Singapore, feared domination by the Malay, the dominant group in Malaysia. Although economically the Chinese are a powerful group in Malaysia, politically they often suffer discrimination.

7. Inaugurated by the Bangkok Declaration in 1967, actual cooperation between the ASEAN members (Brunei, Indonesia, Malaysia, the Philippines, and Thailand) began only after the Bali Summit of 1976. *See* Chow Kit Boey, *Asean Economic Cooperation and Singapore,* in SINGAPORE: TWENTY-FIVE YEARS OF DEVELOPMENT 341-64 (You Poh Seng & Lim Chong Yah eds. 1984) [hereinafter SINGAPORE: 25 YEARS].

8. *Future of 'Plato's Republic'; A Rough Road Ahead,* INSIGHT, May 12, 1986, at 16 [hereinafter *Future of 'Plato's Republic'*].

9. Compare the population of Malaysia (14.5 million) and Indonesia (165 million) with that of Singapore (2.4 million).

10. *See* KUNIO YOSHIHARA, FOREIGN INVESTMENT AND DOMESTIC RESPONSE, A STUDY OF SINGAPORE'S INDUSTRIALIZATION 13 (1976) [hereinafter K. Yoshihara]. Most developing countries practice import substitution. Although the home industry then develops in a protected environment, local companies are often unable to compete worldwide at a later time.

cent), with the remainder being Malay (15 percent), Indian (7 percent), and Eurasian and European (together 3 percent). Generally, most people speak English because Singapore chose to expand its usage rather than abolish it. Most people also are well educated, thanks to the high educational standards set by the British and maintained following independence. The result is a multiracial, cosmopolitan city with an appealing atmosphere to locals and foreigners alike.[11]

Equally important to many is Singapore's strong, consistent, and concerned leadership, dominated by the People's Action Party (PAP) under one leader, Mr. Lee Kuan Yew.[12] The People's Action Party was formed in 1954 by moderate, British trained social democrats (led by Mr. Lee) together with communist-oriented Chinese.[13] When Singapore achieved self-government in 1959, Mr. Lee, then thirty-six years old, became Prime Minister, a post he still holds. Initially the communist party was strong, appealing more to the masses, many of whom were unemployed and poorer than the mostly British-educated members of the PAP. Following Singapore's separation from Malaysia, however, the communists suffered a major setback,[14] and since then the PAP has ruled practically unopposed.[15] Only in 1981 and 1984 did two opposition parties win one seat each out of the seventy-nine seats in Parliament.[16]

II. Singapore's Government Sector

Working for Singapore's prosperity and survival, Lee Kuan Yew heavily promoted a free market nation. Even though communists had helped him to power in 1959, Mr. Lee was concerned that they would deter foreign

11. The cosmopolitan atmosphere is enhanced by Singapore's many shopping centers and fine hotels.

12. Singapore is a parliamentary democracy. Every citizen over twenty-one years of age must vote. Parliament is unicameral and consists of seventy-nine members. The President, who is elected by Parliament for four-year terms, is a mere figurehead, the real power being with the Prime Minister, Mr. Lee Kuan Yew, and his British-style cabinet of 14 members. *See* P. PILLAI, *supra* note 3, at 24.

13. *Id.* at 25-27.

14. *See* K. YOSHIHARA, *supra* note 10, at 2-3.

15. In 1969 the Presidential Council for Minority Rights was created to grant minority groups a voice in government; however, the Council was denied the right to vote. *See* P. PILLAI, *supra* note 3, at 24.

16. In October 1981 the Worker's Party leader, Mr. J.B. Jeyaretnam broke PAP's thirteen-year monopoly. The December 1984 election showed a 13 percent swing against the PAP, with two seats (one to Mr. Jeyaretnam) going to the opposition. *See Singapore: Challenge and Response*, FAR-EASTERN ECON. REV., July 11, 1985, at 34-44. *See also* Lee Kuan Yew v. J.B. Jeyaretnam, [1979] 19 MALAYAN L.J. 281, a case in which the Prime Minister won a libel action against Mr. Jeyaretnam, who in an election speech, in 1976, had accused Mr. Lee of favoritism toward his wife and brother, both former law partners in the firm of Lee & Lee.

investments, which he considered vital to bolster and sustain the island. Nevertheless, Singapore remains a highly regulated society with the Government deeply involved with business.[17] The purpose of governmental involvement has been not only to create and maintain the type of infrastructure that would attract private business, but also to prevent failures of a free market and to create an environment in which all people could attain a reasonable standard of living. As a result, the Government remains involved with economic development, finance, housing, education, retirement and social security, and public transportation, among other activities.

Singapore's Economic Development Board (EDB) was established in 1961 with an initial capitalization of S$100 million to guide, promote, assist, finance, and manage economic development.[18] With offices worldwide, EDB currently advises the Government on industrial policy and assists in carrying out that policy.[19] Singapore's finances are controlled tightly by the Monetary Authority (MAS), created in 1971. MAS is the financial agent and banker to the Government and exercises all the functions of a Central Bank except for the issuance of currencies, which is the responsibility of the Board of Commissioners of Currency.[20]

Housing, a prime example of Singapore's achievement, is handled by the Housing and Development Board (HDB) created in 1960.[21] The HDB now provides public housing for over 75 percent of the population. This building activity also helped in reducing unemployment during the early years of Singapore's independence.

Education is encouraged for all citizens, and the most promising students are put on an accelerated schedule.[22] Since the mid-1970s the Government has concentrated on promoting and expanding technonological and engineering skills.[23]

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17. The Government owns all or part of some 500 businesses. *See A Hard Landing Awaits Singapore*, FORTUNE, Jan. 20, 1986, at 97-99.

18. EDB was preceded by the Singapore Industrial Promotion Board, which failed for lack of capital. *See* K. YOSHIHARA, *supra* note 10, at 20.

19. A discussion of the EDB appears in P. PILLAI, *supra* note 3, at 128-56.

20. *See* SINGAPORE: 25 YEARS, *supra* note 7, at 125-30; *see also* TAN CHWEE HUAT, FINANCIAL MARKETS AND INSTITUTIONS IN SINGAPORE 8 (4th ed. 1985).

21. *See* Quah, *Public Housing*, in GOVERNMENT AND POLITICS OF SINGAPORE 233-58 (Quah, Chee & Meow eds. 1985).

22. *See Future of 'Plato's Republic'*, *supra* note 8, at 16. For instance, in a "nurture over nature" approach, the Government organizes parties for educated young persons to get acquainted. Also, in 1984/1985 the Government guaranteed third children of graduated mothers (i.e., those with a degree) privileged treatment in the school system. Second children of uneducated mothers were promised preferred school enrollment (but with a lower preference than the prior group), provided their mothers agreed to sterilization. Because of public outcry, the Government discontinued this policy during 1985.

23. Around 1975 Singapore began promoting high technology industries through a high-

To guarantee all its citizens a secure retirement, Singapore created the Central Provident Fund in 1965. Employer and employee each must contribute a relatively large percentage of salary. With the exception of housing purchases from the HDB, Singaporeans do not have access to their retirement funds until age fifty-five. Meanwhile amounts accumulated in the Central Provident Fund provide the Government with resources for its many social programs.[24]

Singapore Airlines, partially owned by the Government, has built a respectable name in air transport.[25] Another public/private corporation, the Singapore Bus Service, provides an extensive well-run bus operation.[26] The biggest project currently undertaken by the Government is the construction of an enormous Mass Rapid Transit project for underground transport.[27]

III. Singapore's Anticorruption Law

Colonial Singapore had been rampant with bribery, nepotism, misappropriation of public funds, irregularities in licensing, and underassessment of taxes. To thwart the growth of communism as well as to demonstrate that market societies need not necessarily be corrupt, Mr. Lee initiated several strong measures against corruption.[28]

In 1960 the Government enacted the Prevention of Corruption Act (POCA) with stiff penalties for those in public or private organizations who either offer or accept bribes.[29] If convicted, public officers and private organizations may receive prison terms of up to seven years and S$10

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wage, high-cost policy that would add high values to its products, seeking to reserve highly skilled jobs for its small population. This policy backfired. Costs have risen faster than productivity, affecting Singapore's competitiveness relative to neighboring countries. *See Singapore's Shift Offers Quick Aid for Bottom Lines, Ambitious Long-Term Goals,* Bus. Int'l, May 12, 1986, at 146-47 [hereinafter *Singapore's Shift*].

24. *See* Low, *Public Enterprises in Singapore,* in Singapore: 25 Years, *supra* note 7, at 256. Until April 1, 1986, when the employer's contribution was reduced to 10 percent, employer and employee each had to pay 25 percent of salaries. The 25 percent rule continues to apply for the employee's share. The employer's share was reduced, to revitalize Singapore's floundering economy. *See Singapore's Shift, supra* note 23, at 146-47.

25. The Government sold 100 million shares of Singapore Airlines to the public in November 1985 to promote increased interest in the Singapore stock market, which is suffering under the recession. *See A Hard Landing Awaits Singapore, supra* note 17, at 98.

26. P. Pillai, *supra* note 3, at 173.

27. *See* Low, *supra* note 24, at 262. The Mass Rapid Transit Corporation was inaugurated on October 22, 1982. Since many Singaporeans no longer work as manual laborers, construction workers are mostly Koreans and other foreigners.

28. P. Pillai, *supra* note 3, at 123.

29. Prevention of Corruption Act, Ch. 104, 3 Singapore Rev. Stat. 221 (1960), *as amended,* 3 Singapore Rev. Stat. 287 (Supp. 1972). POCA was preceded by the generally ineffective Prevention of Corruption Ordinance of 1937.

thousand in fines.[30] At the same time salaries of public servants have been increased gradually to levels deemed more realistic.[31]

To ensure compliance with POCA, the Corrupt Practices Investigation Bureau (CPIB), the enforcement agency established by POCA, was given broad investigative and enforcement powers. The CPIB operates in secret and, since 1970, has been under the supervision of the Prime Minister's Office. Thus governmental departments and statutory boards find it prudent to cooperate with the CPIB.[32] The CPIB may trace bank accounts of anyone suspected of violating POCA and may conduct unannounced searches and seizures of offices or homes. Since enactment, enforcement under POCA has been vigorous without regard to status or position. Cases have been brought, for example, against senior officers of the Public Utilities Board and the Port of Singapore Authority. Police officers have been blacklisted for fraudulently collecting money, and a raid was conducted on a finance company.[33]

IV. The 1967 Companies Act

Singapore's open, accessible, clean environment make it a haven for foreign investment. Doing business in Singapore is regulated by the Companies Act of 1967, which is based on Australian and English company law.[34] The Companies Act contains provisions on, among other matters, incorporation and directors' duties.

A. Incorporation

Private companies, public companies, and branches of foreign companies may be registered in Singapore. A company may be limited by

30. S$ means Singapore dollar, which is about half the U.S. dollar. In January 1987 one U.S. dollar could be exchanged for approximately 2.07 Singapore dollars.

31. On corruption, see generally Quah, *Administrative and Legal Measures for Combatting Bureaucratic Corruption in Singapore,* in Occasional Paper No. 34 (Singapore: Eurasia Press 1978).

32. One commentator has observed that "[i]n the Singapore bureaucracy, the CPIB is feared as the PAP leadership's all-seeing eye, and is respected for its near-clockwork efficiency and its sophisticated operational methods. The CPIB's formidable name in Chinese is 'Foul Greed Investigation Bureau'." *See* Quah, *supra* note 31, at 14.

33. *See id.* at 18-19.

34. The basic law on companies was enacted in the Companies Act of 1967, *revised in* the Companies Act, Ch. 185 of the 1970 Edition, and *amended in* 1970, 1973, 1974, 1975 and 1984. In 1985 the Companies Act was reprinted and renumbered (this article follows the new numbering). *See also* the Business Registration Act of 1973, Ch. 36, at 493 (Supp. 1973), which regulates partnerships, and the Securities Industry Act of 1973, Ch. 17, at 321 (Supp. 1973), *as amended by* the Securities Industries Act 1986 (effective August 1986), dealing with securities. The latter Act builds on U.S. securities law.

shares or by guarantee, or it may be unlimited.[35] A limited company may be public or private. Public companies may offer their shares for sale to the public and list their stock on the Stock Exchange of Singapore.[36] Private companies must limit the number of shareholders to fifty and restrict the transfer of shares. They may not raise money by invitation to the public.[37]

The incorporation process consists of filing with the Registrar a memorandum of association (roughly equivalent to articles of incorporation in U.S. jurisprudence) and articles of association (roughly equivalent to bylaws in U.S. jurisprudence), together with the required fee and, since 1984, a declaration of compliance.[38] The Registrar then issues a certificate of incorporation.[39] The company must have a minimum of two directors, one of whom must reside in Singapore.[40] Shareholders need not reside in Singapore. Also, Singapore requires no local equity participation and applies few exchange restrictions.[41]

The Act requires a Singapore company to have a registered office in Singapore[42] and to maintain certain records such as registers of members, directors, directors' holdings, managers, and secretaries, and a minute book of meetings.[43] Public companies are required to keep, in addition, a register of individuals with substantial interests in the company's share capital. A Singapore company must file its audited financial statements annually with the Registrar of Companies. A branch of a foreign company must file two different balance sheets, one required by the law of the country of incorporation to be filed within two months of the foreign company's annual general meeting, and another arising out of its Singapore operations.[44] If this dual filing poses an unreasonable burden for a company, the Registrar may order relief.[45]

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35. Sections 4 and 17(2) of the Companies Act. In a limited company, shareholders limit liability to their shareholdings or guarantee. An unlimited company exposes shareholders to unlimited liability. But see section 17(5) of the Companies (Amendment) Act 1984, which prohibits registration of companies limited by guarantee.

36. See the Companies Act, part IV, sections 43-56 for requirements of public offerings.

37. Section 18(1) of the Companies Act. A private company with fewer than twenty members, none of which is a corporation, may be exempt from filing certain reports with the Registrar.

38. Sections 19(1) and (2) of the Companies Act.

39. Section 19(4) of the Companies Act.

40. Section 145(1) of the Companies Act.

41. TAN CHWEE HUAT, *supra* note 20, at 10.

42. Section 142(1) of the Companies Act.

43. *See* Companies Act, Part V, Management and Administration, Division 4—Register of Members, §§ 190-196 and Division 5—Annual Return, §§ 197-198.

44. Section 373 of the Companies Act.

45. Section 373(7) as adopted by the 1984 Companies (Amendment) Act.

B. Directors' Duties

Generally, directors owe shareholders a duty of loyalty and a duty of care. As fiduciaries, the loyalty obligation requires directors to place the company's interest ahead of their own. Section 157 of the 1967 Companies Act states that "a director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office" and "not make improper use of any information acquired by virtue of his position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself or for any other person or to cause a detriment to the company."[46] For instance, a director may not serve two masters, profit secretly, or usurp an opportunity belonging to the corporation. The duty of care requires a director to exercise that degree of care and skill that might reasonably be expected from a person of his knowledge and experience.[47] A director generally satisfies this duty when he acts to the best of his capabilities in the interest of the company.

The Companies Act adds many statutory duties. For instance, a director must consider the interests of employees and shareholders,[48] must keep accounts,[49] appoint auditors,[50] and abstain from fraudulent trading.[51] These duties, common law and statutory, all seek to protect investors against abuse and misuse by directors and the companies operated under their supervision.[52]

46. Sections 157(1) and (2) of the Companies Act.

47. *See* C. Tay Swee Kian & Tang See Chim, Directors' Duties and Liabilities 53 (1985) [hereinafter Tay]; *see also Re* City Equitable Fire Insurance Co. Ltd., [1975] Ch. 407, which states:

1. A director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience. . . .
2. A director is not bound to give continuous attention to the affairs of his company. His duties are of an intermittent nature to be performed at periodical board meetings and at meetings of any committee of the board upon which he happens to be placed. He is not, however, bound to attend all such meetings, though he ought to attend whenever, in the circumstances, he is reasonably able to do so. . . .
3. In respect of all duties, that having regard to the exigencies of business and the articles of association, may properly be left to some other officials, a director is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly. . . .

48. Section 159 of the Companies Act.

49. Section 199 of the Companies Act.

50. Section 205 of the Companies Act. Auditors now must be appointed within three months after incorporation.

51. Section 340 of the Companies Act.

52. The importance Singapore attaches to directors' duties is apparent in the following: The developing countries, specially those which used to be corrupt and are in the process of eradicating corruption, face special dangers from loose (and publicly flouted) regulation of companies, when they are under threat from communist subversion. For the communists often pose as being highly moral and ethical, as opposed to the establishment which is portrayed as oppressive of the poor, ridden by nepotism and flouters of the rule of law,

C. Limited Insurance

The Companies Act invalidates any provision in the articles, contractual or otherwise, that exempts or indemnifies a director for negligence, default, or breach of duty or trust.[53] Articles or contract may, however, indemnify a director out of the assets of the company for liability incurred in defending cases, civil or criminal, decided in the director's favor.[54] Furthermore, even if it appears to the court that the director is guilty of negligence, default, or breach of duty or trust, the court may still grant relief if in its opinion the director acted honestly and reasonably, and in fairness ought fairly to be excused.[55]

V. The 1984 Companies (Amendment) Act[56]

With the increased level of business activity taking place in Singapore, many practices developed to circumvent existing laws. For instance, attorneys, bankers, accountants, and others would incorporate companies with a nominal capital of a few dollars, under an internationally known name, and with themselves as directors. These dormant companies then could be sold "off the shelf" to investors wanting to save the time and paperwork of registering their own companies.[57] In addition, many companies did not meet annually, as is required by the 1967 Companies Act, and did not file returns with the Registrar.[58] In some instances when a

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> and if company law is publicly unenforced in the face of real or imagined widespread abuses whereby the common people suffer serious losses, this helps the communists to subvert existing governments. The dilemma is that while overstrict application of draconian company laws may scare away foreign investors, too easy enforcement will help the subversive elements, but the solution is obvious—to take the middle way.

A. Singh, Director's Liabilities in Singapore & Malaysia after Tarling's Case (1981).

53. Section 172(1) of the Companies Act.

54. Section 172(2) of the Companies Act. See also article 113 of Table A, Fourth Schedule to the Act, which reads that "every director . . . shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour . . . in which relief is granted to him by the Court in respect of any negligence, default, breach of duty or breach of trust."

55. Section 391 of the Companies Act.

56. For a general review, see Woon, *The Companies (Amendment) Act 1984: The Registrar's Shopping List—Some Problems Introduced by the Companies (Amendment) Act 1984*, 26 Malaya L. Rev. 309 (1984).

57. *See Solicitors are Now Reluctant to be Company Directors*, The Singapore Monitor, Sept. 11, 1984, *reprinted in* Tay, *supra* note 47, at 82.

58. According to the Straits Times, Oct. 9, 1984, *reprinted in* Tay, *supra* note 47, at 33, four out of ten companies were either not filing returns on time, or were not revealing everything that they should in their returns.

company was doing poorly, the directors would resign their posts leaving no one to account for poor performance.[59]

The Registrar thus was losing the ability to monitor and regulate Singapore companies properly. Although the Registrar exercised pressure on companies to file reports and refused to record resignations if fewer than two directors would remain in office, the legality of such actions was doubtful. Officially, the 1967 Companies Act required the filing of reports only after a meeting was held. If the directors held no meeting, no reports seemed necessary. Case law provides further that resignations are effective upon notification to the company in writing, or orally at a general meeting.[60] Meanwhile, the 1967 Companies Act provides that the Directors' Register, held by the Registrar, serves as prima facie evidence of directorships.[61] Thus by not recording resignation notices, a director appears to continue in office.

Upon becoming independent, Singapore acquired the English legal system, and although it is developing its own unique style, Singapore continues to look to England for major trends in the law.[62] One such trend in England is a renewed concern with the quality, liability, and reliability of directors, and the improved protection of investors.[63] As a result Singapore proposed in 1983 to amend its Companies Act, the first substantial revision in ten years.[64] The purpose was to confer legality on certain acts by the Registrar and, more importantly, to increase the duties and liabilities of directors to better safeguard investors. Departing from its usual practice, apparently because of the importance of the subject matter, Parliament sent the bill to a Select Committee to solicit suggestions from business and other interested parties. Many of the suggestions were accepted.[65]

59. There was a fear that fly-by-night companies would milk Singapore investors and the organizers then flee the country. Few such incidences actually appear to have happened.

60. *E.g.*, Glossop v. Glossop, [1907] 2 Ch. 370.

61. Section 173(8) of the Companies Act.

62. "As a generalization one can say that English Law (including statutes) as of 27 November 1826, and current English commercial law form the underlying strata of Singapore's law." From P. PILLAI, *supra* note 3, at 25. The Judicial Committee of the Privy Council in London still operates as a court of last resort. English legal education remains recognized for entrance to the Singapore bar.

63. For instance, in England the 1983 Gower Report on Investor Protection proposed that directors who had been involved with compulsory liquidations be automatically disqualified from assuming other directorships. Euromarket News No. 835, Jan. 8, 1985, at 5. But when on March 11, 1985, England consolidated its Companies Act (not a "scissors and paste" job, but "the largest consolidation in our history") it did not adopt any of the automatic disqualifications of directors suggested by the Gower Report. *See also* the 1982 British Cork Report, the final Report of the Review Committee on Insolvency Law and Practice (Cmnd. 8558); and the 1984 White Paper, A Revised Framework for Insolvency Law (Cmnd. 9175).

64. Bill No. 16/83, introduced in Parliament on December 29, 1983.

65. Report of the Select Committee on the Companies (Amendment) Act Bill No. 16 of

A. Increased Powers for the Registrar

Several changes affect the powers of the Registrar. The 1984 Amendments authorize the Registrar to refuse memoranda or name registrations, to wind up companies, or to strike them from the companies register.

Under earlier law the Registrar could not refuse to register a proposed company if the objects were lawful and the tendered documents appeared in order. Under new section 20, the Registrar need not register the memorandum (and thus the company) "unless he is satisfied that all the requirements of the Act in respect of the registration and of all matters precedent and incidental thereto have been complied with." The Registrar must also refuse registration if he determines that: (a) "the proposed company is likely to be used for an unlawful purpose" or that; (b) "it would be contrary to the national security or interest for the proposed company to be registered."[66] Appeal may be taken to the Minister whose decision is final.[67] Existing companies violating this section may be wound up or struck from the register depending on whether they are local or foreign.[68]

Further, the Registrar may refuse registration or order a company to change its name if the name is identical or confusingly similar to any other business name, domestic or foreign.[69] To apprise the Registrar of possible conflicts in company names early, the 1984 Amendments obligate companies to reserve their name as part of the incorporation process.[70]

1983 [hereinafter Select Committee Report]. An advertisement inviting written representations on the bill was published in several newspapers on January 26, 1984. A press release was also issued. Written representations could be submitted in Malay, Chinese, Tamil, or English, and the closing date was February 18, 1984. Fourteen written commentaries were received (all in English) from such diverse sources as private legal practitioners, the Law Society, the Chamber of Commerce, Accounting Society, a bank, Price Waterhouse, and two law professors. Six meetings were held.

66. Respectively, sections 20(1), 20(2)(a) and (b) of the Companies Act. Section 369 extends these new powers to registration of foreign companies.

67. Section 20(3) of the Companies Act.

68. Section 254(m) allows winding up by the court if "the company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest." Section 377(8) provides that "where the Registrar is satisfied that a foreign company is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore or against national security or interest, he shall strike the name of the foreign company off the register and it shall thereupon cease to be registered as a foreign company under this Division."

69. Section 27(1)(b) and (c) (first registration); Section 27(2)(a) and (b) (name change).

70. Section 27(11) of the Companies Act. Reservation is for two months, with one renewal for the same period. Sections 27(12) and (13). During the period that a reservation remains in force no other company has access to the same name.

B. Increased Duties and Liabilities of Directors

The 1984 Amendments increase the duties and liabilities of directors significantly. They create new criminal offenses for directors, disallow resignations under certain circumstances, and create new grounds for disqualification. The rules prohibiting loans to directors have been tightened, and insider trading provisions have been revised. The purpose is to guarantee to investors that the people who run the company are honest, accountable, and available.

C. Criminalization

Many actions have been criminalized, subjecting directors to fines or jail terms. No distinction has been made between part-time or full-time, inside or outside directors. The obligations and penalties apply across the board.[71] All in all, the 1984 Companies Act recognizes over 100 offenses. Penalties, for instance, run from a S$1,000 fine for a failure to issue share certificates containing the prescribed information to five years imprisonment or a fine up to S$100 thousand for violating insider trading rules.[72]

D. Restricted Resignations

Although the 1967 Companies Act required that every company have a minimum of two directors, at least one of whom resided in Singapore, the 1984 Amendments strengthen this provision by prohibiting resignation unless at least two directors remain, one of whom resides in Singapore.[73] Any resignation violating this provision is deemed invalid.[74] The prohibition does apply if a director is required to resign because, for instance, of individual or corporate bankruptcy or for being a "persistent defaulter."[75]

E. Disqualifications

The 1984 Amendments refine one ground for disqualification (bankruptcy) and adopt two new ones (double liquidation and persistent de-

71. Originally, the bill imposed liabilities on all directors irrespective of fault. Because of the undue hardship, however, especially for foreign directors, that such a rule might impose (a point particularly emphasized by the commentaries), the final Act punishes only those directors who are actually at fault. *See* Select Committee Report, *supra* note 65.

72. Respectively, sections 149 and 155 of the Companies Act. For a list of offenses, see Tay, *supra* note 47, at 61-81.

73. Section 145(1) of the Companies Act.

74. Section 145(6) of the Companies Act.

75. Section 145(7) of the Companies Act. If a foreign company is left with only one agent in Singapore, it has twenty-one days to appoint another. Section 370(5) of the 1984 Companies (Amendment) Act.

fault).[76] The 1967 Companies Act already prohibited a person legally declared bankrupt from acting as a director except with permission of the court.[77] The 1984 Amendments make it clear that the bankruptcy judgment may also be made by a foreign court. The concept is, of course, that those unable to manage their own affairs should be prohibited from managing the affairs of others.

F. Double Liquidation

This concept is carried one step further in the double liquidation provision. New section 149 disqualifies from acting as a director a person who has been involved twice with bankrupt companies. For example, if a person: (a) is or has been a director of Company A at any time within three years prior to its liquidation; and (b) is or has been a director of Company B at any time (there is no cut-off period); and (c) Company A and Company B go into liquidation due to insolvency within five years of each other, such person is automatically disqualified for five years from acting as a director or taking part in any way in the management of any Singapore company without permission of the court. The court may lift the ban, if the director can satisfy the court that his conduct with the liquidated firm does not make him unfit for a similar position in another company.[78] Upon conviction for violating this provision a director may be liable for a fine up to S$10 thousand or for two years imprisonment.

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76. Other previously established grounds for disqualification include becoming of unsound mind, unjustified absences from directors' meetings for more than six months, or failure to disclose conflicting interests. Persons seventy years and older require special permission to be on the boards of public companies. Section 153 of the Companies Act.

77. Section 148 of the Companies Act. The debtor, however, must notify the Minister of his request for dispensation.

78. Section 149 reads in part:

(1) where a person

(a) is or has been a director of a company which has at any time gone into liquidation (whether while he was a director or at any time within 3 years of his ceasing to be a director) and was insolvent at that time; and

(b) is or has been a director of another such company which has gone into liquidation and was insolvent at that time within 5 years of the date on which the first-mentioned company went into liquidation, and that person within a period of 5 years after the other such company referred to in paragraph (b) has gone into liquidation, 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 of a company, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$10 thousand or to imprisonment for a term not exceeding 2 years or to both.

(2) The Court shall not give leave under this section unless

(a) 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;

Section 149 raises several problems for unwary directors. Since there is no cut-off period for having been a director of the second company (Company B), the exposure to liability may extend for an indeterminate period of time. Also, the section fails to recognize that companies fail for reasons other than mismanagement,[79] and even when mismanagement causes failure, not all directors may be equally at fault. Persons registered as nominee directors of shelf companies, who have hardly been involved in management, could face liability for many years after they have resigned and the companies have been sold to other investors. In addition, those individuals who customarily accept posts as a service to their clients to satisfy the Singapore local director requirement (such as attorneys and accountants) run the risk of unintentionally violating the statute. If they represent several companies, two of which go into liquidation within the prescribed period, their remaining directorships expose them automatically to liability under the statute. Foreign directors also may incur automatic liability for actions beyond their control and knowledge.

Although the double liquidation provision is modeled on English law, a major difference applies. In England, the disqualification is not automatic. The court winding up the company must make an explicit disqualifying order, or the relevant authorities may apply for an order to be issued requiring the director to ask permission before accepting other directorships. Either way the director knows his status.[80] Moreover, the

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and

(b) the applicant has satisfied the Court that his conduct as a director of any of those companies referred to in subsection (1) did not make him unfit to be concerned in the management of a company.

79. The double liquidation provision conclusively presumes that companies fail because of bad management.

80. *See* sections 12, 13, and 14 of the U.K. Insolvency Act 1985 and sections 295-299 and 300-302 of U.K. Companies Act 1985. For instance, section 12 of the U.K. Insolvency Act 1985 reads in part:

12.(1) The court shall make a disqualification order against a person in any case where, on the application under this section, the court is satisfied—

(a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently); and

(b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.

(2) The period specified as the period of the disqualification in a disqualification order made under this section shall not be less than two years.

(3) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under this section should be made against any person, an application for the making of such an order against that person may be made—

(a) by the Secretary of State; or

(b) if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being wound up by the court in England or Wales,

burden is not on the director to prove his fitness to manage, as in Singapore, but on the accuser to show lack of fitness.[81]

G. Persistent Default

New section 155 disqualifies a person, on penalty of up to a S$10 thousand fine or two years imprisonment, from acting as a director without permission of the court if he is guilty of "persistent default" in filing returns with the Registrar.[82] A person is in "persistent default" if convicted of three or more offenses for not filing returns with the Registrar or of defying three court orders to supply such returns or permit inspec-

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by the official receiver.

. . . .

(6) The Secretary of State or the official receiver may require the liquidator, administrator or administrative receiver of a company—
  (a) to furnish him with such information with respect to any person's conduct as a director of the company; and
  (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director, as the Secretary or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

(7) For the purpose of this section a company becomes insolvent if
  (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up;
  (b) an administration order is made in relation to the company; or
  (c) an administrative receiver of the company is appointed, and references in this section to a person's conduct as a director of any company or companies include, whether that company or any of those companies has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

The commentary to section 12 reads in part:

> The original clause from which this section evolved was the most controversial provision in the Bill, and underwent considerable alteration throughout all Parliamentary stages. In chap. 45 of the Cork Report it was recommended that delinquent directors should be punished by disqualification from company management for up to 15 years. The Report also recommended that in certain serious cases of misconduct disqualifications should be mandatory, while in others it would be a matter for the court's discretion. In their White Paper (paras. 12-14 and 46-51) the Government adopted a more draconian and mechanical approach whereby all directors of companies undergoing compulsory liquidation would suffer automatic disqualification unless they could exculpate themselves before a court. Clause 7 of the Bill as first published duly embodied this principle. However, a concerted opposition in Parliament led to radical recasting of the clause through progressive stages in which the Government, having first been defeated on a division (Hansard H.L. Vol. 459, col. 628), withdrew its original clause (Hansard H.L. Vol. 461, cols. 711-19) and subsequently procured the enactment of § 12 in its present form, providing a restrictively controlled procedure for the disqualification of directors of insolvent companies.

As of Jan. 1, 1987, section 12 of the Insolvency Act 1985 has been repealed by the Companies Directors Disqualification Act 1986, which contains provisions similar to those of section 12.

81. England maintains a public register of such disqualified persons.

82. Section 155(1) of the Companies Act.

tions.[83] A certificate of the Registry testifying to such refusals or orders is prima facie proof of the offense.[84] This section obviously seeks to bolster the Registrar's powers by giving him the power to punish directors for failing to hold annual meetings and file returns.

This section is also derived from English law.[85] Again in England, however, the court must specifically disqualify the director. In Singapore this step is automatic, punishing the honest director along with the guilty one. The potential problem is particularly acute for part-time or foreign absentee directors, who often lack power to compel the company to hold annual meetings, make reports, or file returns.[86]

H. No Director Loans

The new rules prohibiting company loans to directors have been clarified. The policy in opposing such loans is relatively straightforward. If creditworthy, directors could obtain loans elsewhere; if not, they should not place the company's assets at risk for personal gain. Consequently, section 162 of the 1967 Companies Act prohibits companies from making or guaranteeing loans to or for its directors.[87] Section 163, adopted in 1974, prohibits director-connected company loans. Thus, if the directors of the lending company, alone or together, have an interest of twenty percent or more in the shares of the borrowing company, the loan is illegal.[88] "Interests in shares" include beneficial interests, interests held through companies controlled by a person or his associates, contracts for purchase, options, trusts, and other rights over shares.[89] If the borrowing company has no share capital, legality depends on whether the directors have control.[90]

Formerly, an exemption from section 162 applied when the lending of money was "in the ordinary course of business," such as for banks. As a result many companies, whatever their business, tended to sign "no objection clauses" to benefit from the exemption. Section 162 now clarifies that the exemption applies only to banks, finance companies, insurance companies, or other companies subject to the Monetary Authority

83. Section 155(3) and (4) of the Companies Act.

84. Section 155(7) of the Companies Act.

85. Section 93 of the U.K. Companies Act 1981, and section 297 of the U.K. Consolidated Companies Act 1985.

86. See discussion by Hicks, *Disqualification of Directors for Persistent Default in Filing Documents, Section 155, Companies Act*, 27 MALAYA L. REV. 329 (1985).

87. Section 162. But with shareholder approval, full-time directors may be given loans to buy homes.

88. Section 163(2)(a) of the Companies Act.

89. Section 7 of the Companies Act.

90. Section 163(2)(b) of the Companies Act.

of Singapore.[91] Section 162(6) clarifies further that the term "directors" includes spouse and children.[92] Section 163, which was adopted several years later, already had a similar provision.[93]

A third clarification relates to the lending of funds to director-connected companies. Since it was not uncommon for companies to borrow through related Malaysian or Hong Kong companies, section 163 now states that director-connected company loans are also prohibited if the borrowing company is incorporated outside Singapore.[94] Violation of either section by the company exposes the authorizing directors upon conviction to fines (not exceeding S$20,000) and imprisonment (not exceeding two years).[95]

I. Insider Trading

Another significant change in the 1984 Amendments concerns insider trading. Common law did not consider directors fiduciaries subject to a duty to disclose material inside information.[96] The building of trust in financial markets, a cause Singapore strongly supports, can be accomplished by precluding individuals with special information from using it to their advantage until it has become public. Consequently, the 1967 Companies Act (as well as other statutes) attempts to curtail insider trading directly and indirectly.[97] Insider trading cases are still relatively uncommon in Singapore[98] because the stock market is young and investors are largely unaware of their rights. When such instances do occur, however, the difficulties of apprehending the wrongdoers are considerable.[99] The 1984 Amendments, therefore, attempt to strengthen enforcement.[100]

91. Section 162(1)(d) of the Companies Act.

92. Section 162(6) of the Companies Act.

93. Section 163(5) of the Companies Act.

94. Section 163(2) of the Companies Act.

95. Sections 162(4) and 163(7) of the Companies Act.

96. *See* Percival v. Wright [1902] 2 Ch. 421, *cited in* TAY, *supra* note 47, at 100.

97. Insider trading is regulated by the Companies Act, the Securities Industry Act of 1973 *supra* note 34, and the Singapore Code on Takeovers and Mergers of 1979. Indirect insider regulation is through registers of shareholdings as required by section 69 A-N (substantial shareholdings), sections 134-134A (Director's Interests) of the Companies Act, and sections 26-30 of the Securities Industry Act of 1973 (securities). The new Singapore Securities Industry Act 1986, (effective August 1986) has expanded the takeover provisions of the Companies Act.

98. *But see* the *Haw Par* case, mentioned in TAY, *supra* note 47, at 99. See also the recent Pan-Electric debacle, which caused the Singapore stock market to close for several days in November 1985. *Singapore Strained by Crisis in Stocks*, New York Times, Dec. 5, 1985, at D8.

99. The Singapore Stock Exchange was created on May 24, 1973, at which time it was separated from the Malaysian Stock Exchange with which it had been united since 1963.

Section 157 of the Companies Act provides for corporate remedies. If an officer or agent of a company takes unfair advantage of his position, he must return any profits he makes to the company and may be liable for fines (up to S$5,000) and imprisonment (one year).[101] Section 158 provides a remedy for those who have dealt with insiders.[102] Section 87 of the Securities Industry Act provides for remedies against securities market professionals.[103]

Although the first and last provisions remain unchanged, the 1984 Amendments alter section 158 in several ways. The term "insiders," originally confined to officers, agents, and employees, now includes "substantial shareholders," defined as holders of not less than five percent of the shares.[104] Originally only securities traded on the stock exchange were affected. The 1984 Amendments apply to insider trading of securities whether traded on the stock exchange or elsewhere. The statute of limitations runs for two years after completion of the insider trade, or (under the Amendments) for six months after the victim's discovery of the relevant facts in relation to the dealing.[105] The definition of inside information has been changed from "specific" to "special" confidential information, which means any confidential fact or circumstance of whatever nature that would affect the price of the securities of the company.[106] Although

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For a history of the Singapore Stock Exchange, see TAN CHWEE HUAT, *supra* note 20, at 3-12.

100. Following the Pan-Electric incident, Singapore decided to revise again its insider trading laws. *See Singapore Stock Exchange Regroups After Pan-Electric; Opens Door to Foreign Firms*, BUS. ASIA, Apr. 28, 1986, at 131.

101. Sections 157(2) and (3) of the Companies Act.

102. Section 158 reads in part:

(1) An officer, agent, employee or substantial shareholder of a corporation who in or in relation to a dealing in securities by himself or any other person makes use to gain, directly or indirectly, an advantage for himself or any other person of special confidential information acquired by virtue of his position as such officer, agent, employee or substantial shareholder which, if generally known, might reasonably be expected to affect materially the price of the subject-matter of the dealing shall, in addition to any penalty imposed under section (9), be liable to a person for loss suffered by that person by reason of the payment by him or to him of a consideration in respect of the securities greater or lesser, as the case may be, than the consideration that would have been reasonable if the information had been generally known at the time of the dealing.

(2) An officer, agent, employee or substantial shareholder of a corporation is not liable under subsection (1) to a person for any loss suffered by that person if that person knew or ought reasonably to have known of the information referred to in subsection (1) before entering into the transaction relating to the dealing in securities of the corporation.

103. Section 87 of the Securities Industry Act 1973.

104. Section 81 of the Companies Act defines substantial shareholder.

105. Section 158(3) of the Companies Act.

106. Section 158(1) of the Companies Act.

this change resulted from prior controversial court cases, the effect of the difference remains unclear.[107]

The penalty for insider trading is increased to up to S$100 thousand or five years imprisonment.[108] Moreover, the insider must reimburse the victim for the amount the shares reasonably would have been worth had the information been publicly known.[109] If, however, the victim knew or "ought reasonably to have known" of the inside information, the insider is not liable.[110]

The last change, section 158(10) of the Amendments, concerns tippees, a group not covered by the older Act. A tippee is a person who deals on the basis of inside information received from an insider. If a tippee knows or "ought reasonably to have known" that the information was acquired by the insider because of his position, the tippee may be liable for a fine up to S$50 thousand or imprisonment for up to three years.[111] A tippee's victim, however, may not seek damages from either the tipper or the tippee.

VI. The Aftermath of the 1984 Amendments

Almost immediately after passage of the 1984 Amendments, the Registrar intensified enforcement efforts, bringing charges against 155 company directors for being persistently in default. Fifty-four of those pleaded guilty and were fined from S$150 to S$1,200, for a total of more than S$30 thousand. Twenty-five were acquitted, and seventy-six have gone to trial.[112]

The double liquidation provision brought even more commotion. While recognizing the importance of an open and honest business environment, many claimed that with this provision Singapore had gone too far. Those who were accustomed to serving as directors (e.g., attorneys, bankers, and accountants) began to decline such assignments. Instead a new group of directors emerged, comprised of persons with little to lose. For instance, unemployed persons or Philippine maids were recruited for a fee

107. For instance, in *Public Prosecutor v. G. Choudhury*, the issue was whether a financial crisis was specific information under then section 158. The trial court said it was. The appellate court overruled, stating that "facing a financial crisis is a subjective statement and not an objective one, precisely and unequivocally expressed." Reinstating the decision of the trial court, the High Court held that a company's financial situation "is the kind of specific information anyone familiar with the market knows that can markedly affect the prices of the particular shares and can result in the suspension of the trading of the shares on the Stock Exchange." *See* [1981] MALAYAN L.J. 77, 79.

108. Section 158(9) of the Companies Act.

109. Section 158(1) of the Companies Act.

110. Section 158(2) of the Companies Act.

111. Section 158(10)(a) and (b) of the Companies Act.

112. The Straits Times, Jan. 8, 1985, *reprinted in* TAY, *supra* note 47, at 32.

to serve as directors in name, while real managers were running the company.

At this time of heightened enforcement and creative lawbreaking, economic growth in Singapore began to taper off. In 1985 Singapore experienced a severe decline with the first decrease in its GNP.[113] Blamed for the recession were such outside forces as worldwide falling oil prices, the global shipping debacle, and the shrinking export market in the United States. Blamed too were Singapore's overregulation, the rigidity in its economic management system, its slow reaction to market forces, and its autocratic, paternalistic attitude. Singapore's high wage policy of the late 1970s was also criticized as having jeopardized its regional competitiveness. In addition, Singapore's unusually high savings rate (41 percent), which resulted from compulsory contributions to the Central Provident Fund, was claimed to be economically unhealthy.[114] Another reason given is that the Chinese population of Hong Kong stayed in Hong Kong and did not move their businesses to Singapore as had been anticipated.

After recovering from the initial shock of the recession, however, Mr. Lee has charted a new course. In the short run, Singapore will seek to stimulate the economy through tax reductions. Starting in April 1986, corporate income taxes were reduced from 40 percent to 33 percent. The amount of the employer's contribution to the Central Provident Fund has been lowered from 25 percent to 10 percent. And future wage increases will be tied to productivity and no longer directed by the Wage Guidelines Committee. In the long run, Singapore may slowly denationalize its industry and return it to private entrepreneurs.[115]

Meanwhile the Companies Act is under revision.[116] The main objects of the current proposals are twofold: to obligate companies to make earlier and fuller disclosures, and to expand the powers of the court in dealing with failing companies and with irregularities under the Act.[117] Clearly, the purpose is to increase the Government's authority over companies.

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113. *See, e.g.*, Talib, *Singapore: Highlights of the Report of the Economic Committee*, 4 ASIAN-PACIFIC TAX & INVESTMENT BULL. 103 (1986).

114. *See e.g., Future of 'Plato's Republic'*, *supra* note 8.

115. *See Singapore's New Budget Cuts Taxes, Hikes Spending to Revive Ailing Economy*, BUS. ASIA, Mar. 31, 1986, at 98; *Does the Recession Mean a Watershed in Singapore?*, BUS. ASIA, Apr. 7, 1986, at 108; *see also Riding It Out*, ASIAWEEK, July 5, 1985, at 28-40.

116. Companies (Amendment) Bill No. 9/86, introduced in Parliament Mar. 31, 1986. The Bill is presently before the Parliamentary Select Committee.

117. *See* Explanatory Statement Bill No. 9/86, at 120. The bill, among other things, makes more extensive provisions for consolidated accounts of companies; recasts the restrictions in which financial assistance may be given by a company for the acquisition of its own shares; refines the rules on registration of a prospectus; enlarges disclosure of directors' benefits; and confers wider powers on the Court to deal with irregularities in proceedings under the Act.

On the other hand the current proposals would also relax the double liquidation provision of the 1984 Companies (Amendment) Act. The present provision disqualifies a person who was director of liquidated Company A at any time within three years of its liquidation, and of liquidated Company B at any time. The bill adds the same three-year cut-off period to the Company B directorship.[118] Thus, if a person has resigned within three years prior to either Company A's or Company B's liquidation, he does not face automatic disqualification for other directorships, even though Company A and Company B both went bankrupt within a five-year span. Still, the disqualification remains automatic, requiring the director to convince the court of his fitness to serve as a director for other companies. One important exception to automatic disqualification, however, is that a director may defend himself by proving that at the time he resigned from Company A or Company B either the entity had not begun to transact business or he was unaware of an impending insolvency.[119]

VII. Conclusion

A Singapore directorship is fraught with risks. In addition to the usual duties of loyalty and care, the Singapore Companies Act recognizes statutory duties, many of which are subject to criminal penalties. Failure to hold meetings or to file documents exposes even responsible directors to severe penalties, as does involvement more than once with failing companies. Resignation may be impossible and insurance unavailable. Above all, the Registrar watches with great scrutiny.

There are, of course, several ways to reduce these risks: Know your colleagues and avoid being the last remaining director; do not accept honorary directorships except as they may benefit your business; keep track of all directorships, past and present, and continue to check regularly

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118. Clause 22 of the Companies Amendment Bill, amending section 149 of the Companies Act.

119. Clause 22, adding new subsections (6) and (7) to section 149 reads in part:

(6) It is a defence to a prosecution under subsection (1) if the defendant proves—
  (a) that, at the time he resigned as a director from a company to which subsection (1) applies, the company had not commenced business or exercised any borrowing power from the date of incorporation of the company; or
  (b) that he was not aware of a fact or occurrence the existence of which was necessary to constitute the offense and that
    (i) he was not so aware on the date of the summons; or
    (ii) he became so aware before the date of the summons and within 4 weeks thereafter he applied to the court for leave under this section.

(7) For the purpose of subsection (6)(b), a person shall conclusively be presumed to have been aware of a fact or occurrence at a particular time of which he would, if he had acted with reasonable diligence, have been so aware at that time.

Although part of a major revision of the Companies Act, it is expected that section 149 will be amended separately shortly.

the financial position of those companies at the Registry of Companies for at least three years following resignation; call meetings; file papers. In short, ensure compliance with the law. Keep abreast of corporate developments, speak out when asked, and sometimes speak out even when not asked.

Singapore stands at the world's crossroads as a major regional entrepot and shipping center. Although Mr. Lee may retire soon, his successor will be carefully selected and trained.[120] That successor may not follow the exact example of Mr. Lee, but does modern Singapore really need or want the same stern hand?[121]

In its young history, Singapore has proved its resilience. Singapore survived the Japanese occupation, the transfer from British rule, a communist insurgence, and the separation of Malaysia. Today, the outlook is that Singapore will prevail again, in this case over the present economic recession. By controlling corruption, and by consolidating and expanding its economic and strategic stronghold, Singapore should remain an attractive financial and business center for Asia and a stable long-term host for foreign investment. With this economic forecast, the need for Singapore directors will remain strong.

120. Mentioned is Mr. Lee's son, the thirty-four-year old Mr. Lee Hsien Loong, but the favored candidate appears to be Deputy Prime Minister Mr. Goh Chok Tong. *See Future of 'Plato's Republic'*, *supra* note 8, at 17.

121. As expressed by a Singapore secretary: "But my children will never stand for what we put up with in our generation. They have had a good life all along, and they are going to make a change. Even a blind man can see that." *Future of 'Plato's Republic'*, *supra* note 8, at 17.