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**SUPPLEMENTARY REPORT
ON FORMALITIES IN THE EXECUTION
OF DOCUMENTS:
AMENDMENTS TO COMPANIES ACT AND
LIMITED LIABILITY PARTNERSHIPS ACT**

A Joint Consultation by the
Accounting and Corporate Regulatory Authority
& the Attorney-General's Chambers
Singapore

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PART 1

BACKGROUND

- 1.1 This Supplementary Report is published as a follow-up to the Report¹ on the Proposed Instruments (Formalities) Bill published in October 2001 (2001 Report). Subsequent to the publication of the 2001 Report, the Law Society was consulted on the proposed Bill at the request of the Ministry of Law. Their comments were considered in further consultation with the Registrar of Titles and Deeds and the Registrar of Companies.
- 1.2 The 2001 Report proposed the adoption of provisions to reform the law on the formalities relating to the execution of documents, especially deeds. The proposals seek to simplify the execution of instruments, especially deeds, by individuals and corporations by abolishing certain archaic formalities, while preserving a level of security adequate for the purposes for which such instruments are used. They would also promote certainty by clarifying the law relating to execution of instruments by agents e.g. under a power of attorney.
- 1.3 In summary, the proposals in the 2001 Report were as follows:
 - (a) A deed no longer has to be made on paper or parchment but it must be a document in writing.
 - (b) A deed no longer has to be sealed in the case of individuals, companies, limited liability partnerships and various other corporate bodies.
 - (c) There is a new requirement that the document must be clear on its face that it is intended to be a deed (the “face value requirement”).
 - (d) A deed must still be delivered but a deed is no longer necessary to authorise an agent to deliver a deed.
 - (e) There is a new conclusive presumption in favour of a purchaser in good faith that a solicitor is authorised to deliver a deed on behalf of a party to it.

¹ LRRD No. 1/2001, available on the Internet at <http://www.agc.gov.sg/publications/index.html>.

- (f) It is clarified that, in the case of execution by agents, the formalities which apply are those applicable to the agent rather than the party on whose behalf the agent is acting.

1.4 Since the publication of the 2001 Report, there have also been various significant developments in the law.

- The Limited Liability Partnerships Act (Cap. 163A) came into operation on 11 April 2005. This Report contains proposals to amend the provisions as to the execution of documents by limited liability partnerships.
- Proposals have also been reviewed in light of the cancellation, with effect from 1 April 2003, of Declaration 3 under the Companies Act (Cap. 50) and *Gazette* Notification No. 878 of 1999². These subsidiary legislation had declared various statutory corporations to be public authorities for the purposes of the Companies Act³. As a result of their cancellation, references to “corporations” in the Companies Act now apply to all statutory corporations.
- In September 2002, the UK Lord Chancellor’s Department published a consultation paper on “The Implementation of the Law Commission’s Report: The Execution of Deeds and Documents by or on behalf of Bodies Corporate by way of the Regulatory Reform Order”. A Report on the Response to the Consultation Paper was subsequently published.⁴ The respondents generally welcomed the Law Commission’s recommendations to simplify the law and the proposals were felt to be a satisfactory introduction to the modernisation of the law relating to deeds and documents. The provisions of the draft Instruments (Formalities) Bill proposed by the UK Law Commission have been implemented via Regulatory Reform (Execution of Deeds and Documents) Order 2005 (2005 No. 1906), brought into force on 15 September 2005.⁵

² Published on 1 April 1999.

³ The following bodies corporate were declared as public authorities for the purposes of the definition of “corporation” in the Companies Act: Port of Singapore Authority, Tourist Promotion Board, Economic Development Board, Board of Commissioners of Currency, Singapore, Public Utilities Board, Singapore Telephone Board, Central Provident Fund Board, Land Transport Authority: Declarations – Public Authorities – Consolidation (Cap. 50, Decl 3); Declaration on LTA published in *Government Gazette* dated 1 April 1999.

⁴ <http://www.dca.gov.uk/consult/rro/deedsresp.htm>.

⁵ 2005 No. 1906 available at <http://www.opsi.gov.uk/si/si2005/20051906.htm>.

- Section 44 of the UK Companies Act 2006 (UK CA 2006), which came into force on 6 April 2008⁶, made further changes to the execution of documents by companies. It allows a company to execute a document (including a deed) by a single director signing in the presence of a witness who attests the director's signature. The execution provisions in the UK CA 2006 also reflect the changes in the UK which make a company secretary no longer mandatory for private companies.
- A Steering Committee to review the Companies Act (Cap. 50) was established in 2007. Amongst the proposals being considered by the Committee are proposals:
 - a) To make a company secretary no longer mandatory for private companies; and
 - b) For foreign entities, including foreign companies, to be administered under a standalone legislation for foreign entities and to remove from the Companies Act provisions relating to corporations other than companies registered under that Act.

- 1.5 This Supplementary Report focuses on the proposed amendments to the Companies Act which relate to the execution of documents by companies and related amendments to the Limited Liability Partnerships Act (Cap. 163A) to apply the provisions on execution of documents by companies to limited liability partnerships, with appropriate modifications. A summary of the proposed amendments is set out in **Annex D**. The proposals are discussed in greater detail in **Part 2** (on the Companies Act) and **Part 3** (on the LLP Act).
- 1.6 The proposed amendments to the Companies Act and the Limited Liability Partnerships Act are set out at **Annexes A and B**, respectively. The Derivation Table for the proposed provisions is at **Annex C**.
- 1.7 A further Report will be published subsequently to update the proposals relating to individuals and other entities (other than those registered under the Companies Act and Limited Liability Partnerships Act). One significant departure from the original proposals in the 2001 Report is to place the proposed provisions relating to individuals and such entities in

⁶ The Companies Act 2006 (Commencement No. 5, Transitional Provisions and Savings) Order 2007, available at http://www.opsi.gov.uk/si/si2007/uksi_20073495_en_1.

the Civil Law Act (Cap. 43) instead of having a new Instruments (Formalities) Act.

PART 2 AMENDMENTS TO COMPANIES ACT

2.1 General

2.1.1 It is proposed to delete the existing section 41 of the Companies Act (Cap. 50) and to replace it with proposed sections 41 to 41G. Existing section 41(4) to (9) of the Companies Act were based on the earlier versions of the Australian Corporations Act.⁷ Although many of these provisions do not now appear in the new Australian Corporations Act 2001, we propose to re-enact these provisions in sections 41C⁸ to 41F of the Companies Act for clarity and continuity. Consequential amendments are to be made to sections 19, 39, 41, 123, 144, 179, 215, 272 and 385, and the Fourth and Eleventh Schedules, of the Companies Act. The proposed amendments are set out in **Annex A** and the Derivation Table is at **Annex C**. A summary of the proposals is set out in **Annex D**.

2.1.2 In view of the proposal of the Steering Committee for the review of the Companies Act that foreign entities, including foreign companies, be administered under a standalone legislation for foreign entities, it is proposed that sections 41A(2), 41B(3) and 41E should be placed together with other provisions governing corporations incorporated outside Singapore. This may be in a new Act governing such foreign entities or other existing legislation such as the Civil Law Act (Cap. 43). (We will be proposing, in a subsequent Supplementary Report on the execution of documents by individuals and other entities, to place the proposed provisions relating to individuals and such entities in the Civil Law Act.⁹) The Companies Act will therefore apply only to companies registered under that Act. The references to “corporations” in other provisions of the Companies Act relating to the execution of documents have accordingly been changed to “companies”.

Q1	Should the provisions governing the execution of documents by foreign corporations be contained in a new Act governing foreign entities or in the Civil Law Act with other amendments to implement the proposals to reform the formalities for the execution of documents and deeds relating to individuals and other entities? (See paragraph 2.1.2)
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⁷ Similar to section 182 of the Australian Corporations Act 1989.

⁸ Note section 41C(1) to (3) have been modified based on the UK model.

⁹ This is instead of a new Instruments (Formalities) Act, as had been proposed in the 2001 Report. See footnote 1.

2.1.3 The proposed provisions are discussed in greater detail below.

2.2 Section 41

2.2.1 Section 41 re-enacts the current section 41(1) and (2) of the Companies Act (Cap. 50) on pre-incorporation contracts.

2.3 Section 41A

2.3.1 Section 41A deals with how a contract may be made by a company. Section 41A(1) replaces the current section 41(3) of the Companies Act by adopting section 43 of the UK Companies Act 2006¹⁰ with modifications. A company can make a contract under its common seal or through human agency. The words “by writing” found in the UK Act have been omitted in section 41A(1)(a) since a contract made under the common seal of the company, by necessary implication, has to be in writing. Further, if these words are retained, it may be argued that paragraph (b) applies only to contracts made orally.

2.3.2 Section 41A(2) adopts the modifications applied to section 43 of the UK Companies Act 2006¹¹ by the UK Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009¹² to contracts made by a corporation incorporated outside Singapore. In addition to the common seal, corporations incorporated outside Singapore may make contracts in any manner or through human agency, in accordance with the laws of its territory of incorporation. There is a proposal to move this provision as mentioned in paragraph 2.1.2.

2.3.3 The common parts of the foregoing provisions have been rearranged in subsections (3) and (4).¹³

2.4 Section 41B

2.4.1 Section 41B deals with the execution of documents by a company.

¹⁰ This re-enacts section 36 of the UK Companies Act 1985.

¹¹ See footnote 10.

¹² Regulation 4, available at http://www.opsi.gov.uk/si/si2009/uksi_20091917_en_2#pt2-11g4

¹³ Section 43 of the UK Companies Act 2006 does not contain the words in proposed section 41A(4).

- 2.4.2 Section 41B(1) is based on section 44(1), (2) and (3) of the UK Companies Act 2006. As was proposed in the draft provisions in the 2001 Report¹⁴, the provision allows for signing on behalf of the company by a director and a secretary of the company, or by the 2 directors of the company, as an alternative to affixing of its common seal. Consistent with changes made in the UK Companies Act 2006, the provision also allows for a document to be executed by a corporation by the director of the company signing on behalf of the company, in the presence of a witness who attests the signature.
- 2.4.3 Section 41B(2) provides that a document signed in accordance with subsection (1)(b), and expressed in whatever words to be executed by the company, has the same effect as if executed under the common seal of the company. We propose to amend all requirements in legislation for the affixing of a common seal of a company to make it clear that the alternative modes of execution in section 41B(1)(a) and (b) are equally acceptable. Section 41B(2) will however be required until all such requirements have been amended.
- 2.4.4 Section 41B(3) adopts the modifications applied to section 44 of the UK Companies Act 2006¹⁵ by the UK Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009¹⁶ to contracts made by a corporation incorporated outside Singapore. The laws of the territory in which the corporation is incorporated will apply. There is a proposal to move this provision as mentioned in paragraph 2.1.2.
- 2.4.5 Section 41B(4) adopts section 44(6) of the UK Companies Act 2006, which requires a person signing a document in 2 different capacities to sign separately in each capacity,¹⁷ with further modifications.¹⁸
- 2.4.6 Section 41B(5) adopts section 44(8) of the UK Companies Act 2006. It confirms that a company may execute a document in the name of or on behalf of another person whether or not that person is also a company.

¹⁴ Which were based on similar provisions in section 36A of the UK Companies Act 1985.

¹⁵ Paragraph 7 of the Companies Act 2006 (Consequential Amendments etc) Order 2008 (No. 948) provides that the repeal of section 36A of the UK Companies Act does not affect the operation of that section as applied by the Foreign Companies (Execution of Documents) Regulations 1994. See also footnote 10.

¹⁶ See footnote 12.

¹⁷ C.f. Companies Act s.171(5).

¹⁸ See paragraph 3.1.7 of Part 3 of this Paper.

- 2.4.7 Section 41B(6) clarifies that a company need not have a common seal and that the section applies whether it does or not.¹⁹
- 2.4.8 The presumption of due execution in favour of a purchaser in section 44(5) of the UK Companies Act 2006 was not adopted. The Law Reform Committee of the Singapore Academy of Law was of the view that there should be no presumption of valid execution.²⁰
- 2.4.9 Section 44(7) of the UK Companies Act 2006 which addresses the situation where a director or secretary of the company is a firm has not been adopted as the Companies Act requires a secretary or director of a company to be a natural person.²¹
- 2.4.10 Amendments allowing a company to execute a document without a common seal if the document is signed by 2 directors of the company or a director and a secretary of the company have been in effect in Australia since 1998.²² The Australian Corporations Act 2001 also provides that if a company uses its common seal to execute a document, the witnessing of the fixing of the seal is permissible by the same persons.²³

<p>Q2 Should the Companies Act contain a provision to provide that if a company uses its common seal to execute a document, the witnessing of the fixing of the seal is permissible by the same persons? (See paragraph 2.4.10)</p>

- 2.4.11 Subsection (1) of the proposed section 41B²⁴ in the 2001 Report, which stated that the subsections following have effect with respect to the execution of documents by a corporation, has been deleted as it is already obvious that the section has this effect (except that it is limited to companies²⁵) both from its heading and the terms of the provisions.

¹⁹ This provision was in section 36A of the UK Companies Act 1985. Section 44 of the UK Companies Act 2006 does not contain this provision. A slightly different provision stating that a company need not have a common seal is found in section 45(1) of the UK Companies Act 2006 (Common seal).

²⁰ See paragraph 5.27 of the 2001 Report (LRRD No. 1/2001).

²¹ Sections 171(1) and 145(2) of the Companies Act respectively.

²² Section 127(1) of the Australian Corporations Act 2001.

²³ Section 127(2) of the Australian Corporations Act 2001.

²⁴ c.f. UK Companies Act 1985, section 36A(1).

²⁵ See paragraph 2.1.2.

2.5 Section 41C

- 2.5.1 Section 41C deals with the execution of deeds by companies.
- 2.5.2 Section 41C(1) clarifies what is required for a document to be validly executed as a deed by a company for the purposes of proposed section 4(2)(b) in the 2001 Report.²⁶ The document must be duly executed by the company and delivered as a deed.
- 2.5.3 Section 41C(2), (3) and (4) provides for a company to empower agents and attorneys to execute deeds on its behalf. Section 41C(2) provides for the empowerment to be done by deed instead of under the common seal. Section 41C(2) and (3) is based on the current section 41(5) and section 47 of the UK Companies Act 2006. Amendments have been made to clarify that alternative methods of execution may be used by the agent or attorney.
- 2.5.4 The Law Society had pointed out that the proposed section 41C of the Companies Act (Cap. 50) in the 2001 Report²⁷ gave rise to ambiguity as to whether an individual appointed as an agent of a corporation (as defined in the Companies Act) should have to seal the instrument before that instrument can be executed as a deed. It was suggested that in the case of corporations without a common seal, “it would appear at least on one reading that the agent-individual would be required to seal the document with his own seal”. It was also stated that “if one result of section 41C(2) is that corporations and their agents choose to err on the side of prudence in continuing to seal most, if not all, of their deeds, the real impact of the Bill would appear to be significantly diminished”.

²⁶ Proposed clause 4(2)(b) of the Instruments (Formalities) Bill in the 2001 Report (LRRD No. 1/2001) read:

“(2) An instrument shall not be a deed unless ...

(b) it is validly executed as a deed –

- (i) by that person or a person authorised to execute it in the name or on behalf of that person; or
- (ii) by one or more of those parties or a person authorised to execute it in the name or on behalf of one or more of those parties.”.

As mentioned in paragraph 2.1.2 of this Supplementary Report, it will be proposed that the provisions be placed in the Civil Law Act (Cap. 43) instead.

²⁷ Section 41C(2) in the 2001 Report, similar to section 182(8) of the Australian Corporations Act 1989, read:

“(2) A corporation may, by deed, empower any person either generally or in respect of any specified matters, as its agent or attorney, to execute deeds on its behalf and a deed signed by such an agent or attorney on behalf of the corporation and under his seal, or, subject to section 41D, under the appropriate official seal of the corporation shall bind the corporation and have the same effect as if it were under its common seal.”.

2.5.5 In our view, the words beginning from “and a deed signed by such an agent ...” to the end operate as a deeming provision. That is, it does not prevent attorneys from executing deeds in other ways.²⁸ Nevertheless, a cursory reading of the provision could admittedly cause confusion and cast doubt on the efficacy of alternative methods of execution. Furthermore, with the abolition of the requirement for sealing in the case of individuals²⁹, the reference to sealing in section 41C is meaningless in relation to individuals. To make it clear that alternative methods of execution are available, we propose to amend the provision (now at section 41C(2) and (3)) as follows:

“(2) A company may, by instrument executed as a deed, empower any person either generally or in respect of any specified matters, as its agent or attorney, to execute deeds on its behalf.

(3) A deed shall have the same effect as if the deed were executed by the company, if the deed is —

(a) duly executed by an agent or attorney empowered in accordance with subsection (2) on behalf of the company; or

(b) signed by such an agent or attorney and (subject to section 41D) under the appropriate official seal of the company.”.

2.5.6 The reference to the deed being “binding” on the company has been deleted from proposed section 41C(3) as this provision only concerns due execution. A deed does not take effect (i.e. bind the company) until the requirement for delivery is fulfilled.³⁰ It is clear from the words “executed by the company” that the company is the party that will be bound by the deed.

2.5.7 The reference to due execution will allow the agent or attorney to execute the deed by any alternative means of execution available.³¹

2.5.8 Section 41C(4) re-enacts the current section 41(6) of the Companies Act (Cap. 50) with drafting amendments. The Law Society had also

²⁸ E.g. in accordance with proposed provision on execution of instruments by a donee of a power of attorney in section 8 of the Instruments (Formalities) Bill in the 2001 Report (LRRD No. 1/2001).

²⁹ New section 4(1)(b) of the draft Bill in the 2001 Report.

³⁰ Though there is a rebuttable presumption of delivery at common law upon sealing of a deed by a corporation: *Mayor, Constables and Company of the Merchants of the Staple v The Governor and Company of the Bank of England* (1887) 21 QBB 160.

³¹ e.g., under the following provisions in the proposed Instruments Formalities Act in the 2001 Report (See Annex A of LRRD No. 1/2001) - section 8 (where an individual is empowered as agent or attorney) or section 7 (where a corporation aggregate is so empowered) - or proposed section 41B of the Companies Act (where a company is so empowered).

proposed to use the word “received” in place of “given” in his section³². We have not made the amendment. The Registrar of Companies had commented that the principal should be allowed to revoke the authority of his agent or attorney when he gives notice of the revocation.

2.6 Section 41D

2.6.1 Section 41D(1) and (2) re-enacts the current section 41(7) of the Companies Act (Cap. 50) (on the official seal for use abroad) with drafting amendments.

2.6.2 Section 41D(3) adopts section 49(3) of the UK Companies Act 2006.

2.7 Section 41E

2.7.1 Section 41E rearranges the current section 41(8) and (9) of the Companies Act (on the requirements of seal by a foreign territory in relation to the authorisation of an agent). The references to “under seal” have been replaced by references to “by deed”.

2.7.2 We propose to modify the existing section 41(8) in new section 41E as follows:

“Authority of agent of corporation incorporated outside Singapore need not be by deed, unless deed required by law of foreign territory

41E.—(1) The fact that a power of attorney or document of authorisation given to or in favour of the donee of the power or agent of a corporation incorporated outside Singapore is not given *by deed* shall not affect (for any purpose intended to be effected in Singapore) the validity or effect of *any instrument* executed *as a deed* on behalf of that corporation by such donee or agent, and such an instrument shall for all such purposes be as valid as if such authority of the donee or agent had been given *by deed*.

(2) Subsection (1) shall not apply unless the power of attorney or document of authorisation referred to in that subsection is valid as a power of attorney or document of authorisation for such purposes in accordance with the laws of the territory under which the corporation is incorporated.

(3) Notwithstanding section 41G, subsections (1) and (2) shall apply to every instrument under seal executed before the commencement of [these amendments] on behalf of a corporation by a donee of a power or an agent of that corporation whose authority was not under seal.”.

³² Section 41C(3) in the 2001 Report (LRRD No. 1/2001).

2.7.3 Current section 41(8) provides that the authority of an agent of a corporation need not be under seal if it is “valid as a power of attorney or document of authorisation in accordance with the laws of the territory under which the corporation is incorporated”. The Explanatory Statement to Bill 9 of 1986 (which inserted section 41(8)) indicates that the amendment was intended to enable agents of foreign corporations to execute deeds although their agency instruments were not under seal because the laws of the country of incorporation do not require the use of a common seal:

“Clause 8 amends section 41 to provide for execution of instruments under seal in relation to foreign corporations. There are many foreign countries the laws of which do not require companies incorporated therein to possess and use a common seal. This would be so in countries that are non-Common Law countries. Therefore, a power of attorney or document of authorisation given by such a company is not under seal. While such powers of attorney would be valid in Singapore as agency instruments they would not empower the attorney to execute any document required to be under seal since under common law the attorney must be appointed by an instrument which is itself executed by deed under common seal. The object of the new subsection is to validate such instruments if they are in accordance with the laws of the country where the corporation was incorporated.”

2.7.4 At common law, an attorney’s authority to *execute a deed* or to *deliver a deed* on behalf of another generally has to be given by deed.³³ Proposed section 4(1)(c) in the 2001 Report will abolish the rule of law in relation to *delivery* of an instrument as a deed, but will not change the rule requiring authority to *execute* a deed on another’s behalf to be given by deed. Therefore, where Singapore law applies to the creation or validity of a power of attorney or document of authorisation,³⁴ a deed will still be required if the attorney or agent is to execute a deed. Proposed section 41C(2) (which reproduces existing section 41(5) with modifications) reflects the common law position as it provides that a company may empower its agent or attorney to execute deeds on its behalf “by instrument executed in accordance with section 41B(1)”.

³³ The Execution of Deeds and Documents by or on behalf of Bodies Corporate, UK Law Commission Consultation Paper No.143, paragraph 8.3.

³⁴ The issue of whether Singapore law or foreign law would govern the form requirements for a power of attorney or document of authorisation is a complex issue. *Dicey and Morris on The Conflict of Laws* (12th Edition) Volume 2 pages 1452 – 1466.

2.7.5 The authority will have the same effect as if it had been “given by deed”. This will address the new ‘face value requirement’.³⁵ The ‘face value requirement’ requires clear indication within the document that it is intended to be a deed. In most cases, there would be no difficulty in satisfying this requirement. However, in the case of powers of attorney or documents of authorisation executed overseas by foreign corporations (e.g. in civil law countries where the law does not have the concept of a deed) such documents are unlikely to be executed with Singapore’s form requirements, such as the ‘face value requirement’, in view. Where Singapore law applies,³⁶ such an authority may be invalidated for failure to satisfy the ‘face value requirement’, notwithstanding that the method of execution used complies with section 41B(3). A power of attorney or document of authorisation to sign deeds on behalf of corporation incorporated outside Singapore will therefore be valid, notwithstanding that it is not given by deed, if it is valid for those purposes in accordance with the laws of the place of incorporation of the corporation.

2.7.6 Proposed section 41E(3) follows the wording of existing section 41(9) closely. It is intended to save instruments executed on behalf of corporations which have been validated by the existing section 41(8) and (9).

2.7.7 There is a proposal to move this provision as mentioned in paragraph 2.1.2.

2.8 Section 41F

2.8.1 Section 41F re-enacts the current section 41(4) of the Companies Act (Cap. 50) on the authentication of documents by a company. It allows authentication without the use of a common seal.

2.9 Section 41G

2.9.1 Section 41G makes the transitional provisions applicable to sections 41A to 41F. It provides that these sections shall not apply to documents or instruments executed (whether or not delivered) before the commencement of the proposed amendments.³⁷

³⁵ Proposed section 4(2)(a) in the 2001 Report.

³⁶ See footnote 34.

³⁷ With the exception of section 41E(3). See paragraph 5.47 of the 2001 Report for further discussion of this transitional provision.

2.10 Consequential amendments to Companies Act

2.10.1 In the 2001 Report, we had proposed that it was unnecessary to amend certain references in the Companies Act (Cap. 50) to the requirement for a common seal as the proposed amendments provide that the alternative methods of execution have the same effect as execution under the common seal.³⁸ Nevertheless, in order to underline the fact that there is no preference for the use of the common seal under the Companies Act and that the alternative methods of execution provided by the proposed amendments are not subordinate to the use of the common seal, it is now proposed that all provisions which impose a requirement for the use of the common seal alone will be replaced with express provision that the alternative methods of execution may also be used.

2.10.2 **Section 19(5)** We propose to delete the words “and a common seal” in section 19(5) (Effect of incorporation). This is for consistency with the new section 41B(6) which provides that a corporation need not have a common seal.

2.10.3 **Section 39(1)** A consequential amendment is made to section 39(1) by replacing the words “signed and sealed” with the words “executed as a deed”.

2.10.4 **Section 123** We had in the 2001 Report proposed that no amendment was required to section 123 as the proposed amendments provide that the alternative methods of execution have the same effect as execution under the common seal.³⁹ As discussed in paragraph 2.10.1, we now propose to add an express reference to the alternative means of execution. In addition we propose to rearrange the section as follows:

“Certificate to be evidence of title

123.—(1) Every share certificate shall state as at the date of the issue of the certificate —

- (a) the name of the company and the authority under which the company is constituted;
 - (b) the address of the registered office of the company in Singapore, or, where the certificate is issued by a branch office, the address of that branch office;
- and

³⁸ Proposed section 41B(2).

³⁹ Proposed section 41B(2).

(c) the class of the shares, the amount paid on the shares, the amount (if any) unpaid on the shares and the extent to which the shares are paid up.

(2) Every share certificate shall be —

(a) under the common seal (if any) of the company or, in the case of a share certificate relating to shares on a branch register, the official seal (if any) of the company; or

(b) signed in accordance with section 41B(1)(b).

(2A) A share certificate specifying any shares held by any member of the company in accordance with subsection (2) shall be prima facie evidence of the title of the member to the shares.

(3) Failure to comply with this section shall not affect the rights of any holder of shares.

(4) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence.”.

2.10.5 **Section 124** No amendment is proposed as this provision relates to the requirements for the process of sealing with a duplicate seal and therefore is not relevant where an alternative method of execution is used.

2.10.6 **Section 144(1)(a)** A consequential amendment is made to section 144(1)(a) by adding the words “, if any” after the word “seal”.

2.10.7 **Section 179** As discussed in paragraph 2.10.1, we propose to amend section 179 to read as follows:

“(5) Subject to section 41E, a certificate executed in accordance with section 41B(1) shall be prima facie evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (3).”.

2.10.8 **Section 215(10)** It is proposed that the reference to under seal in this provision be replaced by the words “by deed”. The provision has been split into paragraphs for clarity:⁴⁰

⁴⁰ This is similar to section 975(2)(b) of the UK Companies Act 2006, available at http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/2006/cukpga_20060046_en_59#pt28-ch3-pb1-11g975:

“(2)The reference in section 974(2) to shares already held by the offeror does not include a reference to shares that are the subject of a contract—

(a)intended to secure that the holder of the shares will accept the offer when it is made, and

(b)entered into—

(i)by deed and for no consideration,

(ii)for consideration of negligible value, or

(iii)for consideration consisting of a promise by the offeror to make the offer.”

“(10) The reference in subsection (1) to shares already held by the transferee company includes a reference to shares which the transferee company has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder —

(a) *by deed and* for no consideration; or

(b) for no consideration other than a promise by the transferee company to make the offer.”.

2.10.9 **Section 272(2)** It is proposed that the provision be amended to clarify that the power of a liquidator to execute deeds and other documents in the name and on behalf of the company is quite separate from the power to use the company’s seal. This is similar to the powers of Judicial Managers provided in sub-paragraphs (h) and (i) of the Eleventh Schedule to the Companies Act (Cap. 50). (See paragraph 2.10.13 below.)

2.10.10 **Section 368(1)(e)** No amendment is required as the provision already recognises a memorandum of appointment executed on its behalf in such manner as to be binding on the company.

2.10.11 **Section 385** As discussed in paragraph 2.10.1, we now propose to amend section 385 to read as follows:

“Certificate as to shareholding

385. A certificate specifying any shares held by any member of that company and registered in the branch register which is —

(a) *under the seal (if any) of the foreign company; or*

(b) *executed in any manner permitted for share certificates by the laws of the territory in which the foreign company is incorporated,*

shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.”.

2.10.12 **Fourth Schedule to the Companies Act** We propose to amend paragraph 8 to refer to section 123(2) of the Act (see proposed amendments to section 123 discussed in paragraph 2.10.4 above) as follows:

“8. Every person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate in accordance with *section 123(2) of the Act* but in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.”.

Paragraph 59 of the Fourth Schedule need not be amended as it already recognises a proxy “under the hand of an officer or attorney duly authorised”. There is also no need to amend paragraph 75 of the Fourth Schedule which relates to “any official seal”.

We propose that paragraph 96 of the Fourth Schedule be clarified by adding the words “(if any)” as follows:

“96. The directors shall provide for the safe custody of the seal (*if any*), which shall only be used by the authority of the directors or of a committee of the directors authorised by the directors in that behalf, and every instrument to which the seal (*if any*) is affixed shall be signed by a director and shall be countersigned by the secretary or by a second director or by some other person appointed by the directors for the purpose.”.

2.10.13 Eleventh Schedule It is proposed that the words “, if any” be added after the reference to the “company’s seal” in sub-paragraph (h). This is similar to the proposed amendments in section 272(2). (See paragraph 2.10.9 above.)

PART 3

APPLICATION TO LIMITED LIABILITY PARTNERSHIPS

3.1 Limited Liability Partnerships

- 3.1.1 The proposed amendments to the Limited Liability Partnerships Act 2005 (LLPA), which commenced on 11 April 2005, are set out in **Annex B** and the Derivation Table is at **Annex C**. A summary of the proposals is at **Annex D**. Section 5(2) of the Act provides that sections 41 (except subsection (9)) and 144(1)(a)⁴¹ of the Companies Act (Cap. 50) shall apply to a limited liability partnership as they apply to a corporation within the meaning of that Act.
- 3.1.2 It is proposed that section 144(1)(a)⁴² and new sections 41 to 41G of the Companies Act (Cap. 50)⁴³ should be reproduced, with the appropriate modifications, in the LLPA instead of being adopted by reference as is currently the case. This will make it easier and clearer to apply the provisions in respect of limited liability partnerships (LLPs). This will also be consistent with the likelihood, flowing from the proposal to limit the application of the Companies Act to companies registered under that Act, that the provisions on the execution of documents in respect of other corporations and foreign entities will be specifically provided for in other legislation. It is proposed that a new section 13A to the LLPA be inserted so that the modified provisions on the execution of documents may be set out in a new First Schedule⁴⁴ to the LLPA (the existing Schedules to the LLPA will have to be renumbered):

“Formalities

13A. The provisions in the First Schedule shall apply to a limited liability partnership.”.

- 3.1.3 Proposed sections 41A(2), 41B(3) and 41E of the Companies Act should not be included in the LLPA since they relate to corporations incorporated outside Singapore and have no relevance to LLPs registered under the LLPA, and in view of the proposal in paragraph 2.1.2 above⁴⁵.

⁴¹ Section 144(1)(a) of the Companies Act relates to the requirement for the name of the company to appear on its seal.

⁴² See proposed paragraph 4(2) of the First Schedule to the LLPA (Annex B).

⁴³ See Part 2 and Annex A of this Paper.

⁴⁴ See Annex B.

⁴⁵ That foreign entities, including foreign companies, be administered under a standalone legislation for foreign entities.

- 3.1.4 In the UK, sections 43 to 47 of the UK Companies Act 2006 (relating to execution of documents) apply to LLPs, with modifications as prescribed in the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (UK LLP Regulations).⁴⁶
- 3.1.5 The UK LLP Regulations apply section 43 of the UK Companies Act 2006 to LLPs, with the clarification that this is without prejudice to section 6 of the UK Limited Liability Partnerships Act, thus preserving the ability of members to act as agents of the LLP. We propose to adopt a similar clarification in respect of section 9 of the LLPA.⁴⁷
- 3.1.6 Instead of the signature by directors or a director and a secretary, or the signature by a director attested by a witness, in section 44 of the UK Companies Act 2006, the UK LLP Regulations provide for signature by 2 members of the LLP or signature by a member of the LLP attested by a witness. We agree that the application of proposed paragraph 3(3) of the new First Schedule to the LLPA⁴⁸ should be modified accordingly. However, execution should be by the signature of a partner of the LLP who is also a manager because it is not the intention that sleeping partners should, as a matter of course, be able to bind the limited liability partnership.⁴⁹ This will mean that a document signed by 2 partner-managers of a LLP, or by one partner-manager in the presence of a witness who attests the signature, will be as effective as a document executed under the common seal of the LLP.

<p>Q3 Do you agree that proposed paragraph 3(3) of the new First Schedule to the LLPA should refer to “partners of a limited liability partnership, being also managers of the limited liability partnership”? (See paragraph 3.1.6)</p>
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- 3.1.7 The UK LLP Regulations extend the application of section 44(6) of the UK Companies Act 2006 to documents signed “on behalf of an LLP and

⁴⁶ SI 1804/2009, available at http://www.opsi.gov.uk/si/si2009/uksi_20091804_en_17#pt18-11g79.

⁴⁷ Inserted as “Subject to section 9 of the Act” in proposed paragraph 2(1) of the First Schedule to the LLPA. (See Annex B.)

⁴⁸ See Annex B.

⁴⁹ Partners may bind the limited liability partnership as agents of the limited liability partnership subject to section 9 of the LLPA. We also note that partners of the LLP will usually be regarded as managers of the LLP if they take part in the management of the LLP by signing documents on behalf of the LLP. (See definition of “manager” in section 2 of the LLPA.)

a company”.⁵⁰ Paragraph 3(3) of the new First Schedule to the LLPA adopts this modification, with a further extension to include signing on behalf of a limited liability partnership and “any other body corporate”.⁵¹ It is proposed that a similar formulation be adopted in proposed section 41B(4).⁵²

- 3.1.8 Existing section 5(1)(c) of the LLPA should be deleted as provisions will be made for the common seal in the proposed new First Schedule.⁵³ Section 5(2) of the LLPA will be deleted since those provisions will be in the First Schedule.
- 3.1.9 A related amendment will also be made to paragraph 20(2)(d) of the existing Fifth Schedule to the LLPA, similar to the amendment to section 272(2) of the Companies Act (Cap. 50).⁵⁴ This will clarify that the power of a liquidator to execute deeds and other documents in the name and on behalf of the limited liability partnership is quite separate from the power to use the seal of the limited liability partnership.

⁵⁰ Section 44 of the UK Companies Act 2006, as modified, reads: “(6) Where a document is to be signed by a person on behalf of more than one LLP, *or on behalf of an LLP and a company*, it is not duly signed by that person for the purposes of this section unless he signs it separately in each capacity.” (Italics added.)

⁵¹ See paragraph 3 in Annex B.

⁵² See paragraph 3 in Annex A.

⁵³ Paragraph 4 of the proposed First Schedule to the LLPA (See Annex B).

⁵⁴ See paragraph 2.10.9 above.

ANNEX A

PROPOSED AMENDMENTS TO COMPANIES ACT

1. Section 19(5) of the Companies Act (Cap. 50) is amended by deleting the words “and a common seal”.
2. Section 39(1) of the Companies Act is amended by deleting the words “signed and sealed” and substituting the words “executed as a deed”.
3. Section 41 of the Companies Act is repealed and the following sections substituted therefor:

“Ratification by company of contracts made before incorporation

41.—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the company, the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

Contract by company

41A.—(1) A contract may be made —

- (a) by a company, under its common seal; or
- (b) on behalf of a company, by any person acting under its authority, express or implied.

[(2) Where a corporation is incorporated outside Singapore, a contract may be made —

- (a) by the corporation under its common seal or in any manner permitted by the laws of the territory in which the corporation is incorporated for the execution of documents by such a corporation; or
- (b) on behalf of the corporation by any person who, in accordance with the laws of the territory in which the corporation is incorporated, is acting under the authority (express or implied) of that corporation.]

[There is a proposal to move this subsection out of the Companies Act]

(3) Any formalities required by law in the case of a contract made by an individual shall also apply, unless a contrary intention appears, to a contract made by or on behalf of the company.

(4) A contract made by or on behalf of a company may be varied or discharged in the manner in which the contract is authorised to be made.

Execution of document by company

41B.—(1) A document is executed by a company —

- (a) by the affixing of its common seal; or
- (b) by signing on behalf of the company —
 - (i) by a director and the secretary of a company, or by 2 directors of a company; or
 - (ii) by the director of the company in the presence of a witness who attests the signature.

(2) A document signed in accordance with subsection (1)(b), and expressed (in whatever words) to be executed by the company, has the same effect as if executed under the common seal of the company.

[(3) Where a corporation is incorporated outside Singapore, a document which —

- (a) is executed in any manner permitted by the laws of the territory in which the corporation is incorporated for the execution of documents by such a corporation; or
- (b)(i) is signed by a person or persons who, in accordance with the laws of the territory in which the corporation is incorporated, is or are acting under the authority (express or implied) of that corporation; and
- (ii) is expressed (in whatever form of words) to be executed by the corporation,

has the same effect in relation to that corporation as it would have in relation to a corporation incorporated in Singapore if executed in accordance with section 41B by the corporation.]

[There is a proposal to move this subsection out of the Companies Act.]

(4) Where a document is to be signed by a person on behalf of more than one company, or on behalf of a company and any other body corporate, it shall not be taken to be duly signed by that person for the purposes of subsection (1) or (3) unless the person signs it separately in each capacity.

(5) This section shall apply in the case of a document which is executed by a company in the name or on behalf of another person whether or not that person is also a company.

(6) A company need not have a common seal and this section shall apply whether it does or not.

Execution of document as a deed by or on behalf of company

41C.—(1) A document is validly executed by a company as a deed for the purposes of [section 4(2)(b) of the Instruments (Formalities) Act], if, and only if —

- (a) it is duly executed by the company; and
- (b) it is delivered as a deed.

(2) A company may, by instrument executed as a deed, empower any person either generally or in respect of any specified matters, as its agent or attorney, to execute deeds on its behalf.

(3) A deed shall have the same effect as if the deed were executed by the company if the deed is —

- (a) duly executed by an agent or attorney empowered in accordance with subsection (2) on behalf of the company; or
- (b) signed by such an agent or attorney and (subject to section 41D) under the appropriate official seal of the company.

(4) The authority of an agent or attorney empowered under subsection (2) shall, as between the company and any person dealing with him, continue —

- (a) during the period, if any, mentioned in the instrument conferring the authority; or
- (b) if no period is mentioned in the instrument conferring the authority, until notice of the revocation or determination of his authority has been given to the person dealing with him.

Official seals for use abroad

41D.—(1) A company that has a common seal may have for use in any place outside Singapore one or more official seals, each of which shall be a facsimile of the common seal of the company with the addition on its face of the name of the place where it is to be used.

(2) The person affixing any such official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

(3) The official seal when duly affixed to a document has the same effect as the company's common seal.

[Authority of agent of corporation incorporated outside Singapore need not be by deed, unless deed required by law of foreign territory

41E.—(1) The fact that a power of attorney or document of authorisation given to or in favour of the donee of the power or agent of a corporation incorporated outside Singapore is not given by deed shall not affect (for any purpose intended to be effected in Singapore) the validity or effect of any instrument executed as a deed on behalf of that corporation by such donee or agent, and such an instrument shall for all such purposes be as valid as if such authority of the donee or agent had been given by deed.

(2) Subsection (1) shall not apply unless the power of attorney or document of authorisation referred to in that subsection is valid as a power of attorney or document of authorisation for such purposes in accordance with the laws of the territory under which the corporation is incorporated.

(3) Notwithstanding section 41G, subsections (1) and (2) shall apply to every instrument under seal executed before the commencement of [these amendments]

on behalf of a corporation by a donee of a power or an agent of that corporation whose authority was not under seal.]

[There is a proposal to move this subsection out of the Companies Act.]

Authentication of document

41F. A document or proceeding requiring authentication by a company may be authenticated by the signature of a duly authorised officer of the company and need not be authenticated under the common seal of the company.

Application of sections 41A to 41F

41G. Sections 41A to 41F shall not apply in relation to documents or instruments executed (whether or not delivered) before the commencement of [these amendments].”.

4. Section 123 of the Companies Act is amended by deleting subsections (1) and (2) and substituting the following subsections:

“(1) Every share certificate shall state as at the date of the issue of the certificate —

- (a) the name of the company and the authority under which the company is constituted;
- (b) the address of the registered office of the company in Singapore, or, where the certificate is issued by a branch office, the address of that branch office; and
- (c) the class of the shares, the amount paid on the shares, the amount (if any) unpaid on the shares and the extent to which the shares are paid up.

(2) Every share certificate shall be —

- (a) under the common seal (if any) of the company or, in the case of a share certificate relating to shares on a branch register, the official seal (if any) of the company; or
- (b) signed in accordance with section 41B(1)(b).

(2A) A share certificate specifying any shares held by any member of the company in accordance with subsection (2) shall be prima facie evidence of the title of the member to the shares.”.

5. Section 144(1)(a) of the Companies Act is amended by inserting, immediately after the word “seal”, the words “, if any”.

6. Section 179 of the Companies Act is amended by deleting subsection (5) and substituting the following subsection:

“(5) Subject to section 41E, a certificate executed in accordance with section 41B(1) shall be prima facie evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to subsection (3).”.

7. Section 215 of the Companies Act is amended by deleting subsection (10) and substituting the following subsection:

“(10) The reference in subsection (1) to shares already held by the transferee company includes a reference to shares which the transferee company has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder thereof to accept the offer when it is made, being a contract entered into by the holder —

(a) *by deed and* for no consideration; or

(b) for no consideration other than a promise by the transferee company to make the offer.”.

8. Paragraph (d) of section 272(2) of the Companies Act is deleted and the following paragraphs substituted therefor:

“(d) use the company’s seal, if any; and

(da) do all acts and execute in the name and on behalf of the company any deed, receipt or other document;”.

9. Section 385 of the Companies Act is deleted and the following section substituted therefor:

“Certificate as to shareholding

385. A certificate specifying any shares held by any member of that company and registered in the branch register which is —

(a) under the seal (if any) of the foreign company; or

(b) executed in any manner permitted for share certificates by the laws of the territory in which the foreign company is incorporated,

shall be prima facie evidence of the title of the member to the shares and the registration of the shares in the branch register.”.

10. The Fourth Schedule to the Companies Act is amended —

(a) by deleting the words “under the seal of the company in accordance with” in paragraph 8 and substituting the words “executed in accordance with section 123”; and

(b) by inserting, immediately after the word “seal” wherever it appears in paragraph 96, the words “(if any)”.

11. The Eleventh Schedule to the Companies Act is amended by inserting, immediately after the word “company’s seal” in paragraph (h), the words “, if any”.

Annex B

**PROPOSED AMENDMENTS TO LIMITED LIABILITY
PARTNERSHIPS ACT**

1. Replace section 5 of the Limited Liability Partnerships Act (Cap. 163A) with the following section:

“Capacity

5. A limited liability partnership shall, by its name, be capable of —
- (a) suing and being sued;
 - (b) acquiring, owning, holding and developing or disposing of property, both movable and immovable; and
 - (c) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.”.

2. Insert, immediately after section 13 of the Limited Liability Partnerships Act (Cap. 163A), the following section:

“Formalities

13A. The provisions in the First Schedule shall apply to a limited liability partnership.”.

3. Insert the following Schedule immediately before the existing First Schedule and renumber the existing Schedules accordingly:

“FIRST SCHEDULE

**FORMALITIES RELATING TO CONTRACTS
AND THE EXECUTION OF DOCUMENTS**

Ratification by limited liability partnership of contracts made before incorporation

1.—(1) Any contract or other transaction purporting to be entered into by a limited liability partnership prior to its formation or by any person on behalf of a limited liability partnership prior to its formation may be ratified by the limited liability partnership after its formation and thereupon the limited liability partnership shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

(2) Prior to ratification by the limited liability partnership, the person or persons who purported to act in the name or on behalf of the limited liability partnership shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit thereof.

Contract by limited liability partnership

- 2.—(1) Subject to section 9 of the Act, a contract may be made —
- (a) by a limited liability partnership, under its common seal; or
 - (b) on behalf of a limited liability partnership, by any person acting under its authority, express or implied.

(2) Any formalities required by law in the case of a contract made by an individual shall also apply, unless a contrary intention appears, to a contract made by or on behalf of the limited liability partnership.

(3) A contract made by or on behalf of a limited liability partnership may be varied or discharged in the manner in which the contract is authorised to be made.

Execution of document by limited liability partnership

3.—(1) A document is executed by a limited liability partnership —

(a) by the affixing of its common seal; or

(b) by signing on behalf of the limited liability partnership —

(i) by 2 partners of a limited liability partnership, being also managers of the limited liability partnership; or

(ii) by a partner of a limited liability partnership, being also a manager of the limited liability partnership, in the presence of a witness who attests the signature.

(2) A document signed in accordance with subsection (1)(b), and expressed (in whatever words) to be executed by the limited liability partnership, has the same effect as if executed under the common seal of the limited liability partnership.

(3) Where a document is to be signed by a person on behalf of more than one limited liability partnership, or on behalf of a limited liability partnership and any other body corporate, it shall not be taken to be duly signed by that person for the purposes of subsection (1) unless the person signs it separately in each capacity.

(4) This section shall apply in the case of a document which is executed by a limited liability partnership in the name or on behalf of another person whether or not that person is also a limited liability partnership.

Common seal

4.—(1) A limited liability partnership need not have one and this section applies whether it does or not.

(2) If a limited liability partnership which has a common seal, its name shall appear in legible romanised letters on the seal.

(3) A limited liability partnership shall be guilty of an offence if default is made in complying with subsection (2).

(4) An officer of a limited liability partnership, or any person acting on behalf of a limited liability partnership, who uses or authorises the use of any seal purporting to be a seal of the limited liability partnership on which its name does not appear shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

Execution of document as a deed by or on behalf of limited liability partnership

5.—(1) A document is validly executed by a limited liability partnership as a deed for the purposes of [section 4(2)(b) of the Instruments (Formalities) Act], if, and only if —

- (a) it is duly executed by the limited liability partnership; and
- (b) it is delivered as a deed.

(2) A limited liability partnership may, by instrument executed as a deed, empower any person either generally or in respect of any specified matters, as its agent or attorney, to execute deeds on its behalf.

(3) A deed shall have the same effect as if the deed were executed by the limited liability partnership if the deed is —

- (a) duly executed by an agent or attorney empowered in accordance with subsection (2) on behalf of the limited liability partnership; or
- (b) signed by such an agent or attorney and (subject to paragraph 6) under the appropriate official seal of the limited liability partnership.

(4) The authority of an agent or attorney empowered under subsection (2) shall, as between the limited liability partnership and any person dealing with him, continue —

- (a) during the period, if any, mentioned in the instrument conferring the authority; or
- (b) if no period is mentioned in the instrument conferring the authority, until notice of the revocation or determination of his authority has been given to the person dealing with him.

Official seals for use abroad

6.—(1) A limited liability partnership that has a common seal may have for use in any place outside Singapore one or more official seals, each of which shall be a facsimile of the common seal of the limited liability partnership with the addition on its face of the name of the place where it is to be used.

(2) The person affixing any such official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

(3) The official seal when duly affixed to a document has the same effect as the limited liability partnership's common seal.

Authentication of document

7. A document or proceeding requiring authentication by a limited liability partnership may be authenticated by the signature of a duly authorised officer of the limited liability partnership and need not be authenticated under the common seal of the limited liability partnership.

Application of this Schedule

8. This Schedule shall not apply in relation to documents or instruments executed (whether or not delivered) before the commencement of [these amendments].”.

4. Amend the existing Fifth Schedule of the Limited Liability Partnerships Act by deleting sub-paragraph (*d*) of paragraph 20(2) and substituting the following paragraphs therefor:

“(*d*) use the seal of the limited liability partnership, if any; and

(*da*) do all acts and execute in the name and on behalf of the limited liability partnership any deed, receipt or other document;”.

ANNEX C

DERIVATION TABLE FOR PROPOSED PROVISIONS**Abbreviations**

LLPA	-	Singapore Limited Liability Partnerships Act (Cap. 163A, 2006 Revised Edition)
CA	-	Singapore Companies Act (Cap. 50, 1994 Revised Edition)
Proposed CA	-	Singapore Companies Act (Cap. 50, 1994 Revised Edition), as proposed to be amended in this Report
RRO 2005	-	UK Regulatory Reform (Execution of Deeds and Documents) Order 2005
CA 1985	-	UK Companies Act 1985
CA 2006	-	UK Companies Act 2006
CL 1989	-	Australian Corporations Law 1989
CL 2001	-	Australian Corporations Law 2001
UK Reg 2009	-	UK Overseas Companies (Execution of Documents and Registration of Charges) Regulations 2009
UK Reg1994	-	UK Foreign Companies (Execution of Deeds) Regulations 1994
UK LLPR 2009	-	UK Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009

Headings	Act and amended section	Legislative sources/Comments
Companies Act		
Registration and incorporation	s.19(5)	Amended
Effect of memorandum and articles	s.39(1)	Amended
Ratification by company of contracts made before incorporation	s.41(1) and (2)	Re-enacts s.41(1) and (2), c.f. CA 2006, s.51
Contract by corporation	s.41A(1)	Replaces CA s.41(3). CA 2006, s.43(1) [CA 1985, s.36]
	s.41A(2)	CA 2006, s.43(1), as modified by UK Reg 2009 [CA 1985, s.36, as modified by UK Regulations 1994]
	s.41A(3)	CA 2006, s.43(2) [CA 1985, s.36]
	s.41A(4)	CA, s.41(3) (in part)
Execution of document by corporation	s.41B(1)	CA 2006 s.44(1), (2) and (3) [CA 1985, s.36A(2) & (4)]

Supplementary Report on Formalities in the Execution of Documents:
Amendments to Companies Act and Limited Liability Partnerships Act

Headings	Act and amended section	Legislative sources/Comments
	s.41B (2)	CA 2006 s.44(4) [CA 1985, s.36A(4)]
	s.41B (3)	CA 2006, s.44(2), as modified by UK Reg 2009 [CA 1985, s.36A(2) and (4), as modified by UK Regulations 1994]
	s.41B (4)	CA 2006 s.44(6) modified [CA 1985, s.36A(4A), inserted by RRO 2005]
	s.41B (5)	CA 2006, s.44(8) [CA 1985, s.36A(7), inserted by RRO 2005]
	s.41B(6)	CA 1985, s.36A(3) c.f. CA 2006 s.45(1)
Execution of document as a deed by or on behalf of corporation	s.41C(1)	CA 2006 s.46(1) [CA 1985, s.36AA(1), inserted by RRO 2005]
	s.41C(2) & (3)	CA 2006 s.47, CA s.41(5), CL 1989, s.182(8)
	s.41C(4)	CA s.41(6). CL 1989, s.182(9)
Official seals for use abroad	s.41D(1) & (2)	CA, s.41(7), CL 1989, s.182(10) and (11) and CA 2006 s.49(1) & (2).
	s.41D(3)	CA 2006 s.49(3)
Authority of agent of a corporation need not be under seal, unless seal required by law of foreign territory	s.41E(1) & (2)	CA, s.41(8).
	s.41E(3)	CA, s.41(9)
Authentication of document	s.41F	CA, s.41(4), CL 1989, s.182(7)
Application of sections 41A to 41F	s.41G	RRO 2005, article 1(2)
Certificate to be evidence of title	s.123(1), (2), (2A)	CA, s.123(1) and (2)
Publication of name and registration number	s.144(1)(a)	Amended.

Headings	Act and amended section	Legislative sources/Comments
Quorum, chairman, voting, etc., at meetings	s.179(5)	Amended.
Power to acquire shares of shareholders dissenting from scheme or contract approved by 90% majority	s.215(10)	Amended.
Powers of liquidator	s.272(2)(d)	Amended. UK Law Commission draft Instruments (Formalities) Bill, clause 6. Also CA, Eleventh Schedule, (Powers of Judicial Managers), subparagraphs (h) and (i)
Certificate as to shareholding	s.385	Amended.
Table A	Fourth Schedule, paragraph 8	Amended
Table A	Fourth Schedule, paragraph 96	Amended
Powers of Judicial Manager	Eleventh Schedule, paragraph (h)	Amended
Limited Liability Partnerships Act		
Capacity	s.5	S.5(1)(c) and (2) deleted.
Formalities	s.13A	New, inserts new First Schedule relating to "Formalities relating to Contracts and the Execution of Documents"
Ratification by limited liability partnership of contracts made before incorporation	New First Schedule, paragraph 1	Proposed CA, s.41
Contract by limited liability partnership	New First Schedule, paragraph 2	Proposed CA, s.41A(1), (3) and (4); CA 2006, s.43(1), (2) & (3), modified by UK LLPR 2009 reg.4
Execution of document by limited liability partnership	New First Schedule, paragraph 3	Proposed CA, s.41B(1), (2), (4) and (5); CA 2006, s.44, modified by UK LLPR 2009 reg.4
Common seal	New First Schedule, paragraph 4	Proposed CA, s.41B(6) and s.144(1)(a), (1B) & (2); CA 2006, s.445, modified by UK LLPR 2009 reg.4

Supplementary Report on Formalities in the Execution of Documents:
Amendments to Companies Act and Limited Liability Partnerships Act

Headings	Act and amended section	Legislative sources/Comments
Execution of document as a deed by or on behalf of limited liability partnership	New First Schedule, paragraph 5	Proposed CA, s.41C; CA 2006, s.46 & 47, modified by UK LLPR 2009 reg.4
Official seals for use abroad	New First Schedule, paragraph 6	Proposed CA, s.41D; CA 2006, s.49, modified by UK LLPR 2009 reg.4
Authentication of document	New First Schedule, paragraph 7	Proposed CA, s.41F(4)
Application of this Schedule	New First Schedule, paragraph 8	Proposed CA, s.41G
Formalities relating to Contracts and the Execution of Documents	Existing Fifth Schedule, paragraph 20(2)(d) and (da)	LLPA, existing Fifth Schedule, paragraph 20(2)(d) modified. UK Law Commission draft Instruments (Formalities) Bill, clause 6 and CA 2006, Eleventh Schedule, (Powers of Judicial Managers), subparagraphs (h) and (i)

ANNEX D

SUMMARY OF PROPOSED CHANGES TO THE COMPANIES ACT AND THE LIMITED LIABILITY PARTNERSHIPS ACT**A. INTRODUCTION**

1. The proposals to reform the law relating to the execution of documents, especially deeds, will involve amendments to the Companies Act and the Limited Liability Partnerships Act (“the LLP Act”). In particular –

- (a) section 41 of the Companies Act will be repealed and new sections 41 to 41G inserted; and
- (b) section 5(2) of the Limited Liability Partnerships Act will be repealed and replaced, and a new section 13A and a new First Schedule inserted.

2. In addition, miscellaneous amendments will also be made to align the other provisions of the Companies Act and the LLP Act with the new provisions (e.g. to make clear that the common seal is optional).

Existing provisions

3. To understand the changes, it is useful to start with the existing provisions. Existing section 41 of the Companies Act deals with the following aspects of contracts by companies and corporations:

- (a) ratification of pre-incorporation contracts made on behalf of a company [*subsections (1) and (2)*];
- (b) formation of contracts by a corporation [*subsection (3)*];
- (c) means by which a corporation may authenticate documents [*subsection (4)*];
- (d) execution of deeds by a corporation [*subsections (5) and (6)*];
- (e) official seals by corporations for use abroad [*subsection (7)*];
- (f) authority of agent of foreign corporation to execute instrument under seal need not be under seal if the authorisation is valid under that foreign corporation’s law [*subsections (8) and (9)*].

4. Section 5(2) of the LLP Act applies the following provisions of the Companies Act to LLPs:

- (a) section 41 (except for subsection (9) – which is a savings provision that is not relevant to LLPs); and
- (b) section 144(1)(a) (which requires the name of the company to appear on the seal).

B. AMENDMENTS TO COMPANIES ACT

Consequential amendment to section 19(5)

5. Section 19(5) of the Companies Act (which deals with the effects of incorporation) is amended by qualifying the words “common seal” with the words “if any” to make clear that a common seal is optional. This ties in with proposed new section 41B(6).

Consequential amendment to section 39(1)

6. Section 39(1) of the Companies Act (which deals with the effect of the memorandum and articles) is amended by substituting the reference to “signed and sealed” with the words “executed as a deed”. This is because “sealing” will be obsolete (for companies that no longer have seals) and also for individuals (under amendments to the general law e.g. Civil Law Act).

New proposed section 41 – Pre-incorporation contracts

7. Proposed new section 41 deals with pre-incorporation contracts. It re-enacts section 41(1) and (2) of the Companies Act without modification. In summary –

- (a) subsection (1) provides that pre-incorporation contracts and transactions entered by or on behalf of the company may be ratified by the company after incorporation, in which event the company will be bound by, and entitled to the benefit of, the contract or transaction; and
- (b) subsection (2) provides that before such ratification, the person who acted in the name or on behalf of the company will, in the absence of an express agreement to the contrary, be personally bound by, and entitled to the benefit of, the contract or transaction.

New proposed section 41A – Contracts

8. Proposed new section 41A deals with how a company (and a corporation incorporated outside Singapore) may make a contract. It replaces existing section 41(3). In summary –

- (a) subsection (1) provides that a company can make a contract either under its common seal or by a person acting under its express or implied authority;
- (b) subsection (2) provides that a corporation incorporated outside Singapore (a “foreign corporation”) can make a contract –
 - (i) under its common seal or in any manner recognised by the laws of the territory of incorporation (the “foreign law”); or
 - (ii) by any person who, under the foreign law, is acting under the corporation’s express or implied authority;
- (c) subsection (3) provides that, unless a contrary intention appears, the same formalities for contracts by individuals apply to contracts made by or for a company;
- (d) subsection (4) provides that a contract made by or for a company may be altered or terminated in the way the contract is authorised to be made.

9. The suggestion is to move section 41A(2) (which deals with contracts by foreign corporations) out of the Companies Act so that section 41A will deal solely with companies incorporated under the Companies Act.

New proposed section 41B – Execution of documents

10. Proposed new section 41B deals with how a company (and a corporation incorporated outside Singapore) may execute a document. There is no equivalent in existing section 41. In summary –

- (a) subsection (1) provides that a company may execute a document in 2 ways –
 - (i) by affixing its common seal; or
 - (ii) by signing on behalf of the company by –
 - (A) a director and a secretary of the company or 2 directors of the company; or
 - (B) a director of the company with a person witnessing the signature;
- (b) subsection (2) provides that a document signed by the relevant officers and expressed to be executed by the company has the same effect of being executed under the company’s common seal;
- (c) subsection (3) provides that in the case of foreign corporations, a document –
 - (i) executed in a manner recognised by the foreign law; or
 - (ii) signed by a person recognised by the foreign law as acting for the corporation and expressed to be executed by the corporation,
 has the same effect as document executed by a local company under section 41B;
- (d) subsection (4) provides that a person signing a document for more than one company must sign the document separately in each capacity;
- (e) subsection (5) provides that the section applies to any document executed by a company for another person (whether a company or not);
- (f) subsection (6) provides that a company need not have a common seal and that the section applies whether it has one or not.

11. This provision makes it expressly clear that a company need not have a common seal and sets out how a company may execute a document with or without a common seal. The suggestion is to move section 41B(3) (which deals with execution of documents by foreign corporations) out of the Companies Act so that section 41B will deal solely with companies incorporated under the Companies Act.

New proposed section 41C – Execution of document as a deed

12. Proposed new section 41C deals with how a company may validly execute a document as a deed. It replaces existing section 41(5) and (6). In summary –

- (a) subsection (1) provides that a document is validly executed as a deed under the law governing the valid execution of deeds⁵⁵ if –
 - (i) it is duly executed by the company; and

⁵⁵ There will be general provisions (outside the Companies Act) dealing with valid execution of deeds providing, amongst other things, that an instrument is not a deed unless it makes clear on its face that it is intended to be a deed by the person making it or the parties to it.

- (ii) it is delivered as a deed;
- (b) subsection (2) provides that a company may, by an instrument executed as a deed empower any person to execute deeds as its agent;
- (c) subsection (3) provides that a deed has effect as a deed executed by the company if it is —
 - (i) duly executed on behalf of the company by an agent or attorney authorised under section 41C(2); or
 - (ii) signed by such agent or attorney under the official seal (if any) of the company;
- (d) subsection (4) provides that the authority an agent empowered under section 41C(2) to execute deeds continues —
 - (i) during the period stated in the instrument of authority; or
 - (ii) where no period is mentioned, then until the person dealing with the agent is given notice of revocation of the authority.

13. This provision sets out how a deed is made by a company, the 2 main requirements for a deed⁵⁶, how the company may empower agents to execute deeds on its behalf, how such agents may execute such deeds and the duration of the agents' authority.

New proposed section 41D – Official seals for use abroad

14. Proposed new section 41D deals with official seals for use outside Singapore in place of the common seal. It replaces and expands existing section 41(7). In summary —

- (a) subsection (1) provides that a company having a common seal may have official seals for use outside Singapore (which must be facsimiles of the common seal but with the name of the place of use on its face);
- (b) subsection (2) provides that the person affixing the official seal must (in writing under his hand) certify the date and place on the instrument;
- (c) subsection (3) provides that the official seal when duly affixed has the same effect as the company's common seal.

New proposed section 41E – Authority of agent of corporation incorporated outside Singapore need not be deed, unless deed required by law of foreign territory

15. Proposed new section 41E deals with the validity of deeds executed by an agent of a foreign corporation where the agent's authorisation is not by deed but where the authorisation is valid under the foreign law. It replaces, with drafting changes, existing section 41(8) and (9). In summary —

- (a) subsection (1) provides that the fact that the authority of the foreign corporation's agent is not given by deed does not affect the validity or effect

⁵⁶ That is, the document must be executed by the company and it must be delivered as a deed.

- of any instrument executed as a deed by the agent and the instrument will be valid as if the authority had been given by deed;
- (b) subsection (2) provides that section 41E(1) does not apply unless the authorisation is valid for such purposes under the foreign law;
 - (c) subsection (3) provides that the provision applies to every instrument executed under seal before the date of the amendments by an agent of the corporation who is not authorised under seal.

16. The suggestion is move section 41E (which deals with instruments executed by agents of foreign corporations) out of the Companies Act.

New proposed section 41F – Authentication of document

17. Proposed new section 41F deals with how a company may authenticate a document. It re-enacts section 41(4) with the modification that it is now confined to companies and not corporations. In summary, it provides that documents or proceedings requiring authentication can be authenticated by the signature of a duly authorised officer of the company and do not require authentication under the common seal of the company.

New proposed section 41G – Application of section 41A to 41F

18. Proposed new section 41G provides that new sections 41A to 41F do not apply to documents or instruments executed (whether delivered or not) before the date of the amendments.⁵⁷

Consequential amendment to section 123

19. Section 123 of the Companies Act (which deals with share certificates) is amended to provide that a share certificate issued by a company may, aside from being under the common seal or an official seal (as the case may be), alternatively be signed by the officers of the company in accordance with proposed new section 41B(1)(b).

Consequential amendment to section 144(1)(a)

20. Section 144(1)(a) of the Companies Act (which deals with the publication of the name of the company) is amended by qualifying the reference to “the seal” with the words “if any” to make clear that a common seal is optional. This ties in with proposed new section 41B(6).

Consequential amendment to section 179(5)

21. Section 179(5) of the Companies Act (which deals with evidence of appointments of representatives of corporations at company meetings) is amended to provide that, subject to proposed new section 41E⁵⁸, a certificate executed in accordance with proposed new section 41B(1) will be prima facie evidence of

⁵⁷ Note however that section 41D(3) operates notwithstanding section 41G.

⁵⁸ Section 41E deals with deeds executed by agents of a corporation incorporated outside Singapore who are not authorised under deed but where the authorisation is valid as a power of attorney or document of authorisation under the laws of territory of incorporation.

appointment (i.e. the certificate can be signed by the relevant officers of the company as an alternative to being under the seal of the corporation).

Consequential amendment to section 215(10)

22. Section 215(10) of the Companies Act (which explains, in the context of a scheme or contract to transfer all the shares of a particular class in a company to another company, the meaning of the reference to shares already held by the transferee company) is amended by replacing the reference to “under seal” with the words “by deed”. This is because “sealing” will be obsolete (for companies that no longer have seals).

Consequential amendment to section 272(2)(d)

23. Section 272(2)(d) of the Companies Act (which empowers a liquidator to, amongst other things, execute documents and use the company’s seal) is repealed and replaced by new paragraphs (d) and (da), to qualify the reference to the “company’s seal” with the words “if any” to make clear that a common seal is optional. This ties in with proposed new section 41B(6) but preserves the liquidator’s power to use the common seal if the company has one.

Consequential amendment to section 385

24. Section 385 of the Companies Act (which provides that a foreign company’s certificate as to shareholding is prima facie evidence of title) is amended to provide that the certificate may be under the seal of the foreign company or alternatively be executed in any manner permitted for share certificates by the foreign law. This makes provision for where the foreign company is not required to have, and does not have, a “seal”.

Consequential amendment to Fourth Schedule

25. Miscellaneous amendments are also made to the Fourth Schedule of the Companies Act (Table A) relating to the regulations that may be adopted as Articles of Association as follows —

- (a) under paragraph 8 of Table A, that a member of a company is entitled to receive a certificate executed under section 123 of the Act (that is, the certificate need not be under seal, as currently provided, but may instead be signed by the officers of the company in accordance with section 41B(1)(b)); and
- (b) under paragraph 96 of Table A, the references to the “company’s seal” are qualified by the words “if any” to make it clear that a common seal is optional. This ties in with proposed new section 41B(6).

Consequential amendment to Eleventh Schedule

26. The Eleventh Schedule of the Companies Act (dealing with powers of judicial manager) is amended to qualify the words “company’s seal” with the words “if any”

to make it clear that that a common seal is optional. This ties in with proposed new section 41B(6).

C. AMENDMENTS TO LIMITED LIABILITY PARTNERSHIPS ACT

Amendment to section 5

27. Section 5 of the LLP Act is repealed and re-enacted. Proposed new section 5 reproduces existing section 5(1)(a), (b) and (d). Section 5(2) (which applies certain sections of the Companies Act to LLPs) is now dealt with in the proposed new First Schedule to the LLP Act. Section 5(1)(c), referring to the common seal of an LLP, is now dealt with in paragraph 4 of that Schedule.

New section 13A – Formalities

28. Proposed new section 13A provides for a new First Schedule to apply to LLPs.

New First Schedule – Formalities relating to contracts and execution of documents

29. Proposed new First Schedule to the LLP deals with —
- (a) ratification of pre-registration contracts (similar to proposed new section 41 of the Companies Act);
 - (b) contracts by LLPs (similar to proposed new section 41A of the Companies Act);
 - (c) execution of documents by an LLP (similar to proposed new section 41B of the Companies Act but with some changes to take into account that an LLP does not have directors but partners and managers instead). In particular, a document may be executed by an LLP —
 - (i) by affixing its common seal; or
 - (ii) by the signing on behalf of the LLP by 2 partners of the LLP who are also managers or by one partner cum manager in the presence of an attesting witness;
 - (d) common seal of an LLP (similar to proposed new section 41B(6), and amended 144(1), of the Companies Act);
 - (e) execution of documents as deeds by an LLP (similar to proposed new section 41C of the Companies Act);
 - (f) official seals for an LLP for use abroad (similar to proposed new section 41D of the Companies Act);
 - (g) authentication of documents by an LLP (similar to proposed new section 41F of the Companies Act); and
 - (h) the application of First Schedule to documents and instruments executed (whether delivered or not) only on or after the commencement of the amendments (similar to proposed new section 41G of the Companies Act).

LIST OF QUESTIONS

- Q1 Should the provisions governing the execution of documents by foreign corporations be contained in a new Act governing foreign entities or in the Civil Law Act with other amendments to implement the proposals to reform the formalities for the execution of documents and deeds relating to individuals and other entities? (See paragraph 2.1.2)
- Q2 Should the Companies Act contain a provision to provide that if a company uses its common seal to execute a document, the witnessing of the fixing of the seal is permissible by the same persons? (See paragraph 2.4.10)
- Q3 Do you agree that proposed paragraph 3(3) of the new First Schedule to the LLPA should refer to “partners of a limited liability partnership, being also managers of the limited liability partnership”? (See paragraph 3.1.6)

INSTRUCTIONS FOR RESPONSES

- ❖ Please send your feedback to the Legal Services Division, Accounting and Corporate Regulatory Authority, marked “**Consultation on Formalities in the Execution of Documents: Amendments to Companies Act and Limited Liability Partnerships Act**”:
 - via e-mail, to **ACRA_SEALconsult@acra.gov.sg**;
 - by post to **Legal Services Division, Accounting and Corporate Regulatory Authority, 10 Anson Road #05-01/15, International Plaza, Singapore 079903**; and/or
 - via fax, to **62251676**.
- ❖ You may also give your comments via the **REACH portal**.
- ❖ Please include your personal/company particulars as well as your correspondence address, contact number and e-mail address in your submission.
- ❖ The closing date for this consultation is **Friday, 10th December 2010**.
- ❖ A soft copy of this consultation paper can be downloaded from:
 - <http://www.reach.gov.sg> (under E-Consultation Paper)
 - <http://www.acra.gov.sg> (under “Publications → Public Consultation Papers”); or
 - <http://www.agc.gov.sg> (under “Publications”).
- ❖ Please note that the feedback received may be made public unless confidentiality is specifically requested for all or part of the submission.