Appendix II

Reform in Overseas Jurisdictions concerning Capital Maintenance Rules

UK

1. Reform for public companies in the UK has been largely constrained by European Community ("EC") law. The EC Directives which require capital preservation for public companies are themselves being reviewed. The Interdisciplinary Group on Capital Maintenance established in May 2003 to review company law on capital maintenance in the UK and Europe concluded that the focus of the law on creditor protection should be on maintaining a reasonable expectation of solvency, and not maintaining share capital.

Australia

2. After the 1998 reform to the Australian Corporations Act, financial assistance, capital reductions and buy-backs are generally allowed (with no prescription as to the source of funds) provided that there is no material prejudice to the company, its shareholders, and the ability to pay creditors. The Australian system is therefore also premised upon solvency although there is, unlike the US Revised Model Business Corporations Act 1984 ("MBCA") and New Zealand models, no prescribed formulation for the solvency measure.

Singapore

3. Singapore has introduced solvency as an exception to its financial assistance prohibition, and as an alternative method of reducing share capital. It allows buy-backs to be made (even from capital) provided the company is not insolvent, and does not become insolvent as a result of the purchase.

US and New Zealand

4. The MBCA of the US is arguably the first carefully considered modern treatment of the full solvency test approach. New Zealand followed it with additional safeguards a few years later. It seems that the transition for New Zealand from the strict UK approach on capital maintenance in

1993 to the MBCA solvency test approach has been successful, and has been used as the reference for reform in the UK and Singapore.