Second Reading Speech By Senior Minister of State for Finance and Transport, Mrs Josephine Teo, On The Companies (Amendment) Bill on 7 October 2014 at the Parliament

1. Mdm Speaker, I beg to move, "That the Bill be now read a Second time."

2. Since its enactment in 1967, the Companies Act has undergone several reviews to ensure that our corporate regulatory regime is robust and supports Singapore's growth as a global hub for businesses and investors. The Act was last amended in 2006 following a comprehensive review by the private sector-led Company Legislation and Regulatory Framework Committee.

3. Since then, there have been further changes to the business environment, making it necessary for us to update our regulatory regime. Several jurisdictions, such as Australia, Hong Kong and the United Kingdom, have also reviewed their corporate law framework and updated their laws.

4. In October 2007, the Ministry of Finance (MOF) set up a Steering Committee led by Professor Walter Woon and comprising senior public and private sector members, to undertake a comprehensive review of the Companies Act. The Steering Committee assessed that the Companies Act was fundamentally sound. Its recommendations focused on streamlining requirements to reduce the regulatory burden on companies, while strengthening corporate governance where necessary. This review culminated in the largest number of proposed reforms since the enactment of the Companies Act.

5. MOF and the Accounting and Corporate Regulatory Authority (ACRA) have conducted several rounds of public consultation on the Steering Committee's recommendations, as well as other proposed amendments to the Companies Act. The views and suggestions from the public, business community and professional bodies have been incorporated into the amendments where appropriate. The Bill before the House represents the outcome of this effort.

6. Mdm Speaker, I will now go through the key amendments in the Bill.

Reduce regulatory burden and provide greater business flexibility

7. The first set of amendments aims to reduce regulatory burden and provide greater business flexibility.

8. Let me now elaborate on the key changes.

9. First, clauses 128 and 184 of the Bill will introduce a “small company” concept to determine audit exemption. This will replace the current criterion where a company is exempted from auditing its accounts annually only if it is an exempt private company and has annual revenue of $5 million or less. An exempt private company generally refers to a private company with up to 20 members and no corporate shareholders. In future, to qualify for audit exemption as a “small company”, a company must be a private company that meets at least two of three criteria for each of the previous two financial years, which are:

- total annual revenue not more than $10 million;
- total assets not more than $10 million
- number of employees not more than 50.

10. The criteria are consistent with those used in the Singapore Financial Reporting Standards for Small Entities. While audits can be useful, they cost time and money. It is also not strictly necessary for ACRA to impose an annual requirement for small companies which do not have wide public interest. The amendment will therefore reduce compliance costs for at least 25,000 small companies which currently do not qualify for audit exemption. Existing safeguards will be retained, such as requiring all companies to keep proper accounting records, and empowering shareholders with at least 5% voting rights to require a company to prepare audited accounts.

11. Second, clause 33 of the Bill will remove the one-share-one-vote restriction for public companies. This will give public companies greater flexibility in raising capital, and investors a wider range of investment opportunities. The United States, the United Kingdom and Australia already allow companies to issue classes of shares with different voting rights subject to the companies' articles, although in Australia, listed companies are prevented from doing so by listing rules.

12. There will be safeguards to protect the rights of existing shareholders and ensure that investors are well informed. For example, public companies will be required to specify in their constitutions the rights of the different classes of shares.

13. The amendment will liberalise the regime for about 800 non-listed public companies. However, for listed companies, the Singapore Exchange and the Monetary Authority of Singapore are reviewing whether listed companies should be permitted to issue shares with different voting rights. Pending the conclusion of the review, the Singapore Exchange's current policy of not listing companies with different voting rights will continue to apply.

14. The third key amendment is to remove the requirement for private companies to keep a register of members. Instead, ACRA will maintain the register of members of private companies. The Bill will require private companies to register share ownership and changes in share ownership with ACRA. This change will remove duplication in the maintenance of information concerning ownership and improve the public's access to information relating to company shareholdings.

15. The fourth key change is to allow an individual to reflect an alternate address, instead of his residential address, in ACRA's public records.

16. The fifth amendment relates to regulatory requirements for foreign companies. Clause 156 of the Bill will require a foreign company to appoint at least one locally-resident agent instead of the current two. This will reduce the regulatory burden for foreign companies and align our requirements with those of the United Kingdom,

Hong Kong, Australia and New Zealand. The Bill will include safeguards, such as requiring that a replacement agent be appointed before the existing sole agent is permitted to resign, or within 21 days of the death of the sole agent. As agents are responsible for ensuring that the foreign company complies with the Companies Act and are personally liable for the penalties incurred by the foreign company in Singapore, the Bill will also replace the term "agent" with "authorised representative" to better reflect the accountability and responsibility of the appointed person.

Improve corporate governance

17. Mdm Speaker, let me next move on to the second set of amendments that seek to improve corporate governance.

18. First, clause 97 of the Bill will introduce a new multiple-proxies regime. Specified intermediaries such as banks and capital market services licence holders that provide nominee or custodial services, will be allowed to appoint more than two proxies to attend shareholders' meeting. Indirect investors, including CPF members who have invested in the shares of companies through the CPF Agent Banks or CPF Board can also be appointed as proxies to participate in shareholders' meetings, and be given the same rights as direct investors to vote at the meetings.

19. Although the Code of Corporate Governance already encourages listed companies to amend their constitutions to allow indirect investors to attend and vote at shareholders' meetings, few companies have done so. This amendment will thus allow more shareholders to participate in companies' annual general meetings, which is important for a healthy and well-functioning capital market. To give companies more time to work out the new procedures for proxy appointments and accommodate potentially larger numbers of attendees at their meetings, a six-month grace period will be provided before this amendment takes effect.

20. Currently, directors of non-listed companies are required to disclose conflicts of interest in transactions and shareholdings in the company and related

corporations. To further strengthen corporate governance in Singapore, the Bill will extend such disclosure requirements to chief executive officers (CEOs) of non-listed companies, given the influence that CEOs have on company decisions. The change is consistent with the disclosure framework already adopted for CEOs of listed companies under the Securities and Futures Act.

21. Currently, an auditor is allowed to resign only at a general meeting or if he is not the sole auditor, and when a replacement auditor is appointed. The Bill will allow an auditor to resign in situations where the company refuses to hold a general meeting or appoint a new auditor. At the same time, clause 126 of the bill will require auditors of public interest companies and their subsidiaries to seek ACRA's consent and concurrently notify the company concerned of the reasons for his resignation, if the resignations are before the end of their terms. The company must circulate the auditor's notification to its shareholders. Such resignations will be effected only upon ACRA's consent. This will allow ACRA to stop the resignation in the public interest where necessary and alert ACRA to any potential breaches by the company under the Act. The company is required to appoint a replacement auditor within 3 months.

22. Besides stepping up disclosure requirements, the Bill will enhance ACRA's enforcement powers. Clause 76 of the Bill introduces new powers which allow ACRA to debar a director or secretary of a company from taking up new appointments if the company has failed to file relevant documents at least three months after the prescribed deadlines under the Companies Act. The impetus for the enhanced enforcement powers is to raise the compliance rate for the filing annual returns and ensure the business information on ACRA's register is accurate and reliable. The debarment of such persons will also prevent irresponsible directors and company secretaries from holding similar positions in other companies.

23. The Registrar will be able to debar a person from taking up any new appointment as a director or secretary in other companies until the default in his company has been rectified. The Registrar will exercise the new powers judiciously

and consider representations from directors and company secretaries before issuing debarment orders against irresponsible directors and company secretaries.

24. The next amendment relates to share warrants under section 66 of the Companies Act. A share warrant entitles the bearer of the warrant to the shares specified in the warrant and does not require his name to be registered in the register of members. Companies have been prohibited from issuing share warrants since 29 December 1967. A transitional arrangement was put in place for bearers of share warrants issued before 29 December 1967 to convert the warrants to registered shares. As this transitional arrangement has been in place for more than 40 years, it is timely to end it as part of our corporate governance review.

25. Clause 34 of the Bill will phase out any outstanding share warrants by giving bearers of these warrants a two-year period, from the time the amendment is effected, to surrender the warrants for cancellation and have their names entered in the register of members. Companies will cancel any outstanding share warrants that are not surrendered. This amendment also addresses the growing international expectation to strengthen transparency of companies.

26. The Bill also contains amendments to improve the corporate governance of foreign companies, which are required under the Companies Act to register in order to carry on business in Singapore through a branch office. I will elaborate on two of these amendments.

27. Currently, the Registrar is vested with the powers to strike a foreign company off the register when he has reasonable cause to believe that it has ceased to carry on business in Singapore, or that it is being used for an unlawful purpose. A foreign company that is struck off may no longer establish a place of business or carry on business in Singapore. Clause 163 of the Bill will introduce three additional grounds for the Registrar to strike off a foreign company:

28. The first is where the sole authorised representative has given notice of his resignation to the company and filed a notice with the Registrar, but the foreign company has failed to respond or appoint another authorised representative within 12 months. The second is where the authorised representative has received no instructions from the company within 12 months of a request for instructions as to whether the foreign company intends to continue its registration in Singapore. It will be unfair to compel a sole authorised representative to remain responsible for the foreign company in these situations.

29. The third is where the foreign company does not appoint a replacement authorised representative within 6 months after the death of the sole authorised representative. The Registrar can strike off the foreign company as the foreign company should not be allowed to continue to carry on business in Singapore without an authorised representative for a prolonged period of time.

30. The other key amendment relates to the financial reporting requirements for foreign companies. A foreign company is currently required to file a copy of the balance-sheet of the foreign company, and a copy of the audited accounts of its operations in Singapore.

31. Clause 161 of the Bill will require foreign companies to file similar components of their financial statements as those expected of locally-incorporated companies. The additional documents to be filed will include income statements, statements of changes in equity, statements of cash flows, notes to the accounts, directors' report and auditors' report, where applicable. The changes will promote greater transparency and allow persons in Singapore who deal with foreign companies to make better informed business decisions.

Ensuring the Law remains updated

32. Mdm Speaker, I would now like to turn to the last set of administrative amendments that ensures that the Companies Act remains relevant and updated.

33. Clause 151 of the Bill will prescribe the limit on preferential payment to an employee of an insolvent company in the subsidiary legislation. Employees of an insolvent company are currently entitled to be paid their wages and salaries, followed by retrenchment benefits and ex-gratia payments, in priority of other unsecured creditors. The limit in the Companies Act on such priority payment is "five months' salary of the employee or $7,500, whichever is lower". The $7,500 limit is based on the monthly salary cap of $1,500 for non-workmen under the Employment Act in 1993 more than two decades ago.

34. As MP Mr. Patrick Tay has noted, the limit is too low. MOF will update the limit and specify in the subsidiary legislation a new limit of "five months' salary or five times the salary cap for non-workmen referred to in Part IV of the Employment Act, whichever is lower". As labour MPs from the National Trades Union Congress like Mr Patrick Tay have pointed out before, this approach has the benefit of ensuring that the limit will be automatically updated each time the salary cap for non-workmen is adjusted in the Employment Act. Based on the current $2,500 salary cap for non-workmen, the new cap will be ""five months' salary or $12,500, whichever is lower". We thank Mr. Tay for having raised this issue.

Conclusion

35. In conclusion, the Bill will reduce regulatory burden on companies, provide for greater business flexibility and improve corporate governance in Singapore. Various stakeholder groups such as small companies, investors and employees, will benefit from the changes, which are expected to be effected by the end of this year.

36. In particular, the Steering Committee's recommendations that will be implemented in the Bill will enhance Singapore's position as an efficient and trusted place for business and investment. I would like to thank the Steering Committee for its significant contributions. MOF and ACRA will continue to review our corporate regulatory framework to ensure that it is conducive to companies and preserves investors' confidence.

37. Mdm Speaker, I beg to move.