

**Second Reading Speech by Ms Indranee Rajah,  
Senior Minister of State for Law and Finance, on the  
Companies (Amendment) Bill, 10 March 2017**

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

**Introduction**

2. The Companies Act was last amended in 2014, mainly to implement the recommendations of the Steering Committee for the Review of the Companies Act.

3. Since then, the Ministry of Finance (MOF) and the Accounting and Corporate Regulatory Authority or ACRA have undertaken another review of the Companies Act to ensure our regulatory regime continues to remain robust, relevant and in line with international norms.

4. The Ministry of Law (MinLaw) has also considered the recommendations of the Insolvency Law Review Committee and the Committee to Strengthen Singapore as an International Centre for Debt Restructuring to enhance Singapore's debt restructuring framework.

5. These reviews have prompted the current amendments which fall into three categories:

- a) first, amendments to improve the transparency of ownership and control of companies in line with certain international norms;
- b) second, amendments to reduce regulatory burden and improve the ease of doing business; and
- c) third, amendments to enhance our debt restructuring framework.

6. Several rounds of public consultation on the proposed amendments were conducted, and the feedback has, where appropriate, been incorporated into the amendments.

7. Mdm Speaker, let me now take members through the key amendments in the Bill.

**(I) Improve transparency of companies**

8. First, improving transparency of companies. The first set of amendments seeks to make the ownership and control of business entities more transparent and thus reduce opportunities for the misuse of corporate entities for illicit purposes. This will help Singapore to better meet the recommendations of the Financial Action Task Force or FATF.

9. FATF is an inter-governmental body that sets global standards for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

10. As a member of the FATF, Singapore undergoes mutual evaluations by the FATF. In Singapore's fourth mutual evaluation last year, the FATF assessed that Singapore has a strong framework for anti-money laundering and countering the financing of terrorism. The FATF also recommended some areas for improvement. One of these was to enhance the access of law enforcement agencies to information on the beneficial ownership of legal persons.

11. Singapore is also a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes or GF. Amending our laws will enable us to better implement international standards on tax transparency.

12. Let me now elaborate on two key changes under this category of amendments:

*(a) Registers of controllers, members and nominee directors*

13. The first pertains to registers of controllers, members and nominee directors. We are requiring three new registers to be maintained by companies.

*(i) Singapore incorporated and foreign companies – Registers of Controllers*

14. First, clause 47 will require locally incorporated companies and foreign companies registered in Singapore to maintain registers of their controllers at prescribed places.

15. A controller, or more commonly known as the beneficial owner, refers to an individual or a legal entity that has interest in or significant control over the company.

16. The Bill defines “significant control” and “significant interest”, and uses a 25% threshold to help companies determine when control and interest is significant.

17. The 25% threshold is consistent with those in the FATF's guidance documents, the United Kingdom's (UK) legislation on registers of people with significant control, and the European Union's Fourth Anti-Money Laundering Directive.

18. Companies will be required to take reasonable steps to identify and obtain information on their controllers, including sending notices to potential controllers or persons who have information about the controllers.

19. Besides companies, the Bill will introduce obligations for two other groups of persons.

(a) First, any person who receives a notice from the company must provide his particulars to the company if he is a controller. If the person is not the controller, the person must provide any information on the controller that he is aware of to the company.

(b) Second, controllers will be required to provide and update their particulars to the companies.

20. Mdm Speaker, the topic of transparency of beneficial ownership continues to gain international attention and momentum. Internationally, there are discussions about central or public registers of controllers, and the automatic exchange of beneficial ownership information.

21. At the G20, there is greater focus on ensuring availability of beneficial ownership information of legal persons to regulators and law enforcement agencies.

22. The Bill only requires companies to maintain non-public registers of controllers. However, this information must be provided to the Registrar and law enforcement authorities upon request.

23. The Bill also provides a reserve power for the Minister to direct the Registrar to maintain a central register of controllers should it become necessary to do so.

*(ii) Foreign Companies – Public Registers of Members*

24. Let me now deal with the next register. Clause 46 will require foreign companies registered in Singapore to maintain public registers of their members. This brings the position of foreign companies into alignment with the current requirement for locally incorporated companies. The change will not impose any additional compliance responsibility for foreign companies who already maintain registers of members in their place of incorporation.

*(iii) Singapore incorporated companies – Registers of Nominee  
Directors*



25. Clause 47 will require locally incorporated companies to maintain the third new register, which is the register of nominee directors. The Bill will also require nominee directors to disclose their nominee status and the particulars of their nominators to their companies. This mitigates the risks of money laundering and terrorist financing being done through nominees.

*(b) Record retention*

26. Next, record retention, or the second key change.

27. When a company is wound up, clause 38 will require the liquidator to retain the company's records for at least five years, instead of the current two. Furthermore, a company that is wound up by its members or creditors will not be allowed to destroy records early. Such a company will have to retain its records for at least five years.

28. For a company that has been struck off and dissolved, clause 39 will require its former officers to similarly retain all

books and papers of the company for at least five years, including its accounting records and registers. The five-year period takes reference from standards under FATF and GF. The changes will allow enforcement agencies to access past records for their investigations.

### *Implementation of transparency-related amendments*

29. These amendments will boost Singapore's on-going efforts to maintain our strong reputation as a trusted and clean financial hub. We intend to effect these amendments by 31 March 2017.

30. To help companies prepare to comply with these new requirements, existing companies will have a transitional period of 60 days from the commencement of the law to maintain the registers of controllers. ACRA will also issue further guidance to companies. This includes samples of the notice that companies can use to send to their shareholders, directors, and any other

relevant persons to assist them in obtaining the information required for their register of controllers.

## **(II) Reduce regulatory burden and improve ease of doing business**

31. Mdm Speaker, I move next to the second set of amendments. These seek to reduce the regulatory burden and improve the ease of doing business. There are three key changes:

### *(a) Inward re-domiciliation regime*

32. First, clause 42 introduces an inward re-domiciliation regime in Singapore. Foreign corporate entities will be allowed to transfer their registration to Singapore, besides the current options of setting up a subsidiary or branch in Singapore. Inward re-domiciliation is akin to changing “corporate citizenship”. Transfer of registration will thus be useful to foreign corporate entities that wish to retain their corporate history and identity.

Foreign corporate entities may choose to re-domicile for various reasons, such as for a more conducive regulatory framework or to be closer to their shareholders or operational base. A foreign corporate entity that is re-domiciled to Singapore will be required to comply with the requirements of the Companies Act like any other Singapore company.

*(b) Requirements on annual general meetings and annual returns*

33. Second, clauses 9 to 10 and 14 to 16 will align the timelines for holding annual general meetings or AGMs and filing annual returns with the companies' financial year end. The Bill will require listed companies to hold AGMs and file annual returns within 4 months and 5 months after their financial year end respectively. Non-listed companies must hold AGMs and file annual returns within 6 months and 7 months after their financial year end respectively.

34. The Bill also exempts all private companies from holding AGMs, subject to safeguards. This will be in addition to the current regime whereby private companies can dispense with the holding of AGMs if all shareholders approve. The Bill also includes safeguards, such as allowing any shareholder of a private company to ask for an AGM within prescribed timelines.

*(c) Common seal*

35. Third, clause 6 will remove the requirement for a common seal to execute documents such as deeds and for certain documents such as share certificates. The use of common seals has become outdated. Jurisdictions such as Australia, Canada, Hong Kong, New Zealand and the UK no longer require the use of common seals. The Bill will allow companies to execute documents by having them signed by company officers who are duly authorised to do so.

36. However, notwithstanding this amendment, companies can choose to retain the use of a common seal based on their business needs.

### **(III) Enhance Singapore's debt restructuring framework**

37. Mdm Speaker, I will now move on to the debt restructuring amendments.

38. Debt restructuring refers to the process undertaken by companies in financial difficulty to renegotiate the terms of their debts and save their businesses.

39. The need for debt restructuring is on the rise globally. Recent high profile cases include Hanjin Shipping's attempted rehabilitation in Korea and ongoing efforts for Singapore-listed businesses like Swiber and Ezra.

40. A successful restructuring averts liquidation, and allows the company to continue as a going concern, which benefits not only

the company owners, but also employees who keep their jobs and others who rely on the company for their own businesses.

41. It also allows the company's creditors to receive a higher repayment under the restructuring proposal than in liquidation.

42. While Singapore is already a regional forum of choice for restructuring, these amendments will:

- a) enhance Singapore's restructuring processes, which are schemes of arrangement, under section 210 of the Act and judicial management, under Part VIIIA of the Act; and
- b) improve our capability to deal with cross-border insolvencies and restructurings.

43. These proposed changes will further enhance our restructuring framework and status as a centre for international debt restructuring.

44. With this background in mind, let me explain the key amendments relating to restructuring.

*(a) Schemes of Arrangement*

45. I will first cover amendments relating to the schemes of arrangement.

46. In a scheme, the company presents a debt restructuring proposal at meetings of its creditors or classes of them. If the proposal is approved by a majority of creditors that hold 75% of the company's debts at these meetings and is sanctioned by the Court, the proposal becomes binding on the creditors.

47. The key amendment is Clause 22, which introduces a new set of provisions that apply to schemes which implement debt restructuring proposals.



48. These provisions adapt parts of Chapter 11 of the United States Bankruptcy Code (“**Chapter 11**”). I will highlight the key features of the new provisions.

*(i) Moratorium*

49. First, moratorium. The provisions will allow the Court to order a moratorium in favour of a company that is proposing or intends to propose a scheme<sup>1</sup>. The moratorium prevents creditors from taking action against the company, such as commencing legal proceedings or enforcing security rights, and gives the company breathing room to put forward the restructuring proposal.

50. Features of Chapter 11 that will be adapted include:

- a) providing an automatic moratorium on filing an application, for a period of up to 30 days<sup>2</sup>;

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<sup>1</sup> see Clause 22, new Section 211B.

<sup>2</sup> see Clause 22, new Section 211B(8).

- b) allowing the Court to give the moratorium worldwide effect<sup>3</sup>;
- c) extending the moratorium to related entities relevant to the restructuring<sup>4</sup>.

51. Finally, the new provisions will provide for carve outs from the moratorium through subsidiary legislation<sup>5</sup>. This will address situations where the moratorium may cause disproportionately adverse effects on certain transactions. An example is contractual obligations under set-off and netting arrangements.

*(ii) Rescue Financing*

52. Next, rescue financing. The next feature of Chapter 11 that is being adapted are rescue financing provisions. Rescue financing consists of new loans which provides working capital during the restructuring. Without rescue financing, a viable

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<sup>3</sup> see Clause 22, new Section 211B(5)(b).

<sup>4</sup> see Clause 22, new Section 211C.

<sup>5</sup> see Clause 22, new Section 211B(12).

company may be unable to restructure, but lenders may be reluctant to provide additional financing to troubled companies.

53. To facilitate rescue financing, the Court will be empowered to order that rescue financing be given super-priority. That means priority over all other debts or to be secured by a security interest that has priority over pre-existing security interests<sup>6</sup>, provided the pre-existing interests are adequately protected. This is consistent with the approach in Chapter 11.

*(iii) Cram Down Provisions*

54. Third, cram down provisions. Another feature adapted from Chapter 11 is to allow the Court to approve a scheme even if there are dissenting creditor classes<sup>7</sup>, but provided safeguards are met<sup>8</sup>.

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<sup>6</sup> see Clause 22, new Section 211E(1).

<sup>7</sup> see Clause 22, new Section 211H.

<sup>8</sup> see Clause 22, new Section 211H(4).

55. Presently, the Court can only sanction a scheme if the requisite majority approval has been obtained from **all** classes of creditors. These provisions therefore prevent a minority dissenting class of creditors from unreasonably frustrating a restructuring that benefits creditors as a whole.

*(iv) Pre-Packs*

56. Fourth, pre-packs. The final feature adapted from Chapter 11 are provisions for pre-negotiated restructurings between the company and its key creditors or ‘pre-packs’. Other creditors will not be affected as the pre-pack is sufficient to save the company.

57. The new provisions facilitate approval of these pre-packs as the Court may dispense with calling creditor meetings, if certain safeguards are met<sup>9</sup>.

*(b) Judicial Management*

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<sup>9</sup> see Clause 22, New Section 2111

58. I will now move on to amendments relating to our judicial management scheme. Judicial management is a temporary court-supervised procedure where a company unable to pay its debts is managed by a judicial manager.

59. Clause 25(a) will allow the Court to make a judicial management order when a company 'is likely to become unable to pay its debts' as opposed the current 'will be unable to pay its debts'<sup>10</sup>. This will allow the judicial management process to commence earlier in the day, when the prospects of saving a company are higher.

60. Clause 25(d) will allow the Court to make a judicial management order despite objections from certain secured creditors if the prejudice caused to unsecured creditors is disproportionately greater<sup>11</sup>. Presently, the Court cannot grant a

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<sup>10</sup> see Clause 25(a)

<sup>11</sup> see Clause 25(d)

judicial management order if these secured creditors oppose the application.

61. Clause 28 will introduce rescue financing provisions, which mirror the provisions introduced for schemes of arrangement.

62. These three enhancements to the judicial management regime will improve its efficacy as a corporate rescue process.

*(c) Cross-border Insolvency*

63. I will now turn to amendments pertinent to cross-border cases, which are increasingly common because businesses conduct their operations and dealings all over the world.

64. Clause 40 sets out a list of factors for the Court to consider when deciding whether a foreign company has substantial connection to Singapore in order for it to be wound up under this Act.

65. The impact of this list goes beyond winding up, as a foreign company that can be wound up under this Act may make an application for a scheme of arrangement<sup>12</sup> or judicial management<sup>13</sup>. This list will provide greater certainty to foreign debtors that wish to restructure in Singapore.

66. Clauses 41 and 50 adopt the UNCITRAL Model Law on Cross-Border Insolvency (1997), which is a well-understood and internationally respected framework that governs the recognition and assistance of foreign insolvency proceedings<sup>14</sup>.

67. Clause 45 abolishes the current rule that requires liquidators of foreign companies to 'ring fence' Singapore assets and pay off debts incurred in Singapore first. However, 'ring fencing' for specific financial entities such as banks and insurance companies will still be retained<sup>15</sup>.

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<sup>12</sup> see Companies Act Section 210(12)

<sup>13</sup> see Clause 24

<sup>14</sup> see Clause 50, New Tenth Schedule

<sup>15</sup> See Clause 45(c) for the full list of financial institutions where the 'ring fencing' rule still applies.

68. These amendments will provide greater certainty of outcome in cross-border cases and significantly enhance Singapore's capability in dealing with cross-border insolvencies.

## **Conclusion**

69. In conclusion, the transparency-related amendments will enable Singapore to better mitigate the risks of money laundering and financing of terrorism. The Bill will also reduce the regulatory burden on companies and improve corporate governance in Singapore.

70. The enhanced debt restructuring framework will give business entities in financial difficulties greater flexibility to restructure and survive. Together with the new inward re-domiciliation regime, these amendments will increase our competitiveness and strengthen Singapore as a leading financial centre.

71. Mdm Speaker, I beg to move.