

**Second Reading (Response) Speech by Mrs Josephine Teo,
Senior Minister of State for Finance and Transport,
on the Companies (Amendment) Bill, 8 October 2014**

1. Mdm Speaker, I thank Mr Ong Teng Koon and Mr Liang Eng Hwa for their comments and support of the Bill.
2. Let me address the specific questions that they have raised and there are quite a few. First, Mr Liang has indicated the need to safeguard against businesses that create many small companies to enjoy the audit exemption. To prevent such instances, the Bill will require that for a company which is part of a group, the company must not only itself qualify as a small company, but the entire group must also meet at least 2 of the 3 quantitative criteria on a consolidated basis. In other words, a company can be exempt if it is a small company in a small group, but not if it is a small company in a bigger group.
3. Mr Ong has asked how we can contain the risk of tax evasion arising from audit exemption. While the criteria for mandatory audit will be changed, the Act still requires all companies, including small companies, to keep proper accounts. In addition, these accounts must comply with the Singapore Financial Reporting Standards unless the company is non-listed, does not have more than \$500k in total assets and have no accounting transaction in a year. ACRA has powers to investigate the accounts, and to require a company which is exempted from audit to lodge audited accounts if it is satisfied that there has been a breach of these duties, or if it is in the public interest to do so.

4. Furthermore, to help companies comply with tax reporting requirements, IRAS has put out a set of detailed guides on the records that must be kept under the Income Tax Act and Goods and Services Tax Act, and what constitutes good record keeping. IRAS has been selectively checking on the record keeping practices of small companies through reviewing tax returns, audits and site visits, and will continue to do so to ensure that their tax declarations are correct. As for companies that seek to evade tax, IRAS will take legal action against them, as well as on advisors or agents who assist such companies. So on audit exemption, there are safeguards.

5. Moving on to shares with multiple voting rights. Mr Ong has provided a balanced perspective on whether Singapore should allow them. Clearly, there are benefits and drawbacks in allowing shares with different voting rights. However, I should point out that the concept of such shares is not entirely new in Singapore and they have been permitted in private companies for some years. Further, in the Companies Act amendments of 2003, the one-share-one-vote restriction was lifted for private companies that are subsidiaries of public companies. We now have decided to lift the restriction in the Companies Act for public companies in view of global developments and demands of increasingly sophisticated investors. The change will not affect listed companies for now, as MAS and SGX are still deliberating on the issue. Rather, it is the 800 or so non-listed public companies that can take immediate advantage of the liberalisation.

6. Mr Ong has highlighted the need to mitigate the risks in allowing shares with different voting rights. Although Mr Ong's comments are made in the context of shares of listed companies, I would like to assure

Members that the Bill will put in place checks and balances for all public companies, whether or not they are listed.

7. Specifically, the Bill will require public companies to specify the rights for different classes of shares in their constitutions, and clearly demarcate the different classes of shares so that shareholders know the rights attached to any particular class of shares. The disclosure requirement is to enable investors to decide whether they are prepared to accept such structures before investing in the companies.

8. The Bill will also require public companies to ensure that information on the voting rights for each class of shares must accompany the notice of meeting at which a resolution is proposed to be passed. In addition, holders of non-voting shares will have equal voting rights on resolutions to wind up the company or to vary the rights of non-voting shares.

9. Mr Ong has asked about shareholders' recourse. The Companies Act already allows minority shareholders to seek redress if they are oppressed by the majority. A shareholder may apply to court for an order that the affairs of the company are being conducted in a manner oppressive to one or more of the shareholders, or in disregard of the interests of shareholders. The court can order one of a spectrum of remedies, such as directing or prohibiting any act, cancelling or varying any transaction, making an order to regulate the conduct of the company in the future, providing for the purchase of the shares of the minority by other shareholders or the company itself, or even order the winding up of the company. Alternatively, shareholders can sell the shares. I would

add that directors have fiduciary duties to act in the best interests of the company, which generally requires the balancing of interest of all shareholders.

10. Mr Ong has also suggested imposing limits on the proportions of voting and non-voting shares, and providing a sunset clause for shares with different voting rights. The Bill does not impose such requirements on public companies, similar to the current approach for private companies, since the objective of the change is to give public companies the flexibility in their capital structures. Rather than for the law to prescribe the capital structure of companies, shareholders will be in a better position to decide whether proportion limits or sunset clauses should be adopted by their companies. For example, family-controlled public companies may not find it necessary to include a sunset clause, whereas there are listed companies in the United States that have included sunset clauses.

11. Mr Ong's final points are on having rules to govern the sale of super majority shares to the market. Due to the nature of super majority shares, such shares are unlikely to be sold in the market. Nevertheless, it is a pertinent point for shares of listed companies, which MAS and SGX will consider.

12. Let me now turn to Mr Liang's comments. Mr Liang made two comments on shares with different voting rights. The first comment is on educating retail investors. Retail investors typically invest in shares of listed companies, which as yet will not be affected by the Bill.

Nevertheless, I agree with him that it will be useful to promote awareness and understanding of such shares.

13. Mr Liang's second comment relates to the pricing of different classes of shares. Pricing of different classes of shares will be determined by the issuing companies and may involve valuation by investment banks and road shows with potential investors. Ultimately, investors will have to assess whether the premiums or discounts offered for each class of shares are fair.

14. Mr Liang has also asked about the circumstances under which ACRA would give consent for the premature resignation of auditors and whether ACRA's decision would give a signal as to the state of the company. Typically, we will not expect an auditor to want to resign before the end of his term, unless in exceptional circumstances. The purpose of not allowing mid-term resignations without consent is to ensure that a company is not left in the lurch without an auditor. The auditor will have had the opportunity to determine his willingness to take on the appointment at the last annual general meeting at which he is appointed. Therefore, he ought not to resign within a short time of a year without good reasons.

15. We take the view that premature resignation of an auditor of a public interest company or its subsidiary is a serious matter, given the public interest implications involved. An auditor is obliged to report on any concerns with the company and can choose to qualify the audit opinion, if necessary. When the Registrar rejects the application and does not consent to the resignation, it is not necessarily giving a negative signal about the company. For example, the Registrar may

have assessed that the auditor had not exhausted all means to discharge its duties but had taken the easy way out by resigning mid-term.

16. Having said that, ACRA will exercise its discretion judiciously, and approval of resignation will generally only be granted in exceptional situations where the auditor is no longer capable of performing a competent audit, for example, due to failing health of the auditor, or loss of independence of the auditor. Mr Liang will be pleased to note that ACRA plans to issue guidelines on what it considers as valid circumstances under which resignations will be accepted. Should the application for consent bring to light potential breaches of the Companies Act by the company, ACRA may also consider investigating the company and directors.

17. Mr Liang has also sought clarification on the timing of the dissemination of the reasons for an auditor's resignation and whether there will be risk of defamation. Upon receiving the notification of resignation from the auditor, the company is required to send a copy of the statement of the auditor's reasons for resignation to the shareholders within 14 days. Safeguards have been put in place to address concerns relating to defamation. A company may apply to the Court to avoid the dissemination of the statement of the auditor's reasons for resignation on the grounds that the auditor has abused the use of the written statement or is using the requirement for dissemination to secure needless publicity for defamatory purposes. The Bill also provides that a person will not be liable for any action for defamation in respect of publication of a written statement of an auditor's reasons for resignation if there is an absence of malice.

18. Mdm Speaker, let me briefly conclude. The proposed amendments to the Companies Act will reduce regulatory burden and provide greater business flexibility. It will also improve corporate governance, and ensure that the Companies Act remains relevant and updated. These amendments balance the need for business flexibility and strong corporate governance, and will enhance Singapore's position as an efficient and trusted place for business and investment.

19. Mdm Speaker, I beg to move.