SECOND READING SPEECH

BY SECOND MINISTER FOR FINANCE, MS INDRANEE RAJAH

ON THE COMPANIES, BUSINESS TRUSTS AND OTHER BODIES

(MISCELLANEOUS AMENDMENTS) BILL,

AT THE PARLIAMENT, ON 9 MAY 2023

Madam Deputy Speaker, I beg to move, "That the Bill be now read a second time."

Introduction

2. This Bill makes four key sets of amendments to the Companies Act. The first three sets of amendments are aimed at promoting a more pro-business environment whilst upholding market confidence and safeguarding public interest. The fourth set of amendments, which applies to several Acts, permanently provides companies, business trusts and variable capital companies with the option to conduct fully virtual or hybrid meetings.

3. Let me now take Members through the four key sets of amendments.

Key Amendments Set 1

4. The first set of amendments at clause 10 makes refinements to the framework for the compulsory acquisition of shares, under section 215 of the Companies Act.

5. When a prospective buyer seeks to acquire a company, he or she may be able to obtain acceptances from a significant majority of shareholders, but still be unable to obtain the approval of all the company's shareholders for his bid. This could be the case if minority shareholders are intentionally holding out for a higher offer.

6. Therefore, the compulsory acquisition framework under section 215 of the Companies Act allows the buyer to acquire the shares of dissenting shareholders, on the condition that his offer is accepted by at least 90% of the company's other shareholders who are unaffiliated with the buyer. This is also known as the 90% threshold for compulsory

acquisition. The intent of such a framework is to address stalemates, such as the scenario mentioned earlier, while safeguarding the rights of minority shareholders.

7. Under the compulsory acquisition framework today, shares held by the buyer as well as shares held by nominees and corporations related to the buyer, are already excluded from the computation of the 90% threshold.

8. We have been monitoring the use of the compulsory acquisition framework over the years, and have observed attempts by some shareholders to circumvent the existing exclusions by making an acquisition offer through special purpose vehicles. This would allow their shares to be included in the computation of the 90% threshold and make it easier to trigger the right of compulsory acquisition. Such practices may be unfair, especially if the buyer is already a controlling shareholder with a significant proportion of the shares of a company. Minority shareholders may then have little bargaining power in relation to the offer price.

9. As such, we will make amendments to tighten the compulsory acquisition framework, by expanding the definition of persons and entities who are considered to be related to the buyer. Specifically, three additional categories of persons will be excluded when computing the 90% compulsory acquisition threshold. These three categories are:

a. One, bodies corporate who are controlled by the buyer;

b. Two, persons who are controlled or can be influenced by the buyer to approve of his takeover offer – for example, his close relatives and bodies corporate controlled by such persons; and

c. Three, persons who control the buyer and the bodies corporate controlled by such persons. This means that even if a person makes an offer through a special purpose vehicle, the person's shares will be excluded from the computation of the 90% threshold since the person also controls the special purpose vehicles.

10. These additional exclusions will apply prospectively to an offer made on or after the commencement date of the amendment. These exclusions will also apply to revised offers, if the original offer is made before the amendment's commencement but is later revised on or after the commencement date.

11. This amendment will provide greater protection to minority shareholders. The Government will continue to monitor the market and update our legislation, where necessary, to ensure fair commercial practices.

Key Amendments Set 2

12. The second set of amendments at clauses 5 and 28 relate to the disqualification of persons as directors under section 155A of the Companies Act.

Application for permission to act as director

13. Currently, any disqualified director who wishes to act as director of a company, must apply to the Court for permission to do so. This

requires an application by the disqualified director and various supporting documents, such as affidavits and submissions. This process can be cumbersome, costly and lengthy.

14. Under the Bill, we will allow disqualified directors to apply to the Registrar of Companies for permission to act as a director of a company. This will shorten the process and will also make it cheaper for disqualified directors to do so.

15. Directors disqualified under section 155A can continue to apply to Court for permission to act as a director of a company. However, a disqualified director who has applied to the Registrar for permission to act as a director of a company will not be allowed to simultaneously apply to the Court for permission, while the application to the Registrar remains pending.

Length of the disqualification period

16. We have also reviewed the length of the disqualification period under section 155A. Currently, the length of the disqualification period

is fixed at five years for all disqualified directors. To better reflect the culpability of a disqualified director, the Bill will reduce the disqualification period for first-time disqualified directors to three years, while keeping that for repeat disqualified directors at five years.

Interpretation of section 155A(1)

17. Third, the amendments clarify when the disqualification provision under section 155A(1) applies. The Court of Appeal has held that based on the ordinary meaning of the current language of section 155A(1), where a director has had one company struck off previously, and subsequently has two companies struck off on the same day, section 155A does not apply.

18. We have studied the Court's decision carefully, and have decided to amend the section to make clear the policy intention which is that directors are disqualified so long as they have at least three companies struck off by the Registrar. A director with 3 companies struck off by the Registrar within 5 years would be hard put to argue that these occurrences are entirely fortuitous. It suggests a consistent

pattern of the director not fulfilling his or her statutory obligations. That is the underlying rationale of this disqualification provision, and the amendments will enable it to be given proper effect.

Key Amendments Set 3

19. The third set of amendments at clauses 9 and 11 serves to update the penalties imposed on directors of companies for the failure to prepare and table financial statements in compliance with the prescribed accounting standards in Singapore.

20. Today, companies incorporated in Singapore and their directors must comply with the Companies Act, which requires them to present their financial statements in accordance with the prescribed accounting standards. The financial statements must give a true and fair representation of the company's performance.

21. ACRA regularly reviews its penalty regime by comparing that with those in other leading common law jurisdictions. We found that

when compared to equivalent offences in other jurisdictions, there is scope to increase our penalties.

22. Therefore, we will increase the maximum penalty from the current $50,000, for offences relating to not having true and fair financial statements that comply with the accounting standards.

23. The maximum penalty for cases where there is no intent to defraud will be raised to $250,000.

24. The maximum penalty for offences where there is intent to defraud will be raised to $250,000 and three years' imprisonment. This is necessary to deter corporate malfeasance and to signal the seriousness with which we view fraud related offences.

Key Amendments Set 4

25. Finally, the fourth set of amendments will permanently provide companies, business trusts and variable capital companies with the

option to conduct fully virtual or hybrid meetings. The amendments for companies are provided for under clauses 2, 6, 15 and 16 of the Bill. Similar amendments will also be made for business trusts and variable capital companies.

26. Today, our laws provide for general, board and other types of meetings to be conducted, but do not explicitly specify the mode of conduct – for instance whether these meetings may be held physically, virtually or in a hybrid manner.

27. During the pandemic, to provide greater clarity, we introduced temporary legislation to enable companies, business trusts and variable capital companies to hold meetings virtually, so that they could continue to convene meetings in a manner that minimised COVID-19 transmission risks. The temporary legislation will cease on 1 July 2023.

28. To continue enabling virtual or hybrid meetings, in addition to the physical meetings which they are already able to hold under existing legislation, we will make enabling provisions to clarify that companies,

business trusts and variable capital companies may conduct their meetings, including general meetings, in a hybrid or fully virtual manner, from 1 July 2023. The enabling provisions mean that entities' constitutions and the regulations issued by the respective regulators will ultimately determine if such meetings are allowed and how they are to be conducted. Entities can choose to continue with physical meetings, if they prefer.

29. Due to the use of technology, some virtual or hybrid meetings may encounter technical issues that may be beyond the control of the entities. Under the amendments, such technological disruptions, malfunctions or outages, in and of themselves, will not cause a meeting to be invalidated. However, we will provide a safeguard for shareholders to apply to the Court if these technical issues result in substantial injustice. This is consistent with the approach adopted for other types of procedural irregularities that occur during company proceedings.

30. The amendments will facilitate the use of electronic media and technology, by providing entities with the flexibility of holding hybrid or virtual meetings, while ensuring that shareholders' rights are upheld.

Conclusion

31. We review the Companies Act regularly to keep pace with changing market conditions and technologies, while upholding market confidence and safeguarding public interest. This ensures that companies operate in a responsible and ethical manner, with a focus on creating long-term value for all stakeholders.

32. Madam Deputy Speaker, I beg to move.