

**SPEECH BY MR THARMAN SHANMUGARATNAM, MINISTER FOR FINANCE, AT ADDRESS BY MR THARMAN SHANMUGARATNAM, MINISTER FOR FINANCE, AT THE SINGAPORE INSTITUTE OF DIRECTORS 10TH ANNIVERSARY GALA DINNER, 17 FEBRUARY 2009, 8:30 PM AT MARINA MANDARIN**

Mr Chew Heng Ching,  
Chairman of the Singapore Institute of Directors,  
Mr John Lim,  
President of the Singapore Institute of Directors,

Distinguished Guests, Ladies and Gentlemen.

**Introduction**

I am very pleased to join you here tonight to celebrate the 10th anniversary of the formation of the Singapore Institute of Directors.

2 It has been an eventful and productive ten years for the Institute. I would like to commend you for the significant role in promoting and enhancing corporate governance in Singapore, through education and training, and the upholding of the highest standard of professional and ethical conduct of directors. Your contributions have come at a time when it has mattered, following the Asian financial crisis and with the much needed attention across the region that has had to be paid to raising standards of corporate transparency and the independence and diligence of Boards.

**Emerging stronger after the economic crisis**

3 A decade later, we are once again in the midst of an economic crisis. Directors face the challenge of steering their companies through an exceptionally difficult economic environment, while preparing to emerge stronger and fitter in the upturn. The Institute can play a key role in helping directors to perform this task without losing sight of their core responsibility of serving the interests of shareholders.

4 No one can say with confidence at this point when the bottom will be reached and how long the weakness in the global economy will last. Although the fiscal stimulus in the US and other leading economies should provide some support for demand in the second half of 2009, growth this year and over the next few years will depend on whether their governments are able to marshal the substantially larger resources needed to deal effectively with the problems ailing the financial system. The signs are not promising. The odds are increasingly in favour of a prolonged period of economic weakness, as financial institutions and households in the US and elsewhere gradually rebuild their balance sheets.

5 We have weathered similar storms before, and we will emerge from this crisis. The government is focused on helping Singapore companies and our people to tide over the difficulties that they will face in the crisis. More than this, we need to build up our capabilities now, sharpen competitiveness in every regard, and be prepared to seize the opportunities and come out stronger in the recovery.

6 We are determined to keep Singapore one of the most attractive locations globally to do business. We will keep our tax regime competitive, ensure a robust and conducive corporate regulatory framework for business growth, and keep working to provide a broader environment that is geared towards helping businesses invest and create jobs for the future.

### **Competitive Corporate Tax Regime**

7 Singapore has one of the most competitive corporate tax regimes in the region, if not globally. Companies large and small enjoy tax rates that are more attractive than in most other countries. With the 1% corporate income tax reduction announced in the latest Budget, and the enhanced threshold for partial tax exemption announced in 2007, companies with chargeable income of \$500,000 are effectively taxed at only 11.8%.

Those with chargeable income of \$1 million will effectively pay less than 15%, below that in any other reputable jurisdiction. (Both categories of companies would fall within the 81<sup>st</sup> to 90<sup>th</sup> percentile of tax-paying companies.)

8 We have also introduced new tax measures over the last year to incentivise companies, especially smaller players, to invest in innovations of one kind or another. We are now one of the most competitive tax jurisdictions for companies to do their research and development in. Further, to encourage businesses who are able to invest now for their next phase of growth, we have substantially enhanced tax allowances for investments in plant and machinery, or in refitting premises, within this year and the next.

9 As a further short term measure to help companies tide over the crisis, we are exempting from tax foreign-sourced income (earned on or before 21 Jan 2009) that is brought back to Singapore within this year. Companies can use these tax-exempt remitted foreign-sourced income for their cash flow needs in Singapore, or as reserves to buffer future contingencies.

10 We have also made it more compelling for companies to have their funds managed by qualified fund managers. We have enhanced the fund management tax incentives in the latest Budget so that our local companies may now avail themselves to the full benefits of these incentives. This is a long term measure to further fortify Singapore's status as a fund management hub. Our message to companies is therefore simple: We are providing every encouragement for you to grow your business here, and manage your money here.

### **Robust Corporate Regulatory Framework**

11 Our broader environment is recognised internationally for being supportive of business growth. (We were ranked first out of 181 economies in the World Bank's Doing Business Report 2009 in terms of ease of doing business.)

12 We are turning our focus once again to the corporate regulatory framework, as we must do from time to time, so that we ensure we are meeting the needs of both companies and shareholders in a rapidly changing business environment.

13 The last holistic review of the Singapore Companies Act was conducted in 1999 by the Company Legislation and Regulatory Framework Committee (or CLRFC). Several changes came out of that Review. We abolished the concepts of par value and authorised capital as they were archaic and served no prudential purposes. We reformed the capital maintenance regime by allowing companies to reduce their capital through special shareholders' resolution without the need for Court approval. We also liberalised the amalgamation process, allowing companies to amalgamate without a Court order.

#### **Developments in other jurisdictions**

14 A number of other countries have since undertaken or completed reviews of their own company law frameworks. For instance, the Australians re-drafted their Corporations Act in 2001 and the UK completed its company law reform in 2006. Hong Kong is currently in the midst of its Companies Ordinance rewrite, which was launched in mid-2006.

15 The UK Companies Act review was broad-ranging. It also had particular emphasis on making the UK Companies Act more user-friendly to the small companies, with what was called a "Think Small First" approach.

#### **The Steering Committee for Reviewing the Companies Act**

16 It is timely for us to take stock and review the Singapore corporate regulatory framework, taking stock of changes in other jurisdictions as well as the continuing changes that have taken place in the business and investment environment since the CLRFC's review. We also want to clean up and re-craft the Companies Act – which is an unwieldy amalgam of legislation largely borrowed from the UK and Australia over different periods of time with an overlay of our own amendments. The new Act should convey the intent of corporate legislation and the rules in clear, concise and unambiguous language which can be readily understood by everyone involved in running or investing in a business enterprise.

17 This is why we had set up a high-level Steering Committee, chaired by Attorney-General Professor Walter Woon, to fundamentally review our Companies Act. The review is aimed at ensuring that we have in place an efficient and transparent corporate regulatory framework that supports Singapore's growth as an international hub for both businesses and investors. The Steering Committee is assisted by five Working Groups studying five broad areas of company law. The President of the Institute, Mr John Lim, chairs the first Working Group on Corporate Governance and Directors' Duties.

### Key principles

18 The Steering Committee will build on the strong foundations of our corporate regulatory framework. The core tenets are sound. But retaining them and building around them, we provide stability in our corporate regulatory framework, while making modifications needed to stay relevant.

19 In particular, the Steering Committee is exploring how the regulatory burdens on companies can be lessened, or the statutory requirements made easier to comply with, whilst ensuring transparency and accountability to third parties. It is also considering how we can avoid 'hard-coding' too many regulatory rules in the body of the Companies Act, and instead enable procedures to be modified as the environment changes, through changes to subsidiary legislation.

20 I will highlight three specific areas that the Steering Committee is studying.

### Codification of Directors' Duties

21 I would first touch on the role of directors and their duties, this being a dinner hosted by the Singapore Institute of Directors. Section 157 of the Companies Act contains the statutory statement of a director's duties. However, Section 157 does not purport to be an exhaustive statement of a director's duties. It complements a body of case law, or what lawyers dub the "common law", relating to the fiduciary duties and responsibilities of directors of a company.

22 The Steering Committee is evaluating whether we should follow the UK approach of setting out in the Companies Act a list of directors' duties which are derived from common law rules and equitable principles. Specifically, the UK spelt out seven duties of directors, namely the duties to act within powers, promote success of the company, exercise independent judgment, exercise reasonable skill and care, avoid conflict of interests, declare interests in proposed transactions or arrangements, and not to accept benefits from third parties. While Australia and New Zealand also adopt certain general duties as statutory duties, the UK's model is the most extensive and exhaustive.

23 There are both pros and cons to the UK approach. On the positive side, it helps directors to better understand the law on their fiduciary duties, which were previously difficult to interpret in light of case law. However there has been criticism that the approach may not allow for the flexibility needed to keep pace with developments and evolving practices in the business arena, and that companies would adopt a 'box ticking' approach, making reference to the consideration of all the factors required, at board meetings and in the board minutes.

24 Some of the codified duties only came into force in the UK from October 2008. The jury is still out on whether the codification of directors' duties will be successful in its aim of balancing precision of the statutory statement against the need for continued flexibility and development of the law.

25 The Steering Committee is studying developments in the UK as well as Hong Kong, which is looking at the UK approach as part of its own Companies Ordinance rewrite. Instead of codifying all the directors' duties in the Companies Act, the Steering Committee is also exploring the option of providing greater clarity to directors via practice directions or guidance notes. This is also practiced in the UK, which issues guidance notes on directors' duties, and such notes contain practical illustrations detailing the practices to adopt in actual situations such as coverage during board meetings.

#### Removing Restrictions on Financial Assistance

26 The Steering Committee is studying the reforms in several other countries (such as Australia, New Zealand, Canada, Italy and the UK) to liberalise the restrictions on financial assistance by a company for the acquisition of its own shares or those of its holding company. This is currently prohibited under Section 76 of the Companies Act - the restrictions exist to protect creditors and shareholders against possible misuse and depletion of a company's assets.

27 Section 76 is known to be rather complex. It has also been interpreted differently by judges, resulting in uncertainty and difficulty in application. Responses have been generally positive in the countries that have removed the financial assistance prohibitions.

When the UK considered abolishing the prohibition, it had in fact studied the US position and concluded that the absence of such prohibitions did not create any significant problems in the US. The Steering Committee will nevertheless study this carefully before making its recommendations.

#### Replacing the concept of the Exempt Private Company (EPC) with a "small company" definition

28 Finally, the Steering Committee is considering whether to introduce a "small company" definition in the Companies Act (with qualifying criteria such as total annual turnover, gross assets and number of employees) so as to reduce the regulatory burden and simplify compliance for such companies.

29 Based on the current definition of an Exempt Private Company (or EPC), even large private companies in terms of assets or operations are able to enjoy the benefits of EPC status, such as exemption from filing accounts with ACRA if they are solvent. This means that other stakeholders such as creditors, customers and employees may not have ready access to the company's financial information. Introducing a "small company" definition with appropriate qualifying criteria to replace the EPC concept, would be more consistent with the market perception of a company's size, and would recognise the interests of this broader group of stakeholders besides shareholders. Adopting a "small company" regime would also align our company laws with the practices in other countries such as the UK, Australia and New Zealand.

30 There are however advantages to retaining the current EPC framework since it has served us well in the past and it is a framework that companies in Singapore are familiar with. Here too, the Steering Committee will have to weigh the pluses and minuses of making the change.

**Conclusion**

31 The Steering Committee has a lot of ground to cover and it will be issuing a public consultation paper on its recommendations. I encourage every one of you here, as captains of industry and business leaders, to share your views and provide comments from the wealth of your experience when the consultation paper is ready.

32 This full effort on everyone's part will help us to improve and enhance our corporate regulatory framework, so as to maintain our status amongst the premier cities to do business.

33 Enjoy the rest of the evening. Thank you.