

Corporate Commercial

Impending Legislative Changes to Enhance Transparency and Beneficial Ownership of Companies, Foreign Companies, and LLPs

Introduction

In July 2021, the Ministry of Finance ("MOF") and the Accounting and Corporate Regulatory Authority ("ACRA") conducted a public consultation on proposed revisions to the Companies Act ("CA") and the Limited Liability Partnerships Act to improve the transparency and beneficial ownership of companies and limited liability partnerships ("LLPs").

The proposed revisions aim to mitigate misuse of corporate entities for illicit purposes, in line with the Financial Action Task Force's standards to combat money laundering, terrorism financing, and other threats to the financial system.

The consultation ended on 30 July 2021 and ACRA recently published responses to feedback received on the consultation. The proposed changes are set out in the draft Corporate Registers (Miscellaneous Amendments) Bill which was presented in Parliament on 1 November 2021 and is slated for second reading in January 2022.

In this Update, we outline the main proposed legislative amendments.

Key Proposed Amendments

- **Register of members of foreign company – Statutory timeline for updating changes**

Presently, foreign companies are required to keep a register of their members but there is no timeline to update registers when there is a change in particulars. With the proposed revision, foreign companies must update their register of members within 30 days after any change in the particulars contained in the register.

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- **Register of controllers of Singapore company, foreign company and LLP – Registration of individuals with executive control under prescribed circumstances**

Where a Singapore company, foreign company or LLP knows or has reasonable grounds to believe that the entity:

- (i) has no registrable controller; or
- (ii) has a registrable controller but has not been able to identify the registrable controller,

individuals with executive control of the entity are taken to be registrable controllers of the entity. The Singapore company, foreign company or LLP must reflect this in its register of controllers within two business days after the date on which the entity (i) knows, or has reasonable grounds to believe that the company, foreign company or LLP has no registrable controller; or (ii) having taken the reasonable steps required by the CA or the LLP Act, forms the opinion that it is unable to identify the registrable controller.

For a Singapore company or a foreign company, the individual(s) with executive control refers to the director(s) with executive control and the chief executive officer. For a LLP, it is the partner(s) with executive control.

ACRA will provide further clarification on how the definition of "executive control" will be applied when it publishes its guidance on this matter.

This new requirement aims to enhance the transparency of ownership and control of companies and LLPs.

- **Register of nominee directors of Singapore company – Statutory timeline for updating**

Presently, Singapore companies must keep a register of nominee directors under the CA. A director must inform his/her companies if he or she is or has ceased to be a nominee director and if there is any change in the particulars of the person for whom he is a nominee. However, there is currently no express requirement in the CA for companies to record such information in their registers of nominee directors upon receipt.

ACRA proposes amending the CA to impose a statutory timeline on Singapore companies to update their registers of nominee directors within seven calendar days after it is informed (i) that a director has ceased to be a nominee; or (ii) of any change to the particulars of a person for whom a director is a nominee.

- **Register of nominee shareholders of Singapore company and foreign company**

ACRA will impose a new requirement on a Singapore company and foreign company to keep a non-public register of nominee shareholders in the prescribed form at the prescribed place.

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The proposed definition of nominee shareholder is one who:

- (i) is *accustomed* or under an obligation whether formal or informal to vote, in respect of shares in the company or foreign company of which the shareholder is the registered holder, in accordance with the directions, instructions or wishes of any other person; and
- (ii) receives dividends, in respect of shares in the company or foreign company of which the shareholder is the registered holder, on behalf of any other person.

MOF and ACRA clarified that the policy intent is not to include secured creditors as "nominee shareholders" and ACRA will publish further guidance on the definition, including the concept of "accustomed".

Under the proposed amendments, nominee shareholders will be required to inform their companies or foreign companies when they become or cease to be nominee shareholders, within 30 days after the date on which they become or cease to be nominee shareholders. The nominee shareholders must also provide prescribed particulars of their nominators to the companies or foreign companies within the same timeframe, and any changes to these particulars within 30 days after the changes. Companies are required to update their register of nominee shareholders within seven calendar days after receipt of information/particulars from the nominee shareholders.

Nominee shareholders of Singapore companies and foreign companies that are incorporated or registered under the CA before the legislative changes come into force will be required to inform their companies and foreign companies of their status together with the prescribed particulars of their nominators within 60 days after the date of commencement of the legislative changes.

Further Information

If you have any queries on the above development, please feel free to contact our team members below who will be happy to assist.

Click on the following links for more information relating to the above development which is available on the ACRA website (www.acra.gov.sg):

- MOF and ACRA [Public Consultation on Proposed Enhancements To Singapore's Regime on Transparency And Beneficial Ownership Of Companies and Limited Liability Partnerships](#) issued on 2 July 2021
- MOF and ACRA [Summary of responses to public consultation on the draft Corporate Registers \(Miscellaneous Amendments\) Bill 2021](#) issued on 27 October 2021

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