

Client Alert

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Proposed Disclosure of Beneficial Owners of Private Limited Companies, Limited Liability Partnerships and Foreign Branches

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The Accounting And Corporate Regulatory Authority (**ACRA**) recently announced proposals for a second round of changes to the Companies Act (**CA**). One of the changes to be introduced by the proposed amendments to the CA and the Limited Liability Partnership Act will be the requirement for the following entities (**reporting entities**) to maintain a register of controllers:

- Singapore-incorporated companies;
- Singapore-registered limited liability partnerships (**LLPs**); and
- Singapore-registered branches of foreign corporations.

This requirement will ensure that Singapore's business transparency regime meets the international standards set by the Financial Action Task Force (**FATF**) and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

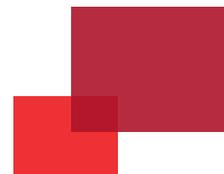
SGX-listed companies already subject to disclosure of interests requirements under the Securities and Futures Act, and financial institutions supervised by the Monetary Authority of Singapore, subject to "fit and proper" checks, are excluded from this requirement.

For the first round of changes to the Companies Act, please see our Client Alerts: "[Forthcoming Changes to the Regulatory Regime for Companies and LLPs](#)" and "[Singapore Restructuring & Insolvency Reform Update: A New Hub for Insolvency and Restructuring](#)".

Who is a Controller?

The new section 92A defines an individual or a corporation as a controller of a reporting entity based on two thresholds:

- Significant control: the right to appoint or remove a majority of directors, and the right to exercise, or the actual exercise of, significant influence or control over certain matters, particularly if this is provided for in the company's constitution (please refer to para. 1 of the new Fifteenth Schedule); and
- Significant interest: having an interest in more than 25% of the shares or voting rights or, where the entity has no share capital, the right to share in more than 25% of the capital or profits (please refer to para. 2 of the new Fifteenth Schedule).



ACRA has not definitively stated whether the Fifteenth Schedule definitions will take into account:

- Section 7(1) of the CA which deems a person to have interest in shares if that person has the authority to dispose, or control the disposal, of those shares; or
- Section 7(2) of the CA which provides for trust arrangements over interests in shares.

ACRA has instead indicated that this may be resolved by rules passed under the new amending sections (see the new section 411(1)(ef)).

Reporting up the Chain

Where the reporting entity is a subsidiary or part of a group of companies, careful scrutiny up the chain of legal entities will be required to ensure proper compliance with reporting requirements, taking into account the thresholds of significant control and significant interest.

This is particularly so where interests in a reporting entity may be held by a foreign company. To avoid duplicative reporting, tracing of the controllers of a reporting entity can stop once the tracing reaches a Singapore-incorporated company that will also be maintaining the register of controllers or is exempted from the regime (see section 92B(1)(a)(iii), and (b)(iii)). However, where the upstream company is a foreign company that does not have a branch registered in Singapore, it does not come under the regime and so the tracing should continue up the chain.

Duties on Company Officers and Controllers

Section 92E will require reporting entities to start keeping a register of controllers within:

- 30 days of incorporation (if incorporated after the amendments come into force); or
- 60 days (if the reporting entity was incorporated/registered before).

The reporting entity must notify any individual or corporation who/which is a registrable controller to furnish the required information and documents, in accordance with these imposed duties:

- Duty to investigate and obtain information (see section 92F);
- Duty to keep information up-to-date (see section 92G); and
- Duty to correct inaccurate information (see section 92H).



Individuals and corporations will be under the following duties if they know or believe that they are registrable controllers:

- Duty to provide information (see section 92I); and
- Duty to provide change of information (see section 92J).

When prosecuting a corporation or partnership for a breach of any of these duties, ACRA will consider the state of mind of any officer, employee or agent of that corporation or partnership as evidence that the corporation or partnership had that state of mind, (see new section 92C, which is based on sections 69 and 70 of the Government Technology Agency Act 2016).

The Register of Controllers

The register of controllers will contain particulars of the controllers which ACRA will prescribe, which are likely to include:

- Full name;
- Residential address;
- Nationality;
- Identification particulars e.g. NRIC or passport number;
- Date of birth;
- Date on which the person becomes, and if applicable, the date on which the person ceases to be a controller; and
- Whether the controller has significant interest in or significant control over the company.

Information that is subject to legal privilege need not be disclosed (see section 92D). The Registrar or authorised officers may have access to records and documents relating to controllers. The reporting entity is prohibited from disclosing to the public the register of controllers or any particulars contained in that register.

Conclusion

These proposed reporting and transparency requirements are adapted from Part 21A of the UK Companies Act 2006 and Schedule 1A (inserted by the UK Small Business, Enterprise and Employment Act 2015) which had the similar purpose of promoting transparency in the ownership of UK-incorporated companies and LLPs to limit opportunities for money laundering, terrorist financing and tax evasion.



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Both Part 21A of the UK Companies Act 2006 and the new section 92A of the CA are aligned with the FATF definition of “beneficial owner”, being the natural person who ultimately owns or controls a customer and/ or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

When brought into force, the new sections to the CA should meet ACRA's objective of making the ownership and control of business entities more transparent and support Singapore's on-going efforts to maintain its corporate governance standards and reputation as a financial hub.