

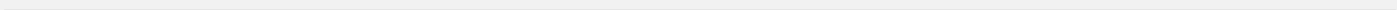


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Changes to Singapore's regulatory regime for Corporate Service Providers and beneficial ownership transparency

Introduction

Previously on 12 March 2024, the Ministry of Finance and the Accounting and Corporate Regulatory Authority ("**ACRA**") sought public feedback on:

- (a) the proposed Corporate Service Providers Bill ("**Proposed CSP Bill**"); and
 - (b) the proposed Companies and Limited Liability Partnerships (Miscellaneous Amendments) Bill ("**Proposed CLLPMA Bill**"),
- (the "**Proposed Bills**").

The Proposed CSP Bill sought to enhance the regulatory regime for the corporate service providers ("**CSPs**") sector, and the Proposed CLLPMA Bill aimed to introduce legislative amendments to the Companies Act 1967 and the Limited Liability Partnerships Act 2005 to enhance the transparency of beneficial ownership of companies and limited liability partnerships.

The public consultation exercise ran from 12 to 25 March 2024.

The feedback received was generally supportive of both the Proposed Bills, and the Proposed Bills were presented in Parliament on 7 May 2024 .

The Proposed Bills are up for 2nd Reading at the next available seating of Parliament.

How the changes are likely to affect you

A summary of the key proposed changes are:

Registration as CSPs

All business entities that carry on a business in Singapore of providing corporate services (even if they do not file transactions with ACRA on behalf of their customers) will be required to be registered as registered CSPs. All registered CSPs are also required to comply with AML/CFT/PF requirements.

Presently, companies and other business entities that do not file transactions with ACRA on behalf of their customers are not required to be registered as registered filing agents ("**RFAs**") and these companies and other business entities are consequently not subject to the requirements for detecting and preventing money laundering, the financing of proliferation of weapons of mass destruction and terrorism financing ("**AML/CFT/PF requirements**").

Should the new law be passed, a person who breaches the requirement to be registered as a registered CSP is guilty of an offence and shall be liable on conviction to a fine not exceeding S\$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding S\$2,500 for every day or part of a day during which the offence continues after conviction.

Further, the term "filing agent" in the Accounting and Corporate Regulatory Authority Act 2004 will no longer be used and will be replaced by the term "corporate service provider". If a person was a RFA before the commencement date of the Proposed CSP Bill, then the person is treated as a registered CSP who is subject to the same terms and conditions of registration until the expiry of his registration

Personal liability of senior management

The proposed changes will impose stricter liability on registered CSPs and their senior management for breaches of AML/CFT/PF requirements as follows:

(a) a registered CSP who breaches AML/CFT/PF requirements is guilty of an offence and shall be liable on conviction to a fine not exceeding S\$100,000 for each breach.

(b) the senior management of a registered CSP who fails to ensure that the registered CSP complies with its AML/CFT/PF requirements is also guilty of an offence and liable on conviction to a fine not exceeding S\$100,000 for each breach.

Nominee directors must be fit and proper

Currently, there is no requirement for RFAs to ensure that the individuals they arrange to act as nominee directors for their customers are fit and proper.

With the proposed changes, a registered CSP must not arrange for a person to act as a nominee director of a company unless he is satisfied that the person is fit and proper.

In determining whether the person is fit and proper, the registered CSP must take reasonable steps to satisfy himself that the person is not disqualified from acting as a director of a company under any written law, and consider other factors prescribed in subsidiary legislation.

A registered CSP who breaches this requirement is guilty of an offence and shall be liable on conviction to a fine not exceeding S\$100,000 for each breach.

It is also noteworthy that a person must not, by way of business, act as a nominee director of a company unless his acting as a nominee director of the company is arranged by a registered CSP.

Nominee status of directors and shareholders to be made public

Presently, nominee directors and shareholders are only required to disclose their particulars to their companies, and such information is maintained in the companies' register of nominee directors and register of nominee shareholders. This information is neither made publicly available nor submitted to ACRA.

Under the proposed changes, it will be mandatory for companies and foreign companies to file all information kept in their registers of nominee directors and nominee shareholders with ACRA.

Upon disclosure to ACRA, the nominee status of the director/shareholder will be made publicly available, including adding the nominee status to Business Profile extractions from ACRA.

However, only public agencies may access the full information maintained by ACRA for the administration or enforcement of any written law.

Register of Registrable Controllers

Right now, companies have to keep a register of registrable controllers within 30 days of being incorporated or registered. With the proposed changes, companies will be required to keep a register of registrable controllers starting on the date of incorporation or registration.

Registrable Controllers

The proposed changes will require companies to check annually with every registrable controller whose particulars are stated in their register of controllers if there has been a change in their particulars or if their particulars are correct, by giving notice to every such controller. Entities that fail to do so will be liable to a maximum fine of S\$25,000.

Presently, companies are only required to give notice to a registrable controller *if the entity knows or has reasonable grounds to believe* that (i) a change has occurred in the particulars of the controller that are stated in the entity's register of controllers (including where a person ceases to be a controller of the company); or (ii) any of the particulars is incorrect.

Foreign companies to maintain register of nominee directors

Under the current regime, unlike a local company, a foreign company is not required to maintain a register of nominee directors. However, the proposed changes will require foreign companies to maintain registers of nominee directors.

New definition of Nominee Shareholder

In view of FATF's recent update of the definition of nominee shareholders in March 2022, the proposed changes will revise the definition of nominee shareholder such that a shareholder of a company or foreign company is a nominee if the shareholder satisfies either or both of the following:

- (a) the shareholder 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
- (b) the shareholder 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.

Stiffer penalties for offences pertaining to the register of controllers, the register of nominee directors and the register of nominee shareholders. Under proposed changes, the maximum penalty for offences pertaining to the register of controllers, the register of nominee directors and the register of nominee shareholders will be increased from S\$5,000 to S\$25,000.

Conclusion

In light of the proposed changes, CSPs and companies are encouraged to review their existing practices and identify any actions that it will need to take to ensure compliance to avoid facing any of the stiffer penalties, as well as personal liabilities for senior management.

For more information, or should you have any queries or require assistance, please feel free to contact Aaron Kok at akok@bihlilee.com.sg, or Deanna Lim at dlim@bihlilee.com.sg.



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