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Singapore seeks transparency on control and ownership

With effect from 31 March 2017, Singapore-incorporated companies, foreign companies registered in Singapore and limited liability partnerships (LLPs) are required to maintain a new register of controllers and Singapore-incorporated companies are required to maintain a new register of nominee directors.

These amendments to Singapore's corporate regulatory regime seek to enhance the transparency of the control and ownership of business entities in Singapore, reducing opportunities for the misuse of corporate entities for illicit purposes. Additionally, the amendments ensure that Singapore's business transparency is aligned with international standards established by inter-governmental organizations, such as the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

REGISTER OF CONTROLLERS

For a company, a controller refers to any individual or entity that owns a "significant interest" in or "significant control" of the company.

For a company with share capital, an individual or legal entity has significant interest in the company if that person:

- (1) Has an interest (directly or indirectly) in more than 25% of the shares in the company; or
- (2) Holds shares with more than 25% of the total voting power in the company.

For a company without share capital, an individual or legal entity has significant interest

in the company if that person has, directly or indirectly, a right to share in more than 25% of the capital or profits of the company. An individual or legal entity has significant control in a company if that person:

- (1) Holds the right, directly or indirectly, to appoint or remove directors holding a majority of the voting rights at directors' meetings of the company;
- (2) Holds, directly or indirectly, more than 25% of the rights to vote on matters that are to be decided upon by the vote of the members of the company; or
- (3) Has the right to exercise significant influence or control over the company.

Not all controllers are required to be registered. To avoid duplicative reporting, companies can stop the tracing of the controllers once it reaches an entity that is either required to maintain a register of controllers or is exempt from such requirements.

The register of controllers must reflect the salient details of the controllers in the entity (i.e., the identification/registration details of the controller, the date on which the person becomes a controller, and how the person is deemed to be a controller).

Companies are required to take reasonable steps to identify and obtain information on their controllers. Such information may be requested by sending notices to parties whom the company has reason to believe are controllers, and recording their responses on an annual basis, as well as to controllers whose particulars the company has reason to believe have changed or are

inaccurate. The key element for compliance by companies is to send out such notices.

Companies are restricted from disclosing any particulars contained in the register of controllers to its members or the public. However, companies must make their register of controllers and the information contained therein available to the Accounting and Corporate Regulatory Authority of Singapore (ACRA) and other public agencies for inspection upon request.

REGISTER OF NOMINEE DIRECTORS

All Singapore-incorporated companies are required to maintain a register of nominee directors, which contains the particulars of the persons nominating the nominee directors. This requirement aims to facilitate the identification of the "controlling mind" of companies, thereby mitigating the risks of money laundering and terrorism financing being done through nominees.

A director is essentially a nominee director if he or she is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions or wishes of any other person. Unlike the register of controllers, a company is not required to take reasonable steps to ascertain whether it has any nominee directors. Instead, the obligation rests on the nominee director to notify the company of his or her status and of the particulars of his or her nominator.

The rules on the privacy and access to the register of controllers similarly apply to the register of nominee directors.

SWIFT RESPONSE

The amendments appear to be a swift response to anti-money laundering recommendations raised by the FATF in its *Mutual Evaluation Report of Singapore* released on 1 September 2016. They also evince Singapore's ongoing efforts to buttress its reputation as a global financial centre, and its pro-active regulatory stance on AML. The amendments present a measured approach by Singapore to remain internationally competitive while continuing to enhance its corporate governance and regulatory regime.

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