

KEY CLAUSES IN THE DRAFT COMPANIES (AMENDMENT) BILL AND CONSULTATION QUESTIONS

In Summary
<p>Current regime</p> <p>Sections 190 and 191 of the Companies Act require public companies to maintain a register of shareholders at their registered offices. Under Division 4A of Part V of the Companies Act, ACRA maintains an electronic public register of shareholders of private companies. There is no requirement for locally-incorporated companies to maintain beneficial ownership (BO) and control information. Professional intermediaries (e.g. company service providers and financial institutions) are required to maintain BO and control information of their clients.</p>
<p>Proposed amendments</p> <p><u>For non-listed locally incorporated companies</u> Require the companies to:</p> <ul style="list-style-type: none"> (a) take reasonable steps to identify their controllers and obtain information on their controllers, by sending out notices to anyone whom they know or have reasonable grounds to believe to be controllers, knows the identity of the controllers or is likely to have that knowledge; (b) maintain registers of controllers at prescribed places (e.g. their registered offices or their registered filing agent's registered offices); (c) ensure that the registers of controllers are up to date by updating the registers within 2 days of receiving information on the controllers; (d) declare in their annual return filed with ACRA that their registers of controllers are kept up to date; and (e) make registers of controllers available to the Registrar and law enforcement authorities upon request and not to the public. <p><u>For any person who receives a notice from the company</u> Require the person to:</p> <ul style="list-style-type: none"> (a) provide his particulars to the company if he is a controller; or (b) provide any information that he is aware of to the company. <p><u>For controllers of companies</u> Require them to provide information and change of information to companies</p>

In Summary

Reasons for proposed amendments

To ensure that the transparency of corporate entities registered in Singapore are in line with international standards set by the Financial Action Task Force (FATF) and Global Forum on Transparency and Exchange of Information for Tax Purposes (GF)

Please refer to the following table for details.

Proposed sections	Description	Reasons/ consultation questions
92 – Application Fourteenth Schedule – Companies to which Division 4A of Part IV does not apply	To provide that the proposed Division 4A applies to all companies other than those set out in Fourteenth Schedule. The companies listed in Fourteenth Schedule are: (a) a public company whose shares are listed on SGX (b) a company that is a Singapore financial institution.	Listed companies are exempted as they are already subject to Part VII (Disclosure of Interest) of the Securities and Futures Act. MAS also performs fit and proper checks on the directors and shareholders of Singapore financial institutions. Hence, MAS, as the supervisory authority for financial institutions, would know the beneficial owners of Singapore financial institutions. <u>Consultation question 1</u> We would like to seek comments on whether there are any other classes of entities that should be exempted.
92A – Interpretation	To define the terms: controller, corporate controller, individual controller, legal entity, significant control and significant interest	FATF defines “ <i>beneficial owner</i> ” as 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. FATF’s definition covers the concepts on ownership and control. To align with FATF’s definition, this section will introduce new terms on controller, corporate controller, individual controller, legal entity, significant control and significant interest. The proposed definitions are adapted from the United Kingdom (UK) legislation.
92B – Meaning of registrable	To set out when the particulars of a corporate controller or individual controller should be included in a company’s register of controllers	To avoid duplicative reporting, the proposed section 92B(1)(a)(iii) and 92B(1)(b)(iii) provide that companies can stop the tracing of the controllers once the tracing reaches a locally incorporated company that will also be maintaining the register of controllers or is exempted from the regime. For

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		example, if Company A is wholly owned by B, and B is a locally-incorporated company maintaining the register of controllers or is exempted from the regime, Company A will only be required to provide information about B and need not go further to provide B's BO or control information.
92C – State of mind of corporation, unincorporated association etc.	To set out when a corporation, unincorporated association or partnership has a state of mind for a particular conduct	The provision is necessary as the new Division 4A refers to knowledge of corporate and unincorporated persons in a proceeding for an offence. This is based on sections 69 and 70 of the Government Technology Agency Act 2016.
92D – Meaning of legal privilege	To set out when information is subject to legal privilege and hence will not be required to be disclosed under the regime	This provides that an addressee of a company's notice is not required to disclose information under section 92F if it is subject to legal privilege. This follows the UK legislation.
92E – Register of controllers	To require a company to maintain a register of controllers (containing prescribed particulars) in a prescribed form and at a prescribed place	<p>Newly incorporated companies will be required to have and maintain the registers of controllers within 30 days from the date of incorporation. Existing companies will be given 60 days from the date of commencement of the regime to have and maintain the required registers.</p> <p>The particulars of individual controllers and corporate controllers to be prescribed are likely to include:</p> <ul style="list-style-type: none"> - full name; - residential address; - nationality; - identification number e.g. IC 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 person has significant interest in or significant control over the company.

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		<p>The prescribed place is likely to be a company's registered office or a registered filing agent's registered office.</p> <p>The registers of controllers will not be made available for public inspection.</p>
<p>92F – Company's duty to investigate and obtain information</p>	<p>To require a company to take reasonable steps to identify its controllers. This means sending notices to anyone whom the company knows or has reasonable grounds to believe to be controllers, who knows the identity of the controllers or who is likely to have that knowledge.</p> <p>To require the addressee of such a notice to comply with the company's notice, subject to legal privilege</p>	<p>This is to help companies maintain the register of controllers.</p>
<p>92G – Company's duty to keep information up-to-date</p>	<p>To require a company to send notices to a controller if it knows or has reasonable grounds to believe that the particulars of the controller have changed</p> <p>To require the addressee of such a notice to comply with the company's notice</p>	<p>To help companies maintain an updated register of controllers.</p>
<p>92H – Company's duty to correct inaccurate information</p>	<p>To require a company to send notices to a controller if it has reasonable grounds to believe that the particulars of the controller in the register are inaccurate</p>	<p>To help companies maintain an accurate register of controllers</p>

Proposed sections	Description	Reasons/ consultation questions
	To require the addressee of such a notice to comply with the company's notice	
92I – Controller's duty to provide information	To require a controller to inform the company of his identity	To help a company meet its obligations under the new sections 92E-92H, these provisions will place an obligation on the controller. This is based on UK's legislation.
92J – Controller's duty to provide change of information	To require a controller to inform the company of any change in his particulars	This is another obligation on the controller. The reasons for the provision are similar to those for the new section 92I.
92K – Power to inspect	To give the Registrar or authorised officers access to records and documents relating to controllers e.g. records of notices sent to controllers and responses received from them	This is linked to the new section 92C. The powers are necessary for the Registrar and authorised officers to enforce the provisions under the new Division 4A.
92L – Central register of controllers	To empower Minister to direct the Registrar to maintain a central register of controllers of companies	Under the proposed new regime, the register of controllers will be maintained by companies. The provision is a reserve power for the Minister in the event central register becomes a new, internationally agreed standard. Singapore will consider whether to move to a central register then.
92M – Rectification	To empower the Court, upon Registrar's application, to direct any company keeping the register of controllers to rectify such register	To enable the Registrar to apply to Court to rectify the registers of controllers kept by companies
92N – Codes of practice, etc.	To empower the Registrar to issue codes, guidance, guidelines, policy statements for matters under this Division	For guidance on compliance and operational flexibility

Proposed sections	Description	Reasons/ consultation questions
920 – Exemption	To empower the Minister to exempt any person or class of persons from all or any of the provisions of the Division	To give flexibility for the Minister to exempt any person or class of persons, other than companies, from the regime
411 – Regulations	To empower the Minister to prescribe the rules by which a person is deemed to have interest in or control over a company	<p><u>Consultation question 2</u> We would like to seek comments on whether the rules by which a person is deemed to have an interest in or control over a company should be based on the existing concept under section 7(1) of the Companies Act.</p>
Fifteenth Schedule – Meanings of “significant control” and “significant interest”	To define significant control over and significant interest in a company	<p>The definition on “significant control” is based on the right to appoint or remove a majority or directors, and the right to exercise (or actually exercises) significant influence or control over matters that may be prescribed.</p> <p>The definition of “significant interest” is based on a person’s interest in more than 25% of the shares held and/ or 25% of voting rights. The definition of “significant interest” in relation to a company that does not have a share capital is based on a person’s right to share in more than 25% of the capital or the profits of the company.</p> <p>Both definitions are adapted from the definitions in UK.</p> <p><u>Consultation question 3</u> We would like to seek comments on whether the proposed definitions on “significant control” and “significant interest” are appropriate and sufficient.</p>