

Summary of Key Feedback and Responses

(A) ACRA (Amendment) Bill

1. Registration of Filing Agents and Qualified Individuals

(a) Requirements for Registration

- (i) Feedback: There should be clarity on the fit and proper requirements for the registration of a filing agent or qualified individual. Other factors such as the competency of an applicant and the experience he possesses should also be taken into account and clarity on the specific requirements for each of these factors should be provided.

Response: The fit and proper requirements are that the applicant must not have been convicted of an offence involving fraud or dishonesty punishable with imprisonment of three months or more and must not be an undischarged bankrupt. The competency and experience of an applicant will also be considered as the Regulations state that only advocates and solicitors, public accountants registered under the Accountants Act, members of the various professional bodies and those with relevant experience as corporate secretarial agents are eligible to register as qualified individuals.

- (ii) Feedback: It is suggested that legislation be put in place such that any person who has been convicted of any offence involving fraud or dishonesty punishable with imprisonment of three months or more within a fixed time period from the time of conviction, will not be allowed to register or renew his registration.

Response: The Chief Executive of ACRA has the discretion to decide on applications for registration or renewal of filing agents and qualified individuals, and may take into consideration the period of time that had elapsed since a conviction when making his decision.

- (iii) Feedback: Only members of professional bodies which are internationally recognised should be eligible to apply for registration as qualified individuals.

Response: Currently, members of the Institute of Singapore Chartered Accountants, the Association of International Accountants (Singapore Branch), the Institute of Company Accountants, Singapore, and the Singapore Association of the Institute of Chartered Secretaries and Administrators are allowed to be registered as prescribed persons. We will continue to allow these categories of persons to seek registration as qualified individuals under the new regime.

- (iv) Feedback: Contrary views were received on the definition of “corporate secretarial agent”. One view was that individuals who satisfy the requirement

in section 171(1AA)(b) of the Companies Act, i.e. individuals who have been company secretaries for at least three years in the preceding five years should be eligible to be registered as qualified individuals, even though they have not been “carrying on the business of providing corporate secretarial services for one or more companies.” Another view was to retain the current definition.

Response: The requirement of “carrying on the business of providing corporate secretarial services for one or more companies” should be retained in the definition of “corporate secretarial agent” as this helps ensure that an individual has adequate practical experience in conducting statutory filing and is therefore also capable of supervising employees in such filing.

- (v) Feedback: Entities providing statutory filing services for clients are headed by prescribed persons but they engage employees with experience to access ACRA’s electronic transaction system and conduct statutory filing. It is suggested that such employees be allowed to be registered as qualified individuals else they would not be able to perform statutory filing services under the new regime.

Response: The Bill does not restrict employees’ access to ACRA’s electronic transaction system. Employees can continue to conduct statutory filing using their Singpass, under the direct supervision of registered qualified individuals.

(b) Exclusion of Certain Transactions and Certain Persons from the Registration Requirements

- (i) Feedback: Lodgements filed by companies under liquidation, receivership, judicial management etc should be excluded from the definition of “transaction” under the Bill.

Response: Certain persons such as officers of companies, group secretaries and liquidators will be exempted from registration requirements. A list of such persons will be included in the Regulations.

- (ii) Feedback: The purchase or retrieval of information from ACRA (e.g. purchase of financial statements and filing extracts) should be excluded from the definition of “transaction” under the Bill, since such information is readily available to the public. In addition, access to ACRA’s electronic transaction system for XBRL conversion services (i.e. conversion of financial statements into XBRL format and uploading of the XBRL file with ACRA to be filed together with an annual return) should be excluded.

Response: The purchase or retrieval of information from the electronic transaction system, and access to the system for XBRL conversion services will be excluded. A list of excluded transactions will be included in the Regulations.

(c) Transitional Framework

Feedback: There should be a transitional framework for existing prescribed persons with qualifications and experience to be registered as qualified individuals.

Response: Existing registered prescribed persons and professional number holders can continue to be registered as qualified individuals and filing agents so that they can conduct statutory filing using ACRA's electronic transaction system during the transitional period of time. ACRA will be writing to all affected persons closer to the implementation date.

(d) Fees for Registration and Renewal

Feedback: The registration fees for registered filing agents and registered qualified individuals should be kept to the minimum and should take into account factors such as the size and type of customers of the registered filing agent.

Response: The registration fees are still being deliberated but it is likely that a flat fee will be imposed regardless of the size and type of customers a registered filing agent may have. This is similar to the registration fees for other corporate vehicles and accounting entities that are registered with ACRA.

2. Enforcement and Regulation

(a) Considerations Relating to Enforcement Action

(i) Feedback: Registered qualified individuals will not be able to conduct statutory filing with ACRA if the registered filing agent is suspended. Hence, the suspension period of a registered filing agent's registration should be capped at not more than three months, and increased if a second or further suspension is imposed on the same filing agent. In addition, the severity of the breach as well as the circumstances of each case should be considered when applying enforcement measures.

Response: ACRA will take a calibrated approach in imposing sanctions, taking into account the seriousness and/or frequency of the breach. Administrative sanctions such as cancellation, suspension or imposing restrictions on a registered filing agent will only be applied to egregious cases.

(ii) Feedback: An enforcement panel should be set up to consider the factors involved in the breach of the terms and conditions by a registered filing agent or qualified individual and to determine the appropriate administrative sanction to be imposed.

Response: ACRA has set up a new Corporate Service Providers Enforcement & Regulation Department to administer the new regime, including investigating alleged breaches of the terms and conditions by registered filing agents and registered qualified individuals. They will be given an opportunity to show cause, including explaining why the Chief Executive of ACRA should not impose administrative

sanctions on them. Any person aggrieved by the decision of the Chief Executive has a right of appeal to the Minister.

- (iii) Feedback: Adequate warning should be given before imposing punishment on any person who makes a false statement or suppresses any material facts in relation to any application under the Act.

Response: The making of a false declaration is a serious offence and should not be viewed lightly. The Chief Executive has the discretion to issue a warning or prosecute.

- (iv) Feedback: A watch-list of registered filing agents who have had administrative sanctions imposed on them, or a recommended list of registered filing agents should be made available to the public.

Response: As a regulatory body, ACRA is not in a position to provide a recommended list of registered filing agents. However, ACRA will consider publishing a list of registered filing agents and registered qualified individuals who have been sanctioned. ACRA will also consider allowing members of the public to conduct a search of ACRA's database to ascertain whether a particular person is registered as a filing agent or qualified individual.

(b) Appeals

Feedback: It is suggested that a committee comprising registered qualified individuals should be formed to review and make recommendations to the Minister in order to ensure transparency of appeals.

Response: There is an existing process for the appellant and the Chief Executive of ACRA to present their cases to the Minister, and the arguments made by either party are shared with the other party. The Minister will come to a decision based on the submissions of the respective parties. The principles of transparency and the right to be heard are therefore adequately safeguarded in the appeal process.

(c) Maximum Quantum for Interest Rate

Feedback: There should be a maximum quantum on the interest rate to be paid for non-payment of financial penalties.

Response: The Bill provides for the interest rate to be pegged to that for an unpaid judgment debt. The current interest rate set by the Supreme Court for unpaid judgement debts is 5.33%.

(B) Key policies in the ACRA (Service Providers) Regulations

1. General

(a) Exemption from FATF Requirements

Feedback: There should be clarity on the classes of persons exempted from compliance with the requirements in the Regulations concerning money laundering and terrorism financing. In particular, lawyers should be exempted as they are already subject to regulation under a similar regime by virtue of the Legal Profession Act and the Law Society of Singapore's Practice Direction 1 of 2008.

Response: Lawyers and registered filing agents are subject to FATF requirements when they perform FATF related activities. These activities are different although there may be some overlap. Further, some registered filing agents are jointly managed by advocates and solicitors, as well as individuals who are not advocates and solicitors. The latter are not regulated by the Law Society. To ensure that all FATF related activities performed by registered filing agents are regulated, and that all the officers of registered filing agents may be held responsible for those activities, it is necessary to require advocates and solicitors who perform those activities to be regulated under the new regime.

(b) Guidance on Registered Filing Agent's Duties

Feedback: There should be clarity on the extent of customer due diligence required of registered filing agents in performing their duties.

Response: Guidelines will be provided to registered filing agents and registered qualified individuals on their legal obligations.

2. FATF Requirements

(a) Reliance on Intermediaries

Feedback: Registered filing agents should be allowed to rely on intermediaries to conduct customer due diligence if certain conditions are met (for example, if the intermediary is subjected to and supervised for compliance with anti-money laundering and counter-terrorism financing measures, the requirements should be consistent with standards set by the FATF).

Response: Registered filing agents will be allowed to rely on third party intermediaries to conduct customer due diligence on their behalf. However, the ultimate responsibility for compliance with the statutory obligations remains with the registered filing agents.

(b) Provision of Guidelines and Templates

- (i) Feedback: Guidance and/or standard forms and procedures relating to the FATF requirements should be provided, including:
- when and how to perform customer due diligence and enhanced customer due diligence;
 - the depth of checks required to establish beneficial ownership;
 - screening of employees; and
 - audit and compliance management.
- (ii) Feedback: A list of foreign countries that have deficient anti-money laundering or counter-terrorism financing measures should be maintained centrally and any update on the list should be communicated to registered filing agents or qualified individuals.

Response: ACRA will issue a set of guidelines to assist registered filing agents in their compliance with the terms and conditions on anti-money laundering and counter-terrorism financing measures. Where possible, links to the public lists of terrorists, politically exposed persons or countries with deficient anti-money laundering or counter-terrorism financing measures will be published online so that registered filing agents may refer to them when doing their necessary due diligence.

3. Education and Training

Feedback: It should be mandatory for applicants seeking to be registered as filing agents and registered qualified individuals to attend training programmes to learn about the terms and conditions of registration and for registered qualified individuals to undergo continual training on FATF obligations, anti-money laundering and counter-terrorism financing, professional ethics, so as to keep updated on regulations and practices.

Response: There will be outreach programmes for persons seeking to be registered as filing agents and qualified individuals to understand the new statutory obligations. ACRA will assess the effectiveness of these outreach programmes before deciding whether to conduct them on a regular basis or to make them compulsory for new applicants or for those seeking renewal.