KENSINGTON®
Knowing how, where and when

www.kensington-trust.com

SINGAPORE – KEY LEGISLATIVE AMENDMENTS WITH EFFECT FROM 31 MARCH 2017

REGISTER OF CONTROLLERS

Singapore companies, foreign companies and limited liability partnerships (LLPs) registered in Singapore (unless exempted by legislation) are required to maintain register of registrable controllers. The aims is to make the ownership and control of corporate entities more transparent and reduce opportunities for the misuse of corporate entities for illicit purposes. This brings Singapore in line with international standards, and boost Singapore's on-going efforts to maintain our strong reputation as a trusted and clean financial hub. This register should be maintained at either entity's registered office or the registered filing agent's registered office.

Who can be a "Controller" of a company?

A Controller is defined as an individual or a legal entity that has a "significant interest" in or "significant control" over the company.

- Controller based on significant interest

  A controller who has significant interest in a company may include any of the following:-

Companies with Share Capital	Companies without Share Capital
An individual who has: • Interest in more than 25% of the shares • Shares with more than 25% of total voting power in the company	An individual who has : • Right to share in more than 25% of the capital or profits of the company

- Controller based on significant control

  A controller who has significant control on a company is a person who:
  - holds the right to appoint or remove directors who hold a majority of the voting rights at directors' meetings;
  - holds more than 25% of the rights to vote on matters that are to be decided upon by a vote of the members of the company; or
  - exercises or has the right to exercise significant influence or control over the company.

Who can be a "Controller" of a LLP?

A controller of the LLP is a person who:

- holds, directly or indirectly a right to share in more than 25% of the capital, or more than 25% of the profits, of the LLP; or a right to share more than 25% of any surplus assets of an LLP on a winding up;
- holds the right, directly or indirectly, to appoint or remove the manager of the LLP, or if the LLP has more than one manager, a majority of the managers of the LLP;
- holds the right, directly or indirectly, to appoint or remove the persons who hold a majority of the voting rights at meetings of the management body of the LLP;
- holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the partners of the LLP; and/ or
- has the right to exercise, or actually exercises, significant influence or control over an LLP.

When to set up and maintain the register of controllers?

Set up timelines	• Newly-incorporated companies and newly registered LLPs are required to keep register of registrable controllers within 30 days from date of incorporation / registration. • Existing companies and LLPs are required to keep register of controllers within 60 days from date of commencement of the regime (31 Mar 2017). • Companies which are not required to keep registers of controllers at or after the date of commencement (31 Mar 2017) but are subsequently required to do so, are required to keep the registers within 60 days after being required to do so.
Maintaining	• Companies are required to enter information into their register of registrable controllers within 2 business days after receiving replies from controllers to notices sent by companies / LLPs.

Who has the rights to see the registers of controller?
The register of registrable controllers must be made available to the Singapore Registrar and public agencies administering or enforcing any written law [including Commercial Affairs Department (CAD), Corrupt Practices Investigation Bureau (CPIB) and Inland Revenue Authority of Singapore (IRAS)] upon request.

The company's officers are able to view the register of controllers and are the ones responsible for maintaining the register. The shareholders will not be able to view the register as the register is not meant for public viewing.

To what extent must companies trace their controllers?
Companies / LLPs are obliged to send notices to any person whom they know or have reasonable cause to believe to be controllers, who knows the identity of the controllers or who is likely to have that knowledge. If the recipient of a notice does not reply, the company need not ensure that the recipient reply and may enter into its register the particulars of a controller with a note indicating that the controller has not confirmed the particulars.

What are the consequences / actions the Singapore ACRA (Accounting and Corporate Regulatory Authority) may undertake if the registers cannot be maintained by the stipulated timelines?
If a company / LLP does not get a response from a potential controller to whom it sent a notice, it must enter into its register of controllers, the particulars of the addressee that it has in its possession with a note that the particulars have not been confirmed by the controller. This must be done within 2 business days after the end of 30 days after the date on which the notice is sent by the company / LLP to the registrable controller. The company is obliged to send a notice to all those whom it believes could be a controller, otherwise it commits an offence. Minimally ACRA expects companies to send a notice to all its shareholders and directors asking whether they are the controllers or know any controllers on an annual basis.

What is the penalty for failing to maintain a register of controllers?
The maximum penalty for non-compliance is S$5,000. This is similar to the existing penalty if companies fail to file annual returns.

REGISTER OF NOMINEE DIRECTOR

Companies incorporated under the Companies Act, Chapter 50 of Singapore (the "**Act**") are required to:

- keep a register of its nominee directors containing the particulars of the nominators of the company's nominee directors; and
- produce the register of nominee directors and any related document to the Registrar, an officer of ACRA or a public agency, upon request.

The registers may be kept at the companies' registered offices or the registered offices of their appointed registered filing agent.

Obligations of nominee directors

Directors of companies should consider whether they are nominees. If they are nominees, they should, within the applicable timelines,

(i) inform their respective companies of that fact; and
(ii) provide the particulars of their nominators.

In addition, nominee directors must inform their companies when they cease to be a nominee and of any change to the nominator's particulars provided to the company.

Definition of "nominee directors"

A director is a nominee if the director is accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of any other person. The obligation to act in accordance with the directions, instructions or wishes of any other person may arise from legal obligations (e.g. contract; trust) or informal arrangements.

For example, a director is a nominee of a person with a shareholding in a company if he is appointed by that person to the board of directors of the company and he acts in accordance with the directions, instructions or wishes of that person.

Timelines

Company incorporated **on or after 31 March 2017**	A director of a company: • who is a nominee must inform the company of that fact and provide the particulars of the nominator **within 30 days after the date of incorporation**; and • who becomes a nominee must inform the company of that fact and provide the particulars of the nominator **within 30 days after the director becomes a nominee**.
Company incorporated **before 31 March 2017**	A director of a company: • who is a nominee must inform the company of that fact and provide the particulars of the nominator **within 60 days after 31 March 2017**; and • who becomes a nominee must inform the company of that fact and provide the particulars of the nominator **within 30 days after the director becomes a nominee**.

For the obligation to inform companies about cessation of nominee directorship and/or update the particulars of nominators, the nominee director must inform his company:

- that he ceases to be a nominee within 30 days of the cessation; and
- of any change to the nominator's particulars provided to the company within 30 days of the change.

Privacy and Access to register of nominee directors
Companies must not disclose or make available for public inspection the register or any particulars contained in the register including its members.

However, companies must make available their registers of nominee directors, information contained in the registers, and any document relating to the registers and the keeping of the registers, to (i) the Registrar and ACRA officers, and (ii) public agencies and their officers (e.g. the CAD, CPIB, IRAS).

What is the penalty for failing to maintain a register of nominee directors?
Generally, failure to comply with this requirement constitutes a criminal offence and the offence can be liable to a penalty of up to S$5,000.

REMOVAL OF THE REQUIREMENT FOR COMMON SEAL

Companies and LLPs are no longer required to use the common seal in the execution of documents as a deed, or other documents such as share certificates. Companies and LLPs can execute documents by having them signed by authorised persons.

Authorised persons for companies	Authorised persons for LLPs
A director and the secretary of a company.	Two partners of an LLP; or
Two directors of a company; or	A partner of an LLP in the presence of a witness who attests the signature.
A director of a company in the presence of a witness who attests the signature.	

PUBLIC REGISTERS OF MEMBERS FOR FOREIGN COMPANIES

The requirements on public registers of members for foreign companies are similar to those for public registers of members for public companies (section 190 of the Act). The register of members may be kept in electronic or hardcopy format at its registered office in Singapore or at some other place in Singapore. Foreign companies registered under the Act on or after 31 March 2017 must, within 30 days after it is registered, keep a public register of its members in Singapore. Foreign company registered under the Act before 31 March 2017 must, within 60 days after 31 March 2017, keep a public register of its members in Singapore (i.e. by 30 May 2017).

Who may inspect the public register of members of a foreign company?
The register shall be open to the inspection of any member of the foreign company without charge and of any other person on payment for each inspection of $1 or such less sum as the foreign company requires. Any member or other person may request the foreign company to furnish him with a copy of the register, or of any part thereof, but only so far as it relates to names, addresses, number of shares held and amounts paid on shares, on payment in advance of $1 or such less sum as the foreign company requires for every page thereof required to be copied and the foreign company shall cause any copy so requested by any person to be sent to that person within a period of 21 days or within such further period as the Registrar considers reasonable in the circumstances commencing on the day next after the day on which the request is received by the foreign company. For further details, please refer to Regulation 11 of the Companies (Register of Controllers and Nominee Directors) Regulations 2017.

RECORDS RETENTION

On Winding up, the company liquidator is required to retain company's records for at least five years (up from the prior two year retention period) and upon strike off/dissolutions, former officers are required to retain books and papers (including accounting records and registers) for at least five years. This allows enforcement agencies to access past records for their investigations.

KEY LEGISLATIVE AMENDMENTS TO TAKE EFFECT WITHIN 2ND HALF 2017

INWARD RE-DOMICILIATION

Foreign corporate entities will be allowed to transfer their registration to Singapore, besides the current options of setting up a subsidiary or branch in Singapore. Inward re-domiciliation is akin to changing 'corporate citizenship'. Transfer of registration will thus be useful to foreign corporate entities that wish to retain their corporate history and identity. Foreign corporate entities may choose to re-domicile for various reasons, such as for a more conducive regulatory framework or to be closer to their shareholders or operational base. A foreign corporate entity that is re-domiciled to Singapore will be required to comply with the requirements of the Act like any other Singapore company.

For more information, please contact us at –

Linda Wong
Managing Director, Kensington Trust Singapore Limited

Phone +65 6635 1730
Email linda.wong@kensington-trust.com

Stella Lee
Executive Director of Kensington Corporate Management (S) Pte. Ltd.

Phone + 65 6635 1730
Email stella.lee@kensington-trust.com

31 March 2017
Singapore