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Mini Guide - Register of Registrable Controllers for Companies

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The information below is for interim reference only. ACRA-issued guidance will be uploaded on this webpage once the subsidiary legislation has been published. Please check back for more updates.

1. Introduction

The Companies Act (Cap. 50) will be amended to introduce registers of registrable controllers of companies under the new Part XIA which will come into effect on 31 March 2017. A set of subsidiary legislation will also be prescribed and come into effect on 31 March 2017. This Mini Guide helps companies understand the basic requirements pertaining to the register of registrable controllers.

2. Requirements at a Glance

Companies are required to each:

maintain a register of registrable controllers containing the particulars of the company's registrable controllers;

- take reasonable steps to identify the registrable controllers of the company, including sending notices to any person whom the company knows or has reasonable grounds to believe is a registrable controller of the company or has knowledge of someone who is a registrable controller;
- keep the particulars in its register of registrable controllers up-to-date by sending notices to registrable controllers whose particulars the company knows or has reasonable grounds to believe have changed or is inaccurate; and
- produce the register of registrable controllers and any related document to the Registrar, an officer of the Accounting and Corporate Regulatory Authority or a public agency, upon request.

2.1 Exemptions

All locally-incorporated companies are subject to the above requirements, except for:

- (a) a public company which shares are listed for quotation on an approved exchange in Singapore;
- (b) a company that is a Singapore financial institution;
- (c) a company that is wholly-owned by the Government;
- (d) a company that is wholly-owned by a statutory body established by or under a public Act for a public purpose;
- (e) a company that is a wholly-owned subsidiary of a company mentioned in sub-paragraph (a), (b), (c) or (d);
- (f) a company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to — (i) regulatory disclosure requirements; and (ii) requirements relating to adequate transparency in respect of its beneficial owners, imposed through stock exchange rules, law or other enforceable means.

3. Maintaining a Register of Registrable Controllers

3.1 Timelines

Companies are required to each maintain a register of registrable controllers within the following timelines:

- Companies incorporated on or after 31 March 2017: within 30 days of the date of incorporation
- Existing companies incorporated before 31 March 2017: within 60 days of 31 March 2017
- Companies which are not required to maintain the register as of 31 March 2017, but are subsequently required to do so: within 60 days of the date of being required to maintain the register. For example, a company that was listed on Singapore Exchange but is

subsequently delisted must keep a register of registrable controllers within 60 days of being delisted.

3.2 Location of register

Companies may keep their registers of registrable controllers at a location prescribed in the subsidiary legislation, which is likely to be (i) their registered offices or (ii) the registered offices of their appointed registered filing agent.

3.3 Form of register

Companies may keep their register electronically or in hard copy format.

4. Taking reasonable steps and sending out notices

4.1 Taking reasonable steps

Companies are required to take reasonable steps to find out and identify their registrable controllers. This is likely to mean that a company must minimally send out a notice to each member and each director of the company at least once annually.

4.2 Sending out notices

The notice would be prescribed in the subsidiary legislation. Companies may send the notice electronically or in hard copy format. Companies are strongly encouraged to document the sending of notices and the receipt of replies to notices.

5. Entering information on the Register of Registrable Controllers

5.1 When to enter information

Companies required to enter information into their registers of registrable controllers within the prescribed timeline after the information has been "confirmed". The prescribed timeline is likely to be within 2 business days after the information has been confirmed.

The subsidiary legislation is likely to prescribe that information is confirmed where:

- the registrable controller replies to a notice; or
- the registrable controller or a registered filing agent (on behalf of the controller) provides his particulars to the company.

If information is not confirmed, companies must enter the information into their registers with a note indicating that the particulars have not been confirmed by the registrable controller.

5.2 Information to be entered

The information to be entered is likely to be as follows:

For individual controllers

- Full name (including aliases);
- Residential address;
- Nationality;
- Identification number e.g. IC or passport number;
- Date of birth; and
- Date on which the person becomes, and if applicable, the date on which the person ceases to be an individual controller.

For corporate controllers

- Name;
- If applicable, Unique Entity Number or other similar identification number;
- Address of registered office;
- Legal form of the entity and the law by which it is governed;
- If applicable, the register of companies in which it is entered (including details of the state, country and the entity's registration number in that register); and
- Date on which the person becomes, and if applicable, the date on which the person ceases to be a controller.

5.3 Companies without registrable controllers

Companies that are confident that they do not have registrable controllers may enter the following statement in their register:

"As of [date], the company knows or has reasonable cause to believe that there are no registrable controllers in relation to the company."

6. Keeping information up-to-date and correcting inaccuracies

6.1 Duty to keep information up-to-date and correcting inaccuracies

Companies are required to (i) keep the information in their registers up-to-date and (ii) correct inaccuracies in said information. This is likely to mean that a company must minimally send a notice to every registrable controller whose particulars are contained in the register of registrable controllers at least once annually.

If a company has, for example, received credible information (e.g. from newspaper reports or law enforcement authorities) that the particulars of a controller is outdated or inaccurate, the company should send a notice to the relevant registrable controller.

If the registrable controller of a company informs the company that his particulars are outdated or inaccurate and provides the correct particulars, the company should update/correct its register.

6.2 Sending out of notices

The notice would be prescribed in the subsidiary legislation. Companies may send the notice electronically or in hardcopy format. Companies are strongly encouraged to document the sending of notices and the receipt of replies to notices.

7. Who is a Registrable Controller of a Company?

7.1 Registrable controller

Only "registrable" controllers of a company are required to be registered in the company's register of registrable controllers.

A controller (A) of a company (X) is registrable, unless:

- (a) A's significant interest in or significant control over X is only through one or more controllers (B) of X;
- (b) A is a controller of B; and
- (c) B is either –

- i. a company or foreign company which is required to keep a register of controllers under the Companies Act;
- ii. a company or foreign company that is exempted from the requirement to keep a register of controllers under the Fourteenth and Fifteenth Schedules to the Companies Act respectively;
- iii. a corporation which shares are listed for quotation on an approved exchange under the Securities and Futures Act;
- iv. a limited liability partnership which is required to keep a register of controllers of limited liability partnerships under the Limited Liability Partnerships Act;
- v. a limited liability partnership that is exempted from the requirement to keep a register of controllers of limited liability partnerships under the Sixth Schedule to the Limited Liability Partnerships Act; or
- vi. a trustee of an express trust to which Part VII of the Trustees Act applies.

The requirement that controllers of a company must be "registrable" before their particulars are captured in the register of registrable controllers of that company helps avoid duplicative reporting.

For example, if a person X is a controller of a company Y only because he wholly owns company Z which in turn wholly owns company Y, person X is not a registrable controller with respect to company Y and so person X's particulars are not required to be contained in company Y's register of registrable controllers. Person X's particulars would instead be captured in company Z's register of registrable controllers.

7.2 Definition of individual and corporate controllers

Controllers may be individual or corporate controllers.

An individual controller is an individual who has a significant interest in, or significant control over, the company.

A corporate controller is a legal entity which has a significant interest in, or significant control over, the company. A legal entity is any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes a foreign company registered under the Companies Act.

7.3 Significant interest and significant control

For companies having share capital, an individual or legal entity has a "significant interest" in the company if the individual or legal entity:

- i. has an interest in more than 25% of the shares in the company; or
- ii. has an interest in one or more voting shares in the company and the total votes attached to that share, or those shares, is more than 25% of the total voting power in the company.

For companies without share capital, an individual or legal entity has a "significant interest" in a company if the individual or legal entity holds, whether directly or indirectly, a right to share in more than 25% of the capital, or more than 25% of the profits, of the company.

For all companies, an individual or legal entity has a "significant control" over a company if the individual or legal entity:

- i. holds the right, directly or indirectly, to appoint or remove the directors of the company who hold a majority of the voting rights at meetings of the directors on all or substantially all matters;
- ii. 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 members of the company; or
- iii. has the right to exercise, or actually exercises, significant influence or control over the company.

The forthcoming guidance will explain the above criteria.

7.4 "Interest"

In determining whether an individual/legal entity has an "interest" in share(s) of the company, companies should apply sections 7(1A) to (6A), (8), (9) and (10) of the Companies Act.

The default rule is that an individual/legal entity has an interest in shares if he/it has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those shares. It is immaterial that the authority of an individual/legal entity to dispose of, or to exercise control over the disposal of, particular shares is, or is capable of being made, subject to restraint or restriction. It is also immaterial, for the purposes of determining whether an individual/legal entity has an interest in a share, that the interest cannot be related to a particular share.

Where any property held in trust consists of or includes shares and an individual/legal entity knows, or has reasonable grounds for believing, that he/it has an interest under the trust, he/it shall be deemed to have an interest in those shares.

Where a legal entity is deemed to have an interest in a share and (a) the legal entity is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of an individual/legal entity; or (b) an individual/legal entity has a controlling interest in the legal entity, that an individual/legal entity shall be deemed to have an interest in that share.

Where a legal entity has, or is by the provisions of section 7 (apart from subsection (4A)) deemed to have, an interest in a share and — (a) an individual/legal entity is; (b) the associates of an individual/legal entity are; or (c) an individual/legal entity and his/its associates are, entitled to exercise or control the exercise of not less than 20% of the voting power in the first-mentioned legal entity, that individual/legal entity shall be deemed to have an interest in that share.

Section 7(6) provides for a list of situations where an individual/legal entity shall be deemed to have an interest in a share (e.g. where an individual/legal entity has entered into a contract to purchase a share).

Section 7(9) provides for a list of situations where an interest in a share may be disregarded (e.g. where the interest is that of an individual/legal entity who holds the share as bare trustee).

7.5 Joint interest in shares or holding of right

If 2 or more individuals/legal entities jointly have an interest in a share, or jointly hold a right, each is considered as having an interest in that share, or as holding that right, as the case may be.

For example, if individuals X and Y jointly have an interest in 50% of the shares in company Z, both are considered to each have an interest in 50% of the shares in Z, so both are controllers of Z and the particulars of both must by default be separately entered in Z's register of registrable controllers.

7.6 Joint arrangements

A joint arrangement is an arrangement between two or more individuals/legal entities having an interest in shares or between holders of rights that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement.

An arrangement includes (i) any scheme, agreement or understanding, whether or not it is legally enforceable and (ii) any convention, custom or practice of any kind. For something to count as an arrangement, there must be at least some degree of stability about it, so one-off "arrangements" do not qualify.

If two or more individuals/legal entities have an arrangement, each of them is treated as having an interest in the combined shares of all of them, or holding the combined rights of all of them, as the case may be.

For example, if individuals X and Y own shares that carry 10% and 20% of the voting rights in company Z respectively, and they have an arrangement between themselves to always exercise their voting rights in the same way, both are treated as having an interest in the combined shares of all of them (i.e. 30%), so both are controllers of Z and the particulars of both must by default be separately entered in Z's register of registrable controllers.

7.7 Nominees

A share or right held by an individual/legal entity as a nominee for another is to be considered as held by the other.

For example, if individual X holds 30% of the shares in company Z as a nominee for individual Y, the shares are considered to be held by Y, so Y (and not X) is a controller of Z and Y's particulars must by default be separately entered in Z's register of registrable controllers.

8. Privacy and Access to Registers of Registrable Controllers

8.1 Registers of registrable controllers not to be made public

Companies must not disclose or make available for public inspection the register or any particulars contained in the register.

For example, if a member of the public or a member of a company approaches the company and requests for access to the company's register of registrable controllers and the information contained therein, the company must decline the request and not provide such access.

8.2 Registers of registrable controllers must be made available to the Registrar and public agencies

Companies must make available their registers of registrable controllers, the 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 Commercial Affairs Department; the Corrupt Practices Investigation Bureau; the Inland Revenue Authority).

When approached by these agencies, companies should cooperate with the agencies and provide the requested information and

documents to these agencies.