



Singapore Parliament passes three bills to bolster corporate regulation and combat money laundering

18 July 2024

LEGAL UPDATE

In this Update

On 2 July 2024, the Singapore Parliament passed the ACRA (Registry and Regulatory Enhancements) Bill, the Corporate Service Providers Bill and the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Bill to enhance our corporate regulatory and anti-money laundering laws.

In this legal update, Directors Benjamin Gaw and Joel Tan set out the key things you must know about the changes and how it may affect you. We also set out the possible steps to take to comply with the new requirements.

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SUMMARY

On 2 July 2024, the Singapore Parliament passed the following bills:

- (a) the ACRA (Registry and Regulatory Enhancements) Bill (“**ACRA Bill**”);
- (b) the Corporate Service Providers Bill (“**CSP Bill**”); and
- (c) the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Bill (“**CLLP Bill**”).

ACRA Bill

Individuals must provide a contact address which will be publicly available

Currently, the residential addresses of individuals associated with businesses registered with ACRA are publicly available unless an alternate address is filed. The option for registering the alternate address is \$40. This exposes individuals to the risk of having their residential addresses exploited for malicious purposes.

Under the new regime, such individuals must provide ACRA with a contact address (within the same jurisdiction as their residential address) at which they can be reached in person or by post in addition to their residential address. The contact address will be made public while the residential address will be kept private unless the individual cannot be reached at the contact address. Further, specified parties, such as financial institutions, may obtain selected personal information from ACRA to fulfil their regulatory obligations (such as customer due diligence), however, they must safeguard the use of such personal information.

Starting 26 August 2024, individuals associated with businesses registered with ACRA will have the option to file an alternate, non-residential contact address with ACRA at no cost. Any alternate address filed with ACRA will automatically become the individual's contact address. In cases where an alternate address has been filed with ACRA under the old regime, it will be automatically converted into the individual's contact address under the new regime.

Importantly, if an alternate address is not filed with ACRA before the amendments take effect, an individual's residential address will be listed as their contact address and will become publicly available. However, individuals can update their contact address with ACRA at any time without any charges.

CSPs are encouraged to verify their clients' preferred contact addresses and update ACRA accordingly.

CSP Bill

Businesses providing corporate services in and from Singapore are required to register with ACRA as Registered CSPs

At present, only CSPs who transact with ACRA on behalf of their clients are required to register with ACRA ("**Registered CSPs**"). Registered CSPs are also subjected to the requirements for detecting and preventing money laundering, the financing of proliferation of weapons of mass destruction, and terrorism financing ("**AML/CFT requirements**"). This results in a regulatory gap as CSPs that are not Registered CSPs may be engaged by customers to facilitate illicit activities.

With the passing of the CSP Bill, all businesses providing corporate services within and from Singapore are required to register with ACRA as Registered CSPs. Corporate services include any of the following services: (a) forming of business entities, (b) acting / arranging for persons to act as directors / nominee shareholders, (c) transacting with ACRA on behalf of other persons or as a secretary of a company by way of business, (d) providing registered office / business address for business entities, and (e) carrying out transactions for customers concerning any of the designated activities relating to the provision of accounting services.

However, not all accounting service providers have to be registered as a Registered CSP. Only businesses carrying out the designated activities in relation to the provision of accounting services must be registered with ACRA under the new regime. Designated activities include: (a) buying or selling of real estate, (b) management of client monies and bank accounts, (c) organisation of contributions for the creation, operation or management of corporations, and (d) the buying and selling of business entities. Accounting services refer to financial accounting services, internal audit services, management accounting services, or taxation services.

Apart from fulfilling the AML/CFT requirements, all Registered CSPs must also comply with obligations relating to financing of proliferation of weapons of mass destruction, in addition to obligations relating to anti-money laundering and counter terrorism financing. These obligations will be set out in subsidiary legislation in due time.

Fines for errant CSPs and their senior management

The CSP Bill also introduces significant changes to the consequences for a breach of AML/CFT requirements by CSPs. This includes higher

financial penalties (up to S\$100,000 for each breach) and the possibility of personal liability for senior management.

Under the current regime, CSPs and their registered qualified individuals (“**RQIs**”) who fail to meet AML/CFT requirements are subject to a financial penalty of up to S\$25,000 per breach. In egregious cases, the CSP’s / RQI’s registration may be suspended or cancelled.

The CSP Bill strengthens deterrence by increasing the maximum financial penalty for a breach of AML/CFT requirements from S\$25,000 per breach to S\$100,000 per breach. Senior management of CSPs may also be held personally liable for such breaches and subject to financial penalty in certain instances. For example, they may be held personally liable if they knew or should have known about the breaches but failed to take reasonable steps to prevent or address them. Reasonable steps that such individuals may take to prevent the commission of offences by the CSP would include actions toward ensuring that the CSP’s employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the offence so far as the provision is relevant to them.

Persons are prohibited from acting as nominee directors unless the appointments are arranged by Registered CSPs and they have been assessed as fit and proper

Currently, CSPs are not obligated to ensure the individuals they arrange to act as nominee directors for their clients are fit and proper persons to carry out the duties of directors. This results in an increased risk of money laundering by businesses who may misuse the nominee directorship arrangement by creating shell companies to facilitate such activities. A nominee director is a director who 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 new regime prohibits a Registered CSP from arranging an individual to act as a nominee director of a company unless it is satisfied that the person is fit and proper. The prospective nominee director should possess the requisite competency, capacity, and integrity. For instance, in determining whether the individual is fit and proper, the Registered CSP should check the prospective nominee director’s compliance records and assess if they have the capacity to properly discharge their duties as a director. Other factors pertaining to the fit and proper requirements will be prescribed in the subsidiary legislation and guidelines in due course.

In relation to the new requirements, Registered CSPs must also update their internal policies to incorporate procedures in its determination as to whether an individual is fit and proper to act as a nominee director.

Additionally, an individual can only act as a nominee director if the nominee directorship is arranged by a Registered CSP, or if the individual is the sole proprietor of a Registered CSP. However, employees who are appointed as directors for their company or a related company would not be required to be appointed through Registered CSPs.

These new requirements will not apply retrospectively to existing nominee director appointments. Nonetheless, ACRA has made the recommendation for Registered CSPs to periodically refresh the fit and proper assessment, particularly if the individual is arranged to act as a nominee director for many of its clients.

CLLP Bill

Disclosure of nominee directors' and nominee shareholders' nominee status and the identities of their nominators

Under the new regime, companies will be required to file all details of nominee arrangements kept in their registers with ACRA. This would include the particulars of their nominee directors / shareholders and identities of their nominators. While the individual's nominee status will be publicly available and be added to business profiles extracted from ACRA, the nominator's identity and other details will not be publicly disclosed. Only relevant public agencies may gain access to the full information maintained by ACRA for the administration or enforcement of any written law.

ACRA will notify companies ahead of time of the timeline and the means to file the information kept in the companies' registers that will be maintained by ACRA.

Increased fines pertaining to the register of registrable controllers, the register of nominee directors and the register of nominee shareholders

As it stands, companies and LLPs must maintain registers of their registrable controllers (beneficial controllers) as well as registers of their nominee directors and nominee shareholders.

With the passing of the CLLP Bill: (a) the maximum fine for register related offences will increase from S\$5,000 to S\$25,000, (b) the provision of false or misleading information to ACRA involving registers will be an offence punishable with a fine of up to S\$25,000, and (c) companies and LLPs will be required to verify and update their controllers' information on an annual basis.

Companies and LLPs should ensure that the information in their registers is up to date.

While the proposed amendments have yet to take effect, ACRA has indicated that it intends to communicate the effective date of the bills in advance and provide CSPs with sufficient time to implement the changes to comply with the new requirements.

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