

13 January 2017

Ministry of Finance
Economic Programmes Directorate
100 High Street
#10-01, The Treasury
Singapore 179464

Dear Sir,

RESPONSE TO THE MINISTRY OF FINANCE (MOF)'S AND THE ACCOUNTING AND CORPORATE REGULATORY AUTHORITY (ACRA)'S PROPOSED CHANGES TO THE COMPANIES ACT, LIMITED LIABILITY PARTNERSHIPS ACT AND ACCOUNTANTS ACT

In preparation of this comment letter, the Institute of Singapore Chartered Accountants (ISCA) has discussed relevant proposed changes with members of the ISCA Ethics Committee and ISCA Insolvency Practices Committee. We have provided our comments mainly on the proposed amendments to improve the transparency of companies and limited liability partnerships (LLPs).

We support the proposal to require companies and LLPs to obtain and maintain beneficial ownership information, and to make the information available to law enforcement authorities upon request. This would be in line with Singapore's efforts to establish a strict and rigorous anti-money laundering and countering the financing of terrorism regime to safeguard our financial system against criminal activities and to maintain our strong reputation as a trusted and clean financial hub.

We have highlighted a few areas below where further enhancements or clarity can be made.

Proposed Fourteenth Schedule - Companies to which Proposed Division 4A of Part IV of the Companies Act does not apply

- 1.1. The proposal exempts listed companies and companies that are Singapore financial institutions from the proposed Division 4A of Part IV of the Companies Act. The reasons provided are that listed companies are subject to Part VII (Disclosure of Interest) of the Securities and Futures Act while the Monetary Authority of Singapore (MAS) 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 (referred to as controllers in the proposal) of Singapore financial institutions.

- 1.2. We believe there should be consistency in the exemption list with other relevant laws and regulations to avoid any potential confusion in the market. For example, it can be inferred from paragraph 6.16 of MAS Notice 626, *Prevention of Money Laundering and Countering the Financing of Terrorism – Banks*, that controller information of holders of stored value facilities are critical as they are specifically not exempted from being inquired about controllers. By the same token, any holder of a stored value facility should also not be exempted from the requirement to obtain and maintain controller information under the Companies Act. As such, paragraph 2(l) of Fourteen Schedule should be removed. Hence, the exemption list should be reviewed comprehensively to avoid any inconsistencies.

Proposed Fifteenth Schedule - Definitions of "significant control" and "significant interest"

- 2.1. We suggest the following to enhance the clarity of the definitions of "significant control" and "significant interest":

Paragraph 1(b)

- 2.1.1. There should be more clarity on what constitutes "significant influence".

Paragraphs 1(c), 2(a), 2(b) and 3(b)

- 2.1.2. There should be more clarity on what constitutes "regulations".

Paragraphs 2(a) and 2(b)

- 2.1.3. We are of the view that both conditions [2(a) on percentage of shares and 2(b) on percentage of voting rights] should be met in order for an individual or legal entity to have significant interest in a company having share capital. This is because there could be classes of shares with no voting rights attached. Hence, the word "and" should be inserted immediately after paragraph 2(a).

- 2.1.4. Interest in a company can be held either directly or indirectly by an individual or legal entity. Hence, we suggest that the paragraph be clarified by indicating that both direct and indirect interests should be taken into consideration when determining whether an individual or legal entity has significant interest in a company.

Particulars of registrable controllers

- 3.1. For consistency, the prescribed particulars of individual controllers and corporate controllers to be included in a company's register of controllers should mirror those maintained by financial institutions in relation to their customers as required by the MAS regulations. For example, the MAS Notice 626 requires the full name and aliases of the controller to be identified whereas Annex 3 of the MOF/ACRA's public

consultation documents only highlight the full name as one of the likely prescribed particulars.

- 3.2. In addition, proposed Section 92E(5) of the Companies Act states that the company must not enter the particulars of any controller onto the register or update the particulars of that controller on the register unless the particulars of that controller are confirmed, in the manner prescribed, by the controller.
- 3.3. Notwithstanding the obligations placed on the controllers to help companies maintain the register of controllers and the related sanctions for non-compliance, there could be circumstances where the company would not be able to receive confirmation from its controllers and hence unable to update the register accordingly. For example, an individual controller may be located overseas and is not contactable.
- 3.4. As it is important to maintain controller information for purpose of anti-money laundering and countering the financing of terrorism, MOF/ACRA may wish to consider if it is relevant for a company to also separately maintain particulars of a controller whom the company knows or has reasonable grounds to believe to be a controller, and to whom the company has sent out a notice under the proposed Section 92F, even though the controller has not confirmed his identity. The company can indicate that the person has not confirmed his identity in the register.

Stringent records keeping for wound up/struck off companies and LLPs

- 4.1. We also agree with the more stringent records keeping requirements imposed on wound up/struck off companies and LLPs. However, we would like to highlight that there will be additional costs incurred for storage/handling which will need to be funded by the stakeholders of the entity in question. For insolvent entities, these stakeholders would be the creditors and for solvent liquidators, the stakeholders would be the shareholders.

Should you require any further clarification, please feel free to contact Mr Kang Wai Geat, Assistant Director, Technical Advisory and Professional Standards, or Ms Fua Qiu Lin, Senior Manager, Technical Advisory and Professional Standards, at ISCA via email at waigeat.kang@isca.org.sg or qiulin.fua@isca.org.sg respectively.

Yours faithfully,



Mr Titus Kuan
Director

Technical Advisory, Professional Standards, and Learning & Development