

Registers of nominee directors

Guidance for Companies

Version 1.4

Date of Issuance: 22 May 2019

Table of Contents

| | | |
|-----|---|-----------|
| 1. | INTRODUCTION | 1 |
| 2. | REQUIREMENTS AT A GLANCE..... | 1 |
| 2.1 | Exemptions..... | 2 |
| 3. | OBLIGATIONS OF NOMINEE DIRECTORS – DEFINITION, TIMELINES AND REQUIRED PARTICULARS | 3 |
| 3.1 | Obligations of nominee directors | 3 |
| 3.2 | Definition of “nominee directors” | 3 |
| 3.3 | Timelines | 4 |
| 3.4 | Particulars of nominator..... | 5 |
| 4. | MAINTAINING A REGISTER OF NOMINEE DIRECTORS..... | 6 |
| 4.1 | General..... | 6 |
| 4.2 | Location of register..... | 7 |
| 4.3 | Form of register..... | 7 |
| 4.4 | Companies without nominee directors..... | 7 |
| 5. | PRIVACY AND ACCESS TO REGISTERS OF NOMINEE DIRECTORS | 8 |
| 5.1 | Registers of nominee directors is not to be made public..... | 8 |
| 5.2 | Registers of nominee directors must be made available to the Registrar and public agencies..... | 8 |
| | ANNEX A – TEMPLATE FOR REGISTER OF NOMINEE DIRECTORS | 10 |

Notes on versions

| <u>Version</u> | <u>Notes</u> |
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| 1.0 | <ul style="list-style-type: none">• Issued on 31 March 2017. |
| 1.1 | <ul style="list-style-type: none">• Issued on 25 April 2017.• Updated paragraphs 1; 2.1; 3.2; 3.4; and 5.2.• Paragraph 2.1 updated to clarify that (i) a company that is wholly-owned by the Government of Singapore is exempted; and (ii) companies that are undergoing winding up, receivership, judicial management, or striking off are not exempted.• Paragraph 3.2 updated to clarify that a person appointed as a director of a company for the purpose of compliance with the requirement that every company registered in Singapore must have at least one director who is ordinarily a resident in Singapore would generally fall within the definition of a director who is a nominee.• Paragraph 3.4 updated to (i) clarify that the date on which an individual or legal entity becomes/ceases to be a nominator (that is entered into the register of nominee directors) should be the actual date that the person becomes/ceases to be a nominator of a nominee director, which has to be on or after 31 March 2017; and (ii) provide some examples of the name of corporate entity register of the jurisdiction where the legal entity is formed or incorporated. |
| 1.2 | <ul style="list-style-type: none">• Issued on 11 July 2017.• Updated paragraphs 2; 2.1; 4.3; and 5.2. |

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| | <ul style="list-style-type: none"> • Paragraph 2 updated to clarify that the register of nominee directors and the register of registrable controllers are two different registers and the definitions of “nominee director” and “registrable controller” are also different. • Paragraph 2.1 updated to clarify that (i) “approved exchange in Singapore” refers to Singapore Exchange; and (ii) the exemptions only apply to the requirements on a company keeping a register of nominee directors and they do not apply to the nominee director’s duty to provide information. • Paragraph 4.3 updated to clarify that companies are required to comply with the form of the register as prescribed in the Regulations and the exact formatting of the register may vary from Annex A, as long as the form as prescribed in the Regulations is complied with. |
| 1.3 | <ul style="list-style-type: none"> • Issued on 18 September 2017. • Updated paragraph 5.2. • Paragraph 5.2 updated to provide examples of the supporting documents that must be furnished by companies when requested by the Registrar and public agencies. |
| 1.4 | <ul style="list-style-type: none"> • Issued on 22 May 2019. • Amended paragraph 4.2. • Paragraph 4.2 amended to clarify that if a company appoints a registered filing agent to help the company keep its register of nominee directors and the registered filing agent subsequently resigns, the registered filing agent should hand over the register |

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| | <p>to the company, who may appoint another registered filing agent for the purpose of keeping the register.</p> |
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1. INTRODUCTION

The Companies Act (Cap. 50) (“Companies Act”) has been amended to introduce registers of nominee directors of companies under the new Part XIA which came into effect on 31 Mar 2017. These amendments are accompanied by a new set of subsidiary legislation, the Companies (Register of Controllers and Nominee Directors) Regulations 2017 (the “Regulations”) which also took effect on 31 March 2017.

This Guidance is issued by the Accounting and Corporate Regulatory Authority (“ACRA”) to help companies understand and comply with the requirements pertaining to the register of nominee directors. This Guidance is not intended to be exhaustive and does not constitute legal advice. Companies may wish to seek legal advice when in doubt.

2. REQUIREMENTS AT A GLANCE

Companies incorporated under the Companies Act are required to:

- keep a register of its nominee directors containing the particulars of the nominators of the company’s nominee directors (section 386AL of the Companies Act); and
- produce the register of nominee directors and any related document to the Registrar, an officer of ACRA or a public agency, upon request (section 386AM of the Companies Act).

The above requirements are implemented from 31 March 2017 onwards. For the avoidance of doubt, these requirements do not apply to foreign companies registered under the Companies Act.

Nominee directors are required to inform their respective companies of the fact that they are nominee directors and provide the prescribed particulars of their nominators to their companies within the applicable timelines.

Please note that the register of nominee directors and the register of registrable controllers¹ are two different registers. The definitions of “nominee director” and “registrable controller” are also different. Depending on the facts and circumstances of a case, an individual may be both, either or neither. The fact that an individual is a nominee director does not by itself mean that the same individual is a registrable controller, and vice versa.

2.1 Exemptions

The following locally-incorporated companies are exempted:

- (a) a public company which shares are listed for quotation on an approved exchange in Singapore²;
- (b) a company that is a Singapore financial institution³;
- (c) a company that is wholly-owned by the Government of Singapore;
- (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 subsidiary⁴ 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.

¹ Please refer to the ACRA-issued Guidance for companies on registers of registrable controllers.

² i.e. Singapore Exchange.

³ For the definition of “Singapore financial institution”, please see paragraph 2 of the Fourteenth Schedule to the Companies Act.

⁴ Please see section 5B of the Companies Act.

Companies subject to requirements similar to the substantial shareholder notification and disclosure requirements under Part VII of the Securities and Futures Act that listed companies have to comply with would qualify under (f).

Companies that are undergoing winding up, receivership, judicial management, or striking off are not exempted, unless they qualify under one of the categories in (a)-(f).

Please note that the exemptions only apply to the requirement on a company keeping a register of nominee directors⁵; they do not apply to the nominee director's duty to provide information⁶. For example, a company X that is a Singapore financial institution is not required to keep a register of nominee directors, but if X is a nominator of a nominee director of a company Y that is not exempted from the requirement on keeping a register of nominee directors, then the nominee director is required to provide X's particulars to Y and X's particulars are required to be contained in Y's register of nominee directors.

3. OBLIGATIONS OF NOMINEE DIRECTORS – DEFINITION, TIMELINES AND REQUIRED PARTICULARS

3.1 Obligations of nominee directors

Directors who are nominees 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.

3.2 Definition of “nominee directors”

⁵ See section 386AL(3) of the Companies Act.

⁶ See section 386AL(1)-(3) of the Companies Act.

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.

For example, a person appointed as a director of a company for the purpose of compliance with the requirement that every company registered in Singapore must have at least one director who is ordinarily a resident in Singapore⁷ would generally fall within the definition of a director who is a nominee.

3.3 Timelines

For the obligation to inform companies about nominee directorship and provide the particulars of nominators, the applicable timelines depends on the date of incorporation of the company.

A director of a company incorporated on or after 31 March 2017:

- 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.

A director of a company incorporated before 31 March 2017:

⁷ Section 145(1) of the Companies Act.

- 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 after the cessation; and
- of any change to the particulars provided to the company within 30 days after the change.

3.4 Particulars of nominator

Nominee directors must provide the following particulars of their nominators to their respective companies:

For nominators who are individuals

- full name;
- aliases, if any;
- residential address;
- nationality;
- identity card number or passport number;
- date of birth; and
- date on which the director became the individual's nominee.

For nominators which are legal entities

- name;
- unique entity number issued by the Registrar, if any;
- address of registered office;

- legal form of the legal entity;
- jurisdiction where, and statute under which, the legal entity is formed or incorporated;
- name of corporate entity register of the jurisdiction where the legal entity is formed or incorporated, if applicable;
- identification number or registration number of the legal entity on the corporate entity register of the jurisdiction where the legal entity is formed or incorporated, if applicable; and
- date on which the director became the legal entity's nominee.

The date on which an individual or legal entity becomes/ceases to be a nominator (that is entered into the register of nominee directors) should be the actual date that the person becomes/ceases to be a nominator of a nominee director, which has to be on or after 31 March 2017 as the law commences on that date.

The following are some examples of the name of corporate entity register of the jurisdiction where the legal entity is formed or incorporated:

- If the legal entity is a local company incorporated under the Companies Act, the name of the register would be the Accounting and Corporate Regulatory Authority.
- If the legal entity is a company incorporated under the United Kingdom's Companies Act 2006, the name of the register would be UK Companies House.

4. MAINTAINING A REGISTER OF NOMINEE DIRECTORS

4.1 General

Companies are required to each maintain a register of nominee directors from 31 March 2017 onwards.

Companies should enter into their registers the information received from nominee directors.

Companies are strongly encouraged to document the receipt of information from nominee directors.

4.2 Location of register

Companies may keep their registers of nominee directors at (i) their registered offices or (ii) the registered offices of any registered filing agent appointed by the company for the purpose of keeping the register of nominee directors.

If a company appoints a registered filing agent to help the company keep its register of nominee directors and the registered filing agent subsequently resigns, the registered filing agent should hand over the register to the company, who may appoint another registered filing agent for the purpose of keeping the register.

4.3 Form of register

Companies may keep their register electronically or in hardcopy format. Companies are required to comply with the form of the register as prescribed in the Regulations. A template is at Annex A. The exact formatting of the register may vary from Annex A, as long as the form as prescribed in the Regulations is complied with.

4.4 Companies without nominee directors

If a company has not received any information from its nominee directors, the company may enter the following statement in their register:

“As of [date], the company have not received any information on nominee directors of the company.”

5. PRIVACY AND ACCESS TO REGISTERS OF NOMINEE DIRECTORS

5.1 Registers of nominee directors is not to be made public

Companies must not disclose or make available for inspection the register or any particulars contained in the register to any member of the public. Auditors are also not entitled to have access to 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 nominee directors and the information contained therein, the company must decline the request and not provide such access.

5.2 Registers of nominee directors must be made available to the Registrar and public agencies

Companies must make available their registers of nominee directors, the information contained in the registers, and any document relating to the registers and the keeping of the registers⁸ ("supporting documents"), to (i) the Registrar and ACRA officers, and (ii) public agencies and their officers (e.g. the Singapore Police Force; the Commercial Affairs Department; the Corrupt Practices Investigation Bureau; the Inland Revenue Authority of Singapore).

When approached by these agencies, companies must cooperate with the agencies and provide the requested information and documents to these agencies. Agencies may inspect, examine and make copies of the registers and the supporting documents produced.

⁸ Section 386AM (1) of the Companies Act states:

"The Registrar or an officer of the Authority may —

(a) require a company or foreign company to which this Part applies to produce its register, its register of nominee directors and any other document relating to those registers or the keeping of those registers;

(b) inspect, examine and make copies of the registers and any document so produced; and

(c) make such inquiry as may be necessary to ascertain whether the provisions of this Part are complied with."

The following are some examples of the supporting documents that must be furnished when requested by the agencies. These documents serve to provide confidence that the registers have been kept up-to-date and are accurate.

- if a nominator is a Singapore Citizen or Singapore Permanent Resident, a copy of NRIC;
- if a nominator is a foreign individual, a copy of passport and document to verify the residential address (e.g. utility bill);
- if a nominator is a foreign legal entity that is not registered in Singapore, a copy of the certificate of registration from the jurisdiction of incorporation and, if the registered office address is not shown on the certificate, document to verify the address (e.g. utility bill); and
- records of information received from the nominee directors that led to the particulars of their nominators being inserted in the register of nominee directors (e.g. emails, hardcopy letters).

ANNEX A – TEMPLATE FOR REGISTER OF NOMINEE DIRECTORS

| Date of entry/update | Name of nominee director | Particulars of nominator |
|----------------------|--------------------------|---|
| 02/04/2017 | John Tan | Full name: Wong Ah Beng Alias: Wong Ah Fatt Residential address: 1 Circle Road, Singapore 123456 Nationality: Singaporean Identification card number: S1234567G Date of birth: 08/11/1967 Date on which the person becomes a nominator: 31/03/2017 |
| 03/04/2017 | Muhammad Aziz | Full name: Richard O'Connor Alias: Dick O'Connor Residential address: 2 Sunrise Road, Singapore 234567 Nationality: British Passport number: 123456789 Date of birth: 03/07/1980 Date on which the person becomes a nominator: 31/03/2017 |
| 02/05/2017 | John Tan | Full name: Wong Ah Beng Alias: Wong Ah Fatt Residential address: 1 Circle Road, Singapore 123456 Nationality: Singaporean Identification card number: S1234567G Date of birth: 08/11/1967 Date on which the person ceased to be a nominator: 01/05/2017 |

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| 04/06/2017 | Muhammad Aziz | <p>Full name: Richard O'Connor</p> <p>Alias: Dick O'Connor</p> <p>Residential address: 2 Sunrise Road, Singapore 234567</p> <p>Nationality: British</p> <p>Passport number: 123456789</p> <p>Date of birth: 03/07/1980</p> <p>Date on which the person ceased to be a nominator: 01/06/2017</p> |
| 04/06/2017 | Muhammad Aziz | <p>Name: ABC Limited</p> <p>Unique entity number issued by the Registrar: N.A.</p> <p>Address of registered office: 1 Brick Road, United Kingdom</p> <p>Legal form: Private limited company</p> <p>Jurisdiction where and statute under which the legal entity is formed or incorporated: United Kingdom, Companies Act 2006</p> <p>Name of the corporate entity register of the jurisdiction where the legal entity is formed or incorporated: UK Companies House</p> <p>Identification number or registration number on the corporate entity register of the jurisdiction where the legal entity is formed or incorporated: 01234567</p> <p>Date on which the person becomes a nominator: 01/06/2017</p> |