

**CORPORATE REGULATION, THE SINGAPORE WAY – REGISTERS OF
CONTROLLERS UNDER THE COMPANIES (AMENDMENT) BILL 2017 AND THE
LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) BILL 2017**

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I. The Companies (Amendment) Bill 2017 and the Limited Liability Partnerships (Amendment) Bill 2017

1. On 10 March 2017, Parliament passed the Companies (Amendment) Bill 2017 and the Limited Liability Partnerships (Amendment) Bill 2017.
2. The Bills introduce several law reforms aimed at reducing the regulatory burden on business entities, enhancing the transparency of business entities and introducing an inward re-domiciliation regime in Singapore.
3. The reforms reflect ACRA's philosophy towards corporate law reform, which is to promote a trusted and responsive regulatory environment for businesses, and, represent the culmination of an extensive engagement and deliberation process.
4. Instead of transplanting wholesale foreign precedents into Singapore's legal framework, ACRA seeks to prune and adapt foreign precedents so that implemented reforms are appropriate and beneficial in Singapore's context and are sensitive to stakeholders' needs and concerns. To do so, ACRA conducts regular environment scans of legal and policy developments in leading overseas jurisdictions and engages industry stakeholders at regular dialogue sessions, including the Panel of ACRA's Institute of Corporate Law¹, in order to get a sense of the views and concerns of those on the ground.
5. For example, in formulating the reforms in the Bills, ACRA conducted focus group discussions with bankers, lawyers and professional trustees, and consultations with professional bodies such the Institute of Singapore Chartered Accountants, CPA Australia, the Chartered Secretaries Institute of Singapore, the Association of Small and Medium Enterprises, the Law Society of Singapore, the Singapore Institute of Directors, the Singapore Business Federation.
6. This article discusses the reforms pertaining to the register of controllers.

II. Register of controllers

7. The Bills collectively introduce new requirements pertaining to registers of beneficial owners and controllers (referred to in the legislation as "controllers") that companies, foreign companies and limited liability partnerships are required to each keep.

¹ <https://www.acra.gov.sg/legislation/legal-resources/institute-of-corporate-law-journal>

8. The new requirements are adapted from the requirements implemented in the UK on “registers of persons with significant control” under the Small Business, Enterprise and Employment Act 2015 (“SBEE Act 2015”).

A. Registers of controllers not to be made public

9. Leading to the passing of the Bills, ACRA closely studied global developments and in particular the UK’s framework under the SBEE Act 2015, as well as the international standards set by the Financial Action Task Force (“FATF”) and the Global Forum on Transparency and Exchange of Information for Tax Purposes.
10. Implemented in April 2016, the UK requires its companies and limited liability partnerships to keep “registers of persons with significant control” and to provide the information therein annually to Companies House to be kept in a central register. Both registers and the information contained therein are generally made publicly available to any member of the public, so a member of the public that may not have any relation to a company has the right to inspect the company’s register and the central register kept by Companies House.
11. When consulted on the UK’s framework, the feedback from the industry provided at dialogue sessions with ACRA revealed that privacy was of concern to clients. It was recognised that there were legitimate situations and reasons for preserving privacy, such as where a family is planning its finances or revealing the sources of a person’s wealth may endanger his or her safety.
12. The prevailing international standards also did not mandate that member jurisdictions implement public registers of beneficial ownership and control information of legal persons; for example, Recommendation 24 of the FATF Recommendations² allows member jurisdictions to require beneficial ownership and control information of legal persons to be obtained and maintained by (i) the legal persons, (ii) company registries or (iii) other sources such as existing information kept by financial institutions and designated non-financial businesses and professions³.
13. It was with the above insights that the Bill was crafted so that the registers of controllers that companies, foreign companies and LLPs are required to keep and the information therein must only be made available to the Registrar and public agencies for the purpose of enforcement of the laws under their respective purviews, and not to members of the public. This position aims to strike a judicious balance between legitimate privacy concerns and making readily available to competent authorities accurate beneficial ownership and control information of legal persons.

B. Exclusion of restriction notices

14. Another aspect of the UK’s framework is “restriction notices”. Similar to the position in the Bills, the UK legislation requires companies and LLPs to send notices requesting persons to confirm whether they are persons with significant control and if they are, to provide their particulars to the company. Similar to the position in the Bills, failure to reply to a notice is an offence in the UK.
15. However, in the UK, in addition to an offence, a person who fails to reply to a notice may also be subjected to a restriction notice issued by the company, which essentially

² Available here: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html>

³ See page 85 of the FATF Recommendations.

“freezes” the person’s interest in the company (e.g. the person is disabled from exercising his voting rights in the shares of the company that he owns). The company must consider whether it should issue a restriction notice to the person.

16. The Bills do not follow the UK’s position in this regard because the process for imposing restrictions presents a significant degree of risk and burden on the company. In the UK, the company must first send a warning notice to the errant recipient before it may send the restriction notice. The company must also consider whether there are valid reasons for the recipient’s failure to respond, what the relevant interests that may be frozen are, and whether imposing restrictions would have an unfair effect on third parties. While these safeguards are necessary, it is not certain that all companies in our jurisdiction could fairly be expected to properly ascertain and discharge the full scope of the duties imposed under the UK’s model. On balance, it was considered sufficient to render failure to respond to notices an offence under the Bills.

C. Providing help resources to companies, LLPs and the industry

17. In implementing the SBEE Act 2015, the UK government published guidance documents that explain to the public how companies and LLPs may comply with the requirements pertaining to the register of persons with significant control.
18. Given that the register of controllers is new to the industry and it is important for the public and the relevant entities to understand how to comply with the relevant requirement, the Bills empower the Registrar to publish codes, guidance, policy statements and practice directions to provide guidance to companies, foreign companies and LLPs in relation to the operation or administration of any provision relating to the register of controllers.
19. ACRA would be publishing guidance that suggest some practical measures that may be taken to comply with the requirements, as well as explain with examples and illustrations some key definitions and concepts in the legislation⁴. ACRA obtained feedback from the industry that such guidance would be useful, and should be comprehensive, with separate documents issued for companies, foreign companies and LLPs. Taking up this feedback, ACRA intends to issue separate guidance documents, as well as strive to make the guidance documents the go-to reference resource for companies, foreign companies and LLPs.

⁴ Please refer to ACRA’s website: <https://www.acra.gov.sg/legislation/legislative-reform/companies-act-reform/companies-amendment-act-2017/register-of-registrable-controllers>