Annex 1

SUMMARY OF FEEDBACK AND MOF/ ACRA'S RESPONSES ON PROPOSED AMENDMENTS FOR COMPANIES AND LIMITED LIABILITY PARTNERSHIPS (LLPS) TO MAINTAIN REGISTERS OF CONTROLLERS[1], AND OTHER FATF-RELATED AMENDMENTS

A. Proposed amendments on registers of controllers

When tracing of controllers can stop[2]

1. Feedback: A respondent suggested that tracing can stop once it reaches corporations whose shares are listed for quotation on an approved exchange in Singapore. There was also feedback to mitigate the compliance costs by not requiring a locally incorporated company to list down the particulars of every intermediate corporate controller in the company's ownership chain.

2. MOF's and ACRA's response: We agree that tracing should stop when it reaches corporations as they are subject to the substantial shareholding requirements under the Securities and Futures Act. Particulars of intermediate corporate controllers need not be recorded in the register. Only: (i) the first registrable individual controller; or (ii) the first registrable corporate controller which is a locally incorporated/ registered company/ limited liability partnership (LLP) that is required to maintain a register of controllers or is exempted from the requirement to maintain a register of controllers, should be recorded in the register of controllers.

When a corporation, unincorporated association or partnership has a state of mind for a particular conduct

3. Feedback: A respondent suggested adapting section 236B of the Securities and Futures Act, where the concepts of conduct and knowledge of the board or a high managerial agent are used or where it is relevant that a "corporate culture existed within the corporation that directed or encouraged non-compliance".

4. MOF's and ACRA's response: We have considered section 236B of the Securities and Futures Act and will retain the original provision regarding the knowledge of corporate or unincorporated persons in a proceeding for an offence. The provision more accurately captures the intent of clarifying when a corporate or unincorporated person is considered to have the requisite knowledge of the wrongdoing committed by its officers/ employees/ agents.

Information subject to legal privilege

5. Feedback: A respondent suggested re-wording the provision on legal privilege to make it similar to section 393 of the Companies Act[3]. There was also feedback that the provision was too wide and should be limited to the new requirements on maintaining the registers of

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[1] The amendments are set out in Annexes 3 and 4 during the second public consultation: https://app.mof.gov.sg/Public-Consultation/Public-Consultation-Open/MOF-and-ACRA-Invite-Public-Feedback-on-Proposed-Changes-to-The-Companies-Act-Limited-Liability-Partnerships-Act-and-Accountants-Act

[2] To avoid duplicative reporting, MOF and ACRA have proposed that companies can stop the tracing of controllers once the tracing reaches a locally incorporated company that maintains the register of controllers or is exempted from the regime.

[3] Section 393 sets out that a solicitor of any privileged communication need not make any disclosure to an inspector appointed under the Act, except for the name and address of his client.

controllers. On the other hand, there were suggestions to remove the provision, as legal professionals already have a duty to keep beneficial ownership information of their clients and the provision would create a bias towards the legal profession.

6. MOF's and ACRA's response: There is a need to have a provision on legal privilege to strike a balance between upholding legal privilege and ensuring adequate disclosure of information, similar to the UK's approach. We have considered section 393 of the Companies Act and are of the view that section 393, which does not define "privileged communication", is not suitable. Hence, we will retain the original provision, which is adopted in recent laws such as the Organised Crime Act.

Registers of controllers

7. Feedback: There were queries on the format (i.e. paper or electronic format) in which the registers of controllers should be kept. There were suggestions to:

(a) allow a company to indicate in the register that controllers did not confirm their identities even though the company has taken reasonable steps to find out and identify its controllers, and sent out notices;

(b) include a 60-day grace period for de-listed companies to transit to the new regime; and

(c) require companies to maintain the register at one prescribed location (i.e. the company's registered office) for consistency and ease of access. On the other hand, there was also feedback to allow registers to be maintained at the registered filing agent's registered office.

8. MOF's and ACRA's response: Companies will be given the flexibility to decide whether to keep their registers of controllers in paper or electronic format. We agree with suggestions for (a) and (b). For (b), besides de-listed companies, the 60-day grace period will also apply to other companies that are initially outside the scope of the new requirements under Part XIA but subsequently fall within scope. To cater to the needs of different companies, we will also retain our original position for the registers of controllers to be kept at either the company's registered office or the registered filing agent's registered office.

Particulars to be maintained in the registers of controllers

9. Feedback: A respondent indicated that the register of controllers should only record the full name of the controller and an alternate address (in lieu of a residential address) where the controller could be located, and not the date of birth and identification number of the controllers. Another respondent suggested mirroring the particulars maintained by financial institutions in relation to their customers (i.e. full names plus aliases of the registrable controllers). One respondent asked whether there should be statutory provisions to exclude the application of the Personal Data Protection Act to the personal data of the controllers. There were also queries on the types of information required if the corporate controller is a foreign government.

10. MOF's and ACRA's response: The register of controllers will not be public and will be accessible to the Registrar or law enforcement authorities (e.g. the Commercial Affairs Department). For law enforcement purposes, personal particulars (including aliases) and residential address of registrable controllers must be recorded in the register. The Personal Data Protection Act will not apply to the particulars of controllers provided to companies for the purpose of maintaining the registers of controllers. Where the controller is a foreign government, particulars of the foreign government should be provided and maintained. The particulars will be prescribed in the subsidiary legislation.

Duty of companies to investigate and obtain information, and keep information up to date

Obligation on companies in relation to registers of controllers

11. Feedback: A respondent asked what would constitute taking "*reasonable steps*" to find out and identify controllers. Instead of making it an offence for companies if they fail to take reasonable steps to identify their controllers, the respondent suggested:

(a) placing a primary obligation for the registrable controllers to provide information to the companies, since a company would not be able to independently identify its controllers by performing due diligence;

(b) making it a statutory obligation for companies to take reasonable steps to inform any person believed to be a registrable controller to provide information to the companies. If the companies had done so, it would be deemed to have discharged its statutory obligation;

(c) requiring the company to notify ACRA if it was unable to receive confirmation of the particulars of a registrable controller after a reasonable period of time or having exhausted all available means to do so; and

(d) giving ACRA the authority to strike off the name of a company from its register if the company could not obtain the confirmed particulars of its registrable controllers.

12. Another respondent suggested that if a company failed to comply with the new requirements, it should be an offence only if the non-compliance was an intentional or reckless. Some respondents suggested requiring a controller to make a declaration to the company that he was a controller, with a duty imposed on that company and/ or its corporate secretarial service providers to inform the shareholders to make such declaration.

13. MOF's and ACRA's response: ACRA will issue guidance on what constitutes taking "*reasonable steps*". The proposed requirement for companies to take reasonable steps does not mean that a company is expected to know who their controllers are or ensure that it receives replies to the notices it sent. To address this, there is already an independent obligation for controllers to provide their information to the companies. However, the company will not be liable for an offence if the controller fails to reply to the notices sent. The law will make it an offence only if companies fail to send out notices to anyone whom they know or have reasonable grounds to believe to be controllers, or knows the identity of the controllers or is likely to have that knowledge. Furthermore, a company will be allowed to indicate in the register that controllers did not confirm their identities even though the company has taken reasonable steps to find out and identify its controllers, by sending out notices. Accordingly, we are of the view that it is sufficient if the controller notifies the company and provides his particulars and need not make a declaration.

14. As the register of controllers will be maintained by companies, there is no need for companies to notify ACRA if they are unable to receive confirmation of the particulars of a registrable controller after a reasonable period of time or having exhausted all available means to do so. On the suggestion to strike off companies that are unable to obtain confirmation of controllers' particulars, while this is a possible enforcement option, there is no intention to do so now. We will review the need for such an enforcement option at an appropriate junction after the new law is implemented.

Sending notices to obtain information

15. Feedback: A respondent suggested specifying when companies must send out notices, since controllers must provide information to the companies within 30 days of the company's notice. Another suggestion was to make clear that a company must still send out notices to a controller to obtain relevant information in the event that controller ceased to be one and the company was only made known of that fact later. One respondent suggested that all notices and responses to the notices be in electronic form, without the requirement for hard copies.

16. MOF's and ACRA's response: The timelines regarding when companies should send notices to obtain information and when controllers should respond will be set out in the subsidiary legislation. Such communication can be done electronically.

Duty of controllers to provide and update information

17. Feedback: There were queries on whether a registrable controller's duty to notify a company of his identity would be satisfied if the controller notified the first Singapore company required to keep a register of controllers below the controller's ownership chain. There was also feedback that provisions requiring a registrable controller to provide information or documents in his custody or control should be removed as such information likely to be personal and confidential. A respondent commented that there might be a chilling effect on Singapore as a choice destination to carry on business if Singapore moved towards a public register of controllers or automatic exchange of such information between governments.

18. MOF's and ACRA's response: We confirm that a controller's duty to notify the company that he is a registrable controller is satisfied by notifying the first locally incorporated company/ LLP that is required to keep a register of controllers below the controller's ownership chain. We agree that there is a need to balance confidentiality with transparency. Hence, we will replace the requirement for registrable controllers to provide "such other information or documents within the person's custody or control as may be prescribed" with "such other information as may be prescribed". We note the concerns relating to a public register of controllers and automatic exchange of such information, and it should be noted that the current amendments to the Companies Act and the LLP Act require a non-public register of controllers which is accessible only to law enforcement authorities and ACRA.

Access to registers of controllers

19. Feedback: To maintain confidentiality, some respondents indicated that information about controllers should be disclosed on statutorily specified grounds and only to the Singapore regulatory authorities, and not to persons without such statutory rights such as foreign governments and foreign tax authorities. On the contrary, there were suggestions to give the following parties access to the registers of controllers:

(a) financial institutions so that they can fulfil their customer due diligence obligations;
(b) auditors of companies for the purpose of an audit, since they already have a right to access accounting and other records (including registers) under section 207(5) of the Companies Act;
(c) buyers of companies (pursuant to a merger and acquisition) so that they can conduct due diligence to verify the target company's compliance with the obligations relating to controller registers; and
(d) anyone, subject to controllers' consent.

20. MOF's and ACRA's response: The amendments are intended to give Singapore government agencies access to the register of controllers for the purpose of investigating offences under their respective laws. We do not intend to allow access for the purposes specified above in (a) to (d).

Central register of controllers

21. Feedback: There was a suggestion to use Application Program Interface (API) to streamline the filing of information into the central register. There was another suggestion to use blockchain technology to maintain the central register, allow approved access by authorised officers to ensure secure, authenticated access by registered filing agents.

22. MOF's and ACRA's response: The provision for a central register of controllers is drafted as a reserve power for the Minister in the event that a central register becomes a new, internationally agreed standard which is implemented by major financial centers globally. If Singapore eventually moves to a central register of controllers, we will consider the technology for implementing such a register.

List of companies exempted from the regime

23. Feedback: Besides exempting public companies listed on SGX and Singapore financial institutions from the proposed regime, some respondents suggested also exempting the following:

(a) companies that are wholly-owned by the Singapore government and statutory boards;
(b) subsidiaries of companies that are exempted from the regime;
(c) foreign companies listed on SGX;
(d) companies listed on overseas stock exchanges and subjected to rules equivalent or similar to the Securities and Futures Act;
(e) public companies limited by guarantee;
(f) open-ended investment companies;
(g) company structures in other jurisdictions with large shareholder bases e.g. insurance companies with millions of individual policy holders;
(h) companies in other jurisdictions subject to oversight by the regulatory equivalent of MAS;
(i) accounting corporations, accounting firms and accounting limited liability partnerships providing public accountancy services in Singapore;
(j) entities that are subject to the substantial shareholding regime under section 79(2) of the Companies Act;
(k) entities exempted from requirements to identify beneficial owners under ACRA (Filing Agents and Qualified Individuals) Regulations 2015;
(l) entities listed in the Fifth Schedule to the Constitution of the Republic of Singapore i.e. CPF Board, HDB, Jurong Town Corporation, MAS, GIC Pte Ltd, Temasek Holdings (Pte) Ltd and MND Holdings (Pte) Ltd;
(m) companies operating in heavily regulated industries e.g. designated telecommunication licensees under the Telecommunications Act and broadcasting companies under the Broadcasting Act;
(n) entities exempted from complying with the requirements under the UK BO regime (e.g. regulated markets in a European Economic Area (EEA) state, exchanges in the UK, prescribed foreign securities exchanges);
(o) charitable companies or institutions of public character under the Charities Act; and
(p) REIT managers regulated by the Code on Collective Investment Schemes issued by MAS.

Some respondents indicated that holders of stored value facilities under the Payment Systems (Oversight) Act should not be exempted, for consistency with MAS Notice 626 Appendices 1 and 2.

24. MOF's and ACRA's response: In deciding the types of companies that may be exempted, we considered whether the company is: (i) subject to similar disclosure requirements; and/ or (ii) considered to be at low risk of being used for money laundering and terrorism financing. Taking into account the feedback received, the new list of companies that will be exempted from the regime is as follows:

(a) a public company whose 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 (a)-(d); and
(f) a company whose 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).

Persons deemed to have "*significant interest*" or "*significant" control*"

Definition of "significant control"[4]

25. Feedback: A respondent suggested factoring a situation whereby a minority of the directors hold a majority of the voting rights (see footnote 4(i)). Another respondent suggested replacing footnote 4(i) and (ii) with the following respectively:

(a) controls more than half of the voting power of the total votes attached to all the voting shares in the company; and

(b) is a person in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are accustomed to act.

26. The respondent also suggested replicating section 5(3) of the Companies Act so that any person holding or exercising a power in a fiduciary capacity and subject to regulatory oversight (e.g. licensed fund managers and licensed trustees) would be excluded. There were also queries on:

(a) whether footnote 4(i) could only be satisfied by an express right to appoint or remove a majority of the board e.g. as provided for in the company's constitution or a shareholders' agreement; and

(b) whether a person who indirectly exercises significant influence or control would fall under footnote 4(ii); and

[4] Under the Fifteenth Schedule to the draft Bill issued for public consultation, an individual or legal entity has significant control over a company if the individual or legal entity:
(i) holds the right, directly or indirectly, to appoint or remove a majority of 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) has the right to exercise, or actually exercises, significant influence or control over the company; or
(iii) is treated by regulations as having significant control over that company.

(c) what was meant by "*significant*" under footnote 4(ii) and whether it should be replaced with the SGX Listing Rules definition of control i.e. the capacity to dominate decision-making, directly or indirectly, in relation to the financial and operating policies of a company.

27. MOF's and ACRA's response: We agree with the suggestion to provide for the scenario where a minority of the directors hold a majority of the voting rights. On the suggestion to replace footnote 4(i) and (ii), it will not be appropriate to do so as para 25(a) does not capture the same type of control as footnote 4(i) and para 25(b) will substantially narrow the scope. As the intent of the proposed register of controllers is to record the particulars of the controllers, it will not be appropriate to exclude a controller on the basis that he is holding or exercising a power in a fiduciary capacity and subject to regulatory oversight (e.g. licensed fund managers and licensed trustees). In response to para 26(a), we wish to clarify that footnote 4(i) includes and is not limited to an express right to appoint or remove a majority of the board. In response to para 26(b), footnote 4(ii) will encompass indirect exercise of significant influence or control. ACRA will issue guidance on what constitutes "significant influence or control". Footnote 4(iii) will be removed from the definition, with a new limb added relating to the holding (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 foreign company, which follows UK's legislation.

Definition of "significant interest"

28. Feedback: Some respondents indicated that the proposed threshold of holding more than 25% of shares/ voting rights to be considered to have significant interest under the draft Bill and the 20% threshold under section 7(4A)(a) of the Companies Act[5] should be aligned. There were suggestions to replicate relevant provisions under section 7 of the Companies Act into the proposed definition. Some respondents commented that for an individual or legal entity to have significant interest in a company having a share capital, both conditions on percentage of shares and percentage of voting rights should be met, and direct and indirect interests should be considered.

29. A respondent suggested using a 5% threshold, instead of 25%, and including criteria beyond shareholder ownership to cover situations where controllers appoint representatives, nominees, proxies or agents to represent them. The respondent added that a person holding the position of a senior managing official should also be identified as the person with significant interest. There were queries on whether significant interest would be met by aggregating interests of connected persons or persons that made arrangements with each other, and whether interests held directly and indirectly should be aggregated.

30. MOF's and ACRA's response: We have considered the feedback on the threshold and will retain the proposed threshold of "*more than 25%*" for the purposes of the new regime and retain the existing 20% threshold under section 7(4A)(a). This is because the "*more than 25%*" threshold is consistent with the thresholds used in FATF's Guidance on Transparency and Beneficial Ownership, the EU's 4th Anti-Money Laundering Directive and ACRA's guidelines for corporate service providers in ascertaining beneficial ownership. In response to feedback on incorporating relevant provisions of section 7, we will include supplementary provisions on the relevant subsections of section 7 that will apply in the new regime. The supplementary provisions will also specify how the definitions will apply in scenarios relating to the joint holding of shares/ rights, joint arrangements between holders of shares/ rights as well as the holding of shares/ rights by nominees. On the suggestion to require a person to fulfil both conditions on percentage of shares and percentage of voting rights, we think it will not be appropriate since, for example, a person with an interest in more than 20% of a company's

[5] Section 7(4A)(a) deems a person to have an interest in a share if that person/ relevant parties is/ are entitled to exercise or control the exercise of not less than 20% of the voting power in the body corporate.

shares (but not voting rights) may in substance exercise control over the company as a significant shareholder.

Other comments

31. Feedback: A respondent pointed out that it would be easier in practice to apply the significant interest test compared to the significant control test. Thus, the respondent asked whether it would suffice for a controller to disclose meeting either the definition of "*significant control*" or "*significant interest*" if both definitions were met, without disclosing the circumstances from which the significant control/ interest arose. There were queries on how the definitions would apply to companies limited by guarantee.

32. MOF's and ACRA's response: It will suffice for a controller to disclose whether the controller meets the definition of "*significant control*" and/ or "*significant interest*". There is no need for the controller to disclose the circumstances that led to the controller's significant control and/ or significant interest arose. The definitions will apply to both companies limited by shares and companies limited by guarantee, with appropriate modifications. For example, a person has "*significant interest*" in a company that does not have a share capital (e.g. a company limited by guarantee) if the person holds a right to share in more than 25% of the company's capital or profits.

Other issues

Applicability of the new requirements to other entities

33. Feedback: There were queries on how the new requirements would apply to other types of entities (e.g. governments, ministries, sovereign wealth funds, statutory boards, general partnerships, limited partnerships, trusts arrangements, and fund structures with private equity investors) that were controllers.

34. MOF's and ACRA's response: ACRA will issue guidance as appropriate on how the new requirements will apply to other types of entities where such entities are controllers.

Element of materiality

35. Feedback: A respondent suggested introducing an element of materiality regarding the controller's duty to provide change of information, for consistency with the substantial shareholding regime[6].

36. MOF's and ACRA's response: The percentage level of a controller's interest in a company need not be obtained and maintained in the register of controllers. The controller need only, amongst other things, inform the company as to whether the controller has a significant interest in and/ or significant control over the company.

Implementation of new law

37. Feedback: A respondent suggested giving a 12-month transitional period for companies to maintain and update the registers of controllers from the date of implementation of the new regime.

[6] Under the substantial shareholding regime, substantial shareholders only need to notify companies if there is a change in the percentage level of their interest under section 136 of the Securities and Futures Act.

38. MOF's and ACRA's response: We will give existing and newly-incorporated companies 60 days and 30 days respectively to comply with the new regime. A 12-month transition period will be too long.

B. Other FATF-related amendments

Require a liquidator to retain records of wound up companies and LLPs for five years instead of two

39. Feedback: One respondent commented that the proposal would increase costs for storing and handling records, which would not be in the interests of creditors. The respondent counter-proposed a shorter retention period than the five-year period. Another respondent suggested that records of wound up entities that were kept by liquidators be handed over to the relevant authorities, such that the storage costs would not be borne by the liquidators.

40. MOF's and ACRA's response: To mitigate the additional costs that may be incurred, the law will provide flexibility on how records are to be kept (e.g. electronically). The five-year retention period is an international standard set by the FATF and has been adopted in numerous jurisdictions such as Australia, Hong Kong and the UK. Hence, we will retain this proposal.

Require nominee directors and managers to disclose their nominators, and companies and LLPs to maintain such information

41. Feedback: There were queries on whether: (a) the nominees would be required to disclose the immediate entity appointing the nominees and the controllers acting behind the entity; and (b) the disclosures could be made electronically. There were also suggestions to:

(a) exempt companies listed on SGX and Singapore financial institutions; and

(b) remove the existing requirement for companies to have at least one locally resident director in Singapore as companies usually appoint nominee directors to meet this requirement.

42. There was feedback not to use the term "*nominee*" to delineate a subset of directors. There was other feedback on how "*nominee director*" should be defined. Some respondents indicated that all companies and LLPs should keep proper and accurate records of the nominators of directors' and managers' appointments irrespective of their status (i.e. whether shadow, alternate, sleeping, nominee etc.). The information should also be included in the statutory register of directors. There were queries on why the disclosure requirement would be applicable to managers of LLPs.

43. MOF's and ACRA's response: Nominees will be required to disclose the immediate entity appointing them and the disclosure can be made electronically. The disclosure requirement will apply to locally incorporated companies and there are no compelling reasons to exempt certain entities from the disclosure requirement. We are also unable to accept the suggestion to remove the existing requirement to have at least one locally resident director for accountability concerns and for enforcement purposes.

44. As the intent of the proposal is to find out the identity of the nominators of nominee directors, we will retain the term "*nominee*" in the legislation. There is currently no intention to make the registers of nominee directors publicly available, so information on the nominee directors should not be included in the public register of directors. Instead, the law will give ACRA and other law enforcement agencies access to the registers of nominee directors, similar to the position with respect to the proposed registers of controllers. We have also

reconsidered and decided to drop the proposal to require nominee managers to disclose their nominators and for LLPs to maintain such information. Unlike companies where directors are appointed by shareholders, managers are appointed by LLPs. Thus, there is no need to impose the requirement on managers of LLPs.