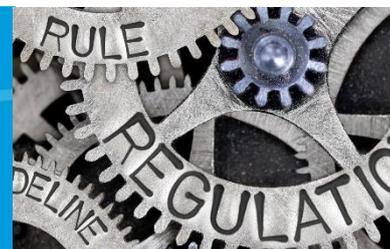


November 2022

Changes to corporate disclosures in Singapore



FULL DISCLOSURE...

In Singapore new corporate disclosures have come into force: requirements for companies (including some foreign companies) to maintain a register of nominee shareholders and changes to the identification of registrable controllers.

Speed read from our Singapore team

On 4 October 2022, the Accounting and Corporate Regulatory Authority ("**ACRA**") announced the implementation of new corporate disclosures under the Companies Act 1967 of Singapore ("**Companies Act**") pursuant to the passing of the Corporate Registers (Miscellaneous Amendments) Act earlier this year.

In summary, the new corporate disclosures relate to:

- (i) the requirement to maintain a register of nominee shareholders; and
- (ii) the identification of registrable controllers.

PART 1: Register of nominee shareholders ("**RONs**")

By 5 December 2022, companies (including some foreign companies)¹ ("**Companies**") must set up and maintain a non-public RONS at their registered offices or the registered offices of any registered filing agent² appointed by the Company for the purpose of keeping corporate registers.

A shareholder is a nominee if the shareholder:

- (i) is accustomed or under an obligation (whether formal or informal) to vote, in respect of shares in the Company of which the shareholder is the registered holder, in accordance with the directions, instructions or wishes of any other person; and

- (ii) receives dividends, in respect of shares in the Company of which the shareholder is the registered holder, on behalf of any other person.

Companies are to include in their RONS, information received from their nominee shareholders (including any updates) within seven days after receipt.

Form of register

The RONS must be in a form compliant with the Eighth Schedule to the Companies (Register of Controllers and Nominee Directors) Regulations 2017 and may be kept electronically or in hardcopy format.

What if there are no nominee shareholders?

Even if there are no nominee shareholders, Companies are still required to maintain the RONS and may enter an entry to the effect that such Company has not received information on nominee shareholders of the Company as of the relevant date.

Privacy and access to the RONS

Except when requested by ACRA and public agencies, Companies must not disclose or make available for inspection the RONS to any member of the public, which includes any other shareholder of the Company and the Company's auditors. So, the changes do not mean that information will be available to the public.

¹ Companies include any company incorporated in Singapore under the Companies Act and foreign companies (as defined in the Companies Act) with a share capital and which either (i) establishes a place of business or carries on business in Singapore; or (ii) intends to establish a place of business or carry on business in Singapore.

² If a Company appoints a registered filing agent to help the Company keep its RONS and the registered filing agent subsequently resigns, the registered filing agent should hand over the RONS to the Company, who may appoint another registered filing agent for the purpose of keeping the register.

What must you do if you are a nominee shareholder, or you have a nominee shareholder?



Inform the Company in which the nominee holds the shares of that fact and provide the prescribed particulars of the individual or legal entity for whom a shareholder of a Company is a nominee ("**Nominator**") ("**Information**") within 60 days from 4 October 2022.

The Information to be provided are as follows:

- (i) if the Nominator is an individual:
 - (a) full name;
 - (b) aliases, if any;
 - (c) residential address;
 - (d) nationality;
 - (e) identity card number or passport number;
 - (f) date of birth; and
 - (g) date on which the shareholder became the individual's nominee;
- (ii) if the Nominator is a legal entity:
 - (a) name;
 - (b) unique entity number issued by ACRA, if any;
 - (c) registered office address;
 - (d) legal form of the legal entity;
 - (e) jurisdiction where, and statute under which, the legal entity is formed or incorporated;
 - (f) name of the corporate entity register of the jurisdiction where the legal entity is formed or incorporated, if applicable;

- (g) 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
- (h) date on which the shareholder became the legal entity's nominee.

If you subsequently become a nominee shareholder, you must inform the Company of that fact and provide the Information within 30 days after you become a nominee shareholder.

If you cease to be a nominee shareholder or if there are any changes to the Information, you must within 30 days after the cessation or change (as the case may be) inform the Company of the fact.

A failure to comply with the above notification requirements may attract a fine of up to S\$5,000.

Are any companies exempt from the requirement to keep the RONS?

Some Companies are exempt from keeping the RONS.³ They include, amongst others:

- (i) a public Company which shares are listed for quotation on an approved exchange in Singapore;
- (ii) a Company that is a Singapore financial institution;⁴
- (iii) a Company that is a wholly-owned subsidiary of a company mentioned in sub-paragraph (i) or (ii) above; or
- (iv) a Company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to – (a) regulatory disclosure requirements; and (b) requirements relating to adequate transparency in respect of its beneficial owners, imposed through stock exchange rules, law or other enforceable means.

Please note that family offices and private trust companies ("**PTC**") exempted from holding a Capital Markets Services Licence and Trust Business Licence (as the case may be) do not fall within the definition of a Singapore financial institution and are not exempt from the requirement to maintain the RONS.

³ Full details of the exempted entities are prescribed in Fourteenth Schedule and Fifteenth Schedule to the Companies Act.

⁴ "Singapore financial institution" is defined in the Fourteenth Schedule to the Companies Act.

PART 2: Identification of registrable controllers

By 5 December 2022, Companies which were previously unable to identify a registrable controller⁵ are now required to record the particulars as prescribed under the Companies (Register of Controllers and Nominee Directors) Regulations 2017 ("**Prescribed Particulars**") of individuals with executive control in their existing register of registrable controllers ("**RORC**").

Where a Company knows or has reasonable grounds to believe that it:

- (i) has no registrable controller; or
- (ii) has a registrable controller but has not been able to identify the registrable controller,

each director with executive control and each chief executive officer ("**CEO**") of the Company is deemed to be a registrable controller of the Company, and information that such director and/or CEO is taken to be a registrable controller of the Company is to be entered into the RORC.

Within two business days of updating their RORCs with Prescribed Particulars, Companies and LLPs are required to file the information with ACRA.

A failure to comply with the above requirements may attract a fine of up to S\$5,000. Every officer of the Company who is in default may also be liable to a fine of up to S\$5,000.

Who has executive control?



A director with executive control refers to a director of the Company who exercises executive control over the daily or regular affairs of the Company through a senior management position.

⁵ An individual or entity is deemed to be a "controller" if it has significant interest in or significant control over a Company.

Thoughts from our team

- Investment powers reserved to an individual or entity ("**Power Holder**") under a settlor-reserved-investment-powers (SRIP) trust may be caught under the new disclosure provisions if the trustee is holding shares of a Company on trust. The trustee is likely to fall within the definition of a "nominee shareholder" as:
 - (a) the trustee (shareholder) will vote in accordance with the directions, instructions or wishes of the power holder, who is entitled to exercise investment powers reserved to him under the SRIP trust; and
 - (b) the trustee (shareholder) receives dividends, in respect of shares in the Company on behalf of the beneficiaries of the trust.

While this may be an issue from a privacy standpoint, the silver lining is that the RONS is a private document that can only be inspected by ACRA and other governmental agencies.

- Family offices and private trust companies are not exempt from the requirement to maintain the RONS and will have to take steps to comply with this new requirement.
- Changes to the identification of registrable controllers may affect trust structures which have not previously identified a registrable controller.

How can we help?

Do reach out to our team with any questions or if you are unsure whether you need to disclose. The regulatory regime globally is evolving and becoming more complex. It is more important than ever to have your bases covered and we can help.

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"Significant control" and "significant interest" is defined in the Sixteenth Schedule to the Companies Act.

Get in touch



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