

Tighter Legal Controls on Corporate Service Providers

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Introduction

Laws aimed at anti-money laundering (“**AML**”), countering the financing of terrorism (“**CFT**”), and countering the proliferation of weapons of mass destruction (“**PF**”) recently came under increased scrutiny in light of the S\$3 billion money laundering incident in Singapore earlier this year.

Upon review and public consultation by the Ministry of Finance (“**MOF**”) and Accounting and Corporate Regulatory Authority (“**ACRA**”) on the legislation administered by ACRA, the (i) Corporate Service Providers (“**CSP**”) Bill, (ii) Companies and Limited Liability Partnerships (Miscellaneous Amendments) (“**CLLPMA**”) Bill, and (iii) ACRA (Registry and Regulatory Enhancements) (“**ACRA RRE**”) Bill were passed by Parliament on 2 July 2024.

This article highlights key legal updates under these Bills in relation to AML, CFT, and PF.

Corporate Service Providers Bill

The CSP Bill aims to enhance Singapore’s regulatory regime in relation to CSPs. We set out the key regulatory changes below:

1. **All business entities providing corporate services required to register with ACRA**

All Singapore-based business entities that provide any corporate service will have to register with ACRA as registered CSPs, even if they do not file transactions with ACRA on behalf of their customers. The law extends to Singapore-based business entities that provide corporate services for the carrying out any “designated activity” in relation to the provision of any accounting service.

“**corporate service**” is defined under the CSP Bill to include, amongst others, company incorporations, provision of secretarial or directorship services, provision of registered office address services, carrying out designated activities relating to the provision of accounting service, and performing ACRA transactions.

“**designated activity**” is defined under the CSP Bill to include, amongst others, the buying or selling of real estate, management of client monies, securities or other assets, management of bank, savings or securities accounts, organisation of contributions for the creation, operation or management of corporations, and the creation, operation or management of legal persons or legal arrangements, or buying and selling of business entities.

Consequently, all registered CSPs will be subject to AML, CFT and PF obligations which are currently only required of registered filing agents (“**RFA**”). This closes the regulatory gap, which previously allowed CSPs that were not RFAs to be excluded from these obligations imposed on RFAs. This gap could previously be exploited by customers that engaged CSPs that were not RFAs for illicit activities.

For failing to register as a CSP, a person would be guilty of an offence and liable on conviction to a fine of up to \$50,000 or to imprisonment for a term of up to 2 years or to both. A person guilty of a continuing offence would be liable on conviction to a further fine of up to \$2,500 for every day or part of a day during which the offence continues after conviction.

2. More severe penalties for failure to fulfil AML, CFT and PF obligations

Criminal liability will be imposed on registered CSPs and their senior management for breaching AML, CFT, or PF obligations.

For failing to fulfil their AML, CFT, or PF obligations, a registered CSP will be liable on conviction to a fine of up to \$100,000 for each breach and its senior management will also be liable on conviction to a fine of up to \$100,000 for each breach.

This marks an increase in penalties where, under existing laws, the maximum fine is \$25,000 for each breach, and senior management of RFAs are not subject to regulatory sanctions for breaches committed by their RFAs.

3. New requirement for CSPs to comply with PF obligations

Registered CSPs will be required to comply with obligations relating to financing of proliferation of weapons of mass destruction (i.e. PF), in addition to existing obligations relating to AML and CFT.

These updates improve consistency with the Financial Action Task Force's ("FATF") recommendations relating to AML, CFT, and PF, and ensure that registered CSPs comply with the requirements in the United Nations Act 2001.

4. Additional regulatory requirements for nominee directors

Additional requirements will be imposed on nominee directorship arrangements to deter CSPs from arranging for unqualified individuals to act as nominee directors for their customers and from allowing nominee directorship arrangements to be exploited to create shell companies to facilitate money laundering or other illicit activities.

Must be appointed by CSP

Individuals may only act as nominee directors by way of business if their nominee directorship was arranged by a registered CSP, unless the individual himself is the sole proprietor of a registered CSP.

A person who breaches this requirement shall be liable on conviction to a fine of up to \$10,000.

Must be fit and proper

Registered CSPs may only arrange for individuals to act as nominee directors if the CSP is satisfied that the nominee director is fit and proper. The registered CSP must take reasonable steps to check that the person is fit and proper, in the sense that they meet the legal requirements to act as directors and are not disqualified from acting as such under any written law.

A registered CSP which breaches this requirement shall be liable on conviction to a fine of up to \$100,000.

Companies and Limited Liability Partnerships (Miscellaneous Amendments) Bill

The CLLPMA Bill aims to enhance the transparency of companies and LLPs. We set out the key changes below:

1. Increased fines relating to the registers of registrable controllers, nominee directors, and nominee shareholders

The maximum fine for offences pertaining to a company's registers of registrable controllers, nominee directors, and nominee shareholders or a LLP's register of registrable controllers will be increased from \$5,000 to \$25,000. Such offences will include providing false or misleading information on a company or LLP's registers to ACRA.

Additionally, companies and LLPs will have to verify and update their controllers' information at the prescribed frequency (i.e. annually).

2. Nominee status of a company's nominee directors and nominee shareholders must be disclosed to ACRA

To improve the transparency of nominee arrangements and thereby strengthen AML safeguards, companies and foreign companies will have to file their registers of nominee directors and nominee shareholders with ACRA.

Additionally, the nominee status of any nominee director or nominee shareholder will be made publicly available, including on business profile extractions.

However, the full information contained in the registers of nominee directors and nominee shareholders maintained by ACRA will only be available to public agencies for the purposes of administering or enforcing any written law.

ACRA (Registry and Regulatory Enhancements) Bill

The ACRA RRE Bill makes amendments to the Accounting and Corporate Regulatory Authority Act 2004, the Accountants Act 2004, the Business Names Registration Act 2014, the Companies Act 1967, the Insolvency, Restructuring and Dissolution Act 2018, the Limited Liability Partnerships Act 2005, the Limited Partnerships Act 2008 and the Variable Capital Companies Act 2018.

Whilst the main legislative changes brought about by the ACRA RRE Bill are for the purposes of strengthening data protection (e.g. introducing a contact address for business owners and company officers to use as the default address displayed on public records instead of their residential address) and facilitating data communications between the Government and businesses, the ACRA RRE Bill does go some way to enhance corporate transparency.

Wider powers for ACRA

For instance, to improve the accuracy of information in ACRA's registers, ACRA will be empowered to request for any information from a prescribed public agency or prescribed entity to verify the accuracy of any document or information in ACRA's repository. The prescribed entities will be specified by the Minister.

Further, to enhance the transparency of the disqualification status of ex-directors of companies, it will be made clear that ACRA is empowered to:

- a. amend a company's register of directors kept with ACRA to reflect the disqualification status of individuals disqualified under the Companies Act; and
- b. use information obtained from the courts to exercise ACRA's power to reflect the disqualification status of individuals disqualified under the Companies Act in the company's register of directors kept with ACRA.

Conclusion

The new laws introduced by these Bills will expand ACRA's regulatory scope, enable greater scrutiny on CSPs in their fulfilment of their AML, CFT, and PF obligations, and impose more severe penalties for failure to meet these obligations. The new laws will require all CSPs to register with ACRA, impose more severe penalties for breaches, and impose more disclosure requirements on CSPs.

With these legal updates, CSPs will be propelled to be even more vigilant against the risks of money laundering, financing of terrorism, and the proliferation of weapons of mass destruction. Companies and business entities in Singapore will also need to cooperate closely with their CSPs to ensure compliance with these new laws.

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