AMENDMENTS TO EP 200, COMPANIES ACT AND LIMITED LIABILITY PARTNERSHIPS ACT

Improving Transparency of Companies and LLPs

BY
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In 2015, the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG) carried out an assessment of the effectiveness of Singapore's anti-money laundering and countering the financing of terrorism (AML/CFT) regime in accordance with the FATF Recommendations. Pursuant to the assessment, the FATF and APG had issued Singapore's Mutual Evaluation Report in September 2016. The report determined that Singapore has a strong AML/CFT framework in place albeit there are still certain areas where improvements are necessary.

To address these findings in the Mutual Evaluation Report, amendments were made to the ISCA Ethics Pronouncement (EP) 200: Anti-Money Laundering and Countering the Financing of Terrorism – Requirements and Guidelines for Professional Accountants in Singapore, in March 2017. At the same time, the Companies (Amendment) Bill 2017 and the Limited Liability Partnerships (LLP) (Amendment) Bill 2017 were passed by Parliament on 10 March 2017. The changes to EP 200 are mainly to provide additional clarity to existing requirements and guidelines, while the objective of the changes to the Companies Act and LLP Act[1] is to enhance the transparency of ownership and control of companies and LLPs.

This article highlights some of the key changes to EP 200, the Companies Act and LLP Act.

There are no changes to the contents of Supplement A (of EP 200). However, previously a good guidance, Supplement A is now mandatory for auditors.

[1] Other legislative changes include amendments to boost Singapore's competitiveness as a business hub by introducing an inward re-domiciliation regime which allows foreign corporate entities to transfer their registration to Singapore and amendments to reduce compliance costs and administrative burden such as simplified requirements for holding annual general meetings and filing of annual returns.

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KEY CHANGES TO EP 200

Supplement A of EP 200 becomes mandatory for auditors

There are no changes to the contents of Supplement A. However, previously a good guidance, Supplement A is now mandatory for auditors. Public accountants would have to take into consideration the specific requirements and guidelines in the Supplement when performing audits of financial statements. For example, if the auditor knows or suspects that money laundering or terrorist financing has occurred, the auditor would have to consider the specific circumstances to determine whether the audit opinion should be modified. If the auditor fails to pursue his suspicions, it may be argued that issuing an unmodified opinion when the circumstances warrant a modified opinion, enables the criminal act to pass off as a legitimate transaction with the consequence that the illegal act can continue. The auditor should also consider the necessity of asking the Suspicious Transaction Reporting Office whether disclosure in the auditor's report through modification of the opinion, could be considered as tipping off.

★ **The amendments to EP 200 are effective from 1 June 2017. The amendments to the Companies Act and LLP Act (amendments relating to improving the transparency of companies and LLPs) were effective from 31 March 2017.**

Screening requirements

EP 200 now provides clarity on the minimum sanction lists for screening purposes. For accountants performing any of the designated high risk services[2], the accountant must screen his client, beneficial owners of the client, any natural persons appointed to act on behalf of the client[3] and connected parties of the client against the sanction lists[4].

All natural and legal persons in Singapore are prohibited under the United Nations Regulations promulgated under the United Nations Act, and the Terrorism (Suppression of Financing) Act, from dealing with designated individuals and entities. Performing the necessary screenings enables the accountants to ensure that they are not in breach of the law. Any breach could subject one to a fine up to $500,000 or to imprisonment for a term up to 10 years or both.

Other changes for accountants providing designated high risk services

- Previously, it was not necessary to identify and verify the identity of the beneficial owners when the client is a government entity. This exemption has been removed.
- Where the client is a trust, amendments have been made to clarify that the ultimate beneficiaries and every beneficiary that fall within a designated characteristic or class of the trust should be identified and reasonable measures should be taken to verify the identity of these beneficiaries.
- Accountants who act as trustees must disclose their trustee status to identified financial institutions and other designated businesses and professions when entering into a business relationship with them.

KEY CHANGES TO THE COMPANIES ACT AND LLP ACT

Register of controllers

One of the key legislative amendments to improve the transparency of companies and LLPs is the requirement for Singapore-incorporated companies, Singapore-registered LLPs and foreign companies registered in Singapore (unless exempted) to maintain beneficial ownership information in the form of a register of registrable controllers. This information is to be made available to public agencies upon request, but not to the public.

[2] Designated high risk services as described under paragraph 1.5 of EP 200 are as follows:
(a) Buying and selling of real estate;
(b) Managing of client money, securities or other assets;
(c) Management of bank, savings or securities accounts;
(d) Organisation of contributions for the creation, operation or management of companies;
(e) Creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

[3] Persons appointed to act on behalf of the client may be an officer of a company, a partner of a partnership, or a sole proprietor of a sole proprietorship, who enters into the business relationship with the professional firm/professional accountant on behalf of the company/partnership/sole proprietorship. This person is usually the one who signs the engagement letter with the professional firm on behalf of the client.

[4] The minimum sanction lists are:
(a) The "Lists of Designated Individuals and Entities" on the Monetary Authority of Singapore website;
(b) The "Terrorist Alert List" on the ISCA website, and
(c) Any other similar lists and information required of professional firms for screening purposes stipulated by relevant authorities in Singapore such as the Accounting and Corporate Regulatory Authority.

[5] http://isca.org.sg/ethics/ethics-headlines/ethics-headlines/2017/march/ep-200-amendments-effective-1-june-2017/

[6] https://www.acra.gov.sg/components/templates/newsDetails.aspx?id=888ee207-0fdc-4a64-a409-6d21df12e51b

In addition, foreign companies registered in Singapore are required to maintain public registers of shareholders. Nominee directors are also required to disclose their nominee status and nominators to their companies, who will need to maintain a non-public register of nominee directors.

Registrable controller: 25% threshold

A registrable controller is an individual or a legal entity that has a "significant interest" in or "significant control" over a company. A controller who has significant interest in a company can be an individual who has interest in more than 25% of the shares of the company or has shares with more than 25% of total voting power in the company. An example of a controller based on significant control is a person who holds more than 25% of the rights to vote on matters that are to be decided upon by a vote of the members of the company. The 25% threshold is consistent with the threshold approach in the FATF guidance documents, and the threshold used in the United Kingdom's legislation.

Duty of companies

Companies are required to take reasonable steps to identify their controllers and obtain information on the controllers by sending out notices to anyone whom they know or have reasonable grounds to believe to be controllers, and anyone who knows the identity of the controllers or is likely to have that knowledge. Companies can discharge their duties by sending notices to the relevant parties and recording their particulars, as well as sending further notices to anyone who has been revealed as potential controllers.

Effective dates

The amendments to EP 200 are effective from 1 June 2017. The amendments to the Companies Act and LLP Act (amendments relating to improving the transparency of companies and LLPs) were effective from 31 March 2017. Existing companies are given a transitional period of 60 days to set up the register of controllers. Newly-incorporated companies are required to set up the register within 30 days from the date of incorporation.

IMPORTANT TO UNDERSTAND THE CHANGES

Professional accountants should have a good understanding of the above changes. Further information on changes to EP 200, the Companies Act and LLP Act is available at the ISCA website[5] and the Accounting and Corporate Regulatory Authority (ACRA) website[6] respectively. ISCA

ISCA is organising a half-day Ethics Seminar on 28 June 2017. In addition to covering the latest additional obligations on AML/CFT, the speakers will be sharing on the upcoming changes to the Ethics Code (EP 100), developments at the International Ethics Standards Board for Accountants as well as implications of whistleblowing from a legal perspective. To register for the seminar, please visit our CPE website at https://eservices.isca.org.sg/courseDetail?courseMasterId=a0g28000002bBkzAAE.

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