April 2017

Improved transparency under the Companies Act and Trustees Act

Changes to Companies Act and Trustees Act

Changes to the Companies Act (Cap. 50) ("CA") and the Trustees Act (Cap. 337) ("TA") aimed at improving transparency in corporate and trust holding structures came into effect on 31 March 2017. These changes were introduced through the Companies (Amendment) Bill 2017 and Trustees (Amendment) Bill 2017, both passed on 10 March 2017.

A key change under the CA is the new requirement for companies to maintain registers of, among others, the controllers of the company. Controllers include an individuals, companies and foreign companies with a significant interest in or significant control over a company. Significant control is broadly defined and includes persons who has more than 25% of the voting rights or who can appoint directors to the company. Significant interest means holding at least 25% of the equity interest in the company. The duties under the new rules fall on both the company and the controllers.

In a similar vein, the TA will now allow the Minister to introduce regulations that require trustees of express trusts (i.e. most of the trust structures set up by private clients) to identify and keep updated information of relevant trust parties (e.g. the settlors and beneficiaries) and the effective controller of the trust. These regulations will apply not only to express trusts governed by Singapore law, but also those administered in Singapore or have trustees resident in Singapore.

How will it affect me?

While these changes may seem worrying at first glance, there is no significant change from the status quo. For instance, there is an exemption for interests is held through a Singapore financial institution, in which case there is no need for the company to maintain a register or the controller to report its interest.

This is because these interests would already be reported under the existing rules, such as under the Securities and Futures Act. Trust companies subject to regulatory oversight by the Monetary Authority of Singapore are already required to maintain such information as well. In this sense, this change was introduced merely to close any gaps in reporting the interests from those that existed before, levelling the playing field.

There should be a minimal impact on privacy as well. There will be a duty on the company not to disclose the register except to government agencies. This is because the need to register was driven by a desire to be in line with the recommendations from the Financial Action Task Force ("FATF"), which has the objective of countering money-laundering and terrorism financing. It is not mandated so that the information could be accessed by the public. It was also not introduced as part of the Automatic Exchange of Information ("AEOI") requirements and does not form part of the information that will be exchanged under that regime.

However, this does not mean it will not be used by the Singapore tax authority to provide information to overseas tax authorities under a separate regime, such as through existing tax treaties, as was the case in AXY v Comptroller of Income Tax [2016] 1 SLR 616.

Conclusions

The changes reflective of a world where borders are becoming blurred. Information will become widely available and taxpayers should plan their affairs on the assumption that their plans will one day be open for the world. This makes it more important than ever to ensure that you are properly advised on the potential risks and opportunities that are available. If you have any questions on these risks, as well as other matters, please feel free to reach out to us to better understand your exposures and let us explore with you on how to manage them.

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