

Short title and commencement

1. This Act is the Companies (Amendment) Act 2017 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 8

2. Section 8(7) of the Companies Act is amended —

(a) by deleting the word “and” at the end of paragraph (a);

(b) by deleting the full-stop at the end of paragraph (b) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(c) the Fourteenth Schedule in relation to the list of companies to which Division 4A of Part IV does not apply; and

(d) the Fifteenth Schedule in relation to the meanings of “significant control” and “significant interest”.

New Division 4A of Part IV

3. Part IV of the Companies Act is amended by inserting, immediately after section 91, the following Division:

“Division 4A — Controllers of companies

20 Application of this Division

92. This Division applies to all companies other than a company set out in the Fourteenth Schedule.

Interpretation of this Division

92A. In this Division, unless the context otherwise requires —

25 “controller” means an individual controller or a corporate controller;

“corporate controller”, in relation to a company, means a legal entity which has a significant interest in, or significant control over, the company;

“individual controller”, in relation to a company, means an individual who has a significant interest in, or significant control over, the company;

5 “legal entity” means any body corporate formed or incorporated or existing in Singapore or outside Singapore;

“significant control”, in relation to a company, has the meaning given to it in the Fifteenth Schedule;

10 “significant interest”, in relation to a company, has the meaning given to it in the Fifteenth Schedule.

Meaning of registrable

92B. For the purposes of this Division, in relation to a company (X) —

- (a) a corporate controller (A) is registrable unless —
- 15 (i) the A’s significant interest in or significant control over X is only through one or more corporate controllers (B) of X;
- (ii) A is a corporate controller of B (or each B if more than one); and
- 20 (iii) each B is either —
- (A) a company to which this Division applies and is required to keep a register of controllers under section 92E; or
- (B) a company set out in the Fourteenth Schedule.
- 25 (b) an individual controller (C) is registrable unless —
- (i) C’s significant interest in or significant control over X is through one or more corporate controllers (D) of X;
- 30 (ii) C is an individual controller of D (or each D if more than one); and

(iii) each *D* is either —

(A) a company to which this Division applies and is required to keep a register of controllers under section 92E; or

5 (B) a company set out in the Fourteenth Schedule.

State of mind of corporation, unincorporated association, etc.

10 **92C.**—(1) Where, in a proceeding for an offence under this Division, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that —

(a) an officer, employee or agent of the corporation engaged in that conduct within the scope of the officer's, employee's or agent's actual or apparent authority; and
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(b) the officer, employee or agent had that state of mind,
is evidence that the corporation had that state of mind.

20 (2) Where, in a proceeding for an offence under this Division, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

(a) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of the employee's or agent's actual or apparent authority; and
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(b) the employee or agent had that state of mind,
is evidence that the unincorporated association or partnership had that state of mind.

Meaning of legal privilege

30 **92D.**—(1) For the purposes of this Act, information or a document is subject to legal privilege if —

- 5 (a) it is a communication made between a lawyer and a client, or a legal counsel acting as such and the legal counsel's employer, in connection with the lawyer giving legal advice to the client or the legal counsel giving legal advice to the employer, as the case may be;
- 10 (b) it is a communication made between 2 or more lawyers acting for a client, or 2 or more legal counsel acting as such for their employer, in connection with one or more of the lawyers giving legal advice to the client or one or more of the legal counsel giving legal advice to the employer, as the case may be;
- (c) it is a communication made —
- 15 (i) between a client, or an employer of a legal counsel, and another person;
- (ii) between a lawyer acting for a client and either the client or another person; or
- (iii) between a legal counsel acting as such for the legal counsel's employer and either the employer or another person,
- 20 in connection with, and for the purposes of, any legal proceedings (including anticipated or pending legal proceedings) in which the client or employer, as the case may be, is or may be, or was or might have been, a party;
- 25 (d) it is an item, or a document (including its contents), that is enclosed with or mentioned in any communication in paragraph (a) or (b) and that is made or prepared by any person in connection with a lawyer or legal counsel, or one or more of the lawyers or legal counsel, in either
- 30 paragraph giving legal advice to the client or the employer of the legal counsel, as the case may be; or
- (e) it is an item, or a document (including its contents), that is enclosed with or mentioned to in any communication in paragraph (c) and that is made or prepared by any
- 35 person in connection with, and for the purposes of, any

legal proceedings (including anticipated or pending legal proceedings) in which the client or the employer of the legal counsel, as the case may be, is or may be, or was or might have been, a party,

5 but it is not any such communication, item or document that is made, prepared or held with the intention of furthering a criminal purpose.

(2) In subsection (1) —

10 “client”, in relation to a lawyer, includes an agent of or other person representing a client and, if a client has died, a personal representative of the client;

“employer”, in relation to a legal counsel, includes —

15 (a) if the employer is one of a number of corporations that are related to each other under section 6, every corporation so related as if the legal counsel is also employed by each of the related corporations;

20 (b) if the employer is a public agency within the meaning of section 128A(6) of the Evidence Act (Cap. 97) and the legal counsel is required as part of the legal counsel’s duties of employment or appointment to provide legal advice or assistance in connection with the application of the law or any form of resolution of legal dispute to any other public agency or agencies, the other public agency or agencies as if the legal counsel is also employed
25 by the other public agency or each of the other public agencies; and

(c) an employee or officer of the employer;

30 “lawyer” means an advocate and solicitor, and includes an interpreter or other person who works under the supervision of an advocate and solicitor;

“legal counsel” means a legal counsel as defined in section 3(7) of the Evidence Act, and includes an

interpreter or other person who works under the supervision of a legal counsel.

Register of controllers

5 **92E.**—(1) A company incorporated on or after the appointed day must keep a register of its registrable controllers not later than 30 days after the date of the company's incorporation.

(2) A company incorporated before the appointed day must keep a register of its registrable controllers not later than 60 days after the appointed day.

10 (3) The company must ensure that the register —

(a) contains such particulars of the company's registrable individual controllers and registrable corporate controllers as may be prescribed who have confirmed their particulars under subsection (5);

15 (b) is updated if any change to the prescribed particulars occurs; and

(c) is kept in such form and at such place as may be prescribed.

20 (4) The company must enter the particulars onto the register or update the register within the prescribed time and in the prescribed manner.

25 (5) The company must not enter the particulars of any controller onto the register or update the particulars of that controller on the register unless the particulars of that controller are confirmed, in the manner prescribed, by the controller.

(6) Subject to section 92K, a company must not disclose or make available for public inspection the register or any particulars contained in the register.

30 (7) If the company fails to comply with subsection (1), (2), (3), (4), (5) or (6), the company and every officer of the company in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$25,000.

(8) In this section, “appointed day” means the date of commencement of section 3 of the Companies (Amendment) Act 2017.

Company’s duty to investigate and obtain information

5 **92F.**—(1) A company must take reasonable steps to find out and identify the registrable controllers of the company.

(2) Without limiting subsection (1), a company (*A*) —

(a) must give a notice to any person (*B*) whom the company knows or has reasonable grounds to believe is a registrable controller in relation to *A*, requiring *B* —

10 (i) to state whether *B* is or is not a registrable controller of *A*;

 (ii) to provide such other information or documents within *B*’s custody or control as may be prescribed; and

(b) must give notice to any person (*C*) whom *A* knows, or has reasonable grounds to believe knows, the identity of a person who is a registrable controller of *A* or who is likely to have that knowledge, requiring *C* —

20 (i) to state whether or not *C* knows or has reasonable grounds to believe that any other person (*D*) is a registrable controller of the company or is likely to have knowledge;

 (ii) to provide such other information or documents within *C*’s custody or control as may be prescribed.

(3) A notice mentioned in subsection (2) —

(a) must state that the addressee must comply with the notice not later than the time prescribed for compliance;

30 (b) must be in such form, contain such particulars and be sent in such manner, as may be prescribed.

(4) Subsection (2) does not require a company to give notice to any person in respect of any information that is required to be stated or provided pursuant to the notice if the information was previously provided by that person or by any registered filing agent appointed by that person or company.

(5) If a company fails to comply with subsection (1), (2) or (3), the company and every officer of the company in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$25,000.

(6) An addressee of a notice under subsection (2) must comply with the notice within the time specified in the notice for compliance except that an addressee is not required to provide any information or document that is subject to legal privilege.

(7) An addressee of a notice under subsection (2) who fails to comply with subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Company's duty to keep information up-to-date

92G.—(1) If a company knows or has reasonable grounds to believe that a relevant change has occurred in the particulars of the registrable controller that are stated in the company's register of controllers, the company must give notice to the registrable controller —

- (a) to confirm whether or not the change has occurred;
- (b) if so —
 - (i) to state the date of the change; and
 - (ii) to provide the particulars of the change; and
- (c) to provide such other information or documents within the person's custody or control as may be prescribed.

(2) The company must give the notice mentioned in subsection (1) within such period as may be prescribed after it learns of the change or first has reasonable grounds to believe that the change has occurred.

(3) Section 92F(3) applies to a notice under this section as it applies to a notice under that section.

(4) Subsection (1) does not require a company to give notice to any person in respect of any information that was previously provided by that person or by any registered filing agent appointed by that person or company.

(5) If a company fails to comply with subsection (1) or (2), or section 92F(3) as applied by subsection (3), the company and every officer of the company in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$25,000.

(6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(7) For the purposes of this section, a “relevant change” occurs if —

(a) a person ceases to be a registrable controller in relation to the company; or

(b) any other change occurs as a result of which the particulars of the registrable controller in the company’s register of controllers are incorrect or incomplete.

Company’s duty to correct inaccurate information

92H.—(1) If a company has reasonable grounds to believe that any of the particulars of a registrable controller that are stated in the company’s register of controllers is inaccurate, the company must give notice to the registrable controller to confirm whether the particulars are correct and, if not, to provide the correct particulars.

(2) The company must give the notice mentioned in subsection (1) within such period as may be prescribed after it has reasonable grounds to believe that the information is inaccurate.

(3) Section 92F(3) applies to a notice under this section as it applies to a notice under that section.

5 (4) Subsection (1) does not require a company to give a notice to any person if the company has already been informed of the relevant change and the information was either provided by the person whom the information relates or has been verified by that person in writing.

10 (5) If a company fails to comply with subsection (1) or (2), or with section 92F(3) as applied by subsection (3), the company and every officer of the company in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$25,000.

15 (6) An addressee of a notice under subsection (1) who fails to comply with the notice within the time specified in the notice for compliance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Controller's duty to provide information

20 **92I.**—(1) A person who knows or ought reasonably to know that the person is a registrable controller in relation to a company must —

- (a) notify the company that the person is a registrable controller in relation to the company;
- (b) state the date, to the best of the person's knowledge, on which the person became a registrable controller in relation to the company;
- 25 (c) provide such particulars and information, and documents within the person's custody or control, as may be prescribed.

30 (2) The person mentioned in subsection (1) must comply with the requirements of that subsection within 30 days after the date on which that person knew or ought reasonably have known that that person was a registrable controller.

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company under section 92F(2) and has complied with the requirement of the notice within the time specified in the notice for compliance.

(4) If a person fails to comply with subsection (1) or (2), the person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Controller’s duty to provide change of information

92J.—(1) A person who is a registrable controller in relation to a company who knows, or has reasonable grounds to believe, that a relevant change has occurred in the prescribed particulars of the registrable controller must notify the company of the relevant change —

- (a) stating the date that the change occurred;
- (b) providing that particulars of the change;
- (c) providing such other information or documents within the person’s custody or control as may be prescribed.

(2) The person mentioned in subsection (1) must comply with the requirements of that subsection within 30 days after the date on which that person knew or ought reasonably to have known of the relevant change.

(3) A person need not comply with the requirements of subsection (1) if the person has received a notice from the company under section 92G(1) and has complied with the requirements of the notice within the time specified in the notice for compliance.

(4) Any person who fails to comply with subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(5) For the purposes of this section, a “relevant change” occurs if —

- (a) a person ceases to be registrable controller in relation to the company; or
- (b) there is a change —
 - (i) in the degree or nature of the person’s interest in or control over the company; or
 - (ii) in the person’s contact details or such other particulars as may be prescribed.

Power to inspect

92K.—(1) Subject to subsection (2), the Registrar or an authorised officer may—

- (a) require a company to which this Division applies to produce the register of controllers and any other document relating to that register or the keeping of that register within such reasonable time as may be specified in the notice;
- (b) inspect, examine and make copies of the register and any document so produced; and
- (c) make such inquiry as may be necessary to ascertain whether the provisions of this Division are complied with.

(2) Where any record or documents as are mentioned in subsection (1) are kept in electronic form —

- (a) the power of the Registrar or authorised officer in subsection (1)(a) to require the register or any documents to be produced for inspection includes power to require a copy of the register or documents to be made available for inspection in legible form and subsection (1)(b) is to accordingly apply in relation to any copy so made available; and
- (b) the power of the Registrar or authorised officer under subsection (1)(b) to inspect the register or any documents includes power to require any person on the premises in question to give the Registrar or authorised

officer such assistance as the Registrar or authorised officer may reasonably require to enable him to inspect and make copies of the register or documents in legible form or to make records of information contained in them.

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(3) Any person who fails to comply with any requirement imposed under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

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(4) This section applies in addition to any right of inspection conferred by section 396A.

(5) For the purposes of this section, an authorised officer is any public officer or officer of any statutory body, or any class of public officers or officers of any statutory body, prescribed as an authorised officer for the purposes of this section.

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Central register of controllers

92L.—(1) This section applies where the Minister, by notification in the *Gazette*, directs the Registrar to maintain a central register of controllers of companies.

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(2) Where the Minister has directed the Registrar to maintain a central register of controllers of companies under subsection (1) —

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(a) the Registrar must keep a central register of controllers consisting of the particulars contained in the register of controllers kept by companies to which this Division applies; and

(b) the Registrar may require any company to which this Division applies to lodge with the Registrar —

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(i) all particulars contained in the company's register of controllers maintained under section 92E;

(ii) all updates to the company's register of controllers that occurs after the lodgment of the particulars under sub-paragraph (i); and

(iii) such other information and documents as may be prescribed.

(3) A lodgment mentioned in subsection (2)(b) must be made in such form and manner, and within such time, as may be prescribed.

(4) If a company fails to comply with subsection (2) or (3), the company and every officer of the company in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$25,000.

(5) Except in such circumstances as may be prescribed, the Registrar must not disclose or make available for public inspection the central register of controllers of companies kept by the Registrar under this section.

Rectification

92M. Where it appears to the Court, as a result of evidence adduced before it by the Registrar, that any particular recorded in any register required to be kept under this Division is erroneous or defective, the Court may by order direct the company keeping the register to rectify the register on such terms and conditions as seem to the Court just and expedient, as are specified in the order and the company must, upon receipt of the order rectify the register accordingly.

Codes of practice, etc.

92N.—(1) The Registrar may issue one or more codes, guidance, guidelines, policy statements and practice directions for all or any of the following purposes:

- (a) to provide guidance in relation to the operation or administration of any provision of this Division;
- (b) generally for carrying out the purposes of this Division.

(2) The Registrar may publish any such code, guidance, guideline, policy statement or practice direction, in such manner as the Registrar thinks fit.

(3) The Registrar may revoke, vary, revise or amend the whole or any part of any code, guidance, guideline, policy statement or practice direction issued under this section in such manner as the Registrar thinks fit.

5 (4) Where amendments are made under subsection (3) —

(a) the other provisions of this section apply, with the necessary modifications, to such amendments as they apply to the code, guidance, guideline, policy statement and practice direction; and

10 (b) any reference in this Act or any other written law to the code, guidance, guideline, policy statement or practice direction however expressed is to be treated, unless the context otherwise requires, as a reference to the code, guidance, guideline, policy statement or practice
15 direction as so amended.

(5) The failure by any person to comply with any of the provisions of a code, guidance, guideline, policy statement or practice direction issued under this section that applies to that person does not of itself render that person liable to criminal
20 proceedings but any such failure may, in any proceedings whether civil or criminal, be relied upon by any party to the proceedings as tending to establish or to negate any liability which is in question in the proceedings.

25 (6) Any code, guidance, guideline, policy statement or practice direction issued under this section —

(a) may be of general or specific application; and

(b) may specify that different provisions apply to different circumstances or provide for different cases or classes of cases.

30 (7) It is not necessary to publish any code, guidance, guideline, policy statement or practice direction issued under this section in the *Gazette*.

Exemption

92O. The Minister may, by order in the *Gazette*, exempt any person or class of persons, from all or any of the provisions of this Division.”.

5 Amendment of section 411

4. Section 411(1) of the Companies Act is amended by inserting, immediately after paragraph (*ee*), the following paragraph:

“(ef) prescribing the circumstances in which a person is to be treated as having significant control over, or an interest or significant interest in, a company for the purposes of Division 4A of Part IV;”.

New Fourteenth and Fifteenth Schedules

5. The Companies Act is amended by inserting, immediately after the Thirteenth Schedule, the following Schedules:

15 “FOURTEENTH SCHEDULE

Sections 8(7), 92 and 92B

COMPANIES TO WHICH DIVISION 4A OF PART IV DO NOT APPLY

1. Division 4A of Part IV does not apply to any of the following companies:

- 20 (a) a public company which shares are listed for quotation on an approved exchange in Singapore;
 - (b) a company that is a Singapore financial institution.
2. For the purposes of paragraph 1, a Singapore financial institution is —
- 25 (a) any bank licensed under the Banking Act (Cap. 19);
 - (b) any finance company licensed under the Finance Companies Act (Cap. 108);
 - (c) any person that is approved as a financial institution under section 28 of the Monetary Authority of Singapore Act (Cap. 186);
 - 30 (d) any money-changer licensed to conduct money-changing business, or any remitter licensed to conduct remittance business,

- under the Money-changing and Remittance Businesses Act (Cap. 187);
- 5 (e) any insurer licensed or regulated under the Insurance Act (Cap. 142);
- (f) any insurance intermediary registered or regulated under the Insurance Act;
- (g) any licensed financial adviser under the Financial Advisers Act (Cap. 110);
- 10 (h) any approved holding company, approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved clearing house, recognised clearing house or holder of a capital markets services licence under the Securities and Futures Act (Cap. 289);
- 15 (i) any trustee for a collective investment scheme authorised under section 286 of the Securities and Futures Act, that is approved under that Act;
- (j) any trustee-manager of a business trust that is registered under the Business Trusts Act (Cap. 31A);
- 20 (k) any licensed trust company under the Trust Companies Act (Cap. 336);
- (l) any holder of a stored value facility under the Payment Systems (Oversight) Act (Cap. 222A);
- (m) any designated financial holding company under the Financial Holding Companies Act 2013 (Act 13 of 2013);
- 25 (n) any person licensed under the Banking Act to carry on the business of issuing credit cards or charge cards in Singapore; and
- (o) any other person licensed, approved, registered or regulated by the Monetary Authority of Singapore constituted under the Monetary Authority of Singapore Act under any written law.

FIFTEENTH SCHEDULE

Sections 8(7) and 92A

MEANINGS OF ‘SIGNIFICANT CONTROL’
AND ‘SIGNIFICANT INTEREST’5 **Definition of “significant control”**

1. For the purposes of Division 4A of Part IV, an individual or legal entity has significant control over a company if the individual or legal entity —

- 10 (a) 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;
- (b) has the right to exercise, or actually exercises, significant influence or control over the company or
- 15 (c) is treated by regulations as having significant control over that company.

Definition of “significant interest”

2. For the purposes of Division 4A of Part IV, an individual or legal entity has a significant interest in a company having a share capital —

- 20 (a) if the individual or legal entity, as the case may be, has an interest, or is treated by regulations as having an interest, in more than 25 percentage of the shares in the company;
- (b) if —
- (i) the individual or legal entity, as the case may be, has an interest, or is treated by regulations as having an interest, in one or more voting shares in the company; and
- 25 (ii) the total votes attached to that share, or those shares, is more than 25 percentage of the total votes attached to all the voting shares in the company.

(2) In this paragraph, “voting share” does not include any treasury share.

30 3. For the purposes of Division 4A of Part IV, a person has a significant interest in a company that does not have a share capital if —

- (a) the person holds a right to share in more than 25% of the capital or the profits of the company; or

- (b) the person is treated by regulations as having a significant interest in the company.”.

EXPLANATORY STATEMENT

This Bill seeks to

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.