



REPUBLIC OF SINGAPORE

GOVERNMENT GAZETTE

BILLS SUPPLEMENT

Published by Authority

NO. 19]

TUESDAY, MAY 7

[2024

First published in the *Government Gazette*, Electronic Edition, on 7 May 2024 at 5 pm.

Notification No. B 19 — The Companies and Limited Liability Partnerships (Miscellaneous Amendments) Bill is published for general information. It was introduced in Parliament on 7 May 2024.

Companies and Limited Liability Partnerships (Miscellaneous Amendments) Bill

Bill No. 19/2024.

Read the first time on 7 May 2024.

A BILL

i n t i t u l e d

An Act to amend the Companies Act 1967 and the Limited Liability Partnerships Act 2005 to require companies, foreign companies and limited liability partnerships to take certain measures to ensure that the particulars of their controllers are up-to-date and correct, and to make other amendments to those Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Act 2024 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

PART 1

AMENDMENT OF COMPANIES ACT 1967

New section 374

2. In the Companies Act 1967 (as amended by section 48 of the ACRA (Registry and Regulatory Enhancements) Act 2024), after section 373, insert —

“Return to be filed on keeping of registers of foreign company

374. A foreign company must, at the time when making a lodgment of —

- (a) its financial statements in accordance with section 373(1); or
- (b) where the Registrar allows under section 373(13)(b) the foreign company to lodge under section 373(1) any other document instead of its financial statements — that other document,

also lodge with the Registrar a return containing prescribed information relating to the keeping of the following registers:

- (c) the register of controllers kept by the foreign company under section 386AF;
- (d) the register of nominee directors kept by the foreign company under section 386AKA;
- (e) the register of nominee shareholders kept by the foreign company under section 386ALA.”.

Amendment of section 386AB

3. In the Companies Act 1967, in section 386AB, in the definition of “register of controllers” or “register” —

- (a) in paragraph (a), after “section 386AF(1),”, insert “(1A),”;
and
- (b) in paragraph (b), after “section 386AF(4),”, insert “(4A),”.

5

Amendment of section 386AF

4. In the Companies Act 1967, in section 386AF —

(a) in subsections (1) and (4), after “31 March 2017”, insert “but before the appointed day,”;

10

(b) after subsection (1), insert —

“(1A) A company incorporated on or after the appointed day must keep a register of its registrable controllers starting on the date of the company’s incorporation.”;

15

(c) after subsection (4), insert —

“(4A) A foreign company registered under Division 2 of Part 11 on or after the appointed day must keep a register of its registrable controllers starting on the date of the foreign company’s registration.”;

20

(d) in subsection (12)(a), after “subsection (1),”, insert “(1A),”;

(e) in subsection (13)(a), after “subsection (4),”, insert “(4A),”; and

25

(f) after subsection (13), insert —

“(14) In this section, “appointed day” means the date of commencement of section 4 of the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Act 2024.”.

30

Amendment of section 386AFA

5. In the Companies Act 1967, in section 386AFA(9), replace “386AH(1), 386AI(1)” with “386AH(1) or (7), 386AI(1), 386AIA(1) or (6)”.

New section 386AIA

6. In the Companies Act 1967, after section 386AI, insert —

“Duty of company and foreign company to ensure information in register is up-to-date and correct

10 **386AIA.**—(1) A company or foreign company must, at the prescribed frequency, give a notice to each registrable controller whose particulars are stated in the company’s or foreign company’s register of controllers for the following purposes:

15 (a) to require the registrable controller to confirm whether or not a relevant change has occurred and, if the change has occurred, to —

(i) state the date of the change; and

(ii) provide the particulars of the change;

20 (b) to require the registrable controller to confirm whether the stated particulars of the registrable controller are correct and, if not, to provide the correct particulars.

(2) The notice mentioned in subsection (1) must —

25 (a) state that the addressee must comply with the notice not later than the time specified for compliance (which must be the prescribed time); and

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

30 (3) An addressee of a notice under subsection (1) must comply with the notice no later than the time specified in the notice for compliance.

(4) If a company or foreign company fails to comply with subsection (1) or (2), the company or foreign company, and

every officer of the company or foreign company who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$25,000.

(5) An addressee of a notice under subsection (1) who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(6) For the purposes of this section, a relevant change occurs if —

(a) the registrable controller ceases to be one in relation to the company or foreign company, as the case may be; or

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

Replacement of section 386AKA

7. In the Companies Act 1967, replace section 386AKA with —

“Register of nominee directors

386AKA.—(1) A company or foreign company registered under Division 2 of Part 11 must keep a register of its directors who are nominees (called in this Part the register of nominee directors) in the prescribed form and at the prescribed place.

(2) Subject to section 386AM, a company or foreign company must not disclose, or make available for inspection, the register of nominee directors or any particulars contained in the register of nominee directors to any member of the public.

(3) A company or foreign company must, within 7 days after the company or foreign company is informed of any fact and provided with any particulars mentioned in section 386AL(1), (1A), (2), (4) or (5), enter that fact and those particulars in its register of nominee directors.

(4) A company or foreign company must, within 7 days after the company or foreign company is informed under

section 386AL(3)(a) or (5A)(a) that a director of the company or foreign company has ceased to be a nominee, enter the following in the company's or foreign company's register of nominee directors:

- 5 (a) the fact that the director has ceased to be a nominee;
 (b) the date on which the director ceased to be a nominee.

(5) A company or foreign company must, within 7 days after the company or foreign company is informed under section 386AL(3)(b) or (5A)(b) of any change to the
 10 particulars of a person for whom a director of the company or foreign company is a nominee, enter the following in the company's or foreign company's register of nominee directors:

- (a) the new particulars of that person;
 (b) the date on which the particulars of that person
 15 changed.

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

Amendment of section 386AL

8. In the Companies Act 1967, in section 386AL —

- (a) in subsection (1), after “31 March 2017”, insert “but before the appointed day”;
- 25 (b) in subsection (1)(a), after “who is a nominee”, insert “on the date of incorporation”;
- (c) in subsection (1)(a), replace “; and” at the end with “; or”;
- (d) in subsection (1)(b), after “who becomes a nominee”, insert “after the date of incorporation”;
- 30 (e) after subsection (1), insert —
- “(1A) A director of a company incorporated on or after the appointed day —

- (a) who is a nominee on the date of incorporation must inform the company of that fact and provide prescribed particulars of the person for whom the director is a nominee on that date; or 5
- (b) who becomes a nominee after the date of incorporation must inform the company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.”; 10
- (f) in subsection (2), delete paragraph (a);
- (g) in subsection (2)(b), after “who becomes a nominee”, insert “after 31 March 2017”;
- (h) replace subsection (3) with — 15
- “*(3)* A director of a company (whether incorporated before, on or after the appointed day) must inform the company —
- (a) that he or she ceases to be a nominee within 30 days after the cessation; and 20
- (b) of any change to the particulars provided to the company under this section (whether as in force on or before the appointed day) within 30 days after the change.”;
- (i) after subsection (3), insert — 25
- “*(4)* A director of a foreign company registered under Division 2 of Part 11 on or after the appointed day —
- (a) who is a nominee on the date of registration must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee on that date; or 30

(b) who becomes a nominee after the date of registration must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

(5) A director of a foreign company registered under Division 2 of Part 11 before the appointed day —

(a) who is a nominee on the appointed day must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 60 days after that day; or

(b) who becomes a nominee after the appointed day must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

(5A) A director of a foreign company mentioned in subsection (4) or (5) must inform the foreign company —

(a) that he or she ceases to be a nominee within 30 days after the cessation; and

(b) of any change to the particulars provided to the foreign company under that subsection within 30 days after the change.”;

(j) replace subsection (6) with —

“(6) If a director fails to comply with subsection (1), (1A), (2), (3), (4), (5) or (5A), the director shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.”; and

(k) after subsection (8), insert —

“(9) In this section, “appointed day” means the date of commencement of section 8 of the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Act 2024.”.

5

Amendment of section 386ALA

9. In the Companies Act 1967, in section 386ALA(2), replace “section 386ALB(1), (2), (3) or (4)” with “section 386ALB(1), (1A), (2), (3), (3A) or (4)”.

Amendment of section 386ALB

10

10. In the Companies Act 1967, in section 386ALB —

(a) in subsections (1) and (3), replace “on or after the appointed day” with “on or after 4 October 2022 but before the appointed day”;

(b) after subsection (1), insert —

15

“(1A) A shareholder of a company incorporated on or after the appointed day —

(a) who is a nominee on the date of incorporation must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, on that date; or

20

(b) who becomes a nominee after the date of incorporation must inform the company of that fact, and provide to the company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.”;

25

30

(c) in subsection (2), delete paragraph (a);

(d) in subsections (2) and (4), replace “the appointed day” wherever it appears with “4 October 2022”;

(e) after subsection (3), insert —

5

“(3A) A shareholder of a foreign company registered under Division 2 of Part 11 on or after the appointed day —

10

(a) who is a nominee on the date of registration must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, on that date; or

15

(b) who becomes a nominee after the date of registration must inform the foreign company of that fact, and provide to the foreign company prescribed particulars of the person for whom the shareholder is a nominee, within 30 days after the date on which the shareholder becomes a nominee.”;

20

(f) in subsection (4), delete paragraph (a);

(g) replace subsections (5), (6) and (7) with —

25

“(5) A shareholder of a company or foreign company (whether incorporated or registered before, on or after the appointed day) must —

30

(a) within 30 days after the shareholder ceases to be a nominee, inform the company or foreign company of the fact that the shareholder has ceased to be a nominee; and

(b) within 30 days after any change to the particulars provided to the company or foreign company under this section (whether as in force on or before the

appointed day) inform the company or foreign company of the change.

(6) If a shareholder of a company or foreign company (as the case may be) fails to comply with subsection (1), (1A), (2), (3), (3A), (4) or (5), the shareholder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

5

(7) In this section and section 386ALA, a shareholder of a company or foreign company is a nominee if the shareholder satisfies either or both of the following:

10

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

15

(b) the shareholder receives dividends, in respect of shares in the company or foreign company of which the shareholder is the registered holder, on behalf of any other person.

20

(7A) In this section, a shareholder of a company incorporated before the appointed day or of a foreign company registered under Division 2 of Part 11 before that day, who, on that day —

25

(a) was not a nominee within the meaning of subsection (7) as in force immediately before that day; but

30

(b) is a nominee within the meaning of that subsection as in force on that day,

is treated as a shareholder of the company or foreign company who becomes a nominee on the appointed day.”; and

35

(h) in subsection (8), replace the definition of “appointed day” with —

5 ““appointed day” means the date of commencement of section 10 of the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Act 2024;”.

Amendment of section 386AM

10 **11.** In the Companies Act 1967, in section 386AM, after subsection (4), insert —

15 “(4A) A person who, in complying with a requirement imposed, or in answering an inquiry made, under subsection (1) or (2), provides any information that is false or misleading in a material particular to the Registrar or an officer of the Authority, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

20 (4B) In proceedings for an offence under subsection (4A), it is a defence to the charge for the accused to prove, on a balance of probabilities, that the accused took all reasonable steps and exercised all due diligence to ensure that the information provided was not false or misleading.”.

Amendment of section 386AN

25 **12.** In the Companies Act 1967, in section 386AN, replace subsection (5) with —

“(5) Subject to subsection (6), the Registrar must not disclose, or make available for inspection, the central register of controllers of companies and foreign companies kept by the Registrar under this section to any member of the public.

30 (6) The Registrar may disclose prescribed information in the central register of controllers of companies and foreign companies to prescribed persons under prescribed circumstances.

(7) To avoid doubt, different information and persons may be prescribed under subsection (6) for different prescribed circumstances.”.

New section 386ANA

13. In the Companies Act 1967, after section 386AN, insert — 5

“Central registers of nominee directors and nominee shareholders

386ANA.—(1) The Registrar must keep a central register of nominee directors and a central register of nominee shareholders consisting of the particulars contained in the registers kept by companies and foreign companies to which this Part applies. 10

(2) A company or foreign company to which this Part applies must lodge with the Registrar —

(a) all particulars contained in the company’s or foreign company’s register of nominee directors maintained under section 386AKA; 15

(b) all updates to that register that occur after the lodgment of the particulars under paragraph (a);

(c) all particulars contained in the company’s or foreign company’s register of nominee shareholders maintained under section 386ALA; and 20

(d) all updates to that register that occur after the lodgment of the particulars under paragraph (c).

(3) The company or foreign company must lodge the particulars, matters and updates in the prescribed form and manner and within the prescribed time. 25

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

(5) Subject to subsection (6), the Registrar must not disclose, or make available for inspection, the central register of nominee

directors or the central register of nominee shareholders kept by the Registrar under this section to any member of the public.

(6) The Registrar may disclose prescribed information in the central register of nominee directors or the central register of nominee shareholders to prescribed persons under prescribed circumstances.

(7) To avoid doubt, different information and persons may be prescribed under subsection (6) for different prescribed circumstances.”.

Miscellaneous amendments

14. In the Companies Act 1967, in the following provisions, replace “\$5,000” with “\$25,000”:

Section 386AF(12) and (13)

Section 386AFA(7)

Section 386AG(5) and (7)

Section 386AH(5) and (6)

Section 386AI(5) and (6)

Section 386AJ(4)

Section 386AK(4)

Section 386ALA(6)

Section 386AM(4)

Section 386AN(4).

PART 2

AMENDMENT OF

LIMITED LIABILITY PARTNERSHIPS ACT 2005

Amendment of section 43

15. In the Limited Liability Partnerships Act 2005 (called in this Part the LLP Act), in section 43, in the definition of “register of controllers” or “register”, after “section 47(1),”, insert “(1A),”.

Amendment of section 47

16. In the LLP Act, in section 47 —

(a) in subsection (1), after “31 March 2017”, insert “but before the appointed day,”;

(b) after subsection (1), insert —

“(1A) A limited liability partnership registered under this Act on or after the appointed day must keep a register of its registrable controllers starting on the date of its registration.”;

(c) in subsection (9)(a), after “subsection (1),”, insert “(1A),”; and

(d) after subsection (9), insert —

“(10) In this section, “appointed day” means the date of commencement of section 16 of the Companies and Limited Liability Partnerships (Miscellaneous Amendments) Act 2024.”.

Amendment of section 47A

17. In the LLP Act, in section 47A(9), replace “49(1), 50(1)” with “49(1) or (7), 50(1), 50A(1) or (6)”.

New section 50A

18. In the LLP Act, after section 50, insert —

“Limited liability partnership’s duty to ensure information in register is up-to-date and correct

50A.—(1) A limited liability partnership must, at the prescribed frequency, give a notice to each registrable controller whose particulars are stated in the limited liability partnership’s register of controllers for the following purposes:

(a) to require the registrable controller to confirm whether or not a relevant change has occurred and, if the change has occurred, to —

(i) state the date of the change; and

(ii) provide the particulars of the change;

(b) to require the registrable controller to confirm whether the stated particulars of the registrable controller are correct and, if not, to provide the correct particulars.

5

(2) The notice mentioned in subsection (1) must —

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

10

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

(3) An addressee of a notice under subsection (1) must comply with the notice no later than the time specified in the notice for compliance.

15

(4) If a limited liability partnership fails to comply with subsection (1) or (2), the limited liability partnership, and every partner of the limited liability partnership who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$25,000.

20

(5) An addressee of a notice under subsection (1) who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

(6) For the purposes of this section, a relevant change occurs if —

25

(a) the registrable controller ceases to be one in relation to the limited liability partnership; or

(b) any other change occurs as a result of which the particulars of the registrable controller stated in the limited liability partnership's register of controllers are incorrect or incomplete.”.

30

Amendment of section 53

19. In the LLP Act, in section 53, after subsection (4), insert —

“(4A) Despite section 79, a person who, in complying with a requirement imposed, or in answering an inquiry made, under subsection (1) or (2), provides any information that is false or misleading in a material particular to the Registrar or an officer of the Authority, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.” 5

(4B) In proceedings for an offence under subsection (4A), it is a defence to the charge for the accused to prove, on a balance of probabilities, that the accused took all reasonable steps and exercised all due diligence to ensure that the information provided was not false or misleading.” 10

Amendment of section 54

20. In the LLP Act, in section 54, replace subsection (5) with —

“(5) Subject to subsection (6), the Registrar must not disclose, or make available for inspection, the central register of controllers of limited liability partnerships kept by the Registrar under this section to any member of the public. 15

(6) The Registrar may disclose prescribed information in the central register of controllers of limited liability partnerships to prescribed persons under prescribed circumstances. 20

(7) To avoid doubt, different information and persons may be prescribed under subsection (6) for different prescribed circumstances.”.

Miscellaneous amendments

21. In the LLP Act, in the following provisions, replace “\$5,000” with “\$25,000”: 25

Section 47(9)

Section 47A(7)

Section 48(5) and (7)

Section 49(5) and (6)

Section 50(5) and (6) 30

Section 51(4)

Section 52(4)

Section 53(4)

Section 54(4).

EXPLANATORY STATEMENT

This Bill seeks to amend the Companies Act 1967 and the Limited Liability Partnerships Act 2005 to require companies, foreign companies and limited liability partnerships to take certain measures to ensure that the particulars of their controllers are up-to-date and correct. The Bill also makes other amendments to those Acts.

Part 1 (clauses 2 to 14) sets out the amendments to the Companies Act 1967.

Part 2 (clauses 15 to 21) sets out the amendments to the Limited Liability Partnerships Act 2005.

Clause 1 relates to the short title and commencement.

PART 1

AMENDMENT OF COMPANIES ACT 1967

Clause 2 inserts a new section 374 to require a foreign company to lodge with the Registrar of Companies (the Registrar) a return containing prescribed information relating to the foreign company's keeping of its register of controllers, register of nominee directors and register of nominee shareholders. The foreign company must lodge the return at the time when making a lodgment under section 373(1) of its financial statements or other document allowed by the Registrar under section 373(13)(b).

Section 373(13)(b) is a new provision that is to be inserted under clause 48 of the ACRA (Registry and Regulatory Enhancements) Bill, which is to be introduced in the same Parliament sitting as this Bill. Clause 48 of the ACRA (Registry and Regulatory Enhancements) Bill will be brought into force before clause 2 of this Bill.

Clause 3 makes consequential amendments to section 386AB arising from the amendments to section 386AF under clause 4.

Clause 4 amends section 386AF to insert new subsections (1A), (4A) and (14).

The new subsection (1A) requires a company that is incorporated on or after the appointed day to keep a register of its registrable controllers starting on the date of the company's incorporation.

The new subsection (4A) requires a foreign company that is registered under Division 2 of Part 11 on or after the appointed day to keep a register of its registrable controllers starting on the date of the foreign company's registration.

Section 386AF(12) and (13) is amended to make a company or foreign company that fails to comply with the new subsection (1A) or (4A) guilty of an offence.

The new subsection (14) defines "appointed day", that is mentioned in the new subsections (1A) and (4A), to mean the date of commencement of clause 4.

Clause 5 amends section 386AFA so that a reference to a registrable controller in the new section 386AIA(1) or (6) (which is inserted under clause 6) does not include a director or chief executive officer who is taken to be a registrable controller under section 386AFA(2).

Clause 6 inserts a new section 386AIA to require companies and foreign companies to take certain measures to ensure that the particulars of their registrable controllers are up-to-date and correct.

Under the new section 386AIA(1), a company or foreign company must, at the prescribed frequency, give a notice to each registrable controller whose particulars are stated in the company's or foreign company's register of controllers to —

- (a) confirm whether or not a relevant change has occurred and, if so, to provide particulars of the relevant change; and
- (b) confirm whether the particulars of the registrable controller stated in the register of controllers are correct and, if not, to provide the correct particulars.

The new section 386AIA(2) sets out the requirements of the notice to each registrable controller.

Under the new section 386AIA(3), an addressee of a notice mentioned in the new section 386AIA(1) must comply with the notice no later than the time specified in the notice for compliance.

Under the new section 386AIA(4), a company or foreign company which fails to comply with the new section 386AIA(1) or (2), and every officer of the company or foreign company who is in default, is each guilty of an offence.

Under the new section 386AIA(5), an addressee of a notice mentioned in the new section 386AIA(1) who fails to comply with the notice is guilty of an offence.

The new section 386AIA(6) sets out the circumstances under which a relevant change occurs, for the purposes of the new section 386AIA.

Clause 7 replaces section 386AKA. The existing section 386AKA requires a company to keep a register of nominee directors. The new section 386AKA imposes that requirement on both companies and foreign companies.

Under the new section 386AKA(1), a company or foreign company must keep a register of its nominee directors in the prescribed form and at the prescribed place.

The new section 386AKA(2) states that, subject to section 386AM (Power to enforce), a company or foreign company must not disclose, or make available for inspection, the register of nominee directors or any particulars contained in the register of nominee directors to any member of the public.

Under the new section 386AKA(3), (4) and (5), a company or foreign company, in keeping its register of nominee directors, must —

- (a) within 7 days after it is informed of any fact and provided with any particulars mentioned in section 386AL(1), (1A), (2), (4) or (5), enter that fact and those particulars in its register of nominee directors;
- (b) within 7 days after the company or foreign company is informed under section 386AL(3)(a) or (5A)(a) that a director of the company or foreign company has ceased to be a nominee, enter that fact and the date on which the director ceases to be a nominee in its register of nominee directors; and
- (c) within 7 days after the company or foreign company is informed under section 386AL(3)(b) or (5A)(b) of any change to the particulars of a person for whom a director of the company or foreign company is a nominee, enter the new particulars and the date on which the particulars of the person changed into its register of nominee directors.

Under the new section 386AKA(6), a company or foreign company which fails to comply with the new section 386AKA(1), (2), (3), (4) or (5), and every officer of the company or foreign company who is in default, is each guilty of an offence.

Clause 8 amends section 386AL to insert new subsections (1A), (4), (5), (5A) and (9), replace subsections (3) and (6) and delete subsection (2)(a) as it is spent.

The existing section 386AL imposes requirements on nominee directors of companies. The amendments seek to impose those same requirements on nominee directors of foreign companies.

Under the new subsections (1A) and (4), a director of a company or foreign company that is incorporated or registered (as the case may be) on or after the appointed day —

- (a) who is a nominee on the date of incorporation or registration, must inform the company or foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee on that date; or
- (b) who becomes a nominee after the date of incorporation or registration, must inform the company or foreign company of the fact and provide the prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

Under the new subsection (3), a director of a company (whether incorporated before, on or after the appointed day) must inform the company that he or she has ceased to be a nominee or of any change to the particulars provided by the director to the company under section 386AL (whether as in force on or before the appointed day) within 30 days after the cessation or change.

Under the new subsection (5), a director of a foreign company that is registered before the appointed day —

- (a) who is a nominee on the appointed day must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director becomes a nominee within 60 days after the appointed day; or
- (b) who becomes a nominee after the appointed day must inform the foreign company of that fact and provide prescribed particulars of the person for whom the director is a nominee within 30 days after the director becomes a nominee.

Under the new subsection (5A), a director of a foreign company mentioned in the new subsection (4) or (5) must inform the foreign company that he or she has ceased to be a nominee or of any change to the particulars provided by the director to the foreign company under the new subsection (4) or (5), within 30 days after the cessation or change.

Under the new subsection (6), the offence under the existing subsection (6) is expanded to include the failure by a director of a company or foreign company to comply with subsection (1A), (4), (5) or (5A). The maximum fine amount for the offence is also increased from \$5,000 (under the existing subsection (6)) to \$25,000.

The new subsection (9) defines “appointed day”, that is mentioned in the new subsections (1A), (4) and (5), to mean the date of commencement of clause 8.

Clause 9 makes a consequential amendment to section 386ALA arising from the amendments to section 386ALB under clause 10.

Clause 10 amends section 386ALB to insert new subsections (1A), (3A) and (7A), replace subsections (5), (6) and (7) and delete subsections (2)(a) and (4)(a) as they are spent.

Under the new subsections (1A) and (3A), a shareholder of a company or foreign company that is incorporated or registered (as the case may be) on or after the appointed day —

- (a) who is a nominee on the date of incorporation or registration, must inform the company or foreign company of that fact, and provide prescribed particulars of the person for whom the shareholder is a nominee, on that date; or
- (b) who becomes a nominee after the date of incorporation or registration, must inform the company or foreign company of that fact, and provide the prescribed particulars of the person for whom the shareholder becomes a nominee, within 30 days after the shareholder becomes a nominee.

Under the new subsection (5), a shareholder of a company or foreign company (whether incorporated or registered before, on or after the appointed day) must inform the company or foreign company that he or she has ceased to be a nominee or of any change to the particulars provided by the shareholder to the company or foreign company under this section (whether as in force on or before the appointed day) within 30 days of the cessation or change.

Under the new subsection (6), the offence under the existing subsection (6) is expanded to include the failure by a shareholder of a company or foreign company to comply with subsection (1A) or (3A). The maximum fine amount for the offence is also increased from \$5,000 (under the existing subsection (6)) to \$25,000.

Under the new subsection (7), a shareholder of a company or foreign company is a nominee if the shareholder satisfies either or both of the following:

- (a) the shareholder is accustomed or under an obligation whether formal or informal to vote, in respect of shares in the company or foreign company of which the shareholder is the registered holder, in accordance with the directions, instructions or wishes of any other person;
- (b) the shareholder receives dividends, in respect of shares in the company or foreign company of which the shareholder is the registered holder, on behalf of any other person.

The new subsection (7A) provides that a shareholder of a company or foreign company who, on the appointed day, was not a nominee under the existing subsection (7) but is a nominee under the new subsection (7), is treated as a

shareholder of the company or foreign company who becomes a nominee on the appointed day.

Clause 10 also replaces the definition of “appointed day” in subsection (8), as the previous definition of “appointed day” is spent. The new definition of “appointed day” means the date of commencement of clause 10.

Clause 11 amends section 386AM to insert new subsections (4A) and (4B).

Under the new subsection (4A), a person who, in complying with a requirement imposed, or in answering an inquiry made, under subsection (1) or (2), provides any information that is false or misleading in a material particular to the Registrar or an officer of the Accounting and Corporate Regulatory Authority (the Authority), is guilty of an offence.

Under the new subsection (4B), in proceedings for an offence under the new subsection (4A), it is a defence to the charge for the accused to prove, on a balance of probabilities, that the accused took all reasonable steps and exercised all due diligence to ensure that the information provided was not false or misleading.

Clause 12 amends section 386AN to replace subsection (5) and insert new subsections (6) and (7).

Under the new subsection (5), the Registrar must not disclose or make available for inspection, the central register of controllers of companies and foreign companies kept by the Registrar under section 386AN to any member of the public. This new subsection is subject to the new subsection (6).

Under the new subsection (6), the Registrar may disclose prescribed information in the central register of controllers of companies and foreign companies to prescribed persons under prescribed circumstances.

The new subsection (7) makes clear that different information and persons may be prescribed under the new subsection (6) for different prescribed circumstances.

Clause 13 inserts a new section 386ANA.

The new section 386ANA(1) requires the Registrar to keep a central register of nominee directors and a central register of nominee shareholders consisting of the particulars contained in the registers of nominee directors and nominee shareholders kept by companies and foreign companies under Part 11A.

Under the new section 386ANA(2) and (3), a company or foreign company must lodge with the Registrar all of the following information in the prescribed form and manner and within the prescribed time:

- (a) all particulars contained in the company’s or foreign company’s register of nominee directors maintained under section 386AKA;
- (b) all updates to that register that occur after the lodgment of those particulars;

- (c) all particulars contained in the company's or foreign company's register of nominee shareholders maintained under section 386ALA;
- (d) all updates to that register that occur after the lodgment of those particulars.

Under the new section 386ANA(4), a company or foreign company which fails to comply with the new section 386ANA(2) or (3), and every officer of the company or foreign company who is in default, is guilty of an offence.

Under the new section 386ANA(5), the Registrar must not disclose or make available for inspection, the central register of nominee directors or the central register of nominee shareholders kept by the Registrar to any member of the public. This new subsection is subject to the new subsection (6).

Under the new section 386ANA(6), the Registrar may disclose prescribed information in the central register of nominee directors or the central register of nominee shareholders to prescribed persons under prescribed circumstances.

The new section 386ANA(7) makes clear that different information and persons may be prescribed under the new section 386ANA(6) for different prescribed circumstances.

Clause 14 makes miscellaneous amendments to certain provisions to increase the maximum fine in those provisions from \$5,000 to \$25,000.

PART 2

AMENDMENT OF LIMITED LIABILITY PARTNERSHIPS ACT 2005

Clause 15 makes a consequential amendment to section 43 arising from the amendments to section 47 under clause 16.

Clause 16 amends section 47 to insert new subsections (1A) and (10).

Under the new subsection (1A), a limited liability partnership registered on or after the appointed day must keep a register of its registrable controllers starting on the date of its registration.

Subsection (9)(a) is amended to expand the offence under subsection (9) to include a failure by a limited liability partnership to comply with the new subsection (1A).

The new subsection (10) defines "appointed day" to mean the date of commencement of clause 16.

Clause 17 amends section 47A(9) so that a reference to a registrable controller in the new section 50A(1) or (6) (which is inserted under clause 18) does not include a partner who is taken to be a registrable controller under section 47A(2).

Clause 18 inserts a new section 50A to require limited liability partnerships to take certain measures to ensure that the particulars of their registrable controllers are up-to-date and correct.

Under the new section 50A(1), a limited liability partnership must, at the prescribed frequency, give a notice to each registrable controller whose particulars are stated in the limited liability partnership's register of controllers to —

- (a) confirm whether a relevant change has occurred and, if so, to provide particulars of the relevant change; and
- (b) confirm whether the particulars of the registrable controller stated in the register of controllers are correct and, if not, to provide the correct particulars.

The new section 50A(2) sets out the requirements of the notice to each registrable controller.

Under the new section 50A(3), an addressee of a notice mentioned in the new section 50A(1) must comply with the notice no later than the time specified in the notice for compliance.

Under the new section 50A(4), a limited liability partnership which fails to comply with the new section 50A(1) or (2), and every partner of the limited liability partnership who is in default, is guilty of an offence.

Under the new section 50A(5), an addressee of the notice mentioned in the new section 50A(1) who fails to comply with the notice is guilty of an offence.

The new section 50A(6) sets out the circumstances under which a relevant change occurs, for the purposes of the new section 50A.

Clause 19 amends section 53 to insert new subsections (4A) and (4B).

Under the new subsection (4A), despite section 79, a person who, in complying with a requirement imposed, or in answering an inquiry made, under subsection (1) or (2), provides any information that is false or misleading in a material particular to the Registrar of Limited Liability Partnerships (the LLP Registrar) or an officer of the Authority, is guilty of an offence.

Under the new subsection (4B), in proceedings for an offence under the new subsection (4A), it is a defence to the charge for the accused to prove, on a balance of probabilities, that the accused took all reasonable steps and exercised all due diligence to ensure that the information provided was not false or misleading.

Clause 20 amends section 54 to replace subsection (5) and insert new subsections (6) and (7).

Under the new subsection (5), the LLP Registrar must not disclose or make available for inspection, the central register of controllers of limited liability

partnerships kept by the LLP Registrar under section 54 to any member of the public. This new subsection is subject to the new subsection (6).

Under the new subsection (6), the LLP Registrar may disclose prescribed information in the central register of controllers of limited liability partnerships to prescribed persons under prescribed circumstances.

The new subsection (7) makes clear that different information and persons may be prescribed under the new subsection (6) for different prescribed circumstances.

Clause 21 makes miscellaneous amendments to certain provisions to increase the maximum fine in those provisions from \$5,000 to \$25,000.

EXPENDITURE OF PUBLIC MONEY

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