

# **Accounting and Corporate Regulatory Authority (Amendment) Bill**

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**Bill No. 8/2014.**

*Read the first time on 17th February 2014.*

A BILL

*i n t i t u l e d*

An Act to amend the Accounting and Corporate Regulatory Authority Act (Chapter 2A of the 2005 Revised Edition) and to make consequential and related amendments to certain other written laws.

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 may be cited as the Accounting and Corporate Regulatory Authority (Amendment) Act 2014 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

## Amendment of section 5

2. Section 5 of the Accounting and Corporate Regulatory Authority Act (referred to in this Act as the principal Act) is amended —

(a) by deleting the words “the designated” in subsection (2)(a) and (b) and substituting in each case the words “each designated”; and

(b) by deleting subsection (5) and substituting the following subsection:

“(5) In subsection (2), “designated professional accountancy body” means a body specified in the Fourth Schedule.”.

## Amendment of section 11

3. Section 11(1) of the principal Act is amended by deleting the words “in good faith done or intended to be done” and substituting the words “done or intended to be done in good faith and with reasonable care”.

## Amendment of section 13

4. Section 13 of the principal Act is amended —

(a) by deleting paragraph (b) and substituting the following paragraph:

“(b) all fees and other sums collected by the Authority or its officers under any written law unless otherwise expressly provided in subsection (2) or that other written law;”;

(b) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsections:

“(2) The following sums collected on or after the date of commencement of section 4 of the Accounting and Corporate Regulatory Authority (Amendment) Act 2014 by the Authority or any of its officers under this Act and any written law specified in the Second Schedule shall be paid into the Consolidated Fund:

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(a) any penalty for late payment or late filing;

(b) any financial penalty, and interest for late payment of the financial penalty;

(c) any sum for the composition of any offence.

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(3) The Authority may recover on behalf of the Government any sum referred to in subsection (2)(a), (b) or (c) as though the sum were a civil debt due to the Authority.

(4) The Authority may waive, refund or remit, wholly or in part, any fee that is paid or is payable to the Authority under any written law and which forms or would form part of the funds and property of the Authority under subsection (1).”.

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## **New Part VIA**

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**5.** The principal Act is amended by inserting, immediately after section 28, the following Part:

### **“PART VIA**

#### **ELECTRONIC TRANSACTION SYSTEM, REGISTERED FILING AGENTS AND REGISTERED QUALIFIED INDIVIDUALS**

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### **Interpretation of this Part**

**28A.** In this Part, unless the context otherwise requires —

“Chief Executive” includes an officer of the Authority authorised by the Chief Executive to exercise a power, function or duty of the Chief Executive under this Part;

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“company” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“copy”, in relation to a document, includes a representation of the document in an electronic form;

5 “document” includes any application, form, report, certification, notice, confirmation, declaration, return or other document (whether in electronic form or otherwise) filed or lodged with, or submitted to, the Registrar;

10 “electronic transaction system” means the electronic transaction system established by the Authority under section 28B(1);

“FATF” means the intergovernmental body known as the Financial Action Task Force;

15 “FATF recommendation” means any recommendation relating to the prevention of money laundering and the financing of terrorism adopted by the FATF;

20 “filing agent” means a person who or which, in the course of his or its business, carries out on behalf of any other person any transaction with the Registrar using the electronic transaction system or any other means permitted or directed by the Registrar if the electronic transaction system is unavailable;

25 “malfunction”, in relation to the electronic transaction system, includes any defect or breakdown in that system or in any equipment, software or telecommunication networks used in or in connection with that system;

“qualified individual” means an individual who satisfies such criteria as may be prescribed;

30 “registered filing agent” means a filing agent registered by the Chief Executive under section 28F;

“registered qualified individual” means a qualified individual registered by the Chief Executive under section 28G;

“Registrar” means the Registrar appointed under a scheduled Act;

“scheduled Act” means any of the written laws specified in the Second Schedule;

“transaction”, in relation to the Registrar, means —

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(a) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar, under a scheduled Act;

(b) the making of any application, submission or request to the Registrar under a scheduled Act;

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(c) the provision of any undertaking or declaration to the Registrar under a scheduled Act; and

(d) the extraction, retrieval or accessing of any document, record or information maintained by the Registrar under a scheduled Act.

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### **Establishment of electronic transaction system**

**28B.**—(1) The Authority may establish an electronic transaction system —

(a) to enable any person to carry out any transaction with the Registrar;

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(b) to enable the Registrar to issue any approval, certificate, notice, determination or other document under a scheduled Act;

(c) to enable the Authority to provide a service to the public whereby information relating to transactions with the Registrar is supplied to the public (whether in bulk or otherwise);

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(d) to enable the Authority to provide any other service falling within the Authority’s functions to persons registered or to be registered under a scheduled Act; and

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- (e) for the purposes of, or connected with, the registration of registered filing agents and registered qualified individuals under this Part.

(2) The information that may be provided under the service referred to in subsection (1)(c) —

(a) may include —

- (i) copies or extracts of documents filed or lodged with, submitted to, or issued by, the Registrar;
- (ii) information extracted from documents filed or lodged with, submitted to, or issued by, the Registrar; and
- (iii) collations, summaries, reports or analyses of documents filed or lodged with, submitted to, or issued by, the Registrar;

(b) may consist of, or be derived from, documents filed or lodged with, submitted to, or issued by, the Registrar other than through the electronic transaction system; and

(c) is subject to any restriction relating to confidentiality under a scheduled Act.

(3) Where any transaction with the Registrar can be carried out using the electronic transaction system, the Registrar may refuse to process the transaction unless —

(a) the transaction is carried out in accordance with this Part including the requirements for the use of the system specified in subsection (4);

(b) the transaction meets the requirements prescribed in the scheduled Act in respect of which the transaction is made; and

(c) the fee or penalty payable in respect of the transaction has been paid.

(4) Subject to this Part and any regulations made under section 28J, the Chief Executive may, from time to time,

determine the requirements for the use of the electronic transaction system, which may include —

- (a) terms and conditions of access to, and use of, the electronic transaction system;
  - (b) security and authentication requirements for access to, and use of, the electronic transaction system; 5
  - (c) retention and production of documents supporting or authenticating transactions; and
  - (d) modes of payment for transactions.
- (5) The fees payable — 10
- (a) in respect of any transaction with the Registrar, or for the issue of any approval, certificate, notice, determination or other document under a scheduled Act, referred to in subsection (1)(a) and (b) shall be determined under the scheduled Act in respect of which the transaction was made or the approval, certificate, notice, determination or other document was issued; and 15
  - (b) in respect of any service provided by the Authority referred to in subsection (1)(c) or (d) shall be determined by the Authority. 20
- (6) The Chief Executive must keep a record, in such form as the Chief Executive may determine, of —
- (a) all transactions with the Registrar under the scheduled Acts carried out using the electronic transaction system unless otherwise ordered by an order of the court; and 25
  - (b) all approvals, certificates, notices, determinations and other documents issued under the scheduled Acts through the electronic transaction system.

### **Requirement to use electronic transaction system and agents for use**

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**28C.—**(1) A person who wishes to carry out a transaction with the Registrar —

(a) must do so using the electronic transaction system if required by the Registrar under the scheduled Act to which the transaction relates; or

(b) may do so using the electronic transaction system if permitted by the Registrar under the scheduled Act to which the transaction relates.

(2) A person may carry out a transaction with the Registrar using the electronic transaction system on behalf of another person only if the first-mentioned person is a registered filing agent.

(3) A registered filing agent may carry out a transaction with the Registrar referred to in subsection (2) only if he acts by or through such individuals as may be prescribed under regulations made under section 28J.

(4) Subsection (2) does not apply to such persons, or to such transactions with the Registrar, as may be prescribed.

### **Evidence of transaction on electronic transaction system**

**28D.**—(1) Notwithstanding any other written law or rule of law —

(a) a copy of the whole or any part of any original document that is certified by the Registrar to be a true copy of the whole or the relevant part of the original document shall in any proceedings be admissible in evidence as of equal validity with the original document; and

(b) any document prepared by the Registrar that —

(i) consists of information reproduced or extracted from any original document; and

(ii) contains a statement by the Registrar that the information is a true reproduction or extract of the original document,

is, unless evidence to the contrary is adduced, admissible in evidence in place of and to the same extent as the original document.



(2) In this section, “original document” means a document filed or lodged with, submitted to, or issued by, the Registrar using the electronic transaction system.

**Electronic transaction system malfunction, errors and omissions**

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**28E.**—(1) Notwithstanding any other written law or rule of law, the Registrar may —

- (a) correct any error or omission in any register kept by the Registrar under a scheduled Act;
- (b) correct any error or omission in any document filed or lodged with, or submitted to, the Registrar; and
- (c) supply entries or records omitted to be made in any register referred to in paragraph (a),

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if the error or omission has occurred or arisen as a result of any malfunction of the electronic transaction system.

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(2) The Registrar shall maintain a record of every correction made under subsection (1).

(3) When any error or omission has been corrected under subsection (1), the error or omission shall be deemed not to have occurred.

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(4) The Authority and the Authority’s officers, employees and agents shall not be liable for any loss or damage, suffered by any person by reason of any error or omission —

- (a) if the error or omission had occurred or arisen as a result of any malfunction in the electronic transaction system; and
- (b) if the malfunction in the electronic transaction system had occurred despite the Authority having acted in good faith and with reasonable care to prevent such a malfunction from occurring.

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**Registered filing agents**

**28F.**—(1) An application by a person to be registered as a registered filing agent under this Part, or for the renewal of such registration, shall —

- (a) contain such information and be made in such manner as the Chief Executive may determine;
- (b) be accompanied by a declaration in such form as the Chief Executive may specify; and
- (c) be accompanied by such application and registration fees as may be prescribed.

(2) A person shall not be registered as a registered filing agent, or have his registration renewed, unless —

- (a) the person meets at least one of the following criteria:
  - (i) the person is a registered qualified individual who will carry out, or supervise the carrying out of, transactions with the Registrar;
  - (ii) the person is a partnership, limited liability partnership or limited partnership, in which there is at least one partner who is a registered qualified individual who will be appointed to carry out, or supervise the carrying out of, transactions with the Registrar;
  - (iii) the person employs or engages a registered qualified individual to carry out, or to supervise the carrying out of, transactions with the Registrar;
- (b) the person is one of the following:
  - (i) an individual or a partnership registered as carrying on business under the Business Registration Act (Cap. 32);
  - (ii) a company incorporated under the Companies Act (Cap. 50);

- (iii) a limited liability partnership registered under the Limited Liability Partnerships Act (Cap. 163A);
    - (iv) a limited partnership registered under the Limited Partnerships Act (Cap. 163B);
  - (c) if the person is an individual, he has successfully completed such courses and training as may be prescribed; and 5
  - (d) if the person is not an individual, the directors, the partners, and the individuals directly or indirectly taking part in or concerned in the management, of that person, have successfully completed such courses and training as may be prescribed. 10
- (3) The Chief Executive may refuse to register or renew the registration of a person as a registered filing agent if —
- (a) where the applicant is an individual — 15
    - (i) the applicant has been convicted (whether in Singapore or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more; or
    - (ii) the applicant is an undischarged bankrupt, whether in Singapore or elsewhere; 20
  - (b) where the applicant is not an individual —
    - (i) any director, partner or individual directly or indirectly taking part in or concerned in the management of the applicant has been convicted (whether in Singapore or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more; or 25
    - (ii) any director, partner or individual directly or indirectly taking part in or concerned in the management of the applicant is an undischarged bankrupt, whether in Singapore or elsewhere; or 30

(c) the Chief Executive is otherwise not satisfied that the applicant is a fit and proper person to be so registered, or that any of its directors or partners or any individual directly or indirectly taking part in or concerned in the management of the applicant, is a fit and proper person.

(4) In determining under subsection (3)(c) whether an applicant is a fit and proper person, or whether any of its directors or partners or any individual directly or indirectly taking part in or concerned in the management of the applicant is a fit and proper person, the Chief Executive may consider such factors as may be prescribed.

(5) The Chief Executive shall refuse to register a person as a registered filing agent if —

(a) that person's previous registration as a registered filing agent had been cancelled because of —

(i) a breach of a prescribed term or condition of registration; or

(ii) a failure to pay a financial penalty imposed because of a breach of a prescribed term or condition of registration; and

(b) less than 2 years has elapsed since the date on which the registration was cancelled.

(6) The registration, or renewal of registration, of a registered filing agent shall be valid for such period as the Chief Executive may specify.

(7) An application for the renewal of registration of a registered filing agent must be made not earlier than 60 days before the date of the expiry of registration.

(8) The Chief Executive may impose on any registered filing agent such restrictions pertaining to the use of the electronic transaction system as the Chief Executive thinks fit.

(9) Every registered filing agent shall comply with all of the following:

- (a) a condition to perform such customer due diligence measures to detect or prevent money laundering and the financing of terrorism as may be prescribed;
- (b) a condition to cease to act as filing agent for a person if the registered filing agent is unable to complete the prescribed customer due diligence measures in respect of that person; 5
- (c) a condition to keep, in such manner and for such minimum period as may be prescribed, all records obtained through the prescribed customer due diligence measures, including (but not limited to) all copies or records of any identification document, accounts and business correspondence, as well as the results of any analysis undertaken; 10
- (d) such other terms and conditions of registration as may be prescribed. 15

(10) Without prejudice to subsections (13) and (14), the Chief Executive may cancel the registration of a registered filing agent —

- (a) if the registered filing agent has ceased to meet — 20
  - (i) at least one of the criteria specified under subsection (2)(a) for any period exceeding any grace period permitted under subsection (12); or
  - (ii) at least one of the criteria specified under subsection (2)(b); 25
- (b) if there exists any ground on which the Chief Executive would have been entitled to refuse registration or renewal of registration under subsection (3);
- (c) if the registered filing agent does not do at least one of the following: 30
  - (i) provide the services of a filing agent;
  - (ii) carry out the functions of a filing agent; or

(d) if the registered filing agent applies to the Chief Executive for his registration to be cancelled.

(11) The Chief Executive may refuse to cancel a registered filing agent's registration under subsection (10)(d) if the Chief Executive suspects that the registered filing agent has breached any of the terms and conditions under subsection (9) and until —

(a) the Chief Executive has investigated the suspected breach; and

(b) the Chief Executive —

(i) has determined that there was no breach; or

(ii) has determined that there was a breach and has either —

(A) taken action against the registered filing agent under subsection (13) for the breach; or

(B) decided not to take action against the registered filing agent under subsection (13) for the breach.

(12) Where, after registration, a registered filing agent ceases to meet at least one of the criteria specified under subsection (2)(a), the registered filing agent must meet at least one of those criteria within the earlier of the following:

(a) the 60th day after the date on which the registered filing agent ceased to meet at least one of the criteria under subsection (2)(a);

(b) the date on which the registered filing agent's registration under this section expires.

(13) Where a registered filing agent has breached any term or condition under subsection (9), the Chief Executive may —

(a) cancel the registration of the registered filing agent;

(b) suspend the registration of the registered filing agent for a period not exceeding 12 months;

(c) restrict the registered filing agent's use of the electronic transaction system to such extent as the Chief Executive thinks fit;

(d) require the registered filing agent to pay, within such period as the Chief Executive may specify, a financial penalty not exceeding \$25,000 for each breach of such term or condition; or

(e) censure the registered filing agent.

(14) If the registered filing agent fails to pay the financial penalty required by the Chief Executive within the period specified by the Chief Executive under subsection (13)(d), the Chief Executive may —

(a) cancel the registration of the registered filing agent;

(b) suspend the registration of the registered filing agent for a period not exceeding 12 months; or

(c) restrict the registered filing agent's use of the electronic transaction system to such extent as the Chief Executive thinks fit.

(15) The Chief Executive shall, before taking any action under subsection (10)(a), (b) or (c), (13) or (14) —

(a) give, in such manner as the Chief Executive may determine, the registered filing agent concerned notice of the Chief Executive's intention to do so; and

(b) call upon the registered filing agent concerned to show cause, within such period as the Chief Executive may specify, as to why such action ought not be taken.

### **Registered qualified individuals**

**28G.—**(1) An application to be registered by the Chief Executive as a registered qualified individual, or for the renewal of such registration, shall —

(a) contain such information and be made in such manner as the Chief Executive may determine;

(b) be accompanied by a declaration in such form as the Chief Executive may specify; and

(c) be accompanied by such application and registration fees as may be prescribed.

5 (2) A person shall not be registered as a registered qualified individual, or have his registration as such renewed, unless —

(a) the person is a qualified individual; and

(b) the person has completed such courses and training as may be prescribed.

10 (3) The Chief Executive may refuse to register or renew the registration of an individual as a registered qualified individual if —

(a) the individual has been convicted (whether in Singapore or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more;

(b) the individual is an undischarged bankrupt, whether in Singapore or elsewhere; or

(c) the Chief Executive is otherwise not satisfied that the individual is a fit and proper person to be so registered.

(4) In determining whether an individual is a fit and proper person under subsection (3)(c), the Chief Executive may consider such factors as may be prescribed.

25 (5) The Chief Executive shall refuse to register a person as a registered qualified individual if —

(a) that person's previous registration as a registered qualified individual had been cancelled because of —

(i) a breach of a prescribed term or condition of registration; or

30 (ii) a failure to pay a financial penalty imposed because of a breach of a prescribed term or condition of registration; and



(b) less than 2 years has elapsed since the date on which the registration was cancelled.

(6) The registration, or renewal of registration, of a registered qualified individual shall be valid for such period as the Chief Executive may specify. 5

(7) An application for the renewal of registration of a registered qualified individual must be made not earlier than 60 days before the date of the expiry of registration.

(8) The Chief Executive may impose on any registered qualified individual such restrictions pertaining to the use by that individual of the electronic transaction system as the Chief Executive thinks fit. 10

(9) Every registered qualified individual shall comply with such terms and conditions as may be prescribed.

(10) Without prejudice to subsections (12), (13) and (14), the Chief Executive may cancel the registration of a registered qualified individual — 15

- (a) if the person ceases to be a qualified individual;
- (b) if there exists any ground on which the Chief Executive would have been entitled to refuse registration or renewal of registration under subsection (3); or 20
- (c) if the registered qualified individual applies to the Chief Executive for his registration to be cancelled.

(11) The Chief Executive may refuse to cancel a registered qualified individual's registration under subsection (10)(c) if the Chief Executive suspects that the registered qualified individual has breached any of the terms and conditions prescribed under subsection (9) and until — 25

- (a) the Chief Executive has investigated the suspected breach; and 30
- (b) the Chief Executive —
  - (i) has determined that there was no breach; or

(ii) has determined that there was a breach and has either —

(A) taken action against the registered qualified individual under subsection (12) for the breach; or

(B) decided not to take action against the registered qualified individual under subsection (12) for the breach.

(12) Where a registered qualified individual has breached any term or condition prescribed under subsection (9), the Chief Executive may —

(a) cancel the registration of the registered qualified individual;

(b) suspend the registration of the registered qualified individual for a period not exceeding 12 months;

(c) restrict the registered qualified individual's use of the electronic transaction system to such extent as the Chief Executive thinks fit;

(d) require the registered qualified individual to pay, within such period as the Chief Executive may specify, a financial penalty not exceeding \$10,000 for each breach of such term or condition; or

(e) censure the registered qualified individual.

(13) If the registered qualified individual fails to pay the financial penalty required by the Chief Executive within the period specified by the Chief Executive under subsection (12)(d), the Chief Executive may —

(a) cancel the registration of the registered qualified individual;

(b) suspend the registration of the registered qualified individual for a period not exceeding 12 months; or

- (c) restrict the registered qualified individual's use of the electronic transaction system to such extent as the Chief Executive thinks fit.

(14) Without prejudice to the generality of subsections (10), (12) and (13), the Chief Executive may cancel or suspend the registration of the registered qualified individual if the Chief Executive is satisfied that the registered qualified individual has, in his capacity as a registered qualified individual, made any declaration, statement or undertaking under any scheduled Act —

- (a) that is false or misleading; or
- (b) that the registered qualified individual was not authorised to make.

(15) The Chief Executive shall, before taking any action under subsection (10)(a) or (b), (12), (13) or (14) —

- (a) give, in such manner as the Chief Executive may determine, the registered qualified individual concerned notice of the Chief Executive's intention to do so; and
- (b) call upon the registered qualified individual concerned to show cause, within such period as the Chief Executive may specify, as to why such action ought not be taken.

### **Appeal to Minister**

**28H.**—(1) Where the Chief Executive has —

- (a) refused to register an applicant as a registered filing agent, or to renew his registration, under section 28F; or
- (b) refused to register an applicant as a registered qualified individual, or to renew his registration, under section 28G,

the Chief Executive must give the applicant written notice of the decision and the applicant may, within 30 days after being notified of the Chief Executive's decision to refuse to register or to renew the registration, appeal to the Minister against that decision.

(2) Where the Chief Executive has decided to take any action with respect to a registered filing agent under section 28F(10), (13) or (14), or with respect to a registered qualified individual under section 28G(10), (12), (13) or (14), the Chief Executive must give the registered filing agent or the registered qualified individual, as the case may be, written notice of the decision.

(3) Any —

(a) registered filing agent who is aggrieved by any action taken by the Chief Executive under section 28F(10), (13) or (14); or

(b) registered qualified individual who is aggrieved by any action taken by the Chief Executive under section 28G(10), (12), (13) or (14),

may, within 30 days after being notified of the decision under subsection (2), appeal to the Minister against the Chief Executive's decision.

(4) The Minister may determine an appeal under this section by confirming, varying or reversing the decision of the Chief Executive, and may impose such conditions for the variation or reversal of the Chief Executive's decision as the Minister thinks fit.

(5) The decision of the Minister in any appeal under this section shall be final.

(6) For the purposes of this section and section 28I, a reference to the Minister shall include a reference to such Minister of State for his Ministry as is designated by the Minister to hear an appeal under this section in place of the Minister.

### **Interest for non-payment and recovery of financial penalty**

**28I.**—(1) A registered filing agent or a registered qualified individual who fails to pay any amount of a financial penalty imposed by the Chief Executive under section 28F or 28G (as the case may be), or by the Minister on an appeal under section 28H —

(a) in the case of a registered filing agent —

- (i) within the period specified for payment by the Chief Executive under section 28F(13)(d); or
- (ii) where there is an appeal to the Minister under section 28H, within the time specified for payment by the Minister; and

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(b) in the case of a registered qualified individual —

- (i) within the period specified for payment by the Chief Executive under section 28G(12)(d); or
- (ii) where there is an appeal to the Minister under section 28H, within the time specified for payment by the Minister,

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shall be liable to pay interest at the same rate as for a judgment debt on the unpaid amount.

(2) The liability of a registered filing agent or a registered qualified individual to pay a financial penalty and any interest on the financial penalty under this Part is not affected by his ceasing to be registered as a registered filing agent or registered qualified individual, as the case may be.

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(3) In any proceeding for the recovery of any financial penalty under this Part —

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(a) a certificate purporting to be under the hand of the Chief Executive certifying the amount of the financial penalty that is imposed, and the period specified for payment, by the Chief Executive under section 28F(13)(d) or 28G(12)(d); and

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(b) where there is an appeal to the Minister under section 28H, a certificate purporting to be under the hand of the Minister certifying the amount of financial penalty that is imposed, and the period specified for payment, by the Minister on an appeal under section 28H(4),

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shall be prima facie evidence of the facts stated therein.

(4) The Minister, or an officer authorised by the Minister in that behalf, may waive, remit or refund in whole or in part any financial penalty imposed or interest on the penalty.

### **Regulations for this Part**

**28J.**—(1) The Minister may make such regulations as are necessary or expedient for carrying out the purposes of this Part.

(2) Without prejudice to the generality of subsection (1), such regulations may —

(a) prescribe the individuals by or through whom a registered filing agent who carries out a transaction with the Registrar must act;

(b) prescribe the persons to whom, and the transactions to which, the requirement under section 28C(2) (that a person may carry out a transaction with the Registrar on behalf of another person only if the first-mentioned person is a registered filing agent) does not apply;

(c) prescribe the criteria for qualified individuals;

(d) prescribe the terms and conditions referred to in sections 28F(9) and 28G(9) including —

(i) the duties of registered filing agents and registered qualified individuals to —

(A) ensure proper access and use of the electronic transaction system and (where applicable) supervise agents and employees of the registered filing agents for such purposes;

(B) keep proper records in respect of transactions with the Registrar; and

(C) give the Chief Executive information, access to premises and records, and other reasonable assistance, for the purposes of inspection and monitoring for compliance with such prescribed terms and conditions;

- (ii) requirements in relation to the detection and prevention of money laundering or the financing of terrorism, and for the recording and reporting of transactions suspected of involving money laundering or the financing of terrorism, including any term or condition necessary or expedient to give effect to any relevant FATF recommendation; and 5
  - (iii) the duty of registered filing agents and registered qualified individuals to assess, and to report to the Chief Executive on, their compliance with such terms and conditions; 10
- (e) provide for the application of the terms and conditions prescribed for the purposes of sections 28F(9) and 28G(9) to transactions with the Registrar that are carried out by means other than through the electronic transaction system (whether because of a malfunction of the electronic transaction system or otherwise); 15
- (f) provide for the manner in which any or both of the following may be published: 20
  - (i) any decision of, or action taken by, the Chief Executive under section 28F or 28G;
  - (ii) any determination of the Minister under section 28H;
- (g) prescribe — 25
  - (i) the fees payable for the purposes of this Part and not expressly provided for in section 28B(5);
  - (ii) the penalties payable for the late filing of any document; and
  - (iii) the manner in which such fees and penalties are to be paid; 30
- (h) provide that any contravention of any provision of the regulations, other than a contravention of a term or condition referred to in section 28F(9) or 28G(9), shall

be an offence punishable with a fine not exceeding \$50,000 or with imprisonment for a term not exceeding 3 years or with both;

(i) prescribe anything which may be prescribed under this Part; and

(j) contain such transitional and other supplementary and incidental provisions as appear to the Minister to be appropriate for carrying out the purposes of this Part.”.

### **Amendment of section 30**

**6.** Section 30 of the principal Act is amended —

(a) by deleting the word “name,” wherever it appears in subsections (1) and (2);

(b) by inserting, immediately after the words “to both” in subsection (2), the words “and, in the case of a continuing offence, to a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction”; and

(c) by deleting the words “Name, symbol” in the section heading and substituting the word “Symbol”.

### **New sections 30A and 30B**

**7.** The principal Act is amended by inserting, immediately after section 30, the following sections:

#### **“Use of name, etc., of Authority**

**30A.**—(1) The Authority may conduct its operations under its full name or under the acronym ACRA.

(2) A person other than the Authority shall not use the name of the Authority or the acronym ACRA, or a name or acronym which so resembles the name of the Authority or the acronym ACRA, as is likely to deceive or cause confusion —

(a) in connection with a business, trade, profession or occupation;



(b) as the name, or as part of the name, of any firm, body corporate or institution; or

(c) in relation to —

(i) services or products; or

(ii) the promotion, by any means, of the supply of services or products.

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(3) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction.

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### **False statements**

**30B.** Any person who, in relation to any application under this Act —

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(a) makes any false statement which he knows to be false or does not believe to be true or which he makes recklessly; or

(b) intentionally suppresses any material fact,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.”.

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### **Amendment of section 31**

**8.** Section 31 of the principal Act is amended —

(a) by deleting the words “, on declaration of his office and production to the person against whom he is acting such identification card as the Chief Executive may direct to be carried by officers or employees of the Authority” in subsection (1);

25

(b) by deleting the word “or” at the end of subsection (1)(b);

30

(c) by deleting the full-stop at the end of paragraph (c) of subsection (1) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(d) examine orally any person reasonably believed to be acquainted with the facts or circumstances of the case or with such other matter as the officer or employee may specify, and reduce into writing the answer given or statement made by that person;

(e) take such photographs or video recordings, as the officer or employee thinks necessary, of the premises in which or in connection with which he reasonably believes an offence has been committed and the persons reasonably believed to be acquainted with the facts or circumstances of the case or with such other matter as the officer or employee may specify; and

(f) require the owner or occupier of any premises in which or in connection with which the officer or employee of the Authority reasonably believes an offence has been committed to give the officer or employee access to such premises without charge for the purpose of investigating that offence.”;

(d) by inserting, immediately after subsection (1), the following subsections:

“(1A) The person referred to in subsection (1)(d) shall be bound to state truly what he knows of the facts and circumstances with which he is acquainted except that he need not say anything that might expose him to a criminal charge, penalty or forfeiture.

(1B) A statement made by the person referred to in subsection (1A) shall —

(a) be reduced to writing;

(b) be read over to him;

(c) if he does not understand English, be interpreted for him in a language that he understands; and

(d) after correction, if necessary, be signed by him.

(1C) An officer or employee of the Authority when exercising any power under this Act shall declare his office and shall produce to the person against whom he is acting such identification card as the Chief Executive may direct to be carried by officers or employees of the Authority.

(1D) An officer or employee of the Authority may also, in relation to an investigation into a breach of a term or condition of registration of a registered filing agent or a registered qualified individual under Part VIA, exercise the powers under subsection (1) in the same manner as if the breach of the term or condition of registration were an offence under this Act.”; and

(e) by inserting, immediately after the words “subsection (1)” in subsection (2)(b), the words “or (1D)”.

#### **Amendment of section 34**

9. Section 34(1) of the principal Act is amended —

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

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

“(v) for the purpose of assisting a public officer, or an officer of another statutory board, who is responsible for administering or enforcing any written law, to administer or enforce that written law;

(vi) in connection with any civil proceedings to which the Authority is a party; or

(vii) with a view to the institution, or otherwise for the purposes, of any disciplinary proceedings or

investigation in connection therewith under any written law.”.

### **Amendment of section 36**

5 **10.** Section 36(1) of the principal Act is amended by deleting “\$1,000.” and substituting the following words:

“the lower of the following:

(a) one half of the amount of the maximum fine that is prescribed for the offence;

(b) \$5,000.”.

### 10 **Amendment of section 37**

**11.** Section 37 of the principal Act is amended by deleting the words “First or Second Schedule” and substituting the words “Second and Fourth Schedules”.

### **Amendment of section 38**

15 **12.** Section 38(2) of the principal Act is amended by inserting, immediately after the words “this Act” in paragraph (c), the words “, other than Part VIA,”.

### **New Fourth Schedule**

20 **13.** The principal Act is amended by inserting, immediately after the Third Schedule, the following Schedule:

#### **“FOURTH SCHEDULE**

Sections 5(5) and 37

#### **DESIGNATED ENTITIES**

25 1. Institute of Singapore Chartered Accountants (formerly known as Institute of Certified Public Accountants of Singapore).”.

### **Savings and transitional provision**

**14.** For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such provisions of a savings or transitional nature consequent on the

enactment of that provision, as he may consider necessary or expedient.

### **Consequential and related amendments to other written laws**

**15.** The provisions of the Acts specified in the first column of the Schedule are amended in the manner set out in the second column thereof.

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## **THE SCHEDULE**

Section 15

### **CONSEQUENTIAL AND RELATED AMENDMENTS TO OTHER WRITTEN LAWS**

*First column*

*Second column*

1. Accountants Act  
(Chapter 2, 2005 Ed.)

New section 12A

Insert, immediately after section 12, the following section:

#### **“Electronic transaction system**

**12A.—**(1) The Registrar may —

- (a) require or permit any person to carry out any transaction with the Registrar under this Act; and
- (b) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction referred to in paragraph (a),

using the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act (Cap. 2A).

(2) In this section, “transaction”, in relation to the Registrar, means —

- (a) the filing or lodging of any document with the

THE SCHEDULE — *continued**First column**Second column*

Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;

(b) any making of any application, submission or request to the Registrar;

(c) any provision of any undertaking or declaration to the Registrar; and

(d) any extraction, retrieval or accessing of any document, record or information maintained by the Registrar.”.

## 2. Limited Liability Partnerships

Act

(Chapter 163A, 2006 Ed.)

(a) Section 2(1)

Delete the definition of “prescribed person”.

(b) Sections 41 and 42

Repeal and substitute the following section:

**“Electronic transaction system**

**41.—(1) The Registrar may —**

(a) require or permit any person to carry out any transaction with the Registrar under this Act; and

(b) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction referred to in paragraph (a),

THE SCHEDULE — *continued**First column**Second column*

using the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act (Cap. 2A).

(2) In this section, “transaction”, in relation to the Registrar, means —

- (a) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;
- (b) any making of any application, submission or request to the Registrar;
- (c) any provision of any undertaking or declaration to the Registrar; and
- (d) any extraction, retrieval or accessing of any document, record or information maintained by the Registrar.”.

3. Limited Partnerships Act  
(Chapter 163B, 2010 Ed.)

- (a) Section 2(1) Delete the definition of “prescribed person”.
- (b) Section 22(2) Delete the words “(not being a copy or an extract referred to in section 23(3))”.
- (c) Section 23 Repeal and substitute the following section:

**“Electronic transaction system**

**23.—(1)** The Registrar may —

- (a) require or permit any person to carry out any transaction

THE SCHEDULE — *continued**First column**Second column*

with the Registrar under this Act; and

- (b) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction referred to in paragraph (a),

using the electronic transaction system established under Part VIA of the Accounting and Corporate Regulatory Authority Act (Cap. 2A).

(2) In this section, “transaction”, in relation to the Registrar, means —

- (a) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;
- (b) any making of any application, submission or request to the Registrar;
- (c) any provision of any undertaking or declaration to the Registrar; and
- (d) any extraction, retrieval or accessing of any document, record or information maintained by the Registrar.”.

(d) Section 25

Repeal.

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## EXPLANATORY STATEMENT

This Bill seeks to amend the Accounting and Corporate Regulatory Authority Act (Cap. 2A) —

- (a) to consolidate the provisions relating to the electronic transaction system used for transactions under the Acts administered by the Accounting and Corporate Regulatory Authority (the Authority) under the Accounting and Corporate Regulatory Authority Act;
- (b) to regulate filing agents (that is, persons who in the course of business carry out on behalf of other persons transactions with the respective Registrars under the Acts administered by the Authority) and qualified individuals (that is, individuals whose role is to carry out or supervise the carrying out of transactions with the relevant Registrar), for amongst other things, compliance with the recommendations of the Financial Action Task Force (FATF) relating to company service providers;
- (c) to provide that penalties for late payment or late filing, financial penalties and interest for late payment of financial penalties and compositions sums collected by the Authority under any written law specified in the Second Schedule are to be paid into the Consolidated Fund and to empower the Authority to recover such sums on the Government's behalf;
- (d) to enhance the Authority's exclusive right to its name and the acronym ACRA, or a name or acronym so closely resembling the name or acronym so as to be likely to be mistaken for it;
- (e) to enhance the Authority's powers of enforcement;
- (f) to make it an offence to make false statements and the suppression of material facts in an application under the Act;
- (g) to widen the exceptions to the preservation of secrecy provision;
- (h) to increase the amount which may be collected to compound an offence under the Act;
- (i) to clarify the meaning of the term “designated professional accountancy body” for the purposes of the membership of the Authority;
- (j) to remove the power to amend the First Schedule (Constitution and proceedings of Authority) by order in the *Gazette*; and
- (k) to clarify the scope of the protection from personal liability applicable to a member, an officer, an employee, etc., of the Authority.

The Bill also makes consequential and related amendments to the Accountants Act (Cap. 2), the Limited Liability Partnerships Act (Cap. 163A) and the Limited Partnerships Act (Cap. 163B).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 5 (Constitution of Authority) to define the term “designated professional accountancy body” (whose role is to nominate certain public accountants and other accountants for appointment by the Minister to the Authority) as a body specified in the new Fourth Schedule (inserted by clause 13).

Clause 3 amends subsection (1) of section 11 (Protection from personal liability) to provide that for a member, an officer, an employee, etc., of the Authority to be protected personally against suit and other legal proceedings for anything done or intended to be done in the execution or purported execution of the Act or other written law, the person must not only act in good faith, but also with reasonable care.

Clause 4 amends section 13 (Funds and property of Authority) to provide —

- (a) that the funds of the Authority do not include penalties for late payment or late filing, financial penalties and interest for late payment of financial penalties and compositions sums collected by the Authority or its officers under any written law specified in the Second Schedule but that such sums are to be paid into the Consolidated Fund;
- (b) that the Authority is empowered to recover such sums on behalf of the Government as if the sums were each a civil debt due to the Authority; and
- (c) that the Authority is empowered to waive, refund or remit the fees paid or payable to the Authority under any written law and which form or would form part of the funds and property of the Authority.

Clause 5 inserts new Part VIA (Electronic transaction system, registered filing agents and registered qualified individuals).

The new Part VIA (comprising new sections 28A to 28J) establishes the electronic transaction system to be used to carry out transactions under the Acts administered by the Authority, provides for the conditions of its use, and provides for the regulation of registered filing agents and registered qualified individuals.

The new section 28A (Interpretation of this Part) defines certain terms used in the new Part VIA.

The new section 28B (Establishment of electronic transaction system) empowers the Authority to establish an electronic transaction system, sets out the purposes of the electronic transaction system, sets out the services which may be provided under the electronic transaction system, sets out certain circumstances in which the Chief Executive may refuse to process a transaction on the electronic transaction system, sets out the Chief Executive’s power to determine the requirements for the use of the electronic transaction system and deals with the fees payable in respect of transactions under the Acts administered by the Authority and for services provided by the Authority.

The new section 28C (Requirement to use electronic transaction system and agents for use) —

- (a) sets out the circumstances in which the electronic transaction system may or must be used;
- (b) provides that only a registered filing agent may carry out a transaction with the appropriate Registrar under the Acts administered by the Authority on behalf of another person;
- (c) provides that a registered filing agent may carry out such a transaction with the appropriate Registrar only if the registered filing agent acts by or through such individuals as may be prescribed; and
- (d) provides that the restriction that only a registered filing agent may carry out a transaction with the appropriate Registrar on behalf of another person does not apply to such persons, or to such transactions with the Registrar, as may be prescribed.

The new section 28D (Evidence of transaction on electronic transaction system) sets out the admissibility in evidence of certain documents certified or prepared by the appropriate Registrar under any Act administered by the Authority in place of certain documents filed, lodged, etc., using the electronic transaction system.

The new section 28E (Electronic transaction system malfunction, errors and omissions) sets out the power of the appropriate Registrar under any Act administered by the Authority to correct errors and omissions resulting from a malfunction of the electronic transaction system and the exclusion of liability for such malfunction.

The new section 28F (Registered filing agents) provides for the registration of registered filing agents, the application for registration, the requirements for registration, the grounds on which registration may or must be refused, the validity period of registration, the renewal of registration, the grounds for cancellation of registration, the restrictions on the use of the electronic transaction system, the terms and conditions of registration (including the duty to undertake customer due diligence measures and to keep records of such measures) and the consequences of breach of terms or conditions of registration (which include the imposition of financial penalties of up to \$25,000 per breach).

The new section 28G (Registered qualified individuals) provides for the registration of registered qualified individuals, the application for registration, the requirements for registration, the grounds on which registration may or must be refused, the validity period of registration, the renewal of registration, the grounds for cancellation of registration, the restrictions on the use of the electronic transaction system, the terms and conditions of registration and the consequences of breach of terms or conditions of registration (which include the imposition of financial penalties of up to \$10,000 per breach).

The new section 28H (Appeal to Minister) sets out the right of appeal to the Minister in respect of a person aggrieved by a decision of the Chief Executive under the new sections 28F and 28G. A reference to the Minister under the section and the new section 28I includes a reference to such Minister of State for his Ministry, designated by the Minister to hear an appeal under the section in place of the Minister.

The new section 28I (Interest for non-payment and recovery of financial penalty) provides for interest to be charged for late payment of any financial penalty imposed under the Part and for how the amount of financial penalty and the time for payment may be proved. The section also empowers the Minister or an officer authorised by the Minister in that behalf to waive, remit or refund the financial penalty or interest on the penalty.

The new section 28J (Regulations for this Part) empowers the Minister to make regulations for carrying out the purposes of the new Part VIA.

Clause 6 amends section 30 (Name, symbol or representation of Authority) —

- (a) to restrict that provision to the use of the Authority's symbol or representation, as the use of the Authority's name is now provided for in new section 30A (inserted by clause 7), and to amend the heading of that provision to remove the reference to "name"; and
- (b) to provide that in the case of a continuing offence, the person who is convicted of an offence under section 30(2) is subject to a further fine not exceeding \$250 for every day or part thereof during which the offence continues after conviction.

Clause 7 inserts new sections 30A and 30B.

The new section 30A (Use of name, etc., of Authority) provides that the Authority may conduct its operations under its full name or under the acronym ACRA. It makes it an offence for a person other than the Authority to use, in connection with specified purposes, the name of the Authority, the acronym ACRA, or a name or acronym which so resembles the name of the Authority or the acronym ACRA as is likely to deceive or cause confusion.

The new section 30B (False statements) makes it an offence for a person, in relation to any application under the Act, to deliberately or recklessly make any false statement or to intentionally suppress any material fact.

Clause 8 amends section 31 (Powers of enforcement) to enhance the powers of an officer or employee of the Authority in relation to offences under the Act or under the Acts administered by the Authority. The powers include the power to examine persons orally, to take photographs and video recordings of premises and persons and to require owners and occupiers of premises to give access to the premises for the purpose of investigating offences. The clause also extends the powers of enforcement under section 31(1) to investigations into a breach of a term

or condition of registration of a registered filing agent or of a registered qualified individual. The amendments also set out certain procedural requirements for the exercise of the enforcement powers under section 31.

Clause 9 amends section 34 (Preservation of secrecy) to provide that the prohibition against members, officers, employees, etc., of the Authority from disclosing information relating to the affairs of the Authority, and other persons obtained in the performance of duty or the exercise of functions, does not apply for additional specified purposes. Disclosure will now be permitted for the purpose of assisting public officers and statutory board officers to administer their laws; in connection with civil proceedings to which the Authority is a party; and for the institution, or otherwise for the purposes, of disciplinary proceedings or investigations in connection therewith under any written law.

Clause 10 amends section 36 (Composition of offences) to increase the maximum amount that may be collected to compound an offence from \$1,000 to the lower of the following sums:

- (a) a sum amounting to one half of the amount of the maximum fine that is prescribed for the offence;
- (b) \$5,000.

Clause 11 amends section 37 (Amendment of Schedules) to remove the power of the Minister to amend by order in the *Gazette* the First Schedule (Constitution and proceedings of Authority), and to empower the Minister to amend by order in the *Gazette* the new Fourth Schedule (Designated entities).

Clause 12 amends section 38 (Rules) to provide that the power to make rules in respect of fees to be charged in respect of anything done or any service rendered by the Authority under the Act or any other written law does not apply to Part VIA of the Act (because separate provision is made in Part VIA for the fees payable under that Part).

Clause 13 inserts a new Fourth Schedule (Designated entities) that specifies the Institute of Singapore Chartered Accountants (formerly known as Institute of Certified Public Accountants of Singapore) as a designated entity for the purposes of new section 5(5).

Clause 14 enables the Minister to make regulations to prescribe savings and transitional provisions for a period of 2 years after the date of commencement of any provision of the Bill.

Clause 15 makes consequential and related amendments to the Accountants Act, the Limited Liability Partnerships Act and the Limited Partnerships Act to enable the use of the electronic transaction system established under the new Part VIA to be used for transactions with the Registrars under those Acts in place of (where appropriate) the separate filing services established under those Acts, and to remove obsolete terms and concepts such as “prescribed person”.

## EXPENDITURE OF PUBLIC MONEY

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

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