

Enhancing Transparency of Beneficial Ownership of Hong Kong Companies

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Legislative proposals

- * To amend the Companies Ordinance (Cap.622) (“CO”) to require disclosure of beneficial ownership information by Hong Kong companies.
- * The proposed amendment is necessary in order to fulfill Hong Kong’s international obligation as a member of the Financial Action Task Force (“FATF”).



FATF's Recommendation 24

* The FATF requires member jurisdictions:-

- to take measures to prevent the misuse of legal persons for money laundering and terrorist financing,
- by ensuring that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.



Defining beneficial ownership

- * The FATF defines “beneficial owner” of a legal person as a natural person who ultimately owns or controls the legal person.
- * This may be determined on the basis of a threshold, such as where an individual owns or controls more than 25% of the legal person through direct or indirect shareholding.
- * This may also be determined on the basis of whether an individual exercises control over the management of the legal person through other means.



Hong Kong's present regime (1)

- * CO requires a company incorporated in Hong Kong to keep the following registers at its registered office or a prescribed place :-
 - register of members (section 627)
 - register of directors (section 641)
 - register of company secretaries (section 648)
- * No requirement for disclosure of beneficial ownership



Hong Kong's present regime (2)

- * The exception is in the case of listed corporations which are required under the Securities and Futures Ordinance (Cap.571) to keep a register of those individuals or entities owning 5% or more interests in any voting shares (including any beneficial owner of such shares).
- * The register is open for inspection by the public.



Companies (Amendment) Bill 2017

- * The Government introduced the above Bill into the Legislative Council on 28 June 2017 requiring companies incorporated in Hong Kong to –
 - maintain a Significant Controllers Register (“SCR”), containing required particulars of registrable persons and registrable legal entities; and
 - take reasonable steps to ascertain the persons who have significant control over the company.



Who are significant controllers

- * Registrable person – a natural person who ultimately has significant control over the company.
- * Registrable legal entity – a legal entity (whether or not incorporated in Hong Kong) which has significant control over the company and is a member of the company.



Scope of application

- * All companies incorporated under the CO in Hong Kong, including companies limited by shares, companies limited by guarantee, and unlimited companies.
- * Listed companies will be exempted as they are subject to a more stringent disclosure requirement under the Securities and Futures Ordinance.



Major Obligations and offences (1)

- * A company has in broad terms the following obligations:-
 - keeping the SCR at the company's registered office or a prescribed place;
 - entering the required particulars of its significant controllers in the SCR;
 - taking reasonable steps to ascertain whether or not there is a significant controller;
 - keeping the information in the SCR up-to-date;
 - making the SCR available for inspection and copying by a law enforcement officer and a significant controller.



Major Obligations and offences (2)

- * Failure to comply with the above obligations is a criminal offence for the company and its responsible person(s). The maximum penalty is a fine at level 4 (i.e. \$25,000). Where applicable, there is a further daily fine of \$700.

Duty of keeping a SCR (1)

- * The SCR should contain –
 - required particulars of registrable person.
 - required particulars of registrable legal entity.
 - particulars of any registrable change with respect to each registrable person/ registrable legal entity.

Duty of keeping a SCR (2)

- The name and contact details of a person designated by the company as its representative to provide assistance relating to the SCR to a law enforcement officer.

- The **designated representative** must be one of the following –
 - a member, director or an employee of the company who is a natural person resident in Hong Kong; or
 - an accounting professional, legal professional or a licensed trust or company service provider.



Duty of keeping a SCR (3)

- * Each company shall keep the SCR at its **registered office** or a **prescribed place**.
- * The SCR cannot be empty.
- * A company must keep the SCR even if it does not have a registrable person or registrable legal entity.



Required particulars of registrable person and registrable legal entity (1)

- * the name of the person or legal entity;
- * the number of the identity card, or the number and issuing country of any passport, of the person;
- * the legal form of the legal entity and the company registration number or the equivalent in its place of incorporation or formation;



Required particulars of registrable person and registrable legal entity (2)

- * the correspondence address (excluding post office box number) of the person, and the address of the registered or principal office of the legal entity;
- * the date when the person became a registrable person, and the date when the legal entity became a registrable legal entity; and
- * the nature of the control of the person or of the legal entity over the company in accordance with the specified conditions.



When to enter the required particulars of registrable person and registrable legal entity

- * the required particulars of a registrable person must be entered into the SCR within 7 days after they have all been confirmed by the registrable person.
- * each of the required particulars of a registrable legal entity must be entered into the SCR within 7 days after that particular comes to the notice of the company.



Additional matters to be noted in the PSC register (1)

- * The company is required to note additional matters in certain cases, such as :-
 - where there is no significant controller;
 - where there is unidentified registrable person;
 - where particulars of identified registrable person are not confirmed;



Additional matters to be noted in the PSC register (2)

- where company's investigations are ongoing;
- where notices issued by the company are not complied with within the specified period;
- where notices issued by the company are complied with after the specified period.

When may entries in the SCR be destroyed

- * An entry in the SCR relating to a significant controller may be destroyed after the end of a period of 6 years from the date on which the person or legal entity ceased to be a significant controller.

Specified conditions for determining significant control (1)

Meeting one or more of the following conditions:

- 1) directly or indirectly holding more than 25% of the issued shares of the company;
- 2) directly or indirectly holding more than 25% of the voting rights in the company;
- 3) directly or indirectly holding the right to appoint or remove a majority of the board of directors of the company;



Specified conditions for determining significant control (2)

- 4) having the right to exercise, or actually exercising, significant influence or control over the company; or
- 5) having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company.



Duty of investigating and obtaining information (1)

- * **Companies** are required to take reasonable steps to identify, ascertain or obtain required particulars of its significant controllers.

Duty of investigating and obtaining information (2)

- * “Reasonable steps” include –
 - reviewing the company’s register of members, articles of association, statement of capital, shareholders agreements, other relevant covenants or agreements; and
 - giving a notice to any person or any legal entity (i) that the company knows or has reasonable cause to believe to be a significant controller; or (ii) that the company knows or has reasonable cause to believe to know the identity of another person who is a significant controller.

Duty to keep information on the SCR up-to-date (1)

- * If a company knows or has reasonable cause to believe that there is a registrable change with respect to a significant controller, the company must give notice to the significant controller within 7 days after such knowledge or belief, whichever happens first.
- * The particulars of any registrable change must be entered into the SCR within 7 days after they have all been confirmed (in the case of registrable person) or after each of the particulars of registrable change comes to the notice of the company (in the case of registrable legal entity).



Duty to keep information on the SCR up-to-date (2)

- * “registrable change” means the person ceasing to be a significant controller or any other change that results in the required particulars of the person entered in the SCR being incorrect or incomplete.



Duty of persons to whom notices are issued by the company (1)

* **Notice addressees** are required to comply with a notice issued by the company to ascertain, confirm and provide the relevant required particulars or registrable changes, including the following:-

- to state whether or not the addressee is a significant controller of the company;
- to confirm or correct any of the addressee's particulars that are included in the notice and supply any that are missing;



Duty of persons to whom notices are issued by the company (2)

- to state whether the addressee knows the identity of another person who is a significant controller and to supply their particulars;
- (in the case of a significant controller entered on the register) to confirm whether or not there is a registrable change and if so, the date of change, confirm or correct the required particulars stated in the notice and provide any particulars that are missing;



Duty of persons to whom notices are issued by the company (3)

- * For persons receiving notices issued by the company, there will be a fine at level 4 (i.e. maximum of \$25,000) for failing to comply with the notice requirements.



Location of the SCR

- * A company must keep its SCR at the company's registered office or a prescribed place.
- * A company must notify the Registrar of the place where the SCR is kept in the specified form.
- * No such notification is required if, since the SCR came into existence, it has been kept at all times –
 - at the company's registered office; or
 - at the same place where the company's register of members has been kept immediately before the commencement date of the new requirement and is continuously kept there, and of which the Registrar has been duly notified.



Right to inspect and request copy

- * Any person whose name is entered in the SCR as a significant controller is entitled, on request and without charge, to inspect the register and to be provided with copies of the register (on payment of a prescribed fee).
- * A law enforcement officer is also entitled, for the purposes of performing functions relating to the prevention, detection or investigation of money laundering or terrorist financing, to inspect the SCR at the place at which it is kept and make copies of the whole or part of the register.

Power of court to rectify register

- * There will be a mechanism for rectification of the SCR.
- * If an interested party is aggrieved by an entry or omission of an entry in a company's SCR, the party may apply to the court for rectification of the SCR.
- * The court may refuse the application, or order such rectification as appropriate and payment by the company of any damages sustained by the interested party.

Thank You

Companies Registry
www.cr.gov.hk

