

Register of Significant Controllers – New Requirements under the Companies Ordinance

Ms Ellen CHAN, Deputy Principal Solicitor /
Mr Francis MOK, Senior Solicitor
Companies Registry



Companies (Amendment) Ordinance 2018

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- To fulfill HK's international obligations to combat money laundering and terrorist financing





Introduction

- A company incorporated in Hong Kong is required –
 - * to identify significant controllers of the company
 - * to maintain a significant controllers register (SCR)
- New Division 2A in Part 12 of the Companies Ordinance, Cap. 622 (CO) & new Schedules 5A, 5B & 5C



Scope of Application


- Definition of “applicable company” [s.653A]
- All companies formed and registered under the CO or a former Companies Ordinance have to keep a SCR -
 - * companies limited by shares
 - * companies limited by guarantee
 - * unlimited companies
- listed companies are exempted

Major Requirements (1)

- Major requirements include -
 - * keeping a SCR [s.653H]
 - * taking reasonable steps to identify the company's significant controllers [s.653P]
 - * entering the required particulars of its significant controllers in the SCR [ss.653J & 653K]
 - * keeping the required particulars up-to-date [s.653T]

Major Requirements (2)

- * allowing inspection and making copies of the SCR by law enforcement officers [s.653X]
- If a company fails to comply with any of the above requirements, the company and each of its responsible persons commit an offence, and each is liable to a fine at level 4 (\$25,000). Where applicable, there is a further daily fine of \$700



Keeping a SCR

- Each company must keep a SCR even if it does not have a significant controller
- SCR must be kept –
 - * in the English or Chinese language [s.653H]
 - * at the company's registered office or a place in Hong Kong [s.653M]
- Must notify the Registrar of Companies –
 - * the place where SCR is kept [s.653M]
 - * of a change in the place at which SCR is kept [s.653N]



Contents of SCR

- S.653I:
 - * Required particulars of each significant controller
 - * Particulars of any registrable change
 - * Name and contact details of a designated representative
 - * Additional matters specified in Schedule 5C
- SCR must not be empty





Significant Controllers

- A registrable person or a registrable legal entity [s.653A]
- Registrable person - natural person or specified entity that has significant control over the company [s. 653C]
- Registrable legal entity - legal entity which is a member and has significant control over the company [s. 653D]



Specified Entity

- Definition in s.653A: Any of the following:
 - * a corporation sole
 - * a government of a country or territory, or part of a country or territory
 - * an international organization whose members include 2 or more countries or territories (or their governments)
 - * a local authority or local government in a country or territory



Not a Registrable Person

S.653C(2) & (3): A natural person or specified entity that has significant control over the company is NOT its registrable person if the person/entity holds shares or rights in the company through –

- its registrable legal entity which has any of its shares listed on the Stock Exchange of Hong Kong; or
- a chain of legal entities with the last one in the chain being a registrable legal entity of the company which has any of its shares listed on the Stock Exchange of Hong Kong



Significant Control (1)

S. 653E: Meeting one or more of the conditions in Part 1 of Schedule 5A:

- directly or indirectly holding more than 25% of the issued shares (the right to share in more than 25% of the capital/profits) of the company
- directly or indirectly holding more than 25% of the voting rights in the company
- directly or indirectly holding the right to appoint or remove a majority of the board of directors of the company



Significant Control (2)

- having the right to exercise, or actually exercising, significant influence or control over the company
- 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

Part 2 of Schedule 5A – Interpretative Provisions



Designated Representative

S.653ZC: Must designate at least one person to assist law enforcement officers in relation to the SCR

- The person must be one of the following: -
 - * a member, director or employee of the company that is a natural person resident in HK
 - * an accounting professional, a legal professional or a TCSP licensee defined in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap. 615



Additional Matters in the SCR

- S. 653I(2)(b): The SCR must contain additional matters under Schedule 5C, e.g.
 - * where there is no significant controller
 - * the company's investigations are ongoing
- S. 653L: Entries of a significant controller in the SCR may be destroyed only after 6 years from the date the person ceased to be a significant controller

Identifying Significant Controllers

- Companies are required to take reasonable steps [s.653P]
- Reasonable steps include reviewing documents and information available, e.g.:
 - * articles of association
 - * register of members
 - * shareholders agreement



Giving Notices (1)

S. 653P(2): A company must give notice to a person –

- if the company knows or has reasonable cause to believe that the person is its significant controller
- within 7 days of such knowledge or belief, whichever happens first
- in accordance with s.653Q



Giving Notices (2)

S. 653P(3): A company must give notice to a person –

- if the company knows or has reasonable cause to believe that the person knows the identity of someone else who is the company's significant controller
- within 7 days of such knowledge or belief, whichever happens first
- in accordance with s. 653R

Giving Notices (3)

S. 653S: Not required to give notice –

- registrable person – the company has already been informed of the person's status as being its significant controller, and all the required particulars have been provided to the company by the person/with the person's knowledge
- registrable legal entity – the company has already been informed of the entity's status as being its significant controller, and all the required particulars have been provided to the company

Duty to keep Information up-to-date (1)

S.653F: Registrable Change

- the person ceases to be the company's significant controller
- any particular entered in the SCR for the person is incorrect or incomplete

Duty to keep Information up-to-date (2)

S. 653T: A company must give notice to its significant controller -

- if the company knows or has reasonable cause to believe that there is a registrable change with respect to the significant controller
- within 7 days after the company first has notice or reasonable cause to believe that there is a change
- in accordance with s. 653U

Duty to keep Information up-to-date (3)

S. 653V: A company is not required to give notice under s.653T if –

- registrable person – the company has already been informed of the change, and the information has been provided to the company by the person/with the person's knowledge
- registrable legal entity – the company has already been informed of the change

Allowing Inspection & Making Copies (1)

S. 653X: A company must make available its SCR for inspection/making of copies at any reasonable time upon demand by –

- an officer of the Companies Registry, for ascertaining whether the statutory requirements relating to SCR are complied with
- a law enforcement officer in performance of a specified function under the law of Hong Kong

Allowing Inspection & Making Copies (2)

- Definition of “law enforcement officer” [s.653B], for example, an officer of -
 - * Customs and Excise Department
 - * Hong Kong Police Force
 - * Inland Revenue Department
- Specified function means a function relating to the prevention, detection or investigation of money laundering or terrorist financing [s.653A]

Allowing Inspection & Making Copies (3)

S. 653W: A person whose name is entered in the SCR as a significant controller is also entitled to –

- inspect the SCR without charge
- be provided with copies of the SCR at a prescribed fee [Cap. 622I]

Offences for false information/statement (1)

It is an offence if any person knowingly or recklessly –

- makes a statement/provides any information that is misleading, false or deceptive in a material particular, in purported compliance with a notice [s.653ZE]
- makes a statement that is misleading, false or deceptive in any material particular, in the SCR [s.895]



Offences for false information/statement (2)

A person who commits any of the above offences is liable –

- on conviction on indictment to a fine of \$300,000 and imprisonment for 2 years
- on summary conviction to a fine at level 6 (\$100,000) and imprisonment for 6 months



Thank You

Companies Registry:
www.cr.gov.hk