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## Keeping of Significant Controllers Registers by Companies

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## Companies (Amendment) Ordinance 2018

- Gazetted – 2 February 2018
- Commencement – 1 March 2018
- To fulfill HK's international obligations to combat money laundering and terrorist financing



## Introduction

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- 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

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- 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]

## Location of SCR

- 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]
- Exception –
  - \* registered office
  - \* same place where register of members is kept, of which the Registrar has been notified



## Contents of SCR

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- 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

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- 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)

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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)

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- 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





## Entering Particulars in the SCR

- S. 653J – Registrable Person
  - \* particulars must not be entered unless all are confirmed by the registrable person
  - \* must be entered within 7 days after so confirmed
- S. 653K – Registrable Legal Entity
  - \* a particular must be entered within 7 days after the particular comes to the notice of the company



## Required Particulars (1)

- Definition in s.653A: The particulars prescribed in Schedule 5B.
- Natural Person
  - \* name
  - \* correspondence address (but not a PO box number)
  - \* the identity card number or, if the person has no identity card, the number and issuing country of a passport the person held
  - \* the date the person became a registrable person of the company
  - \* the nature of control over the company

## Required Particulars (2)

- Legal Entity
  - \* name
  - \* company registration number (or the equivalent in the place of formation)
  - \* address of registered or principal office
  - \* legal form and governing law
  - \* the date on which the legal entity became a registrable legal entity of the company
  - \* the nature of control over 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]

## Obligations of Notice Addressees

- Sections 653Q, 653R & 653U prescribe that the relevant notice must state that the addressee must comply with the requirements in the notice within 1 month from the date of notice
- Failure to comply with the notice is an offence and the notice addressee and every related person are liable to a fine at level 4 (\$25,000) [s.653ZA]



## 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





## Misc. Provisions

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- S. 653Y & s.653Z: The Court may order a company to permit the law enforcement officer to inspect/make copies of the SCR
- S. 653ZD: The company/a significant controller/a person aggrieved may apply to the court to rectify the SCR
- S. 653ZG: Financial Secretary may make regulations, such as, to provide for incidental /supplementary matters relating to keeping a SCR by companies



## Further Information

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- Dedicated thematic section on “Significant Controllers Register” on Companies Registry’s website ([www.cr.gov.hk/en/scr](http://www.cr.gov.hk/en/scr))
- \* Companies (Amendment) Ordinance 2018
- \* Companies Registry External Circular No. 2/2018
- \* Guideline on the Keeping of the SCR by Companies
- Hotline: 3142 2822



Thank You

Companies Registry:  
[www.cr.gov.hk](http://www.cr.gov.hk)