



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

- 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]

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]

Example of registrable person and registrable legal entity in a chain of ownership

Company C's SCR:

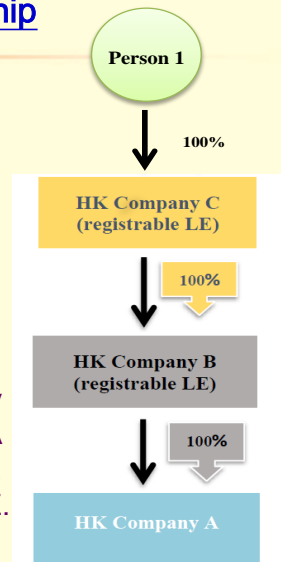
- Person 1 is a registrable person.

Company B's SCR:

- Person 1 is a registrable person and HK Company C is a registrable LE.

Company A's SCR:

- Person 1 is a registrable person by holding interests in Company A through Company B and Company C, and HK Company B is a registrable LE.



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

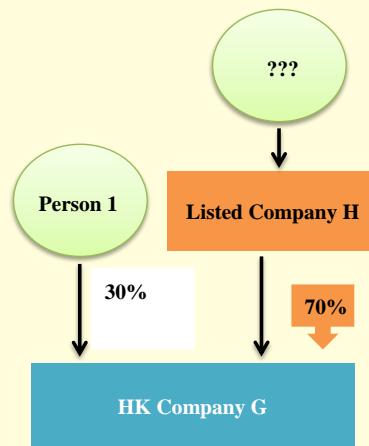
S.653C(2) & (3): A natural person or specified entity that has significant control over the company is NOT its registrable person if the person/entity holds shares or rights in the company through –

- 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

Example of when a person is not a registrable person

Company G's SCR:

- Person 1 is a registrable person.
- Company H is a registrable LE.
- Individuals holding interests in Company G through the listed Company H are not registrable persons of Company G. It is not necessary for Company G to investigate whether any person has significant control over the company through Company H.



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

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

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

- 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

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

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)

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



Further Information

- Dedicated thematic section on “Significant Controllers Register” on Companies Registry’s website (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