

Keeping of the Significant Controllers Register

- Implementation and Common Questions

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Companies (Amendment Ordinance) 2018

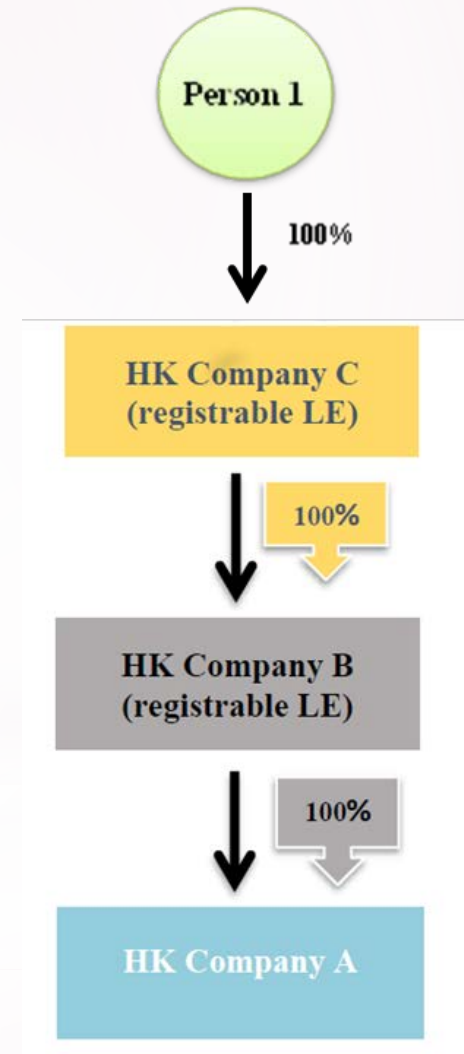
- Commencement - 1 March 2018
- To fulfill HK's international obligations to combat money laundering and terrorist financing
- Companies in Hong Kong should:
 - maintain a Significant Controllers Register ("SCR"), containing required particulars of significant controllers for inspection by law enforcement officers upon demand; and
 - take reasonable steps to ascertain the persons who have significant control over the company

Significant Controllers

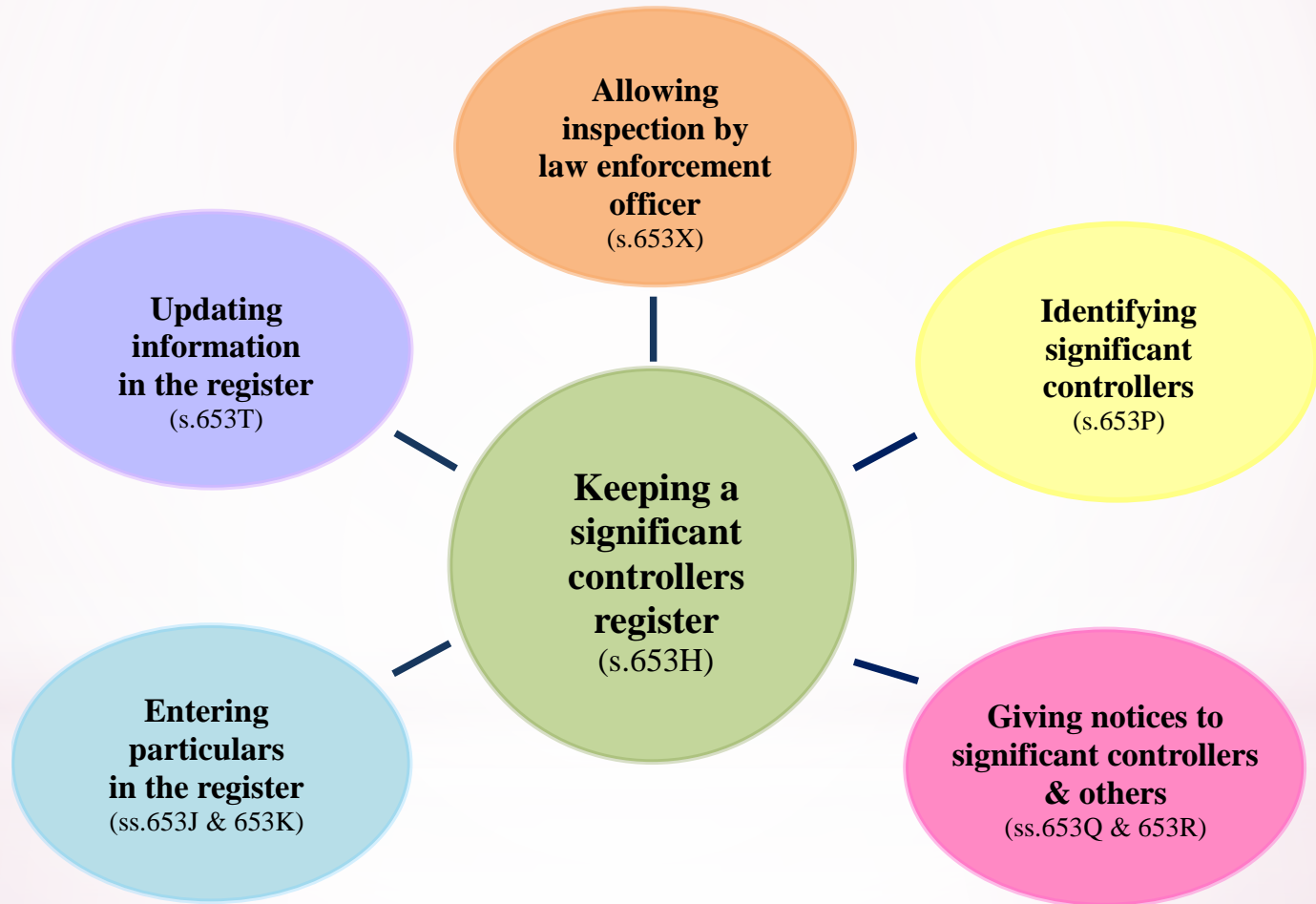
- A person has significant control over a company if the person has a controlling ownership interest (e.g. >25% of shareholdings or voting rights), or if the person exercises control through other means (e.g. holding the right to appoint or remove a majority of directors) - s.653E, Part 1 of Schedule 5A
- 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.



Major Requirements



Location of Significant Controllers Register

- Must keep in the registered office or a specified place in Hong Kong

- 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

Content of Significant Controllers Register

➤ 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

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

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 (1)

➤ Failure to keep SCR

- the company and each of its responsible persons commit an offence
- liable to a fine at level 4 (\$25,000). Where applicable, there is a further daily fine of \$700
(s.653H)

➤ Failure to comply with the notice

- the notice addressee and every related person commit an offence
- liable to a fine at level 4 (\$25,000)
(s.653ZA)

Offences (2)

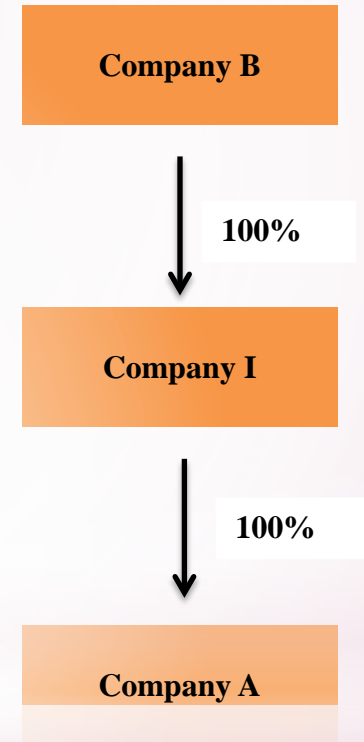
False information / statement:

- It is an offence of 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)
 - 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

Common Questions (1)

Q1. If Company B is holding indirectly 100% of the issued shares of Company A, is Company B a registrable legal entity of Company A?

Answer: No. As Company B is not a member of Company A, it is not a registrable legal entity in this case. (s.653D)

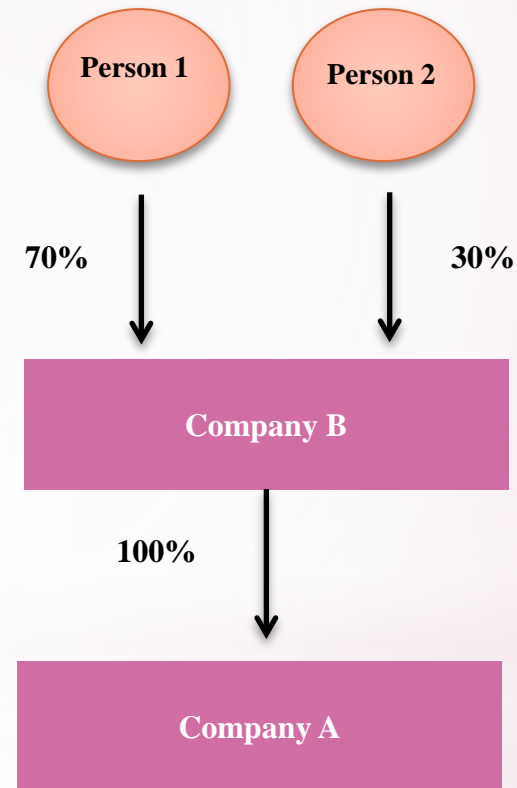


Common Questions (2)

Q2. Company A is wholly owned by Company B. Person 1 and Person 2 are shareholders of Company B, each of them holding 70% and 30% of the issued shares of Company B respectively. Are both of them the registrable persons of Company A?

Answer:

- No. Only Person 1 is the registrable person of Company A
- Majority stake? (holding >50% of voting rights – Schedule 5A, section 7



Common Questions (3)

Q3. What should the company do if a significant controller does not reply to the company's notice within the specified period of 1 month?

Answer: Add a note in the SCR (Annex C of Guideline). Company should also consider reporting the case to CR.

Q4. What is meant by "significant influence or control" as stated in section 1(d) of Schedule 5A to the Companies Ordinance? Do I need to include the senior management officials like CEO and directors of my company in the significant controllers register?

Answer:

- Significant influence - a person can ensure that a company generally adopts the activities which the person desires
- Control - a person can direct the activities of a company
- Roles or positions of a person not equal to significant influence or control
- Consider whether have absolute decision rights or veto rights

(Chapter 10 of Guideline)



Common Questions (4)

Q5. What should the company do if no significant controller can be identified?

Answer: Contact CR for assistance

Q6. If the registrable person of a company is a foreigner and does not hold a HKID nor passport, can the identity card number issued other country be entered into the register?

Answer: Enter the number of identification document issued by the country of the person resides



Common Questions (5)

- Q7 (a). When can the company destroy all the entries of a significant controller in SCR?
- (b). Can the SCR be disposed of immediately after the company is dissolved?

Answer:

- a) Destroy after 6 years from the date the person ceased to be a significant controller
- b) No. Similar to other records and registers of the company, director(s) of the company should ensure that they are kept for at least 6 years after the date of dissolution

Common Questions (6)

Q8. If a significant controller has passed away and transmission of the shares he is holding is not yet completed, who will be the significant controller?

Answer: Particulars of the deceased significant controller should still be entered in the SCR. Company can consider adding appropriate remarks in the SCR

Q9. Can a significant controller inspect full information contained in the SCR, including the particulars of other significant controllers, or just information about himself?

Answer: Can inspect the entire SCR (s.653W)

Common Questions (7)

Q10. What are the responsibilities of designated representative?

Answer:

- Provide assistance to officer of CR to ascertain whether the requirements relating to the keeping of SCR have been complied with
- Provide assistance to other law enforcement officer to facilitate performance of functions relating to money laundering or terrorist financing

Inspection of Significant Controllers Register

- site inspections conducted by officers of CR

Period	No. of companies inspected	No. of companies having kept SCR	SCR not available
From 1.3.2018 up to 30.9.2018	2,016	1,570 (78%)	446 (22%)
From 1.10.2018 to 31.3.2019	2,897	2,512 (87%)	385 (13%)
Total	4,913	4,082 (83%)	831 (17%)

Enforcement Actions

From October 2018 to March 2019:

- Summonses issued : 52
- Conviction cases : 34
- Default notices issued : 78

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 Significant Controllers Registers by Companies
- Frequently asked questions
- Videos

Thank You

Thematic section: www.cr.gov.hk/en/scr

Enquiry Hotline: 3142 2822

