



Hong Kong Companies (Amendment) Ordinance, 2018

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ASIA BRIEFING



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An Ordinance to amend the Companies Ordinance to require certain companies incorporated in Hong Kong to keep registers of persons who have significant control over the companies; and to provide for related matters.

[1 March 2018]

Enacted by the Legislative Council.

1. Short title and commencement

This Ordinance may be cited as the Companies (Amendment) Ordinance 2018.

This Ordinance comes into operation on 1 March 2018.

2. Companies Ordinance amended

The Companies Ordinance (Cap. 622) is amended as set out in sections 3 to 6.

3. Part 12, Division 2 heading amended (registers)

Part 12, Division 2, heading, after “Registers”—

Add

“(other than Register of Significant Controllers)”.

4. Part 12, Division 2A added

Part 12, after Division 2—

Add

“Division 2A—Register of Significant Controllers

Subdivision 1—Preliminary

653A. Interpretation

In this Division—

applicable company (適用公司) means a company other than—

- a) a listed company; or,
- b) a company that falls within a type of company, or class of companies, exempted by regulations made under section 653ZG(1)(a);

commencement date (生效日期) means the date of commencement of this Division;

existing company (原有公司) means a company that came into existence before the commencement date;

function (職能) includes a power and a duty;

law enforcement officer (執法人員)—see section 653B;

legal entity (法律實體)— means a body of persons, corporate or unincorporate, that is a legal person under the law that governs it; but does not include a specified entity;

prescribed (訂明) means prescribed by regulations made under section 657;

registrable change (須登記更改)—see section 653F;

registrable legal entity (須登記法律實體)—see section 653D;

registrable person (須登記人士)—see section 653C;

related person (有關連人士)—see section 653G;

required particulars (所需詳情) means the particulars prescribed in Schedule 5B;

significant control (重大控制權)—see section 653E;

significant controller (重要控制人) means—

- a) a registrable person of an applicable company; or
- b) a registrable legal entity of an applicable company;

significant controllers register (重要控制人登記冊) means the register mentioned in section 653H(1);

specified entity (指明實體) means—

- a) a sole corporation;
- b) a government of a country or territory, or part of a country or territory;
- c) an international organization whose members include 2 or more countries or territories (or their governments); or
- d) a local authority or local government in a country or territory;

specified function (指明職能), in relation to a law enforcement officer, means a function of the officer under the law of Hong Kong that is a function relating to the prevention, detection or investigation of money laundering, or terrorist financing, as defined by section 1 of Part 1 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

653B. Law enforcement officer

1. Each of the following is a law enforcement officer for the purposes of this Division—
 - a) an officer of the Companies Registry;
 - b) an officer of the Customs and Excise Department;
 - c) an officer of the Hong Kong Monetary Authority;
 - d) an officer of the Hong Kong Police Force;
 - e) an officer of the Immigration Department;
 - f) an officer of the Inland Revenue Department;
 - g) an officer of the Insurance Authority established under section 4AAA(1) of the Insurance Ordinance (Cap. 41);
 - h) an officer of the Independent Commission Against Corruption established under section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);
 - i) an officer of the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);

j) an officer of any department or agency of the Government, or of any statutory body, that is specified by the Financial Secretary by regulations made under section 653ZG(1)(b) for the purposes of this paragraph.

2. In subsection (1)—

statutory body (法定團體) means a body established or constituted by or under the authority of an Ordinance.

653C. Registrable person

1. If a natural person or specified entity has significant control over an applicable company, the person or entity is a registrable person of the company.
2. Despite subsection (1), a natural person or specified entity that has significant control over an applicable company is not a registrable person of the company if the condition specified in subsection (3) is satisfied.
3. The condition is that the natural person or specified entity has significant control over the company only because—
 - a) the person or entity holds or has rights or shares in the company through a registrable legal entity of the company (entity A), and entity A has any of its shares listed on a recognized stock market; or
 - b) the person or entity holds or has rights or shares in the company through a chain of legal entities with the last one in the chain being a registrable legal entity of the company (entity B), and entity B has any of its shares listed on a recognized stock market.

Note—

See also section 653E and Schedule 5A which provide for the criteria for determining whether a person has significant control over an applicable company.

653D. Registrable legal entity

A legal entity is a registrable legal entity of an applicable company if the entity—

- a) is a member of the company; and
- b) has significant control over the company.

Note—

See also section 653E and Schedule 5A which provide for the criteria for determining whether a person has significant control over an applicable company.

653E. How to determine whether person has significant control over applicable company

A person has significant control over an applicable company if the person meets one or more of the conditions specified in Part 1 of Schedule 5A in relation to the company.

653F. Registrable change

There is a registrable change with respect to a person if—

- a) the person ceases to be a significant controller of an applicable company; or
- b) any other change results in any particulars entered in the company's significant controllers register for the person being incorrect or incomplete.

653G. Related person

1. This section applies if—
 - a) a provision of this Division provides that a requirement of a notice given to a legal entity is not complied with (failure), a related person of the entity commits an offence; or
 - b) a provision in the regulations made under section 653ZG provides that a related person of a legal entity commits an offence if a provision is contravened (**contravention**).
2. For the purposes of the provision, a person is a related person of a legal entity that is a body corporate (**entity A**) if—

- a) the person is an officer or shadow director of entity A; and
 - b) the person authorizes or permits, or participates in, the failure or contravention.
3. A person is also a related person of entity A if—
 - a) the person is an officer or shadow director of another body corporate that is an officer or shadow director of entity A;
 - b) the other body corporate authorizes or permits, or participates in, the failure or contravention; and
 - c) the person authorizes or permits, or participates in, the failure or contravention.
 4. For the purposes of the provision, a person is a related person of a legal entity other than a body corporate (**entity B**) if—
 - a) the person is an officer of entity B that is similar to an officer or shadow director of a body corporate (similar officer of entity B); and
 - b) the person authorizes or permits, or participates in, the failure or contravention.
 5. A person is also a related person of entity B if—
 - a) the person is an officer or shadow director of a body corporate;
 - b) the body corporate is a similar officer of entity B and authorizes or permits, or participates in, the failure or contravention; and
 - c) the person authorizes or permits, or participates in, the failure or contravention.

Subdivision 2—Keeping of Significant Controllers Register

653H. Keeping of register

1. Each applicable company must keep a register of its significant controllers.
2. Subsection (1) applies to an applicable company even if the company does not have a significant controller.

3. The significant controllers register of an applicable company must be kept in the English or Chinese language.
4. If subsection (1) or (3) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

653I. Contents of register

1. The significant controllers register of an applicable company must contain the following particulars of each person that the company knows to be a significant controller of the company—
 - a) the particulars prescribed in Schedule 5B that are applicable to the person; and
 - b) for a registrable change with respect to the person—
 - (i) details of the change; and
 - (ii) the date on which the change occurs.
2. The register must also contain—
 - a) the name and contact details of at least one person designated by the company under section 653ZC; and
 - b) all the additional matters required to be noted in the register under Schedule 5C in relation to the company.
3. If subsection (1)(a) or (b) or (2)(a) or (b) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
4. To avoid doubt, section 634 does not affect what may be contained or entered in the significant controllers register of an applicable company.

653J. Entering of particulars in register—registrable person

1. The particulars required under section 653I(1)(a) to be contained in the

significant controllers register of an applicable company for a natural person or specified entity—

- a) must not be entered in the register unless they are all confirmed by the person or entity; and
 - b) must be entered in the register within 7 days after they have all been so confirmed.
2. The particulars required under section 653I(1)(b) to be contained in the significant controllers register of an applicable company for a registrable change with respect to a natural person or specified entity—
 - a) must not be entered in the register unless they are all confirmed by the person or entity; and
 - b) must be entered in the register within 7 days after they have all been so confirmed.
 3. If subsection (1)(a) or (b) or (2)(a) or (b) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
 4. For the purposes of this section, a particular of a natural person or specified entity is or has been confirmed by that person or entity only if the particular is or has been—
 - a) provided or confirmed by that person or entity; or
 - b) provided or confirmed by another person with that natural person's or specified entity's knowledge.

653K. Entering of particulars in register—registrable legal entity

1. A particular required under section 653I(1) to be contained in the significant controllers register of an applicable company for a legal entity must be entered in the register within 7 days after the

particular comes to the notice of the company.

2. If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

653L. When may entries in register be destroyed

If a person ceases to be a significant controller of an applicable company, all the entries in the company's significant controllers register relating to the person may be destroyed—

- a) for a natural person or specified entity—after the end of a period of 6 years from the date on which the person or entity ceased to be the company's registrable person; and
- b) for a legal entity—after the end of a period of 6 years from the date on which the entity ceased to be the company's registrable legal entity.

653M. Place at which register must be kept

1. An applicable company must keep its significant controllers register at—
 - a) the company's registered office; or
 - b) a prescribed place.
2. The company must notify the Registrar in accordance with subsection (3) of the place at which its significant controllers register is kept.
3. The notice—
 - a) must be in the specified form; and
 - b) must be delivered to the Registrar for registration within 15 days after the register is first kept at that place.
4. An applicable company is not required to comply with subsection (2) if, since its significant controllers register came into existence, the register has at all times

been kept at the company's registered office.

5. Without affecting subsection (4), an existing company is not required to comply with subsection (2) if—
 - a) since the commencement date, the company's register of members has at all times been kept at the place at which it was kept immediately before that date;
 - b) since the company's significant controllers register came into existence, the register has also at all times been kept at that place; and
 - c) immediately before the commencement date, the company has delivered to the Registrar every notice that is required under section 628 in respect of its register of members.
6. If subsection (1) or (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.

653N. Change in place at which register is kept

1. An applicable company must notify the Registrar in accordance with subsection (2) of a change in the place at which its significant controllers register is kept.
2. The notice—
 - a) must be in the specified form; and
 - b) must be delivered to the Registrar for registration within 15 days after the change.
3. An applicable company is not required to comply with subsection (1) in relation to a change mentioned in that subsection if—
 - a) its significant controllers register is kept at the company's registered office; and
 - b) the change is due to a change of the registered office's address.
4. If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of

\$700 for each day during which the offence continues.

Subdivision 3—Investigation and Obtaining Information by Applicable Company

653O. Interpretation

1. In this Subdivision—

specified particulars (指明詳情), in relation to a person—

- a) means the particulars of the person falling within a description of the particulars prescribed in Schedule 5B; but
- b) if the person is a natural person, does not include—
 - (i) the number of an identity card of the person; and
 - (ii) the number and issuing country of a passport held by the person.

2. In sections 653P, 653Q and 653R, a reference to knowing the identity of a person includes knowing any information from which the person can be identified.

653P. Company's duty to investigate and obtain information

1. An applicable company must take reasonable steps—
 - a) to ascertain whether there is any significant controller of the company; and
 - b) if any, to identify each of them.
2. Without limiting subsection (1), if the company knows, or has reasonable cause to believe, that a person is a significant controller of the company, the company must give a notice, in accordance with section 653Q, to the person within 7 days after the first of the following to happen—
 - a) the company first knows that the person is a significant controller of the company;
 - b) the company first has reasonable cause to believe that the person is such a controller.
3. Without limiting subsection (1), if the company knows, or has reasonable cause to believe, that a particular person

knows the identity of another person who is a significant controller of the company, the company must give a notice, in accordance with section 653R, to the particular person within 7 days after the first of the following to happen—

- a) the company first knows that the particular person knows the identity of another person who is a significant controller of the company;
 - b) the company first has reasonable cause to believe that the particular person knows the identity of another person who is such a controller.
4. If subsection (1), (2) or (3) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Note—

See also section 653S which provides for the circumstances under which an applicable company is not required to comply with this section.

653Q. Notice under section 653P (2)

1. A notice given under section 653P (2) by an applicable company must be in writing and must require the addressee of the notice to confirm, as the case requires—
 - a) whether or not the addressee is a registrable person of the company; or
 - b) whether or not the addressee is a registrable legal entity of the company.
- a) state that if the addressee confirms that the addressee is a registrable person or registrable legal entity of the company, the addressee is required to—
 - (i) confirm or correct the required particulars of the addressee that are included in the notice; and
 - (ii) provide any required particulars of the addressee that are missing from the notice; and
- b) require the addressee to—

- (i) state whether or not the addressee knows the identity of another person who is a significant controller of the company; and
 - (ii) if the addressee knows the identity of such a person—
 - (A) provide to the company all the specified particulars of that person that are known to the addressee; and
 - (B) state whether or not the particulars are provided with that person's knowledge.
3. The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

653R. Notice under section 653P (3)

- 1. A notice given under section 653P (3) by an applicable company must be in writing and must—
 - a) require the addressee of the notice to confirm whether or not the addressee knows the identity of another person who is a significant controller of the company; and
 - b) state that if the addressee confirms that the addressee knows the identity of such a person, the addressee is required to—
 - (i) provide to the company all the specified particulars of that person that are known to the addressee; and
 - (ii) state whether or not the particulars are provided with that person's knowledge.
- 2. The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

653S. Circumstances where notice under section 653P not required

An applicable company is not required to comply with section 653P with respect to a significant controller of the company if—

- a) for a registrable person of the company—

- (i) the company has already been informed of the person's status as such; and
 - (ii) all the required particulars of the person have been provided to the company by the person or with the person's knowledge; and
- b) for a registrable legal entity of the company—
 - (i) the company has already been informed of the entity's status as such; and
 - (ii) all the required particulars of the entity have been provided to the company.

Subdivision 4—Applicable Company to Keep Information Up-to-date

653T. Company's duty to keep information up-to-date

- 1. This section applies to an applicable company if the company knows, or has reasonable cause to believe, that there is a registrable change with respect to a person, the details of which are required to be contained in the significant controllers register of the company.
- 2. The company must give a notice, in accordance with section 653U, to the person to whom the registrable change relates within 7 days after the first of the following to happen—
 - a) the registrable change first comes to the notice of the company;
 - b) the company first has reasonable cause to believe that the change has occurred.
- 3. If subsection (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Note—

See also section 653V which provides for the circumstances under which an applicable company is not required to comply with this section.

653U. Notice under section 653T

1. A notice given under section 653T by an applicable company must be in writing and must—
 - a) require the addressee of the notice to confirm whether or not there is a registrable change with respect to the addressee; and
 - b) state that if the addressee confirms that there is such a change, the addressee is required to—
 - (i) inform the company of the date on which the change occurs;
 - (ii) confirm or correct any particulars—
 - (A) that are required to be contained in the significant controllers register of the company for the addressee; and
 - (B) that are included in the notice; and
 - (iii) provide any particulars—
 - (A) that are required to be contained in the register for the addressee; and
 - (B) that are missing from the notice.
2. The notice must also state that the addressee must comply with the requirements made under this section within 1 month from the date of the notice.

653V. Circumstances where notice under section 653T not required

1. An applicable company is not required to comply with section 653T in relation to a registrable change with respect to a natural person or specified entity if—
 - a) the company has already been informed of the change; and
 - b) the information has been provided to the company by the person or entity, or with the person's or entity's knowledge.
2. An applicable company is not required to comply with section 653T in relation to a registrable change with respect to a legal entity if the company has already been informed of the change.

Subdivision 5—Inspection of Significant Controllers Register

653W. Right to inspect and request copy of register

1. A person whose name is entered in the significant controllers register of an applicable company as a significant controller of the company is entitled, on request made in the prescribed manner and without charge, to inspect the register in accordance with regulations made under section 657.
2. A person mentioned in subsection (1) is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register, or a part of it, in accordance with regulations made under section 657.

Note—

For the duties of a company regarding the inspection and provision of copies of its company records, and the power of the Court to make an order relating to the inspection and provision of copies of such records—see regulations made under section 657.

653X. Register be available for inspection etc. by law enforcement officer

1. An applicable company must, on demand made by an officer of the Companies Registry for the purpose of ascertaining whether this Division is or has been complied with, or on demand made by any other law enforcement officer for the purpose of the officer's performance under the law of Hong Kong of a specified function, act as follows—
 - a) at any reasonable time make its significant controllers register available for inspection by the officer at the place at which the register is kept; and
 - b) permit the officer to make a copy of the register, or a part of it, in the course of inspection.

2. If subsection (1)(a) or (b) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

653Y. Court order relating to inspection of register

1. This section applies if section 653X(1)(a) is contravened in relation to a demand made by a law enforcement officer under section 653X (1).
2. The Court may, on application by the law enforcement officer, order the applicable company concerned to permit the officer to inspect the company's significant controllers register.
3. An order made under subsection (2) may—
 - a) direct the company to permit the officer to inspect the register—
 - (i) immediately after the order is made; or
 - (ii) from the time specified in the order; and
 - b) specify the duration and manner of the inspection.
4. Subsection (5) applies if—
 - a) the register is kept at the office of a person other than the company; and
 - b) section 653X(1)(a) is contravened because of a default of the person.
3. The power of the Court under subsection (2) extends to the making of an order against the person mentioned in subsection (4) and the person's officers and employees.

653Z. Court order relating to making copy of register

1. This section applies if section 653X(1)(b) is contravened in relation to a demand made by a law enforcement officer under section 653X(1).
2. The Court may, on application by the law enforcement officer, order the applicable company concerned to permit the officer to make a copy of the company's significant controllers register, or a part of it, in the course of inspection.

3. An order made under subsection (2) may also specify the time, duration, and manner of inspection, including the circumstances in which and the extent to which the copying of information is permitted in the course of inspection.
4. Subsection (5) applies if—
 - a) the register is kept at the office of a person other than the company; and
 - b) section 653X(1)(b) is contravened because of a default of the person.
5. The power of the Court under subsection (2) extends to the making of an order against the person mentioned in subsection (4) and the person's officers and employees.

Subdivision 6—Miscellaneous or Related Matters

653ZA. Addressee of notice to comply with requirements made under section 653Q, 653R or 653U

1. If a requirement made under section 653Q, 653R or 653U is not complied with within 1 month from the date of the notice concerned, the addressee of the notice, and (if the addressee is a legal entity) every related person of the entity, commit an offence, and each is liable to a fine at level 4.
2. If a person is charged with an offence under subsection (1), it is a defence for the person to prove that the requirement was frivolous or vexatious.

653ZB. Legal professional privilege

In complying with a notice given under this Division by an applicable company, a person is not required to provide any information to the company that the person would on grounds of legal professional privilege be entitled to refuse to give or provide in legal proceedings.

653ZC. Designated representative

1. An applicable company must designate at least one person as its representative to

provide the following assistance relating to the significant controllers register of the company—

- a) assistance to an officer of the Companies Registry to facilitate ascertaining whether this Division is or has been complied with;
 - b) assistance to any other law enforcement officer to facilitate the officer's performance under the law of Hong Kong of a specified function.
2. The company must not designate a person under subsection (1) unless—
- a) the person—
 - (i) is a natural person resident in Hong Kong; and
 - (ii) is a director, employee, or member of the company; or
 - b) the person is an accounting professional, a legal professional, or a TCSP licensee, as defined by section 1 of Part 2 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

653ZD. Power of Court to order rectification of register

1. An interested party may apply to the Court to rectify the significant controllers register of an applicable company if—
 - a) the name of a person is, without sufficient cause, entered in or omitted from the register; or
 - b) a default is made, or an unnecessary delay takes place in entering in the register the fact that a person has ceased to be a significant controller of the company.
2. If an application is made under subsection (1), the Court may—
 - a) refuse the application; or
 - b) order that the register be rectified.
3. A rectification order may include an order for the company to pay any damages sustained by an aggrieved party.
4. On an application made under subsection (1), the Court—
 - a) may decide whether the name of a person who is a party to the application

should be entered in or omitted from the register; and

- b) generally, may decide any question considered necessary or expedient to rectify the register.
5. In subsection (1)—

interested party (有利害關係的一方), in relation to a matter mentioned in subsection (1), means—

- a) a person aggrieved by the matter;
- b) a significant controller of the company; or
- c) the company.

653ZE. Offence for false information

1. A person commits an offence if the person, in purported compliance with a notice given under this Division, knowingly or recklessly makes a statement or provides any information that is misleading, false, or deceptive in a material particular.
2. A person who commits an offence under subsection 1 is liable—
 - a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

653ZF. Applicable company not to be affected with notice of certain rights or put on enquiry as to certain rights

An applicable company—

- a) is not, because of anything done under this Division, affected with notice of—
 - (i) the rights of a person in relation to any shares in the company; or
 - (ii) other rights of a person in or with respect to the company; and
- b) is not, because of anything done under this Division, put on enquiry as to those rights of a person.

653ZG. Financial Secretary may make regulations

1. Without affecting section 657, the Financial Secretary may make regulations—
 - a) to exempt a type of company, or class of companies, from this Division or a provision of this Division;
 - b) to specify any department or agency of the Government, and any statutory body, for the purposes of section 653B(1)(j);
 - c) to provide for matters relating to a notice given under this Division by an applicable company, including providing for—
 - (i) the form and content of the notice; and
 - (ii) the way in which it is to be given; and
 - d) to provide for incidental or supplementary matters relating to keeping a significant controller's register of an applicable company.
2. Regulations made under subsection (1) may provide that—
 - a) if a company contravenes any of the regulations made under that subsection, an offence is committed by—
 - (i) the company; and
 - (ii) every responsible person of the company;
 - b) if a legal entity contravenes any of the regulations made under that subsection, an offence is committed by—
 - (i) the entity; and
 - (ii) every related person of the entity; and
 - c) a person who commits an offence mentioned in paragraph (a) or (b) is liable to a fine not exceeding level 5 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for each day during which the offence continues.

Note—

See also section 910 which provides for supplementary provisions for regulations made under this Ordinance.

653ZH. Transitional provision for section 653J

For the purposes of section 653J(1), in relation to an existing company, a particular is confirmed only if the particular is confirmed on or after the commencement date.

653ZI. Transitional provision for section 653K

For the purposes of section 653K, in determining the time at which a particular comes to the notice of an existing company, any knowledge of the particular that the company had before the commencement date is not to be taken into account.

653ZJ. Transitional provisions for section 653P

1. For the purposes of section 653P(2), if, on the commencement date, an existing company knows, or has reasonable cause to believe, that a person is a significant controller of the company, the company must give the notice required under that section within 7 days after the commencement date.
2. For the purposes of section 653P(3), if, on the commencement date, an existing company knows, or has reasonable cause to believe, that a person knows the identity of another person who is a significant controller of the company, the company must give the notice required under that section within 7 days after the commencement date.

653ZK. Transitional provision for section 653S

For the purposes of section 653S, in relation to an existing company, a particular has been provided only if the particular has been provided on or after the commencement date.”

5. Section 911 amended (Financial Secretary and Registrar may amend schedules)

Section 911(1), before “or”—

Add

“, 5A, 5B, 5C”

6. Schedules 5A, 5B and 5C added

After Schedule 5—

Add

“Schedule 5A [ss. 653E & 911] Significant Control over Applicable Company

Part 1

Who has Significant Control over Applicable Company

1. Significant control over applicable company

A person has significant control over an applicable company as defined by section 653A if one or more of the following conditions are met—

- a) the person holds, directly or indirectly—
 - (i) if the company has a share capital—more than 25% of the issued shares in the company; and
 - (ii) if the company does not have a share capital—a right or rights to share in more than 25% of the capital or, as the case requires, profits of the company;
- b) the person holds, directly or indirectly, more than 25% of the voting rights in the company;
- c) the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;
- d) the person has the right to exercise, or actually exercises, significant influence or control over the company;

- e) the person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm—
 - (i) that, under the law governing the trust or firm, is not a legal person; and
 - (ii) whose trustees or members meet one or more of the conditions (in their capacity as such) specified in paragraphs (a), (b), (c) and (d).

Note—

In relation to paragraphs (d) and (e), when determining whether a person has the right to exercise, or actually exercises, significant influence or control over an applicable company or the activities of a trust or firm, regard may be had to any guidelines issued under section 24.

Part 2

Interpretative Provisions

Division 1 — Preliminary

2. Purpose of this Part

This Part sets out the provisions for the interpretation of this Schedule.

3. Interpretation

1. In this Part—

legal entity (法律實體) has the meaning given by section 653A.

2. For the purposes of this Part, an arrangement—
 - a) includes—
 - (i) a scheme, agreement or understanding, whether or not it is legally enforceable; and
 - (ii) a convention, custom or practice of any kind; and
 - b) refers only to an arrangement with some degree of stability, whether by its nature or terms, the time it has been in existence or otherwise.

Division 2 — Shares

4. Joint interest—share

If a person holds a share jointly with another person, each of them is regarded as holding the share.

5. Joint arrangement—share

1. If shares held by a person and those held by another person are the subject of a joint arrangement between the person and the other person, each of them is regarded as holding the combined shares of both of them.
2. For the purposes of subsection (1), a joint arrangement is an arrangement between the holders of shares to exercise all, or substantially all, the rights conferred by their respective shares jointly in a way pre-determined by the arrangement.

6. Share held by nominee

A share held by a nominee for another person is regarded as being held by that other person.

7. Share held indirectly

1. A person holds a share indirectly if the person has a majority stake in a legal entity (**entity A**) and—
 - a) entity A holds the share; or
 - b) entity A is part but not the last of a chain of legal entities and—
 - (i) each of those legal entities (other than the last one in the chain) has a majority stake in the entity immediately below it in the chain; and
 - (ii) the last one in the chain holds the share.
2. For the purposes of subsection (1), a person has a majority stake in a legal entity if—
 - a) the person holds a majority of the voting rights in that entity;
 - b) the person is a member of that entity and has the right to appoint or remove a majority of the board of directors of that entity;

- c) the person is a member of that entity and, under an agreement with another member of that entity, controls alone a majority of the voting rights in that entity; or
- d) the person has the right to exercise, or actually exercises, dominant influence or control over that entity.

Division 3 — Rights

8. Who is regarded as holding right

1. If a person controls a right, the person is regarded as holding the right, whether or not the person in fact holds the right.
2. Although a person in fact holds a right, the person is not regarded as holding the right unless the person also controls the right.
3. For the purposes of this section, a person controls a right if, under an arrangement between the person and another person, a right is exercisable—
 - a) only by the person;
 - b) only in accordance with the person's directions or instructions; or
 - c) only with the person's consent or concurrence.

9. Joint interest—right

If a person holds a right jointly with another person, each of them is regarded as holding the right.

10. Joint arrangement—right

1. If rights held by a person and those held by another person are the subject of a joint arrangement between the person and the other person, each of them is regarded as holding the combined rights of both of them.
2. For the purposes of subsection (1), a joint arrangement is an arrangement between the holders of rights to exercise all, or substantially all, the rights conferred by their respective rights jointly in a way pre-determined by the arrangement.

11. Voting rights in legal entity

1. A reference to the voting rights in a legal entity is a reference to—
 - a) if the entity has a share capital—the rights given to its members in respect of their shares to vote at general meetings of the entity on all matters or on substantially all matters; and
 - b) if the entity does not have a share capital—the rights given to its members to vote at general meetings of the entity on all matters or on substantially all matters.
2. For a legal entity that does not have general meetings at which matters are decided by exercising such rights—
 - a) a reference to the voting rights in the entity is a reference to—
 - (i) if the entity has a share capital—the rights equivalent to those mentioned in subsection (1)(a); and
 - (ii) if the entity does not have a share capital—the rights equivalent to those mentioned in subsection (1)(b); and
 - b) a reference to 25% of the voting rights in the entity is a reference to the right under the entity's constitution to block changes to the overall policy of the entity or to the terms of its constitution.

12. Appointment or removal of majority of board of directors

A reference to a right to appoint or remove a majority of the board of directors of a legal entity—

- a) is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all matters or on substantially all matters; and,
- b) in relation to a legal entity that does not have a board of directors, is a reference to the right to appoint or remove members of an equivalent governing body holding a majority of the voting rights at meetings of the body on all matters or on substantially all matters.

13. Right held indirectly

1. A person holds a right indirectly if the person has a majority stake in a legal entity (**entity A**) and—
 - a) entity A holds the right; or
 - b) entity A is part but not the last of a chain of legal entities and—
 - (i) each of those legal entities (other than the last one in the chain) has a majority stake in the entity immediately below it in the chain; and
 - (ii) the last one in the chain holds the right.
2. For the purposes of subsection (1), a person has a majority stake in a legal entity if—
 - a) the person holds a majority of the voting rights in that entity;
 - b) the person is a member of that entity and has the right to appoint or remove a majority of the board of directors of that entity;
 - c) the person is a member of that entity and, under an agreement with another member of that entity, controls alone a majority of the voting rights in that entity; or
 - d) the person has the right to exercise, or actually exercises, dominant influence or control over that entity.

14. Circumstances under which legal entity would be regarded as having right to appoint director of another legal entity

1. A legal entity (**entity B**) is regarded as having a right to appoint a director of another legal entity (**entity C**) if—
 - a) a person's appointment as a director of entity C follows necessarily from that person's appointment as a director of entity B; or
 - b) the directorship of entity C is held by entity B itself.
2. For the purposes of subsection (1), if entity B does not have a board of directors, a reference to a director of entity B in subsection (1)(a) is a reference to a

member of an equivalent governing body of entity B.

3. For the purposes of subsection (1), if entity C does not have a board of directors—
 - a) a reference to a director of entity C in subsection (1)(a) is a reference to a member of an equivalent governing body of entity C; and
 - b) a reference to the directorship of entity C in subsection (1)(b) is a reference to the membership of an equivalent governing body of entity C.

15. Right attached to shares held by way of security

1. A right attached to shares held by way of security is regarded as being held by the person providing the security—
 - a) if, except for the situation specified in subsection (2), the right is exercisable only in accordance with that person's instructions; or
 - b) if—
 - (i) the shares are held in connection with the granting of loans as part of normal business activities; and
 - (ii) except for the situation specified in subsection (2), the right is exercisable only in that person's interests.
2. The situation is that the right—
 - a) is exercised for the purpose of preserving the value of the security; or
 - b) is exercised for the purpose of realizing the security.

16. Right exercisable only in certain circumstances

1. A right that is exercisable only in certain circumstances is taken into account only if—
 - a) the circumstances have arisen; or
 - b) the circumstances are within the control of the person having the right.
2. A right exercisable under subsection (1)(a) is exercisable for so long as the circumstances exist.

3. A right that is normally exercisable but is temporarily incapable of being exercised continues to be taken into account.
4. A reference in this section to a right that is exercisable does not include a right that is exercisable by a provisional liquidator, liquidator, or creditor under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

Schedule 5B

[ss. 653A, 653I, 653O & 911]

Required Particulars of Significant Controllers

Part 1 Preliminary

1. Interpretation

In this Schedule—

applicable company (適用公司) has the meaning given by section 653A;

registrable person (須登記人士) has the meaning given by section 653C;

significant controllers register (重要控制人登記冊) has the meaning given by section 653A.

Part 2 Natural Person

2. Particulars of natural person

1. This section applies if a registrable person of an applicable company is a natural person.
2. The following are the particulars required under section 653I(1)(a) to be contained in the significant controllers register of the company for the person—
 - a) the person's present forename and surname, former forename, or surname (if any), and aliases (if any);

- b) the person's correspondence address, which must not be a post office box number;
 - c) the number of the person's identity card or, if the person does not have an identity card, the number and issuing country of a passport held by the person;
 - d) the date on which the person became a registrable person of the company;
 - e) the nature of the person's control over the company.
3. In this section—

forename (名字) includes a Christian or given name;

surname (姓氏), in relation to a person usually known by a title that is different from the person's surname, means that title.

4. In this section, a reference to a person's former forename or surname does not include—
- a) a forename or surname of the person that was changed or ceased to be used before the person attained the age of 18 years;
 - b) a forename or surname of the person that has been changed or ceased to be used for a period of at least 20 years;
 - c) if the person is usually known by a title different from the person's surname, the name by which the person was known before adopting or succeeding to that title; and
 - d) if the person is a married woman, a name or surname by which the person was known before the marriage.

Part 3 Specified Entity

3. Particulars of specified entity

1. This section applies if a registrable person of an applicable company is a specified entity.
2. The following are the particulars required under section 653I(1)(a) to be contained

in the significant controllers register of the company for the entity—

- a) the entity's name;
 - b) the address of the entity's principal office;
 - c) the entity's legal form, and the law that governs it;
 - d) the date on which the entity became a registrable person of the company;
 - e) the nature of the entity's control over the company.
3. In this section—

specified entity (指明實體) has the meaning given by section 653A.

Part 4 Legal Entity

4. Particulars of legal entity

1. This section applies to a registrable legal entity of an applicable company.
2. The following are the particulars required under section 653I(1)(a) to be contained in the significant controllers register of the company for the entity—
 - a) the entity's name;
 - b) if the entity is a company—
 - (i) the company's registration number as stated in its certificate of incorporation; and
 - (ii) the address of its registered office;
 - c) if the entity is not a company—
 - (i) (if applicable) its registration number (or the equivalent) in the place of its incorporation or formation; and
 - (ii) the address of its registered or principal office;
 - d) the entity's legal form, and the law that governs it;
 - e) the date on which the entity became a registrable legal entity of the company;
 - f) the nature of the entity's control over the company.
3. In this section—

registrable legal entity (須登記法律實體) has the meaning given by section 653D.

Schedule 5C

[ss. 653I & 911]

Additional Matters

Part 1 Preliminary

1. Interpretation

In this Schedule -

applicable company (適用公司) has the meaning given by section 653A;

registrable person (須登記人士) has the meaning given by section 653C;

required particulars (所需詳情) has the meaning given by section 653A;

significant controller (重要控制人) has the meaning given by section 653A;

significant controllers register (重要控制人登記冊) has the meaning given by section 653A;

specified period (指明限期), in relation to a notice given under section 653P or 653T, means the period of 1 month from the date of the notice.

Part 2

Inclusion of Additional Matters in Certain Cases

2. Case 1 - where there is no significant controller

1. This section applies if an applicable company knows, or has reasonable cause to believe, that it has no significant controller.
2. The company must note in its significant controllers register that the company knows, or has reasonable cause to believe, that it has no significant controller.

3. Case 2 - where there is unidentified registrable person

1. This section applies if -
 - a) an applicable company knows, or has reasonable cause to believe, that it has a registrable person; and
 - b) the company has not been able to identify that person.
2. The company must -
 - a) note in its significant controllers register that the company knows, or has reasonable cause to believe, that it has a registrable person but has not been able to identify that person; and
 - b) make a separate note in the register in respect of each person that the company has not been able to identify.

4. Case 3 - where particulars of identified registrable person are not confirmed

1. This section applies if -
 - a) an applicable company has identified a registrable person of the company; and
 - b) not all the required particulars of that person have been confirmed under section 653J.
2. The company must -
 - a) note in its significant controllers register that the company has identified a registrable person of the company but not all the required particulars of that person have been confirmed under section 653J; and
 - b) make a separate note in the register in respect of each registrable person whose required particulars have not been so confirmed.

5. Case 4 - where company's investigations are ongoing

1. This section applies to an applicable company if -
 - a) none of the following provisions of this Schedule applies to the company -
 - (i) section 2;
 - (ii) section 3;

- (iii) section 4;
 - b) the company has not entered, and is not yet required to enter, the required particulars of a significant controller of the company in its significant controllers register; and
 - c) the company has not completed taking reasonable steps to ascertain whether it has a significant controller.
2. The company must note in its significant controllers register that the company has not yet completed taking reasonable steps to ascertain whether it has a significant controller.

6. Case 5 - where matters noted under section 2, 3, 4 or 5 of this Schedule has ceased to be true

1. This section applies to an applicable company if a matter noted in its significant controllers register under section 2, 3, 4 or 5 of this Schedule has ceased to be true.
2. The company must -
- a) note in its significant controllers register that the matter has ceased to be true; and
 - b) note also in the register the date on which the matter ceased to be true.

7. Case 6 - where requirement made under section 653Q or 653R is not complied with within specified period

1. This section applies if -
- a) an applicable company has given a notice under section 653P (2) or (3); and
 - b) the addressee of the notice has failed to comply with a requirement of the notice made under section 653Q or 653R within the specified period.
2. The company must -
- a) note in its significant controllers register that the company has given a notice under section 653P(2) or (3) (as the case requires) in respect of which a requirement made under section 653Q or 653R (as the case requires) has not been

complied with within the specified period; and

- b) make a separate note in the register in respect of each such notice.

8. Case 7 - where all requirements made under section 653Q or 653R are complied with after specified period

1. This section applies if -
- a) an applicable company has given a notice under section 653P (2) or (3);
 - b) a note has been made in the company's significant controllers register in respect of the notice under section 7 of this Schedule; and
 - c) the addressee of the notice has complied with all of the requirements of the notice made under section 653Q or 653R after the specified period.
2. The company must -
- a) note in its significant controllers register that the company has given a notice under section 653P (2) or (3) (as the case requires) in respect of which all of the requirements made under section 653Q or 653R (as the case requires) have been complied with after the specified period; and
 - b) make a separate note in the register in respect of each such notice.
3. Each separate note must also state the date of the compliance.

9. Case 8 - where requirement made under section 653U is not complied with within specified period

1. This section applies if -
- a) an applicable company has given a notice under section 653T (2); and,
 - b) the addressee of the notice has failed to comply with a requirement of the notice made under section 653U within the specified period.
2. The company must -
- a) note in the entry for the addressee in its significant controllers register that the

company has given the notice to the addressee; and

- b) note also in the register that the addressee has failed to comply with the requirement within the specified period.

Case 9 - where all requirements made under section 653U are complied with after specified period

1. This section applies if -
 - a) an applicable company has given a notice under section 653T(2);
 - b) a note has been made in the company's significant controllers register in respect of the notice under section 9 of this Schedule; and
 - c) the addressee of the notice has complied with all of the requirements of the notice made under section 653U after the specified period.
2. The company must -
 - a) note in the entry for the addressee in its significant controllers register that the addressee has complied with all of the requirements after the specified period; and
 - b) note also in the register the date of the compliance.”.