

## **Submission in respect of the Companies (Amendment) Bill 2017**

It is submitted that the amendments proposed will cause by far the greatest number of companies in Hong Kong unnecessary work. Well over 1.1 million companies will be required to keep extra registers which, in most cases, will contain no more than is already contained in publicly available documents. The purposes of the amendments can be achieved in a simple manner without the necessity of creating extra unnecessary documentation. If that were done, not only would it avoid considerable pointless work, but it would be of more use to the law enforcement officers than the present proposals because the existence of relevant information would be immediately apparent without the need for individual inspection at company premises.

### **The purposes of the amendments**

As set out in the LegCo Brief the purposes of the amendments are to:

- (a) take reasonable steps to ascertain the individuals and legal persons that have significant control over the company (referred to as “significant controllers”), give notice to them, and obtain accurate and up-to-date information about their identities; and*
- (b) maintain a register of significant controllers of the company, containing required particulars of their identities, for inspection by law enforcement officers upon demand.*

### **The proposed amendments**

The present proposed amendments will require all “Applicable Companies” to keep a register of “significant controllers” despite the fact that that information is, in the vast majority of companies, available from the publicly available documents namely annual returns which all companies must file. It will also be contained on the registers of shareholders and directors which all companies must keep. Under the amendments as presently formulated the same information will have to be duplicated in a third register.

### **The companies to which the provisions apply**

“Applicable company” is said to be defined in section 653A but it isn’t. That section simply says all companies are applicable companies other than listed companies and those that are exempted under section 653ZG(1)(a). That section doesn’t help because all that says is:

“ 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;”*

It would appear from what has been published so far that there is no intention of making further regulations. The term Applicable company will thus include all private, all guarantee and other companies that are not listed. From statistics published by the Companies Registry there would appear to be more than 1.1 million private companies in Hong Kong. That number does not include guarantee companies, which also fall within the term Applicable companies. All such companies will have to have extra registers when, for the vast majority, the information that will have to be in those registers is already of public record.

### **Significant controllers**

Although the provisions in the proposed amendments are somewhat complicated, the “significant controllers” can be categorised as the directors, including those who have the power of appointing directors, and the ultimate beneficial owners of more than 25% of the issued share. For most companies the “significant controllers” are evident from the information contained in the Annual Returns which must be filed for every Hong Kong company.

### **A simple solution**

The purposes or objects of the amendments can be achieved by requiring all “Applicable” companies to keep a register of “significant controllers” where the identity of such persons or entities is not self evident from the publicly available Annual Returns. A note can then be required to be inserted in the Annual Returns as to whether such a register is kept.

### **Conclusion**

What is needed is that those companies where the “significant controllers” are not identified in public records should keep a register. That would conveniently avoid well over a million companies having to keep useless bits of paper. It is said that in view of the short time available to have systems in place to satisfy FATF before the 2018 inspection, a short cut has been taken and English legislation has been copied. In the first place Hong Kong Companies legislation has diverged from that of England without any deleterious effect. The time when it has been necessary to mirror English legislation has ended.

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