

LEGISLATIVE COUNCIL BRIEF

Companies Ordinance
(Cap. 622)

Companies (Amendment) Bill 2017

INTRODUCTION

At the meeting of the Executive Council on 20 June 2017, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that, to fulfil Hong Kong's international obligations under the Financial Action Task Force ("FATF"), the Companies (Amendment) Bill 2017 ("the Bill"), at **Annex**, should be introduced into the Legislative Council ("LegCo") to require a company incorporated in Hong Kong, unless otherwise exempted, (hereafter referred to as "an applicable company") 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 officers¹ upon demand.

¹ For the purpose of the Bill, a law enforcement officer is any of the following officers –

- (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 Commission Ordinance (Cap. 571); and
- (j) an officer of any other Government department, Government agency or body established or constituted by or under an Ordinance, that is specified by the Financial Secretary by regulations made under new section 653ZG to be added to the Companies Ordinance by the Bill.

JUSTIFICATIONS

2. The FATF is an inter-governmental body established in 1989 that sets international standards on combating money laundering and preventing terrorist financing. Over the years, the FATF has developed an elaborate set of 40 recommendations, based on which the international community has been strengthening regulation to combat money laundering and terrorist financing (“ML/TF”). Member jurisdictions take turns to evaluate the domestic anti-money laundering and counter-terrorist financing (“AML/CTF”) regime of each other to assess the extent to which the relevant FATF recommendations are observed, both in terms of technical compliance and effectiveness of implementation.

3. Hong Kong has been a member of the FATF since 1991. Although, generally, we have in place a strong and effective AML/CTF framework, international standards have evolved quickly because of the changing financial market and security landscapes. A gap analysis suggests that there are certain key deficiencies in our AML/CTF regime as against the FATF recommendations. One is the absence of statutory requirements for companies to keep their beneficial ownership information.²

4. Hong Kong is scheduled to undergo a mutual evaluation in 2018/19. Given the openness of our economy and our increasing exposure to the Mainland market, we expect keen interest and heightened scrutiny from other FATF members in that evaluation. If remedial action is not taken to deal with the deficiencies in the run-up to 2018, it is almost certain that Hong Kong will receive adverse ratings. Hong Kong will then have to face an “enhanced follow-up” process. Also the perceived failings in relevant areas will be subjected to frequent reporting and close scrutiny by member jurisdictions during annual plenary meetings. More importantly, this will affect our reputation as an international financial centre and a safe and clean city for doing business.

² Other key deficiencies include the absence of statutory customer due diligence and record-keeping requirements for designated non-financial businesses and professions; certain gaps in the CTF regime in relation to terrorist financing crimes, freezing mechanisms and travel bans on terrorist groups; and the absence of a declaration/disclosure system on the physical cross-boundary transportation movement of large quantities of physical currency and bearer negotiable instruments. Separate legislative exercises are being pursued to address these regulatory gaps. The legislative proposal relating to the statutory customer due diligence and record-keeping requirements for designated non-financial businesses and professions is the subject of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017, which will be introduced into LegCo alongside the Bill.

5. We need to take our international obligations to combat ML/TF seriously. Even though it is not possible to close every regulatory gap in our regime, we recommend targeting the key deficiencies. As a matter of priority, we should enhance transparency of beneficial ownership of Hong Kong companies as set out in the Bill.

LEGISLATIVE PROPOSALS

FATF Requirements

6. Despite the essential and legitimate roles companies play in conducting businesses under the global economy, there are increasing international concerns over the misuse of companies, particularly those under complex ownership and control structures, as a way to disguise and hide crime proceeds, facilitate money laundering, or serve illicit purposes such as tax evasion, corruption or terrorist financing. The ultimate ownership of such companies is often obscured so that those with criminal motives can distance themselves from the assets they really control. This is posing significant challenges to law enforcement agencies when investigating the identity of known or suspected criminals who conceal the true purpose of an account or property, or the source or use of certain funds held through companies or layers of companies in a complicated structure across different locations or jurisdictions.

7. The FATF requires member jurisdictions to take measures to prevent the misuse of legal persons for ML/TF, by ensuring that adequate and accurate information on the beneficial owners and control of legal persons can be obtained or accessed in a timely fashion by competent authorities including law enforcement agencies. The FATF defines a beneficial owner as a natural person who ultimately has a controlling ownership interest in a company, or is exercising control of the company through other means.

Hong Kong's Present Regime

8. At present, the Companies Ordinance (Cap. 622) ("CO") requires a company incorporated in Hong Kong to disclose information on its members (including the shares held by each member and the paid-up capital), directors and company secretaries, by keeping the information in the relevant registers kept by the company at its registered office (or a prescribed place), and filing the information with the Companies Registry ("CR") via specified forms for public inspection. The current law focuses on disclosure of legal ownership, and it does not

require a company to ascertain, keep or file information about its ultimate beneficial owner (i.e. the natural person who ultimately owns or controls the company after lifting the veil of corporate layers), except in the case of a listed corporation which is required under the Securities and Futures Ordinance (Cap. 571) (“SFO”) to keep a register of those individuals or entities owning 5% or more interests in any class of voting shares (including any beneficial owner of such interests).³

9. Separately, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) currently requires a financial institution to take reasonable measures, as part of the customer due diligence process, to verify the identity of the ultimate beneficial owner in relation to a customer, including measures to enable the financial institution to understand the ownership and control structure of a corporate customer. However, the information gathered is not normally accessible to law enforcement agencies, unless a court order is obtained to mandate a specific financial institution to produce the relevant records. This is often time-consuming, and can only be accomplished when an investigator knows the financial institution with which a suspicious company has established business relationship. The present regime is thus not very efficient in disrupting illicit financial flows.

Enhancing Transparency of Beneficial Ownership

10. To enhance transparency of corporate beneficial ownership in accordance with the FATF recommendation, we **propose** amending the CO to require a company incorporated in Hong Kong to obtain and maintain up-to-date beneficial ownership information, by way of keeping a “significant controllers register” (“SCR”), for inspection upon demand by law enforcement officers for the purpose of prevention, detection or investigation of money laundering or terrorist financing under the law of

³ Generally, under the SFO, a person comes under a duty of disclosure when (i) the person acquires 5% or more interests in any voting shares in a listed corporation; (ii) there are any changes in the percentage level or nature of the interests in such shares; or (iii) the person ceases to have 5% or more interests in such shares. The person shall give notification to the listed corporation concerned and to The Stock Exchange of Hong Kong of the interests which the person has, or ceases to have, in voting shares in the listed corporation. A beneficial owner of a listed corporation who comes under a duty of disclosure, as summarised above, must give a notification under the SFO. Every listed corporation shall keep a register of interests in shares and short positions under section 336(1) of the SFO. Whenever a listed corporation receives information from a person given in performance of a duty imposed on the person by any relevant provision (including the notification mentioned above), the listed corporation is under a duty to record it in the register. The register shall, for the purposes of enabling members of the public to ascertain the identity and the particulars of persons who are the true owners of voting shares in the listed corporation, be made available for inspection. Any member of the corporation or any other person may require a copy of any such register on payment of a fee.

Hong Kong. Unless otherwise exempted, the requirement will apply to all companies incorporated under the CO in Hong Kong, including companies limited by shares, companies limited by guarantee and unlimited companies.

11. We **propose** exempting listed companies from the relevant requirements as the SFO has a more stringent regime requiring every listed corporation to keep a register of interests in shares. Listed companies aside, we do not intend to exempt any other particular type of company or class of companies. A power will be reserved for the Financial Secretary (including the Secretary for Financial Services and the Treasury) to make regulations providing for any such exemptions should the need arise, say if it transpires in future that any such companies are bound by disclosure and transparency rules similar to the ones being proposed in relation to beneficial ownership.

12. We **propose** that an applicable company must maintain a SCR in either the English or Chinese language, containing information of its significant controllers. The significant controllers of an applicable company are to be classified into two groups, one consists of registrable persons and the other consists of registrable legal entities. An individual who ultimately has a controlling ownership interest (e.g. holding more than 25% of the voting rights or shareholdings) in an applicable company, or who exercises control of the company through other means (e.g. holding the right to appoint or remove a majority of directors of the company) is a registrable person of the company (“registrable person”).⁴

⁴ Under the Bill, a person is a registrable person of an applicable company if one or more of the following conditions are met –

- (a) the person holds, directly or indirectly, more than 25% of the issued shares in the company (or if the company does not have a share capital, the person holds, directly or indirectly, a right or rights to share in more than 25% of the capital or profits of the company);
- (b) the person holds, directly or indirectly, more than 25% of the voting rights of 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 (or if the company does not have a board of directors, the person holds the right to appoint or remove members of an equivalent management governing body holding a majority of the voting rights at meetings of the body on all or substantially all matters);
- (d) the person has the right to exercise, or actually exercises, significant influence or control over the company; or
- (e) the person has the right to exercise, or actually exercises, 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.

Registrable persons of an applicable company also include the following entities (“specified entities”) if they meet one or more of the above conditions –

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

13. We believe that a beneficial owner may hold an interest in a company indirectly through successive layers of companies in a chain of ownership. To facilitate identification of the holding structure in such cases, we **propose** that an applicable company should also be required to identify and include in the SCR the information of a legal entity that has significant control over the company (“registrable legal entity”). A legal entity – whether or not it is formed or incorporated in Hong Kong – is a registrable legal entity of an applicable company only if it meets one or more of the specified conditions⁵ pertaining to controlling ownership interest, and if it is a legal entity immediately above the company in the company’s ownership chain.

14. To ensure the availability and accuracy of beneficial ownership information which may not be readily available or apparent, we **propose** requiring an applicable company to take reasonable steps⁶ to identify and ascertain its registrable persons or registrable legal entities by giving notice to them. A notice addressee who is or is believed to be a registrable person or registrable legal entity of the company, or who knows or is believed to know the identity of a registrable person or registrable legal entity of the company, will be required to confirm or provide (as appropriate) certain particulars relating to the registrable person or registrable legal entity. The particulars⁷ relating to a registrable person of an applicable company should be entered into the company’s SCR within seven days after they have all been provided or confirmed by the registrable person or by another person with the registrable person’s knowledge. Each of the particulars relating to a registrable legal entity of an applicable company should be entered in the company’s SCR within seven days after that particular comes to the

⁵ The specified conditions as applicable to a legal entity are the same as those conditions mentioned in footnote 4. For the purpose of the current proposal, a legal entity does not include a specified entity mentioned in footnote 4.

⁶ Under the Bill, “taking reasonable steps” includes serving a notice to any person (i) that the company knows or has reasonable cause to believe to be registrable, or (ii) that the company knows or has reasonable cause to believe to be a person who knows another person that is registrable.

⁷ When a company has identified a registrable person of the company, the company should obtain and ascertain the accuracy of the particulars required to be entered in its SCR in relation to the person, including –

- (a) the name of the person;
- (b) (if applicable) the number of the identity card, or the number and issuing country of a passport, of the person;
- (c) the date on which the person became a registrable person of the company; and
- (d) the nature of the person’s control over the company.

notice of the company.⁸

15. We **propose** that an applicable company be required to keep a SCR at its registered office or a prescribed place in Hong Kong. All the entries relating to a registrable person or registrable legal entity of the company may be destroyed after the end of a period of six years from the date on which the person or legal entity ceases to be a registrable person or registrable legal entity of the company. The company is not required to open its SCR for public inspection.

16. We **propose** that on demand made by a law enforcement officer for the purpose of the officer's performance under the law of Hong Kong of a function relating to the prevention, detection or investigation of money laundering or terrorist financing, a company must make available its SCR for inspection by the officer. If the company fails to do so, the officer may apply to the Court of First Instance of the High Court of the Hong Kong Special Administrative Region ("Court") for an order to compel immediate inspection. A person whose name is entered in the SCR as a significant controller of the company is also entitled to inspect the register in accordance with regulations made under section 657 of the CO, and may apply to the Court for rectification of the register. The company will have to designate a representative to serve as a contact point for providing information about the SCR and assistance to law enforcement officers should the need arise.

17. If a company fails to comply with the requirement of keeping a SCR, the company (and each of its responsible persons) will be liable to a fine at a level comparable to that currently applicable to failure to keep registers of members, directors and company secretaries under the CO. We **propose** that the maximum penalty for the non-compliance should be a fine at level 4 (i.e. maximum of \$25,000) and a further daily fine of \$700. A similar penalty (i.e. maximum of \$25,000) should apply in relation to each person who commits an offence for not complying with a requirement of a notice mentioned in paragraph 14. If a person is charged with the offence for non-compliance with a notice requirement, it is a defence for the person to prove that the requirement is frivolous or

⁸ When a company has identified a registrable legal entity of the company, the company should obtain and ascertain the accuracy of the particulars required to be entered in its SCR in relation to the legal entity, including—

- (a) the name of the legal entity;
- (b) the legal form of the entity (including the law that governs it) and the company registration number or the equivalent in its place of incorporation or formation;
- (c) the date on which the legal entity became a registrable legal entity of the company; and
- (d) the nature of the entity's control over the company.

vexatious.

18. If any person knowingly or recklessly makes, in a SCR or in a document replying to a company's notice, a statement which is misleading, false or deceptive in any material particular, we **propose** that the person will commit an offence and will be liable on conviction on indictment to a fine of \$300,000 and to imprisonment for two years; or on summary conviction to a fine at level 6 (i.e. maximum of \$100,000) and to imprisonment for six months.

THE BILL

19. The main provisions of the Bill are as follows –

- (a) **Clause 4** adds a new Division 2A to Part 12 of the CO. The new Division 2A mainly provides for an applicable company's duties in relation to keeping its SCR. The following is a brief description of the new sections in that Division –
 - (i) sections 653A to 653D and sections 653F and 653G define certain expressions used in the new Division, such as “applicable company”, “law enforcement officer”, “registrable person”, “registrable legal entity”, “significant controller” and “significant controllers register”;
 - (ii) section 653E provides for the circumstances under which a person is regarded as having significant control over an applicable company;
 - (iii) section 653H requires an applicable company to keep a SCR;
 - (iv) section 653I provides for the contents of the SCR;
 - (v) sections 653J and 653K provide for the entering of certain particulars of a significant controller of the company in the company's SCR;
 - (vi) section 653L provides for the time after which certain entries in the company's SCR may be destroyed;
 - (vii) section 653M provides for the place at which a SCR may

be kept and the giving of a notice to the Registrar of Companies in respect of that place;

- (viii) section 653N provides for the giving of a notice to the Registrar of Companies if there is a change in the place at which the company's SCR is kept;
- (ix) section 653P requires the company to take reasonable steps to ascertain whether there is a significant controller of the company and to issue notices to relevant parties;
- (x) sections 653Q and 653R set out the requirements for a notice to be given under section 653P;
- (xi) section 653T imposes a duty on the company to keep the information in its SCR up to date;
- (xii) section 653U sets out the requirements for a notice to be given under section 653T;
- (xiii) section 653W provides for the right of a person whose name is entered in the company's SCR to inspect the register and request a copy of it;
- (xiv) section 653X requires an applicable company to make its SCR available for inspection by a law enforcement officer for the purpose of the officer's performance under the law of Hong Kong of a function relating to the prevention, detection or investigation of money laundering or terrorist financing, and to permit the officer to make a copy of it;
- (xv) sections 653Y and 653Z empower the Court to make orders relating to the inspection and making copies of the SCR by a law enforcement officer;
- (xvi) section 653ZA imposes a duty on the addressee of a notice given under the new Division 2A to comply with a requirement of the notice made under section 653Q, 653R or 653U;
- (xvii) section 653ZB is a provision on legal professional privilege;

- (xviii) section 653ZC requires an applicable company to designate at least one person to provide assistance relating to the company's SCR to a law enforcement officer;
 - (xix) section 653ZD empowers the Court to rectify the SCR of an applicable company;
 - (xx) section 653ZE creates an offence for making a false statement or providing misleading, false or deceptive information; and
 - (xxi) section 653ZG empowers the Financial Secretary to make regulations; and
- (b) **Clause 6** adds three new schedules to the CO –
- (i) Schedule 5A sets out the criteria for determining whether a person has significant control over an applicable company;
 - (ii) Schedule 5B provides for the particulars to be entered in the SCR of an applicable company; and
 - (iii) Schedule 5C sets out the additional matters required to be entered in the SCR of an applicable company.

LEGISLATIVE TIMETABLE

20. The legislative timetable will be –

Publication in the Gazette	23 June 2017
First Reading and commencement of Second Reading debate	28 June 2017
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSALS

21. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental, family, gender or sustainability implications. The proposed amendments do not affect the binding effect of the CO.

Financial and Staffing Implications

22. There will be additional work for CR to implement the beneficial ownership proposal, educate the public, carry out compliance checks on the SCRs of companies, and undertake related enforcement work, with appropriate revisions to statutory returns and its electronic systems. CR will seek to absorb the additional workload with existing resources as far as possible. Additional manpower resources, if required, will be sought with justifications in accordance with the established mechanism. It is expected that the Companies Registry Trading Fund would be able to generate sufficient revenue on an overall basis to meet the costs for implementing the proposal.

Economic Implications

23. The proposal is pertinent to our fulfilment of the relevant FATF obligations and will reduce the risks of ML/TF in the wider corporate world. This will help safeguard the integrity of our financial markets and business environment, and add to our credibility as a transparent, trusted and competitive place to invest and do business.

PUBLIC CONSULTATION

24. We briefed the LegCo Panel on Financial Affairs on 3 January 2017 on the legislative proposal. We also conducted a public consultation from 6 January to 5 March 2017 on the legislative proposal and received 58 written submissions. Respondents came from a good mix of backgrounds, including the Office of the Commissioner for Personal Data, industry associations and professional bodies, political parties, international advocacy groups and civil society, individual firms or companies, as well as individual members of the public.

25. Overall speaking, there was broad support for the Government to enhance AML/CTF regulation in Hong Kong in fulfilment of our international obligations under the FATF. A majority of the respondents indicated agreement with the overall direction and principles as well as

the broad framework of the legislative proposals, and shared our view that a balanced approach to legislation should be adopted so as to minimise regulatory burden and compliance cost on affected businesses. Respondents also expressed diverse views regarding the precise scope, coverage and parameters of the legislative proposal, by and large reflecting their sectoral interests or backgrounds. Having regard to the responses, we have fine-tuned certain parameters of the legislative proposal as are now reflected in the Bill. We published a consultation conclusion on 13 April 2017.

PUBLICITY

26. We will issue a press release upon gazettal of the Bill, and arrange a spokesperson to answer media enquiries.

ENQUIRIES

27. Enquiries relating to the brief can be directed to Ms Eureka Cheung, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067.

Financial Services and the Treasury Bureau
23 June 2017

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A BILL

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.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2017.
- (2) 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)—

- (a) means a body of persons, corporate or unincorporate, that is a legal person under the law that governs it; but
- (b) 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 corporation sole;
- (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 if 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.
- (2) The notice must—
 - (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.
- (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.

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 controllers 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.

10. 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.”.
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Explanatory Memorandum

Hong Kong is required to meet its obligations under the Financial Action Task Force’s Recommendations for combating money laundering and terrorist financing (*Hong Kong’s obligations*).

2. The main purpose of this Bill is to amend the Companies Ordinance (Cap. 622) (*Companies Ordinance*) to meet Hong Kong’s obligations in providing for transparency in the beneficial ownership of companies.
3. The Bill proposes to add a new Division (*new Division 2A*) to Part 12 of the Companies Ordinance, and 3 new Schedules to that Ordinance—
 - (a) to require a company falling within certain descriptions to keep a register (*significant controllers register*) for persons who have significant control over the company (*significant controllers*);
 - (b) to provide the criteria for determining whether a person has significant control over the company; and
 - (c) to provide for related matters.
4. A company that has the duty to keep a significant controllers register under the new Division 2A is referred to as an applicable company (*applicable company*) in that Division. An applicable company is a company incorporated in Hong Kong other than—
 - (a) a listed company as defined by section 2(1) of the Companies Ordinance; or
 - (b) a company that falls within a type of company, or class of companies, exempted by regulations made under that Division.

New Division 2A Added to Part 12 of Companies Ordinance

5. Clause 4 adds the new Division 2A to Part 12 of the Companies Ordinance. The new Division 2A has 6 Subdivisions and 37 sections (sections 653A to 653ZK).

Subdivision 1 of New Division 2A—Preliminary (Sections 653A to 653G)

6. Subdivision 1 of the new Division 2A provides for preliminary matters.
7. Sections 653A, 653B, 653C, 653D, 653F and 653G define certain expressions used in the new Division 2A. These expressions include—
- (a) *applicable company*;
 - (b) *law enforcement officer*;
 - (c) *registrable change*;
 - (d) *registrable legal entity*;
 - (e) *registrable person*;
 - (f) *related person*;
 - (g) *significant controller*; and
 - (h) *significant controllers register*.
8. Section 653E provides for the circumstances under which a person is regarded as having significant control over an 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 the new Schedule 5A in relation to the company.

Subdivision 2 of New Division 2A—Keeping of Significant Controllers Register (Sections 653H to 653N)

9. Subdivision 2 of the new Division 2A mainly provides for an applicable company's duties in relation to keeping its significant controllers register.
10. Section 653H requires an applicable company to keep a register of its significant controllers, whether or not it has any significant controllers. It also requires the register to be kept in the English or Chinese language.
11. Section 653I provides for the contents of the significant controllers register of an applicable company. The register must contain—
- (a) for each person that the company knows to be a significant controller of the company—the particulars prescribed in the new Schedule 5B that are applicable to the person, and the particulars in relation to certain changes with respect to the person;
 - (b) the name and contact details of at least one person who is designated by the company under section 653ZC; and
 - (c) all the additional matters required to be noted in the register under the new Schedule 5C.
12. Sections 653J and 653K provide for the entering of certain particulars of or in relation to a significant controller of an applicable company in the company's significant controllers register.
13. Section 653L provides for the time after which certain entries in the significant controllers register of an applicable company may be destroyed.
14. Section 653M provides for the place at which the significant controllers register of an applicable company may be kept and the giving of a notice to the Registrar of Companies (*Registrar*) in respect of that place.

15. Section 653N provides for the giving of a notice to the Registrar if there is a change in the place at which a significant controllers register is kept.

Subdivision 3 of New Division 2A—Investigation and Obtaining Information by Applicable Company (Sections 653O to 653S)

16. Subdivision 3 of the new Division 2A (*Subdivision 3*) provides for an applicable company's duty to carry out investigation and obtain information about its significant controllers.
17. Section 653O defines certain expressions used in Subdivision 3.
18. Section 653P(1) requires an applicable company to take reasonable steps to ascertain whether there is any significant controller of the company and, if any, to identify each of them.
19. Section 653P(2) requires an applicable company to give a notice to a person whom the company knows or has reasonable cause to believe to be a significant controller of the company.
20. Section 653P(3) requires that if an applicable 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 also give a notice to the particular person.
21. The requirements for a notice to be given under section 653P(2) are set out in section 653Q, and those for a notice to be given under section 653P(3) are set out in section 653R.
22. Section 653S provides for the circumstances under which an applicable company is not required to comply with section 653P.

Subdivision 4 of New Division 2A—Applicable Company to Keep Information Up-to-date (Sections 653T, 653U and 653V)

23. Section 653T imposes a duty on an applicable company to keep the information in its significant controllers register up-to-date.
24. Under section 653T, if an applicable company knows, or has reasonable cause to believe, that a person has ceased to be a significant controller of the company, the company must give a notice to the person.
25. The company must also give its significant controller a notice if the company knows, or has reasonable cause to believe, that there is any other change resulting in the controller's particulars entered in the significant controllers register of the company being incorrect or incomplete.
26. A notice under section 653T must be given in accordance with section 653U.
27. Section 653V provides for the circumstances under which an applicable company is not required to give a notice under section 653T.

Subdivision 5 of New Division 2A—Inspection of Significant Controllers Register (Sections 653W to 653Z)

28. Subdivision 5 of the new Division 2A contains 4 sections.
29. Section 653W entitles a person whose name is entered in the significant controllers register of an applicable company to inspect the register and request the company to provide a copy of it (or part of it).
30. Section 653X requires an applicable company to make its significant controllers register available for inspection by a law enforcement officer, and permit the officer to make a copy of the register (or part of it).
31. Sections 653Y and 653Z empower the Court of First Instance of the High Court of the Hong Kong Special Administrative Region

(*Court*) to make orders enabling a law enforcement officer to inspect and make a copy of a significant controllers register (or part of it) by the officer.

Subdivision 6 of New Division 2A—Miscellaneous or Related Matters (Sections 653ZA to 653ZK)

32. Subdivision 6 of the new Division 2A provides for miscellaneous or related matters.
33. Section 653ZA imposes a duty on the addressee of a notice given under the new Division 2A to comply with a requirement of the notice made under section 653Q, 653R or 653U.
34. Section 653ZB is a provision about legal professional privilege. It provides that a person is not required to provide information to an applicable company in complying with a notice given under the new Division 2A by the company which the person would, on grounds of legal professional privilege, be entitled to refuse to give or provide in legal proceedings.
35. Section 653ZC requires an applicable company to designate at least one person to provide assistance relating to the company's significant controllers register to a law enforcement officer to facilitate the officer's performance of a function described in that section.
36. Section 653ZD empowers the Court to rectify the significant controllers register of an applicable company.
37. Section 653ZE makes it an offence to make a statement or provide information that is misleading, false or deceptive in a material particular.
38. Section 653ZG empowers the Financial Secretary to make regulations.

39. Sections 653ZH to 653ZK contain transitional provisions for sections 653J, 653K, 653P and 653S. The provisions apply to an existing company as defined by section 653A.

Other Amendments Made to Companies Ordinance

40. Clause 5 makes a minor amendment to section 911 of the Companies Ordinance to empower the Financial Secretary to amend the new Schedules 5A, 5B and 5C.
41. Clause 6 adds new Schedules 5A, 5B and 5C to the Companies Ordinance.