

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 7 July 2017**

**Legal Service Division Report on
Companies (Amendment) Bill 2017**

I. SUMMARY

- 1. The Bill**

 - (a) The Bill seeks to amend the Companies Ordinance (Cap. 622) to implement the recommendations of the Financial Action Task Force ("FATF") for combating money laundering ("ML") and terrorist financing ("TF").
 - (b) The Bill proposes that certain companies incorporated in Hong Kong would be required to keep registers of persons who have significant control over the companies and also provides for related matters.
- 2. Public Consultation** The Administration conducted a public consultation from 6 January to 5 March 2017 on the legislative proposal and received 58 written submissions. There was broad support for the Government to introduce measures to fulfil its international obligations under FATF, but diverse views were expressed regarding the precise scope, coverage and parameters of the proposal.
- 3. Consultation with LegCo Panel** The Panel on Financial Affairs was consulted on 3 January 2017 on the Administration's proposal to enhance the transparency of beneficial ownership of Hong Kong companies to combat ML and TF, and its plan to introduce an amendment bill into the Legislative Council. Members had no objection to the Administration's proposal and plan, but raised various concerns.
- 4. Conclusion** The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to impose new requirements on companies for the purpose of combating ML and TF, Members may wish to form a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 28 June 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: B&M/4/1/43C) issued by the Financial Services and the Treasury Bureau on 23 June 2017 for further details.

Object of the Bill

2. The Bill seeks to implement the recommendations of the Financial Action Task Force ("FATF") for combating money laundering ("ML") and terrorist financing ("TF") by amending the Companies Ordinance (Cap. 622) 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.

Background

3. Under Cap. 622, companies incorporated in Hong Kong are only required to disclose information on legal ownership, e.g. information on members, directors, and company secretaries. There is currently no requirement for companies to provide information on beneficial ownership (i.e. the person or entity that ultimately owns or controls the company). While the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) requires a financial institution ("FI") to verify the identity of the ultimate beneficial owner in relation to a customer, the FI is not obliged to provide the information gathered except under a court order. According to paragraphs 3 to 5 of the LegCo Brief, the Administration has identified the lack of transparency of beneficial ownership of Hong Kong companies as a key deficiency in Hong Kong's anti-money laundering ("AML") and counter-terrorist financing ("CTF") regime. As Hong Kong is a member of FATF, the Administration considers it necessary to amend Cap. 622 in order to enhance Hong Kong's AML and CTF regime to ensure Hong Kong's compliance with FATF's AML and CTF standards.

Provisions of the Bill

4. The Bill proposes to add a new Division 2A (new sections 653A to 653ZK) to Part 12 of Cap. 622 to introduce a new type of register, namely the Significant Controllers Register ("SCR"), and impose various requirements relating to SCR on an applicable company. The new section 653A defines "applicable company" as a company formed and registered under Cap. 622 or the former Companies Ordinance, except listed companies (which are subject to a different and more stringent set of disclosure requirements under the Securities and Futures

Ordinance (Cap. 571)¹) and companies exempted by regulations made by the Financial Secretary ("FS"). The proposed requirements relating to SCR are summarized in the following paragraphs.

Requirement to keep SCR

5. Under the new Division 2A, an applicable company would be required to keep a SCR which must be kept in either the English or Chinese language at the company's registered office or a place prescribed by regulations. The SCR must contain information on the significant controllers of an applicable company, namely registrable persons² or registrable legal entities³ who have significant control over the company. Under the new Schedule 5A to Cap. 622, a person has significant control over an applicable company if certain specified conditions are met. These include holding directly or indirectly more than 25% of the issued shares in the company, holding directly or indirectly more than 25% of the voting rights in the company, and having the right to exercise or actually exercising significant influence or control over the company.

6. An applicable company and every responsible person of the company would commit an offence if any of the above requirements is not complied with, and would each be liable to a fine at level 4 (\$25,000). In the case of a continuing offence, the company and every responsible person of the company would be liable to a further fine of \$700 for each day during which the offence continues.

Company's duty to investigate, obtain information and keep SCR up-to-date

7. The new section 653P of Cap. 622 proposes that an applicable company would be required to take reasonable steps to investigate whether there are any significant controllers of the company. If an applicable company knows or has reasonable cause to believe that a person is a significant controller of the company, or the company knows or has reasonable cause to believe that a particular person knows the identity of a significant controller of the company, the company would be required to give a notice in writing to the person or the particular person who knows the identity of the significant controller within seven days, and the addressee of the notice would be required to confirm whether or not the addressee is a registrable person or registrable legal entity within one month.

¹ Refer to sections 310 to 315 and section 336 of Cap. 571.

² Under the new section 653C, "registrable person" refers to a natural person or a specified entity (defined in the new section 653A, including a government and international organization) who has significant control over an applicable company.

³ Under the new section 653D, "registrable legal entity" refers to a legal entity (defined in the new section 653A as a body of persons, corporate or unincorporate, that is a legal person under the law that governs it, but does not include a specified entity) who is a member of an applicable company and who has significant control over it.

8. Furthermore, an applicable company would be required to ensure that the information contained in SCR is up-to-date. If an applicable company knows or has reasonable cause to believe that there is a registrable change with respect to a person (e.g. if a person ceases to be a significant controller of an applicable company), the company must give a notice in writing to the person to whom the registrable change relates within seven days, and the addressee of the notice would be required to confirm whether or not there is a registrable change within one month.

9. If any of the above requirements is contravened, an applicable company and persons including the responsible persons of the company and the addressee of the notice concerned would commit an offence and would each be liable to a fine at level 4 (\$25,000).

10. It would be an offence under the new section 653ZE for any person to knowingly or recklessly make a statement or provide any information that is misleading, false or deceptive in a material particular in purported compliance with a notice given under the new Division 2A of Cap. 622. Any person who commits the offence would 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 (\$100,000) and to imprisonment for six months.

Permitting law enforcement officers to inspect SCR

11. Under the new section 653X, an applicable company would be required, upon demand, to permit a law enforcement officer (as defined in the new section 653B, including officers of the Companies Registry, the Hong Kong Police Force, the Independent Commission Against Corruption, the Securities and Futures Commission, etc.) to inspect or make copies of SCR for the purpose of the officer's performance of a specified function under the law.

12. If the above requirement is contravened, the company and every responsible person of the company would commit an offence and would each be liable to a fine at level 4 (\$25,000). Furthermore, the Court of First Instance ("Court") may, on application by a law enforcement officer, order an applicable company to permit the officer to inspect or make a copy of SCR.

Other provisions

13. Other provisions of the Bill provide for the following matters:

- (a) under the new section 653W of Cap. 622, a person whose name is entered in SCR of an applicable company as a significant controller would be entitled to inspect SCR, or request a copy of SCR (or a part of it);

- (b) under the new section 653ZB, a person would not be required, in complying with a notice given under the new Division 2A of Cap. 622 by an applicable company, to produce any information to the company that he/she would on grounds of legal professional privilege be entitled to refuse to give or provide in legal proceedings;
- (c) the power of the Court to rectify SCR of an applicable company; and
- (d) miscellaneous and related provisions, including the power of FS to make regulations, and transitional arrangements.

Commencement

14. The Bill, if passed, would come into operation on 1 March 2018.

Public Consultation

15. According to paragraphs 24 and 25 of the LegCo Brief, the Administration conducted a public consultation from 6 January to 5 March 2017 on the legislative proposal and received 58 written submissions from various respondents including the Office of the Commissioner for Personal Data, industry associations, professional bodies, individual firms and companies. There was broad support for the Government to enhance Hong Kong's AML and CTF regime to ensure compliance with international obligations under FATF. A majority of the respondents indicated agreement with the overall direction and principles as well as the broad framework of the proposal, but expressed diverse views regarding the precise scope, coverage and parameters of the proposal.

Consultation with LegCo Panel

16. The Clerk to the Panel on Financial Affairs has advised that the Panel was consulted on 3 January 2017 on the Administration's proposal to amend Cap. 622 to enhance the transparency of beneficial ownership of Hong Kong companies to combat ML and TF; and its plan to introduce an amendment bill into LegCo. Members had no objection to the Administration's proposal and plan, but raised a number of enquiries/concerns on issues including the effects of the proposed requirements in addressing misuse of companies with complex ownership and control structures to hide crime proceeds or facilitate ML and TF, sanctions against non-compliance, and public disclosure of information on the ultimate beneficial ownership of companies.

Conclusion

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce new requirements on companies for the purpose of combating ML and TF, Members may wish to form a Bills Committee to study the Bill in detail.

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