

COMMENTS OF THE HONG KONG BAR ASSOCIATION ON THE GUIDELINE ON THE KEEPING OF SIGNIFICANT CONTROLLERS REGISTER

CHAPTER 2

Paragraph 2.5.2

1. To assist the reader, it is suggested the following should be added to line 1 of paragraph 2.5.2:-

“... that has significant control (as explained in Chapter 3 below) over the company ...”

2. First bullet point – for the sake of clarity and consistency, we suggest bringing this in line with the relevant provision contained in the Companies (Amendment) Bill 2017, i.e. s. 653C, as follows:-

“the person or entity holds shares or rights in the company through a registrable legal entity of the company which has any of its shares listed on the Stock Exchange of Hong Kong; or”

Paragraph 2.6.1

3. Paragraph 2.6.1 provides the definition of a specified entity.
4. The third bullet point is incomplete, as the definition in s. 653A requires such international organization to have at least 2 countries or territories as members. It is suggested that the third bullet point be revised as follows:-

“an international organization whose members include 2 or more countries or territories (or their governments)”

Paragraph 2.7.3

5. The Bar notes that this paragraph is supposed to provide an explanation for s. 653ZC(2), which stipulates the qualifications required a “designated representative” of a company.
6. However, the definition in sub-s. (2)(b) appears to be erroneous, as there is no definition of “an accounting professional”, “a legal professional” or “a TCSP licensee” in section 1 of Part 2 of Schedule 1 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) at all.
7. Instead, under section 18 of Schedule 2 to Cap. 615, sub-s. (3)(a) and (c) list out who are the “specified intermediaries” for the purpose of carrying out customer due diligence under Cap. 615, and that appears to bear some semblance to what s. 653ZC(2)(b) is directed at. Clarification of the statutory language in s. 653ZC(2)(b) is required.

8. Provided the necessary clarification is given to the language in s. 653ZC(2)(b), the Bar has no comment on this paragraph in the draft Guideline.

CHAPTER 5

Paragraph 5.1.1

9. The box in this paragraph closely tracks the particulars set out in the proposed Schedule 5B, however in the second bullet point under “registrable legal entity”, the reference to the law that governs the registrable legal entity is omitted. The Bar is of the view that because the governing law is not of itself an obvious particular to be stated in a filing of such nature, it would be helpful to identify it in the draft Guideline so that those who consult it would be more readily alerted to such requirement. Accordingly the Bar suggests adding as follows:-

“The required particulars for a **registrable legal entity** are –

- name
- the legal form of the legal entity, the law that governs it, and the legal entity’s registration number of the equivalent in its place of incorporation or formation”

CHAPTER 6

Paragraph 6.2.1

10. It may be helpful to include a short reference to the circumstances under which notice under section 653T is not required, as provided under s.653V of the Bill.

CHAPTER 7

Paragraph 7.2.2

11. Paragraph 7.2.2 should mirror s. 653N(3). It is therefore suggested that this paragraph should be amended as follows:-

“There is no need to give notification to the Registrar if the SCR is kept at the company’s registered office and the change ~~is a change in the address of the registered office~~ is due to a change in the registered office’s address.”

CHAPTER 8

Paragraph 8.1.1

12. There is also a typographical error in the table setting out law enforcement officers in Hong Kong. We therefore suggest the following amendments to be made:-

Law enforcement officer includes an officer of the following Government departments or statutory bodies:-

- ...
- Independent Commission Against ~~Commission~~ Corruption
- ...

13. A new paragraph should be added regarding the court’s power to order an inspection of the SCR and the making of copy of the SCR, under ss.653Y and 653Z of the Bill.

Paragraph 8.3.1

14. Paragraph 8.3.1 states that “a person may apply to the Court to rectify the SCR of a company”, but s. 653ZD in fact restricts the classes of persons who can make such an application to the Court. The Bar suggests that this paragraph should be amended to reflect the position more clearly:-

“8.3.1 ~~A person~~ The company, a significant controller or a person aggrieved may apply to the Court to rectify the SCR of a company if –

- the person’s name is wrongly entered in or omitted from the register; or
- there is default or unnecessary delay in entering an entry in the register that the person has ceased to be a significant controller of the company”

CHAPTER 9

Paragraph 9.1

15. The Bar takes the view the specificity of the location of the SCR should also be included as a major obligation, and suggests the following bullet point be added to the end of the list:-

“ • notifying the Registrar of a change in the place at which its SCR is kept”

CHAPTER 11

Paragraph 11.6

16. This paragraph is based on s.15 of Schedule 5A but the current wording in the draft Guideline may cause confusion. To better reflect the intention of that paragraph, the Bar suggests adopting the following wording in place of the current wording.

“11.6 Rights attached to shares held by way of security

11.6.1 If shares are used as security:

- (a) but a right attached to those shares is exercisable only in accordance with the instructions of the person who provides them as security (except where the exercise of such right is for purposes of preserving the value of the security or realising the security); or
- (b) if the shares are held as security in connection with the grant of loans as part of normal business activities (eg obtaining a loan from a bank for business needs) and a right attached to them is exercisable only in the interest of the person who provides them as security (except where the exercise of such right is for purposes of preserving the value of the security or realising the security),

those shares will be regarded as being held by the person providing them as security.”

HONG KONG BAR ASSOCIATION

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