

# TECHNICAL SUPPORT BULLETIN

## (for CSA Expert edition)

P & L Associates brings you practical advice and announcements related to  
CSA: *the Company Secretarial Software*.

Issue: August 2017

Under the recent Bill to amend the Companies Ordinance (Cap. 622), the government is adding the new requirement for companies to keep a **Significant Controllers Register**.

- (1) All Hong Kong incorporated companies with or without share structure, except listed companies and exempt companies, will need to maintain this new register.
- (2) The main purpose of this Bill is to meet Hong Kong's obligations to combat money laundering and terrorist financing by showing who has the significant control of a suspected company.
- (3) The register must be kept in the English or Chinese language.
- (4) Even your company has no significant controller, you still need to maintain this register open for inspection by law enforcement officers.
- (5) Law enforcement officers include but not limited to officers of the following agencies: Companies Registry (C/R), Customs and Excise Department, Monetary Authority, Police Force, Immigration Department, Inland Revenue Department (IRD), Insurance Authority, Independent Commission Against Corruption (ICAC), and Securities and Futures Commission.

This is only a summary. Please read the full version of the Bill to have complete details.

### Who is a Significant Controller?

---

- (1) A person holds, directly or indirectly, more than 25% of the issued shares, rights or share of profit in the company.
- (2) A person holds a share jointly with another person, each of them is regarded as holding the share.
- (3) All joint arrangement between the person and the other person, each of them is regarded as holding the combined shares or the rights of both of them.
- (4) A share held by a nominee for another person is regarded as being held by that other person.
- (5) A person holds a share or right indirectly if it is held through a chain of intermediaries with each holding a majority share in the entity below except the last one which holds the share or right are each regarded a holder of such interest. This is to prevent anyone who uses Non-HK Company to exert significant control of a Hong Kong company.
- (6) A person who has the right to appoint or remove directors holding a majority of the voting rights at board meetings or any governing body.

## What needs to be recorded on a Significant Controllers Register?

---

### For a Natural 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 that 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.

### For a Specified Entity

*A specified entity is a corporation sole; or a government or a local authority of a country or territory; or an international organization whose members include 2 or more countries or territories (or their governments).*

- (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.

### For a Legal Entity

*A legal entity is a body of persons, corporate or un-incorporate, that is a legal person under the law that governs it, but does not include a specified entity.*

- (a) The entity's name;
- (b) If the entity is a company, its company's registration number as stated in its certificate of incorporation (or the equivalent), and the address of its registered office;
- (c) If the entity is not a company, its registration number (or the equivalent) in the place of its incorporation or formation, and 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 person of the company;
- (f) The nature of the entity's control over the company.

## What is the proper procedure when you just find out there is a Significant Controller?

---

### Give a notice to that person

- (a) If the company first knows, or has reasonable cause to believe, that a person is a significant controller of the company, the company must give a notice to the person ("addressee") within 7 days.

- (b) The addressee must comply with the requirements within 1 month from the date of the notice.

#### **The notice must state that**

- (a) If the addressee confirms that the addressee is a registrable person of the company, the addressee is required to confirm or correct the required particulars that are included in the notice, and provide any required particulars that are missing from the notice.
- (b) The notice must also require the addressee to state whether or not the addressee knows the identity of another person who is a significant controller of the company, and, if the addressee knows the identity of such a person, provide to the company all the specified particulars of that person, and state whether or not the particulars are provided with that person's knowledge.

#### **After sending out the notice**

- (a) Make a note in your Significant Controllers Register that you have or have not received the reply from the addressee.
- (b) If you have received the reply then state the date whether all the requirements are complied with. If you have not received the reply you need to state in your register that the addressee has failed to comply with the requirement.

### **What if there is no Significant Controller?**

---

If there is no significant controller, the company still need to write down on the register that the company knows, or has reasonable cause to believe, that it has no significant controller.

### **What if there is an unidentified Significant Controller?**

---

If there is reasonable cause to believe that a significant controller exists but the company has no way to identify that person, the company will need to make a note on the register in respect of each person that the company has not been able to identify.

### **What if you cannot confirm the particulars of that identified Significant Controller?**

---

If there is identifiable significant controller but not all required information is available, the company must write down on the register that the company knows the identified significant controller but not all the required information of the person has been confirmed. Also, the company needs to make a separate note in the register in respect of each registrable person whose required particulars have not been so confirmed.

## **What if the company is currently trying to obtain the required information?**

---

If 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 it is in the process of taking reasonable steps to ascertain whether it has a significant controller, the company must write it down in its Significant Controllers Register of the status of the current investigations.

## **What if a matter noted in its significant controllers' register is no longer true?**

---

The company must note in its Significant Controllers Register that the matter ceased to be true and write down the effective date.

## **What is the penalty for non-compliance?**

---

If a company failed to keep the register, the company as well as every responsible person of the company is considered commit an offence, and each is liable to a fine equal to Level 4 (HK\$25,000) of the Criminal Procedure Ordinance (cap. 221), and, in the case of a continuing offence, to a further fine of HK\$700 for each day during which the offence continues.

## **CSA Expert**

---

According to the C/R's expectation, this new requirement will be taken into effective on or before March 2018. Please note that CSA Expert will only be updated after the passage of this Amendment Bill and before the effective date.

~ End ~

---

The CSA Technical Support Bulletin ("Bulletin") is published by P & L Associates for all users of CSA: *the* Company Secretarial Software whose system is under warranty or annual maintenance. The Bulletin is published for providing practical advice on matters relating to the use of CSA and is primarily for reference only. The publisher shall not be liable in any event for incidental or consequential damages in connection with or rising out of the furnishing, performance, or use of any advice. All brands and products mentioned herein, if any, are trademarks of their respective owners. Copyright by P & L Associates. All rights reserved.