

Keeping of Significant Controllers Registers by Listed Companies' HK subsidiaries – exempted or not?

Unfortunately not.

Probably you are aware that the Companies (Amendment) Ordinance 2018 (the “Amendment Ordinance”) introduces new requirements on the keeping of significant controllers registers (“SCR”) by Hong Kong incorporated companies with effect from 1 March 2018. But what is the impact of the Amendment Ordinance to a listed group?

To enhance transparency of corporate beneficial ownership in order to fulfil Hong Kong’s international obligations, the Companies Ordinance (Cap. 622) is amended to require a company incorporated in Hong Kong to obtain and maintain up-to-date beneficial ownership information by way of keeping a SCR. The SCR should be open for inspection by law enforcement officers upon demand.

Pursuant to s.653A of the Amendment Ordinance, “**applicable company** (適用公司) means a company other than – (a) a listed company”. Hence, listed companies are exempted. However, there is no exemption for listed companies’ subsidiaries.

The SCR of a directly owned subsidiary/interests of a Hong Kong listed company is relatively straight forward. Pursuant to section 653C of the Amendment Ordinance, persons or entities holding interests in a company through a listed company are not registrable persons of the company.

“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.”

Pursuant to section 653D(a) of the Amendment Ordinance, a registrable legal entity is a member (i.e. a registered shareholder) of the 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.”

Hence, if the applicable company is a directly owned subsidiary/interests of a listed company, the investigation is up to the listed company. **However, if the applicable company is an indirectly owned subsidiary/interests of a listed company, Hong Kong has not provided for the investigation to stop at the listed company.** This is a significant departure from the approach taken by other jurisdictions and will potentially create great inconvenience. Get prepared!

Figure 1: Listed companies are exempted

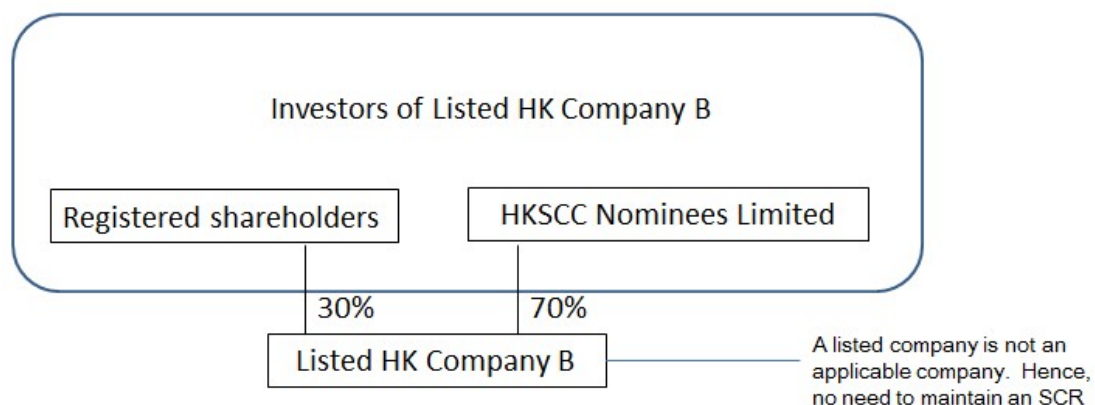


Figure 2: persons or entities holding interests in a company through a listed company (which being the registered shareholder of the company) are not registrable persons of the company

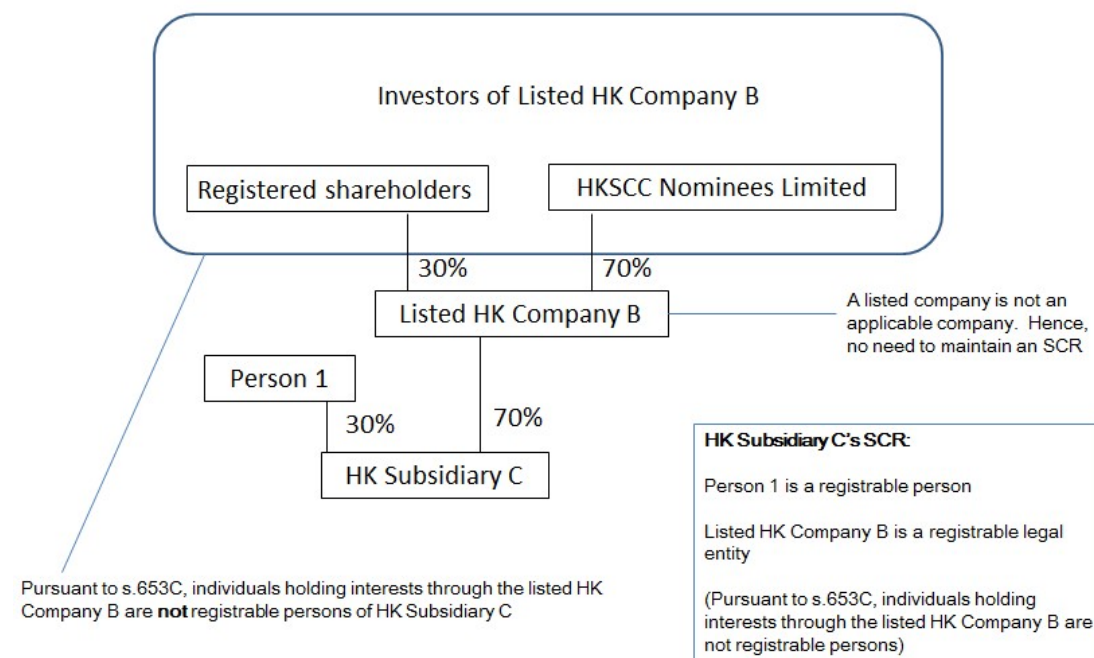
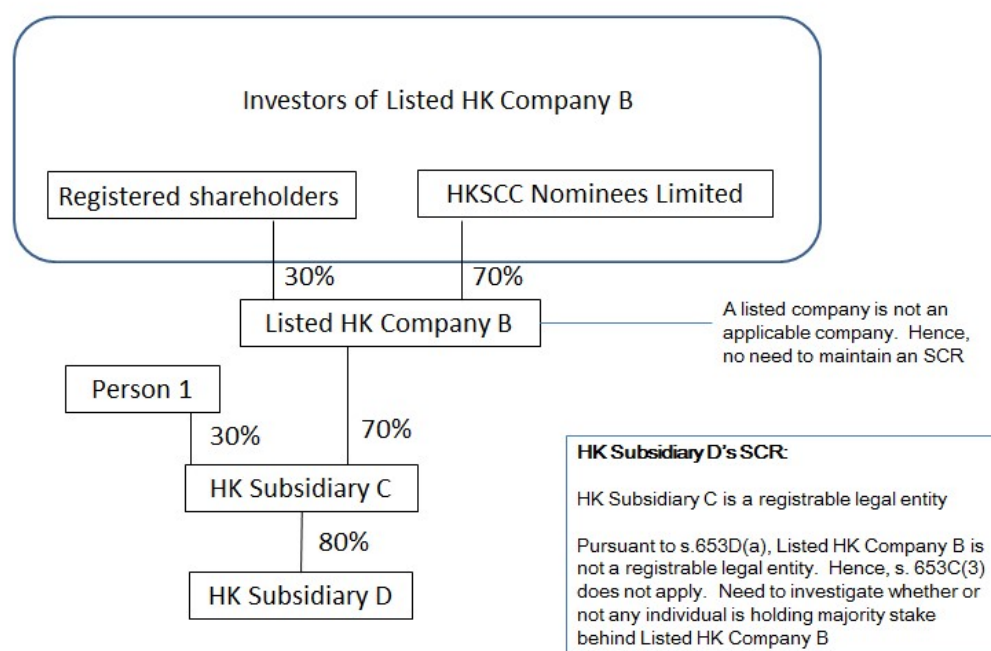


Figure 3: indirectly owned HK subsidiaries/interests of a listed company need to investigate and obtain up-to-date information of the registrable person(s), including those who may hold the interests through the listed company



Professional Development Resources Centre

Please refer to the section on “Significant Controllers Register” on the Companies Registry website at <https://www.cr.gov.hk/en/scr/index.htm> for full information.

By **Maria Kwan** 23 February 2018

Professional Development Resources Centre does not provide advisory service. If any advice or assistance is required, please seek help from your professional advisers. If you would like to receive our future updates, please sign up at www.cpdcentre.org.

Published by Professional Development Resources Centre Limited © 2018