

Registers of registrable controllers

Guidance for Foreign Companies

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Notes on versions

| <u>Version</u> | <u>Notes</u> |
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| 1.0 | <ul style="list-style-type: none">• Issued on 31 March 2017 |
| 1.1 | <ul style="list-style-type: none">• Issued on 25 April 2017• Updated paragraphs 1; 2; 2.1; 3.1; 4.1; 5.1 to 5.2; 6.1; 7.1 to 7.2; 8.5; 9.2 and Annex A heading.• Paragraph 2.1 updated to clarify that foreign companies that are undergoing winding up or striking off are not exempted.• Paragraph 4.1 updated to clarify that (i) if a registrable controller or a person who knows the identity of a registrable controller already gave the requisite information to the foreign company and this information is accurate, the foreign company need not send the notice to that person; and (ii) the foreign company is confident that certain members and/or directors are not registrable controllers and do not know person(s) who are registrable controllers of the foreign company or are likely to have that knowledge, the foreign company need not send the notice to these members and/or directors.• Paragraph 5.1 updated to clarify that if a foreign company sends a notice to a registrable controller and the registrable controller does not reply to the notice even though he is a registrable controller, the foreign company should enter the particulars of the registrable controller that the foreign company has in its possession into the register with a note |

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| | <p>indicating that the particulars have not been confirmed by the registrable controller.</p> <ul style="list-style-type: none"> • Paragraph 5.2 updated to (i) clarify that the date on which an individual or legal entity becomes/ceases to be a registrable controller (that is entered into the register of registrable controllers) should be the actual date that the person becomes/ceases to be a controller, which has to be on or after 31 March 2017; and (ii) provide some examples of the name of corporate entity register of the jurisdiction where the registrable corporate controller is formed or incorporated. • Paragraph 6.1 updated to clarify that if a registrable controller already gave the requisite updated information to the foreign company and this information is accurate, the foreign company need not send the notice to the registrable controller. |
| 1.2 | <ul style="list-style-type: none"> • Issued on 11 July 2017 • Updated paragraphs 2; 2.1; 3.3; 7.1 to 7.2; 7.10 to 7.14; 8.5; 9.1; and 9.2 • Paragraph 2 updated to clarify that the register of registrable controllers and the register of nominee directors are two different registers and the definitions of “registrable controller” and “nominee director” are also different. • Paragraph 2.1 updated to clarify that the exemptions only apply to the requirements on a foreign company keeping a register of registrable controllers and they do not apply to the registrable controller’s duty to provide information. |

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| | <ul style="list-style-type: none">• Paragraph 3.3 updated to clarify that foreign companies are required to comply with the form of the register as prescribed in the Regulations and the exact formatting of the register may vary from Annex A, as long as the form as prescribed in the Regulations is complied with.• Paragraphs 7.1 and 7.10 to 7.14 updated with illustrative diagrams |
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1. INTRODUCTION

The Companies Act (Cap. 50) (“Companies Act”) has been amended to introduce registers of registrable controllers of foreign companies under the new Part XIA which came into effect on 31 March 2017. These amendments are accompanied by a new set of subsidiary legislation, the Companies (Register of Controllers and Nominee Directors) Regulations 2017 (the “Regulations”) which also took effect on 31 March 2017.

This Guidance is issued by the Accounting and Corporate Regulatory Authority (“ACRA”) to help foreign companies understand and comply with the requirements pertaining to the register of registrable controllers. This Guidance is not intended to be exhaustive and does not constitute legal advice. Foreign companies may wish to seek legal advice when in doubt.

2. REQUIREMENTS AT A GLANCE

Foreign companies registered under the Companies Act are required to each:

- maintain a register of registrable controllers containing the particulars of the foreign company’s registrable controllers (section 386AF of the Companies Act);
- take reasonable steps to identify the registrable controllers of the foreign company, including sending notices to any person whom the foreign company knows or has reasonable grounds to believe is a registrable controller of the foreign company, or has knowledge of someone who is a registrable controller or is likely to have that knowledge (section 386AG of the Companies Act);
- keep the particulars in its register of registrable controllers up-to-date by sending notices to registrable controllers whose particulars the foreign company knows or has reasonable grounds to believe

have changed or is inaccurate (sections 386AH and 386AI of the Companies Act); and

- produce the register of registrable controllers and any related document to the Registrar, an officer of ACRA or a public agency, upon request (section 386AM of the Companies Act).

Please note that the register of registrable controllers is different from the register of members. These are separate registers. A foreign company must keep both a register of members and a register of registrable controllers. For example, a member of a foreign company whose particulars are kept in the register of members must also be recorded in the register of registrable controllers if that member is a controller of the foreign company.

Please also note that the register of registrable controllers and the register of nominee directors (that only companies are required to keep)¹ are two different registers. The definitions of “registrable controller” and “nominee director” are also different. Depending on the facts and circumstances of a case, an individual or legal entity may be both, either or neither. The fact that an individual or a legal entity is a registrable controller does not by itself mean that the same individual or legal entity is a nominee director, and vice versa.

2.1 Exemptions

The following foreign companies are exempted:

- (a) a foreign company that is a Singapore financial institution²;
- (b) a foreign company that is a wholly-owned subsidiary³ of a foreign company that is a Singapore financial institution;

¹ Please refer to the ACRA-issued Guidance for companies on registers of nominee directors.

² For the definition of “Singapore financial institution”, please see paragraph 2 of the Fourteenth Schedule to the Companies Act.

³ Please see section 5B of the Companies Act.

- (c) a foreign company which shares are listed on a securities exchange in a country or territory outside Singapore and which is subject to — (i) regulatory disclosure requirements; and (ii) requirements relating to adequate transparency in respect of its beneficial owners, imposed through stock exchange rules, law or other enforceable means.

Foreign companies subject to requirements similar to the substantial shareholder notification and disclosure requirements under Part VII of the Securities and Futures Act that listed companies have to comply with would qualify under (c).

Foreign companies that are undergoing winding up or striking off are not exempted, unless they qualify under (a), (b) or (c).

Please note that the exemptions only apply to the requirements on a foreign company keeping a register of registrable controllers⁴; they do not apply to the registrable controller's duty to provide information⁵. For example, a foreign company X that is a Singapore financial institution is not required to keep a register of registrable controllers, but if X is a registrable controller of a foreign company Y that is not exempted from the requirements on keeping a register of members, then X is required to provide its information to Y and X's particulars are required to be contained in Y's register of registrable controllers.

3. MAINTAINING A REGISTER OF REGISTRABLE CONTROLLERS

3.1 Timelines

Foreign companies are required to each maintain a register of registrable controllers within the following timelines:

- Foreign companies registered on or after 31 March 2017: within 30 days after the date of registration;

⁴ See sections 386AF to 386AI of the Companies Act.

⁵ See sections 386AJ and 386AK of the Companies Act.

- Foreign companies registered before 31 March 2017 : within 60 days after 31 March 2017;
- Foreign companies which are not required to maintain the register but are subsequently required to do so: within 60 days after the date of being required to maintain the register. For example, a foreign company that was a Singapore financial institution but subsequently ceased to be a Singapore financial institution must keep a register of registrable controllers within 60 days of cessation.

3.2 Location of register

Foreign companies may keep their registers of registrable controllers at their registered offices or (ii) the registered offices of any registered filing agent appointed by the foreign company for the purpose of keeping the register of registrable controllers.

3.3 Form of register

Foreign companies may keep their registers electronically or in hardcopy format. Foreign companies are required to comply with the form of the register as prescribed in the Regulations. A template is at Annex A. The exact formatting of the register may vary from Annex A, as long as the form as prescribed in the Regulations is complied with.

4. TAKING REASONABLE STEPS AND SENDING OUT NOTICES

4.1 Taking reasonable steps

Foreign companies are required to take reasonable steps to find out and identify their registrable controllers. This means a foreign company must minimally send out a notice to each member and each director of the foreign company **annually**. A copy of this notice is at Annex B.

If a registrable controller or a person who knows the identity of a registrable controller already gave the requisite information to the foreign company and this information is accurate, the foreign company need not send the notice to that person.

If the foreign company is confident that certain members and/or directors (i) are not registrable controllers and (ii) do not know person(s) who are registrable controllers of the foreign company or are likely to have that knowledge, the foreign company need not send the notice to these members and/or directors.

4.2 Sending out notices

The two types of notice that may be sent are prescribed in the Regulations; for convenient reference, a copy is at Annexes B and C.

The notice at Annex B should be sent to individuals and legal entities that the foreign company knows or has reasonable grounds to believe are registrable controllers of the foreign company.

The notice at Annex C should be sent to individuals and legal entities that the foreign company knows or has reasonable grounds to believe that they know or have reasonable grounds to know the identity of a person who is a registrable controller of the foreign company or is likely to have that knowledge.

Foreign companies may send the notice electronically or in hardcopy format. There is no legal requirement for the notice to be sent via registered mail. The notice need not be signed by a director or authorised representative of the foreign company.

Foreign companies are strongly encouraged to document the sending of notices and the receipt of replies to notices.

5. ENTERING PARTICULARS INTO THE REGISTER OF REGISTRABLE CONTROLLERS

5.1 When to enter particulars

Foreign companies are required to enter/update particulars of registrable controllers into their registers of registrable controllers within 2 business days after the particulars have been “confirmed”.

For registrable controllers whose particulars are not stated in the register⁶, particulars are confirmed if:

- the registrable controller (X) or a registered filing agent (acting on behalf of X) replies to a notice confirming that X is a registrable controller and provides X’s particulars to the foreign company; or
- X notifies the foreign company that he is a registrable controller and provides his particulars to the foreign company.

For registrable controllers whose particulars as stated in the register are outdated⁷, particulars are confirmed if:

- the registrable controller (X) or a registered filing agent (acting on behalf of X) replies to a notice confirming that a change in X’s particulars that are stated in the register of registrable controllers has occurred and provides X’s new particulars to the foreign company; or
- X notifies the foreign company that a change in X’s particulars that are stated in the register of registrable controllers has occurred and provides X’s new particulars to the foreign company.

For registrable controllers whose particulars as stated in the register are inaccurate⁸, particulars are confirmed if the registrable controller (X) or a registered filing agent (acting on behalf of X) replies to a notice confirming that X’s particulars that are stated in the register of registrable controllers are incorrect and provides X’s correct particulars to the foreign company.

⁶ See paragraphs 4.1 to 4.2.

⁷ See paragraphs 6.1 to 6.2.

⁸ See paragraphs 6.1 to 6.2.

If the particulars of a registrable controller are not confirmed, a foreign company must enter or update the particulars that the foreign company has in its possession into its register ***with a note indicating that the particulars have not been confirmed by the registrable controller.*** This must be done within 2 business days after the end of 30 days after the date on which the notice is sent by the foreign company to the registrable controller.

For example, if a foreign company sends a notice to a registrable controller and the registrable controller does not reply to the notice and confirm that he is a registrable controller even though he is a registrable controller, the foreign company should enter the particulars of the registrable controller that the foreign company has in its possession into the register with a note indicating that the particulars have not been confirmed by the registrable controller.

5.2 Particulars to be entered

The particulars to be entered in the register are as follows:

For registrable individual controllers

- full name;
- aliases, if any;
- residential address;
- nationality;
- identity card number or passport number;
- date of birth;
- date on which the registrable individual controller became an individual controller of the foreign company; and
- date on which the registrable individual controller ceased to be an individual controller of the foreign company, if applicable.

For registrable corporate controllers

- name;
- unique entity number issued by the Registrar, if any;
- address of registered office;

- legal form of the registrable corporate controller;
- jurisdiction where, and statute under which, the registrable corporate controller is formed or incorporated;
- name of the corporate entity register of the jurisdiction where the registrable corporate controller is formed or incorporated, if applicable;
- identification number or registration number of the registrable corporate controller on the corporate entity register of the jurisdiction where the registrable corporate controller is formed or incorporated, if applicable;
- date on which the registrable corporate controller became a corporate controller of the foreign company; and
- date on which the registrable corporate controller ceased to be a corporate controller of the foreign company, if applicable.

The date on which an individual or legal entity becomes/ceases to be a registrable controller (that is entered into the register of registrable controllers) should be the actual date that the person becomes/ceases to be a controller, which has to be on or after 31 March 2017 as the law commences on that date.

The following are some examples of the name of corporate entity register of the jurisdiction where the registrable corporate controller is formed or incorporated:

- If the registrable corporate controller is a local company incorporated under the Companies Act, the name of the register would be the Accounting and Corporate Regulatory Authority.
- If the registrable corporate controller is a company incorporated under the United Kingdom's Companies Act 2006, the name of the register would be UK Companies House.

5.3 Foreign companies without registrable controllers

Foreign companies that are confident that they do not have registrable controllers may enter the following statement in their register:

“As of [date], the foreign company knows or has reasonable cause to believe that there are no registrable controllers in relation to the foreign company.”

6. KEEPING PARTICULARS UP-TO-DATE AND CORRECTING INACCURACIES

6.1 Duty to keep particulars up-to-date and correcting inaccuracies

Foreign companies are required to (i) keep the particulars in their registers up-to-date and (ii) correct inaccuracies in the particulars.

For (i), this means a foreign company must minimally send a notice to every registrable controller whose particulars are contained in the register of registrable controllers **annually**. A copy of this notice is at Annex D. If a registrable controller already gave the requisite updated information to the foreign company and this information is accurate, the foreign company need not send the notice to the registrable controller.

If a foreign company has, for example, received credible information (e.g. from newspaper reports or law enforcement authorities) that the particulars of a controller are outdated or inaccurate, the foreign company should send a notice to the relevant registrable controller.

If the registrable controller of a foreign company informs the foreign company that his particulars are outdated and provides the updated particulars, the foreign company should update its register within 2 business days after receiving the information from the registrable controller.

6.2 Sending out of notices

The notices are prescribed in the Regulations; a copy of the notice for updates is at Annex D and a copy of the notice for corrections is at Annex E.

Foreign companies may send the notice electronically or in hardcopy format. There is no legal requirement for the notice to be sent via registered mail. The notice need not be signed by a director or authorised representative of the foreign company.

Foreign companies are strongly encouraged to document the sending of notices and the receipt of replies to notices.

7. WHO IS A REGISTRABLE CONTROLLER OF A FOREIGN COMPANY?

7.1 Registrable controller

“Registrable” controllers of a foreign company are required to be registered in the foreign company’s register of registrable controllers.

A controller (A) of a foreign company (X) is registrable, unless:

- (a) A’s significant interest in or significant control over X is only through one or more controllers (B) of X;
- (b) A is a controller of B (or each B if more than one); and
- (c) B (or each B if more than one) is either –
 - i. a company or foreign company which is required to keep a register of registrable controllers under the Companies Act;
 - ii. a company or foreign company that is exempted from the requirement to keep a register of registrable controllers under the Fourteenth and Fifteenth Schedules to the Companies Act respectively;

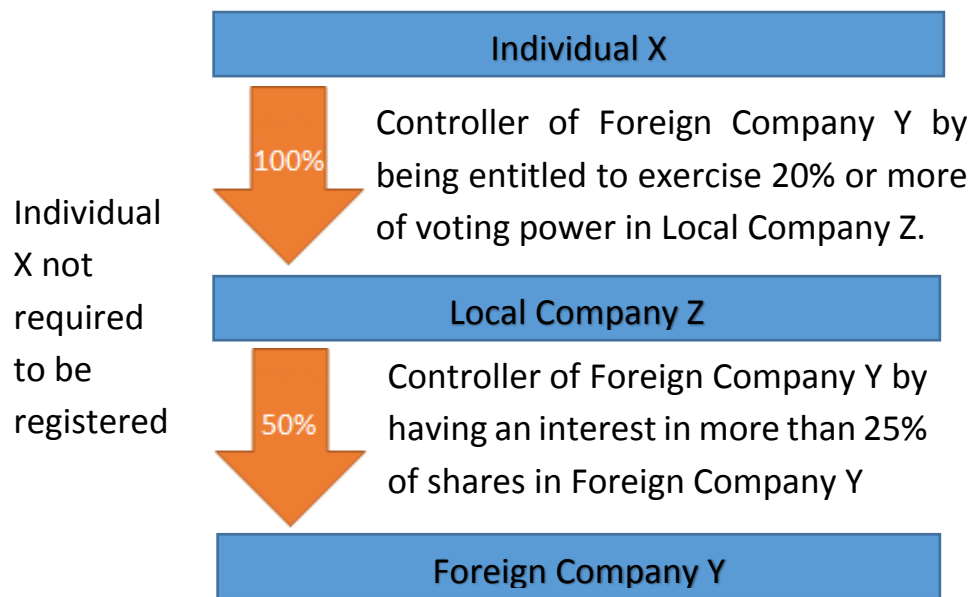
- iii. a corporation which shares are listed for quotation on an approved exchange under the Securities and Futures Act;
- iv. a limited liability partnership which is required to keep a register of registrable controllers of limited liability partnerships under the Limited Liability Partnerships Act ;
- v. a limited liability partnership that is exempted from the requirement to keep a register of registrable controllers of limited liability partnerships under the Sixth Schedule to the Limited Liability Partnerships Act; or
- vi. a trustee of an express trust to which Part VII of the Trustees Act applies.

The criteria in (a), (b) and (c) must be fulfilled before a controller may be considered as not registrable with respect to a foreign company.

The requirement that controllers of a foreign company must be “registrable” before their particulars are captured in the register of registrable controllers of that foreign company helps avoid duplicative reporting.

Example 1: If (i) individual X is a controller of a foreign company Y only because he wholly owns local company Z which in turn has an interest in 50% of the shares in foreign company Y⁹ and (ii) company Z is required to keep a register of registrable controllers, individual X is not a registrable controller with respect to foreign company Y and so individual X’s particulars are not required to be contained in foreign company Y’s register of registrable controllers.

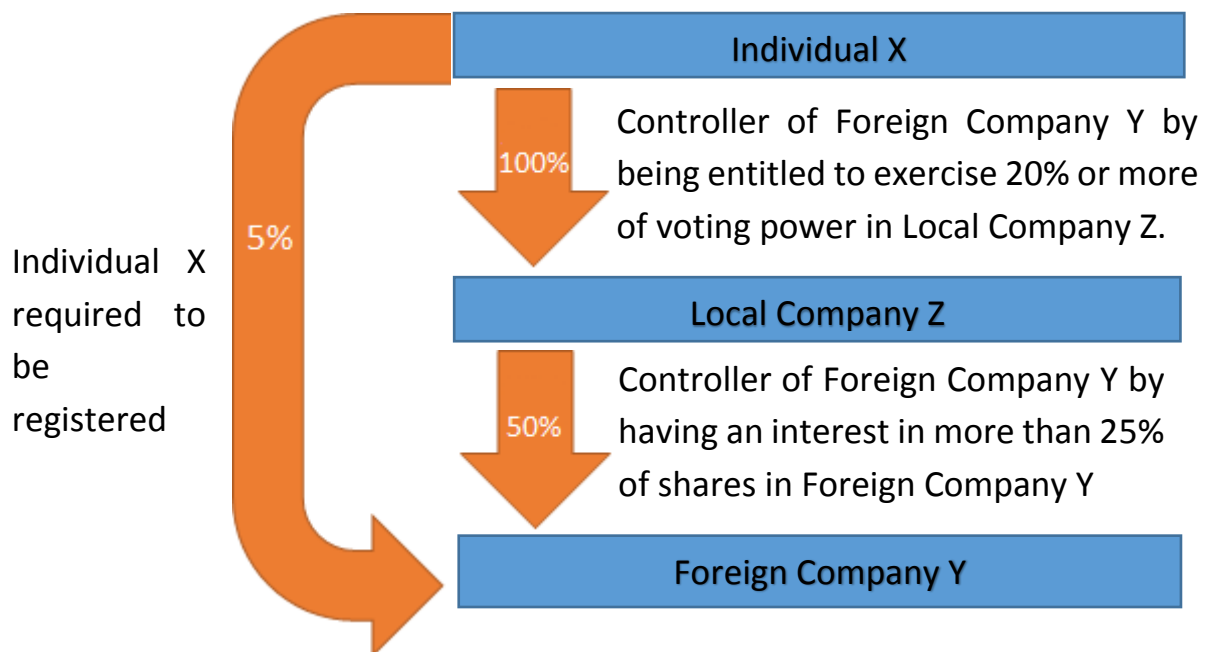
⁹ See paragraphs 7.4 and 7.11.



Individual X's particulars would instead be captured in local company Z's register of registrable controllers.

Example 2: If individual X is a controller of a foreign company Y not only because he wholly owns local company Z which in turn has an interest in 50% of the shares in foreign company Y, but also because he himself has an interest in 5% of the shares in foreign company Y¹⁰, then individual X is a registrable controller with respect to foreign company Y and so individual X's particulars are required to be contained in foreign company Y's register of registrable controllers. Individual X's particulars would also be captured in local company Z's register of registrable controllers, if company Z is required to keep a register of registrable controllers.

¹⁰ See paragraphs 7.4 and 7.11.



7.2 Definition of individual and corporate controllers

Controllers may be individual or corporate controllers. By default, all controllers are registrable in the respective registers of controllers¹¹.

An individual controller is an individual who has a significant interest in, or significant control over, the foreign company.

A corporate controller is a legal entity which has a significant interest in, or significant control over, the foreign company. A legal entity is any body corporate formed or incorporated or existing in Singapore or outside Singapore and includes a foreign company registered under the Companies Act.

Please note that individual controllers who have significant interest in, or significant control over, a foreign company indirectly through a legal entity or a chain of legal entities must by default¹² be recorded in the register of registrable controllers of the foreign company.

¹¹ See paragraph 7.1.

¹² See paragraph 7.1.

7.3 Significant interest and significant control

For foreign companies with share capital, an individual or legal entity has a “significant interest” in the foreign company if the individual or legal entity:

- i. has an interest in more than 25% of the shares in the foreign company; or
- ii. has an interest in one or more voting shares in the foreign company and the total votes attached to that share, or those shares, is more than 25% of the total voting power in the foreign company.

For foreign companies without share capital, an individual or legal entity has a “significant interest” in a foreign company if the individual or legal entity holds, whether directly or indirectly, a right to share in more than 25% of the capital, or more than 25% of the profits, of the foreign company.

For all foreign companies, an individual or legal entity has a “significant control” over a foreign company if the individual or legal entity:

- i. holds the right, directly or indirectly, to appoint or remove the directors or equivalent persons of the foreign company who hold a majority of the voting rights at meetings of the directors or equivalent persons on all or substantially all matters;
- ii. holds, directly or indirectly, more than 25% of the rights to vote on those matters that are to be decided upon by a vote of the members or equivalent persons of the foreign company; or
- iii. has the right to exercise, or actually exercises, significant influence or control over the foreign company.

7.4 Significant interest: (i) Interest in more than 25% of the shares in a foreign company with share capital

This only applies to foreign companies with share capital.

Foreign companies should review their registers of members and constitution (or equivalent). The information in the register of members and relevant documents will help the foreign company to determine whether any individual/legal entity has an interest in more than 25% of the shares in the foreign company.

Please see paragraphs 7.11 to 7.14 of this Guidance for more information on paragraph 4 of the Sixteenth Schedule, which sets out the rules that apply in determining whether an individual/legal entity has an “interest” in share(s) of a foreign company, as well as addresses special situations such as joint interests, joint arrangements and nominees.

7.5 Significant interest: (ii) Interest in voting share(s) with more than 25% of the total voting power in a foreign company with share capital

This only applies to foreign companies with share capital.

The laws of a foreign company’s home jurisdiction and the constitution of a foreign company (or equivalent) may set out the voting rights attached to the foreign company’s shares (or equivalent).

Foreign companies should review the laws of their home jurisdiction, their registers of members and constitution (or equivalent). The information in the register of members and relevant documents will help the foreign company to determine whether any individual/legal entity has an interest in voting shares with more than 25% of the total voting power in the foreign company.

Please note that (i) treasury shares and (ii) shares mentioned in section 21(4B) or (6C) of the Companies Act¹³ should not be included in determining whether an individual/legal entity has an interest in voting shares with more than 25% of the total voting power in the foreign company.

Please see paragraphs 7.11 to 7.14 of this Guidance for more information on paragraph 4 of the Sixteenth Schedule, which sets out the rules that apply in determining whether an individual/legal entity has an “interest” in share(s) of a foreign company, as well as addresses special situations such as joint interests, joint arrangements and nominees.

7.6 Significant interest: (iii) Right to share in more than 25% of the capital or profits of a foreign company without share capital

This only applies to foreign companies without share capital.

The laws of a foreign company’s home jurisdiction and the constitution of a foreign company (or equivalent) may provide for the distribution of the capital and/or profits of the foreign company. Foreign companies should review the laws of their home jurisdiction, their registers of members and constitution (or equivalent). The information in the register of members and relevant documents will help the foreign company to determine whether any individual/legal entity holds the right to share in more than 25% of the capital or profits of the foreign company.

This criteria of significant interest encompass both direct and indirect holding of the right to share in more than 25% of the capital or profits of the foreign company. For indirect holdings, please see paragraph 7.10 of this guidance for more information.

Please also see paragraphs 7.12 to 7.14 of this Guidance for more information on paragraph 4 of the Sixteenth Schedule, which

¹³ These are shares in a holding company that are held by a subsidiary of the holding company in certain circumstances stipulated in section 21.

addresses special situations such as joint holdings, joint arrangements and nominees.

7.7 Significant control: (i) Right to appoint or remove directors who hold a majority of voting rights at meetings of the directors

Foreign companies should consider whether anyone has the right to appoint or remove directors (or equivalent) who hold a majority of voting rights at meetings of the directors. The laws of a foreign company's home jurisdiction and the constitution of a foreign company (or equivalent) may set out how directors are to be appointed and/or removed and the voting rights of directors at meetings of the directors.

Foreign companies should review the laws of their home jurisdiction, their registers of members and constitution (or equivalent). The information in the register of members and relevant documents will help the foreign company to determine whether any individual/legal entity has an interest in voting shares with more than 25% of the total voting power in the foreign company.

This criteria of significant control encompasses both direct and indirect holding of the right to appoint or remove directors who hold a majority of voting rights at meetings of the directors. For indirect holdings, please see paragraph 7.10 of this Guidance for more information.

Please also see paragraphs 7.12 to 7.14 of this Guidance for more information on paragraph 4 of the Sixteenth Schedule, which addresses special situations such as joint holdings, joint arrangements and nominees.

7.8 Significant control: (ii) More than 25% of the rights to vote on those matters that are to be decided upon by the members of the foreign company

Foreign companies should review the laws of their home jurisdiction and their constitutions (or equivalent), and consider whether anyone has more than 25% of the right to vote on those matters that are to be decided upon by the members (or equivalent) of the foreign company.

For example, the laws of the foreign company's home jurisdiction may provide for how matters are to be decided upon by the members of the foreign company. The foreign company's constitution (or equivalent) may also provide how certain matters are to be decided upon by the members of the foreign company.

This criteria of significant control encompasses both direct and indirect holding of the right to vote on those matters that are to be decided upon by the members of the foreign company. For indirect holdings, please see paragraph 7.10 of this Guidance for more information.

Please also see paragraphs 7.12 to 7.14 of this Guidance for more information on paragraph 4 of the Sixteenth Schedule, which addresses special situations such as joint holdings, joint arrangements and nominees.

7.9 Significant control: (iii) Right to exercise or actually exercises significant influence or control over the foreign company

An individual or legal entity that does not meet the criteria set out in paragraphs 7.4 to 7.8 may meet this criteria instead. Please refer to paragraphs 8.1 to 8.5 of this Guidance for further explanation of this criteria.

In assessing whether there are individuals and/or legal entities that meet this criteria, foreign companies should (i) review all the relevant documents and information at their disposal (e.g. constitution; register of members; and register of directors and chief executive officers or equivalent) and all the circumstances relating to the foreign company; and (ii) consider and apply the principles, factors and examples described in paragraphs 8.1 to 8.5.

Please also see paragraphs 7.12 to 7.14 of this Guidance for more information on paragraph 4 of the Sixteenth Schedule, which addresses special situations such as joint holdings, joint arrangements and nominees.

7.10 Indirect holding

An individual/legal entity may indirectly hold (i) the right to share in more than 25% of the capital or profits of the foreign company¹⁴; (ii) the right to appoint or remove directors who hold a majority of voting rights at meetings of the directors¹⁵; and/or (iii) the right to vote on those matters that are to be decided upon by the members of the foreign company¹⁶

Foreign companies should consider whether the individual/legal entity holds the right through a legal entity or chain of legal entities. For example, a registrable individual controller that indirectly holds the right to appoint or remove the directors of foreign company X who hold a majority of voting rights at meetings of the directors through a chain of legal entities would by default¹⁷ have to be recorded in X's register of registrable controllers.

An individual/legal entity holds a right indirectly if the individual/legal entity has a "majority stake" in a legal entity and that legal entity -

- i. holds that right; or
- ii. is part of a chain of legal entities each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and the last of which holds the right in that right.

A has a majority stake in B if:

¹⁴ See paragraph 7.6.

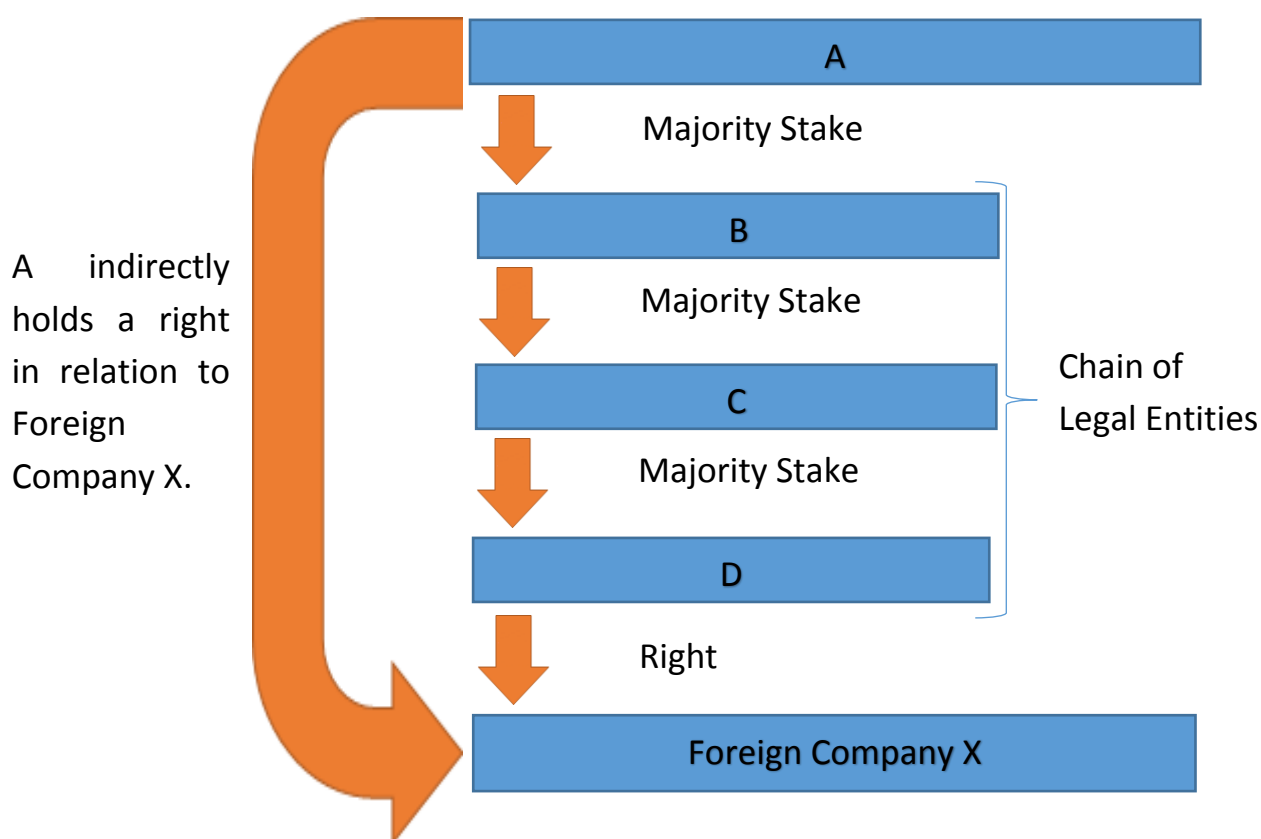
¹⁵ See paragraph 7.7.

¹⁶ See paragraph 7.8.

¹⁷ See paragraph 7.1.

- i. A holds a majority of the voting rights in B;
- ii. A is a member of B and has the right to appoint or remove a majority of the board of directors of B;
- iii. A is a member of B and controls alone, pursuant to an agreement with other members, a majority of the voting rights in B; or
- iv. A has the right to exercise, or actually exercises, significant influence or control over B¹⁸.

Illustration of indirect holding of a right:



7.11 "Interest"

In determining whether an individual/legal entity has an "interest" in share(s) of the foreign company, foreign companies should,

¹⁸ See paragraphs 8.1 to 8.5.

subject to sections described in paragraphs 7.12 to 7.14, apply sections 7(1A) to (6A), (8), (9) and (10) of the Companies Act¹⁹.

The general rule is that an individual/legal entity has an interest in shares if he/it has authority (whether formal or informal, or express or implied) to dispose of, or to exercise control over the disposal of, those shares²⁰. It is immaterial that the authority of an individual/legal entity to dispose of, or to exercise control over the disposal of, particular shares is, or is capable of being made, subject to restraint or restriction²¹. It is also immaterial, for the purposes of determining whether an individual/legal entity has an interest in a share, that the interest cannot be related to a particular share²².

Where any property held in trust consists of or includes shares and an individual/legal entity knows, or has reasonable grounds for believing, that he/it has an interest under the trust, he/it shall be deemed to have an interest in those shares²³. Typically, these individuals and/or legal entities would be the beneficiaries of the trust.

Where a legal entity has, or is deemed to have, an interest in a share and (a) the legal entity is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of an individual/legal entity; or (b) an individual/legal entity has a controlling interest in the legal

¹⁹ See paragraph 4(1) of the Sixteenth Schedule to the Companies Act. Section 7 is well-established. In addition to the register of registrable controllers, section 7 applies to Division 4 of Part IV (substantial shareholdings register) and sections 163 (approval of company required for loans and quasi-loans to, and credit transactions for benefit of, persons connected with directors of lending company, etc), 164 (register of directors' and chief executive officer's shareholdings) and 165 (general duty of directors and chief executive officers to make disclosure). Section 7 is similar to section 4 of the Securities and Futures Act, which applies to Part VII of the Act on disclosure of interests in corporations listed on approved exchanges, including the register of substantial shareholders that such corporations must keep.

²⁰ Section 7(1A)

²¹ Section 7(1B)

²² Section 7(8)

²³ Section 7(2)

entity, that an individual/legal entity shall be deemed to have an interest in that share²⁴.

Where a legal entity has, or is by the provisions of section 7 (apart from subsection (4A)) deemed to have, an interest in a share and — (a) an individual/legal entity is; (b) the associates²⁵ of an individual/legal entity are; or (c) an individual/legal entity and his/its associates are, entitled to exercise or control the exercise of not less than 20% of the voting power in the first-mentioned legal entity, that individual/legal entity shall be deemed to have an interest in that share²⁶.

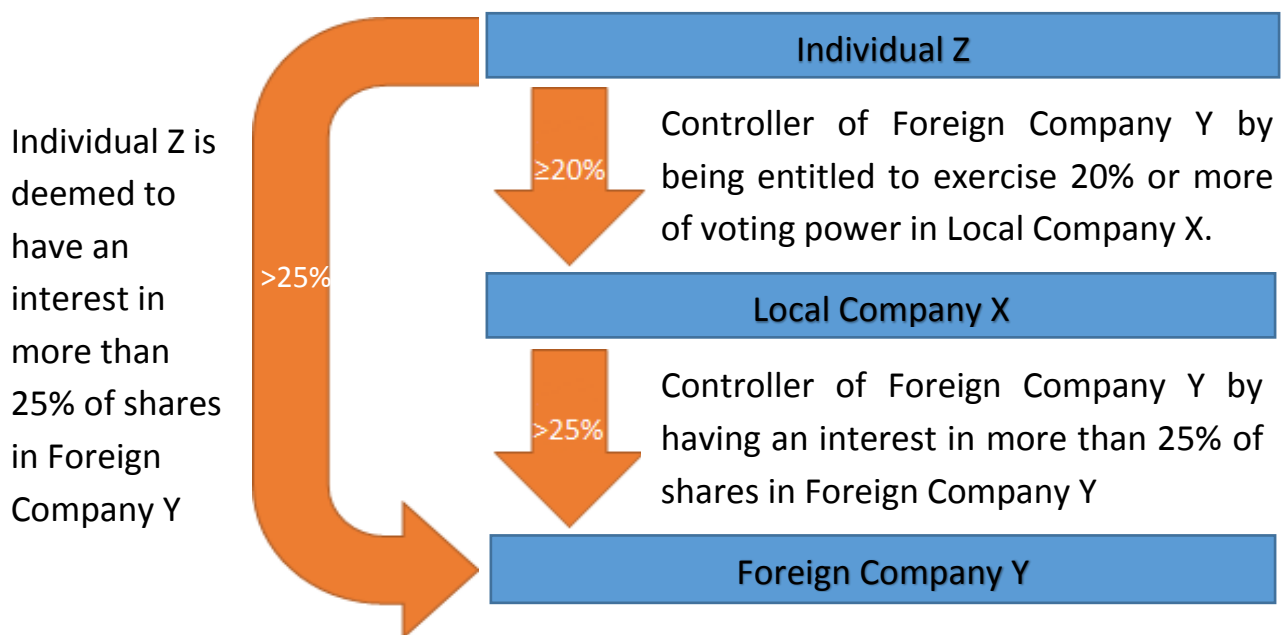
For example, local company X has an interest in more than 25% of the shares in foreign company Y, and individual Z is entitled to exercise or control the exercise of 20% or more of the voting power in local company X. Individual Z would be deemed to have an interest in more than 25% of the shares in foreign company Y and is by default²⁷ a registrable controller of foreign company Y.

²⁴ Section 7(4)

²⁵ Section 7(5) provides that a person is an associate of another person if the first-mentioned person is — (a) a subsidiary of that other person; (b) a person who is accustomed or is under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share referred to in section 7(4A); or (c) a body corporate that is, or a majority of the directors of which are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of that other person in relation to the share referred to in section 7(4A).

²⁶ Section 7(4A)

²⁷ See paragraph 7.1.



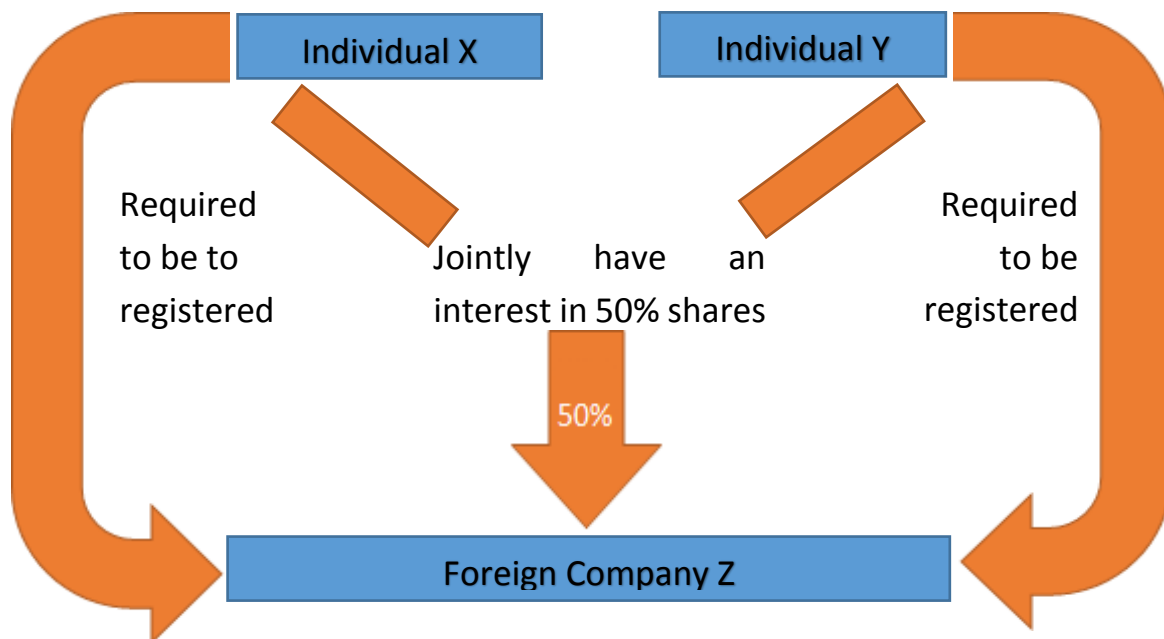
Section 7(6) provides for a list of situations where an individual/legal entity shall be deemed to have an interest in a share (e.g. where an individual/legal entity has entered into a contract to purchase a share).

Section 7(9) provides for a list of situations where an interest in a share may be disregarded (e.g. where the interest is that of an individual/legal entity who holds the share as bare trustee).

7.12 Joint interest in shares or holding of right

If 2 or more individuals/legal entities jointly have an interest in a share, or jointly hold a right, each is considered as having an interest in that share, or as holding that right, as the case may be.

For example, if individuals X and Y jointly have an interest in 50% of the shares in foreign company Z, both are considered to each have an interest in 50% of the shares in Z, so both are controllers of Z and



the particulars of both must by default²⁸ be separately entered in Z's register of registrable controllers.

7.13 Joint arrangements

A joint arrangement is an arrangement between two or more individuals/legal entities having an interest in shares or between holders of rights that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement.

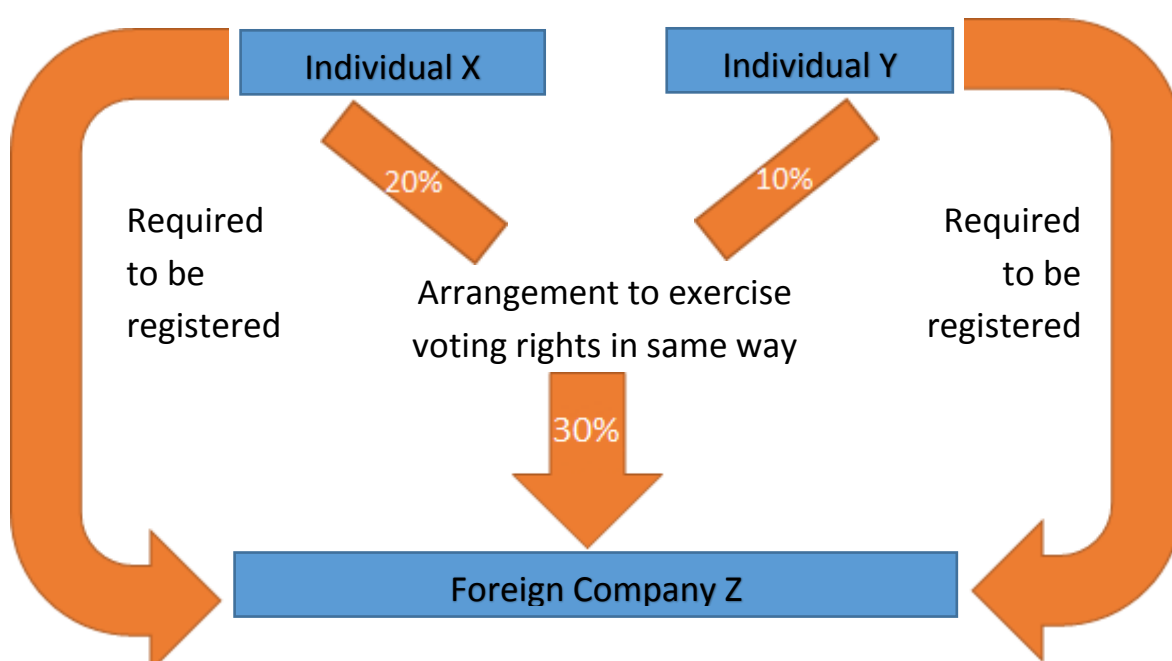
An arrangement includes (i) any scheme, agreement or understanding, whether or not it is legally enforceable and (ii) any convention, custom or practice of any kind. For something to count as an arrangement, there must be at least some degree of stability about it, so one-off "arrangements" do not qualify.

If two or more individuals/legal entities have an arrangement, each of them is treated as having an interest in the combined shares of

²⁸ See paragraph 7.1.

all of them, or holding the combined rights of all of them, as the case may be.

For example, if individuals X and Y own shares that carry 10% and 20% of the voting rights in foreign company Z respectively, and they have an arrangement between themselves to always exercise their voting rights in the same way, both are treated as having an interest in the combined shares of all of them (i.e. 30%), so both are controllers of Z and the particulars of both must by default²⁹ be separately entered in Z's register of registrable controllers.



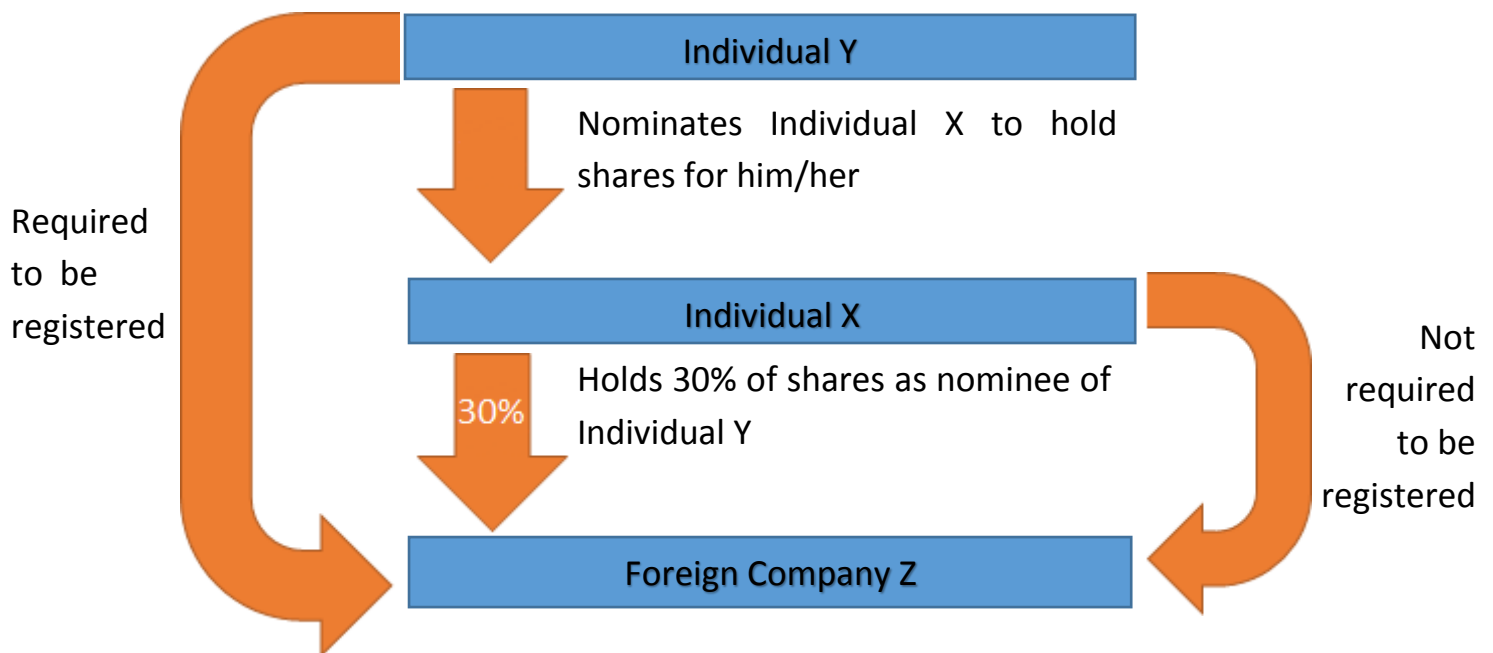
7.14 Nominees

A share or right held by an individual/legal entity as nominee for another is to be considered as held by the other.

For example, if individual X holds 30% of the shares in foreign company Z as a nominee for individual Y, the shares are considered to be held by Y, so Y (and not X) is a controller of Z and Y's particulars

²⁹ See paragraph 7.1.

must by default³⁰ be entered in Z's register of registrable controllers.



8. RIGHT TO EXERCISE OR ACTUALLY EXERCISES SIGNIFICANT INFLUENCE OR CONTROL

8.1 General

An individual/legal entity is a controller of a foreign company if the individual/legal entity (i) has the right to exercise or (ii) actually exercises, significant influence or control over the foreign company.

This section explains the above criteria and provides some principles, factors and examples that foreign companies should consider in determining whether an individual/legal entity falls within the criteria. It also provides some examples of roles and relationships that an individual/legal entity may have with a foreign company, which would not, on their own, result in that individual/legal entity meeting the criteria.

³⁰ See paragraph 7.1.

This section is not exhaustive. Foreign companies may wish to seek legal advice when in doubt.

8.2 “Significant influence” and “significant control”

Where an individual/legal entity can direct the activities of a foreign company, this would be indicative of “significant control”.

Where an individual/legal entity can ensure that a foreign company generally adopts the activities which the individual/legal entity desires, this would be indicative of “significant influence”.

It is not necessary for an individual/legal entity exercising “significant influence” and/or “significant control” to do so with a view to gaining economic benefits from the policies or activities of the foreign company.

8.3 Right to exercise significant influence or control over the foreign company

An individual/legal entity may hold a right to exercise significant influence or control over a foreign company as a result of a variety of circumstances, including the foreign company’s constitution (or equivalent), the rights attached to shares or securities which the individual/legal entity holds, a shareholder’s agreement, and any other agreement.

The following are some non-exhaustive examples of what might constitute a right to exercise significant influence or control.

- An individual/legal entity has absolute decision making and/or veto rights over decisions relating to the running of the business of the foreign company, such as:
 - Adopting or amending the foreign company’s business plan;
 - Changing the nature of the foreign company’s business;
 - Making any borrowing from lenders;

- Appointment or removal of the chief executive officer;
- Establishing or amending any profit-sharing, bonus or other incentive schemes for directors or employees;
- Granting options under a share option or other share-based incentive scheme.

8.4 Actually exercises significant influence or control over the foreign company

In determining whether an individual/legal entity might actually exercises significant influence or control over a foreign company, all relationships that the individual/legal entity has with the foreign company or the management of the foreign company should be taken into account, to identify whether the cumulative effect of those relationships leads to the individual/legal entity actually exercising significant influence or control over the foreign company.

The following are some non-exhaustive examples of how an individual/legal entity might actually exercise significant influence or control over a foreign company.

- An individual/legal entity is significantly involved in the management and direction of the foreign company.
 - For example, an individual, who is not a member or director of a foreign company, regularly or consistently directs or influences a significant section of the board of directors and/or the chief executive officer of the foreign company; or is regularly consulted on Board decisions and/or by the chief executive officer and whose views influence decisions made by the board and/or the chief executive officer.
- The recommendations of an individual/legal entity is always or almost always followed by members holding

the majority of the voting rights in a foreign company, when they are deciding how to vote.

- For example, the founder of a foreign company's business who is no longer a member or director of the foreign company makes recommendations to the shareholders of the foreign company and these recommendations are always or almost always followed by the shareholders.

8.5 Excepted roles

The following is a non-exhaustive list of roles and relationships which would not, on their own, result in the relevant individual/legal entity being considered to having the right to exercise or actually exercising significant influence or control over a foreign company.

- An individual/legal entity provides advice or direction in a professional capacity, for example, as:
 - Lawyer;
 - Accountant;
 - Registered filing agent;
 - Management consultant;
 - Investment manager³¹;
 - Tax advisor; or
 - Financial advisor.
- An individual/legal entity deals with the foreign company under a third party commercial or financial agreement, for example, as:
 - Supplier;
 - Customer; or
 - Lender.

³¹ E.g. an individual or legal entity (e.g. a financial institution) that is engaged to provide professional investment management services to a foreign company (e.g. research and dealing in the foreign company's assets such as securities and bonds on behalf of the foreign company for investment purposes).

- An individual/legal entity exercises a function under a law, for example, as:
 - Regulator;
 - Liquidator;
 - Receiver or manager; or
 - Judicial Manager.
- An individual who is an employee of the foreign company acting in the course of his or her employment.
- An individual who is a director of the foreign company.
- An individual/legal entity which makes recommendations to members of the foreign company on an issue or set of issues on a one-off occasion, which is subject to a vote by the members

Please note that an individual/legal entity that performs an excepted role may, because of circumstances and factors, still be a controller of a foreign company.

For example, a director of a foreign company may also own important assets and/or has key relationships that are important to the running of the foreign company's business (e.g. key intellectual property rights) and uses this additional power to influence the outcome of important decisions related to the running of the business of the foreign company. This individual would not be able to rely on the excepted role of a director, to avoid being considered as a person that has the right to exercise or actually exercises significant influence or control over the foreign company.

9. PRIVACY AND ACCESS TO REGISTERS OF REGISTRABLE CONTROLLERS

9.1 Registers of registrable controllers is not to be made public

Foreign companies must not disclose or make available for public inspection the register or any particulars contained in the register. Auditors are also not entitled to have access to the register.

For example, if a member of the public or a member of a foreign company approaches the foreign company and requests for access to the foreign company's register of registrable controllers and the information contained therein, the foreign company must decline the request and not provide such access.

9.2 Registers of registrable controllers must be made available to the Registrar and public agencies

Foreign companies must make available their registers of registrable controllers, the information contained in the registers, and any document relating to the registers and the keeping of the registers, to (i) the Registrar and ACRA officers, and (ii) public agencies and their officers (e.g. the Singapore Police Force; the Commercial Affairs Department; the Corrupt Practices Investigation Bureau; the Inland Revenue Authority of Singapore).

When approached by these agencies, foreign companies should cooperate with the agencies and provide the requested information and documents to these agencies.

ANNEX A – TEMPLATE FOR REGISTER OF REGISTRABLE CONTROLLERS

| Date of entry/update | Name of controller | Particulars | Remarks / notes |
|----------------------|--------------------|--|--|
| 02/04/2017 | John Tan | Full name: John Tan Ah Kow Alias: Ah Loong Residential address: 1 Flower Road, Singapore 123456 Nationality: Singaporean Identification card number: S1234567A Date of birth: 1 January 1970 Date of becoming a controller: 31/03/2017 | Notice sent to John Tan on 31/03/2017 Confirmation received from John Tan on 01/04/2017 |
| 04/04/2017 | Ali Mohd Hassan | Full name: Ali Mohd Hassan Alias: N.A. Residential address: 1 Sunrise Road, Kuala Lumpur, Malaysia Nationality: Malaysian Passport number: 123456 Date of birth: 1 February 1971 Date of becoming a controller: 02/04/2017 | Confirmation received from Ali Mohd Hassan on 03/04/2017 |

| | | | |
|------------|------------------|--|---|
| 10/04/2017 | John Tan | <p>Full name: John Tan Ah Kow</p> <p>Alias: Ah Loong</p> <p>Residential address: 1 Flower Road, Singapore 123456</p> <p>Nationality: Singaporean</p> <p>Identification card number: S1234567A</p> <p>Date of birth: 1 January 1970</p> <p>Date of ceasing to be a controller: 07/04/2017</p> | <p>Confirmation received from John Tan on 09/04/2017</p> |
| 06/04/2017 | Ali Mohd Hassan | <p>Full name: Ali Mohd Hassan</p> <p>Alias: N.A.</p> <p>Residential address: 29 Harbour Road, Kuala Lumpur, Malaysia</p> <p>Nationality: Malaysian</p> <p>Passport number: 123456</p> <p>Date of birth: 1 February 1971</p> <p>Date of change of particulars: 02/04/2017</p> | <p>Notice sent to Ali Mohd Hassan on 03/04/2017</p> <p>Confirmation received from Ali Mohd Hassan on 05/04/2017 on change of residential address.</p> |
| 04/05/2017 | Alan Subramaniam | <p>Full name: Alan Kelvin Subramaniam</p> <p>Alias: N.A.</p> | <p>Notice sent to Alan Subramaniam on 03/04/2017.</p> |

| | | | |
|------------|-------------|--|--|
| | | Residential address: 1 Ocean Road, Sydney, Australia Nationality: Australia Passport number: 234567 Date of birth: 1 March 1972 Date of becoming a controller: 02/04/2017 | As of 04/05/2017, Alan Subramaniam has not confirmed his particulars. |
| 19/05/2017 | ABC Limited | Name: ABC Limited Unique entity number issued by the Registrar: N.A. Address of registered office: 1 Brick Road, United Kingdom Legal form: Private limited company Jurisdiction where and statute under which the registrable corporate controller is formed or incorporated: United Kingdom, Companies Act 2006 Name of the corporate entity register of the jurisdiction where the registrable corporate controller is formed or incorporated: UK Companies House Identification number or registration number on the corporate entity register of the jurisdiction where the registrable corporate controller is formed or incorporated: 01234567 Date of becoming a controller: 12/05/2017 | Notice sent to ABC Limited on 14/05/2017. Confirmation received from ABC Limited on 18/05/2017. |

ANNEX B – NOTICE FOR CONTROLLERS

Date of notice: [Date that the notice is sent]

Dear [Addressee],

We know or have reasonable grounds to believe that you are a registrable controller of [name of company or foreign company].

This notice is sent under section 386AG(2)(a) of the Companies Act (Cap. 50) and requires you to provide the following information within 30 days after the date of this notice. Please send your reply to [address of company or foreign company]. Failure to provide the information required by this notice may be an offence.

1. Are you a registrable controller of [name of company or foreign company]?

Your reply: Yes / No*

* Delete as appropriate. If your reply is yes and you are an individual, please provide the particulars in sub-paragraph (a). If your reply is yes and you are a legal entity, please provide the particulars in sub-paragraph (b).

(a) If your reply is yes and you are an individual, please provide the following particulars:

(i) your full name:

(ii) your aliases, if any:

(iii) your residential address:

(iv) your nationality:

(v) your identity card number or passport number:

(vi) your date of birth:

(vii) the date on which you became an individual controller of [name of company or foreign company]:

(b) If your reply is yes and you are a legal entity, please provide the following particulars:

(i) your name:

(ii) your unique entity number issued by the Registrar, if any:

(iii) the address of your registered office:

(iv) your legal form:

(v) the jurisdiction where, and statute under which, you are formed or incorporated:

(vi) the name of the corporate entity register of the jurisdiction in which you are formed or incorporated, if applicable:

(vii) the identification number or registration number on the corporate entity register of the jurisdiction where you are formed or incorporated, if applicable:

(viii) the date on which you became a corporate controller of [name of company or foreign company]:

2. Do you know or have reasonable grounds to believe that any other person is a registrable controller of [name of company or foreign company] or is likely to have that knowledge?

Your reply: Yes / No*

* Delete as appropriate. If your reply is yes and the person is an individual, please provide the particulars in sub-paragraph (a). If your reply is yes and the person is a legal entity, please provide the particulars in sub-paragraph (b).

(a) If your reply is yes and the person is an individual, please provide the following particulars to the best of your knowledge:

(i) the person's full name:

(ii) the person's aliases, if any:

(iii) the person's residential address:

(iv) the person's nationality:

(v) the person's identity card number or passport number:

(vi) the person's date of birth:

(vii) the date on which the person became an individual controller of [name of company or foreign company]:

(b) If your reply is yes and the person is a legal entity, please provide the following particulars to the best of your knowledge:

(i) the person's name:

(ii) the person's unique entity number issued by the Registrar, if any:

(iii) the address of the person's registered office:

(iv) the person's legal form:

(v) the jurisdiction where, and the statute under which, the person is formed or incorporated:

(vi) the name of the corporate entity register of the jurisdiction in which the person is formed or incorporated, if applicable:

(vii) the identification number or registration number on the corporate entity register of the jurisdiction where the person is formed or incorporated, if applicable:

(viii) the date on which the person became a corporate controller of [name of company or foreign company]:

In this notice —

“controller”, “corporate controller”, “individual controller” and “legal entity” have the meanings given to them in section 386AB of the Companies Act;

“identity card” has the meaning given to it in section 2(1) of the National Registration Act (Cap. 201);

“registrable” has the meaning given to it in section 386AC of the Companies Act.

Yours sincerely,

[Name of director, secretary or authorised representative of the company or foreign company]

Director / Secretary / Authorised representative*

* Delete as appropriate

[Name of company or foreign company]

ANNEX C – NOTICE FOR PERSONS WHO KNOW CONTROLLERS

Date of notice: [Date that the notice is sent]

Dear [Addressee],

We know or have reasonable grounds to believe that you know or have reasonable grounds to know the identity of a person who is a registrable controller of [name of company or foreign company] or is likely to have that knowledge.

This notice is sent under section 386AG(2)(b) of the Companies Act (Cap. 50) and requires you to provide the following information within 30 days after the date of this notice. Please send your reply to [address of company or foreign company]. Failure to provide the information required by this notice may be an offence.

If you are a registrable controller of [name of company or foreign company], please notify [name of company or foreign company] that you are a registrable controller and provide your particulars to the [name of company or foreign company], as required under section 386AJ of the Companies Act.

1. Do you know or have reasonable grounds to believe that any other person is a registrable controller of [name of company or foreign company] or is likely to have that knowledge?

Your reply: Yes / No*

* Delete as appropriate. If your reply is yes and the person is an individual, please provide the particulars in sub-paragraph (a). If your reply is yes and the person is a legal entity, please provide the particulars in sub-paragraph (b).

(a) If your reply is yes and the person is an individual, please provide the following particulars to the best of your knowledge:

- (i) the person's full name:
- (ii) the person's aliases, if any:
- (iii) the person's residential address:
- (iv) the person's nationality:
- (v) the person's identity card number or passport number:
- (vi) the person's date of birth:
- (vii) the date on which the person became an individual controller of [name of company or foreign company]:

(b) If your reply is yes and the person is a legal entity, please provide the following particulars to the best of your knowledge:

- (i) the person's name:
- (ii) the person's unique entity number issued by the Registrar, if any:
- (iii) the address of the person's registered office:
- (iv) the person's legal form:
- (v) the jurisdiction where, and statute under which, the person is formed or incorporated:
- (vi) the name of the corporate entity register of the jurisdiction where the person is formed incorporated, if applicable:
- (vii) the identification number or registration number on the corporate entity register of the jurisdiction where the person is formed or incorporated, if applicable:
- (viii) the date on which the person became a corporate controller of [name of company or foreign company]:

In this notice —

“controller”, “corporate controller”, “individual controller” and “legal entity” have the meanings given to them in section 386AB of the Companies Act;

“identity card” has the meaning given to it in section 2(1) of the National Registration Act (Cap. 201);

“registrable” has the meaning given to it in section 386AC of the Companies Act.

Yours sincerely,

[Name of director, secretary or authorised representative of the company or foreign company]

Director / Secretary / Authorised representative*

* Delete as appropriate

[Name of company or foreign company]

ANNEX D – NOTICE FOR CHANGE IN PARTICULARS

Date of notice: [Date that the notice is sent]

Dear [Addressee],

We know or have reasonable grounds to believe that that a relevant change has occurred in your particulars that are stated in the register of controllers of [name of company or foreign company].

This notice is sent under section 386AH(1) of the Companies Act (Cap. 50) and requires you to provide the following information within 30 days after the date of this notice. Please send your reply to [address of company or foreign company]. Failure to provide the information required by this notice may be an offence.

1. Are you still a registrable controller of [name of company or foreign company]?

Your reply: Yes / No*

* Delete as appropriate. If your reply is no, please state the date on which you ceased to be a registrable controller of [name of company or foreign company]:

2. Your particulars that are stated in the register of controllers of [name of company or foreign company] are set out below. Has a relevant change in your particulars set out below occurred?

[Set out particulars of addressee that are stated in the register of controllers]

Your reply: Yes / No*

* Delete as appropriate. If your reply is yes, please provide the following information:

(a) the date of the change:

(b) the particulars of the change:

In this notice, “register of controllers” has the meaning given to it in section 386AB of the Companies Act;

Yours sincerely,

[Name of director, secretary or authorised representative of the company or foreign company]

Director / Secretary / Authorised representative*

* Delete as appropriate

[Name of company or foreign company]

ANNEX E – NOTICE FOR INCORRECT PARTICULARS

Date of notice: [Date that the notice is sent]

Dear [Addressee],

We know or have reasonable grounds to believe that your particulars that are stated in the register of controllers of [name of company or foreign company] are incorrect.

This notice is sent under section 386AI(1) of the Companies Act (Cap. 50) and requires you to provide the following information within 30 days after the date of this notice. Please send your reply to [address of company or foreign company]. Failure to provide the information required by this notice may be an offence.

1. Your particulars that are stated in the register of controllers of [name of company or foreign company] are set out below. Are your particulars set out below correct?

[Set out particulars of addressee that are stated in the register of controllers]

Your reply: Yes / No*

* Delete as appropriate. If your reply is no, please provide the correct particulars:

In this notice, “register of controllers” has the meaning given to it in section 386AB of the Companies Act;

Yours sincerely,

[Name of director, secretary or authorised representative of the company or foreign company]

Director / Secretary / Authorised representative*

* Delete as appropriate

[Name of company or foreign company]