

## THE COMPANIES (AMENDMENT) ORDINANCE 2018 - KEEPING OF SIGNIFICANT CONTROLLERS REGISTERS BY HONG KONG INCORPORATED COMPANIES



The Companies (Amendment) Ordinance 2018 (the Amendment Ordinance) will come into effect on 1 March 2018. The Amendment Ordinance introduces new requirements for Hong Kong incorporated companies to keep and maintain a Significant Controllers Register (SCR).

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 all companies incorporated in Hong Kong to obtain and maintain up-to-date beneficial ownership information, by way of keeping a SCR for inspection by law enforcement officers upon demand.

The SCR must contain information on the significant controllers of the applicable company, namely registrable persons (ie a natural person) and/or registrable legal entities (ie a company which is a member of the company) with significant control over the company.

### New requirements at a glance

- ▶ Keep the SCR, in either English or Chinese language, at the company's registered office or a prescribed place in Hong Kong
- ▶ Take reasonable steps to ascertain the company's significant controller(s), including the giving of notices and obtaining their required particulars
- ▶ Keep the required particulars in the SCR up-to-date
- ▶ Make the SCR available for inspection and taking of copies by a law enforcement officer and a significant controller whose name has been entered in the SCR
- ▶ To designate a representative to serve as a contact point for providing information about the SCR and related assistance to law enforcement officer

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## Who are required to keep a SCR?

All companies formed and registered under the Companies Ordinance (Cap 622) or a former Companies Ordinance, namely locally incorporated companies, including companies limited by shares, companies limited by guarantee and unlimited companies will need to maintain this new register to comply with the new requirements. Companies which have their shares listed on the Stock Exchange of Hong Kong are exempted from the requirement.

## What should a company do to identify significant controllers?

The applicable company is required to take reasonable steps to identify the significant controller(s). The steps include sending a written notice to such significant controller(s) or any person who knows the identity of the significant controller within 7 days after knowing (or having reasonable cause to believe) that they are significant controller(s) or know the identity of the significant controller of the company.

## How to determine whether a person has significant control over a company?

A person has significant control over an applicable company if one or more of the following 5 conditions are met:-

- a) The person holds, directly or indirectly, more than 25% of the issued shares in the company or, if the company does not have a share capital, the person holds, directly or indirectly, a right to share in more than 25% of the capital or profits of the company
- b) The person holds, directly or indirectly, more than 25% of the voting rights in the company
- c) The person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company
- d) The person has the right to exercise, or actually exercises, significant influence or control over the company
- e) The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company.

## What are the contents of SCR?

The SCR must contain the required particulars of the significant controller(s) and contact details of the designated representative of the company.

The required particulars are:

For registrable persons – name, address, HKID/passport number, date of becoming a registrable person, and the nature of control over the company

For registrable legal entities – name, address, legal form, registration number, place of incorporation, date of becoming a registrable legal entity, and nature of control over the company

For a designated representative – name and contact details

## Who can be a designated representative?

A company must designate at least one person as its representative to provide assistance relating to the company's SCR to law enforcement officers upon demand.

A company's designated representative must be either a shareholder, director or an employee of the company who is a natural person resident in Hong Kong or, alternatively, an accounting professional, a legal professional or a person licensed to carry on a business as trust or company service provider.

## Which law enforcement officers will have access to the SCR?

Law enforcement officers of the following authorities will have access to the SCR:

- ▶ Companies Registry
- ▶ Customs and Excise Department
- ▶ Hong Kong Monetary Authority
- ▶ Hong Kong Police Force
- ▶ Immigration Department
- ▶ Inland Revenue Department
- ▶ Insurance Authority
- ▶ Independent Commission Against Corruption
- ▶ Securities and Futures Commission

## What are the consequences of non-compliance?

If a company fails to comply with the requirement of keeping a SCR, the company and each of its responsible persons will be liable on conviction to a fine up to HK\$25,000 and a daily fine of HK\$700.

## How can we help?

We can provide support to your Companies in complying with the upcoming requirements including the creation and maintenance of a SCR. If required, we can also be your company's designated representative to assist in all matters relating to SCR.

*The above is not exhaustive and contains only a summary of the new requirements under the Amendment Ordinance relating to SCR. We will be pleased to provide detailed advice by reference to your own company situation upon request.*

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