

The Companies (Amendment) Ordinance 2018
New Requirements on Keeping of Significant Controllers Registers by Companies
Effective from 1 March 2018

In order to enhance transparency of corporate beneficial ownership for fulfilling Hong Kong's international obligations, the Companies Ordinance (Cap. 622) is amended to require a company incorporated in Hong Kong (except companies listed on the Hong Kong stock exchange) to obtain and maintain up-to-date beneficial ownership information, by way of keeping a **Significant Controllers Register** ("SCR"), for inspection by law enforcement officers upon demand.

Effective date

The Companies (Amendment) Ordinance 2018 will come into operation on **1st March, 2018**. That means all companies incorporated in Hong Kong (except listed companies) should maintain its SCR with effect from 1st March, 2018.

Requirement at a glance

The new requirements require a company to:-

- Keep a SCR at the company's registered office or a prescribed place
- Take reasonable steps to identify the company's significant controllers, including the giving of notices and obtaining their required particulars
- Enter the required particulars of its significant controllers in the SCR
- Keep the required particulars of its significant controllers 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

Conditions for significant control

A person is regarded as having significant control over a company if *one or more* on the following 5 conditions are met:-

- 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
- The person holds, directly or indirectly, more than 25% of the voting rights of the company
- The person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company
- The person has the right to exercise, or actually exercises, significant influence or control over the company
- 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 relation to the company

Please refer to the Enclosure for some examples illustrating different situations.

Indirect holdings

For the first three conditions, a person will be considered as indirectly holding the shares or rights if such shares or rights are held through a legal entity in which the person has “majority stake” or through a chain of legal entities below except the last one in the chain (i.e. the applicable Hong Kong company).

The concept of majority stake related to: (1) a majority control of *voting* rights, or appointment or removal of a majority of directors of the legal entity; or (2) having dominant influence over the legal entity.

Please refer to the Enclosure for some examples illustrating different situations.

Content of SCR

A significant controller may be:-

- a registrable person who is a natural person that has significant control over the company
- a registrable legal entity e.g. a company, which is a shareholder of the company that has significant control over the company

In addition, a company must designate at least one person as its representative (“Designated Representative”) to provide assistance relating to the company’s SCR to a law enforcement officer. A Designated Representative may be:-

- a member, director or employee of the company who is a natural person resident in Hong Kong
- an accounting professional (e.g. CPA/ CPA (practicing) registered with the HKICPA), a legal professional or a Trust or Company Service Provider (TCSP) licensee

Please refer to below summary of the required particulars of a significant controller (i.e. a registrable person or registrable legal entity) and Designated Representative to be included in the SCR:-

	Registrable Person	Registrable Legal Entity	Designated Representative
Required particulars	<ul style="list-style-type: none"> ➤ Full name ➤ Correspondence address ➤ HKID card no. / passport no. & country of issue ➤ Date of becoming a registrable person ➤ Nature of control over the Company 	<ul style="list-style-type: none"> ➤ Name ➤ Legal form of the legal entity and the law that governs it ➤ Registration no. or the equivalent in its place of incorporation/ formation ➤ Place of incorporation ➤ Address of its registered or principal office ➤ Date of becoming a registrable legal entity ➤ Nature of control over the Company 	<ul style="list-style-type: none"> ➤ Full name ➤ Capacity ➤ Correspondence address in HK ➤ Telephone no. ➤ Fax no. (if any)

	Registrable Person	Registrable Legal Entity	Designated Representative
Timing for entering the particulars into the SCR	➤ Within 7 days after the required particulars have ALL been confirmed	➤ Within 7 days after EACH particular comes to the notice of the company	➤ When appointed

**Even there is no significant controller/ unidentified significant controller/ unconfirmed particulars of significant controller/ investigations are ongoing by the company, etc., the company must still keep a SCR stating such fact. **

Other requirements of the SCR

- The SCR should be kept at the company's registered office or a place in Hong Kong. If it is kept at a place other than the company's registered office or the place at which the register of members is kept, the company needs to deliver Form NR2 for registration
- The SCR may be kept in hard copy or electronic form
- The SCR should be in English or in Chinese language
- *The SCR is not required to be filed to the Companies Registry*

Penalty for non-compliance

Any non-compliance will be considered as a criminal offence. The company and every responsible person of the company are liable to a fine at level 4 (i.e. HKD25,000). Where applicable, there is a further daily fine of HKD700.

Law enforcement officers who have access to SCR

The law enforcement officers who have access to the SCR include 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 Future Commission, for the purpose of performance of functions relating to prevention, detection or investigation of money laundering or terrorist financing.

Our services

We could assist your company in relation to compiling and maintaining the SCR, as well as acting as designated representative of your company.

Should you need further explanation on the above matters, please contact us at (852) 3929-4800 to seek our professional advice.

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