

COMPANIES (AMENDMENT) ORDINANCE 2018

KEEPING OF SIGNIFICANT CONTROLLERS REGISTER

The new requirements on the keeping of significant controllers registers by companies will come into operation upon commencement of the Companies (Amendment) Ordinance 2018 (“the Amendment Ordinance”) on **1 March 2018**.

Under the Amendment Ordinance, all companies incorporated in Hong Kong (except listed companies) are required to identify a person/persons who has/have significant control over the company and maintain a significant controllers register (“SCR”) which will be accessible by law enforcement officers upon demand. Each company must also designate at least one person as its representative to provide assistance relating to the SCR of the company to law enforcement officers.

1. New Requirements of SCR

- New requirements include :
 - keeping a SCR
 - taking reasonable steps to identify the company’s significant controllers
 - entering the required particulars of its significant controllers in the SCR
 - keeping the required particulars up-to-date
 - allowing inspection and making copies of the SCR by law enforcement officers
- Failure to comply with any of the above obligations is a criminal offence. The company and every responsible person of the company are liable to a fine of HK\$25,000. Where applicable, there is a further daily fine of HK\$700.

2. Keeping a SCR

- Each company must keep a SCR even if it does not have a significant controller
- SCR must be kept :
 - in English or Chinese language
 - at the company’s registered office or a place in Hong Kong
- Must notify the Registrar of Companies :
 - the place where SCR is kept
 - of a change in the place at which SCR is kept

3. *Contents of SCR*

- Required particulars of each significant controller
- Particulars of any registrable change
- Name and contact details of a designated representative
- Any other additional matters
- SCR must not be empty

4. *Significant Controllers*

- A registrable person or a registrable legal entity
- Registrable person - natural person or specified entity that has significant control over the company
- Registrable legal entity - legal entity which is a member and has significant control over the company
- A “specified entity” includes :
 - A government of a country or territory, or part of a country or territory
 - An international organisation whose members include 2 or more countries or territories (or their governments)
 - A local authority or local government in a country or territory

5. *Significant Control*

Meeting one or more of the following conditions :

- The person directly or indirectly holding more than 25% of the issued shares (the right to share in more than 25% of the capital/profits) of the company
- The person directly or indirectly holding more than 25% of the voting rights in the company
- The person directly or indirectly holding 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 exercising, significant influence or control over the company
- The person has the right to exercise, or actually exercising, 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

6. *Designated Representative*

- A company must designate at least one person to assist law enforcement officers in relation to the SCR
- The person must be one of the following :
 - a member, director or employee of the company that is a natural person resident in Hong Kong
 - an accounting professional, a legal professional or a Trust or Company Service Providers licensee defined in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance

7. *Allowing Inspection and Making Copies*

A company must make available its SCR for inspection/making of copies at any reasonable time upon demand by :

- An officer of the Companies Registry, for ascertaining whether the statutory requirements relating to SCR are complied with
- A law enforcement officer in performance of a specified function relating to the prevention, detection or investigation of money laundering or terrorist financing under the laws of Hong Kong
- A “law enforcement officer”, for example, being an officer of :
 - Customs and Excise Department
 - Hong Kong Monetary Authority
 - Hong Kong Police Force
 - Inland Revenue Department

8. *Offences for False Information/Statement*

It is an offence if any person knowingly or recklessly :

- makes a statement/provides any information that is misleading, false or deceptive in a material particular, in purported compliance with a notice; or
- makes a statement that is misleading, false or deceptive in any material particular, in the SCR

A person who commits any of the above offences is liable :

- on conviction on indictment to a fine of HK\$300,000 and imprisonment for 2 years; or
- on summary conviction to a fine at HK\$100,000 and imprisonment for 6 months