

Hong Kong companies must register their beneficial owners starting 1 March 2018

Our Smart News alert of October 2017 reported on the proposed introduction of rules requiring Hong Kong companies to keep track of their beneficial owners by maintaining a 'significant controllers register'. The new rules which amend the Companies Ordinance have now been adopted and will come into effect on 1 March 2018.

This Legal Alert summarises what Hong Kong companies need to do in order to comply with the new requirements under these new rules known as the 'Companies (Amendment) Ordinance 2018'. We refer to [our earlier alert](#) for more details on the context of the new rules and the penalties for non-compliance.

What are the new obligations ?

Companies must establish a register of all persons who have significant control over the company and ensure that at all times the information in the register is kept up-to-date.

Even if a company does not have any significant controllers, it must still set up a significant controllers register.

Who are the significant controllers ?

A significant controller of a company is:

- » a natural person or government entity, which has significant control (not through a listed company) over that company; or
- » a legal entity (other than a government entity), which is a member and has significant control over that company.

A person has "significant control" over a company if he/she/it holds directly or indirectly :

- » more than 25% of the issued shares in that company;
- » the right to share in more than 25% of the capital or profits of a company with no share capital;
- » more than 25% of the voting rights in that company; or
- » the right to appoint or remove a majority of the board of directors of that company.

In addition, anyone who has the right to exercise, or actually exercises, significant influence or control over a company is also a significant controller.

What must go into the significant controllers register?

The significant controllers register must contain the particulars of the significant controllers including:

- » name;
- » address; and
- » nature of the control exercised by the significant controller.

Keeping the register up-to-date

Companies have an ongoing duty to find out who its significant controllers are. If a company believes or has reason to believe a person is a significant controller, it must contact that person to confirm the same.

As soon as a company knows or reasonably believes that a significant controller's details have changed, it must contact the significant controller with a view to obtaining the necessary information to update the register.

Failure to comply with the above obligations may expose a company and every responsible person of that company to a fine.

Must all Hong Kong companies keep a significant controllers register?

The obligation applies to all companies incorporated in Hong Kong, except for :

- » listed companies; and
- » companies, which fall within a type or class of companies specifically exempted by the Financial Secretary of Hong Kong.

Appointing a person in charge

All companies must designate at least one person to be in charge of assisting staff of the Companies Registry or law enforcement officers with enquiries regarding its significant controllers register. That person must be a director, employee or member of the company who is also a natural person resident in Hong Kong, or an accountant, a lawyer or a licensed trust or company service provider (TCSP).

What do to?

Companies should prepare for the implementation of the new regime by ascertaining who their known significant controllers are and making arrangements for the establishment of a significant controllers register. They should also formulate a compliance manual setting out guidelines for maintaining compliance with the new obligations.



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