



Significant Controllers Registers

1 March 2018

With effect from 1 March 2018, the Companies (Amendment) Ordinance 2018 will come into force. All companies incorporated in Hong Kong must maintain a significant controllers register (SCR) to be accessible by law enforcement officers.

Any company affected by the new statutory provision is required to take reasonable steps to identify its significant controllers by reviewing its register of members, articles of association, shareholders agreements and other agreements and issuing a notice to any person who is believed to be the significant controller as well as those who are believed to know the identity of the significant controller.

Duty to keep SCR up-to-date

If the company knows or has reasonable cause to believe that a person is a significant controller, or a particular person knows the identity of another person who is a significant controller, the company must give notice to that person or that particular person **within 7 days** of such knowledge or belief, whichever happens first, to obtain relevant information of such significant controller. The significant controller should also give reply to the company within one month from the date of the notice. The Company is required to keep the relevant particulars of its significant controllers in the SCR up-to-date.

A significant controller of a company can be a registrable person (ie, a natural person or specified entity) and/or a registrable legal entity who falls into any one of the following conditions, and his/her/its particulars are required to be entered into the SCR in order to meet the new statutory requirements:

1. the person holds, directly or indirectly—(i) if the

company has a share capital—more than 25% of the issued shares in the company; or (ii) if the company does not have a share capital—a right or rights to share in more than 25% of the capital or profits of the company; or

2. the person holds, directly or indirectly, more than 25% of the voting rights in the company; or

3. the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company; or

4. the person has the right to exercise, or actually exercises, significant influence or control over the company; or

5. 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 a company.

The SCR should be kept (i) at the registered office of the company or (ii) at the same place where the company's register of members is kept provided that the company has already informed the Registrar of the location of its register of members in a Form NR2 before. Otherwise, the company is required to file a new Form NR2 reporting the location of SCR on or after 1 March 2018.



THE ASSURALS[®] LAW FIRMS WORLDWIDE
A global alliance of closely connected,
yet independent law firms around the world
國際律師行聯盟成員



The required particulars for the significant controller to be kept in the SCR are set out below:

Registrable Person	Registrable Legal Entity or Specified Entity
1. Name	1. Name
2. Correspondence address (but not a post office box number)	2. Address of its registered or principal office
3. ID Card Number (or if the person has no ID card, the number and issuing country of a passport the person holds)	3. Registration number (or the equivalent in its place of incorporation or formation), if any
4. Date of becoming a significant controller	4. Date of becoming a significant controller
5. Nature of control over the company	5. Nature of control over the company
	6. Legal form and the law that governs it

Designated Representative

The company must designate at least one person as its representative to provide assistance relating to its SCR to law enforcement officers. The designated representative may be (i) a member, director or an employee of the company who is a natural person resident in Hong Kong ; or (ii) an accounting professional, a legal professional or a TCSP licensee as defined in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, Cap 615 (AMLO). The name and contact details (eg, address, telephone number, fax number, etc) of the designated representative should also be entered into the SCR.

Penalties

Failure to comply with the new requirements of the Amendment Ordinance is a criminal offence. The company and every responsible person of the company, including but not limited to the directors, are liable to a fine at level 4 (HK\$25,000) and a further daily fine of HK\$700 where applicable.

Exemption

Companies which have their shares listed on the Stock Exchange of Hong Kong are exempted from the new requirements of the Amendment Ordinance.

A dedicated thematic section on “Significant Controllers Register” has been set up on the website of the Companies Registry at www.cr.gov.hk/en/scr. The section contains the full text of the Companies (Amendment) Ordinance 2018, frequently asked questions, External Circulars and Guidelines issued by the Registry in relation to the new requirements.

For more information, please contact Anthony Fung, partner, at anthonyfung@gallantho.com.

