

LEGAL UPDATE

The Introduction of the Keeping of Significant Controllers Registers by Companies in Hong Kong as of 1 March 2018

The Companies (Amendments) Ordinance 2018 will enter into force as of 1 March 2018, under which companies in Hong Kong are required to keep and maintain a significant controllers register (“SCR”), either in English or Chinese, for inspection by competent authorities upon demand. The Companies Registry has published a “Guideline on the Keeping of Significant Controllers Registers by Companies” (the “Guideline”) with detailed guidance on the new requirements in relation to the SCR (the “SCR requirements”). This legal update highlights certain key SCR requirements and lists out certain key actions to be taken by Hong Kong companies. More operational details are set out in the Guideline.

All companies incorporated and registered in Hong Kong (except companies listed on the Stock Exchange of Hong Kong) should maintain a SCR, containing (i) the required particulars of a company’s significant controller(s) and (ii) name and contact details of a designated representative. Companies not incorporated in Hong Kong (including ‘registered non-Hong Kong companies’ as defined under the Companies Ordinance, Cap.622) are not required to maintain a SCR.

Significant Control

In broad terms, significant controller (“SC”) means (i) a natural person or government/local authority with significant control of the company (‘registrable person’ – “RP”), and (ii) any legal entity who is a member of the company and has significant control thereof (‘registrable legal entity’ – “RLE”).

A person is a SC if one or more of the conditions below is/are satisfied:

- 1) The person holds, directly or indirectly –
 - a) if the company has a share capital, more than 25% of the issued shares in the company; or
 - b) 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;
- 2) The person holds, directly or indirectly, more than 25% of the voting rights in the company;
- 3) The person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;
- 4) The person has the right to exercise or actually exercises significant influence or control over the company;
- 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 mentioned above (in their capacity as such) in respect of the company.

Key Dates and Action Items

1 March 2018

A Company should start keeping a SCR at its registered office or a designated place in Hong Kong, even if it has no SC. The SCR can never be left empty. The company should make appropriate entries into its SCR to reflect particular circumstances. New Schedule 5C to CO and Annex C of the Guideline contain 'prescribed wordings' which must be included in the SCR for each outcome.

1 to 8 March 2018

A. If a company has not already been provided with the required particulars of its SCs (or particulars not yet confirmed by RP) on 1 March 2018: A company should issue notices to its SCs between 1 to 8 March 2018 (or other person who knows the particulars of the SCs) to obtain the required particulars of the SCs.

B. If a company has already been provided with the required particulars of its RLE on 1 March: A company can enter the required particulars in its SCR not later than 8 March.

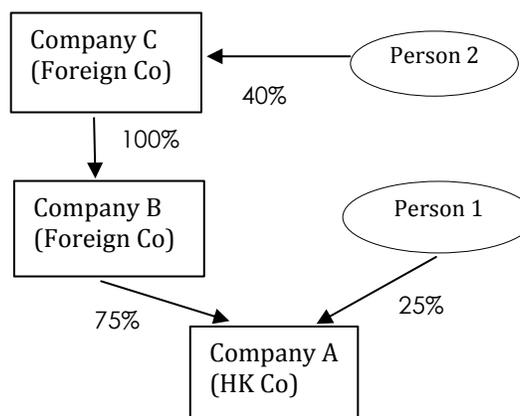
C. If a company has already been provided with the required particulars which are confirmed by its RP on 1 March: A company should enter the required particulars in its SCR not later than 8 March.

Notes to B & C: it is advisable for a company to include the required particulars immediately on 1 March 2018 if available. Otherwise the SCR should contain the 'prescribed wording' reflecting a particular circumstance (e.g. the company is still taking reasonable steps to identify SCs).

In addition to the conditions above, there is a wide range of scenarios where a person may be considered a SC. For example:

- A) For shares and rights that are held indirectly through a chain of legal entities, a person can be considered to have significant control over a company only if that person and each of those legal entities (other than the last one in the chain) has a "majority stake" in the entity immediately below it in the chain and the last one in the chain holds more than 25% of the shares or rights in that company.
- B) If two or more persons jointly hold more than 25% shares or rights in a company, each of them is regarded as holding the shares or rights and each of them is required to be entered in the SCR.
- C) If a person holds more than 25% shares or rights in a company through a nominee, that person must be entered in the SCR.
- D) If the shares in a company are held as security (for example to secure a loan from a lender) under a charge or similar arrangement, depending on the nature of the rights attached to such shares, the chargee and/or chargor may need to be entered in the SCR.

An example is shown in the illustration below.



Company A's SCR

- Company B is RLE
- NB: Person 1 is not a RP as his/her shareholding in Company A is not more than 25%; Person 2 is not a RP as he/she does not have a majority stake in company C, so person 2 is not regarded as indirectly holding Company A.

Company B and C are foreign companies, hence are not required to maintain a SCR.

An example of SCR in relation to Company A above is shown below.

Entry No.	Date of entry	Name of registrable person/legal entity	Particulars	Remarks/Notes
1	1 March 2018	Company B	a) Legal form: [] b) Registration number: [] c) Place of incorporation: [] d) Address of registered office: [] e) Date of becoming a registrable legal entity: 1 March 2018 f) Nature of control over the company: Company B holds more than 25% of the issued shares of the company	
Designated Representative				
Entry No.	Date of entry	Name (capacity)	Contact details	
1	1 March 2018	[Name] (e.g. director of the company / accounting professional / legal professional)	a) Address: [] b) Telephone No: [] c) Fax No: []	

Designated Representative

The company should appoint at least one designated representative (“DR”) to provide assistance to a law enforcement officer in respect of its SCR. A DR shall be a person resident in Hong Kong, who is a director, employee or member of the company; or may be an accounting professional, a legal professional or a licensed trust and company service provider under AMLO.

Required Particulars in the SCR

The SCR should contain the required particulars of a company’s SC(s) and the name and contact details of the company’s DR(s). The following particulars should be entered into SCR in relation of a company’s SC:

- (i) for RPs (natural persons) – the name, correspondence address (not PO box number), Hong Kong identity card number or passport number (if the person has no Hong Kong identity card), the date on which the person became a RP and the nature of RP’s control over the company; and
- (ii) for RLE – name, address of the RLE’s registered office or principal office, company registration number (or its equivalent in its place of incorporation or formation), legal form, place of incorporation, date of becoming a RLE of the company and the nature of RLE’s control over the company.

For existing companies, the company shall state in its SCR the date on which its RP/RLE becomes registrable as 1 March 2018.

Giving Notice

A company is required to take reasonable steps to ascertain and identify its SCs. Unless a company has already been informed that a person or entity is the company’s SC and all of the SC’s required particulars have been provided to the company (in case of a RP, provided by RP or with RP’s

knowledge) on 1 March 2018, the company shall send written notices to the persons whom it knows or has reasonable cause to believe are SCs within 7 days after such knowledge and belief. A company is also entitled to issue written notices to any third party whom it knows or has reasonable cause to believe that the person knows the identity of its SC(s). For existing companies, the company's knowledge or belief is deemed to start on 1 March 2018, hence notices should be issued between 1 to 8 March. The template notices can be found in Annex D of the Guideline. A notice addressee should reply to the notice within one month of the date of notice.

Entering Particulars in SCR

The required particulars of a RLE or RP must be entered into the company's SCR within 7 days after the company has been provided with the required particulars. If the required particulars of a RP are provided by other persons, those required particulars should be entered into the SCR within 7 days upon receipt if those particulars have been provided with that RP's knowledge, or within 7 days after that RP has confirmed the particulars being correct.

Consequences of non-compliance

If a notice addressee or a company fails to comply with one of the SCR requirements, it will be a criminal offence for the notice addressee, the company and each of the company's responsible person, respectively. The notice addressee and every related person could be liable to a fine at level 4 (HK\$25,000). The company and each of its responsible person could be liable to a fine at level 4 (HK\$25,000) and a daily fine of HK\$700 for each day during which the offences continues.

Personal Data (Privacy) Ordinance

It should be noted that the required particulars of a natural person to be kept in a company's SCR are personal data under Personal Data (Privacy) Ordinance, Cap.486 ("PDPO"). Next to the SCR requirements, companies should also ensure that the data protection principles set out in PDPO are complied with. For instance a company should keep its SCR at its registered office or designated place in Hong Kong and take reasonable steps to safeguard personal data from unauthorized or accidental access or use.

Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual contact at our firm.

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