



Hong Kong: new licensing regime for trust or company services providers and significant controller register

We wish to bring to your attention that, with effect from 1 March 2018, a new licensing regime for trust or company services providers will be implemented in Hong Kong. In addition, all companies formed and registered under the local laws shall be required to keep a significant controller register.

1. The New Licensing Regime

Starting from 1 March 2018 trust or company services providers (“**TCSPs**”) shall apply for a licence (“**TCSPs Licence**”) in Hong Kong and must meet certain requirements prior to providing trust or company services business in Hong Kong. In particular, the TPCs shall satisfy the “fit-and-proper” test. The TCSPs Licence shall be granted by the Hong Kong Registrar of Companies (“**Registrar**”) who may also refuse to grant, renew, suspend or revoke it or impose or vary conditions on it. Once granted, the TCSPs Licence is valid for three years. Holders of a TCSP Licence shall be subject to several compliance requirements, including those of customer due diligence and record-keeping requirements under the Hong Kong Anti-Money Laundering and Counter-Terrorism Financing Ordinance. In addition, holders of a TCSPs Licence who intend to cease to conduct trust or company services business shall, prior to the proposed date of cessation, notify the Registrar of that intention and the intended date of cessation. Any person who conducts trust or company service business in Hong Kong without a TCSP Licence commits a criminal offence and may be prosecuted in Hong Kong.

2. The significant controller register

Also commencing from 1 March 2018 and following the coming into operation, on even date, of the Companies (Amendment) Ordinance 2018, companies incorporated in Hong Kong (except listed companies) shall obtain and maintain updated information on beneficial ownership. This information shall be contained in a Significant Controller Register (**SCR**) to be kept, in the English or Chinese language, at the company’s registered office (or other prescribed place) in Hong Kong and available for inspection by the local authorities on demand. A significant controller of a Hong Kong company includes:

- a. a natural person;
- b. a legal entity;

c. in the event that one or more of the following conditions are met:

- 1) the person holds, directly or indirectly, more than 25% of the issued shares in the company or, when the company does not have a share capital, the person holds, directly or indirectly, a right to share more than 25% of the capital or profit;
- 2) the person holds, directly or indirectly, more than 25% of the voting rights in the company;
- 3) the person has, directly or indirectly, the right to appoint or remove a majority of the board of director of the company;
- 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 activities of a trust or a firm which is not a legal person but whose trustees or members meet any of the above conditions 1) to 4) in relation to the company.

The SCR shall contain the following particulars:

a. particulars of every significant controller of the company:

- If it is a natural person full name, address, ID card number (or issuing country and number of the passport), date of becoming a significant controller and nature of control over the company;
- If it is a legal entity name, legal form, registration number, place of incorporation (governing law) and registered office date of becoming a significant controller and nature of control over the company.

b. any change in the particulars of any significant controller of the company

c. name and contact details of at least one company designated representative (CDR) to provide assistance relating to a company's SCR to the authorities. A CDR must be either:

- a shareholder, director or employee of the company who is a natural person and who is resident in Hong Kong; or
- an accounting or a legal professional or a person licensed to conduct a business as TCSP.

Failure to comply with the above constitutes a criminal offence punishable by a fine of level 4 (currently HK\$25,000) and, where applicable, a daily fine of HK\$700.

We are aware of the limited time available to comply with the above requirements. In this connection, we can offer you a flat annual package which shall include the following services:

- a. establishing and maintaining the required SCR for your company;
- b. acting as the CDR of your company;
- c. assisting in any inspection or inquiries from the authorities.

Please note that the above is simply an overview of the subject matter and it is not, nor is it intended to be, a legal opinion or legal advice. Should you have any questions concerning the new law's requirements set out above or should you wish to receive information on our annual package, please do not hesitate to contact us.

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