



The Requirements for Significant Controllers Registers

A private company must keep a number of internal registers, namely:

- (a) the register of members and index of members (together with one or more optional overseas members registers where appropriate);
- (b) the register of directors and register of directors' residential addresses;
- (c) the register of secretaries;
- (d) the register of charges and copies of instruments creating charges; and
- (e) the register of debenture holders if they are not transferable by delivery.

Effective 1 March 2018, a private Hong Kong company also needs to keep a register of significant controllers. The Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (CAP 615) requires a financial institution to take reasonable measures, as part of the customer due diligence process, to verify the identity of the ultimate beneficial owner of a customer, including measures to understand the ownership and control structure of a corporate customer. The requirement to keep a significant controllers register helps to enhance transparency of corporate beneficial ownership in order to fulfil Hong Kong's international obligations and it also enables the authorities to identify and contact person(s) and/or corporation(s) who are the latest decision makers of the company.

Now, all unlisted companies incorporated in Hong Kong are required to:

- (a) take reasonable steps to ascertain the individuals and legal entities that have significant control over the company ("significant controllers"), and to obtain accurate and up-to-date information about their identities; and
- (b) maintain a register of the significant controllers ("significant controllers register") at the company's registered office or a prescribed place, which contains the required particulars of their identities, for inspection by law enforcement officers, upon demand, for the purpose of the officer's performance under the law of Hong Kong of a function relating to the prevention, detection or investigation of money laundering or terrorist financing.

The only type of Hong Kong companies to be exempted from the above requirements would be listed companies and companies exempted by the Financial Secretary. Listed companies are exempted because the Securities and Futures Ordinance already has a more stringent regime requiring listed corporations (including overseas companies listed in Hong Kong) to keep a register of interests in their shares.

Registrable persons

For individuals ("registrable persons"), significant controllers are as follows:

- (a) a person who holds, directly or indirectly, more than 25% of the issued shares in the company;
- (b) a person who holds, directly, or directly, more than 25% of the voting rights in the company;
- (c) a person who holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;
- (d) a person who has the right to exercise, or actually exercises, significant influence or control over the company. Significant influence or control may be exercised through a trust or a firm, whose trustees or members satisfy any of the above conditions (in their capacity as such) in relation to the company.



Indirect interest shall only be calculated or added to the direct interest of a person if that person has a “majority stake” in a legal entity (e.g. Entity A) and:

- Entity A holds the shares or rights in the company; or
- Entity A is part but not the last of a chain of legal entities 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 the shares or rights in the company.

Registrable persons also include a corporate sole, a government, a local authority or local government, and an international organization.

The required particulars for a registrable person who is a natural person are:

- name
- correspondence address (not a post office box number)
- the identity card number or, if the person has no identity card, the number and issuing country of a passport the person held
- the date on which the person became registrable person of the company
- the nature of the person’s control over the company.

Registrable Legal Entity

A legal entity (“registrable legal entity”) (including an overseas legal entity, corporate or unincorporate, but excluding a government, a local authority or local government, or an international organization) is a significant controller of a company if:

- (a) it meets any of the above criteria; and
- (b) it is immediately above the company in the company’s ownership chain as a member of the company.

The required particulars for a registrable legal entity are:

- name
- the legal form of the legal entity, and the legal entity’s registration number or the equivalent in its place of incorporation or formation
- the address of its registered or principal office
- the date on which the legal entity became a registrable legal entity of the company
- the nature of the legal entity’s control over the company.

Location of The Register

An applicable company must keep its significant controller register at the company’s registered office or a prescribed place. The company must notify the Registrar the place at where its significant controllers register is kept by delivering Form NR2 for registration within 15 days after the significant controllers register is first kept at that place.



Inspection

Companies Ordinance does not require the register to be open for public inspection. A person whose name is entered in the register as a significant controller is entitled to inspect the register, and may apply to the Court for rectification of the register.

A fine (maximum \$25,000) and a further daily fine of \$700 would apply to the company (and each of its responsible persons) for failure to keep the register. This is comparable to that currently applicable to failure to keep registers of members, directors and company secretaries.

The "law enforcement officers" who may demand inspection of the significant controllers register are an officer of:

- (a) the Companies Registry;
- (b) the Customs and Excise Department;
- (c) the Hong Kong Monetary Authority;
- (d) the Hong Kong Police Force;
- (e) the Immigration Department;
- (f) the Inland Revenue Department;
- (g) the Insurance Authority;
- (h) the Independent Commission Against Corruption;
- (i) the Securities and Futures Commission; and
- (j) any other Government department, agency or body established or constituted by or under a Hong Kong ordinance, that is specified by the Financial Secretary by regulations.

Every company must designate (i) an individual representative who is a director, employee or member of the company who is a natural person resident in Hong Kong, or (ii), an accountant, a legal professional or a trust or company service provider to serve as a contact point for providing information about its significant controllers register and assistance to law enforcement officers when the need arises.

If a company knows or has reasonable cause to believe that (a) a person is a significant controller of the company or (b) a particular person knows the identity of another person who is a significant controller of the company, the company must give notice to that particular person within 7 days of such knowledge or belief, whichever happens first. The company and every responsible person of the company commit an offence if the above is contravened and each is liable to a fine of HK\$25,000. A company is not required to send the notices if the company has already been informed of the person's status (for a registrable person) or legal entity's status (for a registrable legal entity) as being its significant controller and all the required particulars have been provided to the company. If any person knowingly or recklessly makes, in a significant controllers register or in a reply to a company's notice, a statement which is misleading, false or deceptive in any material particular, the person would commit an offence and be liable on conviction on indictment to a fine of HK\$300,000 and to imprisonment for 2 years; or on summary conviction to a fine (maximum HK\$100,000) and to imprisonment for 6 months.