



# HONG KONG TAX ALERT

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## Hong Kong tightening up on corporate beneficial ownership – Companies (Amendment) Ordinance 2018

### Summary

Effective from 1 March 2018, companies incorporated in Hong Kong (except listed companies) are required to maintain registers of up-to-date beneficial ownership information through a Significant Controllers Register.

This is a bid for Hong Kong to combat money laundering and enhance the transparency of corporate beneficial ownership.

From a Hong Kong tax perspective, these changes potentially provide the Inland Revenue Department with more transparency about the beneficial owner of a company when issuing Hong Kong tax residency certificates to taxpayers.

Effective from 1 March 2018, all companies incorporated in Hong Kong (except listed companies) are required to obtain and maintain up-to-date beneficial ownership information through a Significant Controllers Register ("SCR") (click [here](#) for details of the Companies (Amendment) Ordinance 2018).

This is a bid for Hong Kong to combat money laundering and terrorist financing by enhancing the transparency of corporate beneficial ownership. New Division 2A in Part 12 of the Companies Ordinance (Cap. 622) ("CO") and new Schedules 5A, 5B and 5C will be added to the CO.

### Key requirements

Hong Kong companies are now required to undertake the following steps:

- Take reasonable steps to identify the company's significant controllers, including issuing notices and obtaining required particulars, as appropriate;
- Enter the required particulars of the company's significant controllers in the SCR and keep the SCR at the company's registered office or a prescribed place (the SCR must not be empty);
- Notify the Registrar of Companies of the place where the SCR is kept within 15 days after the SCR is first kept at that place, unless it is kept at the company's registered office or the same place where its Register of Members is kept and the company has already informed the Registrar of that location;
- Designate at least one person to assist law enforcement officers in relation to the SCR.

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### ***Definition of “significant control”***

A person has “significant control” over a company if one or more of the following conditions are met:

- a) The person holds, direct or indirectly, more than 25% of the issued shares in the company (where the company has share capital); or the right to share in more than 25% of the capital or profits of the company (where the company does not have share capital)
- b) The person holds, direct or indirectly, more than 25% of the voting rights in the company;
- c) The person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of a company;
- d) The person has the right to exercise, or actually exercises, significant influence or control over the company;
- e) The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that is not a legal person, and whose trustees or members meet one or more of the conditions specified in (a) to (d) above.

### ***Penalties***

If a company fails to comply with any of the above requirements, the company and each of its responsible persons would have committed an offence and be liable to a fine of HKD25,000 each. A daily fine of HKD700 for continuing offences may also apply. For companies which provide false, misleading or deceptive information in the SCR, a fine of up to HKD300,000 and imprisonment for 2 years could apply.

### ***Maintaining an SCR***

Irrespective of whether or not a company has a significant controller, each company must maintain an SCR (in English or Chinese) at the company's registered office or a place in Hong Kong. The company must also notify the Registrar of Companies the place where the SCR is kept or if there is a change in the place where the SCR is kept. The SCR must be completed (i.e., not left blank) and should be available for inspection by law enforcement officers upon demand.

### **KPMG observations**

As Hong Kong faces increasing scrutiny from global regulators, Hong Kong is stepping up its anti-money laundering policies / rules in a bid to reduce the risk of money laundering and terrorist financing. We expect that the Hong Kong government will likely introduce further measures to ensure that both financial and non-financial industries are compliant with anti-money laundering rules.

From a Hong Kong a tax perspective, these changes potentially provide the Inland Revenue Department with more transparency about the beneficial owner of a company when issuing Hong Kong tax residency certificates to taxpayers. In addition, this information could also be accessed by other tax authorities who are increasingly looking through holding companies to the ultimate owners when determining whether tax treaty benefits apply.

For more information and assistance, please contact your company secretarial service provider or one of our tax advisors below.

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