

# 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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# Contact us:



**Lewis Y. Lu**  
**National Head of Tax**  
Tel: +86 21 2212 3421  
lewis.lu@kpmg.com



**Curtis Ng**  
**Head of Tax, Hong Kong**  
Tel: +852 2143 8709  
curtis.ng@kpmg.com

## Corporate Tax Advisory



**Chris Abbiss**  
**National Head of Real Estate Tax**  
Tel: +852 2826 7226  
chris.abbiss@kpmg.com



**Matthew Fenwick**  
**Partner**  
Tel: +852 2143 8761  
matthew.fenwick@kpmg.com



**Stanley Ho**  
**Partner**  
Tel: +852 2826 7296  
stanley.ho@kpmg.com



**Charles Kinsley**  
**Partner**  
Tel: +852 2826 8070  
charles.kinsley@kpmg.com



**Alice Leung**  
**Partner**  
Tel: +852 2143 8711  
alice.leung@kpmg.com



**Ivor Morris**  
**Partner**  
Tel: +852 2847 5092  
ivor.morris@kpmg.com



**John Timpany**  
**Partner**  
Tel: +852 2143 8790  
john.timpany@kpmg.com



**Eva Chow**  
**Director**  
Tel: +852 2685 7454  
eva.chow@kpmg.com



**Elizabeth de la Cruz**  
**Director**  
Tel: +852 2826 8071  
elizabeth.delacruz@kpmg.com



**Natalie To**  
**Director**  
Tel: +852 2143 8509  
natalie.to@kpmg.com



**Michael Olesnick**  
**Special Advisor**  
Tel: +852 2913 2980  
michael.olesnick@kpmg.com

## Deal Advisory & M&A Tax



**Darren Bowdern**  
**Head of Financial Services Tax, Hong Kong**  
Tel: +852 2826 7166  
darren.bowdern@kpmg.com



**Yvette Chan**  
**Partner**  
Tel: +852 2847 5108  
yvette.chan@kpmg.com



**Sandy Fung**  
**Partner**  
Tel: +852 2143 8821  
sandy.fung@kpmg.com



**Benjamin Pong**  
**Partner**  
Tel: +852 2143 8525  
benjamin.pong@kpmg.com



**Malcolm Prebble**  
**Partner**  
Tel: +852 2685 7472  
malcolm.j.prebble@kpmg.com



**Henry Wong**  
**Partner**  
Tel: +852 2978 8209  
henry.wong@kpmg.com

## China Tax



**Daniel Hui**  
**Principal**  
Tel: +852 2685 7815  
daniel.hui@kpmg.com



**Adam Zhong**  
**Principal**  
Tel: +852 2685 7559  
adam.zhong@kpmg.com



**Travis Lee**  
**Director**  
Tel: +852 2143 8524  
travis.lee@kpmg.com



**Wade Wagatsuma**  
**Head of US Corporate Tax, Hong Kong**  
Tel: +852 2685 7806  
wade.wagatsuma@kpmg.com



**Becky Wong**  
**Director**  
Tel: +852 2978 8271  
becky.wong@kpmg.com

## Global Transfer Pricing Services



**Karmen Yeung**  
**Head of Global Transfer Pricing Services, Hong Kong**  
Tel: +852 2143 8753  
karmen.yeung@kpmg.com



**Lu Chen**  
**Partner**  
Tel: +852 2143 8777  
lu.l.chen@kpmg.com



**John Kondos**  
**Partner**  
Tel: +852 2685 7457  
john.kondos@kpmg.com



**Irene Lee**  
**Director**  
Tel: +852 2685 7372  
irene.lee@kpmg.com



**Lachlan Wolfers**  
**National Head of Indirect Tax & Tax Technology; Asia Pacific Regional Leader, Indirect Tax**  
Tel: +852 2685 7791  
lachlan.wolfers@kpmg.com



**Alexander Zegers**  
**Director, Tax Technology**  
Tel: +852 2143 8796  
zegers.alexander@kpmg.com

## Global Mobility Services



**Murray Sarelius**  
**National Head of Global Mobility Services**  
Tel: +852 3927 5671  
murray.sarelius@kpmg.com



**Barbara Forrest**  
**Principal**  
Tel: +852 2978 8941  
barbara.forrest@kpmg.com



**David Siew**  
**Principal**  
Tel: +852 2143 8785  
david.siew@kpmg.com



**Kate Lai**  
**Director**  
Tel: +852 2978 8942  
kate.lai@kpmg.com



**Erica Chan**  
**Director**  
Tel: +852 3927 5572  
erica.chan@kpmg.com

**kpmg.com/cn**

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