

Client Alert

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Convictions in less than a year after the Significant Controllers Register law came into force

On 7 January 2019, the Companies Registry published highlights of several prosecution cases regarding the convictions in November 2018 of twelve Hong Kong companies for having failed to keep and maintain their significant controllers registers ("**SCR**") in accordance with the Companies Ordinance (Cap 622) (the "**CO**"). All the companies convicted were fined. Details of the prosecutions and convictions can be found at:

<https://www.cr.gov.hk/en/compliance/prosecution.htm>.

For more details about the SCR law, please refer to our March 2018 client alert:

[Take immediate action – The Companies \(Amendment\) Ordinance 2018 will be in force on 1 March 2018](#)

What are the implications of the convictions?

- The government may not give indulgence for non-compliance even though the SCR law has been in force for only less than a year. Unlike in Singapore where initial warning was given for non-compliance with a similar law without a conviction, it appears that the Hong Kong Government is more active in enforcing the new law.
- The convictions, in so far as the SCR law is concerned, are currently limited to breach of s. 653M of the CO for failing to keep the SCR at the registered office. The defaults were likely revealed by ad hoc inspections of the registered offices of the convicted companies by officers of the Companies Registry (the "**CR**"). Whilst it is not clear, and it is difficult to say at this time, how frequent such ad hoc inspections will be made or whether prosecution for non-compliance without cautioning is the general trend, an "Applicable Company" (as described below) should be vigilant and ensure compliance with the SCR law at all times.
- If you are the directors of an Applicable Company, ensure that you have already taken the actions required by the CO to discharge your obligations under the SCR law. We have provided a refresher summary of the SCR law below.
- If you are a foreign investor and has any subsidiary in Hong Kong which is an Applicable Company, ensure that the directors of that subsidiary company have taken actions to comply with the SCR law.
- If you are the designated representative of an Applicable Company, be prepared for any ad hoc inspection of the SCR by the relevant officers and ensure that the complete set of the SCR, together with proper records of investigation (including all notices sent and confirmations received), is in place to be shown and disclosed to any law enforcement officer or CR inspection officer upon request.





Penalties Table

We set out below a penalties table in relation to breaches of the SCR law for easy reference.

Offence	Section	Penalty
Failing to keep SCR	653H	Level 4 fine - \$25,000; Further daily \$700 fine
Failing to include required particulars in SCR	653I	Level 4 fine - \$25,000; Further daily \$700 fine
Failing to keep SCR at registered office/prescribed place, and/or failing to notify Registrar of SCR's location	653M	Level 4 fine - \$25,000; Further daily \$700 fine
Failing to investigate and notify Significant Controllers	653P	Level 4 fine - \$25,000
Failing to record registrable change and give notice	653T	Level 4 fine - \$25,000
Failing to make SCR available for law enforcement officer's inspection	653X	Level 4 fine - \$25,000
Addressee of notice failing to comply within 1 month after date of notice (Defence if can prove that requirement is frivolous or vexatious)	653ZA	Level 4 fine - \$25,000
Knowingly or recklessly making a statement or providing information that is misleading, false, or deceptive	653ZE	Conviction on indictment: \$300,000 fine 2 years' imprisonment Summary conviction: \$100,000 fine at Level 6 6 months' imprisonment

Brief Refresher of the SCR Law

- The SCR Law was incorporated within the CO by an amendment and came into force on 1 March 2018.
- An Applicable Company has the duties and obligations under the CO to:
 - Keep and maintain an SCR whether or not that company in fact has any Significant Controllers.



- Carry out investigations and obtain information about its Significant Controllers.
- Keep information on the SCR up to date including recording any registrable change arising from: (a) any person ceasing to be a Significant Controller; (b) any other change which results in any particulars for any person entered in the SCR being incorrect or incomplete; or (c) any required update on the prescribed additional matters noted on the register.
- Notify the Registrar of Companies of the place at which the SCR is kept and any change in the place at which the register is kept, subject to certain exceptions.
- The SCR must contain the prescribed contents and be kept at the registered office of the Applicable Company or a prescribed place.
- A company is an "Applicable Company" if it is a Hong Kong incorporated company, not being one of the following:
 - a company listed in Hong Kong; or
 - a type of company, or class of companies, that is exempted from keeping and maintaining an SCR by regulations made by the Financial Secretary of Hong Kong.
- An Applicable Company does not include a non-Hong Kong company which has registered branches or representative offices in Hong Kong under Part 16 of the CO.
- A Significant Controller in relation to an Applicable Company means either:
 - (subject to exceptions) a natural person or specified entity that has significant control over that company (a "**Registrable Person**"); or
 - a legal entity that is a member of and has significant control over that company (a "**Registrable Legal Entity**").

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We can help

If you have not already taken steps to prepare the SCR or made any investigation to identify the Significant Controllers, we are happy to assist you. Please do not hesitate to contact us.

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