

## Client Alert

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## Update: The Companies (Amendment) Bill 2017

On 23 June 2017, Hong Kong published the Companies (Amendment) Bill 2017 (the "**Bill**") in the Gazette.

The Bill reflects part of the ongoing efforts of the Hong Kong Government to bring Hong Kong in line with the international standards promulgated by the Financial Action Task Force, of which Hong Kong has been a member since 1991, to enhance Hong Kong's regulatory regime on combating money laundering and terrorist financing. The Bill aims to introduce new laws to improve transparency in the beneficial ownership of Hong Kong incorporated companies.

Key changes proposed to be made pursuant to the Bill include the following:

- Applicable companies will be required to maintain a register of significant controllers.
- Applicable companies have the obligation to carry out investigations, obtain information about its significant controllers and keep the information accurate and updated at all times.

We set out below a summary of these developments, focusing on the proposed amendments to the Companies Ordinance (Cap 622 of the laws of Hong Kong) (the "**CO**") under the Bill.

### Significant Controllers Register

An applicable company will be required to keep and maintain a register (the "**Significant Controllers Register**") for persons who have significant control over that applicable company (the "**Significant Controllers**"). The Significant Controllers Register must contain the prescribed contents and be kept at the registered office of the applicable company or a prescribed place.

#### Definition of an applicable company

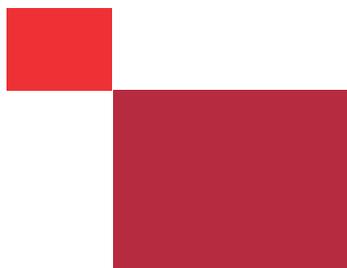
A company is an applicable company if it is a Hong Kong incorporated company that is **not** one of the following:

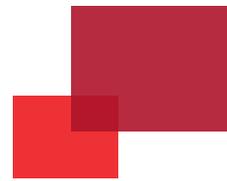
- a listed company; or
- a type of company, or class of companies, that is exempted from keeping and maintaining a Significant Controllers Register by regulations made by the Financial Secretary of Hong Kong.

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.

#### Who is a Significant Controller?

A Significant Controller in relation to an applicable company means either:





- (subject to exceptions) a natural person or specified entity<sup>1</sup> that has significant control over that company (a "**Registrable Person**"); or
- a legal entity<sup>2</sup> that is a member of and has significant control over that company (a "**Registrable Legal Entity**").

Some of the detailed provisions relating to a Significant Controller distinguish between whether it is a Registrable Person or a Registrable Legal Entity.

### What constitutes significant control?

A person has significant control over an applicable company if the person meets one or more of the following conditions:

- the person holds, directly or indirectly, more than 25% of: either the issued shares in that company if it has a share capital; or the right or rights to share in the capital or profits of that company if it does not have a share capital;
- the person holds, directly or indirectly, more than 25% of the voting rights in that company;
- the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of that company;
- the person has the right to exercise, or actually exercises, significant influence or control over that company; or
- the person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm, not being a legal person under the relevant governing law, whose trustee(s) or member(s) meet(s) one or more of the conditions specified above.

There are also specific criteria to determine whether a person is a Significant Controller where shares or rights are held under a joint arrangement.

### Duties and obligations of applicable companies

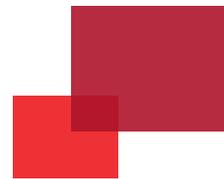
The following is a summary of the key duties of an applicable company:

- Duty to keep a Significant Controllers Register whether or not that company in fact has any Significant Controllers.
- Duty to carry out investigation and obtain information about its Significant Controllers.
- Duty to keep information on the Significant Controllers Register 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 Significant Controllers Register being incorrect or incomplete; or (c) any required update on the prescribed additional matters noted in the register.
- Duty to notify the Registrar of Companies of the place at which the Significant Controllers Register is kept and any change in the place at which the register is kept, subject to certain exceptions.

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1 A specified entity means: a corporation sole; a government of a country; an international organization whose members include 2 or more countries or governments; or a local government or authority in a country.

2 A legal entity means a body of persons, corporate or unincorporate, that is a legal person under the law that governs it, but does not include a specified entity.



In carrying out its duties to investigate, obtain information and keep information up to date about its Significant Controllers, an applicable company is required to give notices to the relevant persons (the "**Notices**") if it knows, or has reasonable cause to believe that:

- that person is a Significant Controller;
- that person knows the identity of another person who is a Significant Controller; or
- there is a registrable change with respect to that person, the details of which are required to be contained in the Significant Controllers Register.

There are exempted circumstances where some of these Notices are not required.

## Inspection of Significant Controllers Register – Not available to the general public

The following persons have the right to inspect the Significant Controllers Register and obtain copies of the register:

- Any Significant Controller whose name is entered in the Significant Controllers Register.
- Any law enforcement officer of various statutory bodies including the Companies Registry, the Hong Kong Monetary Authority, the Hong Kong Police Force, the Inland Revenue Department, the Independent Commission Against Corruption, and the Securities and Futures Commission.

If an applicable company fails to meet the demand for inspection or for making copies by a law enforcement officer, that officer may apply to the Hong Kong Court for an order to compel the applicable company to do so.<sup>3</sup>

## Designated representative

An applicable company must designate at least one representative (with the required qualifications) to facilitate and assist it to comply with its duties in relation to the Significant Controllers Register under the new law, including the provision of assistance to any law enforcement officer for the purposes of performing his function relating to the prevention, detection or investigation of money laundering, or terrorist financing.

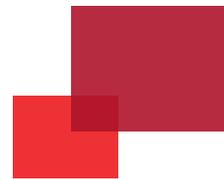
## Effective date

The Bill was introduced into the Legislative Council for first reading on 28 June 2017. It is expected that the Bill, if passed, will come into force on the commencement date which was indicated in the Bill to be 1 March 2018.

It is unclear whether the Companies Registry will issue guidelines to help applicable companies to comply with the new requirements after the Bill is passed, and in particular whether an applicable company will be given any transitional period to set up the Significant Controllers Register and to take all necessary actions required to comply with the new law after it comes into force as of the proposed commencement date.

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<sup>3</sup> The corresponding power of the Court to make an order relating to the rights of a Significant Controller will be provided in the regulations.



## What next?

After the Bill is passed, an applicable company should start to formulate compliance steps and give itself sufficient time to implement and complete these steps so that as of the proposed commencement date, it will have in place an accurate and up to date Significant Controllers Register. An applicable company should also at the same time establish a set of compliance rules in relation to the keeping and maintenance of the Significant Controllers Register to ensure that it will comply with its ongoing obligations under the new law to keep the Significant Controllers Register up to date at all times.

## How we can help

- We will provide further updates with more details in another client alert after the Bill is passed.
- We can help create the Significant Controllers Register, advise on the compliance steps and help establish compliance rules for ongoing compliance for you.
- We can discuss your needs with you and design a tailor-made service programme suitable to your needs and budget to help you comply with the new law.
- We are available to advise you on any question you may have on the proposed new law or any of the concepts discussed in this client alert.

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