

NEW REQUIREMENTS ON HONG KONG COMPANIES COME INTO FORCE ON 1 MARCH 2018

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ABOUT MAZARS

Mazars is an international, integrated and independent organisation, specialising in audit, accounting, tax and advisory services. We rely on the skills of more than 20,000 professionals in 86 countries which make up our integrated partnership.

Including the Hong Kong office, we operate 28 offices in China with around 3,500 staff. They are fully committed to serving the growing and diversified needs of both Chinese companies and international firms.

BACKGROUND

On 24 January 2018, the Companies (Amendment) Ordinance 2018 (“Amendment Ordinance”) and the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2018 were endorsed by Legislative Council for the purposes of (1) increasing transparency in the beneficial ownership of Hong Kong companies and (2) extending the customer due diligence and relevant record-keeping requirements to designated non-financial businesses and professions in order to fulfill Hong Kong’s international obligations.

A new regime requiring Hong Kong companies under the Amendment Ordinance to obtain beneficial ownership information, and to keep and maintain Significant Controllers Registers will come into operation on 1 March 2018 **without grace period**.

The Companies Registry also announced on 25 January 2018 that a new licensing regime for trust and company service providers (“TCSPs”) will come into force on 1 March 2018 under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”).

The New Significant Controllers Register (“SCR”) Requirements under the Amendment Ordinance

1. New requirements under the Amendment Ordinance

A company incorporated in Hong Kong is required to:

- Take reasonable steps to identify its significant controllers;
- Obtain and maintain up-to-date beneficial ownership information by keeping a SCR to be accessible by law enforcement officers on demand;
- Designate at least one representative to provide assistance in the SCR-related matters.

2. Keeping of SCR

- The requirement of keeping a SCR applies to all companies formed and registered under the Companies Ordinance (Cap. 622) or a former Companies Ordinance, Laws of Hong Kong, except listed companies.
- A company must keep its SCR in English or in Chinese;
- The SCR must be kept either at the company’s registered office or at a place in Hong Kong;
- The SCR should be open for inspection by the company’s significant controllers and by law enforcement officer on demand;
- The SCR is NOT open for public inspection.

3. A significant controller includes:

- A registrable person who is a natural person that has significant control over the company; and
- A registrable legal entity (e.g. a company) which is a shareholder of the company that has significant control over the company.

A person (or legal entity) has significant control over a company if one or more of the following five conditions are met:

- The person holds, directly or indirectly, more than 25% of the issued shares in the company or, if the company does not have a share capital, the person holds, directly or indirectly, a right to share in more than 25% of the capital or profits of the company;
- The person holds, directly or indirectly, more than 25% of the voting rights of the company;
- The person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company;

- The person has the right to exercise, or actually exercises, significant influence or control over the company;
- The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the above four conditions in relation to the company.

4. The particulars of a significant controller required for SCR are:

- For a registrable person — Name, correspondence address, Hong Kong identity card number (if the person does not have a Hong Kong identity card, the number and issuing country of the passport);
- For a registrable legal entity — Name, legal form, registration number, place of incorporation (governing law) and registered office address;
- Date of becoming a significant controller;
- Nature of control over the company.

5. Designated representative

A company’s designated representative provides assistance relating to the company’s SCR to a law enforcement officer upon demand. The designated representative must be one of the following:

- A director, member or employee of the company who is a natural person resident in Hong Kong;
- An accounting professional, a legal professional or a TCSP licensed under the AMLO.

6. Filing requirements

A company must notify the Registrar of Companies of the location where its SCR is kept:

- in prescribed form; and
- within 15 days after the SCR is first kept at that place or any change.

However, an existing company is not subject to such filing requirements if:

- the SCR has been kept at all times at the company’s registered office since it came into existence; or
- the SCR is kept at the same place where the company’s register of members is kept.

7. Consequence of non-compliance

- It is a criminal offence if a company or a person fails to comply with the SCR obligations. The company and every responsible person of the company (as defined in Section 3 of the Companies Ordinance (Cap. 622)) are liable to a fine of HK\$25,000 on conviction. If the offence continues, there is additional daily fine of HK\$700.
- It is also a criminal offence if a person (or legal entity) fails to comply with any of the requirements in a notice sent by a company within one month of the date of the notice, the person (or legal entity and every related person of the entity) commits an offence and are liable to a fine of HK\$25,000 on conviction.
- If a person gives false information in response to a notice sent by a company, the person commits an offence and is liable to a fine of HK\$300,000 and imprisonment for two years on conviction on indictment; or to a fine of HK\$100,000 and imprisonment for six months on summary conviction.

The New TCSP Licensing Regime introduced under the AMLO

1. New requirements under AMLO

- TCSPs are required to apply for a licence from the Registrar of Companies (“the Registrar”) and satisfy a fit-and-proper test before they can provide trust or company services as a business in Hong Kong. TCSPs also have to comply with statutory due diligence and record-keeping under Schedule 2 of AMLO.
- The Registrar has the power to grant, refuse to grant, renew, suspend or revoke a licence, and impose or vary any conditions in relation to a licence. A TCSP licence will generally be valid for three years. TCSP licensees are required to obtain prior approval from the Registrar before any person becomes an ultimate owner, a partner or a director of a licensee. TCSPs should also notify the Registrar of any changes in particulars previously provided in connection with an application for the grant or renewal of a licence within one month of the change. A TCSP licensee who intends to cease to carry on the trust or company service business is also required to notify, prior to the intended date of cessation, the Registrar of that intention and the intended date of cessation.

2. Transitional Arrangements

- With effect with 1 March 2018, a person will be deemed to have been granted a licence to carry on a trust or company service business in Hong Kong if immediately before 1 March 2018, the person was carrying on a trust or company service business in Hong Kong and held a valid business registration certificate for that purpose (“deemed licence”).
- A deemed licensee will then have to apply for a licence during a 120 day transitional period commencing from 1 March 2018 and ending on 29 June 2018. The deemed licence will cease to have effect on the expiration of the transitional period. If the deemed licensee applies for a licence during the transitional period, the deemed licence will generally cease to have effect when the application is granted, rejected or withdrawn.

3. Consequence of not having a licence

- According to Section 53F(1) and (2) of the AMLO, a person commits an offence if the person carries on a trust or company service business in Hong Kong without a licence and is liable on conviction to a fine of HK\$100,000 and imprisonment for six months.

Our Hong Kong Corporate Secretarial Services

Mazars has a team of professional chartered secretaries to assist clients in handling corporate secretarial affairs including the new SCR keeping requirements of clients’ companies and attending to ongoing compliance and maintenance.

If assistance in relation to the corporate secretarial affairs is required, please contact:



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