

RAVENCROFT & SCHMIERER

Solicitors Notary Rechtsanwälte

How to Keep a Significant Controllers Register (SCR)

In order to fulfil the international obligations as a member of the FATF (Financial Action Task Force) regarding MLTF (Money Laundering and Terrorist Financing) issues, Hong Kong has, with effect of 1 March 2018, amended the Companies Ordinance.

To comply with the SCR (Significant Controllers Register) regime, all companies incorporated in Hong Kong (except listed companies) must therefore satisfy new requirements in accordance with Cap. 622 the Companies (Amendment) Ordinance 2018, which include:-

- identifying and ascertaining any person that has significant control over the company;
- maintaining a significant controllers register accessible to law enforcement officers upon demand.

1. Listed and foreign companies excluded

Registered non-Hong Kong companies are not required to keep a significant controllers register. Only local companies formed and registered under the Companies Ordinance (Cap. 622) or the former Companies Ordinance, are required to keep a significant controllers register. Listed companies are also excluded.

2. Significant control comes in many forms

A significant controller is defined as a:-

- registrable person who is a natural person with significant control over the company;

- registrable legal entity e.g. a company, with shareholdings giving significant control over the company.

A person has significant control over a company if one or more of the following 5 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 share capital, the person holds, directly or indirectly, a right to shares of 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 first four conditions in relation to the company.

3. The SCR must contain various details

The significant controllers register must contain, among others, the required particulars of the significant controllers and contact details of the

designated representative of the company. The required particulars include:

- name of the registrable person or entity;
- for a registrable person: correspondence address, identity card number (if the person does not have an identity card, the number and issuing country of the passport);
- for a registrable legal entity (e.g. a company): legal form, registration number, place of incorporation (governing law) and address of the registered office;
- date of becoming a significant controller;
- nature of control over the company.

4. Due diligence obligations

A company is required to take reasonable steps to identify the significant controllers. The steps include reviewing the company's register of members, articles of association, shareholders agreements or other agreements and issuing notices

to any person who is believed to be the significant controller and any person who is believed to know the identity of the significant controller.

The SCR register must be kept at the company's registered office address or a place in Hong Kong (the company is required to file a Form NR2 to the Companies Registry reporting the location of SCR). A company must make the SCR register available for inspection and taking of copies by a law enforcement officer. Failing which, the company and responsible person of the company are liable to a fine at level 4 (HK\$25,000) and, where applicable, a further fine of HK\$700 for each day during which the offence continues.

In view of the above, directors and other responsible persons of companies in Hong Kong should take the SCR regime seriously and ensure compliance.

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