

Hong Kong

New Requirement – Register of Significant Controllers

The Companies Ordinance (Cap.622) (the **Ordinance**) has been amended to require a company incorporated in Hong Kong to identify persons who have significant control over the company (**significant controllers**) and to maintain a register of significant controllers (**RSC**) to be accessible by law enforcement officers upon demand. This follows similar steps taken in the UK and other jurisdictions, and the Hong Kong RSCs will not be accessible to the general public.

Who is a Significant Controller?

A person has significant control over a company if one or more of the following five conditions is met:

1. 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
2. the person holds, directly or indirectly, more than 25% of the voting rights of the company
3. the person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company
4. the person has the right to exercise, or actually exercises, significant influence or control over the company
5. 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 their capacity as such) in relation to the company

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Requirements

The new regime requires a company to:

- keep its RSC at the company's registered office or a prescribed place
- take reasonable steps to identify the company's significant controllers, including the giving of notices and obtaining their required particulars
- enter the required particulars of its significant controllers in the RSC
- keep the required particulars in the RSC up-to-date
- make the RSC available for inspection by and provide copies thereof to a law enforcement officer; and
- make the RSC available for inspection by a significant controller whose name has been entered in the RSC, and provide them with a copy upon payment of a fee.

Designated Representative

A company must designate at least one person as its representative to provide assistance relating to the company's RSC to a law enforcement officer.

A designated representative must be one of the following:

- a member, director or an employee of the company who is a natural person resident in Hong Kong
- an accounting professional, a legal professional or a trust and company service provider (TCSP) licensed as defined in the Hong Kong Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance (www.gld.gov.hk/egazette/pdf/20182205/es1201822054.pdf)

Important additional matters

Deadline

While the deadline for establishing an RSC and appointing a Designated Representative for existing companies is not explicit, Marbury has measures in place to ensure there will be no period of non-compliance, no matter how conservative the interpretation.

Duty to investigate

A company has a duty to investigate and obtain information about its registrable persons or registrable legal entities and keep the information up-to-date.

No empty RSC permitted

When a company is in the process of taking reasonable steps to identify its significant controllers, this fact must be entered in the RSC. A company must keep an RSC even if it does not have a registrable person or a registrable

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legal entity. If the company knows that it has no registrable person or registrable legal entity, it must state this fact in the RSC.

Duty to keep RSC up-to-date

A company is required to enter the particulars of any registrable change in respect of a registrable person into its RSC within seven (7) days after they have all been confirmed by the registrable person.

Inspection by a Law Enforcement Officer

On demand by a law enforcement officer for the purpose of performance of functions relating to the prevention, detection or investigation of money laundering or terrorist financing, a company must at any reasonable time make its RSC available for inspection by the officer at the place at which the RSC is kept and permit the officer to make copies.

Failure to properly maintain an RSC – criminal offence

Failure to comply with the above obligations is a criminal offence. The company and every responsible person of the company are liable to a fine at level 4 (ie HKD25,000). Where applicable, there is a further daily fine of HKD700. Provision of false information carries greater penalties and the potential of imprisonment.

Marbury

Marbury is currently engaged in ensuring that it and its clients are able to fulfil their obligations under the Ordinance amendments and we will be contacting our affected clients shortly. If you are in need of assistance kindly contact your usual Marbury representative or info@marburys.com.

Disclaimer

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