



## **Companies (Amendment) - Bill 2017**

### **Beneficial Ownership of Hong Kong Companies**

The Companies Ordinance of Hong Kong currently focuses on disclosure of legal ownership and does not require a company or its directors or officers to ascertain, keep or disclose information about ultimate beneficial owners except in the case of a listed company which has to comply with the relevant regulations under the Securities and Futures Ordinance.

In order to fulfil Hong Kong's obligation as a member of the Financial Action Task Force since 1991 to combat money laundering and terrorist financing, the Finance Services and the Treasury Bureau ("FSTB") submitted the Companies (Amendment Bill) 2017 ("Amendment Bill") to the Legislative Council in June 2017 to amend the Companies Ordinance with the aim of enhancing the transparency of company's ownership in Hong Kong. It was expected that the Amendment Bill would come into operation in March 2018.

#### A. Main Points of the Amendment Bill

1. Except listed companies, all companies (limited by share or guarantee) and unlimited companies that are incorporated in Hong Kong will be required to obtain and hold up-to-date beneficial ownership information for public inspection upon request.
2. A "beneficial owner" in relation to a company means a person who satisfies one of the following conditions :
  - (i) directly or indirectly, holds more than 25% of the issued shares, capital or profits, or
  - (ii) directly or indirectly, holds more than 25% of the voting rights in the company;
  - (iii) directly or indirectly holding the right to appoint or remove a majority of directors; or
  - (iv) having the right to exercise or actually exercising significant influence or

control, or

- (v) having the right to exercise or actually exercising significant influence or control over the activities of a trust or a firm that is not a legal person and those trustees or members must satisfy (i) to (iv) above.

A beneficial owner who satisfies any of the above conditions (“registrable individual”) will be entered into the company’s “register of people with significant control” (“PSC register”). A registrable individual may hold an interest in a company through successive layers of holding companies in the company’s chain of ownership. Any of these legal entities, whether it is formed or incorporated in Hong Kong, is registrable under the Amendment Bill if it meets one of the conditions specified in (i) to (v) above and is an entity immediately above the company concerned in the chain of ownership, will become a registrable entity.

3. Every company must keep a PSC register and must take reasonable steps to ascertain whether there is any significant controller of the company and to identify them if any. The PSC register will contain the details of a registrable individual or registrable entity such as the name, identity card or passport number, company number, correspondence or registered address, date of becoming registrable and the nature of the control over the company.
4. Companies must enter into the PSC register details of an authorized person as a contact point for the PSC register and to provide assistance. The authorized person can either be a natural person authorized by the company resident in Hong Kong or a locally-based designated non-financial business and professional (such as accountants, solicitors, or trust or company service providers).
5. The PSC register will be available for public inspection by any member of the company or person on the register without charge, or other members of the public on payment of a fee. The entry may only be removed from the PSC register and destroyed after six years from the date the individual or legal entity ceased to be the registrable subject.
6. Criminal sanctions will be imposed on a company and its responsible person for non-compliance with the requirements for keeping a PSC register and making the PSC register available for public inspection. Any person knowingly or

recklessly makes a misleading, false or deceptive material statement in the PSC register will commit an offence and subject to a fine.

## B. Comments

The beneficial ownership of many private companies incorporated in Hong Kong adopt the use of declaration of trusts for the purpose of privacy. The owners or controllers who ultimately own or control these private incorporated in Hong Kong are mostly natural persons. The implementation of the Amendment Bill will certainly impact this practice and the traditional common law principle of privacy.

If this Amendment Bill is implemented:

- \* Existing Hong Kong incorporated private companies should review their current corporate and shareholding structures to see if they want to disclose the beneficial ownerships holding more than 25% of the issued shares, voting rights directly or indirectly holding the right to appoint or remove a majority of directors; or having the right to exercise or actually exercising significant influence or control etc.

Moreover, the ultimate beneficial owners of the above Hong Kong incorporated private companies who are Mainland Chinese holding Chinese assets through offshore vehicles should also carefully review the tax implications before implementing changes on their current corporate shareholding structures. If such company holds an asset in Mainland China (such as a wholly foreign owned enterprise or a real property), any change in the foregoing holding company (regardless of the tiers and the change in percentage of the shareholdings) may trigger a reporting obligation and tax exposure in Mainland China.

- \* Investors should also review and determine shareholding structures carefully before they incorporate any new company in Hong Kong in future.

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10th August 2017

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**PLEASE NOTE**

The law and procedure on this subject are very specialised. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

**Published by Christine M. Koo & Ip, Solicitors & Notaries LLP @2017**