



April 2017

## Tighter rules on disclosure of beneficial ownership of Hong Kong Companies

All companies incorporated in Hong Kong under Companies Ordinance, except listed companies, will be required to disclose beneficial ownership information and keep the information in a Register of People with Significant Control [“PSC Register”].

All companies: Limited by shares;  
Limited by guarantee; and  
Unlimited companies.

Companies are required to identify beneficial owners for entry into PSC Register.

Beneficial owners: Individuals who either directly or indirectly holding more than 25% of shares or voting rights or holding the right to appoint or remove a majority of directors, otherwise having significant influence or control.

### 對香港公司實益擁有權的披露將有更嚴格規定

除了上市公司，所有根據《公司條例》在香港成立為法團的公司均須披露持有實益擁有人的資料，並備存「擁有重大控制權人士登記冊」。

所有根據《公司條例》在香港成立為法團的公司包括：股份有限公司；  
擔保有限公司；及  
無限公司。

公司須要識別實益擁有人，並記入所需資料於「擁有重大控制權人士登記冊」內。

實益擁有人：指個人直接或間接地持有 25%以上股份或投票權；或直接或間接地有權委任或免任過半數董事；或憑藉其他方式，有重大影響力或控制權。

Please feel free to contact our partners/ officers you are familiar with if you have any questions on the above or anything else so related.

如有問題或想了解更多，歡迎聯絡本司的合伙人或任何同事。

Please refer to the following pages for the details of the above.

詳情請見後頁(只提供英文版)。



## **Consultation paper on enhancing Transparency of Beneficial Ownership of Hong Kong Companies**

As a member of Financial Action Task Force [“FATF”], Hong Kong [“HK”] is required to take measures to prevent the misuse of legal persons for money laundering and terrorist financing and to ensure adequate, accurate and timely information on beneficial ownership and control of legal persons can be obtained or accessed in a timely fashion by competent authorities.

HK will undergo a mutual evaluation by other member jurisdictions regarding its efforts to combat money laundering and terrorist financing in 2018. To ensure HK’s rating is not adversely affected, HK needs to implement a statutory regime on transparency of beneficial ownership of companies. The public consultation on enhancing transparency of beneficial ownership of HK companies launched by Financial Services and the Treasury Bureau [“FSTB”] is ended on 5 March 2017. FSTB aims to introduce the bill into Legislative Council in the 2<sup>nd</sup> quarter of 2017. It is foreseeable that there will be big change in the transparency in HK.

Summarized below the legislative proposals for your information:-

### **A. Scope of application**

- Proposed to amend the Companies Ordinance to require all companies incorporated in HK to keep beneficial ownership information, include companies limited by shares, companies limited by guarantee, and unlimited companies.
- Listed companies will be exempted as they are already governed by Securities and Futures Ordinance.

### **B. Definition of beneficial ownership**

- Proposes that a beneficial owner in relation to a company is an individual who meets 1 or more of the following:-
  - (a) directly or indirectly holding more than 25% of the shares;
  - (b) directly or indirectly holding more than 25% of the voting rights;
  - (c) directly or indirectly holding the right to appoint or remove a majority of directors;
  - (d) otherwise having the right to exercise, or actually exercising, significant influence or control; or
  - (e) 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, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company, or would do so if they were individuals.



### **C. Company's duty to keep a Register of People with Significant Control ["PSC Register"]**

- Propose that a company should be required to identify and keep a PSC Register.
- Person with significant control ["PSC"] is an individual (i.e. a natural person) who qualifies as a beneficial owner under the conditions set out in Part B above.
- To facilitate the identification of holding structure, propose that a company should be required to identify and register a relevant legal entity with significant control over the company.
- Legal entity is registrable if it meets 1 or more of the conditions set out in Part B above and it is a legal entity immediately above the company in the company's ownership chain.
- When a company has identified a registrable individual or registrable legal entity, the company should obtain and ascertain the accuracy of the following for entry into PSC Register:-
  - (a) name,
  - (b) identity card No. or passport No. and issuing country;
  - (c) legal form of the entity and company registration No.;
  - (d) correspondence address;
  - (e) address of registered/ principal office;
  - (f) date became registrable; and
  - (g) nature of control over the company.
- The PSC Register cannot be empty and, where a company knows or has reasonable cause to believe that there is no registrable individual or registrable legal entity in relation to the company, a statement to that effect should be entered.
- An entry maybe removed and destroyed after end of 10 years from the date on which the individual or legal entity ceased to be registrable.

### **D. Ways to obtain and verify beneficial ownership information**

- Propose requiring a company to take reasonable steps to identify and ascertain its registrable individuals and registrable legal entities, including:-
  - Reviewing a company's register of members,
  - articles of association,
  - statement of capital,
  - relevant covenants or agreements, and
  - serving a notice on any person or any legal entity (i) that the company knows or has reasonable cause to believe to be registrable in relation to the company; or (ii) that knows or may have reasonable cause to know the identity of a person or legal entity with significant control over the company.



- Propose requiring companies to enter into the PSC Register details of an authorized person responsible for providing information and further assistance to law enforcement agencies when the need arises.
- Authorized persons could be a natural person resident in HK, or locally-based designated non-financial business and professional, e.g. accountants, solicitors, or trust or company service providers.

**E. Public inspection of PSC Register**

- Propose that the PSC Register should be available for inspection at the company’s registered office or any other place in HK determined by the company:-

Without charge by

- Any member of the company; or
- person on the register.

With a fee by

- other members of the public.

**F. Sanctions for non-compliance and false statement**

- Propose criminal sanctions against a company and its responsible persons for non-compliance with the requirements for keeping a PSC Register, making available the PSC Register for public inspection and making false statement.
- Propose imposing statutory obligation on notice addressee whom the company knows or has reasonable cause to believe:-
  - to be a registrable individual or a registrable legal entity; or
  - that person knows the identity of someone who is registrable individual or a registrable legal entity in relation to the company; or
  - that person knows the identity of someone likely to have that knowledge

to comply with a notice to ascertain and confirm the relevant required particulars or the relevant changes.

Offence	Proposed maximum penalty
Failing to keep a PSC Register	Fine at level 4 (HK\$25,000) and a further daily fine of HK\$700
Failing to make available a PSC Register for public inspection	Fine at level 4 (HK\$25,000)



<p>Any person knowingly or recklessly makes in the PSC Register a statement which is misleading, false or deceptive in any material particular</p>	<p>Such person may be liable:-</p> <ul style="list-style-type: none"> <li>➤ on conviction on indictment to a fine of HK\$300,000, and to imprisonment for 2 years; or</li> <li>➤ on summary conviction to a fine at level 6 (maximum of HK\$100,000) and to imprisonment for 6 months.</li> </ul>
<p>Any person knowingly or recklessly makes, in a document replying to a company's notice, a statement which is misleading, false or deceptive in any material particular</p>	

**G. Power to rectify PSC Register**

- Propose that if an interested person is aggrieved by an entry in the PSC Register, he may apply to the court for rectification of the PSC Register.

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