

DUTIES OF FRENCH, HONG KONG AND SINGAPORE COMPANIES TO DISCLOSE BENEFICIAL OWNERSHIP IN LINE WITH OECD'S UPSCALED STANDARD TO FIGHT AGAINST MONEY LAUNDERING WORLDWIDE

1 OUTLINE

French Law. - Following the European Directive 2015/849 dated 20 May 2015 on Anti-Money Laundering, the French ordinance n° 2016-1635 dated 1 December 2016 introduced the requirement for French non-listed companies and foreign companies which hold a branch in France to disclose their beneficial owners. The ordinance n° 2018-284 of 18 April 2018 was subsequently adopted to clarify the concept of beneficial owner. The information must be filed with the relevant Commercial and Companies' Registry:

- before 1 April 2018 for companies incorporated before 1 August 2017; and
- within 15 days from the incorporation of the company for companies incorporated after 1 August 2017.

Hong Kong Law. - In Hong Kong Special Administrative Region of the People's Republic of China ("**Hong Kong**"), in a similar effort to prevent money laundering, the Companies (Amendment) Ordinance 2018 published on 1 February 2018 provides that, starting from 1 March 2018, all non-listed companies incorporated in Hong Kong must take steps to keep a register of their significant controllers register and make such register available for inspection by controlling authorities.

Singaporean Law. - In Singapore, since the Companies (Register of Controllers and Nominee Directors) Regulations 2017 which came into effect on 31 March 2017, companies, foreign companies and limited liability partnerships registered in Singapore are required to keep a register of registrable controllers and to make the information available to the Accounting and Corporate Regulatory Authority upon request.

Differences. - The table below compares the provisions in the three jurisdictions. The provisions lead to the same information being gathered but different entities are in charge of keeping and updating the information: Commercial and Companies' Registries in France vs company's officer or professional in Hong Kong and company's officer or registered filing agent in Singapore. As a consequence, the Commercial and Companies' Registries in France will be able to control that all companies comply, whereas the Hong Kong Companies' Registry and the Singapore Accounting and Corporate Regulatory Authority will only be able to perform random checks. Another consequence of this difference may show later, when access to the information is required by an authority.

2 COMPARISON TABLE

REQUIREMENT	FRENCH LAW	HONG KONG LAW	SINGAPOREAN LAW
Entities subject to the requirement to maintain a register	<ol style="list-style-type: none"> Commercial and civil companies which have their registered office in France; Other legal entities which are required to register with the French Commercial and Companies' Registry; and Foreign commercial companies which hold a branch located in France. <p><i>Note: listed companies are exempted from the requirement.</i></p>	<ol style="list-style-type: none"> Companies limited by shares incorporated in Hong Kong; Companies limited by guarantee incorporated in Hong Kong; and Unlimited companies incorporated in Hong Kong. <p><i>Note: listed companies are exempted from the requirement.</i></p>	<ol style="list-style-type: none"> All companies incorporated in Singapore; All foreign companies registered in Singapore; and All limited liability partnerships registered in Singapore. <p><i>Note: listed companies, financial institutions and companies wholly owned by the Singaporean Government are exempted from the requirement.</i></p>
Controlling body	Court Registrar of the commercial court ¹ (<i>greffe du tribunal de commerce</i>).	Companies Registry (CR).	Accounting and Corporate Regulatory Authority (ACRA).

¹ The competent Court Registrar is the Court Registrar of the commercial court of the place of the registered office address of the company or of its principal place of business, if the company has several places of business.

REQUIREMENT	FRENCH LAW	HONG KONG LAW	SINGAPOREAN LAW
<p>Definition of beneficial owner / significant controller / registrable controller</p>	<p>Individual who meets one or more of the 3 following conditions (Article R.561-1 of the French Monetary and Financial Code and Article L. 233-3 of the French Commercial Code):</p> <ol style="list-style-type: none"> 1. Ultimately holds, directly or indirectly, more than 25% of the share capital; 2. Ultimately holds, directly or indirectly, more than 25% of the voting rights; 3. Ultimately has, by any other means, the power to control the company: <ul style="list-style-type: none"> • Determines, in fact, via its voting rights, the decisions taken during general meetings of the company; or • Is a shareholder or member of this company and has the power to appoint or dismiss the majority of members of the administrative, executive or managing bodies of the company. <p>If no beneficial owner has been identified following the previous method, individual(s) who directly or indirectly (via a legal entity) serve as legal representative of the reporting company.</p>	<p>Individual or company which meets one or more of the 5 following conditions:</p> <ol style="list-style-type: none"> 1. Holds, directly or indirectly, more than 25% of the issued shares; 2. Holds, directly or indirectly, more than 25% of the voting rights; 3. Holds, directly or indirectly, the right to appoint or remove a majority of the board of directors; 4. Has the right to exercise, or actually exercises, significant influence or control over the company; and/or 5. 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 4 conditions. 	<p>Individual or legal entity who has significant interest in or significant control over the company:</p> <ol style="list-style-type: none"> 1. Significant interest is characterized where a person: <ul style="list-style-type: none"> • Has an interest in more than 25% of the shares; or • Has an interest in shares representing more than 25% of the total voting power in the company; 2. Significant control is characterized where a person: <ul style="list-style-type: none"> • Holds the right, directly or indirectly, to appoint or remove directors who hold a majority of the voting rights at directors' meetings on all or substantially all matters; • Holds, directly or indirectly, more than 25% of the voting rights on matters to be decided upon by a vote of members of the company; or • Actually exercises, or has the right to exercise, significant influence or control over the company.

REQUIREMENT	FRENCH LAW	HONG KONG LAW	SINGAPOREAN LAW
Requirements	<ol style="list-style-type: none"> File at the Commercial and Companies' registry accurate and up-to-date information regarding the identity of the company's ultimate beneficial owner(s) and the holding percentage for each beneficial owner; In case of indirect holding, information regarding the holding chain. 	<ol style="list-style-type: none"> Take reasonable steps to identify the company's significant controllers; Designate at least one person as the company's representative to provide assistance relating to the register to law enforcement officers; Maintain the significant controllers register available for inspection either at the company's registered office or at another place in Hong Kong; Notify the Companies Registry of the place where the register is kept within 15 days after the register is first kept at that place, only if the register is kept at a place other than the company's registered office or the place at which the register of members is kept; Update the register if there is a change in circumstances and any information is no longer correct. 	<ol style="list-style-type: none"> Take reasonable steps to identify controllers and obtain information on controllers by sending out at least one notice to each member and each director of the company annually; Designate a registered filing agent in charge of keeping the register of registrable controllers or keep the register at the registered office of the company; Maintain the register of controllers available for inspection either at the company's registered office or at the registered office of the filing agent; Update the register if any change occurs.
Form of the register	Filing of the hard copy or electronic filing of a document regarding the beneficial owners of the company with the Commercial and Companies Registry.	Hard copy or electronic register kept by the company itself.	Hard copy or electronic register kept by the company itself.
Content of the register	Regarding the company: <ol style="list-style-type: none"> Corporate name, 	Regarding the company: <ol style="list-style-type: none"> Corporate name; 	Regarding the registrable controllers: <ol style="list-style-type: none"> Name;

REQUIREMENT	FRENCH LAW	HONG KONG LAW	SINGAPOREAN LAW
	<p>2. Legal form;</p> <p>3. Address of registered office;</p> <p>4. Registration number and place of registration.</p> <p>Regarding the ultimate beneficial owners:</p> <p>1. Name, date and place of birth, nationality, address;</p> <p>2. Nature of control over the company or other legal entity;</p> <p>3. Date of becoming a beneficial owner.</p> <p>Regarding any intermediate holding company:</p> <p>1. Corporate name,</p> <p>2. Legal form;</p> <p>3. Address of registered office;</p> <p>4. Registration number and place of registration.</p>	<p>2. Registration number;</p> <p>3. Designated representative of the company;</p> <p>Regarding the significant controllers:</p> <p>1. Name;</p> <p>2. If a significant controller is an individual:</p> <ul style="list-style-type: none"> • Identification document number; • Correspondence address; • Date of becoming a registrable person; <p>3. If a significant controller is a legal entity:</p> <ul style="list-style-type: none"> • Legal form; • Registration number; • Place of incorporation; • Address of registered office; • Date of becoming a registrable legal entity; <p>4. Nature of control over the company or other legal entity.</p>	<p>2. If a registrable controller is an individual:</p> <ul style="list-style-type: none"> • Aliases (if any), residential address, nationality, identification document number and date of birth; • Date of becoming a registrable individual controller; <p>3. If a registrable controller is a legal entity:</p> <ul style="list-style-type: none"> • Legal form; • Unique entity number issued by the Accounting and Corporate Regulatory Authority, if any; • Address of registered office; • Jurisdiction of incorporation and statute under which the controller is incorporated; • Name of the corporate entity register where the controller is incorporated and identification number of the controllers (if applicable); • Date of becoming a registrable corporate controller.

REQUIREMENT	FRENCH LAW	HONG KONG LAW	SINGAPOREAN LAW
Time limit for filing	<ol style="list-style-type: none"> For companies incorporated before 1 August 2017: before 1 April 2018; For companies incorporated after 1 August 2017: within 15 days from the incorporation of the company; and In the event of change of the content of the information filed: within 30 days after such change. 	<ol style="list-style-type: none"> From 1 March 2018: within 7 days after the required particulars have been confirmed by the registrable person or comes to the notice of the company; In the event of change of the registrable information: within 7 days after such change has been confirmed by the registrable person or legal entity. 	<ol style="list-style-type: none"> For companies incorporated before 31 March 2017: within 60 days from 31 March 2017; For companies incorporated after 31 March 2017: within 30 days from the incorporation of the company; In the event of change of the registrable information: within 2 business days after such change has been confirmed by the controller.
Filing cost	<ol style="list-style-type: none"> Companies incorporated before 1 August 2017: 54.42€; Companies incorporated after 1 August 2017: 24.80€; Filing of a change: 48.49€. 	There are no fees for filing the form NR2.	There are no filing fees.
Access to the beneficial owner information	<ol style="list-style-type: none"> Company which filed the information; Judicial, customs, financial intelligence, tax and financial market authorities; Money laundering, terrorism financing, bribery and tax evasion control authorities; and Any person with legitimate interest and authorized by a court decision. 	<ol style="list-style-type: none"> Law enforcement officers, meaning officers of the following bodies: <ul style="list-style-type: none"> Companies Registry; Customs and Excise Department; Hong Kong Monetary Authority; Hong Kong Police force; Immigration Department; Inland Revenue Department; Insurance Authority; 	<ol style="list-style-type: none"> The Registrar and the officers of the Accounting and Corporate Regulatory Authority; and Public agencies administering or enforcing any written law (such as Singapore Police Force, Commercial Affairs Department, Corrupt Practices Investigation Bureau and Inland Revenue Authority of Singapore).

REQUIREMENT	FRENCH LAW	HONG KONG LAW	SINGAPOREAN LAW
		<ul style="list-style-type: none"> • Independent Commission Against Corruption; and • Securities and Futures Commission; <p>2. Significant controller whose name has been entered in the significant controllers register.</p>	
<p>Sanctions in case of non-compliance</p>	<ol style="list-style-type: none"> 1. The president of the French commercial court can order filing of the information under penalty compulsion, or mandate someone else to file the information; 2. The absence or inaccuracy of filing of beneficial owner information is punishable by a maximum €7,500 fine, up to six-month imprisonment and management ban; 3. The legal entities are subject to a maximum €37,500 fine and to the sanctions of Article 131-39 of the French Criminal Code (winding-up, judicial supervision, etc.). 	<ol style="list-style-type: none"> 1. The company and every responsible person of the company are liable to a level 4 fine of HK\$25,000 (in case of failure to comply within one month after the company has received a notice to do so); 2. Daily fine of HK\$700, where applicable; 3. In case of false statement, the person commits an offence and is liable to a maximum fine of HK\$300,000 and up to two years imprisonment. 	<ol style="list-style-type: none"> 1. The company and every officer of the company who is in default are liable to a maximum fine of S\$5,000 (in case of failure to maintain or update the register, to make it available for inspection or to give notice); 2. The addressee who fails to comply with a notice received from the company within the time specified for compliance is liable to a maximum fine of S\$5,000; 3. The controller who fails to provide change of information to the company is liable to a maximum fine of S\$5,000.

How we can help?

The Consultant Team of MLS Company Secretary can help you with:

- Incorporation of companies and corporate compliance in France, Hong Kong or Singapore;
- The preparation of the document containing information regarding the identity of the company's ultimate beneficial owner(s) and its filing with the relevant Commercial and Companies Registry in France;
- The creation and the update of your register of significant controllers and the appointment of a designated representative in Hong Kong; and
- The creation and the update of your register of registrable controllers and the appointment of a registered filing agent in Singapore.

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