

**New Companies Ordinance**  
**Briefing Notes on**  
**Companies (Non-Hong Kong Companies) Regulation**

**BACKGROUND**

Under Part XI of the Companies Ordinance (Cap. 32) (“Cap. 32”), a non-Hong Kong company is required to register with the Registrar of Companies (“the Registrar”) within one month of establishment of a place of business in Hong Kong. The registered non-Hong Kong company must then comply with various requirements as set out in that Part, which include delivery of annual returns and delivery of returns upon change of particulars or termination of authorization of an authorized representative. The application for registration and relevant returns must contain the specified particulars and be accompanied by the required documents.

2. The obligations are re-enacted in various sections under Part 16 of the new Companies Ordinance (“new CO”), while section 805 thereof provides that the Financial Secretary may make regulation to prescribe the particulars and accompanying documents required for the purpose of registration of non-Hong Kong companies or delivery of certain returns.

3. Under Cap. 32, a non-Hong Kong company having only domestic name(s) in Chinese or Roman Script may apply to register a certified translation of a domestic name, in English or Chinese (as the case may be), for entering into the Companies Register in accordance with Companies Registry External Circular No. 1/2001. Sections 777(2)(b) and 779(3)(b) of the new CO provide for the making of such applications in the course of registration of a non-Hong Kong company or upon a change in domestic name(s) of the registered non-Hong Kong company. The applications are subject to the procedures and requirements provided in regulations made under section 805 of the new CO.

4. Section 336A of Cap. 32 provides that the directors of a non-Hong Kong company may revise the accounts of the company if the accounts are found to be non-compliant with the laws of its place of incorporation<sup>1</sup>, and the detailed requirements applicable to the revised accounts and the delivery of the revised accounts to the Registrar for registration are set out in sections 20 and 21 of the Companies (Revision of Accounts and Reports) Regulation (Cap. 32N) (“Cap. 32N”). The aforesaid regime is retained under the new CO, and section 790 thereof provides that the directors of a registered non-Hong Kong company may revise the company’s accounts and section 804 provides that regulations may be made to provide for the detailed arrangements.

## **THE SUBSIDIARY LEGISLATION**

### **Companies (Non-Hong Kong Companies) Regulation (“the Regulation”)**

5. Under the new CO, Part 16 provides for the requirements applicable to non-Hong Kong companies whereas certain procedural requirements are to be set out by subsidiary legislation for ease of reference and to facilitate future updating as necessary. For the implementation of the relevant provisions in the new CO, the Regulation restates, with minor changes where appropriate, the following existing requirements and procedures –

- (a) the particulars and documents required to accompany (i) an application for registration of a non-Hong Kong company; (ii) annual returns; and (iii) returns on change of particulars or termination of authorization of the authorized representative of a registered non-Hong Kong company under sections 333, 333B, 334 and 335 of Cap. 32;
- (b) the eligibility and detailed requirements set out in the Companies Registry External Circular No. 1/2001 concerning the registration of certified translations of the domestic name (or one of the domestic names)<sup>2</sup> of a non-Hong Kong company (see also paragraph 3 for details); and

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<sup>1</sup> Where there is no such requirement in the law of the place of incorporation, the accounts may be revised if they are found to be non-compliant with the laws of any other jurisdiction or rules of any stock exchange that require their publication.

<sup>2</sup> The term “domestic name” is defined in section 774(1) of the new CO to mean the name or names by which the non-Hong Kong company is registered in its place of incorporation.

- (c) the requirements applicable to the revised accounts of a registered non-Hong Kong company in sections 20 to 21 of Cap. 32N.

### The Regulation

- 6. The Regulation comprises seven parts –
  - (a) *Part 1* provides for the commencement of the Regulation and interpretation of the terms used;
  - (b) *Part 2* sets out the particulars and documents required for an application for registration of a non-Hong Kong company;
  - (c) *Part 3* provides that an application under section 776(2) and (3) of the new CO or a return under section 778(2) of the new CO may contain a certified translation of a domestic name under specified conditions. The application or return must be accompanied by a certified translation of the relevant part of the certificate of incorporation or certificate of change of name showing the domestic name or new domestic name of the company;
  - (d) *Part 4* sets out the documents required to accompany a notice of termination of authorization as an authorized representative of a registered non-Hong Kong company;
  - (e) *Part 5* sets out the particulars to be contained in an annual return of a registered non-Hong Kong company;
  - (f) *Part 6* provides for the requirements for delivery of revised accounts of a registered non-Hong Kong company to the Registrar and the effect of the revision; and
  - (g) *Part 7* sets out the particulars of the changes in relation to a registered non-Hong Kong company to be contained in a return required to be delivered under section 791 of the new CO. It also sets out the documents required to accompany the return if there is any change to the constitutional document of the company.