



公 司 註 冊 處
COMPANIES REGISTRY

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14 November 2007

COMPANIES REGISTRY EXTERNAL CIRCULAR NO. 4 / 2007

Companies (Amendment) Ordinance 2004 - Implementation of Provisions Concerning Non-Hong Kong Companies Registered Under Part XI of the Companies Ordinance

INTRODUCTION

The Secretary for Financial Services and the Treasury has appointed **14 December 2007** as the commencement date for the provisions concerning non-Hong Kong companies in Schedule 2 to the Companies (Amendment) Ordinance 2004 (“the Amendment Ordinance”). The Companies Ordinance (Amendment of Eighth Schedule) Order 2007 which amends the registration fees for non-Hong Kong companies will also come into operation on the same day. The related Commencement Notices were published in the Gazette on 18 October 2007 (L.N. 187 and 189 of 2007).

2. The main purpose of the amendments concerning non-Hong Kong companies in Schedule 2 to the Amendment Ordinance is to modernise the registration regime for overseas companies which will be renamed as “non-Hong Kong companies” in the Companies Ordinance (“CO”) while enhancing the disclosure requirements for these companies.

3. This circular is intended to provide a general guide to the subject matter. Members of the public are advised to seek independent legal advice if they have any queries on the new requirements.

MAJOR CHANGES

4. The major changes brought about by the legislative amendments are outlined at **Annex 1**.

AMENDMENTS TO THE EIGHTH SCHEDULE TO THE COMPANIES ORDINANCE

5. In conjunction with the various amendments to the provisions relating to non-Hong Kong companies, Companies Ordinance (Amendment of Eighth Schedule) Order 2007 aims to restructure the existing filing fees for non-Hong Kong companies. The major changes that will **take effect from 14 December 2007** are summarised as follows:-

- (a) The existing filing fees will be replaced by a **single filing fee**, i.e. the existing registration fee of \$20 for each document other than the annual return is no longer required;
- (b) A non-Hong Kong company has to pay an annual registration fee on delivery of the annual return under section 334. **An escalating fee scale (Annex 2) has been introduced for the annual registration fee which is determined by the time of delivery of the annual return.** The fee scale is introduced to encourage compliance with the filing requirement under the CO; and
- (c) A new fee for the issue of certificates of registration in respect of non-Hong Kong companies under section 305(1) is introduced.

INTRODUCTION OF NEW AND REVISED SPECIFIED FORMS

6. To accommodate the legislative changes concerning non-Hong Kong companies, the Registrar of Companies has specified new Forms N1 to N15 and revised Form M1 (G.N. 7224 and 7225 published on 9 November 2007) for use by non-Hong Kong companies **with effect from 14 December 2007**. As from that date, old Forms F1 to F7, ARF1, D2 and M1 will no longer be accepted for registration by the Companies Registry. Details of the new / revised specified forms are set out in **Annex 3**.

7. A complete set of the specified forms in CD-ROM is available for purchase at the 14th floor of the Queensway Government Offices, 66 Queensway, Hong Kong. **Starting from 3 December 2007**, the new / revised specified forms can be downloaded from the section "Public Forms" - "Specified Forms" at www.cr.gov.hk and hard copies will be available for purchase as individual forms at the above address.

ENQUIRIES

8. Enquiries concerning this circular should be directed to:-

Registration and Change of Name of non-Hong Kong companies	Miss Nancy YAU, Assistant Registry Manager (New Companies)	(852) 2867 4790
Filing requirements after registration of non-Hong Kong companies	Ms Amy LUK, Assistant Registry Manager (Registration)	(852) 2867 4562

Ms Ada CHUNG
Registrar of Companies

Major Changes Brought About by Schedule 2 to the Companies (Amendment) Ordinance 2004 Concerning Non-Hong Kong Companies

The Term “Oversea Company”

1. The term “oversea company” in the Companies Ordinance (“CO”) has been replaced by “non-Hong Kong company”.

Definition of “Place of Business”

2. The definition of “place of business” in section 341 of the CO has been simplified to include “a share transfer or share registration office but does not include an office specified in the Twenty-fourth Schedule”. Pursuant to the Twenty-fourth Schedule to the CO, a local representative office established or maintained with the approval of the Monetary Authority under section 46 of the Banking Ordinance (Chapter 155) by a bank as defined in section 46(9) of that Ordinance is not regarded as a “place of business”.

3. Section 360(10) has been added to empower the Financial Secretary to amend the Twenty-fourth Schedule by order published in the Gazette.

Definition of “Authorized Representative”

4. The definition of “authorized representative” has been expressly provided in section 341(1) to mean a person who is authorized by a non-Hong Kong company to accept on behalf of the company service of process and any notices required to be served on the company and whose name is registered as such under section 333 of the CO.

Documents Delivered for Registration of a Non-Hong Kong Company

5. There are no major changes to the documents to be delivered by non-Hong Kong companies to the Registrar of Companies (“the Registrar”) for registration under section 333 of the CO. A new specified form “Particulars of a Non-Hong Kong Company Registered in Hong Kong” (Form N1) has been introduced under section 333(1).

6. To enhance disclosure requirements for non-Hong Kong companies, the following information is also required to be set out in Form N1:-

- (a) the date when the company established its place of business in Hong Kong (section 333(2)(c));
- (b) the dates of appointment of directors and the secretary of the company (section 333(2)(d)(i));
- (c) the identification details of the authorized representative in Hong Kong and the date when such person was authorized (section 333(2)(e)); and
- (d) a description of the documents submitted together with Form N1 (section 333(3)).

7. The new sections 333(3)(c) and (d) require a non-Hong Kong company to submit a certified copy of the latest *published* accounts of the company together with Form N1 if the company is required by the law of the place of incorporation, the laws of any other jurisdictions where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in any of those jurisdictions, to publish its accounts or to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public.

8. To simplify registration requirements, section 333(3)(e) provides that, if neither of the requirements under section 333(3)(c) or (d) is imposed on a non-Hong Kong company, the company can state that fact in Form N1. Section 333(8) provides that, if a non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of Form N1 and the accounts that it is required to publish have not been made up, it should make a statement of that fact in Form N1.

9. The new section 333 shall apply to a non-Hong Kong company that has, at the commencement date of the Amendment Ordinance on 14 December 2007, established a place of business in Hong Kong within 1 month before the commencement and had not complied with the provisions of section 333 of the pre-amended CO. A non-Hong Kong company that had complied with the provisions of section 333 of the pre-amended CO before 14 December 2007 shall be deemed to be a non-Hong Kong company complying with the new section 333.

Change of Corporate Names of Non-Hong Kong Companies

10. Section 335(2) has been amended to extend the prescribed time of delivery of the specified form (Form N10) to the Registrar from 21 days to **1 month** for reporting a change in the corporate name of a non-Hong Kong company. A new section 335(2)(b) has been added to require a non-Hong Kong company to submit with Form N10, a certified copy of the instrument effecting the change of name, together with a certified translation of the instrument in English or Chinese if that instrument is in a language other than English or Chinese.

Regulation of Use of Corporate Names by Non-Hong Kong Companies in Hong Kong

11. Section 337B(3) has been amended to empower the Registrar, instead of the Financial Secretary, to approve a name specified by a non-Hong Kong company, other than its corporate name, under which it proposes to carry on business in Hong Kong. A new specified form (Form N12) has been introduced for use in this respect.

12. The new section 337B(6A) empowers the Registrar to withdraw a notice served on a non-Hong Kong company under section 337B(1). Section 337B(6B) stipulates that, if the notice is withdrawn, the restriction under section 337B(5) from carrying on business in Hong Kong under the company's corporate name after the expiration of 2 months from the service of that notice ceases to apply to the company.

Continuing Obligation in respect of Authorized Representative

13. Section 333A has been amended to shorten the period where a non-Hong Kong company is required to keep an authorized representative after it ceases to have a place of

business in Hong Kong from 3 years to **1 year**. In this respect, a non-Hong Kong company registered under Part XI is required to keep registered the name, address and in the case of an individual, the number of his Hong Kong identity card (if any) or, in the absence of such number, the number and issuing country of any passport, of at least one authorized representative of the company until the expiration of **1 year** from the date on which the company ceases to have a place of business in Hong Kong.

Termination of Registration of Authorized Representative

14. Section 333B has been amended to allow a non-Hong Kong company to terminate the appointment of its authorized representative by sending a notice in writing to him. Section 333B(2) requires a notice to be given to the Registrar in the specified form (Form N2) by either the authorized representative or the company within **1 month** after the date of the notice of termination, informing her of the date of termination of the authorization together with a copy of the notice of termination.

Returns to be Delivered to the Registrar where Documents, etc. Altered

15. Section 335 has been amended to require the delivery to the Registrar for registration returns in specified forms containing the particulars of the alterations within **1 month** after the dates of the respective alterations. These changes include alterations in:

- (a) the charter, statutes or memorandum of the company or other instrument defining the constitution of the company (Form N5);
- (b) the directors, secretary or authorized representative of the company (Form N6);
- (c) the particulars of the directors, secretary or authorized representative of the company delivered to the Registrar under Part XI (Forms N7 or N8); and
- (d) the address of the principal place of business of the company in Hong Kong or its registered office (or its equivalent), or the address of its principal place of business in the place of its incorporation (Form N9).

Filing of Annual Returns

16. Under the pre-amended CO, an oversea company is required to file an annual return confirming that there has been no alteration in the document and particulars delivered under section 333 other than the alterations notified under section 335. Furthermore, an oversea company may be exempted from the requirement to file annual returns and accounts where the company, if incorporated under the CO, would constitute a private company or would be considered to have substantially the same general characteristics as a private company.

17. To ensure timely disclosure of relevant information, the new section 334 requires **every** non-Hong Kong company registered under Part XI to deliver to the Registrar for registration **within 42 days after each anniversary of the date of registration of the company under Part XI** a return in specified form (Form N3) stating:-

- (a) the date of the return, i.e. the date of the most recent anniversary of the date of registration of the company under Part XI;

- (b) the place of incorporation of the company;
- (c) the name of the company and its registered number in Hong Kong;
- (d) the date of registration of the company under Part XI;
- (e) the address of the principal place of business of the company in Hong Kong;
- (f) the addresses of the principal place of business and the registered office of the company in the place of its incorporation;
- (g) particulars of directors, the secretary or authorized representative of the company as at the date of the return;
- (h) a statement indicating that the latest published accounts of the company are delivered to the Registrar together with the return or, in the case where section 336 does not apply, a statement of that fact;
- (i) where the company has been incorporated for less than 18 months prior to the date of delivery of the annual return and the accounts of the company that are required to be published have not been made up, a statement stating that fact;
- (j) particulars relating to the authorized share capital and issued share capital or their equivalents in the case of a company having a share capital; and
- (k) particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar under the CO.

18. The new section 334(1) regarding the filing of annual returns for the year of commencement of the Amendment Ordinance, namely 2007 by non-Hong Kong companies will apply only to those non-Hong Kong companies with anniversary dates of registration falling on or after 14 December.

19. The new section 334(5) provides that where there has been no alteration in the particulars required to be filed since the date of the last return, the company may make a return by certificate in the specified form (Form N4) stating that fact. However, **the first annual return filed by a non-Hong Kong company after the commencement of the Amendment Ordinance should be presented in the new Form N3.**

Accounts of Non-Hong Kong Companies

20. An overseas company is currently required under section 336 of the CO to file certified copies of the accounts of its last financial year with the Registrar except where it fulfils the exemption criteria as set out in Companies Registry External Circular No. 4 of 1994. The old section 336 has been repealed.

21. A non-Hong Kong company is required under the new section 336 to deliver to the Registrar for registration certified copies of the latest published accounts of the company that comply with the law of the place of its incorporation or the laws of any other jurisdictions where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in those jurisdictions.

22. Certified copies of the latest published accounts of the company shall be submitted together with the annual return **within 42 days** after each anniversary of the date of registration of the company.

23. Where a non-Hong Kong company is neither required by the law of the place of its incorporation nor other relevant jurisdictions or regulatory authorities to publish its accounts or to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public, the company should state that fact in the annual return. Applications for exemption from filing accounts are no longer required.

24. If a non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of the annual return and the accounts of the company that are required to be published have not been made up, the company should state that fact in the annual return. Explanatory letters for not submitting accounts are no longer required.

Transitional Provisions on Filing Annual Returns and Accounts

25. The new section 334(6) provides for the arrangements of filing annual returns in the year of commencement of the Amendment Ordinance. Non-Hong Kong companies which are required to file a return in 2007 pursuant to the requirement of the new section 334(1) will be relieved from that obligation if they have filed a return within 3 months immediately before 14 December 2007.

26. Similarly, if a non-Hong Kong company has, within 3 months immediately before the commencement of the new section 336, complied with section 336 of the pre-amended CO in filing copies of the documents mentioned in section 336(1)(a) and (b) or (4) of the pre-amended CO with the Registrar, the company shall not be obliged to deliver its latest published accounts after the commencement if those latest published accounts relate to the same financial year.

Discontinuance of Exemption from Filing Annual Returns and Accounts

27. With effect from 14 December 2007, exemptions from filing annual returns and accounts under section 336(6) of the pre-amended CO and applications in the form of lawyers' or auditors' certificates as to the private status of the company will no longer be required. Companies Registry External Circular No. 4 of 1994 is hereby cancelled.

Notice of Commencement of Liquidation and of Appointment of Liquidator

28. Section 337A has been revised to require all non-Hong Kong companies, regardless of whether liquidation proceedings are initiated in their places of incorporation or otherwise, to deliver to the Registrar for registration a notice in the specified form (Form N11) containing detailed information regarding the liquidation and the appointment of a liquidator. The notice should be delivered within **14 days** after the date of commencement of any proceedings for the liquidation of the company or within **14 days** after the notice of commencement of such proceedings has been served on the company according to the law of the place in which such proceedings are commenced, whichever is the later.

Service of documents on non-Hong Kong companies

29. At present, any process or notice required to be served on an overseas company shall be sufficiently served if it is addressed to any person whose name has been provided to the

Registrar under Part XI of the CO. This means that the process or notice may also be sent to the directors or secretary of the company. Section 338(1) has been revised to clarify that any process or notice required to be served on a non-Hong Kong company shall be sufficiently served if it is served on the authorized representative of the company.

30. Section 338(2)(b)(ii) has been revised to provide that, if a non-Hong Kong company no longer has a place of business in Hong Kong and the addresses of its registered office and principal place of business have not been registered, a document may be served on the company by leaving it at or sending it by post to any place in Hong Kong at which the company has had a place of business within the previous 12 months (as against the period of 3 years in the pre-amended CO).

Notices to be Sent when a Non-Hong Kong Company Ceases to Have a Place of Business in Hong Kong

31. Section 339 has been revised to require a non-Hong Kong company to notify the Registrar in the specified form (Form N13) within **7 days** after ceasing to have a place of business in Hong Kong.

Notice to be Sent when a Non-Hong Kong Company is Dissolved

32. A new section 339AA has been added to provide for the filing of a notice of dissolution of a non-Hong Kong company in the specified form (Form N14) together with a certified copy of an instrument effecting the dissolution within **14 days** after the date of dissolution.

Voluntary Revision of Accounts

33. Section 336A has been revised to reflect the changes in the definition of the term “relevant requirements”. A new specified form (Form N15) has been introduced for use in this respect.

Registration of Charges

34. The new section 91 clarifies the circumstances under which a non-Hong Kong company is required to register charges on its property. While sections 91(1) and (3) extend the application of Part III of the CO on registration of charges to a non-Hong Kong company registered under Part XI, section 91(2) further clarifies that Part III does not extend to charges on property in Hong Kong of a non-Hong Kong company registered under Part XI if the relevant property was not in Hong Kong at the time the charge was created by the company or at the time it was acquired by the company subsequent to the creation of the charge.

35. In addition, the new section 91(7) clarifies specifically how a ship or aircraft shall be treated as property in Hong Kong for the purpose of Part III of the CO.

Inspection, Production and Evidence of Documents Kept by the Registrar

36. Sections 305(1)(b) (iia) and (iib) have been added pursuant to which members of the public may require a certificate certifying that a non-Hong Kong company is registered under Part XI and, where a non-Hong Kong company has changed its name, a fresh certificate certifying that the company is registered under Part XI with the new name, on payment of the prescribed fees.

**Annual Registration Fee Payable on Delivery of an Annual Return
under Section 334 of the Companies Ordinance**

	HK\$
(i) if delivered within 42 days after the anniversary of registration	180
(ii) if delivered more than 42 days after but within 3 months after the anniversary of registration	1,200
(iii) if delivered more than 3 months after but within 6 months after the anniversary of registration	2,400
(iv) if delivered more than 6 months after but within 9 months after the anniversary of registration	3,600
(v) if delivered more than 9 months after the anniversary of registration	4,800

List of New/Revised Specified Forms

Form No.	Form Name	Existing Form to be Replaced
<i>New Specified Forms</i>		
Form N1	Particulars of a Non-Hong Kong Company Registered in Hong Kong	Form F1 - Registration of an Oversea Company in Hong Kong
Form N2	Termination of Registration of Authorized Representative of a Non-Hong Kong Company	N.A.
Form N3	Annual Return of a Non-Hong Kong Company	Form ARF1 - Annual Return of an Oversea Company
Form N4	Annual Return of a Non-Hong Kong Company - Certificate of No Change	
Form N5	Notification of Alteration in the Charter, Statutes etc. of a Non-Hong Kong Company	Form F4 - Return of Alteration in the Charter, Statues etc. of an Oversea Company
Form N6	Notification of Change of Secretary and Director of a Non-Hong Kong Company (Appointment / Cessation)	Form D2 - Notification of Changes of Secretary and Directors
Form N7	Notification of Change of Particulars of Secretary and Director of a Non-Hong Kong Company	
Form N8	Notification of Change of Authorized Representative of a Non-Hong Kong Company	Form F3 - Notification of Changes of Authorized Representatives
Form N9	Notification of Change of Address of a Non-Hong Kong Company	Form F2 - Change of Address of an Oversea Company
Form N10	Notification of Change in the Corporate Name of a Non-Hong Kong Company	Form F5 - Return of Change in the Corporate Name of an Oversea Company
Form N11	Notification of Commencement of Liquidation and Particulars of Liquidator of a Non-Hong Kong Company	N.A.
Form N12	Statement of Approved Name for Carrying on Business in Hong Kong by a Non-Hong Kong Company	Form F6 - Statement of Approved Name used by an Oversea Company to carry on Business in Hong Kong

Form No.	Form Name	Existing Form to be Replaced
<i>New Specified Forms</i>		
Form N13	Notification of Cessation of Having a Place of Business in Hong Kong of a Non-Hong Kong Company	N.A.
Form N14	Notification of Dissolution of a Non-Hong Kong Company	N.A.
Form N15	Statement of Revision of Accounts of a Non-Hong Kong Company	Form F7 - Statement of Revision of Accounts or Reports
<i>Revised Specified Form</i>		
Form M1	Mortgage or Charge Details	