

For Information

Legislative Council Panel on Financial Affairs

Filing of Annual Returns by Non-Hong Kong Companies under the Companies Ordinance

Purpose

This information note reports on the implementation of the filing requirements for annual returns by non-Hong Kong companies as stipulated under the Companies (Amendment) Ordinance 2004 (“Amendment Ordinance”), which became effective on 14 December 2007.

Background

2. The Amendment Ordinance was enacted in July 2004 to implement, among other things, various proposals to modernise the registration regime for non-Hong Kong companies¹. The Amendment Ordinance requires a non-Hong Kong company to file a full annual return, like companies incorporated in Hong Kong, in specified form containing particulars of the company within 42 days after each anniversary date of its registration under the Companies Ordinance (“CO”)². Non-Hong Kong companies are also subject to escalating fees if they file their annual returns late, as imposed under the Companies Ordinance (Amendment of Eighth Schedule) Order 2007 (“Fees Order”). The Fees Order and the relevant provisions concerning non-Hong Kong companies in the Amendment Ordinance came into operation on 14 December 2007.

¹ A non-Hong Kong company (previously known as “oversea company” before the commencement of the Amendment Ordinance) is a company incorporated outside Hong Kong which establishes a place of business in Hong Kong.

² A non-Hong Kong company was previously required to file an annual return simply confirming that there has been no alteration in the information previously filed by the company other than alteration which has been notified by the company under the CO.

3. Members were briefed on the above requirements for non-Hong Kong companies regarding the filing of annual returns and escalating fees on 3 January 2005 vide LC Paper No. CB(1)547/04-05(03). Members requested the Administration to monitor and report on the compliance of non-Hong Kong companies in about a year's time upon implementation of the new filing requirements.

Compliance of Non-Hong Kong Companies

4. In order to enhance the compliance of non-Hong Kong companies with the new filing requirements as enacted under the Amendment Ordinance, the Companies Registry ("CR") has implemented a number of measures to promote the new registration regime prior to the commencement of the relevant provisions, including:

- (a) briefing sessions were conducted by the CR on the new filing requirements to members of professional bodies such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Certified Public Accountants and the Society of Chinese Accountants and Auditors since a majority of non-Hong Kong companies have engaged professional services in the filing of statutory returns, including the annual return;
- (b) publicity materials including external circulars and information pamphlets on details of the new filing requirements have been issued by the CR to members of the public³. The publicity materials are also available for collection at CR's offices or downloading from the CR's website; and
- (c) the CR has written to all 8,038 non-Hong Kong companies on the register about the new filing requirements. The non-Hong Kong companies are also encouraged to subscribe to the free "Annual Return e-Alert Service" provided by the CR to receive reminders on the filing of annual returns.

³ Including CR's major customers, members of professional organisations and subscribers to CR's e-news service.

5. For non-Hong Kong companies which were registered after the commencement of the relevant provisions, the CR has issued relevant information pamphlets to the companies upon their registration to remind them of their statutory obligations including the filing of annual returns.

6. The above measures taken by the CR have enhanced the compliance of non-Hong Kong companies with the new filing requirements. In the first year of implementation of the new filing requirements subsequent to the commencement of the relevant provisions in the Amendment Ordinance, i.e. for the year 2008, 87% of the non-Hong Kong companies have filed their annual returns. This is a significant improvement as compared to the compliance rates of 65% and 71% for 2006 and 2007 respectively. Of the non-Hong Kong companies which have filed annual returns in 2008, 85% of them have filed the annual returns within the 42-day statutory period.

7. Like companies incorporated in Hong Kong, non-Hong Kong companies registered under the CO which fail to file their annual returns are liable to prosecution. In 2008, the CR has issued summonses to 70 non-Hong Kong companies for failure to file or late filing of annual returns for 2008.

8. Since November 2008, the CR has put in place new measures to further enhance the compliance of companies with their statutory filing obligations. Under the new arrangement, the CR will issue "Notices to File" ("Notices") to companies which failed to file their annual returns within the statutory period. The companies will be given 28 days to rectify their defaults by filing the outstanding annual returns. Those which fail to rectify will be subject to prosecution action. As at end of December 2008, a total of 200 Notices have been issued to non-Hong Kong companies. With the issue of the Notices, we expect that the compliance of non-Hong Kong companies with the filing requirements will be further improved.

Way Forward

9. The new requirements for the filing of annual returns by non-Hong Kong companies as imposed by the Amendment Ordinance have been operating smoothly with improved compliance. The CR will continue to monitor the situation and promote compliance by non-Hong Kong companies.

Companies Registry

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