

**For discussion  
on 3 January 2005**

**The Legislative Council  
Panel on Financial Affairs**

**Proposals to Restructure the Filing Fees and  
Introduce a New Fee for the  
Additional Issue of Certificates of Registration  
in relation to Non-Hong Kong Companies**

**Introduction**

This paper aims to brief Members on the proposals to restructure the filing fees for overseas companies, which will be renamed as “non-Hong Kong companies” once Schedule 2 of the Companies (Amendment) Ordinance 2004 comes into effect, and to introduce a new fee for the issue of certificates of registration in relation to such companies under section 305(1) of the Companies Ordinance (“the additional issue”). The proposals would be effected through amendments to the Eighth Schedule to the Companies Ordinance (“the Ordinance”).

**Background**

2. A company incorporated outside Hong Kong which establishes a place of business in Hong Kong is known as an overseas company in the Ordinance. The registration regime for such company is provided for in Part XI of the Ordinance.

3. The Companies (Amendment) Ordinance 2004 was enacted in July 2004 to implement, among other things, various proposals to modernise the registration regime. These proposals include the introduction of a requirement for an overseas company to file a full annual return<sup>1</sup> in the specified form containing particulars of the company within

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<sup>1</sup> An overseas company is currently required to file an annual return simply confirming that there has been no alteration in the original information filed by the company other than the alteration which has been notified by the company under the Ordinance. A full annual return consists of detailed and timely information about the company such as address of principal place of business and particulars of directors etc.

42 days from the anniversary date of its registration and a new service of additional issue of certificates of registration in relation to such company. To put in place the proposals, there is a need to restructure the current filing fees, which are set out in the Eighth Schedule<sup>2</sup> to the Ordinance (see paragraphs 4 to 5 below) and to introduce a new fee for the additional issue of the relevant certificates.

## **(A) Proposed Filing Fees**

### *(a) Single filing fee*

4. At present, overseas companies are required to pay a fee of \$140 for filing an annual return, plus \$20 for filing each other document as prescribed in items (b) and (c) of Part III of the Eighth Schedule. We propose to replace these fees with a new single filing fee payable upon the delivery of a full annual return in the specified form. This approach was fully adopted in the filing fees for local companies in 1996. The proposed fee is set at \$250 per annum, which has been worked out on the basis that overseas companies on average would not pay more than as present (if their annual returns are filed within the deadline prescribed in the Ordinance). The relevant calculation is set out as follows -

	<u>Amount</u>
	\$
(a) Current fee for filing an annual return	140
(b) Current fee for filing 5.5 documents <sup>(Note i)</sup> at \$20 per document (\$20 x 5.5)	<u>110</u>
Proposed new filing fee <sup>(Note ii)</sup>	<u>250</u>

Note (i): The Companies Registry's (CR's) statistics indicate that, on average, an overseas company submits some 5.5 documents in a year.

Note (ii): No separate fee will be charged for filing each document other than the full annual return.

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<sup>2</sup> The Eighth Schedule to the Ordinance sets out the fees payable to the Registrar of Companies.

The proposal will also simplify the fee structure and help streamline the administrative work of the Companies Registry (CR) and its customers<sup>3</sup>.

*(b) Escalating fees*

5. Furthermore, with a view to encouraging compliance with the filing requirements under the Ordinance and timely disclosure of corporate information, we propose to introduce escalating fees in respect of late filing. The same arrangement has already been made in the case of local companies having a share capital<sup>4</sup>. In short, the longer the delay in filing the returns, the higher the fee payable. Details are set out in the following table -

<b>Filing fee payable on delivery of an annual return of an overseas company</b>	<b>Amount</b>
Delivered on time, i.e. within 42 days after the anniversary of registration	\$250
More than 42 days after but within 3 months after the anniversary of registration	\$1,200
More than 3 months after but within 6 months after the anniversary of registration	\$2,400
More than 6 months after but within 9 months after the anniversary of registration	\$3,600
More than 9 months after the anniversary of registration	\$4,800

**(B) Proposed Fee for the additional issue of certificates of registration**

6. To enhance customer service and to meet customers' needs, the CR also plans to introduce a new service<sup>5</sup> of the additional issue of certificates of registration in relation to overseas companies. We propose

<sup>3</sup> The fee collection of the CR as well as the submission of documents by customers will be streamlined.

<sup>4</sup> The proposed escalating fees are pegged to those for local public companies limited by shares because the current fee scale for these companies has been working well and is effective in encouraging compliance.

<sup>5</sup> New sections 305(1)(b)(iia) and (iib) of the Ordinance, added by section 25 of the Companies (Amendment) Ordinance 2004, provide that any person may, on payment of the prescribed fees, require a certificate of registration or a certificate of registration of change of name.

to introduce a new fee for this service at a level of \$170 per copy of certificate, which is the same as that applicable to local companies.

7. The relevant proposals, as set out in paragraphs 4 to 5 above, were briefly discussed by the Bills Committee set up by the Legislative Council to scrutinise the Companies (Amendment) Bill 2003 (now the Companies (Amendment) Ordinance 2004). No objections were raised by the Bills Committee.

### **Consultation**

8. The CR's Customer Liaison Group (CLG) comprises representatives of the Hong Kong Association of Banks, the Hong Kong Institute of Company Secretaries, the Hong Kong Institute of Certified Public Accountants, the Law Society of Hong Kong and some principal customers of the Registry. In June 2004, the CR consulted the CLG on the fee proposals. Members of the CLG generally considered that, overall, the proposals were fair and reasonable and did not raise any objection.

### **Financial Implications**

9. For 2003-04, the total revenue from the filing fees for overseas companies was around \$1.1 million. We expect to receive more or less the same revenue after the restructuring of the filing fee. Revenue from the proposed escalating fees in respect of late filing would vary depending on the extent of compliance by overseas companies. As regards the additional issue of certificates of registration in relation to overseas companies, the revenue generated is expected to have only minimal impact on the CR's financial position.

### **Implementation**

10. The proposals will be implemented by amending the Eighth Schedule to the Ordinance. Under section 360(3A) of the Ordinance, the

Financial Secretary may amend the Schedule by an order published in the Gazette. We aim to gazette and then table the order for the proposed changes at the Legislative Council in the first quarter of 2005. The changes, together with the relevant provisions in the Amendment Ordinance, are planned to come into effect in the latter half of 2005, in order to tie in with the completion of the necessary modifications to the CR's information system.

**Companies Registry**  
**December 2004**