

LEGISLATIVE COUNCIL BRIEF

**COMPANIES ORDINANCE
(AMENDMENT OF EIGHTH SCHEDULE) ORDER 2007**

INTRODUCTION

Section 360(3A) of the Companies Ordinance (Cap. 32) (“CO”) empowers the Financial Secretary, by order published in the Gazette, to amend the table of fees in the Eighth Schedule to the CO (“Eighth Schedule”). By virtue of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), the Financial Secretary also means the Secretary for Financial Services and the Treasury.

2. In exercising the power granted under section 360(3A), the Secretary for Financial Services and the Treasury has made the Companies Ordinance (Amendment of Eighth Schedule) Order 2007 (“Order”) at **Annex**. The main purposes of the Order are to restructure the existing filing fees for oversea companies¹ in the Eighth Schedule and to introduce a new fee for the issue of certificates of registration in respect of such companies. The changes to the fees are necessitated by the commencement of those provisions concerning oversea companies in Schedule 2 to the Companies (Amendment) Ordinance 2004 (“Amendment Ordinance”), which is anticipated to take place in the fourth quarter of 2007 after the completion of the necessary modifications to the Companies Registry (CR)’s information system.

BACKGROUND AND ARGUMENT

3. A company incorporated outside Hong Kong which establishes a place of business in Hong Kong is known as an oversea company in the CO. The registration regime for such companies is provided for in Part XI of the CO.

4. The Amendment Ordinance was enacted in July 2004 to implement, among other things, various proposals to modernise the registration regime. These proposals include the introduction of a

¹ To be renamed as “non-Hong Kong companies” after the commencement of section 1 in Schedule 2 to the Companies (Amendment) Ordinance 2004.

requirement for an overseas company to file a full annual return² in the specified form containing particulars of the company within 42 days after each anniversary date of its registration and a new service of issuing certificates of registration in respect of overseas companies. In conjunction with these proposals, there is a need to restructure the existing filing fees in the Eighth Schedule for overseas companies (see paragraphs 5 and 6 below) and to introduce a new fee for the issue of certificates of registration (see paragraph 7 below).

(A) Proposed Filing Fees

(a) Single filing fee

5. At present, an overseas company is required to pay a fee of \$140 for filing with the CR 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 has been adopted in the filing fees for local companies since 1996. The proposed fee is set at \$180 per annum, which has been worked out on the basis that, on average, overseas companies would not pay more than as present (if their annual returns are filed within the deadline prescribed in the CO). The relevant calculation is set out as follows -

	Fee item	Amount (\$)
(a)	Current fee for filing an annual return	140
(b)	Current fee for filing two documents ³ at \$20 per document (\$20 x 2)	40
	Proposed new filing fee ⁴	180

² 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 any alteration which has been notified by the company under the CO. A full annual return consists of detailed information about the company, such as address of the principal place of business, particulars of directors etc.

³ The CR's current statistics show that, on average, an overseas company files about two documents (other than its annual return) in a year.

⁴ No separate fee will be charged for filing any document other than the full annual return.

(b) *Late filing fees*

6. In addition, we propose to introduce escalating fees in respect of late filing of full annual returns with a view to encouraging compliance with the filing requirements under the CO and timely disclosure of corporate information. This arrangement has applied to local companies having a share capital⁵ since 1988. In short, the longer the delay in filing its annual return, the higher the fee will be payable by an overseas company. Details of the proposal are as follows -

	Filing fee payable on delivery of an annual return of an overseas company	Amount (\$)
(a)	Delivered on time, i.e. within 42 days after the anniversary of registration	180
(b)	More than 42 days after but within 3 months after the anniversary of registration	1,200
(c)	More than 3 months after but within 6 months after the anniversary of registration	2,400
(d)	More than 6 months after but within 9 months after the anniversary of registration	3,600
(e)	More than 9 months after the anniversary of registration	4,800

⁵ The proposed escalating fees are pegged to those for local non-private companies limited by shares, which have been effective in deterring late filing.

(B) Proposed fee for the issue of certificates of registration

7. To enhance customer service and to meet customers' needs, the CR will introduce a new service⁶ of issuing certificates of registration in respect of overseas companies. A new fee of \$170 per copy of certificate, which is the same as that applicable to local companies, is proposed for the service.

THE ORDER

8. The main provisions are as follows –
- (a) Section 2(a) amends Part III of the Eighth Schedule to prescribe the single filing fee and late filing fees for overseas companies;
 - (b) Section 2(b) makes consequential amendments to Part V of the Eighth Schedule, which sets out the fees for inspecting, obtaining documents and records kept by the CR, following the enactment of Schedule 2 to the Amendment Ordinance (insofar as it relates to overseas companies); and
 - (c) Section 2(c) amends Part VI of the Eighth Schedule to prescribe the fee for issuing a certificate of registration in respect of an overseas company or a certificate of registration in respect of an overseas company with a changed name.

IMPLICATIONS OF THE PROPOSAL

9. The Order is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the CO. It has no civil service, economic, productivity, environmental or sustainability implications.

⁶ New sections 305(1)(b)(ia) and (ib) of the CO, 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 in respect of an overseas company or a certificate of registration in respect of an overseas company with a changed name.

10. For 2006-07, the total revenue from the filing fees for overseas companies was around \$0.9 million. It is expected that roughly the same revenue will be received after the restructuring of the existing filing fees for overseas companies. Revenue from the proposed late filing fees would vary depending on the level of compliance by overseas companies. As regards the issue of certificates of registration in respect of overseas companies, the revenue generated is expected to have only minimal impact on the CR's financial position.

PUBLIC CONSULTATION

11. In June 2004, the CR consulted its Customer Liaison Group ("CLG") comprising representatives of the Hong Kong Association of Banks, the Hong Kong Institute of Chartered Secretaries (the then Hong Kong Institute of Company Secretaries), the Hong Kong Institute of Certified Public Accountants (the then Hong Kong Society of Accountants), the Law Society of Hong Kong and some principal customers. Members of the CLG generally considered that the proposals⁷ were fair and reasonable and did not raise any objection. In January 2005, we consulted the Legislative Council Panel on Financial Affairs on the proposals⁸. Members of the Panel were supportive of the proposals in principle.

LEGISLATIVE TIMETABLE

12. The Order and the relevant provisions concerning overseas companies etc. in Schedule 2 to the Amendment Ordinance are planned to come into effect in the fourth quarter of 2007 to tie in with the completion of the necessary modifications to the CR's information system in respect of overseas companies. Relevant commencement notices will be tabled into the Legislative Council for negative vetting in due course.

PUBLICITY

13. A press release will be issued on 18 May and a spokesman will be available to handle enquiries.

⁷ The proposed single filing fee put to the CLG and the Panel at that time was \$250. Upon further review by the CR of the number of documents filed by overseas companies, the single filing fee has been adjusted downwards to \$180.

⁸ See footnote (7) above.

SUBJECT OFFICER

14. Enquiries on this brief should be addressed to Mr Arthur Au, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (telephone number: 2528 6384).

**Financial Services Branch
Financial Services and the Treasury Bureau
May 2007**

COMPANIES ORDINANCE (AMENDMENT OF EIGHTH SCHEDULE)
ORDER 2007

(Made by the Secretary for Financial Services and the
Treasury under section 360(3A) of the
Companies Ordinance (Cap. 32))

1. Commencement

This Order shall come into operation on a day to be appointed
by the Registrar of Companies by notice published in the Gazette.

**2. Table of Fees to be paid to the Registrar of
Companies**

The Eighth Schedule to the Companies Ordinance (Cap. 32), as
amended by section 50(2) of Schedule 2 to the Companies (Amendment)
Ordinance 2004 (30 of 2004), is amended -

(a) in Part III, by repealing paragraphs (b) and (c) and
substituting -

"(b) Annual registration fee (to be paid
on delivery of return under section
334) -

(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"

;

(b) in Part V -

- (i) in paragraph (a)(i), by repealing "an
oversea company" and substituting "a
non-Hong Kong company";

- (ii) in paragraph (a)(ii), by repealing "an overseas company" and substituting "a non-Hong Kong company";
- (iii) in paragraph (a)(iii), by repealing "oversea companies" and substituting "non-Hong Kong companies";
- (iv) in paragraph (c)(i)(A)(III), by repealing "and articles, or any other instrument, constituting or defining the constitution of an overseas company" and substituting "(including articles, if any), or any other instrument constituting or defining the constitution of a non-Hong Kong company";
- (v) in paragraph (c)(i)(A)(VIII), by repealing "an overseas company delivered under section 333(1)(f)" and substituting "a non-Hong Kong company delivered under section 333(1)(f) of the pre-amended Ordinance, or section 333(3)(c) or (d)";
- (vi) in paragraph (c)(i)(A)(IX), by repealing "of an overseas company delivered under section 336(1)(a) and (b)" and

- (x) in paragraph (c)(i)(C)(I), by repealing "in respect of a company or a company (whether a company within the meaning of this Ordinance or not) incorporated outside Hong Kong which has a place of business in Hong Kong";
- (xi) in paragraph (c)(ii)(A)(III), by repealing "and articles, or any other instrument, constituting or defining the constitution of an oversea company" and substituting "(including articles, if any), or any other instrument constituting or defining the constitution of a non-Hong Kong company";
- (xii) in paragraph (c)(ii)(A)(VIII), by repealing "an oversea company delivered under section 333(1)(f)" and substituting "a non-Hong Kong company delivered under section 333(1)(f) of the pre-amended Ordinance, or section 333(3)(c) or (d)";
- (xiii) in paragraph (c)(ii)(A)(IX), by repealing "of an oversea company delivered under section 336(1)(a) and

(b)" and substituting "of a non-Hong Kong company delivered under section 336(1)(a) and (b) or (4) of the pre-amended Ordinance";

(xiv) in paragraph (c)(ii)(A), by adding -

"(X) accounts of a Not Not \$35";
 non-Hong Kong applicabl applicabl
 company e e
 delivered under
 section 336(1)
 or (2)

(xv) in paragraph (c)(ii)(B)(II), by repealing "or each return delivered under section 336(1), in respect of an oversea company" and substituting "of the pre-amended Ordinance or the specified form delivered under section 333(1), in respect of a non-Hong Kong company";

(xvi) in paragraph (c)(ii)(B), by adding -

"(III) each return Not Not \$30";
 delivered under applicable applicable
 section 336(1) of
 the pre-amended
 Ordinance, or
 section 334, in

respect of a
non-Hong Kong
company

(xvii) in paragraph (c)(ii)(C)(I), by repealing
"in respect of a company or a company
(whether a company within the meaning of
this Ordinance or not) incorporated
outside Hong Kong which has a place of
business in Hong Kong";

(xviii) in paragraph (c)(iii)(A)(III), by
repealing "and articles, or any other
instrument, constituting or defining the
constitution of an oversea company" and
substituting "(including articles, if
any), or any other instrument
constituting or defining the
constitution of a non-Hong Kong
company";

(xix) in paragraph (c)(iii)(A)(VIII), by
repealing "an oversea company delivered
under section 333(1)(f)" and
substituting "a non-Hong Kong company
delivered under section 333(1)(f) of the
pre-amended Ordinance, or section
333(3)(c) or (d)";

- (xx) in paragraph (c)(iii)(A)(IX), by repealing "of an oversea company delivered under section 336(1)(a) and (b)" and substituting "of a non-Hong Kong company delivered under section 336(1)(a) and (b) or (4) of the pre-amended Ordinance";
- (xxi) in paragraph (c)(iii)(A), by adding -
- "(X) accounts of a \$29 \$26 Not
non-Hong Kong applicable";
company delivered
under section
336(1) or (2)
- (xxii) in paragraph (c)(iii)(B)(II), by repealing "or each return delivered under section 336(1), in respect of an oversea company" and substituting "of the pre-amended Ordinance or the specified form delivered under section 333(1), in respect of a non-Hong Kong company";
- (xxiii) in paragraph (c)(iii)(B), by adding -
- "(III) each return \$23 \$21 Not
delivered under applicable";
section 336(1) of
the pre-amended

Ordinance, or
section 334, in
respect of a
non-Hong Kong
company

(xxiv) in paragraph (c)(iii)(C)(I), by
repealing "in respect of a company or a
company (whether a company within the
meaning of this Ordinance or not)
incorporated outside Hong Kong which has
a place of business in Hong Kong";

(xxv) in paragraph (c)(v), by repealing "an
oversea company" and substituting "a
non-Hong Kong company";

(xxvi) in the Note, by adding -

"pre-amended Ordinance" (修訂前的本條
例) -

(a) in paragraph
(c)(i)(A)(VIII),
(ii)(A)(VIII) and
(iii)(A)(VIII), means
the Companies Ordinance
(Cap. 32) that was in
force immediately
before the amendment of

section 333 of that Ordinance by section 28 of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) ("the Amendment Schedule");

(b) in paragraph

(c)(i)(A)(IX),

(ii)(A)(IX) and

(iii)(A)(IX), means the

Companies Ordinance

(Cap. 32) that was in

force immediately

before the amendment of

section 336 of that

Ordinance by section 35

of the Amendment

Schedule;

(c) in paragraph

(c)(i)(B)(II),

(ii)(B)(II) and

(iii)(B)(II), means the

Companies Ordinance

(Cap. 32) that was in

force immediately
before the amendment of
section 333 of that
Ordinance by section 28
of the Amendment
Schedule;

(d) in paragraph
(c)(i)(B)(III),
(ii)(B)(III) and
(iii)(B)(III), means
the Companies Ordinance
(Cap. 32) that was in
force immediately
before the amendment of
section 336 of that
Ordinance by section 35
of the Amendment
Schedule;"

(c) in Part VI, by repealing paragraph (i)(i) and
substituting -

"(i) a certificate of incorporation or
a certificate of change of name of
a company \$ 170

(ia) a certificate certifying

registration of a non-Hong Kong
company or a certificate
certifying registration of a
non-Hong Kong company with a
changed name \$ 170".

Secretary for Financial Services and
the Treasury

8 May 2007

Explanatory Note

This Order revises the fees payable to the Registrar of Companies by non-Hong Kong companies (formerly known as oversea companies) for filing certain documents and introduces a new fee for the issue of a certificate of registration or a certificate of registration with a changed name in respect of a non-Hong Kong company.

2. This Order also makes several consequential amendments to Part V of the Eighth Schedule to the Companies Ordinance (Cap. 32) following the enactment of Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) (in so far as it relates to non-Hong Kong companies).