

立法會
Legislative Council

LC Paper No. LS5/07-08

**Paper for the House Committee Meeting
on 2 November 2007**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 18 October 2007**

Date of tabling in LegCo : 24 October 2007

Amendment to be made by : 21 November 2007 (or 12 December 2007 if
extended by resolution)

PART I LEGISLATIVE COUNCIL ORDINANCE

Legislative Council Ordinance (Cap. 542)

**Declaration of Geographical Constituencies (Legislative Council) Order 2007
(L.N. 186)**

This Order declares areas of Hong Kong to be geographical constituencies (GCs) for the purpose of an election to elect Members for the fourth term of office of the Legislative Council, gives names to those constituencies, and specifies the number of Legislative Council Members to be returned for each of those constituencies.

2. The Order declares that the number of seats to be allocated to the 5 GCs are as follow—

- (a) Hong Kong Island - 6 seats;
- (b) Kowloon West - 5 seats;
- (c) Kowloon East - 4 seats;
- (d) New Territories West - 8 seats; and
- (e) New Territories East - 7 seats.

3. The boundaries of the existing 5 GCs will remain unchanged. Compared with the number of seats allocated to each GC for the 2004 LegCo election, Kowloon West will have one additional seat, while Kowloon East will have one less seat.

4. Members may refer to LegCo Brief File Reference : CMAB C1/30/8 issued by Constitutional and Mainland Affairs Bureau in October 2007 for background information.

5. At its meeting on 16 July 2007, the Panel on Constitutional Affairs was briefed on the provisional recommendations of the Electoral Affairs Commission (EAC) on the boundaries and names of the LegCo GCs.

6. Views expressed by members were mainly—

- (a) the requirements under the Legislative Council Ordinance (Cap. 542) that there were to be five GCs and each GC was to have four to eight elected Members was too rigid and ignored the principle of fairness in an election;
- (b) as the difference in population between Kowloon West and Kowloon East was only about 12 000, the boundaries between the two GCs should be adjusted so that the number of seats in these two GCs would remain unchanged;
- (c) the Kowloon West and Kowloon East GCs should be merged into one so that the overall GC seats in Kowloon would be maintained at nine;
- (d) the number of seats entitled by New Territories West was 8.732, which should be nine when rounded up. However, due to the statutory requirement of a maximum of eight seats for each GC, only eight seats were allocated to New Territories West. The boundaries between New Territories West and Kowloon West should be re-delineated so that there would be a fairer allocation of seats between the two GCs; and
- (e) consideration should be given to transferring the Island District Council from New Territories West to Hong Kong Island in order to narrow the population deviation of Hong Kong Island which stood as high as -9.11% and reduce the number of entitled seats of New Territories West to around 8.

7. The Administration advised that—

- (a) the EAC chaired by a judge was an independent body free from any interference. The criteria adopted by the EAC in allocating seats were based on the requirements in law;
 - (b) the boundaries of the five GCs were based on the boundaries of the 18 District Councils. These boundaries would not be adjusted for the purpose of the LegCo elections;
 - (c) the EAC had considered different options before drawing up the provisional recommendations. As re-delineating the existing GC boundaries was a drastic change, the EAC recommended that the status quo should be maintained; and
 - (d) in accordance with section 19 of the EAC Ordinance (Cap. 541), the EAC was consulting the public on these provisional recommendations from 5 July to 3 August 2007 before submitting its report on the proposed recommendations to the Chief Executive.
8. This Order will come into operation on 1 January 2008.

PART II COMMENCEMENT NOTICES

Companies (Amendment) Ordinance 2004 (30 of 2004)

Companies (Amendment) Ordinance 2004 (Commencement) (No. 2) Notice 2007 (L.N. 187)

Financial Reporting Council Ordinance (Cap. 588)

Financial Reporting Council Ordinance (Commencement) (No. 3) Notice 2007 (L.N. 188)

Companies Ordinance (Amendment of Eighth Schedule) Order 2007 (L.N. 86 of 2007)

Companies Ordinance (Amendment of Eighth Schedule) Order 2007 (Commencement) Notice (L.N. 189)

9. L.N. 187 specifies 14 December 2007 as the date on which certain provisions of the Companies (Amendment) Ordinance 2004 (30 of 2004) (the Amendment Ordinance) will come into operation. Those provisions are related to modernising the registration regime for overseas companies, renaming "oversea companies" to "non-Hong Kong companies" and making consequential amendments to some ordinances.

10. The Amendment Ordinance was enacted on 9 July 2004. Parts of the Amendment Ordinance have been brought into operation by L.N. 154 of 2004, L.N. 82 of 2005 and L.N. 26 of 2007. The provisions concerning non-Hong Kong

companies are planned to be implemented to tie in with the completion of the necessary enhancements to the Companies Registry's Integrated Companies Registry Information System (ICRIS) which were required to cater for the operation of the new registration regime of non-Hong Kong companies. As sufficient time was needed to ensure the system stability of ICRIS, the relevant enhancement works to ICRIS have just been completed in August 2007. The enhancement works concerning the remaining provisions in Schedule 2 to the Amendment Ordinance on the streamlining of the incorporation procedures is expected to be completed before mid-2008.

11. L.N. 188 specifies 14 December 2007 as the date on which section 64 of the Financial Reporting Council Ordinance (Cap. 588) (FRCO) relating to voluntary revision of accounts of a non-Hong Kong company will come into operation. That is the only provision in FRCO relating to non Hong Kong companies.

12. L.N. 189 specifies 14 December 2007 as the date on which the Companies Ordinance (Amendment of Eighth Schedule) Order 2007 (L.N. 86 of 2007) will come into operation. The Amendment Order revises the fees payable to the Registrar of Companies by non-Hong Kong 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.

13. Members may refer to the Information Note on L.N. 187 issued by the Financial Services Branch, Financial Services and the Treasury Bureau (**Annex**) (File Reference: C2/1/57/1 Pt.8 CBT 15/2 of October 2007) for background information.

14. The Financial Affairs Panel has not discussed L.N. 187 - L.N. 189.

Fugitive Offenders (Malaysia) (Amendment) Order 2007 (L.N. 82 of 2007)
Fugitive Offenders (Malaysia) (Amendment) Order 2007 (Commencement)
Notice (L.N. 190)

15. This Commencement Notice specifies 1 November 2007 as the date on which the Fugitive Offenders (Malaysia) (Amendment) Order 2007 (L.N. 82 of 2007) will come into operation. The Amendment Order amends the Principal Order to implement in Hong Kong the protocol entered into by the Government of Hong Kong and the Government of Malaysia on 17 October 2006 to supplement the Bilateral Agreement on the arrangements for the surrender of fugitives signed in 1995.

16. A Subcommittee has been formed to study the Amendment Order. The Subcommittee recommended to the House Committee that the Amendment Order be supported.

17. The Panel on Security has not discussed the Commencement Notice.
18. No difficulties have been identified in relation to the legal or drafting aspects of the above items of subsidiary legislation.

Encl

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**The Legislative Council
House Committee Meeting
on 2 November 2007**

Information Note

**Companies (Amendment) Ordinance 2004
(Commencement) (No. 2) Notice 2007 (L.N. 187)**

Purpose

This paper sets out the background to the Companies (Amendment) Ordinance 2004 (Commencement) (No.2) Notice 2007 (L.N. 187) (“Notice”) which was gazetted on 18 October 2007. The Notice aims to commence those provisions in the Companies (Amendment) Ordinance 2004 (“Amendment Ordinance”) which modernise the registration system for “oversea companies”¹. Subject to the completion of the negative vetting process in the Legislative Council (“LegCo”), these provisions will come into operation on 14 December 2007.

Background

2. The Amendment Ordinance was enacted by LegCo in July 2004. It comprises three parts, namely, (a) provisions updating the prospectus regime to facilitate market development (Schedule 1 to the Amendment Ordinance); (b) provisions modernising the registration regime for overseas companies and streamlining the incorporation procedures (Schedule 2 to the Amendment Ordinance); and (c) provisions enhancing shareholders’ remedies (Schedule 3 to the Amendment Ordinance). The provisions in relation to the prospectus regime and shareholders’ remedies were commenced by commencement notices published in the Government Gazette in 2004 (L.N. 154 of 2004) and 2005 (L.N. 82 of 2005) respectively². The provisions concerning overseas companies and

¹ A company incorporated outside Hong Kong which establishes a place of business in Hong Kong is known as an overseas company in the Companies Ordinance. Overseas companies will be renamed as “non-Hong Kong companies” after the commencement of section 1 in Schedule 2 to the Companies (Amendment) Ordinance 2004.

² In addition, by the Companies (Amendment) Ordinance 2004 (Commencement) Notice 2007 (L.N. 26), the Secretary for Financial Services and the Treasury appointed 20 April 2007 as the day on which the following provisions of the Ordinance came into operation –

(a) section 3 (insofar as it relates to sections 2, 3 (insofar as it relates to the repeal of paragraph 5A of the Companies (Forms) Regulations (Cap. 32 sub. leg. B)) and 4 of Part 2 of Schedule 4);

incorporation procedures have yet to come into operation, pending the completion of necessary enhancements to the Companies Registry's ("CR") Integrated Companies Registry Information System ("ICRIS")³.

The Subject Commencement

3. The provisions concerning overseas companies include, among other things, renaming "overseas companies" in the Companies Ordinance ("CO") as "non-Hong Kong companies", introducing a requirement for a non-Hong Kong company to file a full annual return⁴ and a new service of issuing certificates of registration in respect of non-Hong Kong companies. In conjunction with these provisions, the Companies Ordinance (Amendment of Eighth Schedule) Order 2007 ("Fees Order") was made and passed by LegCo in June 2007 to restructure the existing filing fees in the Eighth Schedule for non-Hong Kong companies and to introduce a new fee for the issue of certificates of registration. The Fees Order replaces the existing filing fees concerning overseas companies with a single filing fee, and introduces a new fee for the issue of certificates of registration. Escalating fees in respect of late filing of annual returns by non-Hong Kong companies are also introduced to encourage compliance with the filing requirements under the CO and the timely disclosure of corporate information.

Implementation

4. The provisions concerning non-Hong Kong companies are planned to be implemented to tie in with the completion of the necessary enhancements to ICRIS which were required to cater for the operation of the new registration regime of non-Hong Kong companies as mentioned in paragraph 3. As sufficient time was needed to ensure the system stability of ICRIS, the relevant enhancement works to ICRIS have just been completed in August 2007. The provisions concerning non-Hong Kong companies are now ready to commence. In this connection, the Secretary for Financial Services and the Treasury ("SFST") has appointed 14 December 2007 as the date on which these

(b) sections 2, 3 (insofar as it relates to the repeal of paragraph 5A of the Companies (Forms) Regulations (Cap. 32 sub. leg. B)) and 4 of Part 2 of Schedule 4.

³ ICRIS (Phase I) has transformed the CR's core business activities into a paperless operation. Image records of paper documents are almost instantly available for public search after registration.

⁴ The Amendment Ordinance will introduce a requirement for an overseas company to file a full annual return 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. 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 the address of the principal place of business, particulars of directors etc.

provisions will come into operation. As regards the Fees Order, as mentioned in paragraph 3, since it also makes reference to “non-Hong Kong companies”, it has to commence at the same time as the above provisions concerning non-Hong Kong companies. In this regard, the Registrar of Companies has appointed the same date (i.e. 14 December 2007) on which the Fees Order will come into operation.

5. The enhancement works concerning the remaining provisions in Schedule 2 to the Amendment Ordinance on the streamlining of the incorporation procedures⁵ is expected to be completed before mid-2008. SFST will prescribe a date by notice published in the Gazette upon the completion of the enhancement work.

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

⁵ This will include the introduction of an incorporation form to replace the existing memoranda and articles of association