

LEGISLATIVE COUNCIL BRIEF
COMPANIES ORDINANCE
(AMENDMENT OF EIGHTH SCHEDULE) ORDER 2008

PURPOSE

This paper aims to brief Members on the proposal to introduce new search fees for the new incorporation forms for local companies upon the commencement of the provisions in Schedule 2 to the Companies (Amendment) Ordinance 2004 (“Amendment Ordinance”) in relation to the implementation of such incorporation forms. Legislative amendments to Part V of the Eighth Schedule¹ to the Companies Ordinance (“the Ordinance”) (Cap. 32) will be required to implement the proposed new search fees.

BACKGROUND

2. The Amendment Ordinance was enacted in July 2004 to implement, among other things, various proposals to modernise the company registration regime. Section 7 of Schedule 2 to the Amendment Ordinance, upon commencement², will introduce incorporation forms³ for a person to apply to the Registrar of Companies (“the Registrar”) for forming an incorporated company in Hong Kong. In gist, the introduction of incorporation forms aims to streamline the incorporation procedures. At present, in addition to submitting the Memorandum and Articles of Association (“M&A”) of the company, the following documents have to be submitted at the time of incorporation or shortly afterwards (except for item (a) which must be submitted with the M&A):-

¹ The Eighth Schedule to the Ordinance sets out the fees payable to the Registrar and Part V sets out those fees for inspecting, obtaining documents and records kept by the Registrar, etc.

² The relevant sections in the Amendment Ordinance are planned to commence on 11 July 2008 to tie in with the completion of the necessary modifications to the Companies Registry’s information system.

³ There will be two incorporation forms for incorporating local companies: one for companies limited by shares (Form NC1) and another for companies other than those limited by shares (Form NC1G).

- (a) Statement of Compliance on Incorporation of a Company (Form NC1A);
- (b) Notification of First Secretary and Director (Form D1); and
- (c) Notification of Situation of Registered Office (Form R1).

The information contained in items (a) to (c) above will be covered by the incorporation forms.

3. To tie in with the introduction of the incorporation forms for incorporating local companies, there is a need to specify new fees in Part V of the Eighth Schedule to the Ordinance in relation to searches conducted with respect to the forms.

PROPOSED SEARCH FEES

4. Considering that the new incorporation forms for local companies are comparable to the existing specified form on “Particulars of a Non-Hong Kong Company Registered in Hong Kong”⁴ (Form N1) in terms of contents and document size, we propose that the search fees for the new incorporation forms should be the same as those for Form N1 applicable to non-Hong Kong companies, as follows:-

	<u>Registered online users</u>	<u>Unregistered online users</u>	<u>On-site users</u>
For downloading an image record online	\$16	\$18	N/A
For online viewing of an image record	\$21	\$23	N/A
For obtaining a copy of an image record at the Companies Registry (“the Registry”)	N/A	N/A	\$30

⁴ Pursuant to sections 333(1) and 333(2) of the Companies Ordinance, any non-Hong Kong company that establishes a place of business in Hong Kong shall, within one month of the establishment of the place of business, apply to the Registrar for registration by delivering to the Registrar a specified form, i.e. Form N1, containing such particulars as the name and place of incorporation of the company and particulars of the director, secretary and authorised representative of the company.

5. The proposed fees are also set on the basis that customers on average would not pay more to the Registry than at present for obtaining similar information relating to a company. At present, a search of the particulars of a newly incorporated company generally involves separate searches of the documents listed in paragraph 2 above. The search fees for each of these documents as specified in Part V of the Eighth Schedule⁵ are:-

	<u>Registered online users</u>	<u>Unregistered online users</u>	<u>On-site users</u>
For downloading an image record online	\$9	\$10	N/A
For online viewing of an image record	\$12	\$13	N/A
For obtaining a copy of an image record at the Registry	N/A	N/A	\$20

As the incorporation forms will cover the information currently contained in three documents, the proposed search fees would be slightly cheaper for customers on average. For example, a registered online user now pays at least \$18 for information about the registered office, directors and company secretary of the company. In future, he or she would only need to pay \$16 to obtain the same information, among others, contained in the incorporation form.

THE ORDER

6. 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.

⁵ The search fees for these documents are covered under the item “any other document” in Part V of the Eighth Schedule.

7. 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 2008 (“Order”) at Annex. The main purpose of the Order is to introduce new search fees for the new incorporation forms for local companies upon the commencement of the provisions in Section 7 of Schedule 2 to the Amendment Ordinance.

PUBLIC CONSULTATION

8. On 6 March 2008, the Registry consulted its Customer Liaison Group (“CLG”) comprising representatives of the Hong Kong Association of Banks, the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Certified Public Accountants, the Law Society of Hong Kong and some principal customers of the Registry. Members of the CLG generally considered that the proposed search fees for the new incorporation forms for local companies are fair and reasonable because currently a majority of their searches on information of a particular company would involve searching two to three individual forms. They therefore did not raise objection to the proposed search fees for the new incorporation forms.

9. We also consulted the Legislative Council Panel on Financial Affairs on the proposal at its meeting on 8 April 2008. Members of the Panel raised no objection to the proposal.

IMPLICATION OF THE PROPOSAL

10. As the new incorporation forms, which contain comprehensive information/particulars in respect of a company, will save our customers from conducting separate searches on different forms for vital information relating to a newly incorporated company, we envisage that most of our customers will be paying less search fees in future. Notwithstanding this, we expect that the overall impact on the revenue of the Companies Registry Trading Fund will be immaterial.

LEGISLATIVE TIMETABLE

11. The Order and the relevant provisions concerning the new incorporation forms for local companies, among others, in the Amendment Ordinance are planned to come into effect on 11 July 2008 to tie in with the completion of the necessary modifications to the Registry's information system. The Order and relevant commencement notices will be published in the Gazette on 16 May 2008 and tabled in the Legislative Council for negative vetting on 21 May 2008.

PUBLICITY

12. A press release will be issued on 16 May 2008 and a spokesman will be available to handle enquiries.

SUBJECT OFFICER

13. Enquiries of this brief should be addressed to Miss Carol Or, Assistant Secretary for Financial Services and the Treasury (Financial Services) (telephone number: 2528 9077).

**Financial Services Branch
Financial Services and the Treasury Bureau
May 2008**

**COMPANIES ORDINANCE (AMENDMENT OF
EIGHTH SCHEDULE) ORDER 2008**

(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 11 July 2008.

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

Part V of the Eighth Schedule to the Companies Ordinance (Cap. 32) is
amended –

- (a) in paragraph (c)(i)(B), by adding –
- | | | | |
|---------------|------|------|--------------|
| “(IV) each | \$18 | \$16 | Not |
| incorporation | | | applicable”; |
| form | | | |
- (b) in paragraph (c)(ii)(B), by adding –
- | | | | |
|---------------|------------|------------|--------|
| “(IV) each | Not | Not | \$30”; |
| incorporation | applicable | applicable | |
| form | | | |
- (c) in paragraph (c)(iii)(B), by adding –
- | | | | |
|---------------|------|------|--------------|
| “(IV) each | \$23 | \$21 | Not |
| incorporation | | | applicable”. |
| form | | | |

Secretary for Financial Services and
the Treasury

7 May 2008

Explanatory Note

This Order amends Part V of the Eighth Schedule to the Companies Ordinance (Cap. 32) to add the following fees –

- (a) the fees for obtaining, by way of downloading through on-line medium, an image record of an incorporation form (as referred to in section 14A(1) of the Ordinance) kept by the Registrar of Companies;
- (b) the fee for inspecting and obtaining, at the office for the registration of companies, a copy of an image record of an incorporation form kept by the Registrar of Companies; and
- (c) the fees for on-line inspection of, and obtaining, an image record of an incorporation form kept by the Registrar of Companies.