

For discussion
on 1 March 2012

Legislative Council Panel on Financial Affairs

Proposal to abolish capital duty levied on Hong Kong companies

PURPOSE

This paper briefs Members on the proposal in the 2012-13 Budget to abolish capital duty currently levied on Hong Kong companies that have a share capital under the Companies Ordinance (Cap 32) (CO).

PROPOSAL

2. We propose that an Order be made by the Secretary for Financial Services and the Treasury to amend the Eighth Schedule to the CO to abolish capital duty with effect from 1 June 2012. We will also move Committee Stage Amendments (CSAs) to the Companies Bill (CB) currently being scrutinised by a Legislative Council (LegCo) Bills Committee so as to remove the provisions that impose capital duty.

JUSTIFICATIONS

3. At present, section 304(1) of the CO enables the Registrar of Companies to collect fees as set out in the Eighth Schedule. Under the Eighth Schedule, a local company having a share capital has to pay an *ad valorem* charge at a rate of \$1 for every \$1,000 or part thereof (but subject to a cap of \$30,000 per case) on –

- (a) the amount of its nominal share capital on its incorporation;
- (b) the increase in the amount of its nominal share capital after its incorporation; and
- (c) the amount of premium when its shares are issued at a premium.

The above *ad valorem* charges are collectively known as “capital duty”, details of which are set out in items (a), (b) and (c)(ii) of Part I of the Eighth Schedule (see **Annex A**).

4. Under the CB, the amount of the capital duty will be calculated according to the amount of “issued share capital”¹ instead of “nominal share capital” as the notion of nominal value of shares will be abolished under the CB. The main relevant provisions in the CB are –

- (a) clause 62(1)(c), which requires the payment of capital duty based on the amount of proposed share capital upon formation of a company;
- (b) clause 137(3), which levies capital duty for registering an increase in the company’s issued share capital as a result of an allotment; and
- (c) clause 166(3), which levies capital duty for registering an increase in the company’s issued share capital as a result of alteration of share capital.

5. The Financial Secretary announced in the 2012-13 Budget Speech on 1 February 2012 a proposal to abolish capital duty levied on local companies. This is to encourage investors to set up companies in Hong Kong to raise capital and expand their business, thereby enhancing Hong Kong’s competitiveness as a corporate domicile.

Considerations

6. In other comparable common law jurisdictions such as the United Kingdom, Singapore, Australia and New Zealand, no similar duties are levied on companies’ share capital.

7. The attractiveness of Hong Kong as a company domicile will be enhanced if we abolish the capital duty on local companies under the CO and the CB. This will reduce the costs of incorporation and subsequent fund-raising activities through issuance of new shares. It will also bring Hong Kong in line with international practice, and improve our competitiveness as an international business centre.

¹ The rate was intended to be at the same rate as the current capital duty, i.e. \$1 for every \$1,000 or part thereof, and capped at \$30,000 per case.

LEGISLATIVE PROPOSALS

CO

8. We propose that an Order be made by the Secretary for Financial Services and the Treasury pursuant to section 360(3A) of the CO to amend the Eighth Schedule, with a view to effecting abolition of capital duty with effect from 1 June 2012.

9. Specifically, the Order will amend items (a), (b) and (c)(ii) of Part I of the Eighth Schedule such that the relevant fees payable will be reduced to \$0. The amendments will be applicable to companies which lodge the relevant documents about incorporation, increase in nominal share capital or issuing of shares at a premium with the Companies Registry on or after 1 June 2012.

10. The proposed legislative timetable is as follows –

Publication of the Order in the Gazette	16 March 2012
Tabling of the Order in the LegCo for negative vetting	21 March 2012
Commencement of the Order	1 June 2012

CB

11. To give effect to the abolition of capital duty under the CB, we will propose CSAs to remove the relevant provisions that provide for capital duty to be levied.

REVENUE IMPLICATOINS

12. The average annual revenue from capital duty from 2008-09 to 2010-11 was \$89.7 million. The breakdown is at **Annex B**. It is estimated that the abolition of capital duty would cost the general revenue around \$90 million a year.

ADVICE SOUGHT

13. Members' advice is invited on the proposed legislative proposals as set out in paragraphs 8 to 11 above.

**Financial Services and the Treasury Bureau
23 February 2012**

Chapter: 32 Title: COMPANIES ORDINANCE
Schedule: 8 Heading: **TABLE OF FEES TO BE PAID TO THE REGISTRAR OF COMPANIES**

EIGHTH SCHEDULE [sections 19, 48B, 49A, 168R,
177, 304, 318 & 360]
(Amended 28 of 2003 s. 116)

I.-BY A COMPANY HAVING A SHARE CAPITAL

- (a) for registration of company (Amended 28 of 1990 s. 2) \$1425
And, in addition, for every \$1000 or part of \$1000 of the nominal share capital (subject to the amount of the fee so calculated not exceeding \$30000) (Amended 20 of 1983 s. 2; L.N. 135 of 1996) \$ 1
- (aa) lodgment fee to be paid on delivery of the incorporation form under section 15 (Added L.N. 11 of 1996. Amended 30 of 2004 s. 2) \$ 295
- (b) for registration of every increase in nominal share capital made after the first registration of any company, for every \$1000 or part of \$1000 of such increase (subject to the amount of the fee so calculated not exceeding \$30000) (Amended 20 of 1983 s. 2; L.N. 135 of 1996) \$ 1
Provided that where a company has paid an additional fee under paragraph (c)(ii) in respect of shares allotted at a premium, no fee shall be payable under this paragraph in respect of any increase in the nominal share capital of that company where such increase is made for the purpose of capitalizing the whole or any part of that premium and is applied to that purpose. \$ 4
And, in addition, in the case of a company having on the 1 June 1955 a nominal share capital in excess of \$3000000, on the first such increase after the said date, for every \$1000 or part of \$1000 of such excess nominal share capital as remains unissued immediately before such increase
- (ba) in the case of a company having on the 1st day of June, 1955 a nominal share capital in excess of \$3000000, for every \$1000 or part of \$1000 of such excess nominal share capital as remains unissued as at the date of payment of this fee \$ 4
The fee under this paragraph shall be paid on or before the 1st day of January, 1977:
Provided that no fee shall be payable under this paragraph by a company which has increased its nominal share capital and paid the additional fee under paragraph (b). (Added 4 of 1976 s. 4. Amended 81 of 1976 s. 6)

- (c) for registration of a return of allotments-
 - (i) in the case of a company having on 1 June 1955 a nominal share capital in excess of \$3000000, for every \$1000 or part of \$1000 of such excess nominal share capital allotted after the said date \$ 4
 Provided that no additional fee shall be payable under this subparagraph by a company which has paid the additional fee under paragraph (b) or (ba);
 - (ii) in the case of company which allots shares at a premium, whether for cash or otherwise, for every \$1000 or part of \$1000 of the aggregate amount or value of the premiums paid or payable on such shares (subject to the amount of the fee so calculated not exceeding \$30000) (Replaced L.N. 11 of 1996. Amended L.N. 135 of 1996) \$ 1
- (ca) for registration of a prospectus under section 38D or 342C (Replaced 86 of 1992 s. 19) \$1415
- (d) for registration of any existing company, except such companies as are by this Ordinance exempted from payment of fees in respect of registration under this Ordinance, the same fee as is charged for the registration of a new company.

...

Receipts of capital duty from 2008-09 to 2010-11

Item	Financial year	2008-09 \$(m)	2009-10 \$(m)	2010-11 \$(m)
• For nominal share capital upon incorporation		26.3	29.4	41.6
• Increase of nominal share capital		39.0	41.1	51.7
• Share premium		13.3	11.2	15.4
Total		78.6	81.7	108.7