

**LEGISLATIVE COUNCIL BRIEF**

Companies Ordinance (Chapter 32)

**COMPANIES ORDINANCE (AMENDMENT OF EIGHTH SCHEDULE) ORDER 2012**

**INTRODUCTION**

Pursuant to section 360(3A) of the Companies Ordinance (Cap 32) (CO), the Secretary for Financial Services and the Treasury has made the Companies Ordinance (Amendment of Eighth Schedule) Order 2012 (the Order) at Annex to reduce capital duty to \$0 with effect from 1 June 2012.

**JUSTIFICATIONS**

2. Section 304(1) of the CO enables the Registrar of Companies (the Registrar) to collect fees as set out in the Eighth Schedule to the CO. Under the Eighth Schedule, a local company having a share capital has to pay an *ad valorem* fee 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 for its registration as a company;
- (b) the increase in the amount of its nominal share capital after its incorporation; and
- (c) the amount of premiums if its shares are issued at a premium.

The above *ad valorem* fees are collectively referred to as “capital duty” generally, details of which are set out respectively in paragraphs (a), (b) and (c)(ii) of Part I of the Eighth Schedule.

3. Section 360(3A) provides that the Financial Secretary (which by virtue of section 3 of the Interpretation and General Clauses Ordinance (Cap 1) also includes the Secretary for Financial Services and the Treasury) may, by order published in the Gazette, amend the table of fees in the Eighth Schedule.

4. 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.

5. 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. The abolition of capital duty will bring Hong Kong in line with international practice, and improve our competitiveness as an international business centre.

## **THE ORDER**

6. The main provisions of the Order are set out below –

- (a) section 1 provides that the Order comes into operation on 1 June 2012;
- (b) section 3(1), (2) and (4) substitutes the current *ad valorem* fee of "\$1" in paragraphs (a), (b) and (c)(ii) of Part I of the Eighth Schedule by "\$0";
- (c) section 3(3) rectifies a minor textual error by replacing “分配申報表” (corresponding to “return of allotment”) by “分配申報書” in the Chinese text of paragraph (c) of Part I of the Eighth Schedule; and
- (d) section 5 provides for the application of the Order, i.e. the amendments will be applicable to companies which lodge the relevant documents with the Registrar for registration of a company, increase in nominal share capital or issuing of shares at a premium on or after 1 June 2012.

## **LEGISLATIVE TIMETABLE**

7. The legislative timetable of the Order is as follows –

Publication in the Gazette	16 March 2012
Tabling at the Legislative Council (LegCo) for negative vetting	21 March 2012
Commencement	1 June 2012

## **IMPLICATIONS OF THE PROPOSAL**

8. The Order is in conformity with the Basic Law, including the provisions concerning human rights. It does not have any productivity, environmental or civil service implications. The average annual revenue from capital duty from 2008-09 to 2010-11 was \$89.7 million. It is estimated that the abolition of capital duty would cost the general revenue around \$90 million a year. The abolition of capital duty will enhance Hong Kong's competitiveness as an international business centre.

## **PUBLIC CONSULTATION**

9. The LegCo Panel on Financial Affairs was consulted on 2 March 2012 and supported the proposal.

## **PUBLICITY**

10. A press release will be issued when the Order is published in the Gazette on 16 March 2012. A spokesperson will be available to handle enquiries.

## **ENQUIRIES**

11. For enquires on this brief, please contact Mr Maurice LOO, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2528 9016.

**Financial Services Branch  
Financial Services and the Treasury Bureau  
14 March 2012**

## Companies Ordinance (Amendment of Eighth Schedule) Order 2012

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

1. **Commencement**  
This Order comes into operation on 1 June 2012.
2. **Companies Ordinance amended**  
The Companies Ordinance (Cap. 32) is amended as set out in section 3.
3. **Eighth Schedule amended (table of fees to be paid to the Registrar of Companies)**
  - (1) Eighth Schedule, Part I, paragraph (a)—  
**Repeal**  
“\$1”  
**Substitute**  
“\$0”.
  - (2) Eighth Schedule, Part I, paragraph (b)—  
**Repeal**  
“\$1”  
**Substitute**  
“\$0”.
  - (3) Eighth Schedule, Chinese text, Part I, paragraph (c)—  
**Repeal**  
“分配申報表”  
**Substitute**  
“分配申報書”.

- (4) Eighth Schedule, Part I, paragraph (c)(ii)—  
**Repeal**  
“\$1”  
**Substitute**  
“\$0”.
- (5) Eighth Schedule, at the end of Part I—  
**Add**  
“Application—  
Paragraphs (a), (b) and (c)(ii), as amended by the Companies Ordinance (Amendment of Eighth Schedule) Order 2012, apply to the registration of a company, the registration of an increase in nominal share capital or the registration of a return of allotments if—
  - (a) in the case of paragraph (a), the relevant incorporation form is delivered, or the relevant application for registration is made, to the Registrar on or after 1 June 2012;
  - (b) in the case of paragraph (b), the relevant notice of increase in nominal share capital is given to the Registrar on or after 1 June 2012; or
  - (c) in the case of paragraph (c)(ii), the relevant return of allotments is delivered to the Registrar on or after 1 June 2012.”.



Secretary for Financial Services and  
the Treasury

7 March 2012

**Explanatory Note**

This Order amends Part I of the Eighth Schedule to the Companies Ordinance (Cap. 32) to give effect to the proposal concerning ad valorem fees in relation to share capital in the Budget introduced by the Government for the 2012–2013 financial year.

2. Paragraphs (a), (b) and (c)(ii) of that Part are amended so that the following fees are reduced to \$0—
  - (a) the ad valorem fee in relation to nominal share capital under paragraph (a) of that Part;
  - (b) the ad valorem fee in relation to an increase in nominal share capital under paragraph (b) of that Part;
  - (c) the ad valorem fee in relation to an allotment of shares at a premium under paragraph (c)(ii) of that Part.
3. This Order also corrects a minor textual error in the Chinese text of paragraph (c) of that Part.