

DEACONS
的近律師行

Setting up a business in Hong Kong



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As indicated in this brochure, we can arrange for our service companies to provide company secretarial and registered office services. The corporate services which our Corporate Services Team can provide are discussed in more detail in Part D.

This brochure is based on law and practice as at August 2021 and rates of taxation are those for the year of assessment 2020/2021.

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A Introduction

1 General

- 1.1 A foreign company wishing to carry on business in the Hong Kong Special Administrative Region (Hong Kong) may do so by either incorporating a Hong Kong company or registering a branch of that foreign company in Hong Kong. (The process by which a Hong Kong company is set up is the same whether the incorporator is a foreign company, a Hong Kong company, an individual or other legal entity.) The relevant government authority is the Registrar of Companies (Registrar).
- 1.2 The purpose of this publication is to assist our clients in setting up and maintaining a business in Hong Kong through a Hong Kong (see Part B) or a foreign (see Part C) company.
- 1.3 Some of the issues which arise in connection with doing business in Hong Kong, such as registration with the revenue authorities and compliance with visa requirements, involve similar considerations whether the business is to be operated as a separate Hong Kong company or as a branch operation. These issues have accordingly been dealt with generally (see Part A, paragraph 3 and Part F respectively).
- 1.4 Other issues, such as the method of registration of the relevant entity, differ greatly depending on whether the client wishes to incorporate a Hong Kong company or register a branch operation and have been dealt with separately. Accordingly, those readers who are only interested in setting up a Hong Kong company need not refer to Part C and, likewise, those who have decided to set up a branch may disregard Part B.

2 Branch or subsidiary

- 2.1 The differences between a Hong Kong branch and a Hong Kong subsidiary of a foreign company stem from the fact that, unlike a branch, a subsidiary is an entity which, under Hong Kong law, is entirely separate from its parent. The business activities available to a company in Hong Kong are generally not dependent upon whether the company is locally incorporated and there is generally little practical difference between operating a branch and a subsidiary company in respect of profit computation. The rate of tax levied on profits is the same for local and foreign companies and dividends are generally not taxable in Hong Kong.
- 2.2 The usual reasons for preferring a subsidiary over a branch include the following:
- (1) parent company will not be liable for the debts of its subsidiary; its legal liability will be limited to the amount of any unpaid issued share capital and its potential loss will therefore be limited (in the absence of a guarantee or other security) to the value of any assets it contributes by way of capital to the company;
 - (2) only that information which relates to the subsidiary must be filed with the Registrar and kept up to date;
 - (3) a subsidiary does not need to file its accounts on the public record whereas in some cases a foreign company will need to (see Part C, paragraph 3.2);
 - (4) the presence of a branch in Hong Kong makes it more likely that the “parent” company would be sued in Hong Kong even in connection with matters unrelated to its business operations there;
 - (5) it is usually simpler and more cost effective to set up a Hong Kong company than it is a Hong Kong branch;
 - (6) where the constitutional documentation in relation to the “parent” company is not in English or Chinese, this will not require translation if a local company is incorporated, whereas in the case of a branch it will require translation; and
 - (7) it is not necessary to arrange for certified copies of any documents to incorporate a Hong Kong company whereas in the case of a branch it is so necessary.

- 2.3 On the other hand, the usual reasons for preferring a branch over a subsidiary include the following:
- (1) there may be tax advantages under the tax laws of the place of incorporation of the “parent”, in particular, in relation to the treatment of any losses which the Hong Kong operations may incur in the first few years of its operation (such as by way of group loss provisions);
 - (2) a branch can often rely on the credit of the “parent” company;
 - (3) if business operations are terminated in Hong Kong, the lengthy liquidation process required for a Hong Kong company can be avoided and any capital can simply be remitted out of Hong Kong;
 - (4) no stamp duty (except in relation to any land or any shares in Hong Kong companies owned by the foreign company) will be payable on any transfer of the Hong Kong business operated by a foreign company, whereas stamp duty will generally be payable on any transfer of shares in a Hong Kong subsidiary company (see Part E, paragraph 5.1); and
 - (5) the ongoing maintenance expenses involved with a branch can be lower than those involved with a subsidiary, in particular, as Hong Kong law does not require the separate audit of a branch.

3 Business registration

- 3.1 The Business Registration Ordinance requires that every business in Hong Kong must register with the Business Registration Office. This is effected by the issuance of a business registration certificate in respect of each location from which the business is conducted. The certificate must be displayed on the premises. A business registration certificate is valid for 1 year unless an election has been made for a 3-year certificate. The current annual fee and levy for the issue of the 1-year certificate is HK\$2,250 and the 3-year certificate is HK\$5,950. Normally, a new business registration certificate can be issued immediately upon application and payment of the required fee and levy.
- 3.2 Registration with the Business Registration Office amounts to notification to the Commissioner of Inland Revenue (Commissioner) that a business, which may be subject to the payment of profits tax (see Part E, paragraph 4), has been established. It does not mean that any actual profits tax liability exists or is acknowledged.
- 3.3 All Hong Kong companies and foreign companies which have branches registered in Hong Kong are deemed to be carrying on business in Hong Kong and must register under the Business Registration Ordinance at the same time when submitting application to the Registrar for incorporation of a Hong Kong company or registration of a branch of a foreign company.
- 3.4 The particulars registered with the Business Registration Office are available for public inspection and any change in the registered particulars must be notified to the Business Registration Office within 1 month.
- 3.5 The Business Registration Ordinance is Hong Kong’s de facto tax registration statute. All companies, foreign companies, branches, permanent establishments, etc. registered under the Ordinance will in practice be issued with a tax return, notwithstanding that they may not at law be taxable in Hong Kong, generally within 18 months of registration.

4 Registration of charges

- 4.1 Both Hong Kong companies and foreign companies with Hong Kong branches (see Part C, paragraph 2.1) must file (with the Registrar) the particulars of any registrable charge:
- (1) given by the company over its assets; or
 - (2) existing over assets acquired by the company
- normally within 1 month of the creation of the charge or the acquisition of such assets, respectively.
- 4.2 Generally speaking, those charges requiring registration include floating charges and charges over land, ships, goodwill, book debts, trademarks and patents and other tangible assets. Foreign companies are only required to register charges over relevant assets located in Hong Kong or which come into Hong Kong.
- 4.3 All companies are required to keep a register of charges over their assets (whether they are registrable charges or not) containing short particulars of the assets charged and the amount secured. In the case of foreign companies, this is limited to assets located in Hong Kong or which come into Hong Kong. Further, all companies are required to keep copies of registered charges. The register of charges must be open for inspection by anyone whereas copies of registered charges are available to members and creditors only.
- 4.4 Charges requiring registration which are not registered are generally void against a liquidator of a company in a winding-up and against other creditors. For this reason a person taking the benefit of a charge will usually take steps to ensure that the charge is registered if it is required to be.

5 Additional licences and consents

- 5.1 Certain businesses may not be carried on in Hong Kong without a specific licence or other consent to do so from the relevant regulatory authority, in addition to the corporate requirements set out in this brochure. These businesses include banking, deposit-taking, money-lending, securities and commodities dealing and advising, leveraged foreign exchange trading and insurance. A discussion of the relevant requirements for these businesses is beyond the scope of this brochure but before commencing to operate any such business, specific professional advice should be obtained.

6 Prospectuses

- 6.1 The Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Securities and Futures Ordinance contain extensive provisions in relation to the issue and distribution of prospectuses in Hong Kong concerning shares in or debentures of companies, whether the company is registered in Hong Kong or not. Advice in this regard is available upon request.

B Hong Kong companies

1 Introduction

Private companies

- 1.1 Companies incorporated in Hong Kong can be public or private and can be limited by shares or by guarantee. Most companies limited by guarantee are set up by non-profit organisations and most public companies are listed on the Hong Kong stock exchange.

1.2 The appropriate vehicle for a business which wants to:

- (1) limit its liability;
- (2) obtain private funding only; and
- (3) generate financial returns for its shareholders

is a private company limited by shares. The great majority of companies in Hong Kong are private companies limited by shares and in this brochure we limit our discussion accordingly.

Characteristics

1.3 A private company is a company which, in its articles of association:

- (1) restricts the right to transfer its shares;
- (2) limits the number of its members to 50 (excluding employees); and
- (3) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Liability of shareholders

1.4 The liability of each member of a company is limited to the amount (if any) unpaid on the shares held by that particular member. Accordingly, if the company becomes insolvent and is wound up, the shareholders stand to lose their agreed investment in the company only, and need not make any further contribution to meet the company's liabilities.

Ongoing maintenance obligations

1.5 The ongoing maintenance obligations relating to a Hong Kong company are set out in detail later in this chapter. These obligations can be divided into annual obligations and those obligations which only arise where there has been a change in relation to the corporate structure and other matters (see Part B, paragraph 4 and Part B, paragraph 5, respectively). Where a company becomes dormant, it will not be necessary for the company to comply with these annual obligations (see Part B, paragraph 7).

Pre-incorporation contracts

1.6 Any person who purports to enter into a contract in the name of or on behalf of a company which has not yet been incorporated will be personally liable for that contract. The contract may be ratified by the company after incorporation (in which case the person will no longer be personally liable) but this situation has become largely non-existent as same day incorporation via electronic filing is now possible.

Significant controllers register

1.7 Pursuant to the Companies (Amendment) Ordinance 2018 which came into operation on 1 March 2018, every company incorporated in Hong Kong (except listed companies) must:

- (1) keep a significant controllers register (SCR) at its registered office or a prescribed place;
- (2) take reasonable steps (including giving notices) to identify its significant controllers, and obtain their particulars for entry in the SCR;
- (3) enter significant controllers' particulars in the SCR;
- (4) keep the SCR up-to-date; and
- (5) make the SCR available for inspection and taking of copies by the significant controllers whose names have been entered therein, and by law enforcement officers.

- 1.8 Significant controllers include:
- (1) a “registrable person”, being a natural person or government or local authority or an international organisation who meets any one or more of the conditions set out below; and
 - (2) a “registrable legal entity”, being a local or an overseas entity which is a member of the company and meets one or more of the Conditions.
- 1.9 Conditions for significant control over a company:
- (1) The person holds, directly or indirectly, more than 25% of the issued shares in the company or, if the company does not have a share capital, the person holds, directly or indirectly, a right to share in more than 25% of the capital or profits of the company.
 - (2) The person holds, directly or indirectly, more than 25% of the voting rights of the company.
 - (3) The person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company.
 - (4) The person has the right to exercise, or actually exercises, significant influence or control over the company.
 - (5) The person has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company.

We will be happy to answer any questions you may have and help with your company's compliance with this new regime.

2 Incorporation of a company

General

- 2.1 The incorporation of a private company in Hong Kong requires at least 1 shareholder. Under the current Companies Ordinance (CO), a Hong Kong company is only required to have the articles of association. There is no longer a requirement to keep a memorandum of association. After the constitutional documents are filed with (and an Incorporation Form is submitted to) the Registrar, the Registrar will issue a certificate of incorporation certifying the name and the date of incorporation of the company.

Name

- 2.2 A company can be incorporated with any name (except for names which are the same as existing company name and names which are expressly prohibited). The Registrar has the power to require a company to change its name, including where the name gives so misleading an indication of the nature of the company's activities in Hong Kong as to be likely to cause harm to the public or it is too like another name of an organisation established in Hong Kong under any ordinance at the time of registration.
- 2.3 A company may be incorporated with either an English name or a Chinese name or both. Where a company is incorporated with an English and a Chinese name so that both names appear on the certificate of incorporation, the two names together constitute the full formal name of the company must be stated in the Articles of Association. The common seal of the company may be engraved with only its English name or Chinese name (also see Part B, paragraph 3.18); and the company may choose to display or state just the English name or the Chinese name, or both the English name and Chinese name in the registered office, every business venue, communication documents, transaction

instruments and on any website of the company. If both an English and a Chinese name are to be used, it is worth considering the meaning of the name in both languages and ensuring that the translation from the primary to the secondary language is well done. The secondary name may be a translation or a transliteration of the primary name or wholly unconnected with it.

Shareholders

- 2.4 Every company must have at least 1 registered shareholder. There is no requirement that a shareholder be resident in Hong Kong. Any legal entity can be a shareholder in a company, including a company, receiver, liquidator or sole proprietor.
- 2.5 In order to save time, we can incorporate companies with one of our nominee companies acting as founder member. The first share is usually transferred to one of the ultimate shareholders or their nominees after incorporation.

Articles of association

- 2.6 Under the CO, it is optional for a company to state its objects in its articles. However, if the objects are stated, they will limit the company's powers and shareholders may restrain the company in acting outside of the scope of its objects. As the exception to the general rule, companies incorporated to promote charitable and similar objects, and which have been authorised to dispense with the use of the word "Limited" in their name, must provide a description of their objects and powers.
- 2.7 The articles of association are the regulations (or bye-laws) of the company. They may follow a standard form, incorporating the regulations contained in the Model Articles of the CO or a more detailed version which excludes the Model Articles and contains all the regulations in the articles themselves, or a combination of the two. Unless expressly excluded, the provisions of the articles of association in the Model Articles will apply.
- 2.8 In general, companies incorporated by our firm are incorporated with detailed articles rather than the Model Articles. Articles may include a wide range of special provisions to meet individual situations, such as special classes of shares and pre-emption rights on the transfer of shares.

Initial share capital

- 2.9 Under the CO, the concepts of "authorised share capital" and "par value" have been abolished. As a result, there is no longer a need to state the same in a company's articles. It is optional for a company to state the maximum number of shares that it may issue in its articles.
- 2.10 There is no minimum share capital required. It is common for companies to start with a share capital of HK\$1,000 or HK\$10,000. The capital can, however, be denominated in any currency and there are no legal prohibitions on a company having a multi-currency capital structure, although in practice this can be quite cumbersome.
- 2.11 The share capital may be divided into different types or classes of shares, including preference shares. A company may also have shares carrying differing rights.
- 2.12 At least 1 founder member's share must be issued on the incorporation of a company, and the share capital can be further increased in accordance with the company's capital requirements.
- 2.13 Shares may be allotted for cash, services or other consideration such as the transfer of property. As a result of the abolition of par value, there is no nominal price at which to issue shares. If a company's articles of association permit, shares may also be issued as redeemable shares.

Registered office

- 2.14 Each Hong Kong company must have a registered office in Hong Kong to which all official communications and notices (including service of process) may be addressed. The address of the registered office of a new company must be stated in the Incorporation Form filed at the Companies Registry for incorporation. Our address may be used as the registered office address when we also provide company secretarial services to the company (see Part D, paragraph 3).

Timing/shelf companies

- 2.15 It is possible to set up a new company within a relatively short time but some of our clients prefer to acquire a “shelf” company (a company which has already been incorporated using our standard form articles of association). The main advantage in acquiring a shelf company is that it is not necessary to wait for the Registrar to process the incorporation, which usually takes about 4 working days unless it is processed via e-filing with which same day incorporation is possible. Once acquired, the name and/or the articles of association of the shelf company can be changed if the client so desires (see Part B, paragraphs 5.2 to 5.3 and Part B, paragraph 5.6 respectively). A company can be incorporated on same day by e-filing provided that our service company is the founder member.

Fees

- 2.16 We can provide, on request, details of the costs involved in incorporating a new company or acquiring a shelf company. Our standard charges include:

- (1) legal expenses;
- (2) filing and other government fees;
- (3) business registration certificate (see Part A, paragraph 3);
- (4) printing charges;
- (5) statutory books (share register, minute book, etc.); and
- (6) common seal

and in either case are based on the adoption of standard form articles of association. Our standard charges do not include the items listed below as post-incorporation matters as these are charged for separately on a time-spent or item basis.

3 Post-incorporation matters and general requirements

Directors

- 3.1 Hong Kong private companies must have at least 1 individual director. The directors need not be resident in Hong Kong. Anyone who is over the age of 18 may, subject to certain exceptions, be appointed as a director. Corporate directors may be appointed in the case of a private company, unless the company is a member of a group of companies of which a Hong Kong listed company is a member. Where a private company has only 1 shareholder and that shareholder is the sole director of the company, the company may nominate a person over the age of 18 as a reserve director to act in the place of the sole director in the event of the latter's death.
- 3.2 The particulars of the directors (which as a matter of practice includes alternate directors) and reserve director of a company must be filed with the Registrar within 15 days of their appointment/nomination.

- 3.3 Directors must disclose to the other members of the board as soon as possible the nature and extent of any material interest, direct or indirect, which they may have in any contract, transaction or arrangement or proposed contract, transaction or arrangement with the company which is significant in relation to the company's business. If a director fails to do so, that director may be accountable to the company for any profit he or she makes from that contract, also the director can be subject to a default fine. In certain circumstances the contract may also be voidable at the option of the company. Generally a director may not vote at, or be counted towards the quorum of, a meeting to discuss the matter in which he is interested although often this is relaxed in the articles of associations. Where any general interests exist (for example, where the director is a director or shareholder of other companies), it is common for a general disclosure to be made at the first meeting of the directors after the appointment of the relevant director or as soon as possible.
- 3.4 A director may normally be removed by an ordinary resolution of the company even where there is an agreement, or there is a provision in the articles of association, to the contrary. The removal of a director under this statutory power entails certain procedures designed to allow the director to make representations against the proposed removal. The articles of association may also expressly provide for the removal of directors in other ways. Removal of a director contrary to an agreement with the company may give rise to a claim by the director against the company.

Issuing shares

- 3.5 The issuing of new shares in a company is generally a three-step process involving the members' mandate to the directors to issue shares (see paragraph 3.6 below), allotment by the directors of the shares to particular persons and then the issuance of the share certificates to such persons after their particulars as members are entered into the company's register of shareholders.
- 3.6 Allotments of shares, other than allotments pursuant to offers to existing shareholders pro rata to their existing holdings, may only be made with the prior approval of the shareholders in general meeting. This approval may be given either in relation to a particular allotment or allotments or generally. In either case this shareholder approval expires (if not previously revoked by the company in general meeting) when the next annual general meeting of the company is held or ought to be held or until the expiration of the period of 12 months from the date of the said approval if annual general meeting is not required by law to be held by the company.
- 3.7 A return of allotment of shares, disclosing the members and their shareholdings must be filed with the Registrar within 1 month of the date of the allotment. If this time limit is not met, the Registrar will usually refuse to accept the return of allotments for filing and an application will have to be made to the court for leave to file the return out of time.
- 3.8 A share may be beneficially owned by someone other than the registered holder. In the case of a private company, it is not normally necessary for the identity of the beneficial owner to be revealed to the company or to any authority or to be a matter of public record, although a subsidiary is required to state in its accounts the name of its ultimate holding company.

Alteration of share capital

- 3.9 In addition to the issue of new shares mentioned above, a company may alter its share capital in any one or more of the following ways:
- (1) increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;
 - (2) capitalise its profits, with or without allotting and issuing new shares;

- (3) allot and issue bonus shares with or without increasing its share capital;
- (4) convert all or any of its shares into a larger or smaller number of shares; and
- (5) cancel shares –
 - (a) that, at the date the resolution for cancellation is passed, have not been taken or agreed to be taken by any person; or
 - (b) that have been forfeited.

Secretary

- 3.10 Each Hong Kong company must have a secretary who or which is resident in Hong Kong. If the company has a sole director, that person cannot also be the secretary of the company. The particulars of the secretary must be filed with the Registrar within 15 days of the appointment of the secretary. The secretary's responsibilities include keeping a register of the company's members, directors, charges and the company's minutes.
- 3.11 Our firm can provide secretarial services (see Part D, paragraph 3) and use of our address as the registered office address of the company (see Part B, paragraph 2.14).

Auditors and books of account

- 3.12 A Hong Kong company must keep proper books of account and have the accounts audited annually by Hong Kong registered auditors. It is advisable for the auditors to be appointed as soon as practicable after incorporation, especially where advice is required on accounting systems and the like. The first auditors are generally appointed by the directors. The appointment of auditors is normally reconfirmed at each annual general meeting. Auditors may be removed by an ordinary resolution of the shareholders. (Most of the large international accounting firms have offices in Hong Kong and can act as auditors. There are also many reputable and competent local accounting firms.)
- 3.13 The books of account must be open to inspection by the directors at all times. If the books are kept outside Hong Kong, certain accounts, returns and other information must be sent to and kept in Hong Kong for inspection by the directors, at least once every 6 months. The board has the power to decide where the books of account are kept, or where the accounts, records and other information are to be sent. A company must keep its books of account for at least 7 years.

Bankers

- 3.14 After a company is incorporated it may open bank accounts in Hong Kong and elsewhere. A directors' resolution will usually be required to authorise the opening of each account and to authorise signatories to operate that account. Most banks have standard form resolutions which they require to be passed in connection with the opening of any account.
- 3.15 It is important to ensure that the company's cheques and other financial instruments include the name of the company in full. It should also be made clear on the face of the instrument that any individual signatory signs "for and on behalf of" the company to avoid any personal liability on the part of the signatory.

Financial year

- 3.16 The financial year end of the company should be determined, and any change in the financial year end authorised, by a directors' resolution.

Business registration

- 3.17 All Hong Kong companies must register under the Business Registration Ordinance (see Part A, paragraph 3).

Seals and chops

- 3.18 Under the CO, it is optional for a company to keep a common seal. If a seal is required for use outside Hong Kong, an official seal may be adopted if the company has a common seal. The CO does not require the use of the official seal outside Hong Kong to be authorised by the company's articles and objects.
- 3.19 As a matter of practice, many authorities in Hong Kong, in particular governmental and other regulatory authorities, expect a signature on behalf of a company to be accompanied by the imprint of a rubber stamp or "chop" showing the name of the company and some words indicating the authority of the signatory. There is, however, no legal requirement for such chops.

4 Maintenance – annual requirements

Annual accounts/directors' report

- 4.1 A profit and loss account and a balance sheet for the company must be audited by Hong Kong registered auditors and laid before the shareholders in annual general meeting (if it is required by law to be held). There are lengthy and detailed provisions in the CO regarding the types of accounts to be prepared and we can supply further details on request. Generally, Hong Kong private companies having a share capital are not required to file their accounts with the Registrar.
- 4.2 A directors' report must be prepared in conjunction with the annual accounts. The CO provides a list of what this report should contain and this list includes details of contracts with the company or certain companies with which it is associated which are significant in relation to the company's business and in which any director has a material interest.

Annual general meeting

- 4.3 Unless otherwise exempted or required under the CO and a company's articles of association, a company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting within 9 months after the end of the accounting reference period by reference to which the company's financial year is determined (or if the accounting reference period is the company's first accounting reference period and is longer than 12 months, within 9 months after the anniversary of the incorporation of the company or 3 months after the end of that accounting reference period, whichever is the later) and at such place as may be determined by the directors. Every accounting reference period is the period of 12 months beginning immediately after the end of the previous accounting reference period and ending on its accounting reference date unless such period is shortened or extended pursuant to a resolution passed by the directors pursuant to the CO. An annual general meeting must be held even though there may be no accounts available for presentation to the meeting and no other relevant business to attend to.
- 4.4 If the annual general meeting is required to be held, the directors must approve the accounts and the directors' report, they may recommend a dividend and must resolve to call the annual general meeting. If all the shareholders entitled to attend and vote at the annual general meeting so agree, the meeting may be held at short notice, but otherwise at least 21 clear days' notice is required. Copies of any audited accounts to be considered at the annual general meeting must be sent to all shareholders, debenture holders and other persons so entitled not less than 21 days before the date of the meeting, unless all shareholders entitled to attend and vote at the meeting otherwise agree.

Annual return

- 4.5 An annual return must be filed with the Registrar at least once a year. The annual return contains among other things:
- (1) particulars of the issued share capital of the company;
 - (2) the names and addresses of its directors and the secretary;
 - (3) the names and addresses of its registered shareholders; and
 - (4) the amount secured by any registered charges.
- 4.6 The return must be signed by a director or the secretary of the company and must be filed within 42 days of the anniversary of the incorporation of the company. Public companies and companies limited by guarantee without a share capital must file their annual return within 42 days after the return date. The return date for a public company is 6 months after the end of the company's accounting reference period while the return date for a guarantee company is 9 months after the end of the company's accounting reference period.

5 Maintenance – changes in particulars

Filing obligations

- 5.1 A company must file the relevant particulars with the Registrar within the period indicated, in the event of:
- (1) any change in the directors or secretary or in the filed particulars of any existing directors or secretary – 15 days;
 - (2) any change in the location of the registered office – 15 days;
 - (3) any alteration in the share capital (the company must include a statement of capital) – 1 month;
 - (4) any allotment, issue of new shares or alteration of share capital – 1 month;
 - (5) any relocation of the company's statutory books from the company's registered office – 15 days;
 - (6) any change of name of a company – 15 days after the passing of the resolution;
 - (7) the passing of a special resolution (other than special resolutions to change the name of a company) or certain other resolutions – 15 days; and
 - (8) the creation of a charge over certain types of assets or the acquisition subject to an existing charge of certain types of assets, in either case whether the asset is within or outside Hong Kong (see Part A, paragraph 4) – 1 month.

Change of name

- 5.2 To effect a change in the name of a company (which includes the adoption or abandonment of a formal English or a Chinese version of the name – see Part B, paragraphs 2.2 to 2.3):
- (1) the shareholders must approve of the change in name by special resolution (see Part B, paragraph 6.5); and
 - (2) the new name must be registered with the Registrar.
- 5.3 It normally takes about 4 working days from the time of the filing of the specified form giving notice of the change of name for the certificate of change of name to be issued. The change in name is effective from the date on such certificate. Alternatively, if our service company is the company secretary of a company, we can submit the specified form by e-filing and in this way, the certificate of change of name can normally be issued on the date of submission.

Increases in issued share capital

- 5.4 An increase in the share capital of a company does not require the approval of the shareholders except in certain cases. A company's articles of association may provide for the increasing of the company's share capital by way of ordinary resolution. Notice of the increase must also be filed with the Registrar (see Part B, paragraph 5.1(3)).
- 5.5 The procedure for allotting and issuing new shares is set out under Part B, paragraphs 3.5 to 3.8 and the related filing obligations are included under Part B, paragraph 5.1(4).

Changes to articles of association

- 5.6 Most of the provisions of a company's articles of association can be changed by special resolution (see Part B, paragraph 6.5).
- 5.7 There are exceptions to this general rule. Where a company has issued different classes of shares, the special rights of any one class may, subject to the articles of association, be changed only with the approval of 75% of the holders of shares of that class. Also, a member must agree in writing to an alteration to the articles of association which requires that member to take or subscribe for more shares or increase his liability to contribute to the share capital of the company or otherwise pay money to the company.
- 5.8 A signed copy of every special resolution and every resolution varying a provision in the articles of association must be filed with the Registrar and annexed to every copy of the articles of association of the company issued subsequently to any such change. When the articles of association is amended a printed copy of the articles as amended and certified by a director or company secretary must be filed with the Registrar.

Share transfers

- 5.9 The transfer of legal title to shares in a Hong Kong company is effected by an instrument of transfer. Beneficial title to shares is transferred by way of contract notes (a bought note and a sold note).
- 5.10 Contract notes must be submitted to the Stamp Duty Office for stamping within 2 days (30 days if the sale takes place outside Hong Kong) of their execution. Ad valorem stamp duty is levied on each contract note (i.e. both the bought note and the sold note) at the rate of HK\$1 per HK\$1,000 or part thereof, of, whichever is the higher of the consideration paid or the value of the shares transferred (so that the total rate of duty on a sale of shares is effectively 0.2%) (see Part E, paragraph 5.1). Exemptions from stamp duty are available for intra-group transfers. We will be pleased to provide more detailed advice on the requirements for exemption on request.
- 5.11 In the case of a private company, a certified copy of the latest audited accounts (consolidated where relevant) and/or the latest management accounts (if audited accounts have not been prepared or if they are not up to date) together with details of any land and properties held and a copy of any sale and purchase agreement must normally be submitted when the documents are lodged for stamping. The Stamp Duty Office may also require additional information.
- 5.12 The instrument of transfer attracts a HK\$5 fixed duty. In the case of a sale and purchase of shares by a person who is not resident in Hong Kong, the ad valorem stamp duty can be paid on the instrument of transfer in addition to the HK\$5 fixed duty if contract notes have not been made out and stamped.
- 5.13 Where a transfer of the beneficial ownership is made otherwise than by sale and purchase (e.g. by way of gift), the instrument of transfer is stampable at the fixed rate of HK\$5 plus ad valorem stamp duty of 0.2% of the value of the shares at the date of transfer.

- 5.14 When there is a sale of beneficial ownership only and no transfer of legal ownership (i.e. where the shares will remain registered in the name of the same person as a nominee for the beneficial owner), contract notes must be made out and ad valorem stamp duty of 0.2% paid. An instrument of transfer will not be required in this case but it is advisable for there to be a declaration of trust (see below).
- 5.15 Ad valorem stamp duty is not payable on a transfer in registered ownership which does not involve any change in the beneficial ownership of the shares. Where shares are registered in the name of a nominee, it is sensible to execute a declaration of trust and to have the declaration of trust adjudicated as not chargeable to duty. The fee for this is HK\$50. Adjudication can avoid later disputes with the Stamp Office about the beneficial ownership of shares.
- 5.16 Penalties for failure to stamp documents within the required time range from 2 to 10 times the amount of duty payable, although the Collector of Stamp Revenue has power to remit the whole or any part of any penalty in appropriate cases. Neither the company nor any other person is permitted to act on or in general rely in court proceedings on any stampable instrument which is not duly stamped. An unstamped instrument may not be registered in the company's books.
- 5.17 After stamping (and compliance with any other formalities prescribed by the articles of association), the transfer can be registered in the statutory books of the company and a new share certificate issued.
- 5.18 Share transfers are sometimes restricted by, for example, provisions in the company's articles of association which require that the shares are first offered for sale to existing shareholders.

6 Management

Directors and board meetings

- 6.1 Responsibility for the overall management of a Hong Kong company typically rests with its board of directors. Generally, the board authorises the actions of the company through board resolutions passed at board meetings or, if authorised by the articles, by written resolution signed by all the directors or a stated proportion of them.
- 6.2 There is no Hong Kong requirement that board meetings be held in Hong Kong or at any specific intervals. Normally, reasonable notice of meetings must be given to each director, but the articles of association can modify this general obligation. The board of directors may delegate its powers to certain persons. A certain degree of delegation is, so far as third parties dealing with the company are concerned, normally implied in the case of managing directors and senior employees of a company.
- 6.3 Where a private company has only 1 director and that director takes a decision that may be taken at a meeting of directors, the decision must be evidenced by a resolution in writing or a written record of the decision which must be delivered to the company within 7 days of the decision having been made.

Shareholders and shareholders' meetings

- 6.4 Certain decisions however must, by law, be made or sanctioned by the shareholders in general meeting. This is done by the passing of an ordinary or, in some cases, a special resolution. Such resolutions may be proposed as special business at annual general meetings or at separately convened meetings, called general meetings.
- 6.5 An ordinary resolution requires a simple majority of the shareholders who attend and vote at a meeting to approve it. A special resolution, on the other hand, requires a 75% majority of the shareholders who attend and vote at a meeting to approve it.

- 6.6 Generally, 14 clear days' notice is required for a general meeting other than an annual general meeting. At least 21 days' notice is required for an annual general meeting. A majority in number of shareholders having the right to attend and vote at general meetings who together hold not less than 95% in nominal value of all the shares, or all the shareholders in the case of an annual general meeting, may agree that a meeting be held at short notice.
- 6.7 The articles of association should make provision for the quorum and voting rights and will determine whether or not the chairman of the meeting has a casting vote. There is a statutory right on the part of a shareholder to appoint a proxy to attend and vote on his or her behalf at any meeting at which the shareholder is entitled to attend and vote. A statement to this effect must be included in the notice of each general meeting. A proxy need not be a member. A corporation which is a member can attend a meeting by appointing a representative to attend the meeting on its behalf. Such a representative can speak and vote on a show of hands or on a poll. A proxy can vote on a show of hands or on a poll unless the articles of association provide otherwise. It is usually necessary to lodge appointments of proxies (but not of corporate representatives) in advance of the meeting.
- 6.8 A company's articles of association will usually permit resolutions to be passed by a written resolution signed by all the shareholders, without the need to hold a meeting.
- 6.9 Where a private company has only 1 shareholder and that shareholder takes a decision that may be taken in a shareholders' meeting, the decision must be evidenced by a written resolution or a written record of the decision which must be delivered to the company within 7 days of the decision having been made.

7 Dormant companies

- 7.1 An inactive Hong Kong private company may be classified as "dormant". To become "dormant" the company must pass a special resolution (see Part B, paragraph 6.5) authorising its directors to deliver to the Registrar the special resolution declaring that the company will become dormant. Once the necessary formalities have been complied with, the company will be exempt from complying with the requirements for holding annual general meetings, preparing and filing annual returns and carrying out audits of its accounts.
- 7.2 A company will be eligible to apply for dormant status if, since the date of incorporation or any other specified date, it has not entered into what is known as an "accounting transaction". An accounting transaction is a transaction which is required by Section 373 of the CO to be entered into the company's accounting records. This includes the receipt and expenditure of money and the sale and purchase of goods, assets and liabilities, but does not include a fee which a company is required to pay by law, for example the annual business registration fee.
- 7.3 Prior to a company ceasing to be dormant, the directors must deliver to the Registrar a further special resolution declaring that the company intends to enter into a relevant accounting transaction, at which stage the company will cease to be dormant and the normal requirements will apply again. The advantage of being able to put a company into dormancy is that the cost of maintaining the company can be significantly reduced without having to wind up or apply to the Registrar to de-register the company.

C Hong Kong branches of foreign companies (Non-Hong Kong companies)

1 Introduction

Requirement to register

- 1.1 Foreign companies must register as a non-Hong Kong company in each case a Hong Kong branch with the Registrar within 1 month of establishing a place of business in Hong Kong.
- 1.2 In practice, it is sufficient if the application for registration is lodged with the Registrar within 1 month.
- 1.3 The obligation to register with the Registrar discussed in this paragraph is separate from the obligation under Part A, paragraph 3 to register businesses with the Business Registration Office.

Representative office

- 1.4 A non-Hong Kong company which has a presence in Hong Kong but does not transact any business which creates legal obligations and confines itself to promotional activities is not considered as having established a place of business in Hong Kong for the purpose of registration with the Registrar. Advice should therefore be sought as to whether, based on the nature of the business, in a particular case it is necessary to register a "representative office" as a branch.

Name of company in Hong Kong

- 1.5 Non-Hong Kong companies can and usually do register the Hong Kong branch in their own name. However, the Registrar has power to require a non-Hong Kong company, which is carrying on business in Hong Kong under its corporate name, to use a different name under certain circumstances. This power must be exercised within 6 months of the date of registration of a branch or the date of registration of any change in the name of the non-Hong Kong company.

Display of name of company and place of incorporation

- 1.6 Non-Hong Kong companies, which register a branch, must conspicuously exhibit at every place in Hong Kong where they carry on business, and include on their letterhead, notices or official publications and transaction instruments, the name of the company and the place of incorporation of the company. Where the liability of the shareholders of the non-Hong Kong company is limited, this must also be conspicuously displayed (a) in a notice at all its business venues; and (b) in all its communication document and transaction instrument. These requirements are generally complied with by the use of the words, "[Name of Company] incorporated in [place] with limited liability".

A non-Hong Kong company in liquidation must in every advertisement of the non-Hong Kong company state in legible characters its name and place of incorporation, and where applicable, that the liability of its members is limited. A non-Hong Kong company in liquidation when displaying or stating its name must:

- (1) if its name is in a language other than Chinese, add "(in liquidation)" after the name;
- (2) if its name is in Chinese, add "(正進行清盤)" after the name;
- (3) if its name is in Chinese and a language other than Chinese, add "(正進行清盤)" after the name in Chinese and add "(in liquidation)" after the name in that other language.

Continuing obligation

- 1.7 Once registered in Hong Kong, a non-Hong Kong company has continuing maintenance obligations in relation to the Registrar and the Commissioner. The obligations in relation to the Registrar fall into two categories: the updating on a case by case basis of information filed with the Registrar and the filing of certain documents with the Registrar on an annual basis. The continuing obligations in relation to the Commissioner relate to the registration of each of the non-Hong Kong company's businesses (see Part A, paragraph 3) and the filing of a profits tax return (see Part E, paragraph 4).

2 Registration procedure

Information and documents required for registration

- 2.1 The following information and documents of the non-Hong Kong company are required for the registration:
- (1) Details of the non-Hong Kong company
 - (a) corporate name;
 - (b) place of incorporation;
 - (c) date of establishment of the place of business in Hong Kong; and
 - (d) e-mail address for the offices in Hong Kong and in its place of incorporation (optional to provide and any subsequent change thereof has to be reported to the Companies Registry in a prescribed form).
 - (2) Particulars of individual directors
 - (a) present forename and surname;
 - (b) former forename or surname, if any;
 - (c) in the case of a Chinese director who uses Chinese characters for his names at (a) and/or (b) above, those Chinese characters;
 - (d) alias, if any;
 - (e) usual residential address (a post office box address alone is not acceptable, nor is an hotel address unless there is no other permanent address);
 - (f) date of appointment as director of the non-Hong Kong Company;
 - (g) Hong Kong identity card number or if none, the number and issuing country of any passport held by him; and
 - (h) e-mail address (optional to provide and any subsequent change thereof has to be reported to the Companies Registry in a prescribed form).
 - (3) Particulars of corporate directors
 - (a) corporate name;
 - (b) registered or principal office address;
 - (c) date of appointment as director of the non-Hong Kong company; and
 - (d) e-mail address (optional to provide and any subsequent change thereof has to be reported to the Companies Registry in a prescribed form).

(4) Alternate directors

Comparable particulars as in paragraphs (2) and (3) above for any alternate directors appointed.

(5) Particulars of the individual secretary

Comparable particulars as in paragraph (2) above for any individual secretary appointed, except correspondence address instead of usual residential address is required.

(6) Particulars of corporate secretary

Comparable particulars as in paragraph (3) above for any corporate secretary appointed.

(7) Joint secretaries

Where there are joint secretaries, particulars of all must be filed.

(8) Authorised representative in Hong Kong

The non-Hong Kong company must authorise 1 or more persons resident in Hong Kong (which expression does not include a body corporate or a firm other than a solicitor corporation, a company which is for the time being registered under the Professional Accountants Ordinance or a firm of solicitors or professional accountants) to accept on behalf of the non-Hong Kong company service of process and any notices required to be served on the non-Hong Kong company.

For an individual authorised representative:

- (a) present forename and surname;
- (b) in the case of a Chinese authorised representative who uses Chinese characters for his name at (a) above, those Chinese characters;
- (c) address in Hong Kong ("care of" address and post office box number are not acceptable);
- (d) date of appointment as authorised representative of the non-Hong Kong company;
- (e) Hong Kong identity card number or if none, the number and issuing country of any passport held by him; and
- (f) e-mail address (optional to provide and any subsequent change thereof has to be reported to the Companies Registry in a prescribed form).

For an authorised representative other than individual:

- (a) name of the firm or corporation;
- (b) business address in Hong Kong; and
- (c) e-mail address (optional to provide and any subsequent change thereof has to be reported to the Companies Registry in a prescribed form).

If required, Deacons can provide the name of the firm as the representative authorised to accept service of process on behalf of the non-Hong Kong company.

(9) Places of business

The addresses of the non-Hong Kong company's principal place of business and branch offices, if any, in Hong Kong and the addresses of the non-Hong Kong company's principal place of business, if any, and registered office in its place of incorporation.

(10) Charges/Mortgages

If the non-Hong Kong company has property in Hong Kong which is subject to a charge that is required to be registered under Part 8 of the CO, the non-Hong Kong company shall, within 1 month after the date on which it establishes the place of business, send to the Registrar for registration the particulars in respect of the charge. The following documents are required:

- (a) a specified form; and
- (b) a certified copy of the instrument (if any) creating or evidencing the charge.

(11) Certificate of incorporation

A certified copy of the non-Hong Kong company's certificate of incorporation or its equivalent, together with a certified translation thereof if the certificate is not written in English or Chinese.

(12) Charter, statutes or memorandum and articles, or other instrument constituting or defining its constitution

A certified copy of the non-Hong Kong company's charter, statutes or memorandum and articles, or other instrument constituting or defining its constitution (if the instrument is not written in English or Chinese, a certified translation thereof).

(13) Accounts

A certified copy of the non-Hong Kong company's latest published accounts in the form required by the law in the place of incorporation of the non-Hong Kong company, the laws of any other jurisdictions where the non-Hong Kong company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in any of those jurisdictions, or, if there is no such requirement, in the form in which they are submitted to the members of the non-Hong Kong company (if the accounts are not in English or Chinese, a certified translation thereof).

The accounts mentioned above are not required if the non-Hong Kong company can fulfil either of the following two conditions:

- (a) The non-Hong Kong company is neither required by the law of the place of its incorporation, the laws of any other jurisdictions where the non-Hong Kong company is registered as a company, nor the rules of the stock exchange or similar regulatory bodies in any of those jurisdictions to publish its accounts or to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public.
- (b) The non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery to the Registrar of the registration form and the accounts of the non-Hong Kong company that are required to be published have not been made up.

Certification of corporate documents

2.2 The certified documents mentioned at paragraphs 2.1 (11) to (13) above mean documents, duly certified as true copies in one of the following prescribed manners:

- (1) in the non-Hong Kong company's place of incorporation:
 - (a) by an official of the government of that place to whose custody the original of the document is committed;
 - (b) by a notary public practising in that place;
 - (c) by a lawyer practising in that place;
 - (d) by a professional accountant practising in that place;

- (e) by an officer of a court of law duly authorised by the law of that place to certify documents for any judicial or other legal purpose; or
 - (f) by a professional company secretary practising in that place;
- (2) in Hong Kong:
- (a) by a notary public practising in Hong Kong;
 - (b) by a solicitor practising in Hong Kong;
 - (c) by a certified public accountant (practising) within the meaning of section 2 of the Professional Accountants Ordinance (Cap 50);
 - (d) by an officer of the court in Hong Kong who is authorised by law to certify documents for any judicial or other legal purpose;
 - (e) by a consular officer of the place of incorporation of the company; or
 - (f) by a professional company secretary practising in Hong Kong;
- (3) by an officer of the company; or
- (4) by the authorised representative of the company.

2.3 It is important that all certifications be accomplished in the above manner because otherwise any other form of certification will result in the documents being rejected.

Translation of documents

2.4 The translations mentioned at paragraphs 2.1(11) to (13) above must be certified by the translator to be a correct translation and the translator must also be certified by the appropriate person hereunder mentioned to be believed by him to be competent to translate the contents of the documents into English or Chinese:

- (1) where the translation is made in a place outside Hong Kong:
 - (a) a notary public practising in that place;
 - (b) a lawyer practising in that place;
 - (c) a professional accountant practising in that place;
 - (d) an officer of a court of law duly authorised by the law of that place to certify documents for any judicial or other legal purpose;
 - (e) a consular officer in that place;
 - (f) a professional company secretary practising in that place; or
 - (g) such other person as may be specified by the Registrar;
- (2) where the translation is made in Hong Kong:
 - (a) a notary public practising in Hong Kong;
 - (b) a solicitor practising in Hong Kong;
 - (c) a certified public accountant (practising) within the meaning of section 2 of the Professional Accountants Ordinance (Cap 50);
 - (d) a consular officer in Hong Kong; or
 - (e) a professional company secretary practising in Hong Kong.

2.5 If the Registrar is satisfied that such compliance is not possible, he may at his discretion accept translation duly certified as true translation by a sworn translator or court translator or authorised public translator or certified translator or expert translator or official translator.

Please also note that:

- (1) all translator's and certifier's signatures must be hand written and not mechanical;
- (2) all certifications must themselves be in English or Chinese;
- (3) a copy of the certificate of incorporation or its equivalent should be attached to the translation and identified as the original from which the translation was made; and
- (4) any certification of competence must expressly refer to the competence of the translator in the terms mentioned above, and should not simply be the usual chop or stamp of the person certifying.

3 Maintenance – annual requirements

Annual filing obligations

- 3.1 Each non-Hong Kong company must within 42 days after each anniversary of the date of its registration file a return with the Registrar in a specified form (Form NN3) stating:
- (1) the date of the return, i.e. the date of the most recent anniversary of the date of registration of the non-Hong Kong company;
 - (2) the place of incorporation of the non-Hong Kong company;
 - (3) the name of the non-Hong Kong company and its registered number in Hong Kong;
 - (4) the date of registration of the non-Hong Kong company;
 - (5) the address of the principal place of business of the non-Hong Kong company in Hong Kong;
 - (6) the addresses of the principal place of business and the registered office of the non-Hong Kong company in the place of its incorporation;
 - (7) particulars of directors, the secretary or authorised representative of the non-Hong Kong company as at the date of the return;
 - (8) a statement indicating that the latest published accounts of the non-Hong Kong company are delivered to the Registrar together with the return or, in the case where such delivery is not required a statement of that fact (see Part C, paragraph 3.4);
 - (9) where the non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of the annual return and the accounts of the non-Hong Kong company that are required to be published have not been made up, a statement stating that fact;
 - (10) particulars relating to the authorised share capital and issued share capital or their equivalents in the case of a non-Hong Kong company having a share capital; and
 - (11) particulars of the total amount of the indebtedness of the non-Hong Kong company in respect of all mortgages and charges which are required to be registered with the Registrar under the Ordinance.

Accounts

- 3.2 A non-Hong Kong company is required to deliver to the Registrar for registration certified copies of the latest published accounts of the non-Hong Kong company that comply with:
- (1) the law of the place of its incorporation; or
 - (2) the laws of any other jurisdictions where the non-Hong Kong company is registered as a company; or
 - (3) the rules of any stock exchange or similar regulatory bodies in those jurisdictions.

- 3.3 Certified copies of the latest published accounts of the non-Hong Kong company shall be submitted together with the annual return within 42 days after each anniversary of the date of registration of the non-Hong Kong company.
- 3.4 Where a non-Hong Kong company is neither required by the law of the place of its incorporation nor other relevant jurisdictions or regulatory authorities to publish its accounts or to deliver copies of its accounts to any person in whose office they may be inspected as of right by members of the public, the non-Hong Kong company should state that fact in the annual return.
- 3.5 If a non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of the annual return and the accounts of the non-Hong Kong company that are required to be published have not been made up, the non-Hong Kong company should state that fact in the annual return. Explanatory letters for not submitting accounts are no longer required.

4 Maintenance – changes in particulars

Alteration in charter, statutes, etc.

- 4.1 A non-Hong Kong company is required to file notification to the Registrar in specified form for any alteration in its charter, statutes, etc. within 1 month after the date of alteration.

Change of director and secretary

- 4.2 A non-Hong Kong company is required to file notification to the Registrar in specified forms for any appointment / cessation / change of particulars of its director(s) and/or secretary within 1 month after the date of such change.

Change/termination of authorised representative

- 4.3 A non-Hong Kong company is required to file notification to the Registrar in specified forms for any appointment / cessation / change of particulars of its authorised representative within 1 month after the date of such change.
- 4.4 A non-Hong Kong company or the authorised representative, as the case may be, is required to file notification to the Registrar in specified form together with a copy of the notice of termination of its authorised representative within 1 month after the date of the notice of termination in writing to the non-Hong Kong company or the authorised representative, as the case may be.
- 4.5 The effective date of termination of the authorised representative will be on the expiration of 21 days from the date of filing the specified form with the Registrar or the date of termination of the authorisation as stated in the copy of the notice of termination submitted with the specified form, whichever is the later.
- 4.6 A non-Hong Kong company is required to have an authorised representative in Hong Kong for at least 11 months after it ceases to have a place of business in Hong Kong.

Change of address

- 4.7 A non-Hong Kong company is required to file notification to the Registrar in specified form for any change of its address(es) within 1 month after the date of such change.

Change of corporate name and statement of approved name

- 4.8 A non-Hong Kong company is required to file notification to the Registrar in specified form for any change of its corporate name together with a certified copy of the instrument effecting such name change within 1 month after the date of such change.

- 4.9 A certificate of registration of change of name will be issued by the Registrar to the non-Hong Kong company.
- 4.10 A non-Hong Kong company is required to file to the Registrar in specified form a statement of approved name for carrying on business in Hong Kong if applicable.

Commencement of liquidation and dissolution

- 4.11 A non-Hong Kong company is required to file notification to the Registrar in specified form for its commencement of liquidation and particulars of its liquidator within 15 days after the date of commencement.
- 4.12 Any change in the particulars given at the aforesaid notification should be reported to the Registrar in specified form within 15 days after the date of change.
- 4.13 Notification should be given by an authorised representative of a non-Hong Kong company to the Registrar in specified form for its dissolution together with a certified copy of the instrument effecting the dissolution within 15 days after the date of dissolution.

Cessation of place business

- 4.14 A non-Hong Kong company is required to file notification to the Registrar in specified form for its cessation of having a place of business in Hong Kong within 7 days after the date of cessation.

Obligation to state name, whether limited and place where incorporated

- 4.15 A non-Hong Kong company is required to state in every official publication and exhibit in its place(s) of business in Hong Kong its corporate name, place of incorporation and whether it is incorporated with limited liability.
- 4.16 If a non-Hong Kong company is in liquidation, it is also required to state such fact in all its documents and in the exhibit of its name at every place where it carries on business in Hong Kong.

D Corporate services from Deacons

1 Introduction

- 1.1 Deacons has a large Corporate Services Team which provides a range of corporate secretarial services to clients in relation to companies incorporated in Hong Kong, Bermuda, the Cayman Islands, the British Virgin Islands, Liberia, Mauritius, Bahamas, Panama and Vanuatu and for non-Hong Kong companies registered in Hong Kong. The team operates under the direction of a partner and every client's secretarial affairs are handled by an executive who is a member of The Chartered Governance Institute.
- 1.2 These services are generally provided using one of our nominee companies. The services available include providing:
- (1) ongoing secretarial services for Hong Kong and offshore companies and non-Hong Kong companies registered in Hong Kong;
 - (2) registered office facilities (for Hong Kong companies); and
 - (3) an authorised representative (for non-Hong Kong companies registered in Hong Kong).

2 Fees

- 2.1 The Corporate Services Team charges for its services on a two-fold basis.
- (1) Firstly, a fixed annual charge which is payable in advance at the beginning of each calendar year is levied in relation to the basic services discussed separately in Part D, paragraphs 3 to 6; and
 - (2) Further, any additional work not covered by the annual charge is invoiced separately on a time spent basis. Disbursements such as filing and government fees are charged separately at cost as incurred.
- 2.2 A list of our current fixed annual charges is available on request.

3 Secretarial services

- 3.1 Every Hong Kong company is required by law to have a Hong Kong resident secretary (see Part B, paragraph 3.10) and clients often find it convenient and reassuring to appoint our nominee company as secretary. For companies incorporated in Hong Kong, our secretarial nominee company is Consec Services Limited. The services covered by our fixed annual charge include:
- (1) provision of a company secretary;
 - (2) provision of the registered office;
 - (3) custody of the statutory books and records; and
 - (4) renewal of the business registration certificate kept at our address.
- 3.2 For companies incorporated in Liberia, Panama, the British Virgin Islands, Bermuda or the Cayman Islands, we can provide secretarial services even where our nominee company cannot be formally appointed as secretary of the company. The services covered by fixed annual charge in these cases include:
- (1) custody of the statutory books and records;
 - (2) arranging payment of the company's resident agent's fee;
 - (3) payment of the corporation registration fee/franchise tax imposed in the place of incorporation; and
 - (4) preparation of routine minutes for the annual shareholders' and directors' meetings where required.

4 Authorised representative for foreign companies registered in Hong Kong

- 4.1 Every foreign company registered in Hong Kong is required to appoint an authorised representative (see Part C, paragraph 2.1(8)). We can provide this service for an annual fixed fee.

5 Arranging resident agent for foreign companies

- 5.1 The services covered by the fixed annual charge include:
- (1) routine correspondence with the resident agent;
 - (2) arranging payment of the resident agent's fee; and
 - (3) arranging payment of the corporation registration fee/franchise tax in the country of incorporation of the company.

6 Agent for service of process

- 6.1 Our nominee company, Consec Services Limited, is also available to act as agent in Hong Kong for the service of process on clients who do not ordinarily reside in Hong Kong or are overseas entities and need to appoint a service agent in Hong Kong (e.g. in connection with a commercial transaction). This service is provided at an annual fixed fee.

E Taxation, duties and fees

1 Introduction

- 1.1 Taxation in Hong Kong is territorial. Domicile, nationality and residence are generally irrelevant in determining whether or not a charge to Hong Kong tax arises. There are three principal heads of income tax in Hong Kong:
- (1) property tax
 - (2) salaries tax
 - (3) profits tax
- 1.2 The Inland Revenue Department (IRD) is responsible for the administration and collection of taxes in Hong Kong.
- 1.3 Stamp duty is levied on transfers of Hong Kong stock and on agreements for the conveyance of immovable property situated in Hong Kong. Additional stamp duty charges arise, broadly speaking, where the conveyance is to a non-Hong Kong permanent resident buyer of residential property, or where the property has been disposed of within 36 months of acquisition.
- 1.4 Interest earned by financial institutions from the carrying on of banking and similar financial activities in Hong Kong is generally chargeable to profits tax. Conversely, interest derived from deposits placed by Hong Kong businesses with Hong Kong financial institutions generally will not be chargeable to profits tax, subject to certain anti-avoidance carve-outs.
- 1.5 Dividends are generally exempt from profits tax by operation of statute, and are, in any event not taxed as a matter of IRD practice.
- 1.6 There is no capital gains tax in Hong Kong. Broadly, the disposal of capital assets is only taxable where such assets constitute trading stock.
- 1.7 Taxation in Hong Kong can be complex. We recommend that clients take specific tax advice when establishing operations in Hong Kong to arrive at fiscally efficient structuring solutions.

2 Property tax

- 2.1 Property tax is charged at the rate of 15% of the net assessable value of any land or buildings in Hong Kong. The net assessable value is the rent received less: (i) any rent which has become irrecoverable; (ii) rates paid; and (iii) a fixed allowance of 20% of assessable value (after any rates have been paid) for repairs.
- 2.2 Corporations carrying on a trade or business in Hong Kong can elect to be exempted from property tax and subject instead to profits tax.

3 Salaries tax

General

- 3.1 Salaries tax is charged on income arising in or derived from Hong Kong from: (i) any office or employment of profit; or (ii) any pension.

Income

- 3.2 Income from employment chargeable to salaries tax includes wages, salary, leave pay, fees, commission, bonus, gratuity, perquisites and allowance.
- 3.3 Perquisites, including non-monetary remuneration, are generally taxable. Housing provided by an employer is taxable, but on a concessionary basis.

Source

- 3.4 A person is subject to salaries tax on his Hong Kong sourced employment income, income from an office in Hong Kong (e.g. a directorship), or a Hong Kong pension. If the employment is a Hong Kong employment, all income derived from it will normally be subject to salaries tax even if some services are performed outside Hong Kong.
- 3.5 Income from a non-Hong Kong employment is only taxed to the extent of income derived from services rendered in Hong Kong. What constitutes a Hong Kong employment will ultimately be a matter of fact and law. In making this determination, the practice of the IRD is to take all relevant factors into account, with particular emphasis on where the employment contract was negotiated and entered into, its governing law, where it is enforceable, where the employer is resident, and where contractual payments are made.
- 3.6 No account is taken for salaries tax purposes of visits to Hong Kong not exceeding 60 days in any tax year. In other words, a person holding a Hong Kong employment will be exempt from salaries tax if he visits Hong Kong for not more than 60 days in a year of assessment. Note that a Hong Kong Permanent Resident cannot in general avail himself of the 60-day exemption regime.

Directors' fees

- 3.7 Fees paid to persons who hold the office of director of a corporation which central management and control are exercised in Hong Kong are income arising in or derived from Hong Kong and chargeable to salaries tax irrespective of where the person resides.

Rates of tax

- 3.8 Broadly speaking, salaries tax is chargeable at progressive rates of up to 17%, and is calculated with reference to various personal allowances and bands of taxable employment income. However, the aggregate rate of taxation is capped at 15% of taxable income. The Government from time to time grants unilateral tax reductions to all salaries taxpayers.

Returns

- 3.9 An employer is not in the ordinary course required to withhold salaries tax but it must furnish an annual return to the IRD of remuneration paid to employees and must furnish various other returns; e.g. on commencement or termination of employment or departure of the employee from Hong Kong.

Provisional salaries tax

- 3.10 Salaries tax is charged on a provisional basis. A provisional assessment for the current fiscal year is made based on the previous year's final assessment and tax is charged accordingly. Once the actual income for the year of assessment is known, a final assessment is issued, with credit being given for provisional salaries tax already paid.

4 Profits tax

General

- 4.1 Generally, the corporate profits tax rate is currently 16.5% of assessable profits and the rate for unincorporated entities, including individuals and partnerships is 15%. Subject to the fulfilment of certain conditions, both companies and unincorporated businesses may avail themselves of a reduced rate of profits tax of 8.25% and 7.5% respectively on the first HK\$2 million of taxable profits.

Charge to profits tax

- 4.2 A person will be subject to Hong Kong profits tax if and to the extent that both of the following conditions are met:
- (i) The person carries on a trade, profession or business in Hong Kong (either in its own right or through an agent); and
 - (ii) Profits are derived from that trade, profession or business (other than profits arising from the sale of capital assets not held as trading stock), which arise in or are derived from Hong Kong (i.e. the profits have a Hong Kong source) and are not otherwise regarded as taxable or exempt from tax.
- 4.3 Whether a trade, profession or business is carried on in Hong Kong is ultimately a mixed question of fact and law. Generally, a person will be regarded as carrying on a trade, profession or business in Hong Kong if it has an office, a place of business or where a significant portion of its business activities are undertaken in Hong Kong. The general consensus is that the threshold test is low and easily satisfied.
- 4.4 The broad guiding principle in determining the source of a profit is first to identify the nature of the profit in question and then look at what the taxpayer has done to earn it, and where he has done it, discounting antecedent or incidental matters.

Chargeable profits and deductions

- 4.5 Outgoings and expenses incurred (but not necessarily wholly or exclusively incurred) in the production of taxable profits are broadly speaking deductible irrespective of source. Certain specific types of deductible and non-deductible expenses are specified in the Inland Revenue Ordinance. Capital expenditure is generally not deductible, though Hong Kong has a comprehensive system of capital allowances to enable the writing-down of costs for the acquisition of, among other things, plant and machinery. Capital expenditure on specified intellectual property rights is likewise deductible.
- 4.6 Subject to certain anti-avoidance provisions, business losses arising to a body corporate may be carried forward indefinitely and set-off against future profits. There are no provisions for transferring losses between group companies or for carrying back losses.
- 4.7 Hong Kong offers a wide range of tax incentives, targeting strategic industries the Government considers are of strategic economic importance. Notable tax incentives include reduced rates of profits tax for corporate treasury centres, aircraft lessors and aircraft leasing managers, ship leasing managers, and certain insurance, insurance brokerage, reinsurance, and captive insurance businesses. A total exemption from profits tax is in principle available to ship lessors, recipients of carried interest from a private equity fund, and bona-fide widely held investment funds.

Tax year

- 4.8 The tax year in Hong Kong runs from 1st April to 31st March and businesses potentially liable to profits tax are usually issued with a tax return in April or May of each year requesting that they complete the return and furnish it to the IRD, together with the relevant accounts within 1 month of the date of issue of the return.

Provisional profits tax

- 4.9 The IRD issues a provisional profits tax assessment for each current tax year at the same time as it issues a final profits tax assessment for the preceding year. Provisional tax is applied first against profits tax payable on the profits of the current year of assessment. When the final assessment is calculated, any underpayment of tax is added to the provisional profits tax assessment for the following year.

Who is responsible?

- 4.10 The secretary, managers and directors of a company are each responsible for ensuring compliance with the company's fiscal obligations. Where there is no officer or manager of the company ordinarily resident in Hong Kong who can be so responsible, the company is obliged to appoint a tax representative and advise the IRD accordingly. The IRD has the power to impose penalties for the late or incorrect filing of tax returns and the delayed or failed payment of taxes.

Transfer pricing

- 4.11 Arrangements and transactions as between associated persons are expected to be priced on an arm's length basis. The IRD is committed to applying the Organisation for Economic Co-operation and Development (OECD) transfer pricing standards to both domestic arrangements and transactions, and international arrangements or transactions with a Hong Kong nexus.

5 Stamp duty

Share transfers

- 5.1 Stamp duty is levied on the transfer of Hong Kong stock at an aggregate rate of 0.26%. Duty is charged on the consideration for the transaction or, if higher, the market value (see Part B, paragraph 5.10).

Sale and purchase agreements and conveyances of immovable property

- 5.2 Ad valorem stamp duty (AVSD) is levied on agreements for sale of immovable property at a progressive rate of up to 4.25% for commercial property and 15% for residential property. Certain conveyances of residential property to Hong Kong Permanent Resident buyers are chargeable to AVSD at a lower rate.
- 5.3 Special stamp duty (SSD) is chargeable on the transfer of residential properties acquired on or after 20 November 2010 and resold within 36 months. For property acquired on or after 27 October 2012, the rate of SSD ranges from 10% for properties held for a period of more than 24 months but less than 36 months, to 20% for properties held for 6 months or less. SSD is calculated by reference to the stated consideration or market value of the property, whichever is higher. It is chargeable in addition to AVSD. Certain agreements for sale of residential property are not chargeable with special stamp duty such as sale to the vendor's parent, spouse, child, brother or sister, sale pursuant to a court order and sale by a mortgagee.

- 5.4 Buyer's stamp duty (BSD) is chargeable on the acquisition of Hong Kong residential property by any person other than a Hong Kong permanent resident individual. BSD is charged at a flat rate of 15% of the stated consideration or the market value of the property acquired, whichever is higher. The buyer or transferee alone is liable for BSD. BSD is chargeable in addition to both AVSD and SSD.

Relief

- 5.5 The transfer of shares from one associated corporate body to another is exempt from stamp duty, subject to the approval of the Collector of Stamp Revenue. Two companies are associated where one is the beneficial owner of not less than 90% of the issued share capital of the other, or a third company owns not less than 90% of the issued share capital of each company. In addition to the 90% association test, a number of other conditions need to be satisfied to qualify for this exemption. A clawback provision applies where the 90% association test ceases to be satisfied within 2 years from the date of the transfer.

F Employment visas

- 1 Foreign companies often wish to transfer certain of their employees to Hong Kong in connection with setting up business operations in Hong Kong. In general, unless such employees have the right of abode, the right to land in Hong Kong or the right of unconditional stay in Hong Kong they will need to obtain a Hong Kong employment visa to work in Hong Kong.
- 2 In order to qualify for a Hong Kong employment visa, a person must possess a special skill, knowledge or experience of value which is relevant to the job that is unavailable locally. This test can generally be satisfied in the case of an intra-company or intra-group transfer. The applicant will also be required to nominate a sponsor, which must be a Hong Kong company or a foreign company registered in Hong Kong. Accordingly, the sponsor will usually be the Hong Kong employer company.
- 3 An employment visa application may be lodged with the Hong Kong Immigration Department by post or in person. Normally, employees should obtain visas before coming to Hong Kong but if the employee is already in Hong Kong (i.e. as a visitor), it is important to note that the employee may not commence employment duties in Hong Kong until he obtains an employment visa, save for certain limited business-related activities which may be carried out by persons entering Hong Kong on a visitor status (e.g. attending meetings).

Want to know more?

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