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AMENDMENTS TO THE HONG KONG COMPANIES ORDINANCE RELATING TO THE NON-HONG KONG COMPANIES REGISTERED UNDER PART XI [23th Jan. 2008 Issues 4]

The 'non-Hong Kong companies' have gone through the 'honey moon' period since the introduction of certain provisions of the Companies (Amendment) Ordinance 2004 in Hong Kong concerning the 'non-Hong Kong companies', i.e. all the overseas companies with branch operations in Hong Kong, the non-Hong Kong companies deal with the new rules of the game after 14 December 2007.

The new provisions simplify the registration requirements of non-Hong Kong companies or 'oversea companies' and introduce the new disclosure requirements and clarify certain circumstances that the non-Hong Kong companies are required to register charges on properties under Part XI of the Hong Kong Companies Ordinance.

Registration requirements of non-Hong Kong companies

For the purpose of Part XI registration, the non-Hong Kong company will apply to the Registrar of Companies a new specified form stating the required information in respect of the non-Hong Kong company: (a) company name; (b) place of incorporation; (c) date of establishment of its place of business in Hong Kong; (d) appointment of director and secretary; (e) appointment of authorized representative; and (f) registered office of the company and address of principal place of business in Hong Kong.

The non-Hong Kong company is also required to deliver to the Registrar of Companies the specific forms: (a) certified copy of memorandum and articles; (b) certified copy of certificate of incorporation; and (c) certified copy of the latest published accounts, if applicable.

However, filing of published accounts is not required if either (i) not required by the law of the company's place of incorporation, by the laws of any other jurisdictions where the company is registered as a company, or by the rules of any stock exchange or similar regulatory bodies in those jurisdictions; or (ii) the company has been incorporated for less than 18 months and the accounts have not been made up, is fulfilled.

New statutory annual return filing requirements

The non-Hong Kong company is now required to file a new annual return within 42 days after each anniversary of the date of its registration date under Part XI together with a prescribed fee HK\$180. Late filing of annual return will



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cause a sliding scale to a maximum of HK\$4,800. The non-Hong Kong company is required to file a certified copy of the company's latest published accounts, unless the Non-Hong Kong company fulfills either one of the conditions described above, together with its annual return. In such case, a statement to this fact is contained in the annual return.

The non-Hong Kong company is now required to pay the amended statutory fees, including the late filing of annual return with the Companies Registry in Hong Kong.

Reporting changes of non-Hong Kong companies

The non-Hong Kong company is also required to file the new specified forms with the Companies Registry in the events of (a) changes in the particulars of the company within 1 month, and a certified copy of the certificate effecting the name change in its original language, and its certified translation in English or Chinese, if applicable; (b) commencement of liquidation, appointment of liquidator or any change in particulars of liquidator within 14 days; (c) dissolution of the company within 14 days, and a certified copy of the document effecting the dissolution and its certified translation in English or Chinese; and (d) ceasing to have a place of business in Hong Kong within 7 days.

Amendments relating to authorized representatives

After the non-Hong Kong company ceases to have a place of business in Hong Kong, it is required to maintain an authorized representative for 1 year.

A copy of a notice of termination or its certified translation in English or Chinese is required to be filed with the Registrar within 1 month. The termination will take effect on 21 days from the filing date or the date of termination stated in the termination notice, whichever is the later.

Registration of charges on properties

The non-Hong Kong company is required to register the charges on properties in Hong Kong within 5 weeks after creation of the charge or 5 weeks after the company is registered under Part XI of the Hong Kong Companies Ordinance.

The non-Hong Kong companies registered under Part XI of the Hong Kong Companies Ordinance should ensure their branch offices in Hong Kong comply with the new compliance requirements.

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