

PART 16

NON-HONG KONG COMPANIES

Introduction

1. Part 16 deals with companies incorporated outside Hong Kong which have established a place of business in Hong Kong. It essentially restates the existing Part XI of the CO which has been substantially amended by the Companies (Amendment) Ordinance 2004, mainly with a view to simplifying the filing requirements. No substantive amendment to the existing registration regime of non-Hong Kong companies is proposed. Nevertheless, we aim to improve the clarity of the provisions and make them more user-friendly. Where appropriate, the procedural and technical details concerning the registration of and returns to be made by non-Hong Kong companies are moved to subsidiary legislation to facilitate updating of the provisions in future.

- The significant changes to be introduced under this Part are highlighted below:
 - (a) **Clarifying provisions for striking non-Hong Kong companies off the register and their restoration to the register; and**
 - (b) **Modifying the penalty provisions to align with those of Hong Kong incorporated companies.**

Significant Changes

- (a) **Clarifying provisions for striking non-Hong Kong companies off the register and their restoration to the register**

Background

2. At present, section 339A of the CO empowers the Registrar to remove the name of a non-Hong Kong company from the register if there is reasonable cause to believe that the company has ceased to have a place of business in Hong Kong, by applying the CO provisions relating to the striking off of

local defunct companies, with such adaptations as are necessary. Such a legislative provision by way of reference is considered unsatisfactory and may give rise to uncertainty as to which provisions would apply. For example, whether there is a right for a non-Hong Kong company that has been struck off the register or its directors or members to apply for its restoration to the register. To avoid such uncertainty, express provisions are introduced in Part 16 to clarify the matters.

Proposal

3. **Clauses 16.23 to 16.28** expressly set out the steps that the Registrar should take before striking a non-Hong Kong company off the register, the procedures for a director or member of a non-Hong Kong company that has been struck off the register to apply to the Registrar for its restoration to the register, and the conditions for granting such an application.
- (b) **Modifying the penalty provisions to align with those of Hong Kong incorporated companies**

Background

4. Section 340 of the CO imposes liability on a non-Hong Kong company that is in default of any provisions under Part XI as well as every officer or agent of that company who authorises or permits the default. Under the Twelfth Schedule to the CO, a fine of up to \$50,000 (level 5) may be imposed summarily upon any of these persons and a daily default fine of \$700 may also be imposed for any continued default in compliance with these provisions. The imposition of a uniform level of penalty for different types of offences is considered unsatisfactory. It would also result in an offence of similar nature being subject to different penalty levels, depending on whether the company is a locally incorporated or a non-Hong Kong company.

Proposal

5. The offence provisions are set out in individual clauses of Part 16. The penalty levels are generally aligned with comparable offence provisions for Hong Kong incorporated companies.

Other Changes

(a) Moving certain procedural details to subsidiary legislation

6. Currently, the procedural and technical details concerning the registration of and returns to be made by non-Hong Kong companies are set out in sections 333, 334 and 335 of the CO. These include the particulars to be contained in the applications or returns and the accompanying documents. Such procedural or technical details are likely to require updating over time. To facilitate future updating, they should be moved from primary into subsidiary legislation.
7. **Clause 16.31** empowers the Financial Secretary to make regulations to prescribe certain procedural and technical details. Such details include, among others:
 - (a) the particulars to be contained in applications for registration of non-Hong Kong companies and the documents to accompany such applications;
 - (b) the particulars to be contained in annual returns or returns of change of certain particulars by registered non-Hong Kong companies and the documents to accompany such returns; and
 - (c) the documents to accompany a notice of the termination of the authorisation of an authorised representative by a registered non-Hong Kong company to the Registrar.

(b) Clarifying provisions on change of corporate name of non-Hong Kong companies

8. At present, section 335(2) of the CO requires a non-Hong Kong company to notify the Registrar of any change of its corporate name. The provision is fairly general. There may be uncertainty as to whether notification is required in certain scenarios, such as where there is a change to the registered name of the company in its place of incorporation without a change in the translation appearing on our register which is being used as the company's corporate name in Hong Kong. **Clause 16.5** clarifies the notification requirements in various scenarios relating to the change of

corporate name of non-Hong Kong companies. **Clause 16.6** clarifies the registration procedures for change of corporate name.