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## Hong Kong Company Compliance Requirements and Costs

Unless otherwise advised, the Hong Kong Company in this article refers to a private company limited by share registered in Hong Kong in accordance with the Hong Kong Companies Ordinance.

### 1. Internal Record Keeping Requirements

(1) Annual accounts/directors' report

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 general meeting within 18 months of incorporation and then at least once in every calendar year. There are lengthy and detailed provisions in the Companies Ordinance 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.

A directors' report must be prepared in conjunction with the annual accounts. The Companies Ordinance 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.

(2) Annual general meeting

An annual general meeting of the shareholders must be held within 18 months of incorporation and then at least once in every calendar year, although not later than 15 months after the last annual general meeting. (This 15 month period may be extended at the discretion of the Registrar upon payment of a fee.) 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.

Before the annual general meeting is 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.

(3) Maintenance of Register of Members

A Hong Kong company is required to keep a share register, which is prima facie evidence of any details required by the Companies Ordinance to be contained in

the Register. Forms contained in each company kit make provision for all information required by the Ordinances. The original or copy of the Register of Members must be kept at the Registered Office in the Hong Kong. Kaizen, if appointed as Company Secretary, should be notified of any share transfers or issue of additional shares.

- (4) Maintenance of Register of Transfers, Directors and Secretaries  
A company is required by law to maintain these registers. They must be kept at the Registered Office of the Company. Kaizen, if appointed as company secretary, should be notified of any appointments or resignations of directors.
- (5) Maintenance of Minutes and Financial Records  
A company is required to keep minutes of all meetings of directors, members, committees of directors, committees of officers and committees of members. Copies of all written resolutions consented to by the foregoing parties must also be kept.

## 2. External Filing and Reporting Requirements (with Companies Registry as Required by Company Laws)

- (1) Filing of Annual Return  
An **Annual Return** must be filed with the **Registrar of Companies** at least once a year (except if there has been no change in the filed particulars since the date of the last annual return, in which case a certificate confirming this fact can be filed in lieu of an annual return).

The annual return contains among other things:

- particulars of the authorised and issued share capital of the company
- the names and addresses of its directors and the secretary
- the names and addresses of its registered shareholders
- the amount secured by any registered charges.

The return must be signed by a director and 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 of the annual general meeting in each year.

- (2) Filings of Changes in Particulars
  - (a) Filing obligations  
A company must file the relevant particulars with the Registrar within the period indicated, in the event of:
    - any change in the directors or secretary or in the filed particulars of any existing directors or secretary - 14 days
    - any change in the location of the registered office - 14 days
    - any increase in the authorised share capital - 15 days
    - any relocation of the company's statutory books from the company's registered office - 14 days
    - the passing of a special resolution or certain other resolutions - 15 days
    - any allotment or issue of new shares (this also requires the payment of a capital fee on the amount of any premium over the nominal value at which the shares are allotted or issued) - 8 weeks

- 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 - 5 weeks.

In relation to the last two items, if the relevant particulars are not filed with the Registrar within the prescribed period, an application will have to be made to the Court for an extension of the time within which the particulars may be filed. Any such application will need to be supported by an affidavit giving an explanation as to why the particulars were not filed within the prescribed period.

- (b) **Change of Name**  
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):
- the shareholders must approve of the change in name by special resolution
  - the new name must be registered with the Registrar

It normally takes about 14 working days from the time of the filing of the special resolution for the certificate of incorporation on change of name to be issued. The change in name is effective from the date on such certificate.

- (c) **Increases in authorised and issued share capital**  
Any increase in the authorised share capital of a company requires the approval of the shareholders. A company's articles of association typically provide for the increasing of the company's authorised share capital by way of ordinary resolution. Any increase in authorised share capital will attract a capital fee and notice of the increase must also be filed with the Registrar together with a signed copy of the resolution.
- (d) **Amendments to Memorandum or Articles of Association**  
Most of the provisions of a company's Memorandum and Articles of Association can be changed by special resolution.

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. Where the special rights exist by virtue of the memorandum of association and there is no provision for alteration, all such shareholders must agree before the rights can be changed. Also, a member must agree in writing to an alteration to the memorandum or 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.

A signed copy of every special resolution and every resolution varying a provision in the memorandum or articles of association must be filed with the Registrar and annexed to every copy of the memorandum and articles of association of the company issued subsequently to any such change. When the memorandum of association is amended it must be reprinted and filed with the Registrar.

### 3 External Filing and Reporting Requirements (with Inland Revenue Department as Required by Hong Kong Tax Laws)

- (1) Renew Business Registration Certificate (BR) every year  
No matter you actually do business or not (dormant), once your Hong Kong company is officially registered, it is required to apply for a Business Registration Certificate and renew its BRC every year thereafter and pay the business registration fee accordingly. If for any reason, you omitted any year of renewal, you still have to pay them up even you want to close the company. If Kaizen is being appointed as company secretary of your Hong Kong company, Kaizen will inform you and renew the BRC for and on your behalf upon your instruction and payment.
- (2) File Profits Tax Return  
The Profits Tax Return is for you to report the net income of your Hong Kong company to the Hong Kong tax authority so as to enable them to assess tax payable of your Hong Kong company.

The first thing to do is select a year end. If no other reason, we suggest 31st March. As your company starts not on 1st April, your first year will not have exactly 12 months of record. The first set of Profits Tax Return will arrive around 18 months after your incorporation. However, please don't delay in doing accounting, auditing and report proactively to the IRD. Legally it is tax payer's duty and late report may lead to penalty, especially when IRD finds you're delaying government revenue (*Please click here for detailed information on Hong Kong Profits Tax*).

To fulfill above, you need an accountant to prepare the financial statements, an auditor to issue an Auditor's Report and to file the tax returns.

- (3) File Employer's Return for your employees  
This is to report to the IRD the amount of salary paid to your staff in the past year. The year end is always 31st March. A separate form for each employee, regarding its residence and nationality, should be filled out and filed with the IRD. Our tax department will contact you immediately after the close of the relevant account year in respect of the preparation and filing of the Employer's Return so as to make sure that the return is being handled in a timely manner.

### 4 Requirements for Keeping Business Records

Section 51C of the Inland Revenue Ordinance requires that every person carrying on a trade, profession or business in Hong Kong must keep sufficient business records, either in English or Chinese, for his income and expenditure so as to enable his assessable profits to be ascertained. He must keep such records for at least 7 years. Failure to do so may render him liable to a penalty of HKD100,000.

- (1) books recording receipts and payments, income and expenditure;
- (2) original documents such as vouchers, bank statements, invoices, bills, receipts etc;
- (3) books recording assets and liabilities;
- (4) books recording daily cash receipts and cash expenditures;
- (5) where the business involves dealing in goods : -

- (a) a record of all goods purchased and all goods sold showing date of transactions, the goods concerned, the suppliers, the customers;
- (b) a record of trading stock at the opening and also at the end of the accounting period and details of the stocktaking for preparation of the stock record;
- (6) where the business involves the provision of services, records of all the services provided showing date of transactions, the services and the customers.

## **5 Summary of Costs Related to the Maintenance of a Company in Hong Kong**

The costs needed for all the compliance requirements listed in this article could be divided into two categories, Company Law Compliance Costs (CLCC) and Tax Law Compliance Costs (TLCC), as listed in the table below. The two costs combined together represent the minimum costs to maintain a Hong Kong incorporated company in good standing.

The other compliance costs, especially the accounting and audit fees, are estimations only and the actual costs for these services will be adjusted upwardly depending on the nature of business and volume of transactions and amount of turnover etc. Anyway, you should always budget a higher amount for the compliance purpose.

Company Law Compliance Costs are fixed costs and has nothing to do with the operation of the company. On the other hand, Tax Law Compliance Costs are variable costs and will be varied taking into consideration of the nature of the business, volume of transactions and turnover. The amounts listed in the table below under the heading Tax Law Compliance Costs represent the minimum costs and will be increased in accordance with the increase in the complicatedness of the nature of business, volume of transaction and amount of turnover.

In any case, it is important to note that the costs stated here, especially those listed under the heading Tax Law Compliance Costs, are estimated figures and for general reference only and the actual costs could always be higher.

<b>Item</b>	<b>Description</b>	<b>Amount (USD)</b>
<b>Company Law Compliance Costs (Fixed)</b>		
1	Company secretary	320
2	Registered office (Note 1)	200
3	Business registration fee (Note 2)	320
4	Annual General Meeting	100
5	Annual Return statutory filing fee	15
	Subtotal	955
<b>Tax Law Compliance Costs (Variable)</b>		
6	Accounting fee	200 up
7	Auditing fee (Note 3)	650 up
8	Employer's Return filing fee	40
9	Profits tax computation and Tax Return filing fee	100

9	Exemption from profits tax	
	Subtotal	990
	<b>TOTAL</b>	<b>1,945 up</b>

Notes:

- (1) The fee does not cover mailing forwarding. Mail forwarding will attract a handling charge of HKD20 plus actual postage for each batch of mails forwarded;
- (2) The current rate is HKD450. However, it is the sole discretion of the Government to adjust the fee. It is very possible that the business registration fee will be adjusted back to HKD2,450 starting from 1 August 2011, from the prevailing rate of HKD450;
- (3) The audit fee listed here represents our fee for the audit of a company with minimal operation. The actual audit fee will be higher as long as there are business transactions.

## 6 Filing and Renewal Deadlines

No.	Action	Deadline	Remark
1	Filing Annual Return		
2	Renewal of Business Registration Certificate		
3	Renewal of Company Secretary services		
4	Renewal of Registered Office Service		
5	Preparation of annual financial statements		
6	Audit of First Financial Statements		
7	Audit of annual financial statements		
8	Filing of Employer's Return		
9	Filing of First Profits Return		
10	Filing of Profits Tax Return (after the first one)		