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L.N. 79 of 2013

# **Companies (Non-Hong Kong Companies) Regulation**

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## Companies (Non-Hong Kong Companies) Regulation

(Made by the Financial Secretary under sections 804 and 805 of the Companies Ordinance (28 of 2012))

### Part 1

#### Preliminary

##### 1. Commencement

This Regulation comes into operation on the day on which sections 804 and 805 of the Companies Ordinance (28 of 2012) come into operation.

##### 2. Interpretation

In this Regulation—

*authorized representative* (獲授權代表) has the meaning given by section 774(1) of the Ordinance;

*certified copy* (經核證副本) has the meaning given by section 775 of the Ordinance;

*corporate name* (法團名稱) has the meaning given by section 774(1) of the Ordinance;

*domestic name* (本土名稱) has the meaning given by section 774(1) of the Ordinance;

*place of business* (營業地點) has the meaning given by section 774(1) and (3) of the Ordinance.

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## Part 2

### Particulars and Documents Required for Application for Registration

#### 3. Particulars to be contained in application for registration

- (1) For the purposes of section 776(4)(b) of the Ordinance, an application for registration as a registered non-Hong Kong company must contain—
  - (a) if the company's domestic name is in Roman script or in Chinese, the domestic name;
  - (b) the place of incorporation of the company;
  - (c) the date on which the company established its place of business in Hong Kong;
  - (d) the following particulars with respect to each director of the company—
    - (i) the director's date of appointment;
    - (ii) if the director is a natural person—
      - (A) the present forename and surname, former forename or surname (if any), and aliases (if any);
      - (B) the usual residential address; and
      - (C) the number of the identity card or, if the director does not have an identity card, the number and issuing country of any passport held by the director; and
    - (iii) if the director is a body corporate, the name of the body corporate, its registered number in Hong Kong (if any) and the address of its registered or principal office;

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- (e) the following particulars with respect to the company secretary of the company (or, if there are joint company secretaries, with respect to each of them)—
- (i) the company secretary's date of appointment;
  - (ii) if the company secretary is a natural person—
    - (A) the present forename and surname, former forename or surname (if any), and aliases (if any);
    - (B) the correspondence address; and
    - (C) the number of the identity card or, if the company secretary does not have an identity card, the number and issuing country of any passport held by the company secretary; and
  - (iii) if the company secretary is a body corporate, the name of the body corporate, its registered number in Hong Kong (if any) and the address of its registered or principal office; and
- (f) the address of—
- (i) the principal place of business of the company in Hong Kong;
  - (ii) the principal place of business (if any) of the company in its place of incorporation; and
  - (iii) the registered office (or its equivalent) of the company in its place of incorporation.
- (2) For the purposes of subsection (1)(e), if all the partners in a firm are joint company secretaries of the non-Hong Kong company, the name and principal office of the firm may be substituted for the particulars mentioned in subsection (1)(e)(ii) and (iii).
- (3) In this section—
- forename* (名字) includes a Christian or given name;
- residential address* (住址)—

- (a) does not include an address at a hotel unless the person to whom it relates is stated, for the purposes of this section, to have no other permanent address; and
  - (b) does not include a post office box number;
- surname* (姓氏), for a person usually known by a title different from the person's surname, means that title.
- (4) For the purposes of this section, a correspondence address must not be a post office box number.
  - (5) In this section, a reference to a former forename or surname is to be construed in accordance with sections 643(6) and 650(5) of the Ordinance.

#### 4. Documents to accompany application for registration

- (1) For the purposes of section 776(4)(d) of the Ordinance, an application for registration as a registered non-Hong Kong company must be accompanied by—
  - (a) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or any other instruments defining the company's constitution or, if the charter, statutes, memorandum or the other instruments are in a language other than English or Chinese, a certified translation of the charter, statutes, memorandum or instrument in English or Chinese;
  - (b) a certified copy of the company's certificate of incorporation and, if the certificate is in a language other than English or Chinese, a certified translation of the certificate in English or Chinese;
  - (c) if the law of the place of incorporation of the company requires the company to publish its accounts or to deliver copies of its accounts to any person in whose office the accounts may be inspected as of right by members of the public, a certified copy of the latest published accounts of the company that comply with that law;

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- (d) if—
- (i) the law of the place of incorporation of the company does not impose the requirement referred to in paragraph (c); but
  - (ii) the law of any other jurisdiction where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in that jurisdiction impose that requirement,  
a certified copy of the latest published accounts of the company that comply with the law or rules that may be chosen by the company; and
- (e) if none of the following laws or rules imposes the requirement referred to in paragraph (c), a statement in the specified form specifying that fact—
- (i) the law of the place of incorporation of the company;
  - (ii) the law of any other jurisdiction where the company is registered as a company, or the rules of any stock exchange or similar regulatory bodies in that jurisdiction.
- (2) For the purposes of subsection (1)(b), if it is shown to the satisfaction of the Registrar that it is not the practice under the law of the place where a non-Hong Kong company claims to be incorporated to issue a certificate of incorporation, the company must deliver to the Registrar other evidence of incorporation that the Registrar considers sufficient.
- (3) For the purposes of subsection (1)(c) and (d), if the accounts required to be provided are in a language other than English or Chinese, the company must deliver to the Registrar a certified translation of the accounts in English or Chinese for registration instead of the certified copy of the accounts in the original language.

- (4) For the purposes of subsection (1)(c) and (d), if—
- (a) a non-Hong Kong company has been incorporated for less than 18 months prior to the date of delivery of the application under section 776(4) of the Ordinance; and
  - (b) the accounts that the company is required to publish have not been made up,
- the company must deliver to the Registrar for registration a statement in the specified form specifying that fact instead of the certified copy of the latest published accounts of the company.
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## Part 3

### Certified Translation of Domestic Name

**5. Company may include certified translation of domestic name: application for registration**

For the purposes of section 777(2)(b) of the Ordinance, an application for registration as a registered non-Hong Kong company under section 776(2) or (3) of the Ordinance may contain—

- (a) if the company has 1 domestic name and that name is not in Roman script, a certified translation, in English, of that name;
- (b) if the company has more than one domestic name and none of which is in Roman script, a certified translation, in English, of any one of those names;
- (c) if the company has 1 domestic name and that name is not in Chinese, a certified translation, in Chinese, of that name; or
- (d) if the company has more than one domestic name and none of which is in Chinese, a certified translation, in Chinese, of any one of those names.

**6. Company may include certified translation of domestic name: change of domestic name**

(1) For the purposes of section 779(3)(b) of the Ordinance, a return delivered by a registered non-Hong Kong company under section 778(2) of the Ordinance to the Registrar for registration may contain—

- (a) if the company has 1 new domestic name and that name is not in Roman script, a certified translation, in English, of that name;

- (b) if the company has more than one new domestic name and none of which is in Roman script, a certified translation, in English, of any one of those names;
  - (c) if the company has 1 new domestic name and that name is not in Chinese, a certified translation, in Chinese, of that name; or
  - (d) if the company has more than one new domestic name and none of which is in Chinese, a certified translation, in Chinese, of any one of those names.
- (2) Subsection (1)(a) and (b) does not apply, if at the time of delivering the return, one or more of the company's corporate names are in Roman script.
- (3) Subsection (1)(c) and (d) does not apply, if at the time of delivering the return, one or more of the company's corporate names are in Chinese.

**7. Contents of application under section 5 and return under section 6**

- (1) If a certified translation of a domestic name is contained in an application under section 5, the application must contain a certified translation (in the same language as the certified translation of the domestic name) of the relevant part of the company's certificate of incorporation (or its equivalent) that states—
- (a) the domestic name of the company;
  - (b) the nature of that certificate (or its equivalent); and
  - (c) the date of issue of that certificate (or its equivalent).
- (2) If a certified translation of a new domestic name is contained in a return under section 6(1), the return must contain a certified translation (in the same language as the certified translation of the new domestic name) of the relevant part of the company's certificate of change of name (or its equivalent) that states—

- (a) the new domestic name of the company;
  - (b) the nature of that certificate (or its equivalent); and
  - (c) the date of issue of that certificate (or its equivalent).
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## **Part 4**

### **Notice of Termination of Authorized Representative**

#### **8. Documents to accompany notice of termination**

For the purposes of section 787(5)(b) of the Ordinance, a notification under section 787(3) of the Ordinance must be accompanied by—

- (a) a copy of the written notice of termination sent under section 787(1) or (2) of the Ordinance; or
  - (b) a certified translation of the written notice of termination in English or Chinese if it is in a language other than English or Chinese.
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## Part 5

### Particulars Required for Annual Return

#### 9. Particulars to be contained in annual return

- (1) For the purposes of section 788(2)(b) of the Ordinance, an annual return of a registered non-Hong Kong company must contain—
  - (a) the date of the annual return, which must be the date of the most recent anniversary of the date of registration of the company under—
    - (i) Part 16 of the Ordinance; or
    - (ii) Part XI of the predecessor Ordinance;
  - (b) the place of incorporation of the company;
  - (c) the corporate name or approved name of the company;
  - (d) the date of registration of the company and its registered number under—
    - (i) Part 16 of the Ordinance; or
    - (ii) Part XI of the predecessor Ordinance;
  - (e) the address of—
    - (i) the principal place of business of the company in Hong Kong;
    - (ii) the principal place of business (if any) of the company in its place of incorporation; and
    - (iii) the registered office (or its equivalent) of the company in its place of incorporation;
  - (f) the particulars specified in section 3(1)(d)(ii) and (iii) with respect to each person who, at the date of the annual return, is a director of the company;

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- (g) the particulars specified in section 3(1)(e)(ii) and (iii) with respect to each person who, at the date of the annual return, is the company secretary (or, if there are joint company secretaries, with respect to each of them) of the company;
  - (h) the following particulars with respect to each person who, at the date of the annual return, is an authorized representative of the company—
    - (i) the name and address of the representative; and
    - (ii) if the representative is a natural person—
      - (A) the number of the representative's identity card; or
      - (B) if the representative does not have an identity card, the number and issuing country of any passport held by the representative;
  - (i) for a company to which section 789 of the Ordinance applies, a statement specifying that the latest published accounts of the company are delivered to the Registrar under that section together with the annual return;
  - (j) for a company to which section 789 of the Ordinance does not apply, a statement specifying that fact;
  - (k) if the company has been incorporated for less than 18 months prior to the date of delivery of the annual return under section 788(1) of the Ordinance, and the accounts of the company that are required to be published have not been made up, a statement in the specified form specifying that fact;
  - (l) if the company has a share capital, the particulars relating to the authorized share capital (if any) and issued share capital (or their equivalents) of the company; and

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- (m) the particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that are required to be registered with the Registrar under—
- (i) Part 8 of the Ordinance; or
  - (ii) Part III of the predecessor Ordinance.
- (2) For the purposes of subsection (1)(g), if all the partners in a firm are joint company secretaries of the registered non-Hong Kong company, the name and principal office of the firm may be substituted for the particulars specified in section 3(1)(e)(ii) and (iii).
- (3) In subsection (1)(c)—
- approved name*** (經批准名稱) has the meaning given by section 774(1) of the Ordinance.
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## Part 6

### Revision of Accounts under Section 790 of Ordinance

#### 10. Interpretation

(1) In this Part—

**original accounts** (原有帳目) means the accounts that are the subject of revision by revised accounts;

**regulatory requirement** (規管性規定) has the meaning given by section 790(2) of the Ordinance;

**revised accounts** (經修改帳目) means—

- (a) for a revision under section 790 of the Ordinance by replacement, the accounts replacing the original accounts for the purpose of the revision; or
- (b) for a revision under that section by supplementary note, the original accounts together with the supplementary note for the purpose of the revision.

(2) In this Part—

- (a) a reference to revision of any accounts by replacement is a reference to revision by the preparation of a replacement set of accounts in substitution for the accounts; and
- (b) a reference to revision of any accounts by supplementary note is a reference to revision by the preparation of a note indicating revisions made to the accounts.

(3) This Part is not to be construed as affecting any right accrued, or any obligation or liability incurred, in relation to any original accounts.



**11. Company to deliver revised accounts to Registrar**

- (1) If the directors of a registered non-Hong Kong company have revised the accounts of the company under section 790 of the Ordinance, the company must comply with subsection (2) or (3) within 28 days after whichever is the earlier of the following—
  - (a) the date on which the revised accounts of the company are published;
  - (b) the date on which copies of the revised accounts of the company are delivered to any person in whose office the revised accounts may be inspected as of right by members of the public.
- (2) If the original accounts of a registered non-Hong Kong company are revised by replacement, the company must—
  - (a) make in a prominent position in the revised accounts of the company—
    - (i) a statement specifying that the revised accounts replace the original accounts for the financial year specified in the statement; and
    - (ii) a statement specifying—
      - (A) the respects in which the original accounts did not, as appears to the directors of the company, comply with the regulatory requirement; and
      - (B) the material revisions to the original accounts that are made under section 790 of the Ordinance; and
  - (b) deliver to the Registrar for registration—
    - (i) a certified copy of the revised accounts that comply with the regulatory requirement; or

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- (ii) if the revised accounts are in a language other than English or Chinese, a certified translation of the revised accounts, in English or Chinese, that comply with the regulatory requirement.
  - (3) If the original accounts of a registered non-Hong Kong company are revised by supplementary note, the company must—
    - (a) make in a prominent position in the supplementary note a statement specifying that the note—
      - (i) revises in certain respects the original accounts; and
      - (ii) is to be treated as forming part of the original accounts; and
    - (b) deliver to the Registrar for registration—
      - (i) a certified copy of the supplementary note that complies with the regulatory requirement; or
      - (ii) if the supplementary note is in a language other than English or Chinese, a certified translation of the supplementary note, in English or Chinese, that complies with the regulatory requirement.
  - (4) If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
  - (5) If a person is convicted of an offence under subsection (4), the magistrate may, in addition to any penalty that may be imposed, order that the person must do the act that the person has failed to do as required by subsection (2)(b) or (3)(b) within a time specified in the order.

- (6) A person who contravenes an order under subsection (5) commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

**12. Effect of revision after delivery of revised accounts to Registrar**

- (1) If a registered non-Hong Kong company complies with section 11(2) or (3) with respect to any of its revised accounts, Part 16 of the Ordinance has effect with respect to the revised accounts as if the revised accounts were, as from the date of their registration with the Registrar, the accounts of the company in place of the original accounts.
- (2) Without limiting subsection (1), if, as at the date of registration of the revised accounts of a registered non-Hong Kong company for a financial year with the Registrar, section 789(2) of the Ordinance has yet to be complied with, the revised accounts are, as from that date, the accounts of the company for that financial year for the purposes of that section.
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## Part 7

### Change of Registered Particulars

#### 13. Particulars to be contained in a return under section 791 of Ordinance

For the purposes of section 791(3)(b) of the Ordinance, a return delivered under section 791(1) of the Ordinance in relation to a registered non-Hong Kong company must—

- (a) identify the matters specified in section 791(2) of the Ordinance in which a change is made;
- (b) contain the new particulars after the change; and
- (c) contain the date on which the change is made.

#### 14. Documents to accompany a return under section 791 of Ordinance

- (1) This section applies if, in relation to a registered non-Hong Kong company, a change is made in any of the instruments specified in section 791(2)(a) of the Ordinance.
- (2) For the purposes of section 791(3)(c) of the Ordinance, a return delivered under section 791(1) of the Ordinance must be accompanied by—
  - (a) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or the other instruments defining the company's constitution after the change; or
  - (b) if the charter, statutes or memorandum (including articles, if any) of the company or the other instruments defining the company's constitution are in a language other than English or Chinese, a certified translation of the charter, statutes, memorandum or instruments in English or Chinese.

Companies (Non-Hong Kong Companies) Regulation

L.N. 79 of 2013

B2579

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John TSANG  
Financial Secretary

16 May 2013

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### Explanatory Note

Part 16 of the Companies Ordinance (28 of 2012) (*Ordinance*) makes provisions for non-Hong Kong companies, being companies incorporated in a place outside Hong Kong that have established a place of business in Hong Kong. This Regulation is made under sections 804 and 805 of the Ordinance to provide for the various particulars and documents to be provided to the Registrar of Companies (*Registrar*) in respect of a non-Hong Kong company (*company*). The Regulation is divided into 7 Parts.

2. Part 1 deals with the preliminary matters, including the commencement of the Regulation and interpretation of the terms used.
3. Part 2 sets out the particulars and documents required for an application for registration as a registered company.
4. Part 3 provides that an application under section 776(2) and (3) of the Ordinance or a return under section 778(2) of the Ordinance may contain a certified translation of a domestic name under specified conditions. The application or return must be accompanied by a certified translation of the relevant part of a certificate of incorporation or certificate of change of name showing the domestic name or new domestic name of the company.
5. Part 4 sets out the documents required to accompany a notice of termination of authorization as an authorized representative of a registered company.
6. Part 5 sets out the particulars to be contained in an annual return of a registered company.

7. Part 6 provides for the requirements for delivery of revised accounts of a registered company to the Registrar and the effect of the revision. Failure to comply with the requirements is an offence punishable by a fine at level 5.
8. Part 7 sets out the particulars of the changes of a registered company (such as changes made to its constitution or directors) to be contained in a return required to be delivered under section 791 of the Ordinance. It also sets out the documents required to accompany the return if there is any change to the company's constitution.