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Non-Hong Kong Company Registration and Maintenance Guide (4) Annual Requirements and Filing of Changes

1. Maintenance - Annual Requirements

Annual Filing Obligations

Subject to it being exempted from the obligation to do so, every year the foreign company must file the following documents with the Registrar:

- (1) an Annual Return confirming that the particulars of company as at the date of return;
- (2) certified copies of each of the following documents or certified translations if the original is not in English or Chinese:
 - (a) balance sheet as at the end of the company's last financial year;
 - (b) profit and loss account for the company's last financial year;
 - (c) group accounts, if any, in respect of the company's last financial year;
 - (d) directors report, if any, in respect of the company's last financial year;
 - (e) auditor's report, if any, on the balance sheet and the accounts.

Certification of Accounts

Accounts and reports requiring certification must be certified by a director, the secretary or other principal officer of the company.

Exemption - US Companies

In the case of companies incorporated in the United States, the Registrar has determined that an exemption from the annual filing requirements will be granted if the company can satisfy each of the following requirements in respect of the entire year for which the exemption is claimed:

- (1) the company has been either a wholly-owned subsidiary of another company or the actual number of its members has not exceeded 35 and;

- (2) there has been no provision in its constitution, articles of association or bye-laws for the creation or issue of bearer issues or share warrants, and its shares have not been transferable by delivery and;
- (3) the company has not, under the law of its place of incorporation or origin, been obliged to publish its accounts or to deliver copies to any person in whose office they may be inspected as of right by members of the public.

Exemption - Other Foreign Companies

In the case of foreign companies incorporated other than in the United States, the Registrar has determined that an exemption from the annual filing requirements will be granted if the company can satisfy each of following requirements:

- (1) the company has no more than 50 members and;
- (2) its shares are not listed on any official stock exchange and the company is prohibited from offering and has not offered any shares or debentures to the public and;
- (3) there is no power in its constitution to issue bearer shares or share warrants and;
- (4) shares in the company cannot be transferred merely by delivery and;
- (5) the company is not required by the law to file accounts or to make its accounts available for public inspection at its place of incorporation.

Application for Exemption

In order to apply for an exemption, a certificate must be provided by either:

- (1) the auditor or the lawyer of the foreign company practising in its place of incorporation or;
- (2) an "independent" solicitor or auditor practising in Hong Kong.

The Registrar has a discretion as to whether or not to grant a foreign company an exemption and the practice of the Registrar is to deal with applications for exemption on a case by case and a year by year basis.

Tax Authorities

It is important to note that the exercise by the Registrar of the discretion does not exempt the company from any obligation to file its accounts with the Hong Kong tax authorities if business is being conducted in Hong Kong.

2. Maintenance - Changes in Particulars

Filing Obligations

Foreign companies registered in Hong Kong must deliver a return to the Registrar within a fixed period in the case of any change to any of the following particulars in relation to the company:

- (1) its constitutional documents;
- (2) the details of its directors (and secretary where relevant);
- (3) the details of its authorised representative(s);
- (4) the address of its registered office or its principal place of business;
- (5) its corporate name.

Liquidation

If liquidation proceedings against a foreign company registered in Hong Kong are commenced in its place of incorporation, notice of that fact and of the appointment of any liquidator must also be filed with the Registrar.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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