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Comparison of Subsidiary and Branch Office in Hong Kong

The subsidiary company (in the form of a company limited by shares) and Non-Hong Kong company (known as branch office) are the two most commonly used investment vehicles for foreign companies to establish and carry out business in Hong Kong.

A Non-Hong Kong company, also commonly known as branch office, is considered an extension of the foreign company and is not a separate legal entity of its own. This means that the foreign company is responsible for the liability of its non-Hong Kong company. Additionally, the foreign company can also be sued in Hong Kong in the case of any dispute.

A branch office is also subject to same compliance requirements applicable to a subsidiary, except that of auditing of financial statements. In accordance with the Companies Ordinance (Chapter 622 of Hong Kong laws), the annual financial statements of a branch is only required to be audited if the jurisdiction in which the foreign company is registered also requires that its financial statements be audited. On the other hand, all Hong Kong registered companies are required to have their annual financial statements audited.

A branch is generally not a tax resident and therefore making it ineligible for possible tax incentives that are available to companies incorporated in Hong Kong. A limited company wholly owned by a foreign company is a separate legal entity from its foreign parent company. A Hong Kong registered company will by default considered to be a tax resident in Hong Kong and therefore is eligible to enjoy tax benefits and incentives which otherwise not available to non-tax residents.

This article compares branch office and subsidiary company in Hong Kong in terms of asset protection, business activity, financial reporting and tax benefits. A table comparing a branch and a subsidiary in many other aspects is also attached.

1. Separate Legal Identity and Asset Protection

A Hong Kong branch office (formally known as Non-Hong Kong company) is an extension of the foreign company and is not a separate legal entity of its own. This means that foreign company will be liability to and is responsible for the debts of its Hong Kong branch office. Also, a foreign company can be sued in Hong Kong in case where there is any dispute between its Hong Kong branch and its business partners. Hence the assets of the parent company will be not protected in this case.

A subsidiary company, which is in the form a company limited by shares, on the other hand, is an independent legal entity separate from the foreign company even if the foreign company holds 100% shares in it. This means that the foreign company does not have to bear the losses and liabilities of the Hong Kong subsidiary company. Effectively, the assets of both the subsidiary and the parent company are protected even if either company are sued.

2. Organisational Structure

A branch office does not have the concepts of shareholder/member, director, company secretary and registered office as stipulated by the Companies Ordinance. That is, the foreign company is required to appoint director and company secretary for its non-Hong Kong company. Also, in contrast to a local Hong Kong company, a branch office is not required to keep a significant controller register.

On the other hand, a local Hong Kong company is required to have a minimum of one shareholder/member who must subscribe at least share of the company's capital, one individual director, one company secretary who can be a corporation or individual and a street address as its registered office address.

3. Business Activities

Hong Kong branch office, being an extension of its parent foreign company, is only allowed to carry out activities defined in the constitution (articles of association) of that of its foreign company and cannot perform other activities in Hong Kong that are not aligned with the activities of the respective foreign company.

A subsidiary company can, however, be made to perform any activity, as long as these are defined clearly at the time of incorporation of the respective Hong Kong subsidiary company.

Both a branch office and subsidiary company, when they intend to carry out certain regulated business, they are required to apply and obtain licence and permit applicable to that intended business activities.

For example, when a branch or subsidiary company intend to provide asset management services to their clients in Hong Kong, they will need to obtain a type 9 licence from the Securities and Futures Commission. And if they intend to provide travel services, they need to obtain a Travel Agent Licence.

4. Annual Financial Reports

The branch office of a foreign company, unless the laws of the jurisdiction in which its foreign head office is registered requires the annual financial statements of its foreign head office to be audited, is not required to arrange to have its annual financial statements audited, as per the Companies Ordinance.

A subsidiary company, wholly owned by a foreign company and in the form of company limited by shares, is a separate entity and in accordance with the Companies Ordinance, is required to appoint a accounting firm or a public accountant practising in Hong Kong as its auditor and arrange to have its annal financial statements audited by the auditor.

5. Taxation

In terms of taxation, both a branch and a subsidiary company in Hong Kong are subject to the same tax liability and enjoys the same tax benefits, except the access to tax treaties.

Both a branch and a subsidiary in Hong Kong are subject to profits tax only and at the same two tiers of tax system at the rates of 8.25% and 16.5% respectively. A branch office is also eligible to whatever benefits of tax rebate or reduction or concession made available to a local company by the Hong Kong Government from time to time.

However, a branch is accessible to the benefits of tax treaties between Hong Kong and other jurisdictions on the ground that a branch is not a Hong Kong tax resident or that the Hong Kong branch is not the ultimate beneficiary of the income stipulated by such a treaty.

In summary, a branch office is preferred by banks and insurance companies that want to use the brand name and finances of the parent company to secure licences and business contracts, while a subsidiary company is preferred by many foreign companies when establishing a business entity in Hong Kong due to its separate nature providing flexibility of business operations.

If you wish to obtain more information or assistance, please visit our official website at www.kaizencpa.com or contact us through the following:

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Comparison of Branch Office and Subsidiary in Hong Kong

TYPES	SUBSIDIARY COMPANY	BRANCH OFFICE
Entity Name	Need not be the same as parent company	Must be the same as the foreign head office
Allowed Activities	Can conduct all business activities	Must be the same as the foreign head office
Suitable For	For local or foreign companies that wish to expand their operations in Hong Kong and/or further expansion into the China and other Asian market	For foreign companies that wish to expand their operations in Hong Kong
Disadvantages	Continuing compliance obligations eg Financial Reports, Audit, AGMS, etc	Continuing compliance obligations eg Financial Reports, etc
Ownership	Can be 100% foreign or locally owned	Owned 100% by the foreign head office
Separate Legal Entity	Yes	No
Cap on Number of Members	Yes, max 50	Not Applicable
Minimum Setting up Requirement	Minimum One shareholder that can be an individual or a corporate entity (100% local or foreign shareholding allowed). Must have at least one individual director	Must have one Hong Kong Resident Agent/Representative
Limited Liability	Liabilities limited to subsidiary	Liabilities extend to the foreign head office
Need for Audited Accounts	Need to arrange to its annual financial statements audited by a Hong Kong licenced accounting firm.	Only need to be audited if the financial statements of the foreign head office is also required to be audited.
Filing of Accounts with CR/IRD	No/Yes	No/Yes
Tax Treatment	May be qualified as Hong Kong resident entity and hence may be able to enjoy local corporate tax benefits	Generally taxed as non-resident entity, local tax benefits not available
Access to Tax Treaty	Generally, have access to tax treaties	Generally, no access to tax treaties
Tax Benefits	Eligible to be taxed at the two-tier tax rates	Eligible to be taxed at the two-tier tax rates
Bank Account	Can open bank account in Hong Kong	Can open bank account in Hong Kong
Validity Period	Perpetually until deregistered	Perpetually until deregistered
Staff Hiring	No restrictions on hiring local or foreign staff	No restrictions on hiring local or foreign staff
Appointment of Officers	Must appoint at least one individual director and one company secretary	Must appoint at least one local authorized agent.
Appointment of Designated Rep.	Must appoint a local resident to act as the designated representative	No
Governing Body	CR	CR