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Hong Kong Company Maintenance and Compliance Guide (6) - Share transfers

The transfer of legal title to shares in a Hong Kong company is effected by an "instrument of transfer". Beneficial title to shares is transferred by way of contract notes (a bought note and a sold note).

Contract notes must be submitted for stamping within two days (30 days if the sale takes place outside Hong Kong) for execution. Ad valorem stamp duty is levied on the contract notes at the rate of HK\$2.00 per HK\$1,000 or part thereof (i.e. 0.2% of the share value to be transferred), or the consideration paid of the transferred, whichever is higher, while the instrument of transfer attracts a HK\$5 fixed duty. Exemptions from stamp duty are available for intra-group transfers. We will be pleased to provide more detailed advice on the requirements for exemption on request.

In the case of a private company, a latest audited accounts (or consolidated accounts) or latest management accounts (if audited accounts have not been prepared or if they are not up to date) together with details of any land and properties held and a copy of any sale and purchase agreement must normally be submitted when the documents are lodged for stamping. The Stamp Duty Office may also require additional information.

Where a transfer of the beneficial ownership is made otherwise than by sale and purchase e.g. by way of gift, the instrument of transfer is stampable at the fixed rate of HK\$5 plus ad valorem stamp duty of 0.2% of the value of the shares at the date of transfer.

When there is a transfer of beneficial ownership only and no transfer of legal ownership (i.e., where the shares will remain registered in the name of the same person as a nominee for the beneficial owner), contract notes must be made out and ad valorem stamp duty of 0.2% paid. An instrument of transfer will not be required in this case but it is advisable for there to be a declaration of trust (see below).

Ad valorem stamp duty is not payable on a transfer in registered ownership which does not involve any change in the beneficial ownership of the shares. Where shares are registered in the name of a nominee, it is sensible to execute a declaration of trust and to have the declaration of trust adjudicated as not chargeable to duty. The government fee for the execution is HK\$50.

Penalties shall be imposed if failure to stamp the documents within the required time range (from two to ten times the amount of duty payable), although the Collector of Stamp Revenue has power to remit the whole or any part of any penalty in appropriate cases. Neither the company nor any other person is permitted to act on or in general rely in court proceedings on any stampable instrument which is not duly stamped. An unstamped instrument may not be registered in the company's books.

After stamping (and compliance with any other formalities prescribed by the articles of association), the transfer can be registered in the statutory books of the company and issue a new share certificate.

Share transfers are sometimes restricted by, for example, provisions in the company's articles of association which require that the shares are first offered for sale to existing shareholders.

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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