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Non-Hong Kong Company Registration and Maintenance Guide (2) - Advantages of Non-Hong Kong Company Over Local Company

1. Advantages of Non-Hong Kong Company (also known as Branch Office) Over Local Hong Kong Company

Any foreign incorporated company may be registered in Hong Kong as a Non-Hong Kong company (also known as branch office) for those clients who simply wish to create a new Hong Kong entity. The procedure whereby a foreign company is registered in Hong Kong may result in considerable advantages over the equivalent procedure of incorporating a new Hong Kong local company. Those advantages may be summarised as follows:-

(1) Stamp Duty Advantage

Any transfer of shares in a Hong Kong incorporated local company is subject to the stamp duty of the law in Hong Kong but most of the offshore jurisdictions do not impose stamp duty on share transfers. Any share transfer which takes place in a Non-Hong Kong company would follow the procedures applicable in that offshore jurisdiction where a reduced amount of paperwork is required and no stamp duty need be paid.

(2) Ease of Administration

Offshore jurisdictions normally allow for easier administration of a company. Although Non-Hong Kong company have additional reporting requirements to those imposed by offshore jurisdictions. The actual administration of the company would largely follow the offshore jurisdiction procedures and it is therefore much easier and quicker to undertake the administrative procedures such as raising the share capital, transferring shares, appointing and resigning directors, amending the Memorandum and Articles of Association etc.

(3) Accounting Requirements

If the jurisdiction of the parent company is not required to disclose its accounts to the public, the Non-Hong Kong company will be exempted from the requirement to file an accounts to the Companies Registry and, if the offshore jurisdiction does not impose a requirement for accounts to be audited, the Hong Kong Inland Revenue Department may accept unaudited accounts.

(4) Company Names

It is possible to bypass many of the restrictions which would be imposed by the Hong Kong Companies Registry if you register a Non-Hong Kong company. For example, a Hong Kong incorporated local company which wishes to use the word "trust" in its name would normally be required to have a higher share capital whereas no such requirement would apply to a Non-Hong Kong. In most of the offshore jurisdictions it is possible to incorporate a limited liability company without the requirement to use the word "Limited" or any derivative thereof as part of the name. A Non-Hong Kong company may therefore register without including the word "Limited" in its name, which a Hong Kong incorporated local company must be ended with the word "Limited".

(5) Bearer Shares

A Hong Kong company cannot issue bearer shares according to the Hong Kong Companies Ordinance but some of offshore jurisdictions impose no such prohibition. When this kind of offshore company register as a Non-Hong Kong company, they will not be restricted by Hong Kong Companies Ordinance bearer shares issue.

(6) Corporate Mobility

If a Hong Kong incorporated local company wished to leave the register in Hong Kong then it can only be deregistered or winding up. By contrast a company registered in offshore jurisdictions which was registered as a Non-Hong Kong company may leave the Hong Kong register by a relatively simple procedure and continue to exist under the law of that offshore jurisdiction retaining the corporate history. Additionally, an offshore company would have the ability to redomicile itself in another jurisdiction, but Hong Kong local company cannot be redomicile to other jurisdiction.

(7) Tax Advantage For Trading Companies

A registered Non-Hong Kong company is, potentially, given a more lenient tax treatment by the Hong Kong Inland Revenue Department than an equivalent Hong Kong incorporated local company. IRD Practice Note No. 21 (Revised), revised in July 2012, outlines what, in the opinion of the Inland Revenue Department, constitutes Hong Kong source income. In relation to trading transactions the Practice Note states that where either the contract for sale or the contract for purchase is effected in Hong Kong then the profits which result from the contract will be taxable in Hong Kong. However, it states that "where an overseas company sets up a branch in Hong Kong to act simply as a buying office (i.e. the branch only purchases goods and is not involved in their sale) no profits tax liability will arise". It therefore seems as though an overseas company can effect contracts for the purchase of goods in Hong Kong without liability to Hong Kong tax whereas a Hong Kong incorporated local company cannot enjoy this privilege.

(8) Possible Salaries Tax Advantage for Employees

An individual employed by a Hong Kong incorporated local company would generally not be allowed to claim relief from Hong Kong salaries tax in respect of earnings accumulated while travelling abroad on business. An employee of a registered Non-Hong Kong company who is able to show that his contract of employment was signed and negotiated while he was outside Hong Kong may be able to claim a time apportionment and gain relief from Hong Kong salaries tax in respect of earnings accumulated while outside Hong Kong.

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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