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23 May 2025

OFFICIAL RECEIVER'S OFFICE CIRCULAR NO. 2/2025

Prosecution of Insolvency Offences – Commencement of Companies (Amendment) (No.2) Ordinance 2025

The Companies (Amendment) (No. 2) Ordinance 2025 (“**the Amendment Ordinance**”) comes into operation on 23 May 2025. The Amendment Ordinance provides for a regime to enable a company incorporated outside Hong Kong to transfer its domicile to Hong Kong and makes related amendments to the Companies Ordinance (Cap. 622) (“**Cap. 622**”) and other enactments, including S. 274 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“**Cap. 32**”). This Circular aims to supplement ORO Circular No. 6/2014 and ORO Circular No. 5/2017 in relation to S. 274 of Cap. 32 (Liability where proper records not kept).

Amendments to Cap. 32

2. By virtue of the Amendment Ordinance, the definition of “company” in S. 2(1) of Cap. 32 has been amended to include a re-domiciled company under Cap. 622¹. S. 274 of Cap. 32 is therefore now applicable to a re-domiciled company. Related amendments have also been made to S. 274(1) of Cap. 32 to provide for the calculation of the period in respect of the failure to keep proper records of a re-domiciled company to be from the “re-domiciliation date”², if the commencement of the winding up takes place within 2 years from the re-domiciliation date (see paragraph 3 below).

Appendix II attached to ORO Circular No. 5/2017

3. Paragraph 5 of Appendix II attached to ORO Circular No. 5/2017 is revised to reflect the amended S. 274(1) of Cap. 32 and is set out below:

- “5. Under S. 274(1) of Cap. 32, officers of a company are required to keep accounting records that comply with S. 373(2) and S. 373(3) of Cap. 622 for any part of the shorter of the period of 2 years immediately preceding the commencement of the winding-up, or the period between (a) the date of incorporation (in relation to a company that is not a re-domiciled company) or (b) the re-domiciliation date (in relation to a re-domiciled company) and the commencement of the winding up¹⁶.”

Effective Date

4. This Circular takes effect on 23 May 2025. Except as varied by this Circular, ORO Circular No. 6/2014 and ORO Circular No. 5/2017 remain in full force and effect.

1. A new definition of “re-domiciled company” with direct reference to the definition in S. 2(1) of Cap. 622 is added to S. 2(1) of Cap. 32.
2. A new definition of “re-domiciliation date” with direct reference to the meaning given by S. 820A of Cap. 622 is added to S. 2(1) of Cap. 32.

Signed
(Miss Lillian Chow)
Official Receiver

To all insolvency practitioners
via (1) The Hong Kong Institute of Certified Public Accountants
(2) The Law Society of Hong Kong
(3) The Hong Kong Chartered Governance Institute