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23 May 2025

OFFICIAL RECEIVER'S OFFICE CIRCULAR NO. 3/2025

Disqualification of Directors – 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 certain provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“**Cap. 32**”) and Form D1 set out in the Schedule to the Companies (Reports on Conduct of Directors) Regulation (Cap. 32J) (“**Cap. 32J**”).

2. This Circular aims to update the general information provided to liquidators (including provisional liquidators and receivers as appropriate) for completion of Form D1 and to remind them of the statutory requirement to use the updated version of Form D1.

Amendments to Cap. 32

3. By virtue of the Amendment Ordinance, the definition of “company” in Cap. 622 is expanded to cover a re-domiciled company and the definition of “non-Hong Kong company” has been amended to exclude a re-domiciled company¹. To align with the amended definitions in Cap. 622, S. 2(1) of Cap. 32 is amended to include a re-domiciled company in the definition of “company” and to exclude a re-domiciled company from the definition of “non-Hong Kong company”.

Appendix I attached to ORO Circular No. 6/2017

4. To reflect the latest amendments to Cap. 32, the definition of “company” in Paragraph (A) of Appendix I attached to ORO Circular No. 6/2017 is revised to reflect the amended definitions and is set out below:

“Company

“Company” means

- (i) a company formed and registered under Cap. 622, an existing company or a re-domiciled company³,
- (ii) an unregistered company within the meaning of Part X of Cap. 32 (other than a partnership, whether limited or not or an association) –
 - wherever incorporated
 - carrying on business in Hong Kong or which has carried on business in Hong Kong, and
 - which is capable of being wound up under Cap. 32⁴; or
- (iii) a registered non-Hong Kong company⁵.”

Appendix II attached to ORO Circular No. 6/2017

5. In view of the issuance of ORO Circular No. 2/2025 on Prosecution of Insolvency Offences, Paragraph (I)(A)(1) of Appendix II attached to ORO Circular No. 6/2017 is amended as follows:

- “1. State particulars of breach of any of the above sections (with reference to the prevailing ORO Circulars on Prosecution of Insolvency Offences)
- Whether accounting records have been recovered.
 - If some accounting records have been recovered, state particulars as to non-compliance with the relevant section, such as auditor’s qualification regarding adequacy of records.”

Amendments to Cap. 32J (Form D1)

6. Under the Amendment Ordinance, Form D1, Annex A contained in the Schedule to Cap. 32J is amended and a new paragraph 3A providing for the re-domiciliation date² for a re-domiciled company is inserted. Liquidators should, with immediate effect, use the updated version of Form D1 in Cap. 32J for the submission to the Official Receiver.

Effective Date

7. This Circular takes effect on 23 May 2025. Except as varied by this Circular, ORO Circular No. 6/2017 and ORO Circular No. 2/2020 remain in full force and effect.

1. S. 3 of the Amendment Ordinance. A new definition of “re-domiciled company” with direct reference to the definition in S. 2(1) 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