

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2215/09-10  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/09/2

**Bills Committee on Companies (Amendment) Bill 2010 and  
Business Registration (Amendment) Bill 2010**

**Fifth meeting on  
Monday, 17 May 2010, at 5:30 pm  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Paul CHAN Mo-po, MH, JP (Chairman)  
Hon Albert HO Chun-yan  
Dr Hon Margaret NG  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Miriam LAU Kin-yee, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Ting-kwong, BBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Starry LEE Wai-king  
Hon CHAN Kin-por, JP

**Members absent** : Hon CHAN Kam-lam, SBS, JP  
Hon CHIM Pui-chung

**Public officers attending** : Financial Services and the Treasury Bureau  
  
Mr John LEUNG, JP  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)  
  
Miss Grace KWOK  
Principal Assistant Secretary for Financial Services and the  
Treasury (Financial Services)

Companies Registry

Ms Elizabeth MO  
Deputy Principal Solicitor (Company Law Reform)

Ms Rita HO  
Registry Solicitor

Ms Kitty TSUI  
Senior Solicitor (Company Law Reform)

Miss Wendy MA  
Assistant Registry Manager

Department of Justice

Miss Amy CHAN  
Senior Government Counsel

Miss Emma WONG  
Senior Government Counsel

**Clerk in attendance :** Ms Anita SIT  
Chief Council Secretary (1)5

**Staff in attendance :** Mr Timothy TSO  
Assistant Legal Adviser 2  
  
Mr Noel SUNG  
Senior Council Secretary (1)4

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**I Confirmation of minutes and matters arising**

(LC Paper No. CB(1)1784/09-10 — Minutes of meeting on 20 April 2010)

The minutes of the meeting held on 20 April 2010 were confirmed.

## **II Meeting with the Administration**

### Follow-up to issues raised at the meeting on 3 May 2010

(LC Paper No. CB(1)1886/09-10(01) — Administration's response to issues raised at the meeting on 3 May 2010)

### Clause-by-clause examination of the Bills

(LC Paper No. CB(3)390/09-10 — The Bill on Companies (Amendment) Bill 2010

LC Paper No. CB(3)391/09-10 — The Bill on Business Registration (Amendment) Bill 2010

LC Paper No. CB(1)1201/09-10(01) — Marked-up copy of the Bill on Companies (Amendment) Bill 2010 prepared by the Legal Service Division

LC Paper No. CB(1)1201/09-10(02) — Marked-up copy of the Bill on Business Registration (Amendment) Bill 2010 prepared by the Legal Service Division

LC Paper No. CB(1)1294/09-10(01) — Letter from Assistant Legal Adviser to the Administration dated 22 February 2010 on Companies (Amendment) Bill 2010

LC Paper No. CB(1)1343/09-10(01) — Administration's response to the letter from Assistant Legal Adviser dated 22 February 2010 on Companies (Amendment) Bill 2010

LC Paper No. CB(1)1294/09-10(02) — Letter from Assistant Legal Adviser to the Administration dated 22 February 2010 on Business Registration (Amendment) Bill 2010

LC Paper No. CB(1)1477/09-10(01) — Administration's response to the letter from Assistant Legal Adviser dated 22 February 2010 on Business Registration (Amendment) Bill 2010)

2. The Committee deliberated (Index of proceedings attached at **Appendix**).

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Follow-up actions to be taken by the Administration

3. The Administration was requested to take the following follow-up actions to address concerns raised by members: -

- (a) Regarding the concern that the measures for verifying the identity of the applicants and the authenticity of documents delivered through the on-line application system would be implemented as administrative arrangements and would not be spelt out in the Bills, the Administration would give assurance in the speech at the resumption of the Second Reading debate on the Bills, about the implementation of the measures and that the Administration would revert to the Legislative Council Panel on Financial Services if substantial changes were made to those measures in future.
- (b) Regarding the need to provide information of the newly registered companies to existing companies for checking against similar company names, the Administration should look into the feasibility of -
  - (i) dissemination of basic information (such as the company name) on newly registered companies free of charge to the public regularly; and
  - (ii) providing a notification service relating to the registration of new companies and the related charging arrangements.
- (c) To address Mr Albert HO's concern about the channels available for companies to seek a review of the Registrar of Companies' direction for a company to change its name, the Administration should consider the feasibility of providing for such cases to be heard by the Administrative Appeals Board instead of the court.
- (d) Regarding the inconsistencies in the approval/rejection authorities for registration of company names, and the use of words such as "must" and "may" in various sections of the Companies Ordinance (CO) (Cap. 32), the Administration should review the provisions for rectifying the inconsistencies.
- (e) On the concurrent use of "must" and "shall" in various sections of the CO, the Administration should consider amending the relevant sections in the current legislative exercise so as to achieve consistency in the use of words within the same section of an ordinance.

- (f) On the concern about companies failing to comply with the Registrar of Companies' direction to change the names of the companies, the Administration should consider adding a provision in section 22AA of CO stipulating the prohibition of the continued use of the rejected company names, and the criminal liabilities for breaching the Registrar of Companies' direction.
- (g) On the arrangement of notifying a person through e-mail to check documents stored in the Companies Registry's computer system, the Administration should confirm the rationale for the proposed arrangement under proposed section 346(2A)(b)(ii).
- (h) Regarding the concern that the Companies Registry might be obliged under proposed section 348BA to store the certificates issued by the Registrar of Companies in its computer system indefinitely in the absence of a specified time limit for applicants to retrieve the certificates, the Administration should review the provision and consider the need of setting a time limit for storage of the certificates in the Companies Registry's computer system.

### **III Any other business**

4. There being no other business, the meeting ended at 7:30 pm.

Council Business Division 1  
Legislative Council Secretariat  
9 June 2010

**Proceedings of the  
Bills Committee on Companies (Amendment) Bill 2010 and  
Business Registration (Amendment) Bill 2010  
Fifth meeting on Monday, 17 May 2010, at 5:30 pm  
in the Conference Room A of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000819 – 000956	Chairman	Confirmation of minutes of meeting on 20 April 2010	
<b>Meeting with the Administration</b>			
000957 – 001433	Administration	Briefing by the Administration on paper LC Paper No. CB(1)1886/09-10(01)	
001434 – 001606	Mr CHAN Kin-por Administration	In reply to Mr CHAN Kin-por's enquiry on whether information on the verification procedures of the jurisdictions other than those listed in the paper (LC Paper No. CB(1)1886/09-10(01)) was available, the Administration advised that only information relating to the authentication procedures in Australia, New Zealand, Singapore and United Kingdom, which were common law jurisdictions, had been collected.	
001607 – 002043	Ms Miriam LAU Administration Chairman	In response to Ms Miriam LAU's enquiry regarding registration of users of the Integrated Companies Registry Information System (ICRIS) by using a digital certificate issued by the Hongkong Post or any recognized Certification Authority, the Administration advised that the Certification Authority would verify the identity of the applicant before issuing the digital certificate.	
002044 – 002329	Chairman Administration Ms Miriam LAU	Noting that the ICRIS registration procedure and the proposed measures for verification of the identities of the ICRIS users would not be included in the Bills and would be implemented as administrative procedures, Ms Miriam LAU requested that the relevant Government official should, in his/her speech at the resumption of the Second Reading debate on the Bills, give assurance about the implementation of the proposed measures and that the Administration would revert to the Legislative Council Panel on Financial Services if substantial changes were made to those measures in future.	The Administration to take action.
002330 – 004832	Dr Philip WONG Mr WONG Ting-kwong Ms Miriam LAU Administration	Dr Philip WONG and Mr WONG Ting-kwong were concerned that companies might not be aware that the name of a new company was very similar to the names of their companies, such as by adding the word "Holding" or "International" in the name of an	

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		<p>existing company. Dr WONG and Mr WONG opined that with the implementation of the on-line company registration system, a notification system should be put in place whereby companies would be informed of the names of newly registered companies on a regular basis. Computerization of the company registration system should facilitate the search of relevant information.</p> <p>Mr WONG pointed out that some time in the past, the Companies Registry did inform the relevant party if the name of a new company resembled closely to the name of an existing company. The business sector might be prepared to pay for such notification service. Ms Miriam LAU expressed reservation whether the business sector, especially the small and medium sized enterprises, should be required to pay for the notification service.</p> <p>Noting that companies had to pay a fee for access to the list of newly registered companies on the Companies Registry website at present, Ms Miriam LAU opined that some basic information (such as the name and nature of business) on newly registered companies should be provided free of charge to the public regularly so that companies might check whether the name of a new company resembled closely to theirs.</p> <p>The Administration responded that the guidelines for approving and rejecting the registration of company names had been enhanced so that the names of newly registered companies which resembled closely with the names of existing companies would be considered as “too like”, e.g. registration of companies which added the word "Holding" or "International" in the name of an existing company might be considered as “too like”. Companies might lodge a complaint to the Companies Registry if they considered that the name of a new company was "too like" the names of their companies, within 12 months of the registration of the new company. At present, some companies paid fees to the Companies Registry to obtain lists of newly registered companies so that they could check against similar company names.</p> <p>The Administration would look into the feasibility of -</p> <p>(a) dissemination of basic information</p>	<p>The Administration to take action.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(such as the name) on newly registered companies free of charge to the public regularly; and</p> <p>(b) providing a notification service relating to the registration of new companies and the related charging arrangements.</p> <p>The Administration added that the company registration system had been revised years ago and for the sake of efficiency, the Companies Registry no longer consulted the existing companies regarding the registration of new companies. The current legislative proposals did not propose changes to the existing procedure for companies to raise objection to the registration of the names of new companies.</p>	
<b>Clause-by-clause examination of the Bill</b>			
004833 – 005504	Chairman Administration	<p><u>Clause 8 – Punishment of offences under this Ordinance</u></p> <p><b>Part 3</b></p> <p><b>Amendments Relating to Company Name</b></p> <p><u>Clause 9 – Restriction on registration of companies by certain names</u></p> <p>Members raised no question on clauses 8 and 9.</p>	
005505 – 012229	Administration Mr Albert HO Ms Miriam LAU Ms Audrey EU ALA2	<p><u>Clause 10 – Change of name</u></p> <p>Mr Albert HO enquired, apart from applying to court to set aside the Registrar of Companies' direction for a company to change its name, whether an administrative appeal channel was available for a company to seek review of the Registrar of Companies' direction. Mr HO opined that given the cost and time involved in court hearings, an administrative appeal system should be established for companies seeking review of the Registrar of Companies' direction to change a company's name.</p> <p>The Administration advised that under section 22A of the Companies Ordinance (CO) (Cap. 32), a company might apply to the court to set aside the Registrar of Companies' direction to change its name. Currently no administrative appeal channel</p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p>was provided for review of the Registrar of Companies' direction.</p> <p>ALA2 pointed out that under section 22A of the CO, a company might apply to the court to set aside the Registrar of Companies' direction to change its name on the ground that the name of the company gave so misleading an indication of the nature of its activities as to be likely to cause harm to the public. The Administration proposed in the Bill that a company might apply to the court to set aside the Registrar of Companies' direction to change its name in circumstances where, in the opinion of the Chief Executive, the use of the name by the company would constitute a criminal offence, or the name was offensive or otherwise contrary to the public interest.</p> <p>For cases where the name of a new company was the same as a company on the register of company names, or the company name was likely to give the impression that the company was connected with the Central People's Government or the HKSAR Government, or where special approval by Registrar of Companies was required under section 20(2)(b) of the CO to use particular words, e.g. "trust", in the company names, they were straightforward and the Administration did not see the need to allow companies to apply to the court to set aside the Registrar of Companies' change-of-name direction in such cases..</p> <p>At the request of Mr Albert HO, the Administration would consider the feasibility of providing for the appeal cases under section 22A to be heard by the Administrative Appeals Board instead of the court.</p> <p>Ms Miriam LAU noted with concern that in proposed section 22 (3A), the word "may" was used for the Registrar of Companies to direct a company to change its name. Ms LAU enquired why discretion had to be given to the Registrar of Companies when companies must not be registered by certain names. Ms LAU also queried why, as stipulated in the proposed section 22(3A), the Registrar of Companies would need 3 months to direct a company to change its name.</p> <p>The Administration explained that it was stated in proposed section 20(2A) that the Registrar of</p>	<p>The Administration to take action.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Companies might give consent to registration of certain company names. The use of the word "may" in proposed section 22(3A) was to allow flexibility for the Registrar of Companies to exercise his discretion. The Administration further explained that under the proposed section 22(3A), the Registrar of Companies was allowed to direct a company to change its name within 3 months after its registration; it was not that the Registrar needed 3 months to consider whether a company name should be approved/rejected.</p> <p>Ms Audrey EU expressed concern about the inconsistencies in the approval/rejection authority and the use of the words "must" and "may" in different sections of the CO. Ms EU pointed out that while it was stated in section 20(1) that a company shall not be registered by a certain name if it was, "in the opinion of the Chief Executive", that the use of the name constituted a criminal offence, or the same was offensive or otherwise contrary to the public interest, the proposed section 22(3A) stipulated that "if in the opinion of the Registrar" a company name "must" not be registered, the Registrar of Companies "may" direct a company to change its name. Ms EU enquired whether the opinion of the Chief Executive or that of the Registrar of Companies should apply in the two sections.</p> <p>The Administration advised that under an administrative arrangement the Chief Executive had delegated the authority for approval/rejection of the registration of a company name under section 20 to the Registrar of Companies, although such delegation was not reflected in the provisions of the CO. Legislative amendments would be proposed during the CO re-write exercise to clarify the relevant authority in the legislation.</p> <p>To address members' concern about the inconsistencies in the approval/rejection authorities for registration of company names, and the use of words such as "must" and "may" in various sections of the CO, the Administration was requested to review the provisions for rectifying the inconsistencies.</p> <p>ALA2 pointed out that "shall" was used in the existing sections of the CO (e.g. sections 20, 22, 95,</p>	<p>The Administration to take action.</p>

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		<p>109, 158 and 346) whereas "must" was used in the new sections added by the Bill (e.g. the new sections 20(2A), 22(3A), 95(1A), 109(1C), 158(4AB) and (5B), and 346(2A)). The effect of this was that there would be intermixing of the use of "must" and "shall" in the same section of the Ordinance. To achieve consistency within the same section of an ordinance, consideration should be given to amending "shall" to "must" in the relevant sections. In response to Ms Audrey EU's enquiry, ALA2 said that similar amendments were made to the Occupational Deafness (Compensation) (Amendment) Bill 2009 to change the word "shall" to "must" if the two words were used in the same section.</p> <p>The Administration responded that the drafting practice now required that opportunity was to be taken to use "must" instead of "shall" to impose an obligation in line with ordinary speech in provisions being inserted. The use of "must" to impose an obligation in the CO in which "shall" had been used for the same purpose would not lead to an interpretation that "shall" had a different legal effect from "must" or vice versa. The new sections/subsections were drafted in accordance with the latest drafting practice. Amendments to the CO would be made during the CO re-write exercise in order to maintain consistency in the use of words. In view of members' concern about the concurrent use of "must" and "shall" in the same sections of the CO, the Administration would review the magnitude of the amendment work involved and consider amending the relevant sections in the current legislative exercise.</p>	<p>The Administration to take action.</p>
<p>012230 – 012255</p>	<p>Administration</p>	<p><u>Clause 11 – Power of Registrar to require company to abandon misleading name</u></p> <p>Members raised no question on clause 11.</p>	
<p>012256 – 012759</p>	<p>Chairman Administration Ms Miriam LAU Ms Audrey EU</p>	<p><u>Clause 12 – Section 22AA added</u></p> <p><i>22AA – Power of Registrar to replace company name in case of failure to comply with direction</i></p> <p>In response to Ms Miriam LAU's concern that a company might continue to use its name despite the Registrar of Companies' rejection of the proposed company name, and replacement of the company</p>	

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		<p>name with the registration number on the register of company names, the Administration remarked that if the company continued to use the rejected name for its business, e.g. in advertisements or printing the name on its stationery, the company would be liable to criminal prosecution under section 93(4) of the CO. To address members' concern, the Administration would consider adding a provision in section 22AA stipulating the prohibition of the continued use of the rejected company name and the criminal liabilities for breaching of the Registrar of Companies' direction.</p> <p><u>Clause 13 – Punishment of offences under this Ordinance</u></p> <p>Members raised no question on clause 13.</p>	<p>The Administration to take action.</p>
<p>012800 – 012950</p>	<p>Administration</p>	<p><b>Part 4</b></p> <p><b>Amendments Relating to Statutory Derivative Actions</b></p> <p><u>Clause 14 – Definition</u></p> <p><u>Clause 15 – Members may bring or intervene in proceedings</u></p> <p><u>Clause 16 – Service of written notice</u></p> <p><u>Clause 17 – Court's power to strike out proceedings brought or intervention in proceedings by members under common law</u></p> <p><u>Clause 18 – Effect of approval or ratification</u></p> <p><u>Clause 19 – General powers of court</u></p> <p><u>Clause 20 – Discontinuance or settlement</u></p> <p>Members raised no question on clauses 14 to 20.</p>	
<p>012951 – 013505</p>	<p>Administration Chairman</p>	<p><b>Part 5</b></p> <p><b>Amendments Relating to Electronic Communications with Registrar of Companies</b></p> <p><u>Clause 21 – Interpretation</u></p> <p>Members raised no question on clause 21.</p>	

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		<p><u>Clause 22 – General provisions as to annual returns</u></p> <p>In response to the Chairman's enquiry as to the verification of the authenticity of the signature for submissions of a registered company, the Administration advised that on receipt of a company's submission, the Companies Registry would automatically send an e-mail message to the company's designated email address(es) alerting them of the company's submission(s).</p>	
<p>013506 – 014436</p>	<p>Administration Chairman Ms Miriam LAU Mr WONG Ting-kwong</p>	<p><u>Clause 23 – Register of directors and secretaries</u></p> <p>Members raised no question on clause 23.</p> <p><u>Clause 24 – Documents delivered to Registrar to conform to certain requirements</u></p> <p>Ms Miriam LAU enquired about the rationale of the Companies Registry asking a person through e-mail to check the documents stored in the Companies Registry's computer system, instead of directly sending the documents to the e-mail address of the person concerned. Mr WONG Ting-kwong echoed Ms LAU's concern.</p> <p>The Administration responded that the electronic communication system of ICRIS was still under development. The proposed arrangement in proposed section 346(2A)(b)(ii) was mainly for the purpose of enhancing the security of document delivery as the person concerned had to use his personal password to access the documents stored in the Companies Registry's computer system. The Administration agreed to confirm the rationale for the proposed arrangement.</p>	<p>The Administration to take action.</p>
<p>014437 – 015336</p>	<p>Administration Chairman Ms Miriam LAU Mr WONG Ting-kwong</p>	<p><u>Clause 25 – Sections 346A and 346B added</u></p> <p><i>346A – Documents delivered to Registrar in form of electronic record</i></p> <p><i>346B – Signature of documents delivered to Registrar in form of electronic record</i></p> <p><u>Clause 26 – Power of Registrar to refuse to register certain documents</u></p> <p>Members raised no question on clauses 25 and 26.</p>	

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		<p><u>Clause 27 – Section 348BA added</u></p> <p><i>348BA – Registrar may issue certificates in any manner</i></p> <p>Ms Miriam LAU expressed concern that since no time limit was specified, the Companies Registry might be obliged to store the certificates of incorporation in its computer system indefinitely. The Administration was requested to review the provision and consider the need of setting a time limit for storage of the certificates in the Companies Registry's computer system.</p>	<p>The Administration to take action.</p>
<p>015337 – 020132</p>	<p>Administration Ms Miriam LAU</p>	<p><b>Part 6</b></p> <p><b>Amendments Relating to Communications by Company to Another Person (other than Registrar of Companies)</b></p> <p><b>Division 1 – Companies Ordinance</b></p> <p><u>Clause 28 – Right to receive copies of balance sheets and directors' and auditors' reports</u></p> <p><u>Clause 29 – Subheading repealed</u></p> <p><u>Clause 30 – Circumstances in which listed companies may comply with section 129G by use of computer network</u></p> <p><u>Clause 31 – Part IVAAA added</u></p> <p><b>Part IVAAA</b></p> <p><b>Communications by Company to Another Person (other than Registrar)</b></p> <p><i>168BAA – Interpretation</i></p> <p><i>168BAB – Minimum period specified for purposes of sections 168BAG(4) and 168BAH(6)</i></p> <p><i>168BAC – Period specified for purposes of sections 168BAG(7)(a) and 168BAH(10)(b)</i></p> <p><i>168BAD – Time specified for purposes of sections 168BAF(5)(a) and 168BAG(7)(b)</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>168BAE – Address specified for purposes of sections 168BAF(2)(b) and 168BAG(3)(b)(iii)</i></p> <p><i>168BAF – Communication in hard copy form</i></p> <p><i>168BAG – Communication in electronic form</i></p> <p><i>168BAH – Communication by means of website</i></p> <p><i>168BAI – Member or debenture holder may require hard copy</i></p> <p>The Administration introduced the clauses under Part 6 of the Bill. Ms Miriam LAU suggested and members agreed that the Bills Committee should continue to scrutinize the Bill starting from Part 6 at the next meeting.</p>	
020133 – 020140	Chairman	Date of next meeting	