

立法會
Legislative Council

LC Paper No. CB(1)2480/09-10
(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**

**Seventh meeting on
Monday, 7 June 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Paul CHAN Mo-po, MH, JP (Chairman)
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yee, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Hon CHAN Kin-por, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Albert HO Chun-yan
Hon Audrey EU Yuet-mee, SC, JP
Hon Ronny TONG Ka-wah, SC

Public officers attending : Financial Services and the Treasury Bureau
Mr John LEUNG, JP
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Miss Shirley KWAN
Principal Assistant Secretary for Financial Services and the
Treasury (Treasury)

Miss Fiona CHAU
Assistant Secretary for Financial Services and the Treasury
(Treasury)

Inland Revenue Department

Mrs Brenda LEE
Assistant Commissioner

Mr Eric WAN
Senior Assessor

Companies Registry

Miss Wendy MA
Assistant Registry Manager

Department of Justice

Ms Francoise LAM
Senior Assistant Law Draftsman (Acting)

Mr Peter SZE
Government Counsel

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

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr YICK Wing-kin
Assistant Legal Adviser 8

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

I Meeting with the Administration

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

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

Admin Follow-up actions to be taken by the Administration

2. The Administration was requested to take follow-up actions in respect of the Business Registration (Amendment) Bill 2010 (the Bill), as follows -
- (a) to consider adding the phrase "as soon as practicable" before the word "refund" in the proposed section 7A(4) and after the word "refunded" in the proposed section 16(2)(b);
 - (b) to consider putting in place a mechanism to verify the addresses submitted by companies;
 - (c) to review and revise the proposed amendments to section 4 as appropriate; and
 - (d) to provide information regarding the relevant drafting principles regarding the use of the words "must" and "may" to replace "shall" when making amendments to the existing provisions.

Committee Stage amendments proposed by the Administration

3. Members noted that the Administration would propose Committee Stage amendments (CSAs) to:

- (a) revise the time arrangement in proposed section 168BAI of the Companies Ordinance (Cap. 32) regarding the request and provision of hard copies of documents or information, to the effect that companies would provide hard copies of documents or information to their members or debenture holders within 7 days upon receipt of a request if the documents required an action to be taken by the members or debenture holders; and
- (b) amend the Revenue (Reduction of Business Registration Fees) Order 2010 so that certain business registration applications made under the new section 5A of the Business Registration Ordinance (Cap. 310) would also be entitled to a reduction in business registration fee.

(Post-meeting note: The draft CSAs proposed by the Administration in respect of (b) above was tabled and issued to members vide LC Paper No. CB(1)2193/09-10(03) on 8 June 2010.)

Review of Chinese version

4. Members agreed that Assistant Legal Adviser 8 should review the drafting aspect of the Chinese version of the Bill, and give comments, if any, to the Bills Committee.

Administration's response to issues raised at previous meeting

5. Members noted the Administration's response to the issues raised at the meeting on 31 May 2010, a copy of which was tabled at the meeting.

(Post-meeting note: The Administration's response to the issues raised at the meeting on 31 May 2010 was circulated to members vide LC Paper No. CB(1)2193/09-10(02) on 8 June 2010.)

II Any other business

6. There being no other business, the meeting ended at 5:55 pm.

**Proceedings of the
Bills Committee on Companies (Amendment) Bill 2010 and
Business Registration (Amendment) Bill 2010
Seventh meeting on Monday, 7 June 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000059 – 000332	Chairman	Opening remarks	
Clause-by-clause examination of the Bill			
000333 – 001717	Administration Chairman ALA8	<p>Business Registration (Amendment) Bill 2010</p> <p>Part 1</p> <p>Short Title and Commencement</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Commencement</u></p> <p>Part 2</p> <p>Amendments to Business Registration Ordinance</p> <p><u>Clause 3 – Interpretation</u></p> <p>Members raised no question on long title, clauses 1 to 3.</p> <p><u>Clause 4 – Official secrecy</u></p> <p>In response to ALA8's question, the Administration advised that the word "solely" was included in the new section 4 so as to enable officers of the Companies Registry (CR) to disclose information which was required to be publicized under the Companies Ordinance (Cap. 32). IRD officers had to comply with the official secrecy provisions under the Inland Revenue Ordinance (IRO) (Cap. 112) and the Business Registration Ordinance (BRO) (Cap. 310).</p> <p>Regarding ALA8's point that the word "shall" had been replaced by "must" in the proposed section 4(1) whilst the word "shall" remained unchanged in the other existing subsections of section 4, the Administration responded that the use of "must" to</p>	The Administration to take action.

Time Marker	Speaker	Subject(s)	Action Required
		<p>replace "shall" to impose an obligation in the BRO would not lead to an interpretation that "shall" had a different legal effect from "must" or vice versa.</p>	
001718 – 002205	Administration ALA8	<p><u>Clause 5 – Application for registration</u></p> <p>Members raised no question on clause 5.</p> <p><u>Clause 6 – Sections 5A to 5D added</u></p> <p><i>5A – Simultaneous business registration applications of companies incorporated under Companies Ordinance</i></p> <p><i>5B – Simultaneous business registration applications of non-Hong Kong companies</i></p> <p>In response to ALA8's enquiry, the Administration stated that the simultaneous registration service would not cover the registration of a company's branch office, as inclusion of such applications would increase the capital and maintenance cost of the Integrated Companies Registry Information System (ICRIS), and based on past experience, it was not expected that applications for simultaneous registration of a company and its branch office(s) would be common.</p> <p><i>5C – Registrar to perform certain functions in relation to simultaneous business registration applications</i></p> <p><i>5D – Notices in specified form</i></p> <p>In response to ALA8's enquiry, the Administration remarked that proposed section 5C(6) was to ensure that except as otherwise provided, all relevant provisions applicable under the existing system would also apply to applications made through the simultaneous registration system.</p>	
002206 – 002615	Administration ALA8 Dr Philip WONG	<p><u>Clause 7 – Registration of business and issue of business registration certificate</u></p> <p><u>Clause 8 – Payment of fees</u></p> <p>Members raised no question on clauses 7 and 8.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 9 – Section 7A added</u></p> <p><i>7A – Refund of prescribed business registration fees, prescribed branch registration fees or levies</i></p> <p>In response to ALA8's enquiry and in relation to Dr Philip WONG's concern about the consistency with the time frame for refunding the prescribed fee and levy under the proposed section 7A(2), the Administration was requested to consider adding the phrase "as soon as practicable" before the word "refund" in the proposed section 7A(4).</p>	<p>The Administration to take action.</p>
002616 – 003219	Administration Dr Philip WONG Chairman	<p><u>Clause 10 – Information to be furnished</u></p> <p>Regarding Dr Philip WONG's concern about the accuracy of the addresses provided by companies for registration and notification of changes under sections 5 and 8, the Administration was requested to consider putting in place a mechanism to verify the addresses submitted by companies, such as to check whether the addresses as stated did exist.</p>	<p>The Administration to take action.</p>
003220 – 003541	Administration ALA8	<p><u>Clause 11 – Display of certificates</u></p> <p><u>Clause 12 – Regulations</u></p> <p><u>Clause 13 – Offences</u></p> <p>Members raised no question on clauses 11 to 13.</p> <p><u>Clause 14 – Exemptions</u></p> <p>In response to ALA8's enquiry and Dr Philip WONG's concern about the consistency with the time frame for refunding the prescribed fee and levy under the proposed section 7A(2), the Administration was requested to consider adding the phrase "as soon as practicable" after the word "refunded" in the proposed section 16(2)(b).</p>	<p>The Administration to take action.</p>
003542 – 003735	Administration ALA8	<p><u>Clause 15 – Appeals</u></p> <p>Members raised no question on clause 15.</p> <p><u>Clause 16 – Section 19B added</u></p> <p><i>19B. Purpose of sections 19 and 19A</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>In response to ALA8's enquiry, the Administration remarked that the proposed section 19B was intended to facilitate the Office of the Privacy Commissioner for Personal Data (PCPD) to take actions against any improper use of the personal data obtained under section 19 and/or 19A of the BRO.</p>	
<p>003736 – 005010</p>	<p>Administration Chairman Dr Philip WONG</p>	<p><u>Clause 17 – Schedule 1 amended</u></p> <p><u>Clause 18 – Schedule 2 amended</u></p> <p>Members raised no question on clauses 17 and 18.</p> <p>Part 3</p> <p>Amendments to Business Registration Regulations</p> <p><u>Clause 19 – Interpretation</u></p> <p><u>Clause 20 – Application for registration</u></p> <p><u>Clause 21 – Regulation 3A added</u></p> <p><i>3A – Business particulars in relation to simultaneous business registration applications</i></p> <p><u>Clause 22 – The register</u></p> <p><u>Clause 23 – Business and branch registration certificates</u></p> <p><u>Clause 24 – Regulation 8A added</u></p> <p><i>8A – Electronic records for prescribed forms</i></p> <p>Members raised no question on clauses 19 to 24.</p> <p><u>Clause 25 – Forms</u></p> <p>In response to the Chairman and Dr Philip WONG's enquiry, the Administration remarked that based on PCPD's advice, only personal data which were necessary for the purpose of enforcing the BRO should be collected, and the forms were revised to that effect.</p>	

Time Marker	Speaker	Subject(s)	Action Required
005011 – 005301	Administration ALA8	<p>Part 4</p> <p>Related and Consequential Amendments</p> <p>Inland Revenue Ordinance</p> <p><u>Clause 26 – Official secrecy</u></p> <p>Abattoirs Regulation</p> <p><u>Clause 27 – Registration</u></p> <p>Administrative Appeals Board Ordinance</p> <p><u>Clause 28 – Schedule amended</u></p> <p>Members raised no question on clauses 26 to 28.</p> <p>Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation</p> <p><u>Clause 29 – Inclusion of business name of owner in certificate of ownership</u></p> <p>In response to ALA8's enquiry, the Administration remarked that the proposed amendments for the person concerned to certify a copy of the business registration certificate were in line with the current practice adopted by the departments concerned , and persons who made false representation under the relevant ordinances were subject to criminal prosecution.</p>	
005302 – 005325	Administration	<p>Electronic Transactions Ordinance</p> <p><u>Clause 30 – Service of documents</u></p> <p>Members raised no question on clause 30.</p>	
005326 – 005455	Administration	<p>The Administration advised that CSAs would be proposed for amending the Revenue (Reduction of Business Registration Fees) Order 2010 so that certain business registration applications made under the new section 5A of the BRO would also be entitled to a reduction in business registration fee.</p>	The Administration to move CSAs.

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration explained the draft CSAs tabled at the meeting.</p>	
005456 – 011403	Mr Alan LEONG Chairman Administration	<p>In relation to the concern shared by Mr Alan LEONG and the Chairman that the proposed amendments to section 4, including the use of the word "solely", might have the unintended effect of narrowing the scope of information for preservation of secrecy by officers of the Inland Revenue Department, the Administration was requested to review and revise the proposed amendments as appropriate.</p> <p>Regarding Mr Alan LEONG and the Chairman's concern that the word "shall" had been replaced by "may" in the proposed section 4(3) and replaced by "must" in other proposed sections whilst the word "shall" remained unchanged in the existing sections, the Administration was requested to provide information regarding the relevant drafting principles.</p>	<p>The Administration to take action.</p> <p>The Administration to take action.</p>
011404 – 012201	Chairman Administration ALA2	<p>The Chairman said that the Bills Committee had completed scrutiny of the Business Registration (Amendment) Bill 2010.</p> <p>Members noted the Administration's response to the issues raised at the meeting on 31 May 2010, a copy of which was tabled at the meeting.</p> <p>ALA2 remarked that as requested by members, he had reviewed the Chinese version of the Companies (Amendment) Bill 2010. He pointed out that the Chinese version of section 57B had been proposed to be amended whereas the English version of the same section remained unchanged. The Administration explained that the amendment of the Chinese version of section 57B was proposed in order to more accurately reflect the meaning of the English version of the same section, arising from the interpretation of the Chinese version of the section in a recent court case. The proposed amendment was supported by the Standing Committee on Company Law Reform.</p> <p>In response to ALA2's remark regarding members' concern about the use of the word "他" as the Chinese rendition of "he or she" in the proposed</p>	<p>The Administration to take action.</p>

Time Marker	Speaker	Subject(s)	Action Required
		amendments, the Administration stated that a copy of the Administration's paper submitted to the Panel on Administration of Justice and Legal Services explaining, among other things, the use of "他" as the Chinese rendition of "he and she" would be provided to members.	
012202 – 012654	ALA8 Administration	Members agreed that ALA8 should review the drafting aspect of the Chinese version of the Business Registration (Amendment) Bill 2010, and gave his comments, if any, to the Bills Committee.	ALA8 to take action.
012655 – 012729	Chairman	Arrangement for next meeting	

Council Business Division 1
Legislative Council Secretariat
6 July 2010