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

Background brief

Purpose

This paper outlines the proposals under the Companies (Amendment) Bill 2010 and the Business Registration (Amendment) Bill 2010 ("the Bills") and provides a summary of the views and concerns expressed by members when the proposals were discussed by the Panel on Financial Affairs ("FA Panel").

Proposals under the Bills

2. According to the Administration, there is the need to amend the Companies Ordinance (Cap. 32) ("CO"), ahead of the CO rewrite¹, to provide for electronic incorporation and filing of documents and other technical amendments. This is mainly to tie in with the implementation of Phase II of the Integrated Companies Registry Information System which is expected to come on stream in late 2010/early 2011. In this connection, the Administration also proposes to improve the company name registration system with a view to expediting the company incorporation process and empowering the Registrar of Companies to tackle "shadow companies"².

¹ In mid-2006, the Administration launched a major and comprehensive exercise to rewrite the CO. The Administration conducted three public consultations in 2007 and 2008 to gauge views on a number of complex issues. Taking into account the views received, the Administration has prepared draft clauses of the Companies Bill for further consultation in two phases. The first phase consultation on the draft Companies Bill was launched in December 2009. The second phase consultation is scheduled to be launched in the first quarter of 2010.

² "Shadow companies" refer to those companies incorporated in Hong Kong with names which are very similar to existing and established trademarks or trade names of other companies and which pose themselves as representatives of the owners of such trademarks or trade names to produce counterfeit products in Mainland China bearing such trademarks or trade names.

3. In order to provide more efficient and integrated customer-friendly services to the business sectors, the Administration proposes to amend the Business Registration Ordinance (Cap. 310) ("BRO") to facilitate the provision of a one-stop service for company registration and business registration, and to treat a company's notification of the change in certain particulars (such as corporate name, registered office address etc.) to the Registrar of Companies as a notification to the Commissioner of Inland Revenue. Moreover, in order to facilitate the processing of simultaneous applications by companies to the Registrar and the Commissioner and other business registration applications³ through electronic means, legislative amendments are proposed to the BRO to provide for the use of digital signatures or passwords in these applications and the issuance of business registration certificates in electronic mode.

4. The Administration also takes the opportunity to introduce a number of technical amendments to CO, which include:-

- (a) introducing new provisions to allow companies incorporated in Hong Kong to communicate with their members through electronic means;
- (b) amending section 99(1) to allow listed companies to give notice of closure of registers of members/debenture holders in accordance with the Listing Rules instead of by advertisement in a newspaper;
- (c) amending relevant provisions in CO to expand the scope of statutory derivative actions (SDAs) to cover "multiple" derivative actions;
- (d) removing the statutory prohibition against scripless shareholding and trading in the securities market, so as to facilitate market discussions on and pave way for the introduction of scripless shareholding and paperless transfers⁴ ; and
- (e) rectifying a discrepancy between the English and Chinese versions of section 57B(7).

Major views and concerns expressed by members

5. The Administration briefed the FA Panel on the proposed legislative amendments at the meeting on 11 June 2009. Individual members expressed the following concerns on the proposed amendments:

³ These include business registration applications in respect of sole proprietorship and partnership.

⁴ The Securities and Futures Commission ("SFC") is currently working with the Hong Kong Exchanges and Clearing Limited ("HKEx") and the Federation of Share Registrars on a proposed operational model for implementing a scripless market and have issued a consultation paper on the proposed model on 30 December 2009. Other legislative amendments, mainly to the Securities and Futures Ordinance (Cap. 571) will be needed to provide for the regulation of the scripless environment.

- (a) whether the proposal to amend the CO to expand the scope of SDAs to cover "multiple" derivative actions would fully address the issue about shareholders' rights to commence SDA on behalf of the company;
- (b) the proposal referred to in (a) above might give rise to an increase in the number of SDAs and intervention in proceedings, thereby subjecting the operation of listed companies to higher risks of legal challenges;
- (c) whether the proposal to bring forth the approval of company names prior to the company incorporation process was worth pursuing, given that the proposal would only shorten the company incorporation processing time from four to only one working day, and that the Registrar of Companies would direct a company to change its name after the approval if the name was found to be objectionable upon further checking; and
- (d) whether inconsistency existed in the scrutiny of company names between the Companies Registry in company incorporation and the Inland Revenue Department in business registration.

6. On members' concerns about the proposed expansion of the scope of SDAs to cover "multiple" derivative actions, the Administration advised that in a recent case *Waddington Ltd. v Chan Chun Hoo* CACV No. 220 of 2005, both the Court of Appeal and the Court of Final Appeal ruled that a "multiple" derivative action was maintainable in Hong Kong under the common law and considered it appropriate for the CO to be amended to cover "multiple" SDA. The proposal had been discussed in detail by the Standing Committee on Company Law Reform. While the proposal would further enhance the protection of interests of minority shareholders in general, the operation of listed companies should not be unduly affected as shareholders had to seek leave from the court to commence an SDA.

7. On the concern set out in paragraph 5(c) regarding the approval of company names, the Administration advised that given the few cases of objectionable company names found during the scrutiny of proposed names in the past, it was envisaged that there would be few cases where the Registrar of Companies would direct a company to change its name after the approval, hence the revised procedures should not cause undue disturbance to company operations.

8. On 1 February 2010, the Administration together with SFC and HKEx briefed the FA Panel on the proposed operational model for implementing a scripless securities market in Hong Kong. Members in general were supportive of the direction of the proposal and raised concerns about the availability of disaster recovery measures to cater for system failure, the level of fees and charges on

investors under the new operational model, and the need to conduct extensive consultation with the financial services sector.

Relevant papers

9. Relevant papers are available at the following links:

The Administration's paper for the FA Panel meeting on 11 June 2009
<http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa0611cb1-1829-1-e.pdf>

Minutes of FA Panel meeting on 11 June 2009 (paragraphs 1 to 14)
<http://www.legco.gov.hk/yr08-09/english/panels/fa/minutes/fa20090611.pdf>

The Administration's paper on development of scripless securities market in Hong Kong for the FA Panel meeting on 1 February 2010
<http://www.legco.gov.hk/yr09-10/english/panels/fa/papers/fa0201cb1-978-5-e.pdf>

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