



LAW SOCIETY'S SUBMISSIONS ON THE COMPANIES (AMENDMENT) BILL 2010

Introduction

On 22 January 2010, the Companies (Amendment) Bill 2010 ("Bill") was gazetted. It was the intention of the Companies Registry ("Registry") to introduce the Bill to the Legislative Council in early February 2010 and to enact the same within this year. Part of the amendments is to tackle the problem of "shadow companies" which has been affecting businesses both in and outside Hong Kong in recent years.

The Law Society welcomes the introduction of the Bill which proposes interim measures to strengthen the power of the Companies Registrar ("Registrar") in the process of companies registration and fully support the enactment of these provisions.

The Amendments

1. *New section 20(2A)*

Except with the consent of the Registrar, a company must not be registered by a name that is the same as a name for which a direction to change it has been given by the Registrar under section 22 (for being "*too like*" another company name) or 22A (for being misleading or offensive etc.) of the Companies Ordinance ("Ordinance").

We welcome this new prohibition but regret that it is restricted to a name which is *the same* as the objectionable name for which the Registrar has already directed a name change and does not extend to *similar* names.

2. *New section 22(3B)*

Upon receipt of a court order restraining a company from using its name or any part of the name, the Registrar is empowered to direct such company to change its name within a specified period.

This is a useful provision and would relieve rights holder of the need to sue the individual shareholders of the company which often entails service of proceedings outside Hong Kong.

3. *New section 22AA*

Where a company fails to comply with the Registrar's direction to change the name given under, inter alia, the new section 22(3B) or section 22(2) (the too-like name provision), the Registrar is empowered to substitute the name of the company with a new name consisting of the words "*Company Registration Number*" followed by the company's registration number as stated in its certificate of incorporation.

The effectiveness of this new section will depend on what constitutes non-compliance with the Registrar's direction to change the name, which in turn is dictated by how the direction is formulated.

It is hoped that the direction will target change of the distinctive part (i.e. the well-known mark in question), and not the company name as a whole. In this regard, a direction made pursuant to the new power under section 22(3B) which refers to a court order restraining the company from using its name or *any part of the name* can follow the terms of the court order, such that the company is directed to change its name to one not incorporating any distinctive part of that name (or as provided in the court order).

On the other hand, it is hoped that the Registrar will similarly formulate a direction under section 22(2) requiring the change of the distinctive part of a company name as he considers what is "*too-like*" another company name on the register.

Further Amendments

We have yet to see how these new provisions will be implemented and their effectiveness in tackling the problem of "*shadow companies*". We look forward to further discussing with the Registrar on the implementation of these new provisions. We also urge the Registrar not to close its door to further amendments to the Ordinance if this becomes necessary in the future, especially as part of the second phase rewrite of the Ordinance.

**The Law Society of Hong Kong
Intellectual Property Committee
23 March 2010
133435**



**Business Registration (Amendment) Bill 2010
Law Society's Comments**

The Law Society notes the main purpose of both the Business Registration (Amendment) Bill and the Companies (Amendment) Bill is to streamline the existing incorporation procedures.

The Business Registration (Amendment) Bill seeks to implement a simultaneous application scheme for (1) incorporating a HK company or registering a non-HK company under the Companies Ordinance and (2) obtaining a business registration certificate for that company or branch. In addition an electronic application system for business registration certificates will be implemented.

The Law Society supports the provisions in the Bill subject to clarification on the proposed sections 6(3B) and (3C) of the Bill, namely a business registration / branch registration certificate may be issued in any manner the Commissioner thinks fit, including in the form of an electronic record - will the Commissioner continue to issue "original" certificates if so requested?

**The Law Society of Hong Kong
Company and Financial Law Committee
23 March 2010**

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