

**Business Registration (Amendment) Bill 2010**

**The Administration's Replies to  
the Questions Raised in the Letter of 22 February 2010 from  
the Legal Service Division of the Legislative Council Secretariat**

Question (a)

As far as simultaneous applications are concerned, official secrecy under the Business Registration Ordinance (Cap. 310) will apply to officers of both the Companies Registry ("CR") and the Inland Revenue Department ("IRD"). It is our policy intention to add the word "solely" before "in the performance of any functions" in the proposed section 4(3)(a) of Cap. 310 and Form 4 of the Business Registration Regulations (Cap. 310 sub. leg. A) so as to restrict the scope of official secrecy provisions under Cap. 310 for reasons set out in paragraphs 2 - 4 below.

2. When CR officers process the simultaneous applications, they will come across the following categories of information -

- (i) information required only for company incorporation/registration (e.g. details of First Directors);
- (ii) information required both for company incorporation/registration and business registration (e.g. company name); and
- (iii) information required only for business registration (e.g. election of a 3-year business registration certificate).

3. The Registrar of Companies has a statutory duty under the Companies Ordinance (Cap. 32) to retain and register documents delivered for company incorporation/registration and to make available the said documents kept or maintained by the Registrar for public inspection. The amendment mentioned in paragraph 1 above is crafted deliberately such that the performance of such statutory duty under Cap. 32 by CR officers would not be hindered by the official secrecy provisions under Cap. 310. The currently proposed secrecy obligations would only be imposed upon CR officers in relation to the information

falling under category (iii) in paragraph 2 above.

4. As regards IRD officers who work in the Business Registration Office, they normally perform duties solely under Cap. 310. On specific occasions, they may need to apply information that comes to their notice in the performance of duties under Cap. 310 to perform duties under the Inland Revenue Ordinance (Cap. 112). For example, there may be an occasion where an IRD officer receives a notification of change of business address required under Cap. 310 and in that notification, the taxpayer requests to use the new business address as its correspondence address for its Profits Tax file. Although the proposed addition of the word “solely” will restrict the scope of the official secrecy provisions imposed upon these IRD officers under Cap. 310, these officers will still be required to observe official secrecy provisions under Cap. 112 in respect of the same information.

Question (b)

5. “[T]he executor” in the proposed section 4(1)(b)(iii) refers to the executor referred to in subparagraph (ii). We consider that the proposed section 4(1)(b) is clear since “executor” appears only once before subparagraph (iii).

Question (c)

6. If the proposed simultaneous application service for company incorporation/registration and business registration is to be extended to cover branch registration applications, it would be imperative to add further functions to the computer systems of CR and IRD, thus complicating the system design and increasing system development and maintenance costs. Given that there should be extremely few companies that would wish to set up a branch at the time of incorporation/registration, for cost-effectiveness considerations, we have decided not to cover branch registration applications in the proposed “one-stop” service.

Question (d)

7. The proposed section 5C(6) is intended to make clear that,

except as otherwise provided under Cap. 310, provisions which apply to normal business registration applications, for instance, the proposed sections 6(3B) and (3C) empowering the Commissioner of Inland Revenue (“CIR”) to issue a business registration certificate in the form of an electronic record, are also applicable to simultaneous business registration applications.

8. As far as the processing is concerned, basic steps such as assigning business registration number, collection of the prescribed business registration fee and levy, issue of business registration certificate and registration in the business register are applicable to both simultaneous business registration applications and normal business registration applications. The proposed section 5C(6), together with the provisions on those basic steps, will make it clear that CR officers may handle such steps under the proposed section 5C on behalf of CIR.

Question (e)

9. It is the prevailing practice of IRD to handle all cases of refund as soon as practicable. Such practice would remain for refund cases arising from the proposed sections 7A(2), 7A(4) and 16(2)(b).

Question (f)

10. The proposed section 19B is intended to facilitate the Office of the Privacy Commissioner for Personal Data (“PCPD”) to take actions against any improper use (which may constitute contravention of data protection principle 3 of the Personal Data (Privacy) Ordinance (Cap. 486)) of the personal data obtained under section 19 or 19A of Cap. 310.

11. The business register contains personal data of some business owners, for example, names and Identity Card numbers of sole proprietors. As advised by the PCPD, it would be desirable to state as specifically as practicable the purpose of the business register in the Business Registration Ordinance that establishes it. The proposed section 19B was drafted on the basis of the objects for enacting Cap. 310, i.e. any person can, on payment of a small fee, obtain particulars of the makeup of any business from the registration office, so being in a

position to know with whom he is going to deal.

Question (g)

12. Currently, Marine Department accepts a copy of the business registration certificate certified true by the applicant (the owner or his agent) for the purpose of section 12(1) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D). The Transport and Housing Bureau takes the opportunity in the present legislative amendment exercise to improve section 12(3)(c) of Cap. 548D by Clause 29 of the Bill to better reflect the current practice.

13. There is no general statutory provision governing who has the authority to certify a copy of a document. The proposed amendment seeks to expressly provide the legal basis for the person concerned to certify a copy of the business registration certificate under section 12(3) of Cap. 548D.

14. It is an offence under section 78 of Cap. 548 for a person who, being required to give any information to the Director of Marine or any other person under the Ordinance, fails without reasonable excuse to give such information or gives any information, whether in writing, orally or otherwise, which he knows to be false or misleading as to a material particular. It is also an offence under section 52 of Cap. 548D for a person who (a) either (i) for the purpose of procuring, whether for himself or any other person, the amendment of, or the endorsement on, a certificate of ownership; or (ii) in purported compliance with, or otherwise for the purpose of, a requirement under Cap 548D, supplies any information, knowing it to be false or misleading as to a material particular; or (b) fraudulently uses a document referred to in section 52(a)(i), or a copy of it, that has been forged, altered, cancelled, revoked or suspended or to which he is not entitled.

15. Similarly, the proposed amendment under Clause 27 of the Bill seeks to expressively provide the legal basis for the person concerned to certify a copy of the business registration certificate under section 18 of the Abattoirs Regulation (Cap. 132 sub. leg. A).

16. It is an offence under section 43 of Cap. 132A for a person who, in any form required by, under or for the purposes of the Regulation, makes any statement or furnishes any information which he knows or reasonably ought to know to be false in a material particular.

Question (h)

17. Drafting style for legislation needs to be modernized using plain language as appropriate. The drafting practice now requires that opportunity is to be taken to use “must” instead of “shall” to impose an obligation in line with ordinary speech in provisions being amended. However, we do not consider it necessary to make corresponding amendments to the other provisions in those relevant sections. This change of drafting practice is only a matter of change of style. The legal meaning of the relevant provisions is not affected.

Financial Services and the Treasury Bureau  
March 2010