

**Summary of views submitted by various organizations on the
Companies (Amendment) Bill 2010 and
Business Registration (Amendment) Bill 2010**

(as of 30 March 2010)

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Note: This paper does not cover the views on "multiple statutory derivative action" submitted in response to the Bills Committee's invitation in April 2010.

Abbreviations for Organizations :

HKICS	The Hong Kong Institute of Chartered Secretaries
REDA	The Real Estate Developers Association of Hong Kong
TSL	Tricor Services Limited
LSHK	The Law Society of Hong Kong
BCC	The British Chamber of Commerce in Hong Kong
HKCMA	The Chinese Manufacturers' Association of Hong Kong
CGCC	The Chinese General Chamber of Commerce
SCAA	The Society of Chinese Accountants and Auditors
SMEDA	Hong Kong Small and Medium Enterprises Development Association
EY	Eirene YEUNG (Panel member of the HKICS)

Organizations	Views/Concerns	Response by the Administration
A. General views		
LSHK	<ul style="list-style-type: none"> ● Welcomes the introduction of the Companies (Amendment) Bill 2010, which proposes interim measures to strengthen the power of the Registrar of Companies in the process of companies registration. ● Yet to see how the new provisions under the Companies (Amendment) Bill 2010 will be implemented and their effectiveness in tackling the problem of "shadow companies". ● The Administration should not close its door to further amendments to the Companies Ordinance if this becomes necessary in the future, especially as part of the second phase rewrite of the Ordinance. 	We consider the measures contained in the Companies (Amendment) Bill 2010 would be effective in tackling the problems of "shadow companies". Nevertheless, we will keep in view the operation of these measures and would consider further steps to strengthen the company name regime where necessary.

BCC	<ul style="list-style-type: none"> ● There was no previous hint about the initiative of on-line company registration in previous consultations on Company Ordinance conducted in the last few years. ● Many overseas people are surprised to find out Hong Kong's incorporation system is still paper-based. ● At present completely electronic statutory records are not envisaged, and BCC would endorse the continuation of the 'company kit' for a private Hong Kong company. In practice, on-line information about companies and searches will continue to be used rather than public inspection of actual statutory records at the registered office. 	To tie in with the implementation of the Phase Two of the Integrated Companies Registry Information System ("ICRIS II") in early 2011, legislative amendments to the Companies Ordinance ("CO") to provide for electronic company registration and filing of companies are included in the Companies (Amendment) Bill 2010 ahead of the CO rewrite exercise. The proposal will provide a more efficient option for company registration in addition to the existing paper-based regime, where companies can be incorporated within one day on-line.
HKCMA	<ul style="list-style-type: none"> ● The proposed legislative amendments will facilitate the conduct of business, encourage the use of information technology, and are in line with the idea of environmental protection. 	Noted.
EY	<ul style="list-style-type: none"> ● Support the legislative changes proposed in the amendment bills. 	Noted.
B. Enabling on-line applications for company registration and filing of company documents		
HKCMA	<ul style="list-style-type: none"> ● Support the initiative. 	Noted.
REDA	<ul style="list-style-type: none"> ● Welcome the initiative. 	Noted.

SCAA	<ul style="list-style-type: none"> ● Support the initiative to enhance efficiency and convenience of the company registration process. ● To align with the standards recommended by the Financial Action Task Force on Money Laundering (FATF), it is the current practice of accountants to verify the background of the clients who want to set up a new company by understanding the purposes and operations of their business, obtaining documentary proof of their identities and addresses and, for corporate clients, obtaining the certificate of good standing for identifying shareholders and directors. ● In implementing the electronic company registration process, the Companies Registry should not lose sight of the need to include the above verification procedures. 	<p>Under the proposed electronic regime for company incorporation and documents delivery, the Companies Registry (“CR”) will put in place a registration system to require any person using the ICRIS to register as registered users. To complete the registration, the user has to provide to the CR a copy of his/her HKID/passport (for individuals), the company registration number (for body corporates registered in Hong Kong) or a copy of the certificate of incorporation issued by the authorities in the place of incorporation (for body corporates incorporated outside Hong Kong). Such documents will provide information on the identities of the ICRIS users.</p>
EY	<ul style="list-style-type: none"> ● Welcome the initiative because it promotes the use of information technology and environmentally-friendly practices and saves company expenditure on printing and postage. 	Noted.
SMEDA	<ul style="list-style-type: none"> ● It is better to retain the current practice of the company registration process. The individuals or companies acting as corporate founders should either complete the registration process in person or have their identities and addresses verified by some professionals such as lawyers, accountants and company secretaries. 	<p>The proposal to provide for electronic company registration will allow companies to be incorporated within one day on-line. This facilitates the starting of a business in Hong Kong and puts Hong Kong on a par with other major comparable jurisdictions like the UK and Singapore.</p>

	<ul style="list-style-type: none"> ● It is risky to change the company registration process to an on-line one because of its limitation in verifying the information about the overseas companies applying for registration. Without proper verification in the on-line registration process, local companies conducting business with those overseas countries may need to bear additional risk. 	See also our response to SCAA above.
HKICS	<ul style="list-style-type: none"> ● Support the initiative in enhancing the efficiency of the approval process by reducing the time required to complete company registration from 4 working days to 1, which would ensure a level playing field between Hong Kong and other countries like Singapore. ● The on-line company registration via Phase II of the Integrated Companies Registry Information System (ICRIS II) should adopt customer due diligence on individuals or companies acting as corporate founders to the level currently practised by trust and company service providers on their clients. ● A prudent approach should be adopted in the design of ICRIS II, to avoid upsetting the recent efforts made by the Government and the private sector against money laundering, terrorist financing and tax evasion. ● It is the current practice of company secretaries to conduct customer due diligence on their clients who want to set up a new company. ● Reference can be made to the electronic incorporation arrangements in Singapore. 	See our response to SCAA above.

	<ul style="list-style-type: none"> ● The Company Registry can rely on local professionals like chartered secretaries to help verifying the identities of local or overseas individuals or companies acting as corporate founders. Overseas individuals or companies should be willing to procure these professionals' services to help them complete the procedures of incorporation. The arrangement also makes no difference to local companies including small and medium sized enterprises in terms of cost because they already have company secretaries in place under the existing legislation. 	
TSL	<ul style="list-style-type: none"> ● TSL is concerned that there are no prescribed arrangements whereby the authenticity of documents submitted for company registration through electronic means can be verified. ● Money launderers or terrorists may exploit this loophole and use an overseas company as a corporate founder to hide their own identity. ● The initiative to shorten the processing time of incorporation to one day by means of on-line application is meaningless to sincere overseas investors, as they are still required to meet the stringent customer due diligence requirements laid down by the FATF and the HKMA in respect of setting up accounts with financial institutions for new Hong Kong companies. ● The Government should be prudent in the design of ICRIS II so as not to frustrate the efforts exerted by lawyers, accountants, trust and company service providers in applying customer due diligence on their clients to combat money laundering and terrorist financing. 	See our response to SCAA above.

	<ul style="list-style-type: none"> ● Regarding Clause 23 of the Companies (Amendment) Bill 2010 about "authorized person", guidelines on the qualifications and eligibility of third party intermediaries acting as an "authorized person" should be provided to align with the Government's anti-money laundering initiatives. 	<p>We have no intention to impose any qualification or eligibility requirements for the "authorised persons" under Clause 23 so long as they are authorised by the director and registered as users of ICRIS.</p>
BCC	<ul style="list-style-type: none"> ● Welcome the initiative of introducing on-line incorporation process. ● Compared with the on-line system in the United Kingdom or Singapore, the on-line system in Hong Kong is still coming through very slowly because it supports the incorporation process only but does not deal with other company processes such as filing of company records and company notifications. ● Modern computer profiling techniques should be deployed to check who is involved in the incorporation process and to identify numerous or anomalous applications. ● Most overseas jurisdictions which allow on-line incorporation have the system for licensing or registration of trust and company service providers. A trust and company service provider registration regime should be implemented as quickly as possible so that individuals or companies involved in the on-line incorporation are known 	<p>ICRIS II will be implemented in phases. The first phase will deal with company registration while electronic filing of company documents is targeted to be rolled out in batches from mid-2011.</p> <p>ICRIS II portal has a registration module which requires users to provide basic information during the user registration process before they use the electronic incorporation service. Such information can be used for the purpose of identifying who is involved in the incorporation process.</p> <p>The Administration will separately consider the issues concerning the regulatory regime for trust and company service providers in view of the FATF's recommendations.</p> <p>See also our response to SCAA above.</p>

	or profiled in the register of their trust service providers, and hence “fit and proper” and identifiable people are involved and encouraged in the incorporation system.	
C. Providing for simultaneous application for company registration and business registration		
HKICS	<ul style="list-style-type: none"> ● Supports the launch of ICRIS II for facilitating a one-stop shop for company incorporation and business registration. 	Noted.
REDA	<ul style="list-style-type: none"> ● No objection. ● The initiative will streamline the procedures of company registration and business registration and hence alleviate the administration work of companies. 	Noted.
HKCMA	<ul style="list-style-type: none"> ● Support the initiative. ● The design of ICRIS II and the electronic incorporation process should allow the companies, which do not need to apply for business registration, an option to apply for incorporation only. 	<p>Noted.</p> <p>Under section 2(1A) of the Business Registration Ordinance (Cap. 310), all companies incorporated in Hong Kong or overseas companies registered in Hong Kong under the CO are deemed to be persons carrying on business and shall apply for business registration. In other words, a company, after its incorporation in Hong Kong, is required to apply for business registration regardless of whether the company actually carries on business in Hong Kong. Given the foregoing requirement, we do not consider it necessary to provide the suggested “option” to the applicant.</p>

BCC	<ul style="list-style-type: none"> ● Welcome. ● The initiative will streamline and speed up the incorporation and business registration process and enable a one-stop shop approach to enhance efficiency. ● Agree to the provisions that will enable the Registrar of Companies to act on behalf of the Commissioner of Inland Revenue in the matter of collecting business registration fees at the time of incorporation while noting that the Commissioner of Inland Revenue will continue to maintain its responsibilities, including the collection of business registration renewal fees which may also be issued in electronic format. ● Given that other jurisdictions with on-line incorporation process such as the United Kingdom and Singapore do not charge the equivalent of the business registration fee, the current arrangement of collecting the business registration fee at the same time the company is incorporated will increase the cost of incorporation considerably. It will also discourage incorporation of companies because start-up companies including shelf companies may choose to register at offshore jurisdictions which do not charge a business registration fee. It is time to consider waiving or reducing the business registration fee. 	We welcome the Chamber's support for the proposed one-stop service for company incorporation and business registration, and note the Chamber's views on the business registration fee, which is a matter beyond the scope of the Business Registration (Amendment) Bill 2010.
TSL	<ul style="list-style-type: none"> ● Support the initiative in enhancing convenience and efficiency through the launch of ICRIS II. ● No objection to the proposed technical amendments involved in the initiative, provided that all the concerns in relation to Companies (Amendment) Bill 2010 are 	Noted.

	properly addressed. The initiative can facilitate the conduct of business in Hong Kong.	
LSHK	<ul style="list-style-type: none"> Supports the provisions of the Business Registration (Amendment) Bill 2010, but the Administration needs to clarify the proposed provisions in Clause 6(3)(b) and 6(3)(c) on whether the Commissioner of Inland Revenue will continue to issue the original copy of the business registration certification or branch registration certificate if it is so requested. 	On simultaneous application for company incorporation and business registration, the Registrar will issue the Certificate of Incorporation together with the Business Registration Certificate to the successful applicant in the same manner as the latter submits the application. In other words, if the simultaneous application for company incorporation and business registration is submitted through electronic means, both certificates will be issued to the applicant electronically.
D. Empowering the Registrar of Companies to direct a company to change its name pursuant to a court order or under other specified circumstances		
HKCMA	<ul style="list-style-type: none"> Support. 	Noted.
CGCC	<ul style="list-style-type: none"> The initiative protects the interest of trademark owners and companies. 	Noted.
REDA	<ul style="list-style-type: none"> The initiative enhances the protection of intellectual property rights. 	Noted.
EY	<ul style="list-style-type: none"> The initiative enhances the protection of proprietary rights in intellectual property. 	Noted.
BCC	<ul style="list-style-type: none"> Agree with the initiative. 	Noted.

SCAA	<ul style="list-style-type: none"> ● Agree with the initiative. ● The initiative can expedite the process required to make a company with an objectionable company name to change its name. ● Under the current practice, registration for a company name which is the same as another company name is not allowed. The Registrar of Companies should also be given the power and responsibility to decide whether a company name is “too like” or “similar to” another company name. ● To ensure the power of the Registrar of Companies is not abused in the incorporation process, the Administration should provide clear guidelines on when a company name is regarded as “too like” or “similar to” another company name. 	<p>The Registrar has issued guidelines (“Names Guideline”) informing the public of the requirements for registration of a company name, including the criteria which the Registrar will apply in forming an opinion on whether a name is “too like” another name on the register.</p> <p>Under the current system, a company name is registrable unless it is identical with another name on the register or contains certain words or expressions that are prohibited/restricted for registration because for example, it is offensive or its use would constitute a criminal offence. To streamline and expedite the company registration procedure, we propose to empower the Registrar to issue directions to change name in respect of company names which are registered but subsequently found to be prohibited for registration. If a proposed name is a name in respect of which a direction has been issued, it will not be registered except with the consent of the Registrar. For a company name which is “too like” another name on the register, the Registrar may within 12 months after a company is incorporated direct it to change its name.</p>
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LSHK	<ul style="list-style-type: none"> ● The initiative would relieve rights holders of the need to sue the individual shareholders of the company which often entails service of proceedings outside Hong Kong. ● Regrets that the proposal is restricted to a name which is <i>the same</i> as the objectionable name for which the Registrar has already directed a name change and does not extend to <i>similar</i> names. 	<p>A name which is similar to a name for which the Registrar has directed to change may not itself be objectionable. It is not appropriate to restrict the registration of such names automatically without an opportunity for the complainee to explain his case, as is done in cases of complaints that a company name is “too like” another on the register under section 22(2) of the CO. Currently, in considering whether a company name is “too like” another and in deciding whether a change of name direction is to be issued under section 22(2) of the CO, the Registrar will take into account all the factors and criteria as set out in the Names Guideline. The proposal to screen out, at the application stage, each and every proposed name which is similar to an objectionable name for which a name change direction has been issued would also mean that the process has to be done manually and cannot be done electronically.</p>
<p>E. Empowering the Registrar of Companies to substitute a company’s name with its registration number if it fails to comply with the Registrar’s direction to change its name</p>		
TSL	<ul style="list-style-type: none"> ● Support. ● The initiative will strengthen the company name registration process and enhance enforcement against “shadow companies”. It will address concerns about the practice of some companies which adopt the company names closely similar to some trademarks or brand names for the purpose of misleading or confusing the public. 	Noted.

HKICS	<ul style="list-style-type: none"> ● Support. ● The initiative enhances enforcement against abuses by shadow companies. 	Noted.
EY	<ul style="list-style-type: none"> ● Welcome. ● The measure can reinforce the protection of proprietary rights in intellectual property and enable shadow companies to be effectively identified. 	Noted.
LSHK	<ul style="list-style-type: none"> ● The effectiveness of the initiative 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 <i>any part of the name</i> 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 "<i>too-like</i>" another company name on the register. 	<p>For future cases where the Registrar issues direction to change name pursuant to a court order, it is the intention that the Registrar will take into account or refer to the terms of the court order in issuing the direction.</p> <p>If the court order restrains the use by the defendant company of a distinctive part of the plaintiff's name, it is expected that the direction would contain similar reference to such restriction.</p> <p>Registration of company names and registration of trade marks are two distinct legal regimes. We consider it unfair to grant any company a monopoly over the use of any distinctive words/expressions in its</p>

		name. In considering whether a company name is “too like” another and in deciding whether a change of name direction is to be issued under section 22(2) of the CO, the Registrar will take into account all the factors and criteria as set out in the Names Guideline.
CGCC	<ul style="list-style-type: none"> ● Support, but the company with its name in problem should be directed to change its name within 2 months, instead of 12 months, after its incorporation. 	We consider it reasonable to allow 12 months’ period for the Registrar to exercise power to direct the company to change its name upon incorporation. The Registrar may specify a period (usually six weeks) for the company to comply with the direction.
F. Providing for multiple statutory derivative actions		
HKCMA	<ul style="list-style-type: none"> ● Agree. ● The initiative will further enhance the protection of small shareholders’ interest. 	Noted.
REDA	<ul style="list-style-type: none"> ● Agree. ● The initiative will amend the company law to reflect the recent ruling of court law on statutory derivative action. 	Noted.
TSL	<ul style="list-style-type: none"> ● TSL reserves their comment on this initiative until the outcome of the consultation on “Draft Companies Bill – First Phase Consultation” is available. 	Noted.
BCC	<ul style="list-style-type: none"> ● Agree. 	Noted.

	<ul style="list-style-type: none"> ● Statutory derivative action in the way described in the proposal is not controversial and should be enabled by statute without the need of waiting for the Company Ordinance's rewrite exercise. ● Agree with the coverage of parties under the proposal because all those parties should have the right to take legal action to protect their interests from being affected. 	
SCAA	<ul style="list-style-type: none"> ● Since the term "related company" proposed in Clause 14(3) of the Companies (Amendment) Bill 2010 and the same term currently used in financial reporting standards refer to different types of company. An alternative term should be used in the Bill to avoid confusion. 	The term "related company" will be defined in clause 14(3) in the Companies (Amendment) Bill 2010. We believe that there should not be any confusion.
G. Facilitating electronic and website communication by a company to another person other than the Registrar of Companies		
HKICS	<ul style="list-style-type: none"> ● Support. ● The initiative will promote the use of environmentally friendly practices and information technology, particularly in facilitating the communications between companies and their shareholders and members of the public. 	Noted.
HKCMA	<ul style="list-style-type: none"> ● Support. 	Noted.
REDA	<ul style="list-style-type: none"> ● Support. ● The initiative reduces unnecessary printing costs of the documents mailed to shareholders such as annual reports. 	Noted.
TSL	<ul style="list-style-type: none"> ● No objection to the initiative. 	Noted.

	<ul style="list-style-type: none"> ● The initiative will bring the statutory requirement under the company law in line with the requirements of the Main Board Listing Rules of the HK Exchanges and Clearing Limited. 	
BCC	<ul style="list-style-type: none"> ● Agree with the initiative to provide for electronic communications with the Registrar of Companies and to other persons such as shareholders in the case of listed companies. 	Noted.
H. Removing obstacles to the introduction of paperless holding and transfer of shares and debentures		
HKCMA	<ul style="list-style-type: none"> ● Support. 	Noted.
REDA	<ul style="list-style-type: none"> ● Welcome the initiative which will save costs relating to the issue of share certificates and debentures. ● A sophisticated and reliable system should be in place to support this initiative so as to safeguard the assets of professional and retail investors. 	<p>Noted.</p> <p>The Scripless Securities Market Working Group (WG) has issued a consultation paper on the proposed operational model for implementing a scripless securities market in Hong Kong¹. The consultation period ended on 31 March 2010 and the WG is in the process of reviewing comments received. In this regard, the WG will take into the view raised by REDA.</p>
TSL	<ul style="list-style-type: none"> ● The proposed amendment regarding the initiative should 	We note TSL's separate submission to the

¹ A 3-month consultation on the proposed operational model for implementing a scripless securities market in Hong Kong was launched jointly by the Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing Limited (HKEx) and the Federation of Share Registrars Limited (FSR) on 30 December 2009 and ended on 31 March 2010. The Panel on Financial Affairs was briefed on the contents of the joint consultation paper at its meeting on 1 February 2010.

	<p>be deferred until the outcome of the consultation paper on “A Proposed Operational Model for Implementing a Scripless Securities Market in Hong Kong” is available.</p>	<p>WG indicating its support for the introduction of a scripless securities market in Hong Kong.² As stated in our response issued to the Bills Committee on 5 March 2010 (CB(1)1343/09-10(01)), it is necessary to introduce legislative amendments to take forward the scripless initiative. These amendments are technical changes intended to remove or provide exceptions to the existing limitations in the CO that compel the issue or use of paper documents of title and transfer. This is an important first step in the entire legislative process for implementing the scripless initiative which would also facilitate the market to focus discussions on the proposed operational model for implementing a scripless securities market in Hong Kong, which was the subject under consultation from December 2009 to March 2010.</p> <p>The proposed legislative amendments contained in Part 7 of the Companies (Amendment) Bill 2010 will be brought into operation only when there is general</p>
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² TSL has also made comments on a number of related matters, including the cost implications and the reallocation of responsibilities between HKEx and share registrars (SRs) under the scripless system.

		market consensus on, and readiness to implement, the proposed scripless operational model and would not pre-empt the scripless operational model. We believe that these amendments would help sustain the momentum to take forward this important initiative. Further legislative amendments to the Securities and Futures Ordinance and the Stamp Duty Ordinance, in addition to those to the CO, will be pursued as necessary when the operational model takes shape.
BCC	<ul style="list-style-type: none"> ● Agree to remove obstacles to the introduction of paperless holdings and transfer of shares and debentures 	Noted.
SCAA	<ul style="list-style-type: none"> ● Companies Registry should consider maintaining a real-time update of the information relating to the transfer of shares so that the Registry can provide a more comprehensive profile about a company for public access. 	In order to provide a real-time update of the information relating to the transfer of shares, a new obligation will have to be imposed on all companies to make real-time report to the CR whenever there is a transfer of shares in the company. This will result in heavy administrative burden on companies. According to section 98 of the CO, the member of a company or any other person may access the register of members of the company, subject to the payment of prescribed fees and such

		reasonable restrictions the company may impose. Also, section 107 of the CO requires a company to deliver an annual return to the CR once in every year. The return contains the information as to members and share capital of the company as at the date of return and information on the transfer of shares since the last annual return is provided as well.
I. Exempting listed companies from giving notice of closure of register of members by advertisement in a Newspaper		
HKCMA	<ul style="list-style-type: none"> ● Support. 	Noted.
REDA	<ul style="list-style-type: none"> ● Welcome. ● Provided that the information on book close dates is available on the relevant website, such as the web site of the Hong Kong Stock Exchange and the company itself, the effort needed to publish the same information on newspapers can be eliminated. 	Noted.
EY	<ul style="list-style-type: none"> ● Welcome. ● The exemption proposed can bring the statutory requirement in line with the Hong Kong Listing Rules. It will also ensure a level playing field between the listed companies incorporated in Hong Kong and those incorporated in offshore jurisdictions. 	Noted.