

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

Follow-up to issues raised at the meeting on 31 May 2010

Administration's response

Company and business registration

1. Our proposal is that certificates of incorporation and business registration certificates will be issued to successful applicants in the same manner as they submit the applications. In other words, only electronic certificates will be issued to applicants using the electronic incorporation system. However, if hard copies are required, these applicants can obtain hard copies of the certificates at a fee.

Amendments relating to Communications by Company to Another Person (Other than Registrar of Companies) (Part 6 of the Companies (Amendment) Bill 2010)

2. A draft guide is at Annex.
- 3&4. We have considered Members' suggestions from the drafting point of view. The objective of the new Part IVAAA is to provide for the various modes of communication by a company to another person (other than the Registrar of Companies) under the Companies Ordinance. The new Part contains specific provisions in respect of each type of communication and each kind of intended recipient of the relevant communication. We consider that the structure of the new Part as drafted is appropriate.

We also consider that the use of the term "person's articles" accurately reflects the policy and is appropriate in the context.

5. We note the concern and will address it through appropriate Committee Stage Amendments

**Financial Services Branch
Financial Services and the Treasury Bureau
June 2010**

**Companies (Amendment) Bill 2010
Draft Guide on Company Communications Provisions**

The Companies (Amendment) Bill 2010 introduces a new part on communications by a company to its members or debenture holders (the “recipient”), covering communications in hard copy and, electronic forms and by means of website. The relevant requirements are set out below.

A. Communications by the company in hard copy form
(section 168BAF)

1. A document may be sent by hand to the recipient or by post in hard copy form to an address specified by the recipient or as shown in the company’s register of members or debenture holders, or register of directors and secretaries, as the case may be, or where the company does not have the recipient’s specified address, the recipient’s last known address;
2. A document sent in hard copy form is sufficiently authenticated if it is signed by an officer of the company; and
3. Unless otherwise agreed, a document sent by post to an address in Hong Kong is deemed to have been received by the recipient on the following working day after posting.

B. Communications by the company in electronic form (other than by website)
(section 168BAG)

1. Communications by electronic means can be made by a company only with the recipient’s agreement to an address specified by the recipient;
2. A document sent in electronic form by a company is sufficiently authenticated if the identity of the company is confirmed in a manner as specified by the recipient; or the communication contains a statement of the company’s identity and the recipient has no reason to doubt the truth of that statement;

3. A document is deemed to have been received by the recipient 48 hours after it has been sent by a company by electronic means, or any longer period as specified in the company's articles (for members), instrument creating the debentures (for debenture holders) or any other agreement (for other persons), as appropriate;
4. A document sent in electronic form may also be sent by hand or by post (e.g. by sending a diskette or CD);
5. A recipient may revoke his/her agreement to communicate in electronic form by giving a notice of revocation of at least 7 days or such longer period as specified in the articles of association (for members), instrument creating the debentures (for debenture holders) or any other agreement (for other persons), as appropriate; and
6. A recipient may request information to be provided in hard copy form free of charge within 28 days from the date of receipt of an electronic copy and the company must send a hard copy of the document within 21 days of receiving the request. If the document requires an action to be taken by the recipient, the company must send or supply the hard copy within 7 days after the date of receiving the request.^{Note}

C. Communications by the company by means of website
(section 168BAH)

1. If permitted by a company's articles or a members' resolution, a company may communicate with its members by means of a website, if the recipient consents to such mode of communication. Members or debenture holders of a company are not allowed to communicate to the company by means of website;
2. The recipient is deemed to have agreed to website communication if he/she has not responded to the company's request for consent stating clearly the effect of a failure to respond within 28 days. Where a recipient has not agreed to accept website communication, the company should not ask the recipient again within a period of 12 months from the prior request;

3. The company must notify the recipient of the posting of the document or information on the website, the address of the website, the place on the website where it may be accessed and how to access the document or information;
4. The information posted must be in a form which enables the recipient to read and retain a copy;
5. A document is deemed to have been received by the intended recipient 48 hours after its first posting or 48 hours after receipt of the notice of posting (whichever is the later) unless the company's articles have provided for a longer period;
6. The information must be kept posted on the website for the whole of any specified period or 28 days if no period is specified;
7. The recipient may revoke his/her agreement to website communication by giving a notice of revocation of at least 7 days or such longer period as specified in the articles of association (for members), instrument creating the debentures (for debenture holder) or any other agreement (for other person), as appropriate; and
8. A recipient may request information to be provided in hard copy form free of charge within 28 days from the date of receipt of the website copy and the company must send a hard copy of the document within 21 days of receiving the request. If the document requires an action to be taken by the recipient, the company must send or supply the hard copy within 7 days after the date of receiving the request.^{Note}

Companies Registry

June 2010

^{Note} In response to Members' concern at the Bills Committee meeting held on 31 May 2010 that a member or debenture holder of a company might not have sufficient time to take an action if he is required to make a request for a hard copy 14 days in advance, a Committee Stage Amendment will be introduced to 168BAI(2)(b) and (3) so that a company will be required to send or supply the hard copy to the member/debenture holder within 7 days after the date of receiving the request.