

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

Draft Committee Stage Amendments

Purpose

At the Bills Committee meeting on 10 June, we briefed Members on a number of draft Committee Stage Amendments (“CSAs”) proposed by the Administration to the Companies (Amendment) Bill 2010 (“CAB”) and the Business Registration (Amendment) Bill 2010 (“BRAB”). This note sets out our response to Members’ views on the CSAs.

Companies (Amendment) Bill 2010

The power to issue the direction to change name by the Registrar of Companies (“Registrar”)

2. We originally proposed a CSA to Clause 11(2) of the CAB to replace the word “may” with “must” in the new section 22A(1A) of the Companies Ordinance (“CO”) arising from the discussion at the meeting on 31 May. In view of Members’ query at the meeting on 10 June, we have obtained legal advice from the Department of Justice which is summarised below -

Under the new section 22A(1A), despite the use of the word “may”, if the Registrar is aware that a name should not have been registered under section 20(1)(c) or (d) of the CO, the Registrar would generally be under an obligation to issue a direction for change of name. It has been accepted by the courts that the word “may” can be used to confer a power upon a specified authority to act in certain circumstances, and when the relevant circumstances arise, the authority has a duty to act.

3. On that basis, we consider that there is no need to propose an amendment to Clause 11(2) of the CAB to replace the word “may” with “must” in the new section 22A(1A) of the CO.

Business Registration (Amendment) Bill 2010

The Use of “需” in the Proposed Section 4(3) of the Business Registration Ordinance

4. We appreciate there is a general tendency to differentiate between “須” and “需” in the “obligation” versus “need” sense. Nevertheless, in some contexts, particularly when used in the negative sense, the two words, as in the phrases “無須” and “無需”, can be used interchangeably with the same meaning. In fact, the entry of “無需” in *Xiandai Hanyu Cidian* (The Commercial Press, 1998) reads as “同‘無須’” (i.e. same as “無須”).

5. In the proposed section 4(3) in clause 4(3) of the BRAB, the context is “the officer is not required to..”, which is in the negative sense as explained above. We are of the opinion that the legal effect of “無需” corresponds to the policy intent. As such, we do not intend to change “無需” to “無須”.

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