



立法會秘書處 法律事務部
LEGISLATIVE COUNCIL SECRETARIAT
LEGAL SERVICE DIVISION

來函編號 YOUR REF :
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By Fax (2869 4195)

22 February 2010

Mr Arsene YIU
AS for Financial Services & the Treasury (Financial
Services)(6)1
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Dear Mr YIU,

Business Registration (Amendment) Bill 2010

We are scrutinizing the legal and drafting aspects of the captioned Bill. We would be most grateful for your clarification of the following matters:-

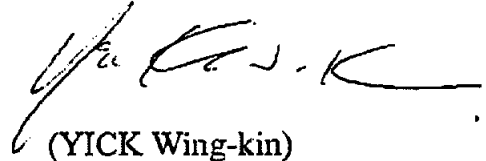
- (a) We note that in the proposed section 4(3)(a) of the Business Registration Ordinance (Cap. 310) (BR Ordinance) and Form 4 of the Business Registration Regulations (Cap. 310 sub. leg. A) (BR Regulations), the word "solely" is added before "in the performance of any function" under the BR Ordinance, please clarify the purpose of adding such word to the proposed section 4(3)(a) (and Form 4 of the BR Regulations) and whether this would have the effect of narrowing the scope of the existing official secrecy provision under the BR Ordinance.
- (b) Regarding the proposed section 4(1)(b)(iii), is it intended that "the executor" refers to the executor referred to in subparagraph (ii)? If so, please make the necessary amendment to reflect this intention clearly.
- (c) As drafted, the proposed section 5C applies in relation to simultaneous business registration applications only. It appears that under the proposed section 5C, the Registrar of Companies will not perform functions relating to the registration of a branch of a business. Please

clarify (i) whether the proposed one-stop service for company incorporation and business registration will not include the service for branch registration applications, even though the applicant concerned may wish to set up a branch of a business immediately after the relevant incorporation and (ii) the reason for not applying the proposed section 5C to branch registration applications.

- (d) Regarding the proposed section 5C(6), since a simultaneous business registration application is defined to mean a business registration application deemed to have been made under the new section 5A(2)(a) or 5B(2), please clarify why it is necessary to provide that a simultaneous business registration application is to be processed in the same manner as if it was made under section 5(1) of the BR Ordinance. Please also explain how a simultaneous business registration application is to be processed for the purposes of the proposed section 5C(6).
- (e) Regarding the proposed section 7A(4), to be consistent with the time frame for refunding the prescribed fee and levy under the proposed section 7A(2), would it be desirable to add the phrase "as soon as practicable" after the word "refund" in the proposed section 7A(4)? By the same spirit, please consider adding the phrase "as soon as practicable" after the word "refunded" in the proposed section 16(2)(b)?
- (f) Considering that people can use the information to be obtained under section 19 or 19A for various purposes, please clarify the purpose of adding the proposed section 19B in which a specific purpose of section 19 and 19A is provided.
- (g) Regarding the technical amendments to the Abattoirs Regulation (Cap. 132 sub. leg. A) and the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D), please clarify how and on what legal basis an applicant (or a person making the request) concerned can certify a business registration certificate by himself.
- (h) We note that as a consequence of the amendments proposed in the captioned Bill, there would be intermixing of the use of "must" and "shall" in the same section. For example, "must" is used in the proposed section 4(1), but "shall" is still used and maintained in section 4(4); similarly, "must" is used in the proposed sub-regulations 4(1), 4(1A) and 4(2) of the BR Regulations, while "shall" is used and maintained in sub-regulations 4(3) and 4B. To achieve consistency within the sections/regulations concerned, would it be desirable to amend "shall" to "must" in the relevant sections/regulations as well? It is noted that similar amendments have been introduced by the Administration in the Occupational Deafness (Compensation) Amendment Bill 2009.

It is appreciated that your reply in both languages could reach us as soon as practicable, preferably by 5 March 2010.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Yick Wing-kin', written in a cursive style.

(YICK Wing-kin)
Assistant Legal Adviser

cc. DoJ (Attn.: Ms Leonora IP, Sr Asst Law Draftsman
Mr Peter SZE, Govt Counsel (By Fax: 2845 2215))

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