

BUSINESS REGISTRATION (AMENDMENT) BILL 2010**CONTENTS**

Clause	Page
PART 1	
SHORT TITLE AND COMMENCEMENT	
1. Short title.....	C101
2. Commencement	C101
PART 2	
AMENDMENTS TO BUSINESS REGISTRATION ORDINANCE	
3. Interpretation.....	C103
4. Official secrecy	C105
5. Application for registration.....	C109
6. Sections 5A to 5D added	
5A. Simultaneous business registration applications of companies incorporated under Companies Ordinance	C109
5B. Simultaneous business registration applications of non-Hong Kong companies	C111
5C. Registrar to perform certain functions in relation to simultaneous business registration applications	C111
5D. Notices in specified form.....	C113
7. Registration of business and issue of business registration certificate	C115
8. Payment of fees	C119
9. Section 7A added	
7A. Refund of prescribed business registration fees, prescribed branch registration fees or levies	C119
10. Information to be furnished.....	C121

Clause		Page
11.	Display of certificates.....	C125
12.	Regulations.....	C125
13.	Offences.....	C125
14.	Exemptions.....	C125
15.	Appeals	C127
16.	Section 19B added	
	19B. Purpose of sections 19 and 19A	C127
17.	Schedule 1 amended	C127
18.	Schedule 2 amended	C129

PART 3

AMENDMENTS TO BUSINESS REGISTRATION REGULATIONS

19.	Interpretation.....	C135
20.	Application for registration.....	C135
21.	Regulation 3A added	
	3A. Business particulars in relation to simultaneous business registration applications.....	C137
22.	The register	C139
23.	Business and branch registration certificates	C141
24.	Regulation 8A added	
	8A. Electronic records for prescribed forms.....	C141
25.	Forms	C143

PART 4

RELATED AND CONSEQUENTIAL AMENDMENTS

Inland Revenue Ordinance

26.	Official secrecy	C147
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Clause		Page
	Abattoirs Regulation	
27.	Registration	C147
	Administrative Appeals Board Ordinance	
28.	Schedule amended	C147
	Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation	
29.	Inclusion of business name of owner in certificate of ownership	C147
	Electronic Transactions Ordinance	
30.	Service of documents	C149

A BILL

To

Amend the Business Registration Ordinance to provide for simultaneous business registration applications on incorporation or application for non-Hong Kong company registration under the Companies Ordinance, to provide for electronic transactions for business registration, and to make miscellaneous amendments; and to make related and consequential amendments to other Ordinances.

Enacted by the Legislative Council.

PART 1

SHORT TITLE AND COMMENCEMENT

1. Short title

This Ordinance may be cited as the Business Registration (Amendment) Ordinance 2010.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

PART 2

AMENDMENTS TO BUSINESS REGISTRATION ORDINANCE

3. Interpretation

(1) Section 2 of the Business Registration Ordinance (Cap. 310) is amended, in the heading, by adding “**and application**” after “**Interpretation**”.

(2) Section 2(1) is amended by repealing the definition of “levy” and substituting—

““levy” (徵費) means an amount prescribed in item 3 of the Table in Schedule 2 and determined in accordance with sections 3 and 4 of that Schedule;”.

(3) Section 2(1) is amended, in paragraph (b) of the definition of “place of business”, by repealing “Registrar of Companies” and substituting “Registrar”.

(4) Section 2(1) is amended by repealing the definition of “prescribed branch registration fee” and substituting—

““prescribed branch registration fee” (訂明的分行登記費) means a fee prescribed in item 2 of the Table in Schedule 2 and determined in accordance with section 2 of that Schedule;”.

(5) Section 2(1) is amended by repealing the definition of “prescribed business registration fee” and substituting—

““prescribed business registration fee” (訂明的商業登記費) means a fee prescribed in item 1 of the Table in Schedule 1 and determined in accordance with section 2 of that Schedule;”.

(6) Section 2(1) is amended by adding—

““branch registration application” (分行登記申請) means an application under section 5(3);

“business registration application” (商業登記申請) means an application under section 5(1);

“company registration application” (公司註冊申請) means an application for registration under section 333 of the Companies Ordinance (Cap. 32);

“electronic record” (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“function” (職能) includes a power and a duty;

“incorporation application” (成立法團申請) means an application to form an incorporated company under section 14A of the Companies Ordinance (Cap. 32);

“incorporation form” (法團成立表格) has the meaning given by section 14A(1) of the Companies Ordinance (Cap. 32);

“non-Hong Kong company” (非香港公司) means a company incorporated outside Hong Kong;

“non-Hong Kong company registration form” (非香港公司註冊表格) means the specified form referred to in section 333(1) of the Companies Ordinance (Cap. 32);

“Registrar” (處長) means the Registrar of Companies appointed under section 303(2) of the Companies Ordinance (Cap. 32);

“Secretary” (政策局局長) means the Secretary for Financial Services and the Treasury;

“simultaneous business registration application” (同步商業登記申請) means a business registration application deemed to have been made under section 5A(2)(a) or 5B(2);”.

(7) Section 2(1A) is amended by adding “any deemed cessation of business under section 6(4F) or” before “any notification”.

(8) Section 2 is amended by adding—

“(1C) This Ordinance applies to—

(a) a person who makes an incorporation application; and

(b) a person who makes a company registration application.”.

(9) Section 2(2) is repealed and the following substituted—

“(2) The functions conferred on the Commissioner under this Ordinance may be performed by any officer of the Inland Revenue Department authorized by the Commissioner, either generally or particularly, subject to the instructions of the Commissioner.

(3) The following functions may be performed by any officer of the Companies Registry authorized by the Registrar, either generally or particularly, subject to the instructions of the Registrar—

(a) functions authorized under this Ordinance to be performed by the Registrar on behalf of the Commissioner;

(b) functions delegated by the Commissioner to the Registrar under this Ordinance;

(c) functions conferred on the Registrar under this Ordinance.”.

4. Official secrecy

(1) Section 4(1) is repealed and the following substituted—

“(1) Except in the performance of the functions referred to in subsection (1A), an officer of the Inland Revenue Department, or of the Companies Registry—

- (a) must preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to the officer's notice solely in the performance of any function under this Ordinance;
- (b) must not communicate any such matter to any person other than—
 - (i) the person to whom such matter relates;
 - (ii) the executor of the person referred to in subparagraph (i); or
 - (iii) the authorized representative of the person referred to in subparagraph (i) or the executor;and
- (c) must not allow any person to have access to any record relating to any such matter in the possession, custody or control of the Commissioner or the Registrar.

(1A) The functions are—

- (a) in relation to an officer of the Inland Revenue Department, functions under the Inland Revenue Ordinance (Cap. 112) or under this Ordinance; and
- (b) in relation to an officer of the Companies Registry, functions under this Ordinance.”.

(2) Section 4(2) is amended by repealing “Every officer of the Inland Revenue Department shall,” and substituting “An officer of the Inland Revenue Department, or of the Companies Registry, must,”.

(3) Section 4(3) is repealed and the following substituted—

“(3) Except as may be necessary for the purpose referred to in subsection (3A), no officer of the Inland Revenue Department, or of the Companies Registry, may be required—

- (a) to divulge or communicate to any court any matter or thing coming to the officer's notice solely in the performance of any function under this Ordinance; or
- (b) to produce in any court any document pertaining to such matter or thing other than a document required to be kept by the Commissioner under this Ordinance.

(3A) The purpose is—

- (a) in relation to an officer of the Inland Revenue Department, to carry into effect the provisions of the Inland Revenue Ordinance (Cap. 112) or of this Ordinance; and
- (b) in relation to an officer of the Companies Registry, to carry into effect the provisions of this Ordinance.”.

(4) Section 4(5) is amended by adding “, or of the Companies Registry,” after “Inland Revenue Department”.

(5) Section 4(6) is amended by repealing “that department” and substituting “the Audit Commission”.

5. Application for registration

(1) Section 5(1A) is amended by repealing “an application under subsection (1)” and substituting “a business registration application”.

(2) Section 5(1B) is amended by repealing everything from “An application” to “be deemed” and substituting “On making a business registration application, if names under which the same business is carried on, other than those mentioned in subsection (1A), are submitted to the Commissioner, the names are for the purposes of this Ordinance deemed”.

(3) Section 5(2) is amended by repealing “An application under subsection (1)” and substituting “A business registration application”.

(4) Section 5(4) is amended by repealing “An application under subsection (3)” and substituting “A branch registration application”.

(5) Section 5 is amended by adding—

“(6) Subsection (2) does not apply to a simultaneous business registration application.”.

6. Sections 5A to 5D added

The following are added—

“5A. Simultaneous business registration applications of companies incorporated under Companies Ordinance

(1) At the time an incorporation application is made, the applicant must—

- (a) pay to the Commissioner the prescribed business registration fee and levy; and
- (b) deliver a notice in a form specified by the Commissioner under section 5D(1), to indicate whether the applicant intends that the company to be formed will make an election under section 6(5C)(c).

(2) If the applicant complies with subsection (1), on the incorporation of the company—

- (a) the company is deemed to have made a business registration application; and
- (b) if the applicant has, under subsection (1)(b), indicated the intent to make an election under section 6(5C)(c), the company is deemed to have made an election under section 6(5C)(c).

5B. Simultaneous business registration applications of non-Hong Kong companies

(1) At the time a company registration application is made, the non-Hong Kong company concerned must—

- (a) pay to the Commissioner the prescribed business registration fee and levy; and
- (b) deliver a notice in a form specified by the Commissioner under section 5D(1)—
 - (i) to submit the particulars prescribed in regulations made under section 14; and
 - (ii) to make an election under section 6(5C)(c) if the company intends to do so.

(2) If the non-Hong Kong company complies with subsection (1), the company is deemed to have made a business registration application.

(3) Subsections (1) and (2) do not apply to a non-Hong Kong company if the business carried on by the company is already registered, or deemed to be registered, under section 6; however, when the company delivers the non-Hong Kong company registration form to the Registrar, the company must deliver a notice in a form specified by the Commissioner under section 5D(1) to indicate that the business is so registered.

5C. Registrar to perform certain functions in relation to simultaneous business registration applications

(1) The Registrar is to perform the following functions for and on behalf of the Commissioner in relation to simultaneous business registration applications—

- (a) collecting prescribed business registration fees and levies under sections 5A(1)(a) and 5B(1)(a) and refunding those fees and levies under section 7A(2)(a) or (4);
- (b) receiving notices under sections 5A(1)(b) and 5B(1)(b) and (3);
- (c) assigning identifying numbers;
- (d) issuing business registration certificates under section 6(3);

(e) giving notification under section 6(4A) of the Commissioner's decisions.

(2) The Commissioner may delegate to the Registrar any other function under this Ordinance in relation to simultaneous business registration applications either generally or particularly.

(3) Subsection (1) or a delegation under subsection (2) does not prevent or restrict the concurrent performance of the function by the Commissioner.

(4) A function performed by the Registrar under subsection (1) or under a delegation under subsection (2) is deemed to be performed by the Commissioner.

(5) In respect of a simultaneous business registration application, the Registrar must transmit to the Commissioner—

(a) all information submitted in notices under sections 5A(1)(b) and 5B(1)(b) and (3); and

(b) the particulars prescribed in regulations made under section 14.

(6) Except as otherwise provided by this Ordinance, a simultaneous business registration application is to be processed in the same manner as if it was made under section 5(1).

5D. Notices in specified form

(1) The Commissioner may specify any form to be used for a notice under section 5A(1)(b) or 5B(1)(b) or (3), and the Registrar must make copies of any such form available during office hours at the office of the Registrar and through any other means that the Registrar considers appropriate.

(2) A notice under section 5A(1)(b) or 5B(1)(b) or (3) must be delivered to the Commissioner, through the Registrar, in the same manner as the related incorporation form or non-Hong Kong company registration form.

(3) If the related incorporation form or non-Hong Kong company registration form is delivered to the Registrar in the form of an electronic record, the notice must also be delivered to the Registrar in the form of an electronic record that complies with any requirement that may be specified by the Registrar for the purposes of this section.

(4) Without limiting the powers of the Registrar under subsection (3), the Registrar may specify requirements regarding the following matters—

(a) the format of an electronic record;

(b) the manner in which an electronic record is to be authenticated or certified; and

- (c) the system by which and the manner in which an electronic record is to be delivered.”.

7. Registration of business and issue of business registration certificate

(1) Section 6 is amended, in the Chinese text, by repealing the heading and substituting “登記業務及發出商業登記證”.

(2) Section 6(1) is repealed and the following substituted—

“(1) The Commissioner must register each business for which a business registration application is made or is deemed to be made under this Ordinance as soon as practicable after the prescribed business registration fee and levy are paid.”.

(3) Section 6(1A) is repealed and the following substituted—

“(1A) The Commissioner must register each branch of a business for which a branch registration application is made under this Ordinance as soon as practicable after the prescribed branch registration fee and levy are paid.”.

(4) Section 6(3) is repealed and the following substituted—

“(3) The Commissioner must issue a business registration certificate for the relevant business as soon as practicable after—

- (a) the Commissioner has decided to register the business;
- (b) the prescribed business registration fee and levy are paid under section 7 or under an order of a magistrate made under section 15; or
- (c) an exemption is granted under section 9.”.

(5) Section 6(3A) is repealed and the following substituted—

“(3A) The Commissioner must issue a branch registration certificate for the relevant branch of a business as soon as practicable after—

- (a) the Commissioner has decided to register the branch;
or
- (b) the prescribed branch registration fee and levy are paid under section 7 or under an order of a magistrate made under section 15.”.

(6) Section 6 is amended by adding—

“(3B) A business registration certificate under subsection (3) or a branch registration certificate under subsection (3A) may be issued in any manner the Commissioner thinks fit.

(3C) Without limiting the powers of the Commissioner under subsection (3B), the Commissioner may issue a certificate in the form of an electronic record.”.

- (7) Section 6(4A) is repealed and the following substituted—
- “(4A) If the Commissioner has decided not to register a business or a branch of a business for any of the reasons specified in subsection (4)—
- (a) the Commissioner must notify the applicant concerned in writing of the decision and the reason for it; and
 - (b) if the decision is made for the reason specified in subsection (4)(b) or (c), the applicant must make a new business registration application or branch registration application, as the case may be, under a different name within 1 month of the notification.”
- (8) Section 6(4D) is repealed and the following substituted—
- “(4D) If—
- (a) at any time after a business or a branch of a business has been registered it appears to the Commissioner that the business or branch should not have been registered for the reason specified in subsection (4)(b) or (c); or
 - (b) on notification of a change of the name of a business or a branch of a business under section 8(1), (1A)(b) or (1B) or on the submission of the name of a business under section 8(1A)(a), it appears to the Commissioner that the business or branch should not be registered under the new name for the reason specified in subsection (4)(b) or (c),
- the Commissioner must issue a notice to the person carrying on the business or branch requesting the person to notify the Commissioner in writing, within 3 months of the issue of that notice, of a change to a different name that does not fall within the description in subsection (4)(b) or (c).”
- (9) Section 6(4F) is amended by repealing “Where a new application for registration of a business or a branch of a business under a different name is not made” and substituting “If no notification of a change to a different name that does not fall within the description in subsection (4)(b) or (c) is given”.
- (10) Section 6(5C)(a) is amended by repealing “or” at the end.
- (11) Section 6(5C)(b) is amended by repealing “an application for the registration of the business under section 5(1)” and substituting “a business registration application for the business”.
- (12) Section 6(5C)(b) is amended by repealing the comma at the end and substituting “; or”.

(13) Section 6(5C) is amended by adding—

“(c) in relation to a simultaneous business registration application,”.

(14) Section 6(5C) is amended, in the Chinese text, by repealing everything from “藉以作出選擇” to “適用商業登記證” and substituting “作出選擇，表示如在其後任何時間，有任何適用商業登記證就該項業務”.

(15) Section 6(7) is amended by repealing “an application for registration under section 5(1)” and substituting “a business registration application”.

8. Payment of fees

(1) Section 7(1)(a) is amended by repealing “fee prescribed in item 1 of Schedule 1” where it twice appears and substituting “prescribed business registration fee”.

(2) Section 7(1)(b) is amended by repealing “fee prescribed in item 2 of Schedule 2” where it twice appears and substituting “prescribed branch registration fee”.

9. Section 7A added

The following is added—

“7A. Refund of prescribed business registration fees, prescribed branch registration fees or levies

(1) Any prescribed business registration fee, prescribed branch registration fee or levy paid is not to be refunded except where it is provided otherwise in this section or any other provision of this Ordinance.

(2) Subject to subsection (3), the Commissioner must refund any prescribed business registration fee or prescribed branch registration fee, as the case may be, or levy paid in respect of a business or a branch of a business—

- (a) as soon as practicable after the Commissioner has given the notification under section 6(4A) if the Commissioner has decided not to register the business or branch for any of the reasons specified in section 6(4); or
 - (b) as soon as practicable if the Commissioner has removed the entry in respect of the business or branch from the register under section 6(4B), and there is no appeal against the removal under section 6(4C) or an appeal under section 6(4C) is unsuccessful or withdrawn.
- (3) Except in the case of a branch of a business, subsection (2)(b) does not entitle the following companies to any refund—
- (a) a company incorporated under the Companies Ordinance (Cap. 32);
 - (b) a non-Hong Kong company to which Part XI of that Ordinance applies.
- (4) If the Registrar refuses an incorporation application made on or after the day on which section 6 of the Business Registration (Amendment) Ordinance 2010 (of 2010) comes into operation, the Commissioner must refund to the applicant the prescribed business registration fee and levy paid under section 5A(1)(a).”.

10. Information to be furnished

(1) Section 8(1) is amended by repealing “Where there occurs any change” and substituting “If there is any change”.

(2) Section 8 is amended by adding—

“(1A) In respect of a simultaneous business registration application relating to an incorporation application—

- (a) the relevant company must, within 1 month of the date on which it commences to carry on the relevant business, submit to the Commissioner in writing the particulars prescribed in regulations made under section 14; and
- (b) if there is any change in those particulars, the company must within 1 month of that change notify the Commissioner of it in writing.

(1B) In respect of a simultaneous business registration application relating to a company registration application, if there is—

- (a) any change in the particulars submitted by the non-Hong Kong company under section 5B(1)(b)(i); or
- (b) in the case the company is not registered under Part XI of the Companies Ordinance (Cap. 32)—

- (i) a change of its corporate name or an alteration of the address of its principal place of business in Hong Kong; or
- (ii) an alteration of its authorized representative or an alteration of name and address of its authorized representative,

the company must within 1 month of that change or alteration notify the Commissioner of it in writing.”.

(3) Section 8(2A) is amended by repealing everything after “under” and substituting “this section, the person is to be treated as having notified the Commissioner of that matter under this section.”.

(4) Section 8 is amended by adding—

“(2B) If a company—

- (a) gives notice of a change of its name under section 22 of the Companies Ordinance (Cap. 32) or gives notice of a change of address of its registered office under section 92 of that Ordinance; or
- (b) delivers a return under section 335 of that Ordinance for—
 - (i) a change of its corporate name or an alteration of the address of its principal place of business in Hong Kong; or
 - (ii) an alteration of its authorized representative or an alteration of name and address of its authorized representative,

the Registrar must transmit the particulars to the Commissioner as soon as practicable after the notice or return is registered or recorded under that Ordinance, and if the company is subject to subsection (1), on the registration or recording, it is to be treated as having notified the Commissioner of the change or alteration under that subsection.”.

(5) Section 8 is amended by adding—

“(2C) If there is a replacement of a company’s name under section 22AA of the Companies Ordinance (Cap. 32), the Registrar must transmit the particulars to the Commissioner as soon as practicable after the replacement, and if the company is subject to subsection (1), on the replacement, it is to be treated as having notified the Commissioner of the replacement under that subsection.”.

11. Display of certificates

Section 12 is amended by adding—

“(3) If the business registration certificate or branch registration certificate is issued in the form of an electronic record, a printed copy of the certificate must be displayed in the manner described in subsection (1) or (2), as the case may be, and the display is to be treated as complying with that subsection.”.

12. Regulations

(1) Section 14(1A) is amended by repealing “Secretary for Financial Services and the Treasury” and substituting “Secretary”.

(2) Section 14(1A)(a) is amended by repealing “application for registration of a business and its branches is” and substituting “a business registration application and a branch registration application are”.

(3) Section 14(1A)(d) is amended by adding “the manner of registration, including” before “the form”.

13. Offences

Section 15 is amended by adding—

“(2A) If the Commissioner has reason to believe that any particulars transmitted by the Registrar under section 5C(5)(b) or 8(2B) are false, inaccurate or incomplete, the Commissioner may inform the Registrar accordingly.”.

14. Exemptions

(1) Section 16 is amended by renumbering it as section 16(1).

(2) Section 16(1)(d) is amended by repealing “Secretary for Financial Services and the Treasury” and substituting “Secretary”.

(3) Section 16 is amended by adding—

“(2) In respect of any prescribed business registration fee and levy required to be paid under section 5A(1)(a) or 5B(1)(a)—

(a) the liability to pay the fee and levy is not affected by any claim that this Ordinance does not apply to the relevant company or business under this section; and

(b) if the Commissioner is satisfied that this Ordinance does not apply to the relevant company after the fee and levy have been paid, the fee and levy are to be refunded.”.

15. Appeals

Section 17(c) is amended by repealing “make an application for registration under a different name” and substituting “notify the Commissioner of a change to a different name”.

16. Section 19B added

The following is added—

“19B. Purpose of sections 19 and 19A

The purpose of sections 19 and 19A is to enable any person to ascertain whether a business is registered under this Ordinance and the particulars of the businesses so registered.”.

17. Schedule 1 amended

(1) Schedule 1 is amended by repealing “ss. 2, 7, 9 & 18” and substituting “ss. 2, 9 & 18”.

(2) Schedule 1 is amended by adding before the column headings—
“TABLE”.

(3) Schedule 1 is amended by adding before the Table—

“1. The Table in this Schedule sets out the prescribed business registration fee payable under sections 5A, 5B and 7 and regulations made under section 14, and the average of total sales or receipts to exempt a business under section 9.

2. In respect of item 1 of the Table, the prescribed business registration fee payable in relation to the registration of a business is the sum specified in column 2 of that item corresponding to the period specified in column 1 of that item within which the following date falls—

(a) in relation to a business registration application (other than a simultaneous business registration application) or a notice issued under section 7(1)(a)(i)—

(i) in the case of a company incorporated under the Companies Ordinance (Cap. 32)—

(A) if the application is made or the notice is issued within 1 year of the date of its incorporation, that date; or

(B) otherwise, the last anniversary of that date;
or

- (ii) in any other case—
 - (A) if the application is made or the notice is issued within 1 year of the date on which the business commences or is deemed to have commenced (whichever is the earlier), that date; or
 - (B) otherwise, the last anniversary of that date;
- (b) in relation to a simultaneous business registration application—
 - (i) in the case of a fee payable under section 5A(1)(a), the date of making the related incorporation application; or
 - (ii) in the case of a fee payable under section 5B(1)(a)—
 - (A) if the related company registration application is made within 1 year of the date of establishment of the non-Hong Kong company's place of business in Hong Kong, that date; or
 - (B) otherwise, the last anniversary of that date;
- (c) in relation to the issue of a further business registration certificate on the expiry of a business registration certificate, the date of the day following the date of that expiry.”.

(4) Column 1 of item 1 of the Table in Schedule 1 is amended by repealing everything from “Fee payable” to “commences” and substituting “Prescribed business registration fee”.

(5) Column 3 of the Table in Schedule 1 is repealed.

18. Schedule 2 amended

(1) Schedule 2 is amended by repealing “ss. 2, 7, 11 & 18” and substituting “ss. 2, 11 & 18”.

(2) Schedule 2 is amended by adding before the column headings—
“TABLE”.

(3) Schedule 2 is amended by adding before the Table—

“1. The Table in this Schedule sets out the penalty payable under section 11, the prescribed branch registration fee payable under section 7 and regulations made under section 14, and the levy payable under sections 5A, 5B and 7 and regulations made under section 14.

2. In respect of item 2 of the Table, the prescribed branch registration fee payable in relation to the registration of a branch of a business is the sum specified in column 2 of that item corresponding to the period specified in column 1 of that item within which the following date falls—

- (a) in relation to a branch registration application or a notice issued under section 7(1)(b)(i)—
 - (i) if the application is made or the notice is issued within 1 year of the date on which the branch commences business or is deemed to have commenced business (whichever is the earlier), that date; or
 - (ii) otherwise, the last anniversary of that date;
- (b) in relation to the issue of a further branch registration certificate on the expiry of a branch registration certificate, the date of the day following the date of that expiry.

3. In respect of item 3 of the Table, the levy payable in relation to the registration of a business is the sum specified in column 2 of that item corresponding to the period specified in column 1 of that item within which the following date falls—

- (a) in relation to a business registration application (other than a simultaneous business registration application) or a notice issued under section 7(1)(a)(i)—
 - (i) in the case of a company incorporated under the Companies Ordinance (Cap. 32)—
 - (A) if the application is made or the notice is issued within 1 year of the date of its incorporation, that date; or
 - (B) otherwise, the last anniversary of that date; or
 - (ii) in any other case—
 - (A) if the application is made or the notice is issued within 1 year of the date on which the business commences or is deemed to have commenced (whichever is the earlier), that date; or
 - (B) otherwise, the last anniversary of that date;
- (b) in relation to a simultaneous business registration application—

- (i) in the case of a levy payable under section 5A(1)(a), the date of making the related incorporation application; or
- (ii) in the case of a levy payable under section 5B(1)(a)—
 - (A) if the related company registration application is made within 1 year of the date of establishment of the non-Hong Kong company's place of business in Hong Kong, that date; or
 - (B) otherwise, the last anniversary of that date;
- (c) in relation to the issue of a further business registration certificate on the expiry of a business registration certificate, the date of the day following the date of that expiry.

4. In respect of item 3 of the Table, the levy payable in relation to the registration of a branch of a business is the sum specified in column 2 of that item corresponding to the period specified in column 1 of that item within which the following date falls—

- (a) in relation to a branch registration application or a notice issued under section 7(1)(b)(i)—
 - (i) if the application is made or the notice is issued within 1 year of the date on which the branch commences business or is deemed to have commenced business (whichever is the earlier), that date; or
 - (ii) otherwise, the last anniversary of that date;
- (b) in relation to the issue of a further branch registration certificate on the expiry of a branch registration certificate, the date of the day following the date of that expiry.”.

(4) Item 2 of the Table in Schedule 2 is repealed and the following substituted—

“2. Prescribed branch registration fee—

- (a) on or after the day on which section 18 of the Business Registration (Amendment) Ordinance 2010 (of 2010) comes into operation—
 - (i) where no election is made under section 6(5C) \$73
 - (ii) where an election is made under section 6(5C) \$189”.

(5) Item 3 of the Table in Schedule 2 is repealed and the following substituted—

“3. Levy—

(a) on or after the day on which section 18 of the Business Registration (Amendment) Ordinance 2010 (of 2010) comes into operation—

(i) where no election is made under section 6(5C) \$450

(ii) where an election is made under section 6(5C) \$1,350”.

(6) Column 3 of the Table in Schedule 2 is repealed.

PART 3

AMENDMENTS TO BUSINESS REGISTRATION REGULATIONS

19. Interpretation

(1) Regulation 2 of the Business Registration Regulations (Cap. 310 sub. leg. A) is amended, in the definition of “business registration certificate”, by repealing the full stop and substituting a semicolon.

(2) Regulation 2 is amended by adding—

““digital signature” (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).”.

20. Application for registration

(1) Regulation 3 is amended by renumbering it as regulation 3(1).

(2) Regulation 3(1) is amended by repealing “Application for registration of a business or a branch of a business under section 5 of the Ordinance shall” and substituting “A business registration application (other than a simultaneous business registration application) or a branch registration application must”.

(3) Regulation 3(1) is amended by repealing everything after paragraph (d).

(4) Regulation 3 is amended by adding—

“(2) An application referred to in subregulation (1) must be accompanied by full payment of—

(a) the prescribed business registration fee or prescribed branch registration fee, as the case may be; and

(b) the levy.”.

21. Regulation 3A added

The following is added—

“3A. Business particulars in relation to simultaneous business registration applications

(1) The particulars to be submitted, under section 5B(1)(b)(i) of the Ordinance, at the time a company registration application is made are as follows—

- (a) a Chinese name, an English name or both a Chinese name and an English name under which the business is carried on;
- (b) the description and nature of the business;
- (c) the date of the commencement of the business.

(2) The particulars to be submitted, under section 8(1A)(a) of the Ordinance, within 1 month of the date of commencement of a company's business are as follows—

- (a) a Chinese name, an English name or both a Chinese name and an English name under which the business is carried on;
- (b) the description and nature of the business;
- (c) the date of the commencement of the business.

(3) The particulars that the Registrar is required to transmit to the Commissioner under section 5C(5)(b) of the Ordinance are as follows—

- (a) in the case of a company incorporated under the Companies Ordinance (Cap. 32)—
 - (i) the name of the company;
 - (ii) the address of the registered office of the company;
 - (iii) the date of the incorporation of the company; and
- (b) in the case of a non-Hong Kong company—
 - (i) the name of the company;
 - (ii) the place of incorporation of the company;
 - (iii) the address of the principal place of business of the company in Hong Kong;
 - (iv) the date on which the company established its place of business in Hong Kong;
 - (v) the name and capacity of the person who has signed the related non-Hong Kong company registration form;
 - (vi) the name and address in Hong Kong of the company's authorized representative referred to in section 333(2)(e) of the Companies Ordinance (Cap. 32);

- (vii) the date of the registration of the company under Part XI of the Companies Ordinance (Cap. 32) (unless the Registrar has refused to register the company under that Part).”.

22. The register

(1) Regulation 4(1) is amended by repealing “an application for registration of a business in the form provided for in regulation 3 the Commissioner shall” and substituting “a business registration application or a branch registration application in a form provided for in regulation 3(1), the Commissioner must”.

- (2) Regulation 4 is amended by adding—

“(1A) As soon as practicable after receipt by the Registrar of an incorporation application, the Commissioner must assign an identifying number in relation to the application, and that identifying number becomes the identifying number of the related simultaneous business registration application on the incorporation of the company concerned.

(1B) If section 5B(1) and (2) of the Ordinance applies, as soon as practicable after receipt by the Registrar of a company registration application, the Commissioner must assign an identifying number to the related simultaneous business registration application.”.

- (3) Regulation 4(2) is repealed and the following substituted—

“(2) The Commissioner must maintain a register which consists of—

- (a) the following information, as supplemented or replaced by information from time to time received by the Commissioner under section 6(4D) or 8 of the Ordinance—

- (i) information submitted in applications made to the Commissioner under section 5 of the Ordinance or section 4 of the Business Regulation Ordinance 1952 (14 of 1952);

- (ii) information submitted in simultaneous business registration applications; and

- (b) the identifying numbers assigned under subregulation (1), (1A) or (1B).”.

(4) Regulation 4(3)(a) is amended by repealing the semicolon and substituting “; and”.

(5) Regulation 4(4A) is amended by repealing “to applications under paragraph (1)” and substituting “under subregulation (1), (1A) or (1B)”.

(6) Regulation 4(4B) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

(7) Regulation 4(4C) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

(8) Regulation 4(4D) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

(9) Regulation 4(4E) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

(10) Regulation 4(4G) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

23. Business and branch registration certificates

Regulation 5 is amended by adding—

“(3) A duplicate under subregulation (2) may be issued in any manner the Commissioner thinks fit.

(4) Without limiting the powers of the Commissioner under subregulation (3), the Commissioner may issue a duplicate in the form of an electronic record.”.

24. Regulation 8A added

The following is added—

“8A. Electronic records for prescribed forms

(1) The Secretary may, for the purposes of the submission of a form under regulation 3 or 6 in the form of an electronic record, by notice published in the Gazette specify—

(a) a system;

(b) a template; and

(c) requirements as to—

(i) the manner of generating or sending the form in the form of an electronic record; and

(ii) how a password approved under subregulation (2) is to be included with, or a digital signature is to be affixed to, the form.

(2) The Commissioner may, for the purposes of the submission of a form under regulation 3 or 6 in the form of an electronic record, approve any sequence or combination of letters, characters, numbers or symbols selected by a person as a password for that person.

(3) A form under regulation 3 or 6 may be submitted to the Commissioner in the form of an electronic record that—

- (a) is submitted using a system, and in a manner, specified under subregulation (1); and
- (b) uses a template specified under subregulation (1) and made available by the Commissioner.

(4) If a form under regulation 3 or 6 is submitted in the form of an electronic record, the requirement for a signature on the form is satisfied by a password of the person approved under subregulation (2) or a digital signature of the person.”.

25. Forms

(1) Form 1(a) set out in regulation 9 is amended by adding “(1)” after “reg. 3”.

(2) Form 1(b) set out in regulation 9 is amended by adding “(1)” after “reg. 3”.

(3) Form 1(b) set out in regulation 9 is amended, under the heading “CERTIFICATE OF APPLICANT”, by repealing—

“*Identity card number/
 Passport number (if no
 identity card number) :.....
 Residential address :.....”.

(4) Form 1(c) set out in regulation 9 is amended by adding “(1)” after “reg. 3”.

(5) Form 1(c) set out in regulation 9 is amended, in item 2 of Section A, by repealing “Partners:” and substituting “*Partners/Principal officers:”.

(6) Form 1(c) set out in regulation 9 is amended, under the heading “CERTIFICATE OF APPLICANT”, by repealing—

“*Identity card number/
 Passport number (if no
 identity card number) :.....”.

(7) Form 1(d) set out in regulation 9 is amended by adding “(1)” after “reg. 3”.

(8) Form 1(d) set out in regulation 9 is amended, under the heading “CERTIFICATE OF APPLICANT”, by repealing—

“*Identity card number/Passport number:”.

(9) Form 4 set out in regulation 9 is repealed and the following substituted—

“FORM 4

[s. 4(2)]

BUSINESS REGISTRATION ORDINANCE

(Chapter 310)

Oath or Affirmation of Secrecy

I, (*full name*)
of (*address*),
an officer of the Inland Revenue Department/Companies Registry⁽¹⁾, having
been appointed to perform functions under the Business Registration
Ordinance (“the principal Ordinance”), swear/solemnly and sincerely affirm⁽¹⁾
that (except in the performance of functions under the principal Ordinance or
under the Inland Revenue Ordinance (Cap. 112)⁽²⁾ or where it is expressly
authorized by any enactment)—

- (a) I will at all times preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person which may come to my notice solely in the performance of any function under the principal Ordinance;
- (b) I will not communicate any such matter to any person other than—
 - (i) the person to whom such matter relates;
 - (ii) the executor of the person referred to in subparagraph (i);
 - or
 - (iii) the authorized representative of the person referred to in subparagraph (i) or the executor; and
- (c) I will not allow any person to have access to any record relating to any such matter in the possession, custody or control of the Commissioner of Inland Revenue/Registrar of Companies⁽¹⁾.

.....

Sworn/Affirmed⁽¹⁾ at
Hong Kong this day of
.....
Before me,

.....

Commissioner for Oaths

(1) Delete whichever is not applicable.
 (2) Delete “or under the Inland Revenue Ordinance (Cap. 112)” in the case of an officer of the Companies Registry.”.

PART 4**RELATED AND CONSEQUENTIAL AMENDMENTS****Inland Revenue Ordinance****26. Official secrecy**

Section 4(4)(d) of the Inland Revenue Ordinance (Cap. 112) is amended by repealing “section 8(1) or (2)” and substituting “section 8”.

Abattoirs Regulation**27. Registration**

Section 18(2)(b) of the Abattoirs Regulation (Cap. 132 sub. leg. A) is amended by adding “, or a copy of the certificate certified under section 19(1)(a) of that Ordinance or certified by the applicant” after “applicant”.

Administrative Appeals Board Ordinance**28. Schedule amended**

Item 22 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by repealing paragraph (c) and substituting—

“(c) The service of a notice under section 6(4D) by the Commissioner of Inland Revenue requesting a person to notify a change to a different name.”.

Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation**29. Inclusion of business name of owner in certificate of ownership**

Section 12(3)(c) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D) is amended by repealing “its certified copy” and substituting “a copy of the certificate certified under section 19(1)(a) of that Ordinance or certified by the person making the request”.

Electronic Transactions Ordinance

30. Service of documents

Schedule 3 to the Electronic Transactions Ordinance (Cap. 553) is amended by adding—

“11. Business Registration Ordinance (Cap. 310) Section 20”.

Explanatory Memorandum

The main object of this Bill is to amend the Business Registration Ordinance (Cap. 310) (“the Ordinance”) to provide for—

- (a) the implementation of a simultaneous application scheme for applications for the following—
 - (i) the incorporation of a company or the registration of a non-Hong Kong company under the Companies Ordinance (Cap. 32) (“the Companies Ordinance”); and
 - (ii) the registration of a business under the Ordinance; and
- (b) the making of business registration applications and branch registration applications, and the issuance of business registration certificates and branch registration certificates, by electronic means.

Part 1—Short title and commencement

2. Clause 1 provides for the short title of the Bill (when enacted) and clause 2 empowers the Secretary for Financial Services and the Treasury (“the Secretary”) to appoint a day on which the Bill (when enacted) comes into operation.

Part 2—Amendments to Business Registration Ordinance

3. Clause 3 amends section 2 of the Ordinance—

- (a) to replace the definitions of “levy”, “prescribed branch registration fee” and “prescribed business registration fee” (consequential to the amendments to Schedules 1 and 2 to the Ordinance under clauses 17 and 18 in relation to the determination of the amounts of the levy and fee);
- (b) to add the new definitions of “branch registration application”, “business registration application”, “company registration application”, “electronic record”, “function”, “incorporation application”, “incorporation form”, “non-Hong Kong

company”, “non-Hong Kong company registration form”, “Registrar”, “Secretary” and “simultaneous business registration application” to facilitate the interpretation of the Ordinance as amended by the Bill;

- (c) to add a proposed section 2(1C) to provide for the application of the Ordinance to persons making applications for the incorporation of a company or the registration of a non-Hong Kong company under the Companies Ordinance;
- (d) to improve section 2(2) (which provides for the performance of the functions of the Commissioner of Inland Revenue (“the Commissioner”) under the Ordinance by officers of the Inland Revenue Department); and
- (e) to add a proposed section 2(3) to provide for the performance of the functions of the Registrar of Companies (“the Registrar”) under the Ordinance by officers of the Companies Registry.

4. Clause 4 amends section 4 of the Ordinance (which provides for the preservation of secrecy with regard to matters that come to the attention of officers of the Inland Revenue Department in the performance of their duties under the Ordinance) to include officers of the Companies Registry in that section. The amendments align with the new simultaneous business registration application scheme under which officers of the Companies Registry will perform functions in relation to simultaneous business registration applications.

5. Clause 5 makes minor textual amendments to section 5 of the Ordinance. It also adds a proposed section 5(6) to clarify that section 5(2) of the Ordinance (obligation to make business registration applications within 1 month) does not apply to simultaneous business registration applications.

6. Clause 6 adds proposed sections 5A to 5D to the Ordinance to provide for the new simultaneous business registration application scheme. In particular—

- (a) the proposed section 5A provides for simultaneous business registration applications of companies incorporated under the Companies Ordinance;
- (b) the proposed section 5B provides for simultaneous business registration applications of non-Hong Kong companies;
- (c) the proposed section 5C—

- (i) provides for the Registrar to perform, for and on behalf of the Commissioner, certain functions in relation to simultaneous business registration applications in order to provide one-stop services for applicants; and
 - (ii) requires the Registrar to transmit certain information and particulars to the Commissioner for the purposes of business registration; and
 - (d) the proposed section 5D empowers the Commissioner to specify forms for the purposes of simultaneous business registration applications and provides for the manner of the delivery of specified forms to the Registrar.
7. Clause 7 amends section 6 of the Ordinance. In particular—
- (a) to make it clear that the Commissioner must issue a business registration certificate or a branch registration certificate after the Commissioner has decided to register a business or a branch of a business;
 - (b) to add a proposed section 6(3B) and (3C) to provide for the issue of business registration certificates and branch registration certificates by electronic means;
 - (c) to amend section 6(4A) so that the Commissioner is also required to notify an applicant of a decision not to register a business or a branch of a business which is unlawful; and
 - (d) to amend section 6(4D) to empower the Commissioner to request for a further change to a different name of a business or a branch of a business if the business or branch should not be registered under a new name notified under section 8 for the reason specified in section 6(4)(b) or (c).
8. Clause 8 makes minor textual amendments to section 7 of the Ordinance.
9. Clause 9 adds a proposed section 7A to provide for the refund of prescribed business registration fees, prescribed branch registration fees or levies under certain circumstances.
10. Clause 10 amends section 8 of the Ordinance to require—
- (a) the submission of business particulars by newly incorporated companies within 1 month of the date of commencement of business (the proposed section 8(1A)(a));
 - (b) the notification of change of particulars by companies that obtained business registration through simultaneous business registration applications (the proposed section 8(1A)(b) and (1B)); and

- (c) the notification of change of names and addresses of companies, etc. by the Registrar (the proposed section 8(2B) and (2C)).

11. Clause 11 adds a proposed section 12(3) to the Ordinance to allow the display of the printed copies of business registration certificates or branch registration certificates for the purposes of section 12 of the Ordinance if the certificates are issued by electronic means.

12. Clause 12 makes minor amendments to the regulation making powers of the Secretary under section 14(1A) of the Ordinance.

13. Clause 13 adds a proposed section 15(2A) to the Ordinance to provide for communication between the Commissioner and the Registrar if there is reason to believe that any particulars transmitted by the Registrar under the proposed section 5C(5)(b) or 8(2B) are false, inaccurate or incomplete.

14. Clause 14 adds a proposed section 16(2) to the Ordinance to make it clear that the liability to pay the prescribed business registration fee and levy in relation to a simultaneous business registration application is not affected by any claim that the Ordinance does not apply to the relevant company or business.

15. Clause 15 amends section 17(c) of the Ordinance, consequential to the amendments to section 6(4D) of the Ordinance under clause 7(8).

16. Clause 16 adds a proposed section 19B to make it clear that the purpose of making available business registration particulars is to enable any person to ascertain whether a business is registered under the Ordinance and the particulars of those businesses so registered.

17. Clause 17 amends Schedule 1 to the Ordinance to make detailed provisions in relation to the determination of the prescribed business registration fee and makes minor textual amendments to that Schedule.

18. Clause 18 amends Schedule 2 to the Ordinance to make detailed provisions in relation to the determination of the prescribed branch registration fee and the levy and makes minor textual amendments to that Schedule.

Part 3—Amendments to Business Registration Regulations

19. Clause 19 amends regulation 2 of the Business Registration Regulations (Cap. 310 sub. leg. A) (“the Regulations”) by adding the new definition of “digital signature” to facilitate interpretation of the Regulations as amended by the Bill.

20. Clause 20 makes minor textual amendments to regulation 3 of the Regulations.

21. Clause 21 adds a proposed regulation 3A to the Regulations to provide for the business particulars required to be submitted to the Commissioner in relation to simultaneous business registration applications.

22. Clause 22 amends regulation 4 of the Regulations—

- (a) to make minor textual amendments to that regulation;
- (b) to provide for the assignment of identifying numbers to simultaneous business registration applications; and
- (c) to ensure that the register maintained by the Commissioner under regulation 4(2) includes information submitted in simultaneous business registration applications and information received under section 6(4D) of the Ordinance.

23. Clause 23 adds a proposed regulation 5(3) and (4) to the Regulations to provide for the issue of duplicates of business registration certificates and branch registration certificates by electronic means.

24. Clause 24 adds a proposed regulation 8A to the Regulations to provide for the submission of the prescribed forms for business registration application, branch registration application and application for exemption under section 9 of the Ordinance by electronic means.

25. Clause 25 amends regulation 9 of the Regulations—

- (a) to remove the requirements for identity card or passport numbers in the “Certificate of Applicant” part of the prescribed forms for business registration application and branch registration application; and
- (b) to adjust the wording of the form of the Oath or Affirmation of Secrecy, consequential to the amendments to section 4 of the Ordinance under clause 4.

Part 4—Related and Consequential Amendments

26. Clause 26 amends section 4(4)(d) of the Inland Revenue Ordinance (Cap. 112), consequential to the amendments to section 8(2A) of the Ordinance under clause 10(3).

27. Clauses 27 and 29 make related amendments to other legislation which require the production of a business registration certificate under certain circumstances.

28. Clause 28 amends the Schedule to the Administrative Appeals Board Ordinance (Cap. 442), consequential to the amendments to section 6(4D) of the Ordinance under clause 7(8).

29. Clause 30 adds section 20 of the Ordinance to Schedule 3 to the Electronic Transactions Ordinance (Cap. 553). Section 20 of the Ordinance provides that any notice to be served under the Ordinance may be served by delivering a copy personally or by post. By adding it to that Schedule, a notice to be served under the Ordinance may be served by electronic means in accordance with section 5A of the Electronic Transactions Ordinance (Cap. 553).