

LEGISLATIVE COUNCIL BRIEF

Business Registration Ordinance (Cap. 310)

BUSINESS REGISTRATION (AMENDMENT) BILL 1998

INTRODUCTION

Annex

At the meeting of the Executive Council on 20 October 1998, the Council **ADVISED** and the Acting Chief Executive **ORDERED** that the Business Registration (Amendment) Bill 1998 at the Annex should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. The Business Registration Ordinance (the Ordinance) provides for the registration of businesses in Hong Kong to enable the Inland Revenue Department (the Department) to raise tax assessments on them. Every person carrying on a business in Hong Kong, with only a few exceptions, is required to register his business with the Department and to renew the business registration certificate annually. He is required to pay a business registration fee and the levy for the Protection of Wages on Insolvency Fund (the levy) for such registration and renewal of the business registration certificate. The Ordinance also stipulates that a branch of a business has to be registered separately and each branch registration certificate also has to be renewed annually. There are about 700 000 active businesses and branches on the Business Register (the Register).

3. In order to provide timely and quality services to the business community and the public at large, we have reviewed the operation of the business registration system. We recommend that a new computer system and revamped office procedures should be introduced in order to rationalise the operation of the system and to keep pace with the development of today's business environment. As a result, we also expect that the time taken for effecting a new business registration will be shortened from six to four working days.

(A) Provision of an Open Business Index

4. Under the Ordinance, any person may, on payment of the prescribed fee, request the Commissioner of Inland Revenue (the Commissioner) to extract any information on the Register, provided that the person can identify the particular business required, such as by furnishing the Commissioner with the business registration number of the business concerned. If the number is not known, the person has to request the Department to conduct a search for the number before any

further search can be done. The Department receives around 100 000 such requests

each year. We propose to set up an Open Business Index (the Index) which will be accessible to the public for the search of business registration numbers of businesses on a self-service basis. This will enable the public to obtain the required information in a timely manner and reduce the workload of the Department. The proposed Index will only include minimal particulars of the registered businesses which enable such businesses to be identified. The Index may in due course be published in electronic form such as on the Internet.

(B) Streamlining the operation of the system

5. The Ordinance and its subsidiary legislation contains some restrictive provisions which are onerous to businesses and may sometimes cause inconvenience. There are also provisions which contain ambiguities and have limited the scope for the Department to streamline operation. We therefore propose to amend the legislation to facilitate business operation and the operation of the system as follows -

- (a) in addition to providing extracts of business particulars in certified form, the Department will be allowed to supply an extract of such particulars in uncertified form upon the payment of a fee. The dispensation with the certifying process which has to be done manually will enable full automation of extraction of information from the Register and hence shorten the processing time. It will also enable the particulars to be transmitted to information seekers electronically;
- (b) the business registration fee and the levy will be required to be fully paid upfront upon the lodging of an application for registration. This will enable the Department to send new certificates by post to the applicants and also relieve the Department from recovering the outstanding amount in new registration cases where payments are in default;
- (c) the fee payable for the issue of business registration certificates will refer to the date of commencement, instead of the expiry date, of the certificate;
- (d) the Commissioner will be authorised to issue a renewal demand notice for the business/branch registration certificate to the business owner concerned if the Commissioner has not received a notice of cessation in respect of such business/branch or where the owner is a company which is deemed to be a person carrying on business;

- (e) there will be no need to submit a duplicate copy of the application form for business registration;
- (f) a notice which is required to be served under the Ordinance may be served to the last known business, residential or other correspondence address of the person concerned;
- (g) penalty will be levied when outstanding payment is not fully received within the stipulated time and the amount of penalty imposed will make reference to the amount prevailing on the date of commencement of the related business/branch registration certificate;
- (h) it will be made clear that the provisions of the Ordinance apply to companies registered under the Companies Ordinance (Cap. 32) until the registration of such companies under the Companies Ordinance is removed and that the provisions applying to a business shall also apply to the branch of a business; and
- (i) the Commissioner will be empowered to compound offences under the Ordinance. This proposed compounding arrangement is in line with that stipulated under sections 80(5) and 82(2) of the Inland Revenue Ordinance (Cap. 112). The intention is to compound minor offences, e.g. failure to display a business registration certificate prominently or failure to supply information as required, and the consent of the person concerned will be obtained before the compounding.

(C) Business names and the Register

6. The legislative provisions in respect of business names and the maintenance of the Register do not suit today's business environment. We propose to introduce the following amendments to such provisions -

- (a) every business will be allowed to register for business registration purposes under any business name except when the business name of a limited company suggests that it is a different limited company;
- (b) the Department will publish on the Register the place of incorporation of an overseas-incorporated business;
- (c) the Commissioner will be empowered to, in the case of an unlawful business, remove the business registration concerned

from the Register, and in the case of an undesirable business name (e.g. a name which suggests a connection with the Government or a public body), direct the business owner concerned to register under a new business name. We also propose to introduce an appeal channel to the Court of First Instance or the Administrative Appeals Board, as the case may be, for business owners who are aggrieved by the Commissioner's decision; and

- (d) the Commissioner will also be empowered to remove from the Register the registration of a business which is found untraceable or where the required business registration fees and the levy have not been paid for a continuous period of 10 years and to remove superseded or obsolete information of a business from the Register after a lapse of 10 years. We also propose that a business registration so removed can be reinstated.

(D) Miscellaneous amendments

7. The opportunity is also taken to replace a reference to the "Governor in Council" by "Secretary for the Treasury" in respect of a regulation-making power which was transferred from the former to the latter in a legislative amendment exercise in 1996.

(E) Consequential amendments to the Business Registration Regulations

8. Apart from the amendments to the Ordinance, the above proposals also require amendments to the Business Registration Regulations (the Regulations). The Secretary for the Treasury, with the authority under section 14(2) of the Ordinance, will amend the Regulations as appropriate.

THE BILL

9. The major provisions of the Bill are -
- (a) **Clause 1** provides that the Bill, when enacted, shall come into operation on a date to be appointed by the Secretary for the Treasury.
 - (b) **Clauses 2(a), 9 and 13** make technical amendments to provisions relating to the prescribed fee for the issue of certain documents under the Ordinance.

- (c) **Clauses 2(b), 2(c) and 3** amend the deeming provisions to enable the Department to better carry out the provisions.
- (d) **Clause 4** enables the Commissioner to provide an Open Business Index.
- (e) **Clauses 5, 6 and 12** update provisions relating to business names and the updating of the Register and provide appeal avenue against the Commissioner's decision in respect of unlawful or undesirable names.
- (f) **Clauses 7, 8, 10, 15-17** seek to streamline the operation of the business registration system.
- (g) **Clause 11** rectifies an oversight in a previous amendment exercise by replacing the reference to "Governor in Council" by "Secretary for the Treasury".
- (h) **Clause 14** adds a new section on the provision of extracts of information on the Register in uncertified form.
- (i) **Clauses 18 and 19** make consequential amendments to the Regulations and to the Administrative Appeals Board Ordinance (Cap. 442) respectively.

PUBLIC CONSULTATION

10. We have informed the Financial Affairs Panel of the Legislative Council of the proposed amendments. The Panel has not raised any adverse comments to the proposals.

HUMAN RIGHTS IMPLICATIONS

11. The Department of Justice advises that the proposed amendment bill is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

12. The initial cost for setting up the Index has already been provided for. The recurrent cost of maintaining the Index will be negligible. The additional revenue from the introduction of a new fee for the provision of business information in uncertified form should be insignificant. Streamlining the operations of the

system will result in staff savings, some of which will be deployed to improve the quality and efficiency of service.

LEGISLATIVE TIMETABLE

13. The legislative timetable is-
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| Publication in the Gazette | 30 October 1998 |
| First Reading and commencement of
Second Reading debate | 11 November 1998 |
| Resumption of Second Reading debate,
committee stage and Third Reading | to be notified |

PUBLICITY

14. We will issue a press release on 21 October.

ENQUIRIES

15. In case of enquiries about this Brief, please contact Miss Amy Tse, Principal Assistant Secretary for the Treasury (Revenue), at 2810 2370.

Finance Bureau
File Reference : FIN CR 3/2311/90
October 1998

A BILL

To

Amend the Business Registration Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Business Registration (Amendment) Ordinance 1998.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Treasury by notice in the Gazette.

2. Interpretation

Section 2 of the Business Registration Ordinance (Cap. 310) is amended -

(a) in subsection (1), by repealing the definition of “prescribed certification fee” and substituting -

““prescribed document fee” (訂明文件費) means the fee for the issue of documents under sections 19 and 19A prescribed by regulations made under section 14;”;

(b) in subsection (1A), by repealing “shall be deemed” and substituting “shall, notwithstanding any notification of cessation of business which may be furnished under section 8(2), be deemed”;

(c) by adding after subsection (1A) -

“(1B) This Ordinance shall apply to -

- (a) a company deemed to be a person carrying on business under subsection (1A);
- (b) a person deemed to be a person carrying on business under section 3(4); and
- (c) a person deemed to be a person carrying on business at a branch of a business under section 3(4AA),

as it applies to a person carrying on business or to a person carrying on business at a branch of a business.”.

3. Persons answerable for doing all acts, etc. required to be done

Section 3 is amended -

- (a) by adding after subsection (4) -

“(4AA) Where the Commissioner serves notice on any person to the effect that he will be deemed to be a person carrying on business at a branch of a business, the person shall be so deemed unless within 1 month from the date of service of such notice the person proves to the satisfaction of the Commissioner that he is not carrying on business at a branch of a business.”;

- (b) in subsection (4A) by adding “or (4AA)” after “(4)”.

4. Official secrecy

Section 4 is amended by adding -

“(7) Notwithstanding anything contained in this section, the Commissioner may provide an index in such form and containing such particulars of businesses as registered under this Ordinance as he sees fit for the purpose of identifying such businesses.”.

5. Application for registration

Section 5 is amended by adding -

“(1A) A person who makes an application under subsection (1) may register -

- (a) a Chinese name;
- (b) an English name; or
- (c) both a Chinese name and an English name,

under which the business is carried on.

(1B) An application under subsection (1) in respect of names other than those mentioned in subsection (1A), whether in Chinese or English shall, for the purposes of this Ordinance, be deemed to be the names of separate branches of the business and this Ordinance shall apply to such branches as they apply to a business carried on at a branch of a business.”.

6. Registration of business and issue of business registration certificate

Section 6 is amended -

- (a) by repealing subsection (4)(b) and substituting -

“(b) by a name which suggests that the business is incorporated with limited liability when it is not, or, where the business is incorporated with limited liability, by a name which suggests that the business is incorporated under a different name;”;

(b) by adding after subsection (4A) -

“(4B) Where at any time after a business or a branch of a business has been registered it appears to the Commissioner that such business or branch should not have been registered for the reason specified in subsection 4(a), -

(a) the Commissioner shall remove the entry in respect of the business or of the branch, as the case may be, from the register; and

(b) the Commissioner shall as soon as practicable after the removal publish a notice in the Gazette of the removal and on publication such business or branch, as the case may be, shall be deemed to have never been registered.

(4C) Any person aggrieved by a decision of the Commissioner made under subsection (4B) may, within 28 days of the publication of the notice of removal referred to in paragraph (b) of that

subsection, appeal to the Court of First Instance against the removal and the Court of First Instance may make such order thereon as it may deem just, including an order as to costs.

(4D) Where at any time after a business or a branch of a business has been registered it appears to the Commissioner that such business or branch should not have been registered for the reason specified in subsection (4)(b) or (c), the Commissioner shall issue a notice to the person carrying on such business or branch requesting him to make a new application to the Commissioner for registration of the business or branch, as the case may be, under a different name which does not contravene the prohibition imposed by subsection (4)(b) or (c) within 3 months of the issue of such notice.

(4E) A notice issued by the Commissioner under subsection (4D) shall include a statement of the reasons therefor and the person issued with the notice may appeal in the manner provided in section 17.

(4F) Where a new application for registration of a business or a branch of a business under a different name is not made in accordance with the requirements of subsection (4D), or no appeal has been lodged under subsection (4E), or an appeal

lodged under subsection (4E) has been determined otherwise than in favour of the appellant, the business or branch, as the case may be, shall be deemed to have ceased to be carried on at the expiration of the 3 months period referred to in subsection (4D) or immediately after the appeal has been so determined, as the case may be, and the Commissioner shall record such cessation on the register accordingly.

(4G) Where a business or a branch of a business is deemed to have ceased to be carried on under subsection (4F), the Commissioner shall as soon as practicable thereafter, notify the person served with the notice under subsection (4D) of such cessation, and publish the name, business registration number, business address and the date of the cessation in the Gazette.”;

(c) by adding after subsection (6) -

“(7) Where a body corporate makes an application for registration under section 5(1) and the body corporate is not incorporated in Hong Kong, the Commissioner shall record its place of incorporation after its name on the register in a manner he sees fit.”.

7. Payment of fees

Section 7(1) is amended -

- (a) in paragraph (a)(i), by adding “and for which the fee prescribed in item 1 of Schedule 1 and the levy have not been paid” after “valid business registration certificate”;
- (b) by repealing paragraph (a)(ii) and substituting -
 - “(ii) in respect of which a valid business registration certificate is due to expire, and the Commissioner has not received any notification of cessation in respect of such business under section 8(2) or where the person is a company which is deemed to be a person carrying on business under section 2(1A),”;
- (c) in paragraph (b)(i), by adding “and for which the fee prescribed in item 2 of Schedule 2 and the levy have not been paid” after “valid branch registration certificate”;
- (d) by repealing paragraph (b)(ii) and substituting -
 - “(ii) in respect of which a valid branch registration certificate is due to expire and the Commissioner has not received any notification of cessation in respect of such branch under section 8(2),”.

8. Penalty for non-payment of fees

Section 11 is amended -

- (a) in subsection (1), by adding “fully” before “paid”;
- (b) by adding after subsection (1) -

“(1A) The penalty to be added under subsection (1) shall be the penalty in force on the date of commencement of the relevant business registration certificate.”.

9. Regulations

Section 14(1)(h) is repealed and the following substituted -

“(h) fees for the issue of documents under sections 19 and 19A and for the issue of duplicate documents;”.

10. Offences

Section 15 is amended by adding after subsection (1A) -

“(1B) The Commissioner may compound any offence under this section and may before judgment stay or compound any proceedings thereunder.”.

11. Exemptions

Section 16(d) is amended by repealing “Governor in Council” and substituting “Secretary for the Treasury”.

12. Appeals

Section 17 is amended -

- (a) in the preamble, by repealing “section 3(4A) or 9(5)” and substituting “section 3(4A), 6(4E) or 9(5)”;
- (b) in paragraph (a) -

- (i) by repealing “within 28 days of the Commissioner informing” and substituting “within 28 days of the service on him of the notice in which the Commissioner informs”;
- (ii) by repealing “and” at the end;
- (c) in paragraph (b) -
 - (i) by repealing “Commissioner informing” and substituting “service on him of the notice in which the Commissioner informs”;
 - (ii) by repealing “,” at the end and substituting “; and”;
- (d) by adding -
 - “(c) in the case of an appeal under section 6(4E), within 28 days of the service on him of the notice in which the Commissioner requests him to make an application for registration under a different name,”.

13. Certification and issue of documents

Section 19(1) is amended by repealing “prescribed fee” and substituting “prescribed document fee”.

14. Section added

The following is added -

**“19A. Supply of extract of information
in uncertified form**

(1) The Commissioner shall, upon request by any person and on payment of the prescribed document fee, supply to that person as soon as practicable an extract of any information on the register in uncertified form.

(2) An extract of information for the purpose of subsection (1) may be supplied in such form and in such manner as the Commissioner sees fit.”.

15. Service of notices

Section 20(b) is repealed and the following substituted -

“(b) by post addressed to the last known business, residential or other correspondence address of the person to be served.”.

16. Schedule 1 amended

Schedule 1 is amended, in item 1, by repealing “expires” and substituting “commences”.

17. Schedule 2 amended

Schedule 2 is amended -

- (a) in item 1 -
 - (i) by repealing “for non-payment” and substituting “where full payment has not been received in respect of”;
 - (ii) in paragraphs (a) and (b), by repealing “of”;
- (b) in item 2, by repealing “expires” and substituting “commences”.

Consequential Amendments

Business Registration Regulations

18. Fees

Regulation 7 is amended by adding -

“(3) The fee for the issue of an extract of information under section 19A of the Ordinance shall be \$45.”.

Administrative Appeals Board Ordinance

19. Schedule amended

Item 22 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is repealed and the following substituted -

- “(a) The service of a notice under section 3(4) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business.
- (b) The service of a notice under section 3(4AA) by the Commissioner of Inland Revenue that a person is to be deemed to be a person carrying on business at a branch of a business.
- (c) The service of a notice under section 6(4E) by the Commissioner of Inland Revenue requesting a person to make an application for registration under a different name.”.

Explanatory Memorandum

The purpose of this Bill is to amend the Business Registration Ordinance (Cap. 310) to

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- (a) replace the definition of “prescribed certificate fee” by a new definition of “prescribed document fee” (clause 2(a));
- (b) provide that the Commissioner may serve notice on any person deeming him to be a person carrying on business or a person carrying on business at a branch of a business (clause 2(b), (c) and 3);
- (c) enable the Commissioner to provide an index for identifying businesses (clause 4);
- (d) provide that a person who makes an application for registration under section 5(1) may register a Chinese name and/or an English name (clause 5);
- (e) empower the Commissioner to remove the entry in respect of any business from the register if that business should not have been registered and provide appeal avenue in respect of the Commissioner’s decision (clause 6);
- (f) enable the Commissioner to call upon any person to pay the fee and the levy if the Commissioner has not received any notification of cessation in respect of the business (clause 7);
- (g) provide that the penalty to be added shall be the penalty in force on the date of commencement of the relevant certificate (clause 8);
- (h) empower the Chief Executive in Council to provide for the fees for the issue of documents under the new section 19A (clause 9);
- (i) enable the Commissioner to compound any offence under section 15 (clause 10);

- (j) make an amendment to section 16 to rectify an oversight (clause 11);
- (k) make minor amendments to the provisions relating to appeals (clause 12);
- (l) replace “prescribed fee” by “prescribed document fee” (clause 13);
- (m) add a new section 19A relating to the supply of extract of information in uncertified form (clause 14);
- (n) provide that notice may be served by delivering a copy by post addressed to the last known address (clause 15);
- (o) make minor amendments to Schedule 1 (clause 16);
- (p) make minor amendments to Schedule 2 (clause 17);
- (q) make consequential amendments to the Business Registration Regulations and the Administrative Appeals Board Ordinance respectively (Clause 18 and 19).