

Ref : CB1/BC/6/98

**Paper for the House Committee Meeting
of the Legislative Council on 18 December 1998**

**Report of the Bills Committee on
Business Registration (Amendment) Bill 1998**

Purpose

This paper reports on the deliberations of the Bills Committee on Business Registration (Amendment) Bill 1998.

Background

2. The Business Registration Ordinance (Cap. 310) (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, is basically required to register his business with the Department and to renew the business registration certificate annually. There are about 700 000 active businesses and branches on the Business Register (the Register). In order to provide timely and quality services to the business community and the public at large, the Bill proposes amendments to the Ordinance to provide changes to the business registration system.

The Bill

3. The Bill seeks to amend the Business Registration Ordinance (Cap. 310) to improve the operation of the business registration system. Major changes proposed in the Bill include:

- (a) streamlining the operation of the business registration system by, inter alia,
 - providing an Open Business Index; and
 - allowing the Department to supply extracts of business particulars in uncertified form;
- (b) empowering the Commissioner of Inland Revenue (the Commissioner) to remove an entry from the register at any time after registration if a business or a branch of a business should not have been registered for reasons specified in the Ordinance;

- (c) empowering the Commissioner to compound offences;
- (d) allowing every business 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; and
- (e) allowing the Department to publish on the Register the place of incorporation of an overseas-incorporated business.

The Bills Committee

4. Members agreed at the House Committee meeting on 13 November 1998 to form a Bills Committee to study the Bill. Hon SIN Chung-kai was elected Chairman of the Bills Committee. Two meetings were held with the Administration. The membership list of the Bills Committee is at **Appendix I**.

Deliberations of the Bills Committee

5. The main deliberations of the Bills Committee are set out in the following paragraphs.

Removal of a business registration from the Register

6. Members have raised concern about the proposed section 6(4B) under which the Commissioner is empowered to remove a business registration from the Register if it appears to him that such business or a branch of the business is unlawful. Members are concerned that the provision has not given a meaning of “unlawful” and question whether the Commissioner will be entrusted with excessive discretion to decide if a business is unlawful. Members are also concerned about the absence of an opportunity for the person concerned to show cause or to make representation refuting the Commissioner’s decision before his business registration is removed from the Register.

7. The Administration’s explanation is that under the existing section 6(4)(a), the Commissioner shall not be required to register any business/branch where the business/branch is unlawful. However, in the event that such a business/branch has been inadvertently registered, the Commissioner is not presently empowered by the Ordinance to take any remedial action. The proposed section 6(4B) remedies the situation by providing that the Commissioner under such circumstances shall remove the entry from the Register and publish a notice of the removal in the Gazette. The Administration assures members that this proposed amendment is purely technical and involves no new policy or change of policy.

8. As to whether a business/branch is unlawful, the Administration has clarified that the decision rests with the court (for cases involving crimes) or other competent authorities. For example, under section 143(1)(c)(i) of the Companies Ordinance (Cap.

32) or under section 95 of the Trustee Ordinance (Cap. 29), the Financial Secretary can appoint inspectors to investigate a business if there are circumstances suggesting that the business has been or is being conducted for an unlawful purpose or that it was formed for any unlawful purpose. The inspectors will then submit a report of the investigation to the Financial Secretary who if considers appropriate, will apply to the court for the winding up of the business. The proposed section 6(4B) will not give the Commissioner the power to make a judgement on whether the business is unlawful. It merely provides a remedy to the Commissioner to remove from the Register a registration of an unlawful business which should not have been registered in the first instance.

9. Considering that whether a business/branch is unlawful is decided by the court or a competent authority, the Administration finds it unnecessary to give a notice to the concerned business owner prior to the removal of his business registration from the Register, as the court or the authority will give the owner the opportunity to show cause before it makes a decision on whether the business/branch is unlawful. In other words, since the business/branch owner should be well aware that investigation into the affairs of his business/branch has been made and of the decision in respect of the investigation, a prior notice of the Commissioner's de-registration action should not be necessary.

10. As regards an appeal channel against the Commissioner's decision, the Administration has drawn members' attention to the proposed section 6(4C) under which the concerned business owner can appeal to court if he is aggrieved by the decision.

11. Members have noted the Administration's explanation but still consider that the Bill should stipulate the circumstances under which the Commissioner can exercise his power in accordance with the proposed section 6(4B). To address members' concern, the Administration has agreed to move an amendment to the effect that the Commissioner shall exercise the power only on the ground that a court or other competent authority has decided that such business or branch is unlawful.

Business names

12. Members have sought clarification on the Commissioner's power under the proposed section 6(4D) in directing a business owner to register under a new business name in case its business name has suggested a connection with the Government or a public body. The Administration has given explanation that if the Government or a public body established with a name suggesting a connection with a business which has already registered with the Department, the proposed section 6(4D) will not have any effect on the business.

Streamlining the operation of the business registration system

13. In response to members' concern about the measures in streamlining the operation of the business registration system, the Administration has given further explanation on two major amendments of the Bill, i.e. setting up an Open Business Index and providing extracts of business particulars in uncertified form.

14. The proposed Open Business Index will be accessible to the public for the search of Business Registration Numbers of businesses on a self-service basis. The Index will contain sufficient, but not excessive, information i.e. the names, addresses and business registration numbers of all businesses registered under the Ordinance, to facilitate identification of a required business. The Open Index will enable the public to obtain the required information in a timely manner and reduce the workload of the Department. The Administration assures members that the proposed Index will not violate the secrecy principle upheld by the Department since it has already been providing information from the Register upon request. The Administration is also underway to publish the Index in electronic form such as on the Internet in around the year 2000.

15. Another amendment of the Bill is to allow the Department to supply extracts of business particulars from the Register in uncertified form. This measure is introduced in order to keep pace with the development of electronic trading. The dispensation with the manual certifying process will enable full automation of extraction of information from the Register and will shorten the processing time. It will also enable the particulars to be transmitted to information seekers electronically.

16. Members welcome the provision of an Open Business Index and appreciate the Administration in enhancing the use of information technology to improve the service.

Committee stage amendments

17. The Committee stage amendment (CSA) to be proposed by the Administration is at **Appendix II**. The Bills Committee has not proposed any CSAs.

Recommendations

18. The Bills Committee recommends that, subject to the CSA to be moved by the Administration, the Second Reading debate on the Bill be resumed on 13 January 1999.

Advice sought

19. Members are invited to note the deliberations of the Bills Committee and support the recommendation at paragraph 18 above.

Legislative Council Secretariat
14 December 1998

**Bills Committee on
Business Registration (Amendment) Bill 1998**

Membership list
(As at 24 November 1998)

Hon SIN Chung-kai (Chairman)
Hon HO Sai-chu, JP
Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Hon Ronald ARCULLI, JP
Hon Jasper TSANG Yok-sing, JP

Total : 6 Members

Appendix II

BUSINESS REGISTRATION (AMENDMENT) BILL 1998

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Treasury

Clause

Amendment Proposed

- 6 In the proposed subsection (4B), by deleting "it appears to the Commissioner" and substituting "the Commissioner, on the ground that a court or other competent authority has decided that such business or branch is unlawful, decides".