

**Bills Committee on
Companies (Amendment) Bill 2003**

**Follow-up actions arising from the discussion
at the meeting on 22 April 2004**

Introduction

This paper sets out the outcome of the follow-up actions arising from the discussion at the meeting on 22 April 2004.

Proposed section 152FD - Saving for solicitors (Schedule 4 of the Bill)

(a) to consider revising proposed section 152FD to extend the saving to cover any record which is or contains a confidential communication made under professional legal privilege for the purpose of obtaining or giving legal advice or assistance

2. We shall revert to the Bills Committee on the issue during the scrutiny of Schedule 4 of the Bill.

Fees relating to oversea companies

(b) to provide figures of the past few years regarding the numbers of Hong Kong companies delivering annual returns for registration within different periods after the anniversary of registration/incorporation

3. The table at **Annex A** shows the numbers of locally incorporated companies which deliver annual returns for registration within different periods after the anniversary of incorporation. These statistics have been prepared for the calendar years from 2001 to 2003 by reference to the actual filing fees paid under the escalating scale under Item (e) of Part I of the Eighth Schedule to the Companies Ordinance (CO). Since the financial statements for the year ended 31 March 2004 are not yet available, the statistics have only been compiled up to the financial year ended 31 March 2003.

4. As regards oversea companies, no such statistics are available as there is no corresponding scale of escalating fees payable for late filing of annual returns by such companies.

**Continuing obligation in respect of authorized representative
Return to be delivered to Registrar where documents, etc. altered**

(c) to consider revising the drafting of section 335(1) to make it clear that the situation specified under existing section 333A(2), i.e. a person registered as an authorized representative ceases to be able to act on behalf of the company whether by reason of death or incapacity or other unforeseen reason, should trigger the requirement on the company to register the change in the authorized representative under proposed section 335(1)

5. The drafting for section 335(1) (Clause 32 of the Bill) was prepared on the basis of the Sub-Committee's decision at its fourth meeting held on 22 November 2000:

"... that Section 333A(2) should be combined with Section 333B(1) so that there would only be one section dealing with termination of the authorised representative as a result of either foreseen or unforeseen reasons."

6. Whilst neither the UK, Australia, New Zealand nor Singapore has any provision in their legislation which corresponds to Section 333A(2), the provisions in their legislation concerning the obligation to file notices of termination/alteration in the authorised local representative of the foreign company legislation are couched in slightly different terms as follows:

United Kingdom

There is no equivalent in the UK Companies Act 1985 which is equivalent to Section 333A(2) of the Companies Ordinance, neither is there any provision governing the termination of appointment of an authorised representative.

Section 692(1)(c) of the Companies Act 1985 provides as follows:

"(1) If any alteration is made in -

(a) ...

(b) ...

(c) the names or addresses of the persons authorised to accept service on behalf of an overseas company,

the company shall, within the time specified below, deliver to the Registrar of Companies for registration a return containing the prescribed particulars of the alteration.

(2) ...

(3) The time for delivery of the returns required by subsections (1) and (2) is –

- (a) in the case of an alteration to which subsection (1)(c) applies, 21 days after the making of the alteration; and
- (b) otherwise, 21 days after the date on which notice of the alteration or change in question could have been received in Great Britain in due course of post (if dispatched with due diligence)."

Australia

Section 601CF(3) of the Corporations Law provides:

"Where:

- (a) because a person ceased on a particular day to be a local agent of the foreign company, a registered foreign company has no local agent; and
- (b) the foreign company carries on business, or has a place of business, in Australia;

the foreign company shall, within 21 days after that day, appoint a person as a local agent."

Section 601CG(5) of the Corporations Law provides:

"A person whom a foreign company appoints as a local agent is a local agent of the foreign company until the person:

- (a) ceases by virtue of Section 601CH to be such a local agent ; or
- (b) dies or ceases to exist."

Section 601CH is the Australian provision which governs removal of the local agent and provides as follows:

"Where a person is a local agent to a foreign company, the foreign company or the person may lodge a written notice stating that the

person's appointment as a local agent has terminated, or will terminate, on a specified day."

New Zealand

The obligation to notify the Registrar of Companies of a change in the person or the address of any person authorised to accept service in New Zealand of documents on behalf of the overseas company is contained in Section 339(1)(d) which provides as follows:

"An overseas company that carries on business in New Zealand must ensure that, within 20 working days of the change or alteration, notice in the prescribed form is given to the Registrar of -

- (a) ...
- (b) ...
- (c) ... or
- (d) a change in any person or the address of any person authorised to accept service in New Zealand of documents on behalf of the overseas company."

Singapore

The Singapore Companies Act has no equivalent to Section 333A of the Companies Ordinance but, pursuant to Section 372(1)(c), it is provided that:

"(1) Where any change or alteration is made in -

- (a) ...
- (b) ...
- (c) the agent or agents of the foreign company or the address of any agent;
-

the foreign company shall, within 1 month or within such further period as the Registrar in special circumstances allows after the change or alteration, lodge for the Registrar particulars of the change or alteration and such documents as the regulations require."

7. Accordingly, the Sub-Committee's proposals to amend the existing Section 333A(2) and 335 were formulated with the intention of

streamlining the provisions in line with the corresponding provisions in other Commonwealth jurisdictions which, with the exception of the Australian provision (which makes a reference to the death of the local agent as an event which would trigger the requirement to file a notice of change) were drafted on the basis that the reason for an authorised representative ceasing to act on behalf of an overseas/foreign company was not expressly stated and that the notice of termination may be given by either the authorised representative or the non-Hong Kong company.

8. It was also considered that it would be less confusing if Section 333A(2) were to be repealed as, if it were to be retained, this would result in a different time limit for filing the same specified form (Form F3) i.e. 6 weeks under Section 333A(2) and 21 days under Section 335(1)(c). Notwithstanding the fact that the former of these provisions is a deeming provision, compliance with which saves the company from committing a breach of the obligation to maintain an authorised representative at all times, the apparent contradiction with the time limit for filing imposed by section 335(1)(c) has caused confusion in the past.

9. The current proposal to repeal the existing section 333A(2) must be considered in conjunction with the revised version of section 333B which now gives the company a new power to terminate the appointment of an authorised representative by sending a notice in writing (whereas formerly, this power was only available to the authorised representative himself).

10. It would therefore operate in such a way that if an authorised representative was no longer able to act for any reason, the non-Hong Kong company would have 14 days during which to forward a copy of the notice of termination to the Registrar under Section 333B. At the same time, the change in the authorised representative involves an alteration made in the authorised representative. The company is therefore required to deliver a document informing the Registrar under Section 335(1). We therefore consider that Section 335(1) as currently drafted is able to cover any scenarios whereby an authorised representative is changed, whatever the reason for the change is.

Signature of memorandum - proposed section 6(2)

(d) to provide information on the guidelines the Companies Registry plans to issue in respect of the manner in which the signature of a founder member in the memorandum delivered to the Company Registry for registration in the form of an electronic record should be authenticated.

11. The Companies Registry intends to apply the requirements stipulated in Gazette Notice No. 2780 (“GN 2780”) at **Annex B** issued by the Information Technology and Broadcasting Bureau pursuant to Section 11(2) of the Electronic Transactions Ordinance in relation to the form of digital signatures to be attached to documents submitted electronically to the Companies Registry. Please refer to paragraph 10 of GN 2780 on the authentication of digital signature.

12. At present, GN 2780 only applies to certain parts of the CO (please refer to page 1 of Part II of GN 2780). As it is only our intention to accept submission of documents in electronic form after Integrated Companies Registry Information System (“ICRIS”) Phase II has been brought into effect (which will possibly be sometime in early 2006), we will be seeking an amendment to GN 2780 to include the application of this GN to additional parts to the CO and will consider whether it will be necessary to amend our existing "Requirements for Documents Guidelines" published on our website to reflect the existing requirement in the GN in relation to digital signatures.

Financial Services Branch
Financial Services and the Treasury Bureau
April 2004

Statistics on Annual Returns filed by local private companies (Financial Year)

Financial Year	Annual Return delivered within 42 days after the anniversary of incorporation (\$105)*	Annual Return delivered more than 42 days after but within 3 months after the anniversary of incorporation (\$870)	Annual Return delivered more than 3 months after but within 6 months after the anniversary of incorporation (\$1,740)	Annual Return delivered more than 6 months after but within 9 months after the anniversary of incorporation (\$2,610)	Annual Return delivered more than 9 months after the anniversary of incorporation (\$3,480)	Total
2000-2001	337,621	11,193	4,975	8,202	4,686	366,677
2001-2002	351,249	11,215	12,924	3,638	2,982	382,008
2002-2003	347,471	9,871	6,888	1,690	1,775	367,695

Statistics on Annual Returns filed by public local companies having a share capital (Financial Year)

Financial Year	Annual Return delivered within 42 days after the annual general meeting (\$140)	Annual Return delivered more than 42 days after but within 3 months after the annual general meeting (\$1,200)	Annual Return delivered more than 3 months after but within 6 months after the annual general meeting (\$2,400)	Annual Return delivered more than 6 months after but within 9 months after the annual general meeting (\$3,600)	Annual Return delivered more than 9 months after the annual general meeting (\$4,800)	Total
2000-2001	411	6	4	2	0	423
2001-2002	400	6	5	2	5	418
2002-2003	394	8	3	2	1	408

* Include annual returns filed by companies limited by guarantee (annual registration fee being \$105 flat)

Statistics on Annual Returns filed by local private companies (Calendar Year)

Calendar Year	Annual Return delivered within 42 days after the anniversary of incorporation (\$105)*	Annual Return delivered more than 42 days after but within 3 months after the anniversary of incorporation (\$870)	Annual Return delivered more than 3 months after but within 6 months after the anniversary of incorporation (\$1,740)	Annual Return delivered more than 6 months after but within 9 months after the anniversary of incorporation (\$2,610)	Annual Return delivered more than 9 months after the anniversary of incorporation (\$3,480)	Total
2001	351,991	11,139	10,700	4,906	3,243	381,979
2002	348,552	10,005	8,816	1,876	1,902	371,151
2003	343,113	10,124	4,651	2,002	2,717	362,607

Statistics on Annual Returns filed by public local companies having a share capital (Calendar Year)

Calendar Year	Annual Return delivered within 42 days after the annual general meeting (\$140)	Annual Return delivered more than 42 days after but within 3 months after the annual general meeting (\$1,200)	Annual Return delivered more than 3 months after but within 6 months after the annual general meeting (\$2,400)	Annual Return delivered more than 6 months after but within 9 months after the annual general meeting (\$3,600)	Annual Return delivered more than 9 months after the annual general meeting (\$4,800)	Total
2001	411	6	5	2	0	424
2002	403	8	3	5	6	419
2003	390	9	0	0	0	399

* Include annual returns filed by companies limited by guarantee (annual registration fee being \$105 flat)

G.N. 2780

INFORMATION TECHNOLOGY AND
BROADCASTING BUREAU

ELECTRONIC TRANSACTIONS ORDINANCE (Chapter 553)

Pursuant to section 11(2) of the Electronic Transactions Ordinance, NOTICE is hereby given that the following requirements shall apply with effect from 4 May 2001 ('Effective Date'):

(I) The information given or presented, or the signature made, as the case may be, for the purposes of an ordinance (including any subsidiary legislation made thereunder) amongst those listed in (II) below, or any provision thereof herebelow specified, shall not satisfy that ordinance, subsidiary legislation or provision thereof unless it complies with all the requirements herein specified, subject to the respective additional requirements or relaxation, if any, stipulated in (III) below.

1. Electronic records in English shall be encoded in American Standard Code for Information Interchange (ASCII).
2. Electronic records in Chinese shall be encoded in Big-5 or ISO10646 standard.
3. When electronic records are encoded in Big-5 standard, the set of characters is restricted to that coded in the Big-5 standard or included in the Hong Kong Supplementary Character Set (HKSCS) published by the Government.
4. When electronic records are encoded in ISO10646 standard, the set of characters is restricted to the Chinese-Japanese-Korean (CJK) Unified Ideographs characters coded in ISO10646 standard.
5. Electronic records shall be sent as follows:—
 - (a) through electronic mail conforming to the Simple Mail Transfer Protocol (SMTP) and the Secure Multipurpose Internet Mail Extension (S/MIME) format and with size not exceeding 5 MB; or
 - (b) in the form of 1.44MB diskette with size of 3.5 inches in MS-DOS format for files not exceeding one diskette's storage capacity; or
 - (c) in the form of CD-ROM in ISO 9660 format.
6. Electronic records shall follow the following file format standards:—
 - (a) Plain text (TXT);
 - (b) Microsoft Rich Text Format (RTF version 1.3 or 1.5)
 - (c) Hypertext Mark Up Language Format (HTML, version 3.2 or 4); or
 - (d) Adobe Portable Document Format (Acrobat version 3 or 4).
7. Graphics in electronic records shall follow the following graphic file formats:—
 - (a) Encapsulated PostScript Files (EPSF);
 - (b) Tag Image File Format (TIFF);
 - (c) Windows BitMaps (BMP);
 - (d) Graphic Interchange File Format (GIF); or
 - (e) Joint Photographic Experts Group (JPEG).
8. Computer Aided Design (CAD) drawings shall follow the following CAD file format:—
 - (a) Autodesk Drawing Exchange Format (DXF)
9. An electronic record given or presented under a statutory provision must be signed with a digital signature if:—
 - (a) the provision expressly requires the signature of a person; or
 - (b) the provision requires the submission to be made in a specified form and the specified form has a signature requirement.
10. A digital signature shall be attached to an electronic record in accordance with the Secure Multipurpose Internet Mail Extension (S/MIME) standard and the Public-Key Cryptography Standards (PKCS).
11. For an electronic record which comprises multiple electronic files and which has to be signed, each individual file shall be separately signed digitally.
12. Electronic records given or presented shall not contain any computer instructions, including but not limited to:—
 - (a) computer viruses; and
 - (b) macros, scripts and fields that depend on the execution environment and the execution of which will cause changes to the electronic record itself or the information system displaying the electronic record.
13. For submission of Government forms to Government, the Electronic Government Forms (in the form of a software) should be used to generate electronic records and, if required, to make digital signatures. The format of individual supporting document, if any, attached in an electronic record should comply with all the relevant requirements specified in (I), except (I)13.

(II)

Chapter 2	Public Finance Ordinance
Chapter 5	Official Languages Ordinance
Chapter 6	Bankruptcy Ordinance
Chapter 7	Landlord and Tenant (Consolidation) Ordinance
Chapter 8	Evidence Ordinance
Chapter 12	Fire Investigation Ordinance
Chapter 24	Securities and Futures Commission Ordinance, section 50(9)
Chapter 28	Land (Miscellaneous Provisions) Ordinance
Chapter 29	Trustee Ordinance
Chapter 32	Companies Ordinance (for information given or presented to the Official Receiver under Parts IVA, V, VI and X)
Chapter 32C	Companies (Fees and Percentages) Order
Chapter 32H	Companies (Winding-up) Rules
Chapter 32J	Companies (Reports on Conduct of Directors) Regulations
Chapter 32K	Companies (Disqualification of Directors) Proceedings Rules
Chapter 33	Co-operative Societies Ordinance
Chapter 35	Pensions (Special Provisions) (Customs Officers) Ordinance
Chapter 37	Limited Partnerships Ordinance
Chapter 41	Insurance Companies Ordinance
Chapter 50	Professional Accountants Ordinance
Chapter 51	Gas Safety Ordinance
Chapter 52	Television Ordinance
Chapter 55	Labour Relations Ordinance
Chapter 56	Boilers and Pressure Vessels Ordinance
Chapter 57	Employment Ordinance
Chapter 59	Factories and Industrial Undertakings Ordinance
Chapter 60	Import and Export Ordinance
Chapter 65	Legal Tender Notes Issue Ordinance
Chapter 66	Exchange Fund Ordinance
Chapter 68	Weights and Measures Ordinance
Chapter 79	Surviving Spouses' and Children's Pensions Ordinance
Chapter 81	Port Control (Cargo Working Areas) Ordinance
Chapter 84	Pilotage Ordinance
Chapter 89	Pensions Ordinance
Chapter 91	Legal Aid Ordinance
Chapter 92	Judicial Officers Recommendation Commission Ordinance
Chapter 93	Public Service Commission Ordinance
Chapter 94	Widows and Orphans Pension Ordinance
Chapter 95	Fire Services Ordinance
Chapter 96	Forest and Countryside Ordinance
Chapter 98	Post Office Ordinance
Chapter 99	Pension Benefits Ordinance
Chapter 102	Waterworks Ordinance
Chapter 104	Ferry Services Ordinance
Chapter 106	Telecommunication Ordinance
Chapter 107	Tramway Ordinance
Chapter 108	Betting Duty Ordinance
Chapter 109	Dutiable Commodities Ordinance