

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

**Follow-up actions arising from the discussion
at the meeting on 3 June 2004**

Introduction

This paper sets out the outcome of the follow-up actions arising from the discussion at the meeting on 3 June 2004.

The operation of proposed sections 333A, 333B and 335 in relation to authorized representative (“AR”)

2. We have prepared 2 charts (at **Annex A** and **Annex B**) to illustrate the operations of proposed sections 333A, 333B and 335.

3. The proposed amendment to section 333A to address Member’s concern is at **Annex C**.

Other proposed CSAs

4. We have also proposed other further CSAs (at **Annex D**) in the light of the comments raised by Members at the last meeting.

**Financial Services Branch
Financial Services and the Treasury Bureau
June 2004**

Annex A**Requirements Under Sections 333A(2), 333B and 335(1)(c)**

| Proposed provision in the draft CSAs | Event triggering requirement to register particulars of new AR | Filing period to be calculated from | Date of existing AR ceases to act |
|---|--|---|---|
| Section 333A(2) | <p>A sole existing AR ceases to be the AR (by reason of death, incapacity or other unforeseen reason).</p> <p>(Note: the words in brackets above will be added to the subsection to address the concerns of Members)</p> | <p>1 month from the date of death, incapacity etc.</p> <p>(Specified Form: (N8))</p> | <p>Date of death, incapacity or other unforeseen reason (date to be reported in the specified form (N8)).</p> |
| Section 333B | <p>Notice of termination stating the date of termination served by either:</p> <p>(1) the existing AR on the company, or</p> <p>(2) the company on the existing AR.</p> <p>(Section 333B(1)(a) or (b))</p> | <p>14 days from service of notice of termination on the company or AR, as the case may be.</p> <p>(Specified form: (N2))</p> <p>(Section 333B(2))</p> | <p><u>Either:</u></p> <p>The date of termination of authorization stated in notice served under section 333B(4)(a) or (b), as the case may be.</p> <p><u>or</u></p> <p>21 days from the date of filing with the CR of the specified form notifying the termination of the AR's appointment, whichever is the later.</p> <p>(Note: see Illustrations at <u>Annex B</u>)</p> |

| Proposed provision in the draft CSAs | Event triggering requirement to register particulars of new AR | Filing period to be calculated from | Date of existing AR ceases to act |
|---|---|--|--|
| Section 335(1)(c) | Alteration in the AR or his particulars. | 21 days from the date of the alteration. (Specified form: (N8)) | Date of resignation or ceasing to act. |

Annex B**Illustration of Filing Requirements Under Sections 333A(2), 333B(1) and 335(1)(c)**

| Illustration of filing requirement pursuant to proposed section 333A(2) (as in the draft CSAs) | | |
|---|---|--|
| Date of death or incapacity etc. : | Notice of change of AR to be filed by : | AR ceases to act: |
| 1 st June | 1 st July (sections 333A(2)) | 1 st June (section 333A(2)) |
| Illustration of filing requirement pursuant to section 333B(1)(a) or(b) | | |
| Date of notice sent to company/AR terminating authorization of AR : | Notice of termination in specified form to be sent to CR by : | AR ceases to act : |
| 1 st June | 15 th June (section 333B(2)) | <p><u>Either:</u> Where date of termination of AR's authorization specified in notice is 1st June, AR ceases to act on 6th July (section 333B(4)(a));</p> <p><u>Or:</u> Where date of termination of AR's authorization specified in notice is, say, 30th June, AR ceases to act on 6th July (21 days from 15th June) (section 333B(4)(b)).</p> |

| Illustration of filing requirement pursuant to section 335(1)(c) | | |
|---|---|--|
| Date of alteration in AR (or his particulars) : | Notice to be filed in the specified form with the CR by : | AR ceases to act : |
| 1 st June | 22 nd June | 1 st June (as reported in specified form) |

Annex C**CSAs to Section 333A*****English version***

“(1) Subject to subsection (2), ~~a~~^{Any} non-Hong Kong company registered under this Part shall at all times, until the expiration of a period of 1 year from the date on which it ceases to have a place of business in Hong Kong, keep registered under section 333 the name, address and, in the case of an individual, number of the identity card (if any) or, in the absence of such number, the number and issuing country of any passport, of its authorized representative.

(2) Where one person only is registered as an authorized representative of a non-Hong Kong company and he at any time ceases to be the authorized representative of the company as a result of death or incapacity or any other unforeseen reason, the company shall, within one month of the person ceasing to be such representative, register the particulars of another person in compliance with subsection (1).”¹

Chinese version

“(1) 除第(2)款另有規定外，任何根據本部註冊的非香港公司，均須時刻將其獲授權代表的姓名或名稱、地址及(如屬個人)身分證號碼(如有的話)或(如沒有身分證號碼)任何護照的號碼及簽發國家，持續根據第 333 條登記，直至由自該公司在香港不再有營業地點的日期起計的 1 年屆滿為止。

(2) 凡只有一人登記為非香港公司的獲授權代表，而該人於某個時間因去世或無行為能力或因任何其他未能預見的原因而不再是該公司的獲授權代表，則該公司須在該人不再是上述代表後的 1 個月內，遵從第(1)款的規定將另一人的詳情登記。”²

¹ This amendment is proposed in accordance with the comments of Members that the scenarios whereby a person ceases to be the authorized representative should be stipulated.

² See Footnote (1).

Annex D**Further CSAs*****Section 153(2) – Chinese version***

“(2) 就本條而言，任何在就某公司而註冊的法團成立表格內作為董事而列名的人即屬該公司的董事，直至有關於董事變動情況的知會就他而根據第158(4)條送交處長為止。自不是私人公司的公司的註冊證書所述的法團成立日期起，在依據第14A條就該公司呈交的法團成立表格內列名為董事的人即擔任該公司的首任董事。”³

Section 153A(2) – Chinese version

“(2) 自私人公司的註冊證書所述的法團成立日期起，在依據第14A條就該公司呈交的法團成立表格內列名為董事的人即擔任該公司的首任董事。”⁴

Section 154(1AA) – Chinese version

“(1AA) 就本條而言，在就某公司而註冊的法團成立表格內作為秘書而列名的人即屬該公司的秘書，直至有關秘書變動情況的知會就他而根據第158(4)條送交處長為止。自公司的註冊證書所述的法團成立日期起，在依據第14A條就該公司呈交的法團成立表格內列名為秘書的人即擔任該公司的首任秘書。”⁵

Section 158(9A)**(English version)**

“(9A) Where a company was registered immediately before the commencement of sections 18, 18A and 20 of Schedule 3 to the Companies (Amendment) Ordinance 2004 (of 2004) and has not complied with section 158(4)(a), (4A) and (5) of the pre-amended Ordinance before the expiry of the periods mentioned in that section

³ To fine-tune the Chinese wording as suggested by Members.

⁴ See Footnote (3).

⁵ See Footnote (3).

158(4)(a) and (4A), then sections 153, 153A and 158 of the pre-amended Ordinance shall continue to apply to the company as if sections 18, 18A and 20(1), (2), (3), (4) and (5) of Schedule 3 to the Companies (Amendment) Ordinance 2004 (of 2004) had not been enacted.”⁶

(Chinese version)

“(9A) 凡公司是在緊接《 2004 年公司(修訂)條例 》(2004 年第 號)附表 3 第 18、18A 及 20 條生效前註冊，而該公司沒有在修訂前的本條例第 158(4)(a)及(4A)條所述的限期屆滿前遵守修訂前的本條例第 158(4)(a)、(4A)及(5)條，則修訂前的本條例第 153、153A 及 158 條繼續適用於該公司，猶如《 2004 年公司(修訂)條例 》(2004 年第 號)附表 3 第 18、18A 及 20(1)、(2)、(3)、(4)及(5)條並未制定一樣。”⁷

⁶ To further fine-tune this section for better presentation.

⁷ See Footnote (6).