



The British
Chamber of Commerce
in Hong Kong
香港英商會

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30 March 2010

(E Mail: yhcheung@legco.gov.hk)

The Hon Mr. Paul Chan
Chairman of the Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

Dear Mr Chan

**Bills Committee on Companies (Amendment) Bill
2010 & Business Registration (Amendment) Bill 2010**

The British Chamber thanks you for the opportunity to present its views on what it regards as important legislation. The Chamber will be represented by Ms Deborah Annells at the meeting of your committee this afternoon. We are pleased to provide our comments on the captioned draft Bills, and apologize for the delay in making our submission following on from your kind extension of time.

The British Chamber welcomes the introduction of on-line incorporation of companies in Hong Kong and recognizes that this will result in many amendments to the existing Companies Ordinance, and a number of changes in local practices, which have been paper based to date. We also welcome the proposal to require the simultaneous application for a Business Registration ("BR") at the time of incorporation in an effort to streamline and speed up the process; in a sense this will provide a 'one stop shop' approach which will greatly enhance efficiency. We also agree to the provisions that will enable the Companies Registry to act on behalf of the Commissioner of Inland Revenue ("CIR") in the matter of collecting BR fees at the time of incorporation whilst noting that the CIR will continue to maintain its responsibilities, and for collecting renewals of BR fees which may also be issued in electronic format.

We are concerned that checks and balances should be included in the new on-line incorporation system given that there is still no system for licensing or even registration of Trust and Company Service Providers in Hong Kong as there are in the majority of other jurisdictions which allow on-line incorporation. Whilst we understand there will be an approval process in terms of registering an on-line user before the incorporation process takes place, we suggest modern computer profiling techniques are deployed to check who is involved in the incorporation process and to identify numerous or anomalous applications. In any case we continue to advocate that a Trust and Company Service Provider regime is implemented as quickly as possible in Hong Kong so that "fit and proper" and identifiable people are involved and encouraged in the system.

This may also be the time to consider waiving or reducing the BR fee for a new company start up in Hong Kong as this is the imposition of a considerable additional cost at the time of incorporation (typically the BR fee is HK\$2,600 i.e. US\$333 annually although currently reduced to HK\$450), and given that other on-line and "onshore" jurisdictions such as the UK and Singapore do not charge the equivalent of BR fees. This additional cost at the time of

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Incorporation will mean that the traditional use of lists of Hong Kong shelf companies may diminish (although we do not think the HK company shelf list will disappear as they will still be available in BVI and other "competitor" jurisdictions which continue to offer fast, easy and cheaper methods to set up a company).

We have no comments on the other proposed amendments which are to be made to the Companies Ordinance and agree that the Registrar may direct a change of company name in the manner set out on the draft Bill; that statutory derivative actions in the way described should be enabled (although we note this matter was initially discussed under the Companies Ordinance Rewrite consultation); and to provide for electronic communications with the Registrar and to other persons in the case, for example, of a listed company with its shareholders; and to remove obstacles to the introduction of paperless holdings and transfers of shares and debentures (and hence Stamp Duty payments on same electronically). At present completely electronic statutory records are not envisaged, and we endorse the continuation of the "company kit" for a private Hong Kong company so that its location is in Hong Kong at a properly registered office in Hong Kong. In practice on-line information about companies and searches would continue to be used rather than public inspection of actual statutory records at the registered office.

Should you require any further input from our members, many of whom are involved in company incorporation and administration services in Hong Kong we would be delighted to assist.

Yours sincerely

Brigadier Christopher Hammerbeck CB.CBE.
Executive Director

Cc: James Riley – Chairman
Deborah Annells – Chair Financial Service Interest Group

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