

LEGISLATIVE COUNCIL BRIEF

Companies Ordinance (Cap. 32)
Business Registration Ordinance (Cap. 310)

Companies (Amendment) Bill 2010 and Business Registration (Amendment) Bill 2010

INTRODUCTION

A&B At the meeting of the Executive Council on 12 January 2010, the Council ADVISED and the Chief Executive ORDERED that the Companies (Amendment) Bill 2010 and the Business Registration (Amendment) Bill 2010, at Annexes A and B respectively, should be introduced into the Legislative Council (“LegCo”) at the same time.

JUSTIFICATIONS

(A) Electronic Company Registration and Expediting Company Name Registration Process

2. The Companies Registry (“CR”) is developing Phase II of the Integrated Companies Registry Information System (“ICRIS II”) which is expected to come on stream in late 2010/early 2011. ICRIS II will enable on-line applications for company registration⁽¹⁾ and filing of company documents but this will require legislative amendments to the Companies Ordinance (Cap. 32) (“CO”) to tie in with the changes in the registration procedure, e.g. to allow the signing of incorporation forms using passwords, streamline the attestation requirements for signatures by founder members, and facilitate the issue of certificates of incorporation/registration by electronic means, etc.

3. As a related matter, in order to expedite the company name approval process, a company name will be accepted for registration

Note ⁽¹⁾ “Company registration” is used as a generic term in this brief to cover both the incorporation of local companies and registration of non-Hong Kong companies.

instantaneously if it satisfies certain preliminary requirements, namely, that it is not identical to another name on the register and does not contain certain specified words or expressions⁽²⁾. Thereafter, if the company's name is found to be objectionable, the Registrar of Companies ("Registrar") will be empowered to direct the company in question to change its name within a period specified by the Registrar. The revised procedures will shorten the processing time for company incorporation from four working days to one day. This will put Hong Kong on a par with comparable jurisdictions like the UK and Singapore. To implement the above changes, legislative amendments to the CO are required ahead of the rewrite of the CO which we are undertaking in parallel.

4. To address the concerns from the business community especially trademark/brand name owners in Hong Kong and overseas in particular those in the US and Japan, we propose to strengthen our company name registration system to enhance enforcement against possible abuses by "shadow companies"⁽³⁾ by empowering the Registrar to act pursuant to court orders to direct a "shadow company" to change its name. The Registrar may substitute the company's name with its registration number if it fails to comply with the Registrar's direction to change name. The same power to substitute names of a company will be given to the Registrar where a company fails to comply with a direction to change its name that is too like that of another company on the register; gives the impression that the company is connected with the Hong Kong SAR Government or the Central People's Government; constitutes a criminal offence; or is contrary to the public interest.

(B) One-stop Service for Company Registration and Business Registration

5. We propose that, upon the implementation of ICRIS II and electronic incorporation of companies by the CR, any person who submits an application for company registration will be deemed to have applied for business registration at the same time. CR will issue the business registration certificate together with the certificate of

Note ⁽²⁾ The Companies (Specification of Names) Order (Cap. 32 sub. leg. E), contains a list of words or expressions (e.g. "Trust", "Municipal", "Building Society", etc.) requiring the Chief Executive's prior approval (authority delegated to the Registrar of Companies) for registration as part of a company's name. We shall conduct a separate review in consultation with relevant bureaux/departments to update the list.

Note ⁽³⁾ "Shadow companies" refer to those companies incorporated in Hong Kong with names which are very similar to existing and established trademarks or trade names of other companies and which often pose themselves as representatives of the owners of such trademarks or trade names to produce counterfeit products in Mainland China bearing such trademarks or trade names.

incorporation/registration to the successful applicants. Such service will be made available for both paper and electronic applications. With simultaneous application in place, an on-line application for registration of a local company and business registration will be completed through one step and within one day, compared with an average of 4 working days to complete the two registrations under the existing system. We therefore have to amend the Business Registration Ordinance (Cap. 310) (“BRO”), for instance, to provide that a person who makes an application for company registration is deemed to have also made an application for business registration, to empower the Registrar to collect business registration particulars, the prescribed business registration fee and levy, and issue the business registration certificate on behalf of the Commissioner of Inland Revenue (“Commissioner”), etc.

6. Currently, a company is required under the CO and the BRO to notify the Registrar and the Commissioner respectively of any change in certain particulars, for example, corporate name, registered office address, etc. In order to provide more efficient and integrated customer-friendly services to the business sectors, we propose treating the company’s notification of the change in such particulars to the Registrar as a notification to the Commissioner. The proposed amendments to the BRO to this effect will come into operation only when the relevant part of ICRIS II is implemented. Moreover, in order to facilitate the processing of simultaneous applications and other business registration applications⁽⁴⁾ through electronic means, legislative amendments will be made to the BRO to provide for the use of digital signatures or passwords in these applications and the issuance of business registration certificates in electronic mode.

(C) Facilitating Electronic and Website Communications

7. Amendments have recently been made to the Listing Rules of the Hong Kong Exchanges and Clearing Limited (“HKEx”) to allow a listed issuer to send corporate communications to its shareholders by making them available on the listed issuer’s website if the shareholders agree, or are deemed to have so agreed. Since there are currently no similar provisions in the CO which provide for such mode of communications, Hong Kong-incorporated listed companies are not able to make use of such facilities. We therefore see the need to amend the CO so that Hong Kong companies can also make use of the companies’ websites to communicate with their shareholders. To further facilitate electronic communication and promote environmental friendliness, we propose to amend the CO to generally enable documents or information to be sent or supplied by a company

Note ⁽⁴⁾ These include business registration applications in respect of sole proprietorship and partnership.

to any person other than the Registrar under the CO through electronic means. Notwithstanding this, we propose to retain the shareholders' right to request the companies to deliver hard copies of documents to them free of charge, and allow individual shareholders to choose not to communicate with the companies electronically. This is to safeguard the interest of those shareholders who do not have access to internet facilities.

(D) Exempting Listed Companies from Giving Notice of Closure of Register of Members by Advertisement in a Newspaper

8. Section 99(1) of the CO requires a company incorporated in Hong Kong to give notice of closure of its register of members/debenture holders by advertisement in a newspaper. However, the Listing Rules require a listed company to publish its notice of closure of register of members on HKEx's website instead of in a newspaper⁽⁵⁾. As a result, a listed company incorporated in Hong Kong has to publish its notice of closure of register of members both in a newspaper and on the HKEx's website. To streamline the requirements and to ensure a level playing field between listed companies incorporated in Hong Kong and elsewhere, we propose to amend the CO to allow listed companies to give notice of closure of registers of members/debenture holders in accordance with the Listing Rules.

(E) Providing for Multiple Statutory Derivative Actions

9. The statutory derivative action ("SDA") procedure in the CO allows a member of a company to bring an action or intervene in the proceedings on behalf of the company in respect of "misfeasance"⁽⁶⁾ committed against the company. Unlike some overseas jurisdictions such as Australia, Canada and New Zealand, where members of a related company⁽⁷⁾ of the company in question have similar rights under their law, section 168BC(1) of the CO only gives members of the company a right to seek leave to commence a SDA, i.e. only "simple" derivative actions as opposed to "multiple" derivative actions (i.e. allowing a member of a related company to commence or intervene in SDA on behalf of the company) can be taken. We propose that, in

Note ⁽⁵⁾ Rule 2.07C and Rule 13.66 of the Main Board Listing Rules which were implemented on 25 June 2007.

Note ⁽⁶⁾ "Misfeasance" is defined as "fraud, negligence, default in compliance with any enactment or rule of law, or breach of duty" in section 168BB(2) of the CO.

Note ⁽⁷⁾ A "related company" in relation to a specified corporation means any company that is the specified corporation's subsidiary or holding company, or a subsidiary of that specified corporation's holding company.

view of a recent court case⁽⁸⁾ where both the Court of Appeal and the Court of Final Appeal ruled that a “multiple” derivative action is maintainable in Hong Kong under the common law and considered it appropriate for the CO to be extended to cover “multiple” SDA, the CO should be amended to expand the scope of SDA to cover “multiple” derivative actions. The proposal would further enhance the protection of the interests of minority shareholders.

(F) Technical Amendments Paving the Way for Scripless Holding and Transfer of Shares or Debentures

10. We propose to introduce technical amendments to the CO to remove, or provide exceptions to, the limitations arising from provisions in the CO that compel the use of paper documents of title and paper instruments of transfer in relation to shares and debentures. This would be an important first step in the legislative process to allow for the development of a scripless market in Hong Kong. The Securities and Futures Commission (“SFC”) is currently working with the HKEx and the Federation of Share Registrars (“FSR”) on a proposed operational model for implementing a scripless market and have issued a consultation paper on the proposed model on 30 December 2009. A firm commitment to remove the existing statutory hurdles in the CO will help focus the market on the scripless initiative to enhance market efficiency and investor protection. The proposed amendments to the CO will come into operation only when the market is ready to implement a scripless model. Other legislative amendments, mainly to the Securities and Futures Ordinance (Cap.571), will also be needed to provide for the regulation of the scripless environment and persons who play a key role in that environment.

(G) Amendment to Rectify the Chinese Version of Section 57B(7) of the CO

11. We noted in our review of the CO and from a 2007 court judgment that there is a discrepancy between the English and Chinese versions of section 57B(7) of the CO. As this provision is regularly encountered in corporate practice, we would take the opportunity to amend the Chinese version of this provision so as to bring it in line with the policy intention and the prevailing market understanding of the legislation.

Note ⁽⁸⁾ *Waddington Ltd. v Chan Chun Hoo* CACV No. 220 of 2005 [2006] 2 HKLRD 896; [2008] 11 HKCFAR 370

THE BILLS

The Companies (Amendment) Bill 2010

Electronic Company Registration and Streamlined Company Name Approval Regime

12. On electronic company registration, **clauses 3-5** provide for a streamlined company formation procedure for the purpose of electronic registration, which will remove the attestation requirements for the signing of memorandum of association and articles of association by a founder member and to reduce the number of founder members required to sign an incorporation form from two to one. **Clauses 24 and 25** provide for electronic communications with the Registrar, including the delivery of documents and forms to the Registrar in electronic form and the signing of the documents using digital signature or password. **Clauses 22 and 23** provide for the signature requirement of certain documents if they are delivered to the Registrar in electronic form and to provide for the documents to be delivered to the Registrar by authorised representatives. **Clause 27** empowers the Registrar to issue certificates in any form including electronic form.

13. On company names registration, **clauses 9-11** empower the Registrar to prohibit a company from being registered by a name that is the same as that for which a direction to change name has been given, and to direct a company to change its name pursuant to a court order or under other circumstances, including those relating to the use of a name which may constitute a criminal offence or is considered to be offensive or contrary to the public interest. **Clause 12** gives a new power to the Registrar to replace a company's name by its registration number if it fails to comply with the Registrar's direction to change its name.

Electronic and Website Communications by a Company to Another Person (Other than the Registrar)

14. **Clause 31** adds new provisions to the CO to provide for the means of communication (i.e. communication in electronic form, communication in hard copy form and communication by means of website) by a company to any person other than the Registrar. It also provides rules that govern such communications (e.g. electronic communications can be made upon the recipient's agreement and to an address specified by the recipient, period of time specified for the information or document to be made available on the website, etc.) and retains the right of the recipient to request hard copy of the document or information.

Multiple Statutory Derivative Actions

15. **Clauses 14-20** amend the CO to enable a member of a related company of a specified corporation to bring or intervene in proceedings against a specified corporation as defined in section 2 of the CO.

Paving Way for Scripless Holding and Transfer of Shares and Debentures

16. **Clauses 36-47** amend the CO and its subsidiary legislation to remove obstacles to the introduction of the scripless holding and transfer of shares and debentures. **Clause 48** is a related amendment to the Securities and Futures Ordinance (Cap.571).

Other Amendments

17. **Clauses 49, 50, 52, 55, 56 and 57** make minor amendments to certain provisions of the CO to rectify textual discrepancies. **Clause 53** amends section 99 of the CO to provide for an alternative means of closing registers of members and registers of debenture holders other than by advertisement in a newspaper. **Clause 54** makes textual amendments to section 102(1) of the CO.

The Business Registration (Amendment) Bill 2010

One-stop Service for Company Registration and Business Registration

18. **Clauses 3-7, 14, 21, 22 and 25** provide for simultaneous application for company registration and business registration by, among others, deeming the person who makes an application for company registration to have applied for business registration at the same time, and allowing the Registrar to collect on behalf of the Commissioner business particulars as well as related business registration fee and levy, and to issue business registration certificates to successful applicants. On simultaneous notification of changes in business particulars, **clause 10** amends the BRO to treat the company's notification of changes in certain business particulars to the Registrar as a notification to the Commissioner.

Electronic Record for Prescribed Form

19. **Clauses 11, 23 and 24** provide for the submission of business registration and branch registration applications as well as the issuance of business registration certificates and branch registration certificates by electronic means. **Clauses 26-30** make related and consequential amendments to other legislation.

Other Amendments

20. Other clauses make minor textual amendments to certain provisions of the BRO.

LEGISLATIVE TIMETABLE

21. The legislative timetable will be –

Publication in the Gazette	22 January 2010
First Reading and Commencement of Second Reading Debate	3 February 2010
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

C 22. The proposal has economic, financial and civil service implications as set out at Annex C. The proposal is in conformity with the Basic Law, including provisions concerning human rights. The amendments proposed in the Companies (Amendment) Bill 2010 and the Business Registration (Amendment) Bill 2010 will not affect the current binding effect of the CO and the BRO. It has no productivity, sustainability or adverse environmental implications.

PUBLIC CONSULTATION

23. In June 2009, we consulted the LegCo Panel on Financial Affairs on the legislative proposals set out in this paper. Members of the Panel did not object to the proposals. The Standing Committee on Company Law Reform has also been consulted and it supported the proposals. The CR and the Inland Revenue Department (“IRD”) have consulted their Customer Liaison Groups and Users’ Committee respectively where members were supportive of the proposals. The proposal to empower the Registrar to tackle the problem of “shadow companies” was also broadly supported by the respondents in a public consultation conducted in the second quarter of 2008 as part of the CO rewrite exercise. As regards the proposal to remove obstacles to the introduction of scripless holdings and transfers of shares and debentures, the SFC, HKEx and FSR launched a consultation to consult the market on a proposed operational model for implementing a scripless market in Hong Kong on 30 December 2009.

PUBLICITY

24. A press release will be issued when the two Bills are gazetted on 22 January. A spokesman will be available to handle any enquiries.

BACKGROUND

25. In mid-2006, the Government launched a major and comprehensive exercise to rewrite the CO. By updating and modernising the CO, we aim to make it more user-friendly and facilitate the conduct of business to enhance Hong Kong's competitiveness and attractiveness as a major international business and financial centre. We aim to introduce the Companies Bill into the LegCo by the end of 2010. Ahead of the rewrite, there is a need to amend the CO to provide for electronic incorporation and filing of documents to tie in with the development of ICRIS II. We take this opportunity to implement other changes in law, including amendments to the BRO to provide for simultaneous application for company registration and business registration, to enhance business friendliness in Hong Kong. Although the Electronic Transactions Ordinance (Cap. 553) permits electronic incorporation and filing of documents under the CO and the BRO, we considered it desirable to include express provisions in the CO and the BRO to specify the requirements in relation to these matters.

ENQUIRIES

26. For any enquiries, please contact Mr Arsene Yiu, Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2528 9077.

Financial Services and the Treasury Bureau
20 January 2010

COMPANIES (AMENDMENT) BILL 2010

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A BILL

To

Amend the Companies Ordinance and its subsidiary legislation to streamline the company formation procedures; to extend the powers of the Registrar of Companies to direct a change of company name; to enlarge the class of persons who may bring or intervene in statutory derivative actions under Part IVAA of the Ordinance; to provide for electronic communications with the Registrar; to provide for the modes of communications by a company to any person other than the Registrar; to remove obstacles to the introduction of paperless holding and transfer of shares and debentures; and to make related and miscellaneous amendments to the Ordinance and its subsidiary legislation and the Securities and Futures Ordinance.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Companies (Amendment) Ordinance 2010.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

PART 2

AMENDMENTS RELATING TO COMPANY FORMATION

3. Signature of memorandum

(1) Section 6(1) of the Companies Ordinance (Cap. 32) is amended by repealing everything after “founder member” and substituting “of the company.”.

(2) Section 6(2) is repealed.

4. Printing and signature of articles

(1) Section 12(1)(c) is amended by repealing everything after “founder member” and substituting “of the company.”.

(2) Section 12(2) is repealed.

5. Incorporation form

(1) Section 14A(2)(f) is amended by repealing “guarantee, the” and substituting “guarantee, the number of members with which the company proposes to be registered on its incorporation, and the”.

(2) Section 14A(2)(j) is amended by repealing “and”.

(3) Section 14A(2)(k) is repealed and the following substituted –

“(k) if the signatory is to be a director of the company on its incorporation, a statement by the signatory –

(i) that he or she has consented to be a director of the company; and

(ii) if the signatory is an individual, that he or she has attained the age of 18 years; and

(l) in relation to each person (other than the signatory) who is to be a director of the company on its incorporation –

(i) a statement by the person that he or she has consented to be a director of the company and, if the person is an individual, that he or she has attained the age of 18 years; or

(ii) a statement by the signatory that the person has consented to be a director of the company and, if the person is an individual, that the person has attained the age of 18 years.”.

(4) Section 14A(3) is amended by repealing everything after “signed by any” and substituting “person who is named in the form as a founder member.”.

(5) Section 14A is amended by adding –

“(5) In subsection (2), “signatory” (簽署人), in relation to an incorporation form, means the person who signs the form for the purposes of subsection (3).

(6) The Financial Secretary may, by order published in the Gazette, amend subsection (2).”.

6. Conclusiveness of certificate of incorporation

(1) Section 18(2) is amended by repealing everything after “statement of compliance” and before “shall” and substituting “specified in subsection (3)”.

(2) Section 18(2) is amended by adding “with all the requirements referred to in subsection (1)” after “evidence of compliance”.

(3) Section 18 is amended by adding –

“(3) The statement specified for the purposes of subsection (2) is a statement –

(a) certifying the company’s compliance with all the requirements referred to in subsection (1);

(b) certifying that the particulars contained in the incorporation form are accurate and consistent with those contained in the

memorandum and articles of the company;
and

- (c) signed by the founder member who signs the form for the purposes of section 14A(3).”.

7. Section 18A added

The following is added –

“18A. Delivery of consent of director

(1) Each consent given for the purposes of section 14A(2)(l)(ii) in relation to a company intended to be incorporated must be delivered to the Registrar in the specified form not later than 14 days after the date of incorporation of the company.

(2) If subsection (1) is contravened, the company, every officer of the company who is in default, and the founder member who signs the incorporation form for the purposes of section 14A(3), commit an offence, and each is liable to a fine and, for continued contravention, to a daily default fine.

(3) In any proceedings against a founder member for an offence under this section, it is a defence for the founder member to establish that he or she took all reasonable steps to secure compliance with subsection (1).”.

8. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding –

“18A(2)	Failing to deliver to the Registrar any consent to be a director	Summary	level 3	\$300”.
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PART 3

AMENDMENTS RELATING TO COMPANY NAME

9. Restriction on registration of companies by certain names

(1) Section 20 of the Companies Ordinance (Cap. 32) is amended by adding –

“(2A) Except with the consent of the Registrar, a company must not be registered by a name that is the same as a name for which a direction has been given under section 22 or 22A on or after the commencement of the Companies (Amendment) Ordinance 2010 (of 2010).”.

(2) Section 20(3) is amended by adding “or (2A)” after “(1)(a) or (b)”.

10. Change of name

(1) Section 22 is amended by adding –

“(3A) If in the opinion of the Registrar a company has been registered by a name by which, at the time of the registration, the company must not be registered under section 20(2), the Registrar may in writing, within 3 months after the time of the registration, direct the company to change the name within the period specified by the Registrar.

(3B) The Registrar may in writing direct a company to change, within the period specified by the Registrar, a name by which the company has been registered if the Registrar receives, from a person in whose favour an order is made by a court restraining the company from using the name or any part of the name –

(a) an office copy of the order; and

(b) a notice in the specified form.

(3C) In subsection (3B), “court” (法院) means any court of the Hong Kong Special Administrative Region of competent jurisdiction.”.

(2) Section 22(5) is amended by repealing “or (4)” and substituting “, (3A), (3B) or (4)”.

11. Power of Registrar to require company to abandon misleading name

(1) The heading of section 22A is amended by repealing “**abandon misleading name**” and substituting “**change misleading or offensive name, etc.**”.

(2) Section 22A is amended by adding –

“(1A) If in the opinion of the Registrar a company has been registered by a name by which, at the time of the registration, the company must not be registered under section 20(1)(c) or (d), the Registrar may direct the company to change the name.”.

12. Section 22AA added

The following is added –

“22AA. Power of Registrar to replace company name in case of failure to comply with direction

(1) This section applies if –

- (a) on or after the commencement of the Companies (Amendment) Ordinance 2010 (of 2010), the Registrar directs a company to change a name under section 22(2), (3A), (3B) or (4) or 22A(1) or (1A); and
- (b) the company fails to comply with the direction –

- (i) in the case of a direction under section 22(2), (3A), (3B) or (4), within the period specified by the Registrar or, if the period is extended under section 22(5), the extended period; and
- (ii) in the case of a direction under section 22A(1) or (1A), within the period specified in section 22A(2) or, if a period is specified by the court under section 22A(3) for the direction, the period specified by the court.

(2) Without limiting sections 22(6) and 22A(4), the Registrar may replace the name with –

- (a) if the name is in English, a new name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation;
- (b) if the name is in Chinese, a new name that consists of the Chinese characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; or
- (c) if the name is both in English and Chinese, a new name in English that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation, and in Chinese that consists of the

Chinese characters “公司註冊編號” as its prefix, followed by that registration number.

(3) On replacing the name with a new name, the Registrar must enter the new name on the register in place of the replaced name.

(4) The replacement takes effect on the date on which the new name is entered on the register under subsection (3).

(5) Within 30 days after entering the new name on the register, the Registrar must –

(a) by notice in writing notify the company of –

(i) the fact that a name of the company has been replaced with a new name; and

(ii) the date on which the replacement takes effect under subsection (4); and

(b) by notice in the Gazette notify that fact and that date.

(6) A replacement of a name of a company under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued against the company by the replaced name may be commenced or continued against it by its new name.”.

13. Punishment of offences under this Ordinance

The Twelfth Schedule is amended, in the entry relating to section 22A(4), in the second column, by adding “or offensive, etc.” after “misleading”.

PART 4

AMENDMENTS RELATING TO STATUTORY DERIVATIVE ACTIONS

14. Definition

(1) Section 168BA of the Companies Ordinance (Cap. 32) is amended by repealing “requires, “proceedings”” and substituting –

“requires –
“proceedings””.

(2) Section 168BA is amended, in the English text, in the definition of “proceedings”, by repealing “court.” and substituting “court;”.

(3) Section 168BA is amended by adding –

““related company” (有關連公司), in relation to a specified corporation, means –

- (a) a subsidiary of the corporation;
- (b) a holding company of the corporation; or
- (c) a subsidiary of a holding company of the corporation.”.

15. Members may bring or intervene in proceedings

(1) The heading of section 168BC is repealed and the following substituted –

“Bringing or intervening in proceedings on behalf of specified corporation”.

(2) Section 168BC(1) is amended by adding “or of a related company of a specified corporation” after “a specified corporation”.

(3) Section 168BC(3) is amended by adding “or on the application of a member of a related company of a specified corporation” after “a specified corporation”.

(4) Section 168BC(4) is amended by adding “, or any common law right of a member of a related company of a specified corporation,” after “a specified corporation”.

(5) Section 168BC(6) is amended by adding “, or of a related company of a specified corporation,” after “a specified corporation”.

16. Service of written notice

Section 168BD(1) is amended by adding “, or of a related company of a specified corporation,” after “a specified corporation”.

17. Court’s power to strike out proceedings brought or intervention in proceedings by members under common law

(1) The heading of section 168BE is repealed and the following substituted –

“Court’s power relating to proceedings brought or intervened in on behalf of specified corporation under common law”.

(2) Section 168BE(1) is amended by adding “, or of a related company of a specified corporation,” after “a specified corporation”.

18. Effect of approval or ratification

(1) Section 168BF(1)(a) is amended by adding “, or of a related company of the specified corporation,” after “the specified corporation”.

(2) Section 168BF(2) is amended by adding “, or of a related company of the specified corporation,” after “member of the specified corporation”.

19. General powers of court

Section 168BG(1) is amended by adding “, or of a related company of a specified corporation,” after “a specified corporation”.

20. Discontinuance or settlement

Section 168BJ is amended by adding “, or of a related company of a specified corporation,” after “specified corporation”.

PART 5

AMENDMENTS RELATING TO ELECTRONIC COMMUNICATIONS WITH REGISTRAR OF COMPANIES

21. Interpretation

Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding –

- ““digital signature” (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);
- “recognized certificate” (認可證書) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);”.

22. General provisions as to annual returns

(1) Section 109(1) is amended by repealing “signed by a director or the secretary of the company”.

(2) Section 109(1A) is amended by repealing “signed by a director or the secretary of the company”.

(3) Section 109 is amended by adding –

“(1C) A copy of an annual return forwarded for the purposes of subsection (1) or (1A) in relation to a company must –

- (a) if forwarded in the form of an electronic record –
- (i) be signed by a director or the secretary of the company; or
- (ii) contain an acknowledgment, by a person who is authorized by the company to deliver any document under this Ordinance on the company’s behalf and whose authorization has been notified to

the Registrar, to the effect that the person is authorized by a director or the secretary of the company to forward the copy; or

- (b) if forwarded in paper form, be signed by a director or the secretary of the company.”.

23. Register of directors and secretaries

(1) Section 158(4AA) is amended by repealing “, signed by the person, that he has accepted the appointment and that he” and substituting “that the person has accepted the appointment and that the person”.

(2) Section 158 is amended by adding –

“(4AB) A statement sent for the purposes of subsection (4AA) in relation to a person appointed as a director of a company must –

- (a) if sent in the form of an electronic record –
- (i) be signed by the person; or
 - (ii) contain an acknowledgment, by another person who is authorized by the person to deliver any document under this Ordinance on the person’s behalf and whose authorization has been notified to the Registrar, to the effect that that other person is authorized by the person to send the statement; or
- (b) if sent in paper form, be signed by the person.”.

(3) Section 158(5A) is amended by repealing “, signed by such person, that he has accepted his nomination and that he” and substituting “that the person has accepted the nomination and that the person”.

(4) Section 158 is amended by adding –

“(5B) A statement sent for the purposes of subsection (5A) in relation to a person nominated as a reserve director of a private company must –

(a) if sent in the form of an electronic record –

- (i) be signed by the person; or
 - (ii) contain an acknowledgment, by another person who is authorized by the person to deliver any document under this Ordinance on the person’s behalf and whose authorization has been notified to the Registrar, to the effect that that other person is authorized by the person to send the statement;
- or

(b) if sent in paper form, be signed by the person.”.

(5) Section 158(8) is amended by repealing “(4A) or (5A)” and substituting “(4AB), (4A), (5A) or (5B)”.

24. Documents delivered to Registrar to conform to certain requirements

(1) Section 346(2) is amended by repealing “; and any such notice shall be served by registered post”.

(2) Section 346 is amended by adding –

“(2A) A notice under subsection (2) must be served on a person –

- (a) by registered post addressed to the person;
or
- (b) if the person consents to the notice being served in the form of an electronic record –
 - (i) by electronic mail transmission to the person’s electronic mail address last known to the Registrar; or
 - (ii) by storing the notice in a system designated by the Registrar and by notifying the person that the notice is so stored.”.

25. Sections 346A and 346B added

The following are added –

“346A. Documents delivered to Registrar in form of electronic record

(1) Subject to subsection (4), where a provision of this Ordinance authorizes or requires a document to be delivered to the Registrar, the document is delivered for the purposes of the provision if it is delivered to the Registrar in the form of an electronic record that complies with any requirements that may be specified by the Registrar for the purposes of this section.

(2) Without limiting the powers of the Registrar under subsection (1), the Registrar may specify requirements regarding the following matters –

- (a) the format of an electronic record;

- (b) the manner in which an electronic record is to be authenticated, approved or certified; and
- (c) the system by which and the manner in which an electronic record is to be delivered.

(3) The Registrar may approve any sequence or combination of letters, characters, numbers or symbols selected by a person as a password for that person's use in any system designated by the Registrar for the purposes of this section.

(4) The Registrar may, by order published in the Gazette, exclude any document from the application of subsection (1) in relation to a provision of this Ordinance that authorizes or requires a document to be delivered to the Registrar.

(5) In this section, a reference to delivering a document includes sending, forwarding or producing the document and, in the case of a notice, giving the document.

346B. Signature of documents delivered to Registrar in form of electronic record

(1) Where a provision of this Ordinance authorizes or requires a person to sign a document that is to be delivered to the Registrar and the document is delivered in the form of an electronic record, the document is signed for the purposes of the provision if the person, for the purpose of authenticating, approving or certifying the document –

- (a) affixes a digital signature of the person to the document; or
- (b) includes with the document a password of the person approved under subsection (4).

(2) For the purposes of subsection (1)(a), a digital signature must be –

- (a) supported by a recognized certificate;

- (b) generated within the validity of that certificate;
and
- (c) used in accordance with the terms of that certificate.

(3) For the purposes of subsection (2)(a), a digital signature is supported by a recognized certificate if it is taken to be supported by that certificate for the purposes of the Electronic Transactions Ordinance (Cap. 553) under section 2(2) of that Ordinance.

(4) The Registrar may approve any sequence or combination of letters, characters, numbers or symbols selected by a person as a password for that person's use in any system designated by the Registrar for the purposes of this section.

(5) In subsection (2)(b), “within the validity of that certificate” (在該證書的有效期內) has the meaning given by section 6(2) of the Electronic Transactions Ordinance (Cap. 553).

(6) In this section, a reference to delivering a document includes sending, forwarding or producing the document and, in the case of a notice, giving the document.”.

26. Power of Registrar to refuse to register certain documents

Section 348(1)(c) is amended by adding “password included with the document,” after “on the document,”.

27. Section 348BA added

The following is added immediately after section 348B –

“348BA. Registrar may issue certificates in any manner

(1) The Registrar may issue a certificate under this Ordinance in any manner the Registrar thinks fit.

- (2) If a certificate is issued to a person in the form of an electronic record, the Registrar must send the record –
- (a) by electronic mail transmission to the person’s electronic mail address last known to the Registrar;
 - or
 - (b) by storing the certificate in a system designated by the Registrar and by notifying the person that the certificate is so stored.”.

PART 6

AMENDMENTS RELATING TO COMMUNICATIONS BY COMPANY TO ANOTHER PERSON (OTHER THAN REGISTRAR OF COMPANIES)

Division 1 – Companies Ordinance

28. Right to receive copies of balance sheets and directors’ and auditors’ reports

Section 129G of the Companies Ordinance (Cap. 32) is amended by adding immediately before subsection (1A) –

“(1AA) For the purposes of section 168BAH(3)(c), a notification is to be sent not less than 21 days before the date of the general meeting concerned.

(1AB) The period specified for the purposes of section 168BAH(3)(d)(i) is the period beginning not less than 21 days before the date of the general meeting concerned and ending on the date of the following general meeting in which documents required to be sent under subsection (1) are required to be laid before the company under this Ordinance or in accordance with a direction of the court.”.

29. Subheading repealed

The subheading immediately before section 141CH is repealed.

30. Circumstances in which listed companies may comply with section 129G by use of computer network

Section 141CH is repealed.

31. Part IVAAA added

The following is added immediately after section 168B –

“PART IVAAA

COMMUNICATIONS BY COMPANY TO ANOTHER
PERSON (OTHER THAN REGISTRAR)

168BAA. Interpretation

(1) In this Part –

“address” (地址) includes a number, or any sequence or combination of letters, characters, numbers or symbols of any language, used for the purpose of sending or receiving a document or information by electronic means;

“applicable provision” (適用條文) means a provision of this Ordinance that authorizes or requires the document or information to be sent or supplied, in writing or not, by a company to another person;

“business day” (營業日) means a day that is not –

- (a) a general holiday; or
- (b) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

“document” (文件) excludes a document that is issued for the purpose of any legal proceedings;

“information system” (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).

- (2) In this Part –
 - (a) a reference to sending a document –
 - (i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; and
 - (ii) excludes serving the document; and
 - (b) a reference to supplying information includes sending, delivering, forwarding or producing the information.
- (3) For the purposes of this Part –
 - (a) a document or information is sent or supplied in hard copy form if it is sent or supplied –
 - (i) in paper form; or
 - (ii) in a similar form capable of being read;
 - (b) a document or information is sent or supplied in electronic form if it is sent or supplied –
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and
 - (c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.
- (4) For the purposes of this Part, a person sends a document, or supplies information, by post if the person posts a prepaid envelope containing the document or information.

168BAB. Minimum period specified for purposes of sections 168BAG(4) and 168BAH(6)

(1) This section specifies the minimum period of the notice of revocation, in relation to an agreement between a company and another person, for the purposes of sections 168BAG(4) and 168BAH(6).

(2) The minimum period is whichever is the longer of the following –

- (a) a period of 7 days;
- (b) the period set out in subsection (3) or (4).

(3) If that other person is not a company, the period set out for the purposes of subsection (2)(b) is –

- (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
- (b) where that other person is a debenture holder of the company, the period specified for the purpose in the instrument creating the debenture; or
- (c) where that other person is not such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(4) If that other person is a company, the period set out for the purposes of subsection (2)(b) is –

- (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
- (b) where the company is a member of that other person, the period specified for the purpose in the person's articles;

- (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the period specified for the purpose in the instrument creating the debenture; or
- (d) where neither that other person nor the company is such a member or holder, the period specified for the purpose in any agreement between the person and the company.

168BAC. Period specified for purposes of sections 168BAG(7)(a) and 168BAH(10)(b)

- (1) This section specifies the period, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 168BAG(7)(a) and 168BAH(10)(b).
- (2) The period is whichever is the longer of the following –
 - (a) a period of 48 hours;
 - (b) the period set out in subsection (3) or (4).
- (3) If that other person is not a company, the period set out for the purposes of subsection (2)(b) is –
 - (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
 - (b) where that other person is a debenture holder of the company, the period specified for the purpose in the instrument creating the debenture; or
 - (c) where that other person is not such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(4) If that other person is a company, the period set out for the purposes of subsection (2)(b) is –

- (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
- (b) where the company is a member of that other person, the period specified for the purpose in the person's articles;
- (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the period specified for the purpose in the instrument creating the debenture; or
- (d) where neither that other person nor the company is such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(5) In calculating a period of hours mentioned in subsection (2)(a), any part of a day that is not a business day is to be disregarded.

168BAD. Time specified for purposes of sections 168BAF(5)(a) and 168BAG(7)(b)

(1) This section specifies the time, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 168BAF(5)(a) and 168BAG(7)(b).

(2) The time is whichever is the later of the following –

- (a) the time at which the document or information would be delivered in the ordinary course of post;
- (b) the time set out in subsection (3) or (4).

(3) If that other person is not a company, the time set out for the purposes of subsection (2)(b) is –

- (a) where that other person is a member of the company, the time specified for the purpose in the company's articles;
- (b) where that other person is a debenture holder of the company, the time specified for the purpose in the instrument creating the debenture; or
- (c) where that other person is not such a member or holder, the time specified for the purpose in any agreement between the person and the company.

(4) If that other person is a company, the time set out for the purposes of subsection (2)(b) is –

- (a) where that other person is a member of the company, the time specified for the purpose in the company's articles;
- (b) where the company is a member of that other person, the time specified for the purpose in the person's articles;
- (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the time specified for the purpose in the instrument creating the debenture; or
- (d) where neither that other person nor the company is such a member or holder, the time specified for the purpose in any agreement between the person and the company.

168BAE. Address specified for purposes of sections 168BAF(2)(b) and 168BAG(3)(b)(iii)

(1) This section specifies the address, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 168BAF(2)(b) and 168BAG(3)(b)(iii).

(2) Subject to subsections (3) and (4), the address is –

- (a) an address specified for the purpose by that other person generally or specifically; or
- (b) an address to which a provision of this Ordinance authorizes or requires the document or information to be sent or supplied.

(3) If that other person (whether or not a company) is a member, debenture holder, director or secretary of the company, the address is –

- (a) the address specified in subsection (2); or
- (b) the person's address as shown in the company's register of members, register of holders of debentures, or register of directors and secretaries.

(4) If that other person is a company and is not a person covered by subsection (3), the address is –

- (a) the address specified in subsection (2); or
- (b) its registered office.

(5) If the company is unable to obtain an address specified in subsection (2), (3) or (4), the address is that other person's address last known to the company.

168BAF. Communication in hard copy form

(1) This section applies if a document or information is sent or supplied, in hard copy form, by a company to another person other than the Registrar.

(2) The document or information is sent or supplied to that other person for the purposes of an applicable provision if the document or information is sent or supplied –

- (a) by hand to that other person; or
- (b) by hand or by post to an address specified in section 168BAE.

(3) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if it is signed by a director or secretary of the company or by an officer of the company authorized for the purpose.

(4) If the document or information is sent or supplied by a person on behalf of the company to another company, subsection (3) does not affect any provision of that other company's articles under which that other company may require reasonable evidence of the person's authority to act on behalf of the company for which the document or information is sent or supplied.

(5) If the document or information is sent or supplied to that other person for the purposes of an applicable provision, it is to be regarded as being received by that other person –

- (a) where the document or information is sent or supplied by post, at the time specified in section 168BAD; or
- (b) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

168BAG. Communication in electronic form

(1) Subject to subsection (2), this section applies if a document or information is sent or supplied, in electronic form, by a company to another person other than the Registrar.

(2) This section does not apply if the document or information is sent or supplied by the company to that other person by making it available on a website.

(3) The document or information is sent or supplied to that other person for the purposes of an applicable provision if –

- (a) that other person has agreed, generally or specifically, that the document or information may be sent or supplied to the person in electronic form and has not revoked the agreement;
- (b) the document or information is sent or supplied –
 - (i) by electronic means to an address specified for the purpose by that other person generally or specifically;
 - (ii) by hand to that other person; or
 - (iii) by hand or by post to an address specified in section 168BAE; and
- (c) the document or information is sent or supplied in a form, and by a means, that, in the company's reasonable opinion, will enable the recipient –
 - (i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and
 - (ii) to retain a copy of the document or information.

(4) That other person has not revoked the agreement for the purposes of subsection (3)(a) unless the person has given the company a notice of revocation of not less than the period specified in section 168BAB.

(5) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if –

- (a) the company's identity is confirmed in a manner specified by that other person; or
- (b) where no manner has been specified, the communication contains or is accompanied by a statement of the company's identity, and that other person has no reason to doubt the truth of the statement.

(6) If the document or information is sent or supplied by a person on behalf of the company to another company, subsection (5) does not affect any provision of that other company's articles under which that other company may require reasonable evidence of the person's authority to act on behalf of the company for which the document or information is sent or supplied.

(7) If the document or information is sent or supplied to that other person for the purposes of an applicable provision, it is to be regarded as being received by that other person –

- (a) where the document or information is sent or supplied by electronic means, at the end of the period specified in section 168BAC after it is sent or supplied;
- (b) where the document or information is sent or supplied by post, at the time specified in section 168BAD; or

- (c) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

168BAH. Communication by means of website

(1) Subject to subsection (2), this section applies if a document or information is sent or supplied by a company to another person other than the Registrar by making it available on a website.

(2) This section does not apply if the document or information is sent or supplied by a member of a company to the company.

(3) The document or information is sent or supplied to that other person for the purposes of an applicable provision if –

- (a) that other person –
 - (i) has agreed, generally or specifically, that the document or information may be sent or supplied by the company to the person by making it available on a website, or is regarded under subsection (4) or (5) as having so agreed; and
 - (ii) has not revoked the agreement;
- (b) the document or information is sent or supplied in a form, and by a means, that, in the company's reasonable opinion, will enable the recipient –
 - (i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and
 - (ii) to retain a copy of the document or information;

- (c) the company has notified that other person of the matters specified in subsection (8); and
- (d) the company has made the document or information available on the website throughout –
 - (i) the period specified by the applicable provision; or
 - (ii) where no period is specified, the period of 28 days beginning with the date on which the notification under paragraph (c) is sent to that other person.

(4) For the purposes of subsection (3)(a)(i), a person who is a member of the company is regarded as having agreed that the document or information may be sent or supplied by the company to the person by making it available on a website if –

- (a) the company's members have resolved, or the company's articles contain a provision to the effect, that documents or information generally may be so sent or supplied by the company to its members;
- (b) the company has individually requested the person to agree that documents or information generally, or the document or information, may be so sent or supplied by the company to the person and has not received a response to the request within 28 days beginning with the date on which the request was sent; and
- (c) the request –
 - (i) stated clearly the effect of a failure to respond within those 28 days; and

- (ii) was sent at least 12 months after a prior request made to the person for the purposes of paragraph (b) in respect of the same or a similar class of documents or information.

(5) For the purposes of subsection (3)(a)(i), a person who is a debenture holder of the company is regarded as having agreed that the document or information may be sent or supplied by the company to the person by making it available on a website if –

- (a) the instrument creating the debenture contains a provision to the effect, or the equivalent debenture holders have resolved in accordance with the provisions of that instrument, that documents or information generally may be so sent or supplied by the company to those holders;
- (b) the company has individually requested the person to agree that documents or information generally, or the document or information, may be so sent or supplied by the company to the person and has not received a response to the request within 28 days beginning with the date on which the request was sent; and
- (c) the request –
 - (i) stated clearly the effect of a failure to respond within those 28 days; and
 - (ii) was sent at least 12 months after a prior request made to the person for the purposes of paragraph (b) in respect of the same or a similar class of documents or information.

(6) That other person has not revoked the agreement for the purposes of subsection (3)(a)(ii) unless the person has given the company a notice of revocation of not less than the period specified in section 168BAB.

(7) For the purposes of subsection (3)(c), if the applicable provision specifies the time by which or the period within which the notification is to be sent, the notification must be sent by that time or within that period.

(8) The matters specified for the purposes of subsection (3)(c) are –

- (a) the presence of the document or information on the website;
- (b) if the document or information is not available on the website on the date of the notification, the date on which it will be so available;
- (c) the address of the website;
- (d) the place on the website where the document or information may be accessed; and
- (e) how to access the document or information.

(9) For the purposes of subsection (3)(d), a failure to make a document or information available on a website throughout the period mentioned in that subsection is to be disregarded if –

- (a) the document or information is made available on the website for part of that period; and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(10) If the document or information is sent or supplied to that other person for the purposes of an applicable provision –

- (a) it is to be regarded as being sent or supplied on whichever is the later of the following –
 - (i) the date on which the document or information is first made available on the website;
 - (ii) the date on which a notification under subsection (3)(c) is sent; and
- (b) it is to be regarded as being received by that other person at the end of the period specified in section 168BAC after whichever is the later of the following –
 - (i) the time when the document or information is first made available on the website;
 - (ii) the time when that other person receives a notification under subsection (3)(c).

(11) In subsection (5), “equivalent debenture holders” (相應債權證持有人), in relation to a person to whom a document or information is sent or supplied by a company, means the debenture holders of the company ranking equally for all purposes with the person.

168BAI. Member or debenture holder may require hard copy

(1) A member or debenture holder of a company may, within 28 days after the date of receiving from the company a document or information, otherwise than in hard copy form, request the company to send or supply to the member or holder the document or information in hard copy form.

(2) The company must send or supply to the member or holder the document or information in hard copy form, free of charge –

- (a) within 21 days after the date of receiving the request; or
- (b) if the document or information requires an action to be taken by the member or holder on or before a date, at least 7 days before the date.

(3) Subsection (2)(b) does not apply unless the member or holder makes a request under subsection (1) at least 14 days before the date mentioned in subsection (2)(b).

(4) If a company contravenes subsection (2), the company, and every officer of the company who is in default, commit an offence, and each is liable to a fine.”.

32. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding –

“168BAI(4)	Company failing to send or supply documents or information in hard copy form	Summary	level 3	\$300”.
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Division 2 – Companies (Revision of Accounts and Reports) Regulation

33. Distribution of revised accounts or directors’ reports

Section 12 of the Companies (Revision of Accounts and Reports) Regulation (Cap. 32 sub. leg. N) is amended by adding –

“(3A) For the purposes of section 168BAH(3)(c) of the Ordinance, a notification is to be sent within 28 days after the date of revision concerned.

(3B) The period specified for the purposes of section 168BAH(3)(d)(i) of the Ordinance is the period beginning on a date falling within 28 days after the date of revision concerned and ending on the date of the following general meeting in which relevant financial documents are required to be laid before the listed company under the Ordinance or in accordance with a direction of the court.”.

34. Notifying recipients of summary financial reports after revision of accounts

Section 13 is amended by adding –

“(4A) For the purposes of section 168BAH(3)(c) of the Ordinance, a notification is to be sent within 28 days after the date of revision concerned.

(4B) The period specified for the purposes of section 168BAH(3)(d)(i) of the Ordinance is the period beginning on a date falling within 28 days after the date of revision concerned and ending on the date of the following general meeting in which relevant financial documents are required to be laid before the listed company under the Ordinance or in accordance with a direction of the court.”.

35. Documents sent under section 12 or 13 by use of computer network

Section 14 is repealed.

PART 7

**AMENDMENTS RELATING TO PAPERLESS HOLDING AND
TRANSFER OF SHARES AND DEBENTURES**

Division 1 – Companies Ordinance

36. Interpretation

Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding –

““prescribed securities” (訂明證券) has the meaning given by section 397(5) of the Securities and Futures Ordinance (Cap. 571);

“Scripless Rules” (《無紙化規則》) means rules made under section 397(1A) of the Securities and Futures Ordinance (Cap. 571);”.

37. Nature of shares

(1) Section 65 is amended by renumbering it as section 65(1).

(2) Section 65(1) is amended by repealing “, transferable in manner provided by the articles of the company,”.

(3) Section 65 is amended by adding –

“(2) The shares or other interest of any member in a company are transferable in the manner provided by the articles of the company subject, for shares or other interest that are prescribed securities, to the Scripless Rules.”.

38. Numbering of shares

Section 65A(3) is amended by repealing “the share certificates” and substituting “any share certificates”.

39. Transfer not to be registered except on production of instrument of transfer

(1) Section 66 is amended by renumbering it as section 66(1).

(2) Section 66(1) is amended by repealing everything after “delivered to the company” and substituting a full stop.

(3) Section 66 is amended by adding –

“(2) Subsection (1) does not apply to a transfer, made in accordance with the Scripless Rules, of shares or debentures that are prescribed securities.

(3) Subsection (1) does not affect any power of the company to register as a shareholder or debenture holder any

person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.”.

40. Transfer by personal representative

Section 67 is amended by repealing everything after “made by” and substituting “the member’s personal representative is as valid as if the personal representative’s name were, at the time of the transfer, entered in the register of members of the company as a holder of the share or interest.”.

41. Duties of company with respect to issue of certificates

(1) Section 70(1) is amended by repealing everything after “so allotted,” and substituting –

“unless –

- (a) the shares, debentures or debenture stock are prescribed securities that are allotted in accordance with the Scripless Rules; or
- (b) if the shares, debentures or debenture stock are not prescribed securities, the conditions of issue of the shares, debentures or debenture stock otherwise provide.”.

(2) Section 70(1A) is amended by repealing everything after “so transferred,” and substituting –

“unless –

- (a) the shares, debentures or debenture stock are prescribed securities that are transferred in accordance with the Scripless Rules; or
- (b) if the shares, debentures or debenture stock are not prescribed securities, the

conditions of issue of the shares, debentures or debenture stock otherwise provide.”.

42. Certificate to be evidence of title

- (1) Section 71 is amended by renumbering it as section 71(1).
- (2) Section 71 is amended by adding –
 - “(2) Subsection (1) does not affect section 102.”.

43. Register of members

- (1) Section 95 is amended by adding –
 - “(1A) If a company’s share capital is divided into different classes of shares and any of those shares are prescribed securities, the company must also enter in the register of members –
 - (a) a statement that its share capital is divided into different classes of shares;
 - (b) the nominal value of, and the voting rights attached to, the shares of each class;
 - (c) in relation to a class of shares (other than shares described as preference shares or preferred shares) the holders of which are not entitled to vote at a general meeting of the company, the words “non voting” or the Chinese characters “無表決權”; and
 - (d) any other matters that are required by the Scripless Rules to be entered in that register.”.
- (2) Section 95 is amended by adding –
 - “(5) Where a company makes default in complying with subsection (1A), the company, and every officer of the

company who is in default, commit an offence, and each is liable to a fine and, for continued default, to a daily default fine.”.

44. Register to be evidence

Section 102 is amended by adding –

“(1A) Without limiting subsection (1), in the absence of evidence to the contrary, an entry in the register of members recording a person as holding any share is proof of the person’s title to the share.”.

45. Provisions relating to acquisition of minority shares after successful take-over offer

(1) Paragraph 7 of the Ninth Schedule is amended by repealing everything after “those shares” and substituting a full stop.

(2) The Ninth Schedule is amended by adding –

“7A. An instrument of transfer is not required under paragraph 7(a) for –

(a) any share for which a share warrant is for the time being outstanding; or

(b) any share that is a prescribed security, if the transfer of the share is made in accordance with the Scripless Rules.”.

46. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding –

“95(5)	Company failing to enter the required matters in the company’s register of members	Summary	level 3	\$300”.
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Division 2 – Companies (Winding-up) Rules

47. Forms

Form 73 of the Appendix to the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) is amended by repealing “. If you do not attend personally you must forward the share certificate” and substituting “of the shares or, if the shares are prescribed securities in uncertificated form within the meaning given by section 397(6) of the Securities and Futures Ordinance (Cap. 571), other evidence of your title to the shares. If you do not attend personally you must forward the share certificate or the evidence (as the case may be)”.

Division 3 – Securities and Futures Ordinance

48. Rules by Commission

(1) Section 397 of the Securities and Futures Ordinance (Cap. 571) is amended by adding –

- “(1A) The Commission may make rules to –
- (a) specify any listed securities not to be prescribed securities, and any other securities to be prescribed securities, for the purposes of rules made under this subsection;
 - (b) provide for the maintaining of registers or other records in respect of holders of prescribed securities, or for otherwise recording or evidencing title to such securities;
 - (c) specify the classes or descriptions of transfer of prescribed securities that may be made without an instrument of transfer;

- (d) provide for the transfer of prescribed securities without an instrument of transfer;
- (e) provide for the issuing of certificates on an allotment or transfer of prescribed securities; and
- (f) provide for the dematerialization and rematerialization of prescribed securities.

(1B) Rules may be made under subsection (1A)(c) only after consultation with the Financial Secretary.”.

(2) Section 397(2) is amended by repealing “subsection (1)” and substituting “subsections (1) and (1A)”.

(3) Section 397 is amended by adding –

“(5) In subsection (1A) –

“dematerialization” (去實物化) means the process of converting prescribed securities from certificated form into uncertificated form;

“prescribed securities” (訂明證券) means any securities –

(a) that are listed, except those specified by rules made under subsection (1A) not to be prescribed securities; or

(b) that are specified to be prescribed securities by rules made under subsection (1A);

“rematerialization” (復實物化) means the process of converting prescribed securities from uncertificated form into certificated form.

(6) For the purposes of subsection (5) –

- (a) prescribed securities are in uncertificated form if the title to them is, in accordance with rules made under subsection (1A), recorded or evidenced otherwise than in paper form; and
- (b) prescribed securities are in certificated form if they are not in uncertificated form.”.

PART 8

MISCELLANEOUS AMENDMENTS

49. Power to dispense with certain words in name of charitable and other companies

(1) Section 21(2) of the Companies Ordinance (Cap. 32) is amended by repealing “subsections (4) and (5)” and substituting “subsections (7) and (8)”.

(2) Section 21(8)(b) is amended by repealing “subsections (4) and (5)” and substituting “subsections (7) and (8)”.

50. Power of Registrar to require company to change misleading or offensive name, etc.

Section 22A(5) is amended by repealing “Subsections (4) and (5)” and substituting “Subsections (7) and (8)”.

51. Non voting shares and shares with different voting rights

Section 57A(1) is amended by repealing “and those words” and substituting “or the Chinese characters “無表決權” and those words or characters”.

52. Approval of company required for allotment of shares by directors

Section 57B is amended, in the Chinese text, by repealing subsection (7) and substituting –

“(7) 本條並不影響任何股份分配的有效性；此外，凡公司的創辦成員藉簽署章程大綱，同意承購公司股份，本條不規定須獲得批准，方可將該等股份分配予該等成員。”

53. Power to close register of members and register of debenture holders

(1) Section 99(1) is amended by repealing “by advertisement in a newspaper circulating generally in Hong Kong” and substituting “in accordance with subsection (1A)”.

(2) Section 99 is amended by adding –

“(1A) A notice for the purposes of subsection (1) –

(a) if the company is a listed company, is to be given –

(i) in accordance with the listing rules applicable to the stock market; or

(ii) by advertisement in a newspaper circulating generally in Hong Kong; and

(b) in the case of any other company, is to be given by advertisement in a newspaper circulating generally in Hong Kong.”.

(3) Section 99 is amended by adding –

“(5) In subsection (1A), “listing rules” (《上市規則》) means the rules made under section 23 of the Securities and

Futures Ordinance (Cap. 571) by a recognized exchange company that govern the listing of securities on a stock market it operates.”.

54. Register to be evidence

(1) The heading of section 102 is amended by repealing “**evidence**” and substituting “**proof**”.

(2) Section 102(1) is repealed and the following substituted –

“(1) In the absence of evidence to the contrary, the register of members is proof of any matters that are by this Ordinance directed or authorized to be inserted in it.”.

55. Interpretation of provisions as to prospectuses

Section 343(2) is amended, in the Chinese text, by repealing “委託人” and substituting “主理人”.

56. Power to make regulations

(1) Section 359A(4)(c)(i) is amended, in the Chinese text, by adding “第” before “129G”.

(2) Section 359A(4)(c)(i) is amended, in the Chinese text, by adding “第” before “109”.

57. First Schedule amended

(1) Regulation 92 of Part I of Table A in the First Schedule is amended, in the Chinese text, by repealing “抽簽” and substituting “抽籤”.

(2) Article 1 of Table C in the First Schedule is amended, in the English text, in the definition of “Ordinance”, by repealing the full stop and substituting a semicolon.

(3) Article 1 of Table C in the First Schedule is amended, in the English text, in the definition of “seal”, by repealing the full stop and substituting a semicolon.

(4) Article 39 of Table C in the First Schedule is amended, in the Chinese text, by repealing “抽籤” and substituting “抽籤”.

Explanatory Memorandum

This Bill amends the Companies Ordinance (Cap. 32) (“the Ordinance”) and its subsidiary legislation for the following main purposes –

- (a) to streamline the company formation procedures;
- (b) to extend the powers of the Registrar of Companies (“the Registrar”) to direct a change of company name;
- (c) to enable statutory derivative actions to be brought or intervened in on behalf of a specified corporation, namely a company or non-Hong Kong company, under Part IVAA of the Ordinance by a member of a subsidiary or holding company of the corporation or by a member of a subsidiary of a holding company of the corporation;
- (d) to provide for electronic communications with the Registrar and for the modes of communications by a company to any person other than the Registrar;
- (e) to remove obstacles to the introduction of paperless holding and transfer of shares and debentures,

and makes related and miscellaneous amendments to the Ordinance and its subsidiary legislation and the Securities and Futures Ordinance (Cap. 571).

Part 1 – Preliminary

2. Clause 1 provides for the short title of the Bill (when enacted).
3. Clause 2 empowers the Secretary for Financial Services and the Treasury to appoint a day for the Bill (when enacted) to come into operation.

Part 2 – Amendments Relating to Company Formation

4. Clauses 3 and 4 amend sections 6 and 12 of the Ordinance respectively to dispense with the requirements that the signing of any memorandum of association and articles of association by a founder member must be witnessed.
5. Section 14A of the Ordinance presently provides that, if 2 or more founder members are named in an incorporation form, the form is to be signed by the 2 or any 2 of those members. Clause 5 amends that section to reduce the number of founder members required to sign an incorporation form from 2 to one. Also, clause 5 amends that section to require additional particulars to be given in an incorporation form and to empower the Financial Secretary to amend section 14A(2) of the Ordinance.
6. Clause 6 amends section 18 of the Ordinance to require the founder member who signs an incorporation form to sign the relevant statement of compliance and to certify as to the particulars contained in the form.
7. Clause 7 adds a new section 18A to the Ordinance. The new section requires consents given for the purposes of the new section 14A(2)(l)(ii) of the Ordinance to be delivered to the Registrar. Contravening the requirement is an offence under the new section 18A of the Ordinance. Clause 8 amends the Twelfth Schedule to the Ordinance to provide for the penalty level for the offence.

Part 3 – Amendments Relating to Company Name

8. The main object of Part 3 is to extend the Registrar's powers to direct a change of company name. Clause 9 adds a new section 20(2A) to the Ordinance. The new section prohibits a company from being registered by a name that is the same as a name for which a direction has been given under section 22 or 22A of the Ordinance.
9. The Registrar currently has powers under sections 22 and 22A of the Ordinance to direct a company to change a company name. Clauses 10 and 11 amend sections 22 and 22A of the Ordinance respectively to empower the Registrar to give a direction in more circumstances.

10. Contravention of a direction to change a company name is currently an offence under the Ordinance. Clause 12 adds a new section 22AA to the Ordinance to provide that, as an additional consequence of a contravention, the Registrar may replace the relevant company name by a new name. Clause 13 amends the Twelfth Schedule to the Ordinance to incorporate the changed heading of section 22A of the Ordinance.

Part 4 – Amendments Relating to Statutory Derivative Actions

11. Part IVAA of the Ordinance currently provides that proceedings against a specified corporation may be brought or intervened in by a member of the corporation. Clauses 14, 15, 16, 17, 18, 19 and 20 amend Part IVAA of the Ordinance to enable a member of a related company of a specified corporation to bring or intervene in such proceedings. A related company of a specified corporation is a subsidiary or holding company of the corporation or a subsidiary of a holding company of the corporation.

Part 5 – Amendments Relating to Electronic Communications with Registrar

12. Clause 21 amends section 2 of the Ordinance to add certain definitions. Those definitions are necessary for interpreting the provisions of the Ordinance as proposed to be amended by Part 5.

13. Clauses 22 and 23 amend sections 109 and 158 of the Ordinance respectively to provide for the signature of the documents required under those sections.

14. Clause 24 amends section 346 of the Ordinance to enable the Registrar to serve a notice under section 346(2) of the Ordinance on any person in the form of an electronic record.

15. Clause 25 adds new sections 346A and 346B to the Ordinance to provide for the delivery of documents to the Registrar in the form of an electronic record and for the signing of those documents.

16. Clause 26 amends section 348(1)(c) of the Ordinance to empower the Registrar to refuse to register or accept for registration any document delivered to the Registrar under the Ordinance if any password included with the document is incomplete or altered.

17. Clause 27 adds a new section 348BA to the Ordinance. The new section empowers the Registrar to issue a certificate under the Ordinance in any manner the Registrar thinks fit.

Part 6 – Amendments Relating to Communications by Company to Another Person (other than Registrar)

18. The main object of Part 6 is to add a new Part IVAAA to the Ordinance to provide for the manner in which documents or information is to be sent or supplied by a company to any person other than the Registrar under the Ordinance or its subsidiary legislation.

Part 7 – Amendments Relating to Paperless Holding and Transfer of Shares and Debentures

19. Part 7 amends the Ordinance, the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) and the Securities and Futures Ordinance (Cap. 571) to remove obstacles to the introduction of paperless holding and transfer of shares and debentures.

Part 8 – Miscellaneous Amendments

20. Part 8 contains miscellaneous amendments to the Ordinance. Clauses 49, 50, 51, 54, 56 and 57 make textual amendments to certain provisions of the Ordinance. Clauses 52 and 55 seek to remove discrepancies in meaning between the English and Chinese texts of sections 57B and 343 of the Ordinance respectively. Clause 53 amends section 99 of the Ordinance to provide for an alternative means of closing the registers of members and registers of debenture holders under that section.

BUSINESS REGISTRATION (AMENDMENT) BILL 2010

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A BILL

To

Amend the Business Registration Ordinance to provide for simultaneous business registration applications on incorporation or application for non-Hong Kong company registration under the Companies Ordinance, to provide for electronic transactions for business registration, and to make miscellaneous amendments; and to make related and consequential amendments to other Ordinances.

Enacted by the Legislative Council.

PART 1

SHORT TITLE AND COMMENCEMENT

1. Short title

This Ordinance may be cited as the Business Registration (Amendment) Ordinance 2010.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

PART 2

AMENDMENTS TO BUSINESS REGISTRATION ORDINANCE

3. Interpretation

(1) Section 2 of the Business Registration Ordinance (Cap. 310) is amended, in the heading, by adding “**and application**” after “**Interpretation**”.

(2) Section 2(1) is amended by repealing the definition of “levy” and substituting –

““levy” (徵費) means an amount prescribed in item 3 of the Table in Schedule 2 and determined in accordance with sections 3 and 4 of that Schedule;”.

(3) Section 2(1) is amended, in paragraph (b) of the definition of “place of business”, by repealing “Registrar of Companies” and substituting “Registrar”.

(4) Section 2(1) is amended by repealing the definition of “prescribed branch registration fee” and substituting –

““prescribed branch registration fee” (訂明的分行登記費) means a fee prescribed in item 2 of the Table in Schedule 2 and determined in accordance with section 2 of that Schedule;”.

(5) Section 2(1) is amended by repealing the definition of “prescribed business registration fee” and substituting –

““prescribed business registration fee” (訂明的商業登記費) means a fee prescribed in item 1 of the Table in Schedule 1 and determined in accordance with section 2 of that Schedule;”.

(6) Section 2(1) is amended by adding –

““branch registration application” (分行登記申請) means an application under section 5(3);

“business registration application” (商業登記申請) means an application under section 5(1);

“company registration application” (公司註冊申請) means an application for registration under section 333 of the Companies Ordinance (Cap. 32);

“electronic record” (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“function” (職能) includes a power and a duty;

“incorporation application” (成立法團申請) means an application to form an incorporated company under section 14A of the Companies Ordinance (Cap. 32);

“incorporation form” (法團成立表格) has the meaning given by section 14A(1) of the Companies Ordinance (Cap. 32);

“non-Hong Kong company” (非香港公司) means a company incorporated outside Hong Kong;

“non-Hong Kong company registration form” (非香港公司註冊表格) means the specified form referred to in section 333(1) of the Companies Ordinance (Cap. 32);

“Registrar” (處長) means the Registrar of Companies appointed under section 303(2) of the Companies Ordinance (Cap. 32);

“Secretary” (政策局局長) means the Secretary for Financial Services and the Treasury;

“simultaneous business registration application” (同步商業登記申請) means a business registration application deemed to have been made under section 5A(2)(a) or 5B(2);”.

(7) Section 2(1A) is amended by adding “any deemed cessation of business under section 6(4F) or” before “any notification”.

(8) Section 2 is amended, by adding –

“(1C) This Ordinance applies to –

(a) a person who makes an incorporation application; and

(b) a person who makes a company registration application.”.

(9) Section 2(2) is repealed and the following substituted –

“(2) The functions conferred on the Commissioner under this Ordinance may be performed by any officer of the

Inland Revenue Department authorized by the Commissioner, either generally or particularly, subject to the instructions of the Commissioner.

(3) The following functions may be performed by any officer of the Companies Registry authorized by the Registrar, either generally or particularly, subject to the instructions of the Registrar –

- (a) functions authorized under this Ordinance to be performed by the Registrar on behalf of the Commissioner;
- (b) functions delegated by the Commissioner to the Registrar under this Ordinance;
- (c) functions conferred on the Registrar under this Ordinance.”.

4. Official secrecy

(1) Section 4(1) is repealed and the following substituted –

“(1) Except in the performance of the functions referred to in subsection (1A), an officer of the Inland Revenue Department, or of the Companies Registry –

- (a) must preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that may come to the officer’s notice solely in the performance of any function under this Ordinance;
- (b) must not communicate any such matter to any person other than –
 - (i) the person to whom such matter relates;

- (ii) the executor of the person referred to in subparagraph (i); or
 - (iii) the authorized representative of the person referred to in subparagraph (i) or the executor;
- and

- (c) must not allow any person to have access to any record relating to any such matter in the possession, custody or control of the Commissioner or the Registrar.

(1A) The functions are –

- (a) in relation to an officer of the Inland Revenue Department, functions under the Inland Revenue Ordinance (Cap. 112) or under this Ordinance; and
- (b) in relation to an officer of the Companies Registry, functions under this Ordinance.”.

(2) Section 4(2) is amended by repealing “Every officer of the Inland Revenue Department shall,” and substituting “An officer of the Inland Revenue Department, or of the Companies Registry, must,”.

(3) Section 4(3) is repealed and the following substituted –

“(3) Except as may be necessary for the purpose referred to in subsection (3A), no officer of the Inland Revenue Department, or of the Companies Registry, may be required –

- (a) to divulge or communicate to any court any matter or thing coming to the officer’s notice solely in the performance of any function under this Ordinance; or
- (b) to produce in any court any document pertaining to such matter or thing other

than a document required to be kept by the Commissioner under this Ordinance.

(3A) The purpose is –

- (a) in relation to an officer of the Inland Revenue Department, to carry into effect the provisions of the Inland Revenue Ordinance (Cap. 112) or of this Ordinance; and
- (b) in relation to an officer of the Companies Registry, to carry into effect the provisions of this Ordinance.”.

(4) Section 4(5) is amended by adding “or of the Companies Registry” after “Inland Revenue Department”.

(5) Section 4(6) is amended by repealing “that department” and substituting “the Audit Commission”.

5. Application for registration

(1) Section 5(1A) is amended by repealing “an application under subsection (1)” and substituting “a business registration application”.

(2) Section 5(1B) is amended by repealing everything from “An application” to “be deemed” and substituting “On making a business registration application, if names under which the same business is carried on, other than those mentioned in subsection (1A), are submitted to the Commissioner, the names are for the purposes of this Ordinance deemed”.

(3) Section 5(2) is amended by repealing “An application under subsection (1)” and substituting “A business registration application”.

(4) Section 5(4) is amended by repealing “An application under subsection (3)” and substituting “A branch registration application”.

(5) Section 5 is amended by adding –

“(6) Subsection (2) does not apply to a simultaneous business registration application.”.

6. Sections 5A to 5D added

The following are added –

“5A. Simultaneous business registration applications of companies incorporated under Companies Ordinance

(1) At the time an incorporation application is made, the applicant must –

- (a) pay to the Commissioner the prescribed business registration fee and levy; and
- (b) deliver a notice in a form specified by the Commissioner under section 5D(1), to indicate whether the applicant intends that the company to be formed will make an election under section 6(5C)(c).

(2) If the applicant complies with subsection (1), on the incorporation of the company –

- (a) the company is deemed to have made a business registration application; and
- (b) if the applicant has, under subsection (1)(b), indicated the intent to make an election under section 6(5C)(c), the company is deemed to have made an election under section 6(5C)(c).

5B. Simultaneous business registration applications of non-Hong Kong companies

(1) At the time a company registration application is made, the non-Hong Kong company concerned must –

- (a) pay to the Commissioner the prescribed business registration fee and levy; and
- (b) deliver a notice in a form specified by the Commissioner under section 5D(1) –
 - (i) to submit the particulars prescribed in regulations made under section 14; and
 - (ii) to make an election under section 6(5C)(c) if the company intends to do so.

(2) If the non-Hong Kong company complies with subsection (1), the company is deemed to have made a business registration application.

(3) Subsections (1) and (2) do not apply to a non-Hong Kong company if the business carried on by the company is already registered, or deemed to be registered, under section 6; however, when the company delivers the non-Hong Kong company registration form to the Registrar, the company must deliver a notice in a form specified by the Commissioner under section 5D(1) to indicate that the business is so registered.

5C. Registrar to perform certain functions in relation to simultaneous business registration applications

(1) The Registrar is to perform the following functions for and on behalf of the Commissioner in relation to simultaneous business registration applications –

- (a) collecting prescribed business registration fees and levies under sections 5A(1)(a) and 5B(1)(a) and refunding those fees and levies under section 7A(2)(a) or (4);
- (b) receiving notices under sections 5A(1)(b) and 5B(1)(b) and (3);

- (c) assigning identifying numbers;
- (d) issuing business registration certificates under section 6(3);
- (e) giving notification under section 6(4A) of the Commissioner's decisions.

(2) The Commissioner may delegate to the Registrar any other function under this Ordinance in relation to simultaneous business registration applications either generally or particularly.

(3) Subsection (1) or a delegation under subsection (2) does not prevent or restrict the concurrent performance of the function by the Commissioner.

(4) A function performed by the Registrar under subsection (1) or under a delegation under subsection (2) is deemed to be performed by the Commissioner.

(5) In respect of a simultaneous business registration application, the Registrar must transmit to the Commissioner –

- (a) all information submitted in notices under sections 5A(1)(b) and 5B(1)(b) and (3); and
- (b) the particulars prescribed in regulations made under section 14.

(6) Except as otherwise provided by this Ordinance, a simultaneous business registration application is to be processed in the same manner as if it was made under section 5(1).

5D. Notices in specified form

(1) The Commissioner may specify any form to be used for a notice under section 5A(1)(b) or 5B(1)(b) or (3), and the Registrar must make copies of any such form available during office hours at the office of the Registrar and through any other means that the Registrar considers appropriate.

(2) A notice under section 5A(1)(b) or 5B(1)(b) or (3) must be delivered to the Commissioner, through the Registrar, in the same manner as the related incorporation form or non-Hong Kong company registration form.

(3) If the related incorporation form or non-Hong Kong company registration form is delivered to the Registrar in the form of an electronic record, the notice must also be delivered to the Registrar in the form of an electronic record that complies with any requirement that may be specified by the Registrar for the purposes of this section.

(4) Without limiting the powers of the Registrar under subsection (3), the Registrar may specify requirements regarding the following matters –

- (a) the format of an electronic record;
- (b) the manner in which an electronic record is to be authenticated or certified; and
- (c) the system by which and the manner in which an electronic record is to be delivered.”.

7. Registration of business and issue of business registration certificate

(1) Section 6 is amended, in the Chinese text, by repealing the heading and substituting “**登記業務及發出商業登記證**”.

(2) Section 6(1) is repealed and the following substituted –

“(1) The Commissioner must register each business for which a business registration application is made or is deemed to be made under this Ordinance as soon as practicable after the prescribed business registration fee and levy are paid.”.

(3) Section 6(1A) is repealed and the following substituted –

“(1A) The Commissioner must register each branch of a business for which a branch registration application is made under

this Ordinance as soon as practicable after the prescribed branch registration fee and levy are paid.”.

- (4) Section 6(3) is repealed and the following substituted –

“(3) The Commissioner must issue a business registration certificate for the relevant business as soon as practicable after –

- (a) the Commissioner has decided to register the business;
- (b) the prescribed business registration fee and levy are paid under section 7 or under an order of a magistrate made under section 15; or
- (c) an exemption is granted under section 9.”.

- (5) Section 6(3A) is repealed and the following substituted –

“(3A) The Commissioner must issue a branch registration certificate for the relevant branch of a business as soon as practicable after –

- (a) the Commissioner has decided to register the branch; or
- (b) the prescribed branch registration fee and levy are paid under section 7 or under an order of a magistrate made under section 15.”.

- (6) Section 6 is amended by adding –

“(3B) A business registration certificate under subsection (3) or a branch registration certificate under subsection (3A) may be issued in any manner the Commissioner thinks fit.

(3C) Without limiting the powers of the Commissioner under subsection (3B), the Commissioner may issue a certificate in the form of an electronic record.”.

(7) Section 6(4A) is repealed and the following substituted –

“(4A) If the Commissioner has decided not to register a business or a branch of a business for any of the reasons specified in subsection (4) –

- (a) the Commissioner must notify the applicant concerned in writing of the decision and the reason for it; and
- (b) if the decision is made for the reason specified in subsection (4)(b) or (c), the applicant must make a new business registration application or branch registration application, as the case may be, under a different name within 1 month of the notification.”.

(8) Section 6(4D) is repealed and the following substituted –

“(4D) If –

- (a) at any time after a business or a branch of a business has been registered it appears to the Commissioner that the business or branch should not have been registered for the reason specified in subsection (4)(b) or (c); or
- (b) on notification of a change of the name of a business or a branch of a business under section 8(1), (1A)(b) or (1B) or on the submission of the name of a business under section 8(1A)(a), it appears to the Commissioner that the business or branch should not be registered under the new

name for the reason specified in subsection (4)(b) or (c),

the Commissioner must issue a notice to the person carrying on the business or branch requesting the person to notify the Commissioner in writing, within 3 months of the issue of that notice, of a change to a different name that does not fall within the description in subsection (4)(b) or (c).”.

(9) Section 6(4F) is amended by repealing “Where a new application for registration of a business or a branch of a business under a different name is not made” and substituting “If no notification of a change to a different name that does not fall within the description in subsection (4)(b) or (c) is given”.

(10) Section 6(5C)(a) is amended by repealing “or” at the end.

(11) Section 6(5C)(b) is amended by repealing “an application for the registration of the business under section 5(1)” and substituting “a business registration application for the business”.

(12) Section 6(5C)(b) is amended by repealing the comma at the end and substituting “; or”.

(13) Section 6(5C) is amended by adding –

“(c) in relation to a simultaneous business registration application.”.

(14) Section 6(5C) is amended, in the Chinese text, by repealing everything from “藉以作出選擇” to “適用商業登記證” and substituting “作出選擇，表示如在其後任何時間，有任何適用商業登記證就該項業務”.

(15) Section 6(7) is amended by repealing “an application for registration under section 5(1)” and substituting “a business registration application”.

8. Payment of fees

(1) Section 7(1)(a) is amended by repealing “fee prescribed in item 1 of Schedule 1” where it twice appears and substituting “prescribed business registration fee”.

(2) Section 7(1)(b) is amended by repealing “fee prescribed in item 2 of Schedule 2” where it twice appears and substituting “prescribed branch registration fee”.

9. Section 7A added

The following is added –

“7A. Refund of prescribed business registration fees, prescribed branch registration fees or levies

(1) Any prescribed business registration fee, prescribed branch registration fee or levy paid is not to be refunded except where it is provided otherwise in this section or any other provision of this Ordinance.

(2) Subject to subsection (3), the Commissioner must refund any prescribed business registration fee or prescribed branch registration fee, as the case may be, or levy paid in respect of a business or a branch of a business –

(a) as soon as practicable after the Commissioner has given the notification under section 6(4A) if the Commissioner has decided not to register the business or branch for any of the reasons specified in section 6(4); or

(b) as soon as practicable if the Commissioner has removed the entry in respect of the business or branch from the register under section 6(4B), and there is no appeal against the removal under

section 6(4C) or an appeal under section 6(4C) is unsuccessful or withdrawn.

(3) Except in the case of a branch of a business, subsection (2)(b) does not entitle the following companies to any refund –

- (a) a company incorporated under the Companies Ordinance (Cap. 32);
- (b) a non-Hong Kong company to which Part XI of that Ordinance applies.

(4) If the Registrar refuses an incorporation application made on or after the day on which section 6 of the Business Registration (Amendment) Ordinance 2010 (of 2010) comes into operation, the Commissioner must refund to the applicant the prescribed business registration fee and levy paid under section 5A(1)(a).”.

10. Information to be furnished

(1) Section 8(1) is amended by repealing “Where there occurs any change” and substituting “If there is any change”.

(2) Section 8 is amended by adding –

“(1A) In respect of a simultaneous business registration application relating to an incorporation application –

- (a) the relevant company must, within 1 month of the date on which it commences to carry on the relevant business, submit to the Commissioner in writing the particulars prescribed in regulations made under section 14; and
- (b) if there is any change in those particulars, the company must within 1 month of that change notify the Commissioner of it in writing.

(1B) In respect of a simultaneous business registration application relating to a company registration application, if there is –

- (a) any change in the particulars submitted by the non-Hong Kong company under section 5B(1)(b)(i); or
- (b) in the case the company is not registered under Part XI of the Companies Ordinance (Cap. 32) –
 - (i) a change of its corporate name or an alteration of the address of its principal place of business in Hong Kong; or
 - (ii) an alteration of its authorized representative or an alteration of name and address of its authorized representative,

the company must within 1 month of that change or alteration notify the Commissioner of it in writing.”.

(3) Section 8(2A) is amended by repealing everything after “under” and substituting “this section, the person is to be treated as having notified the Commissioner of that matter under this section.”.

(4) Section 8 is amended by adding –

“(2B) If a company –

- (a) gives notice of a change of its name under section 22 of the Companies Ordinance (Cap. 32) or gives notice of a change of address of its registered office under section 92 of that Ordinance; or

(b) delivers a return under section 335 of that Ordinance for –

- (i) a change of its corporate name or an alteration of the address of its principal place of business in Hong Kong; or
- (ii) an alteration of its authorized representative or an alteration of name and address of its authorized representative,

the Registrar must transmit the particulars to the Commissioner as soon as practicable after the notice or return is registered or recorded under that Ordinance, and if the company is subject to subsection (1), on the registration or recording, it is to be treated as having notified the Commissioner of the change or alteration under that subsection .”.

(5) Section 8 is amended by adding –

“(2C) If there is a replacement of a company’s name under section 22AA of the Companies Ordinance (Cap. 32), the Registrar must transmit the particulars to the Commissioner as soon as practicable after the replacement, and if the company is subject to subsection (1), on the replacement, it is to be treated as having notified the Commissioner of the replacement under that subsection.”.

11. Display of certificates

Section 12 is amended by adding –

“(3) If the business registration certificate or branch registration certificate is issued in the form of an electronic record, a printed copy of the certificate must be displayed in the manner described in

subsection (1) or (2), as the case may be, and the display is to be treated as complying with that subsection.”.

12. Regulations

(1) Section 14(1A) is amended by repealing “Secretary for Financial Services and the Treasury” and substituting “Secretary”.

(2) Section 14(1A)(a) is amended by repealing “application for registration of a business and its branches is” and substituting “a business registration application and a branch registration application are”.

(3) Section 14(1A)(d) is amended by adding “the manner of registration, including” before “the form”.

13. Offences

Section 15 is amended by adding –

“(2A) If the Commissioner has reason to believe that any particulars transmitted by the Registrar under section 5C(5)(b) or 8(2B) are false, inaccurate or incomplete, the Commissioner may inform the Registrar accordingly.”.

14. Exemptions

(1) Section 16 is amended by renumbering it as section 16(1).

(2) Section 16(1)(d) is amended by repealing “Secretary for Financial Services and the Treasury” and substituting “Secretary”.

(3) Section 16 is amended by adding –

“(2) In respect of any prescribed business registration fee and levy required to be paid under section 5A(1)(a) or 5B(1)(a) –

(a) the liability to pay the fee and levy is not affected by any claim that this Ordinance does not apply to the relevant company or business under this section; and

- (b) if the Commissioner is satisfied that this Ordinance does not apply to the relevant company after the fee and levy have been paid, the fee and levy are to be refunded.”.

15. Appeals

Section 17(c) is amended by repealing “make an application for registration under a different name” and substituting “notify the Commissioner of a change to a different name”.

16. Section 19B added

The following is added –

“19B. Purpose of sections 19 and 19A

The purpose of sections 19 and 19A is to enable any person to ascertain whether a business is registered under this Ordinance and the particulars of the businesses so registered.”.

17. Schedule 1 amended

(1) Schedule 1 is amended by repealing “ss. 2, 7, 9 & 18” and substituting “ss. 2, 9 & 18”.

(2) Schedule 1 is amended by adding before the column headings –

“TABLE”.

(3) Schedule 1 is amended by adding before the Table –

“1. The Table in this Schedule sets out the prescribed business registration fee payable under sections 5A, 5B and 7 and regulations made under section 14, and the average of total sales or receipts to exempt a business under section 9.

2. In respect of item 1 of the Table, the prescribed business registration fee payable in relation to the registration of a business

is the sum specified in column 2 of that item corresponding to the period specified in column 1 of that item within which the following date falls –

(a) in relation to a business registration application (other than a simultaneous business registration application), or a notice issued under section 7(1)(a)(i) –

(i) in the case of a company incorporated under the Companies Ordinance (Cap. 32) –

(A) if the application is made or the notice is issued within 1 year of the date of its incorporation, that date; or

(B) otherwise, the last anniversary of that date; or

(ii) in any other case –

(A) if the application is made or the notice is issued within 1 year of the date on which the business commences or is deemed to have commenced (whichever is the earlier), that date; or

(B) otherwise, the last anniversary of that date;

- (b) in relation to a simultaneous business registration application –
 - (i) in the case of a fee payable under section 5A(1)(a), the date of making the related incorporation application; or
 - (ii) in the case of a fee payable under section 5B(1)(a) –
 - (A) if the related company registration application is made within 1 year of the date of establishment of the non-Hong Kong company's place of business in Hong Kong, that date; or
 - (B) otherwise, the last anniversary of that date;
- (c) in relation to the issue of a further business registration certificate on the expiry of a business registration certificate, the date of the day following the date of that expiry.”.

(4) Column 1 of item 1 of the Table in Schedule 1 is amended by repealing everything from “Fee payable” to “commences” and substituting “Prescribed business registration fee”.

(5) Column 3 of the Table in Schedule 1 is repealed.

18. Schedule 2 amended

(1) Schedule 2 is amended by repealing “ss. 2, 7, 11 & 18” and substituting “ss. 2, 11 & 18”.

(2) Schedule 2 is amended by adding before the column headings –

“TABLE”.

(3) Schedule 2 is amended by adding before the Table –

“1. The Table in this Schedule sets out the penalty payable under section 11, the prescribed branch registration fee payable under section 7 and regulations made under section 14, and the levy payable under sections 5A, 5B and 7 and regulations made under section 14.

2. In respect of item 2 of the Table, the prescribed branch registration fee payable in relation to the registration of a branch of a business is the sum specified in column 2 of that item corresponding to the period specified in column 1 of that item within which the following date falls –

(a) in relation to a branch registration application or a notice issued under section 7(1)(b)(i) –

- (i) if the application is made or the notice is issued within 1 year of the date on which the branch commences business or is deemed to have commenced business (whichever is the earlier), that date; or
- (ii) otherwise, the last anniversary of that date;

- (b) in relation to the issue of a further branch registration certificate on the expiry of a branch registration certificate, the date of the day following the date of that expiry.

3. In respect of item 3 of the Table, the levy payable in relation to the registration of a business is the sum specified in column 2 of that item corresponding to the period specified in column 1 of that item within which the following date falls –

- (a) in relation to a business registration application (other than a simultaneous business registration application) or a notice issued under section 7(1)(a)(i) –

- (i) in the case of a company incorporated under the Companies Ordinance (Cap. 32) –

- (A) if the application is made or the notice is issued within 1 year of the date of its incorporation, that date; or

- (B) otherwise, the last anniversary of that date; or

- (ii) in any other case –

- (A) if the application is made or the notice is issued within 1 year of the date on which the business

- commences or is deemed to have commenced (whichever is the earlier), that date; or
- (B) otherwise, the last anniversary of that date;
- (b) in relation to a simultaneous business registration application –
- (i) in the case of a levy payable under section 5A(1)(a), the date of making the related incorporation application; or
- (ii) in the case of a levy payable under section 5B(1)(a) –
- (A) if the related company registration application is made within 1 year of the date of establishment of the non-Hong Kong company's place of business in Hong Kong, that date; or
- (B) otherwise, the last anniversary of that date;
- (c) in relation to the issue of a further business registration certificate on the expiry of a business registration certificate, the date of the day following the date of that expiry.

4. In respect of item 3 of the Table, the levy payable in relation to the registration of a branch of a business is the sum specified in column 2 of that item corresponding to the period specified in column 1 of that item within which the following date falls –

(a) in relation to a branch registration application or a notice issued under section 7(1)(b)(i) –

(i) if the application is made or the notice is issued within 1 year of the date on which the branch commences business or is deemed to have commenced business (whichever is the earlier), that date; or

(ii) otherwise, the last anniversary of that date;

(b) in relation to the issue of a further branch registration certificate on the expiry of a branch registration certificate, the date of the day following the date of that expiry.”.

(4) Item 2 of the Table in Schedule 2 is repealed and the following substituted –

“2. Prescribed branch registration fee –

(a) on or after the day on which section 18 of the Business Registration (Amendment) Ordinance 2010 (of 2010) comes into operation –

(i) where no election is made under section 6(5C) \$73

(ii) where an election is made under section 6(5C) \$189”.

(5) Item 3 of the Table in Schedule 2 is repealed and the following substituted –

“3. Levy –

(a) on or after the day on which section 18 of the Business Registration (Amendment) Ordinance 2010 (of 2010) comes into operation –

(i) where no election is made under section 6(5C) \$450

(ii) where an election is made under section 6(5C) \$1,350”.

(6) Column 3 of the Table in Schedule 2 is repealed.

PART 3

AMENDMENTS TO BUSINESS REGISTRATION REGULATIONS

19. Interpretation

(1) Regulation 2 of the Business Registration Regulations (Cap. 310 sub. leg. A) is amended, in the definition of “business registration certificate”, by repealing the full stop and substituting a semicolon.

(2) Regulation 2 is amended by adding –
““digital signature” (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).”.

20. Application for registration

(1) Regulation 3 is amended by renumbering it as regulation 3(1).

(2) Regulation 3(1) is amended by repealing “Application for registration of a business or a branch of a business under section 5 of the Ordinance shall” and substituting “A business registration application (other than a simultaneous business registration application) or a branch registration application must”.

(3) Regulation 3(1) is amended by repealing everything after paragraph (d).

(4) Regulation 3 is amended by adding –
“(2) An application referred to in subregulation (1) must be accompanied by full payment of –
(a) the prescribed business registration fee or prescribed branch registration fee, as the case may be; and
(b) the levy.”.

21. Regulation 3A added

The following is added –

“3A. Business particulars in relation to simultaneous business registration applications

(1) The particulars to be submitted, under section 5B(1)(b)(i) of the Ordinance, at the time a company registration application is made are as follows –

- (a) a Chinese name, an English name or both a Chinese name and an English name under which the business is carried on;
- (b) the description and nature of the business;
- (c) the date of the commencement of the business.

(2) The particulars to be submitted, under section 8(1A)(a) of the Ordinance, within 1 month of the date of commencement of a company’s business are as follows –

- (a) a Chinese name, an English name or both a Chinese name and an English name under which the business is carried on;
- (b) the description and nature of the business;
- (c) the date of the commencement of the business.

(3) The particulars that the Registrar is required to transmit to the Commissioner under section 5C(5)(b) of the Ordinance are as follows –

- (a) in the case of a company incorporated under the Companies Ordinance (Cap. 32) –
 - (i) the name of the company;
 - (ii) the address of the registered office of the company;
 - (iii) the date of the incorporation of the company; and
- (b) in the case of a non-Hong Kong company –
 - (i) the name of the company;

- (ii) the place of incorporation of the company;
- (iii) the address of the principal place of business of the company in Hong Kong;
- (iv) the date on which the company established its place of business in Hong Kong;
- (v) the name and capacity of the person who has signed the related non-Hong Kong company registration form;
- (vi) the name and address in Hong Kong of the company's authorized representative referred to in section 333(2)(e) of the Companies Ordinance (Cap. 32);
- (vii) the date of the registration of the company under Part XI of the Companies Ordinance (Cap. 32) (unless the Registrar has refused to register the company under that Part).”.

22. The register

(1) Regulation 4(1) is amended by repealing “an application for registration of a business in the form provided for in regulation 3 the Commissioner shall” and substituting “a business registration application or a branch registration application in a form provided for in regulation 3(1), the Commissioner must”.

(2) Regulation 4 is amended by adding –

“(1A) As soon as practicable after receipt by the Registrar of an incorporation application, the Commissioner must assign an identifying number in relation to the application, and that

identifying number becomes the identifying number of the related simultaneous business registration application on the incorporation of the company concerned.

(1B) If section 5B(1) and (2) of the Ordinance applies, as soon as practicable after receipt by the Registrar of a company registration application, the Commissioner must assign an identifying number to the related simultaneous business registration application.”.

(3) Regulation 4(2) is repealed and the following substituted –

“(2) The Commissioner must maintain a register which consists of –

(a) the following information, as supplemented or replaced by information from time to time received by the Commissioner under section 6(4D) or 8 of the Ordinance –

(i) information submitted in applications made to the Commissioner under section 5 of the Ordinance or section 4 of the Business Regulation Ordinance 1952 (14 of 1952);

(ii) information submitted in simultaneous business registration applications; and

(b) the identifying numbers assigned under subregulation (1), (1A) or (1B).”.

(4) Regulation 4(3)(a) is amended by repealing the semicolon and substituting “; and”.

(5) Regulation 4(4A) is amended by repealing “to applications under paragraph (1)” and substituting “under subregulation (1), (1A) or (1B)”.

(6) Regulation 4(4B) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

(7) Regulation 4(4C) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

(8) Regulation 4(4D) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

(9) Regulation 4(4E) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

(10) Regulation 4(4G) is amended, in the English text, by repealing “paragraph” and substituting “subregulation”.

23. Business and branch registration certificates

Regulation 5 is amended by adding –

“(3) A duplicate under subregulation (2) may be issued in any manner the Commissioner thinks fit.

(4) Without limiting the powers of the Commissioner under subregulation (3), the Commissioner may issue a duplicate in the form of an electronic record.”.

24. Regulation 8A added

The following is added –

“8A. Electronic records for prescribed forms

(1) The Secretary may, for the purposes of the submission of a form under regulation 3 or 6 in the form of an electronic record, by notice published in the Gazette specify –

- (a) a system;
- (b) a template; and
- (c) requirements as to –

- (i) the manner of generating or sending the form in the form of an electronic record; and
- (ii) how a password approved under subregulation (2) is to be included with, or a digital signature is to be affixed to, the form.

(2) The Commissioner may, for the purposes of the submission of a form under regulation 3 or 6 in the form of an electronic record, approve any sequence or combination of letters, characters, numbers or symbols selected by a person as a password for that person.

(3) A form under regulation 3 or 6 may be submitted to the Commissioner in the form of an electronic record that –

- (a) is submitted using a system, and in a manner, specified under subregulation (1); and
- (b) uses a template specified under subregulation (1) and made available by the Commissioner.

(4) If a form under regulation 3 or 6 is submitted in the form of an electronic record, the requirement for a signature on the form is satisfied by a password of the person approved under subregulation (2) or a digital signature of the person.”.

25. Forms

(1) Form 1(a) set out in regulation 9 is amended by adding “(1)” after “reg. 3”.

(2) Form 1(b) set out in regulation 9 is amended by adding “(1)” after “reg. 3”.

(3) Form 1(b) set out in regulation 9 is amended, under the heading “CERTIFICATE OF APPLICANT”, by repealing –

“*Identity card number/

Passport number (if no
identity card number) :
Residential address :"

(4) Form 1(c) set out in regulation 9 is amended by adding “(1)” after “reg. 3”.

(5) Form 1(c) set out in regulation 9 is amended, in item 2 of Section A, by repealing “Partners:” and substituting “*Partners/Principal officers:”.

(6) Form 1(c) set out in regulation 9 is amended, under the heading “CERTIFICATE OF APPLICANT”, by repealing –

“*Identity card number/
Passport number (if no
identity card number) :"

(7) Form 1(d) set out in regulation 9 is amended by adding “(1)” after “reg. 3”.

(8) Form 1(d) set out in regulation 9 is amended, under the heading “CERTIFICATE OF APPLICANT”, by repealing –

“*Identity card number/Passport number:"

(9) Form 4 set out in regulation 9 is repealed and the following substituted –

“FORM 4 [s. 4(2)]

BUSINESS REGISTRATION ORDINANCE

(Chapter 310)

Oath or Affirmation of Secrecy

I, (*full name*)
of (*address*),
an officer of the Inland Revenue Department/Companies
Registry⁽¹⁾, having been appointed to perform functions under the
Business Registration Ordinance (“the principal Ordinance”),

swear/solemnly and sincerely affirm⁽¹⁾ that (except in the performance of functions under the principal Ordinance or under the Inland Revenue Ordinance (Cap. 112)⁽²⁾ or where it is expressly authorized by any enactment) –

- (a) I will at all times preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person which may come to my notice solely in the performance of any function under the principal Ordinance;
- (b) I will not communicate any such matter to any person other than –
 - (i) the person to whom such matter relates;
 - (ii) the executor of the person referred to in subparagraph (i); or
 - (iii) the authorized representative of the person referred to in subparagraph (i) or the executor;
 and
- (c) I will not allow any person to have access to any record relating to any such matter in the possession, custody or control of the Commissioner of Inland Revenue/Registrar of Companies⁽¹⁾.

.....

Sworn/Affirmed⁽¹⁾ at

Hong Kong this day of

.....

Before me,

.....
Commissioner for Oaths

- (1) Delete whichever is not applicable.
- (2) Delete “or under the Inland Revenue Ordinance (Cap. 112)” in the case of an officer of the Companies Registry.”.

PART 4

RELATED AND CONSEQUENTIAL AMENDMENTS

Inland Revenue Ordinance

26. Official secrecy

Section 4(4)(d) of the Inland Revenue Ordinance (Cap. 112) is amended by repealing “section 8(1) or (2)” and substituting “section 8”.

Abattoirs Regulation

27. Registration

Section 18(2)(b) of the Abattoirs Regulation (Cap. 132 sub. leg. A) is amended by adding “, or a copy of the certificate certified under section 19(1)(a) of that Ordinance or certified by the applicant” after “applicant”.

Administrative Appeals Board Ordinance

28. Schedule amended

Item 22 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by repealing paragraph (c) and substituting –

- “(c) The service of a notice under section 6(4D) by the Commissioner of Inland Revenue requesting a person to notify a change to a different name.”.

Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation

29. Inclusion of business name of owner in certificate of ownership

Section 12(3)(c) of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D) is amended by repealing “its certified copy” and substituting “a copy of the certificate certified under section 19(1)(a) of that Ordinance or certified by the person making the request”.

Electronic Transactions Ordinance

30. Service of documents

Schedule 3 to the Electronic Transactions Ordinance (Cap. 553) is amended by adding –

- “11. Business Registration Ordinance Section 20”.
(Cap. 310)

Explanatory Memorandum

The main object of this Bill is to amend the Business Registration Ordinance (Cap. 310) (“the Ordinance”) to provide for –

- (a) the implementation of a simultaneous application scheme for applications for the following –
 - (i) the incorporation of a company or the registration of a non-Hong Kong company under the Companies Ordinance (Cap. 32) (“the Companies Ordinance”); and
 - (ii) the registration of a business under the Ordinance; and

- (b) the making of business registration applications and branch registration applications, and the issuance of business registration certificates and branch registration certificates, by electronic means.

Part 1 – Short title and commencement

2. Clause 1 provides for the short title of the Bill (when enacted) and clause 2 empowers the Secretary for Financial Services and the Treasury (“the Secretary”) to appoint a day on which the Bill (when enacted) comes into operation.

Part 2 – Amendments to Business Registration Ordinance

3. Clause 3 amends section 2 of the Ordinance –

- (a) to replace the definitions of “levy”, “prescribed branch registration fee” and “prescribed business registration fee” (consequential to the amendments to Schedules 1 and 2 to the Ordinance under clauses 17 and 18 in relation to the determination of the amounts of the levy and fee);
- (b) to add the new definitions of “branch registration application”, “business registration application”, “company registration application”, “electronic record”, “function”, “incorporation application”, “incorporation form”, “non-Hong Kong company”, “non-Hong Kong company registration form”, “Registrar”, “Secretary” and “simultaneous business registration application” to facilitate the interpretation of the Ordinance as amended by the Bill;
- (c) to add a proposed section 2(1C) to provide for the application of the Ordinance to persons making applications for the incorporation of a company or the registration of a non-Hong Kong company under the Companies Ordinance;

- (d) to improve section 2(2) (which provides for the performance of the functions of the Commissioner of Inland Revenue (“the Commissioner”) under the Ordinance by officers of the Inland Revenue Department); and
- (e) to add a proposed section 2(3) to provide for the performance of the functions of the Registrar of Companies (“the Registrar”) under the Ordinance by officers of the Companies Registry.

4. Clause 4 amends section 4 of the Ordinance (which provides for the preservation of secrecy with regard to matters that come to the attention of officers of the Inland Revenue Department in the performance of their duties under the Ordinance) to include officers of the Companies Registry in that section. The amendments align with the new simultaneous business registration application scheme under which officers of the Companies Registry will perform functions in relation to simultaneous business registration applications.

5. Clause 5 makes minor textual amendments to section 5 of the Ordinance. It also adds a proposed section 5(6) to clarify that section 5(2) of the Ordinance (obligation to make business registration applications within 1 month) does not apply to simultaneous business registration applications.

6. Clause 6 adds proposed sections 5A to 5D to the Ordinance to provide for the new simultaneous business registration application scheme. In particular –

- (a) the proposed section 5A provides for simultaneous business registration applications of companies incorporated under the Companies Ordinance;
- (b) the proposed section 5B provides for simultaneous business registration applications of non-Hong Kong companies;
- (c) the proposed section 5C –

- (i) provides for the Registrar to perform, for and on behalf of the Commissioner, certain functions in relation to simultaneous business registration applications in order to provide one-stop services for applicants; and
 - (ii) requires the Registrar to transmit certain information and particulars to the Commissioner for the purposes of business registration; and
 - (d) the proposed section 5D empowers the Commissioner to specify forms for the purposes of simultaneous business registration applications and provides for the manner of the delivery of specified forms to the Registrar.
7. Clause 7 amends section 6 of the Ordinance. In particular –
- (a) to make it clear that the Commissioner must issue a business registration certificate or a branch registration certificate after the Commissioner has decided to register a business or a branch of a business;
 - (b) to add a proposed section 6(3B) and (3C) to provide for the issue of business registration certificates and branch registration certificates by electronic means;
 - (c) to amend section 6(4A) so that the Commissioner is also required to notify an applicant of a decision not to register a business or a branch of a business which is unlawful; and
 - (d) to amend section 6(4D) to empower the Commissioner to request for a further change to a different name of a business or a branch of a business if the business or branch should not be registered under a new name notified under section 8 for the reason specified in section 6(4)(b) or (c).
8. Clause 8 makes minor textual amendments to section 7 of the Ordinance.

9. Clause 9 adds a proposed section 7A to provide for the refund of prescribed business registration fees, prescribed branch registration fees or levies under certain circumstances.

10. Clause 10 amends section 8 of the Ordinance to require –

- (a) the submission of business particulars by newly incorporated companies within 1 month of the date of commencement of business (the proposed section 8(1A)(a));
- (b) the notification of change of particulars by companies that obtained business registration through simultaneous business registration applications (the proposed section 8(1A)(b) and (1B)); and
- (c) the notification of change of names and addresses of companies, etc. by the Registrar (the proposed section 8(2B) and (2C)).

11. Clause 11 adds a proposed section 12(3) to the Ordinance to allow the display of the printed copies of business registration certificates or branch registration certificates for the purposes of section 12 of the Ordinance if the certificates are issued by electronic means.

12. Clause 12 makes minor amendments to the regulation making powers of the Secretary under section 14(1A) of the Ordinance.

13. Clause 13 adds a proposed section 15(2A) to provide for communication between the Commissioner and the Registrar if there is reason to believe that any particulars transmitted by the Registrar under the proposed section 5C(5)(b) or 8(2B) are false, inaccurate or incomplete.

14. Clause 14 adds a proposed section 16(2) to the Ordinance to make it clear that the liability to pay the prescribed business registration fee and levy in relation to a simultaneous business registration application is not affected by any claim that the Ordinance does not apply to the relevant company or business.

15. Clause 15 amends section 17(c) of the Ordinance, consequential to the amendments to section 6(4D) of the Ordinance under clause 7.

16. Clause 16 adds a proposed section 19B to make it clear that the purpose of making available business registration particulars is to enable any person to ascertain whether a business is registered under the Ordinance and the particulars of those businesses so registered.

17. Clause 17 amends Schedule 1 to the Ordinance to make detailed provisions in relation to the determination of the prescribed business registration fee and makes minor textual amendments to that Schedule.

18. Clause 18 amends Schedule 2 to the Ordinance to make detailed provisions in relation to the determination of the prescribed branch registration fee and the levy and makes minor textual amendments to that Schedule.

Part 3 – Amendments to Business Registration Regulations

19. Clause 19 amends regulation 2 of the Business Registration Regulations (Cap. 310 sub. leg. A) (“the Regulations”) by adding the new definition of “digital signature” to facilitate interpretation of the Regulations as amended by the Bill.

20. Clause 20 makes minor textual amendments to regulation 3 of the Regulations.

21. Clause 21 adds a proposed regulation 3A to the Regulations to provide for the business particulars required to be submitted to the Commissioner in relation to simultaneous business registration applications.

22. Clause 22 amends regulation 4 of the Regulations –

- (a) to make minor textual amendments to that regulation;
- (b) to provide for the assignment of identifying numbers to simultaneous business registration applications; and
- (c) to ensure that the register maintained by the Commissioner under regulation 4(2) includes information submitted in

simultaneous business registration applications and information received under section 6(4D) of the Ordinance.

23. Clause 23 adds a proposed regulation 5(3) and (4) to the Regulations to provide for the issue of duplicates of business registration certificates and branch registration certificates by electronic means.

24. Clause 24 adds a proposed regulation 8A to the Regulations to provide for the submission of the prescribed forms for business registration application, branch registration application and application for exemption under section 9 of the Ordinance by electronic means.

25. Clause 25 amends regulation 9 of the Regulations –

- (a) to remove the requirements for identity card or passport numbers in the “Certificate of Applicant” part of the prescribed forms for business registration application and branch registration application; and
- (b) to adjust the wording of the form of the Oath or Affirmation of Secrecy, consequential to the amendments to section 4 of the Ordinance under clause 4.

Part 4 – Related and Consequential Amendments

26. Clause 26 amends section 4(4)(d) of the Inland Revenue Ordinance (Cap. 112), consequential to the amendments to section 8(2A) of the Ordinance under clause 10(3).

27. Clauses 27 and 29 make related amendments to other legislation which require the production of a business registration certificate under certain circumstances.

28. Clause 28 amends the Schedule to the Administrative Appeals Board Ordinance (Cap. 442), consequential to the amendments to section 6(4D) of the Ordinance under clause 7(7).

29. Clause 30 adds section 20 of the Ordinance to Schedule 3 to the Electronic Transactions Ordinance (Cap. 553). Section 20 of the Ordinance provides that

any notice to be served under the Ordinance may be served by delivering a copy personally or by post. By adding it to that Schedule, a notice to be served under the Ordinance may be served by electronic means in accordance with section 5A of the Electronic Transactions Ordinance (Cap. 553).

IMPLICATIONS OF THE PROPOSAL

Economic Implications

The proposal should help enhance Hong Kong's business environment, thereby strengthening Hong Kong's position as an international financial and business centre. In particular, the proposal to implement simultaneous application for company registration and business registration, and the proposal to facilitate electronic and website communications would help lower the cost and improve the efficiency of both setting up and operating business in Hong Kong. It should also help enhance Hong Kong's international ranking in Ease of Doing Business.

Financial and Civil Service Implications

2. New fees for electronic incorporation and filing services⁽¹⁾ will be introduced through amendments to Parts I, II and III of the Eighth Schedule to the CO upon the enactment of the Companies (Amendment) Bill 2010. Any increase in revenue arising from the new fees will be offset by a reduction in the fees collected in respect of paper applications. To promote the use of the new electronic service, however, the CR is considering offering a discount to those who use the new e-service. At present, the total annual revenue under incorporation fees and annual registration fees (excluding late filing fees) is \$240 million. Assuming a take-up rate of 50% for the new electronic services, one percent discount would amount to a reduction in CR's annual revenue of \$1.2 million. The proposed new fees will be submitted to LegCo for negative vetting. Business registration fee will remain unchanged after implementation of the one-stop service.

3. The proposals in the Companies (Amendment) Bill 2010 do not have any direct staffing implications. Based on a Feasibility Study conducted by an outside consultant in September 2007, upon the full implementation of ICRIS II and with a take-up rate of 100%, there will be savings of 42 posts involving a sum of around \$7.2 million in general grades staff (based on notional annual salary cost at mid point ("NAMS")) because of the reduction in scanning and data input activities. The general grades staff will be redeployed within the civil service in batches, depending on the take-up rate of the new electronic service.

Note ⁽¹⁾ The development and the average annual recurrent costs for ICRIS II are \$81.5 million and \$18.4 million respectively. In addition, a sum of about \$4 million per annum will have to be paid to contractors who provide electronic payment services. The costs will be borne by the Companies Registry Trading Fund and this has been taken into account when determining the level of new fees.

4. The proposal of one-stop service for company registration and business registration would bring about manpower savings in IRD. It is anticipated that four Assistant Clerical Officer posts would be deleted (around \$0.75 million based on NAMS) after implementation of the one-stop service.