

Bills Committee on Companies Bill

Follow-up actions to be taken by the Administration for the meeting on 31 August 2011

Clause 29 - Unsatisfactory document

Clause 37- Registrar may require company to resolve inconsistency with Companies Register

1. Clause 29 sets out the grounds for refusal of registration of documents by the Registrar. Clause 37(1) states that: *If it appears to the Registrar that the information contained in a document registered by the Registrar is inconsistent with other information on the Companies Register, the Registrar may give notice to the company to which the document relates --*
 - (a) *stating in what respect the information contained in it appears to be inconsistent with other information on the Companies Register; and*
 - (b) *requiring the company to take steps to resolve the inconsistency.*
2. The Administration is requested to --
 - (a) review the drafting of Clause 37(1) to state it clear that both "a document" and "other information" refer to those related to the same company; and
 - (b) clarify the meaning of "inconsistent" information in Clause 37(1) and Clause 29, e.g. whether two charges on a company, if contradictory with each other are "inconsistent" information; if yes, whether both could be registered.
3. Clause 37(3) provides that if a company fails to comply with a requirement under subsection (1)(b), the company, and every responsible person of the company, commits an offence. In view that it may not be possible for the company or responsible person to resolve the inconsistency in information, members requested the Administration to consider providing a defence in the clause.

Clause 38 - Registrar may require further information for updating etc.

4. Members were concerned about the confusion caused by references to "a/the company", "a/the person" and "any other person" in Clauses 37 and 38, thus unclear liability of the company, the person, and any other person in respect of the offence under the two clauses. The Administration is requested to review the drafting of the two clauses, and consider providing a defence in the two clauses.

Clause 40 - Registrar must rectify information on Companies Register on order of Court

5. Clause 40 provides that the court may, on application by any person, direct the Company Registrar to rectify or remove any information on the Companies Register. Members enquired about the procedures for making the application to the court. The Administration is requested to provide information about the relevant court procedures.

Clause 45 - Issue of process for compelling production of information on Companies Register

6. Members requested the Administration to review the drafting of Clause 45, especially the Chinese version, in order to clarify the policy intent.

Clause 47- Register may withhold residential address and identification number from public inspection

7. Clause 47(3) states that: *If a person's address is withheld from public inspection under subsection (1)(a), the Registrar may instead make available for public inspection an address contained in the person's application as the person's correspondence address.*
8. Members considered it important for concerned parties to be able to contact the directors of a company. The Administration is requested to consider changing "may" to "must" in Clause 47(3).

Clause 49 - Register must not make residential address and identification number available for public inspection

Clause 50 - Register may make protected address available for inspection

9. Clause 49 requires the withholding from public inspection a director's residential address or the full identity card number of any person contained in an applicable document delivered to the Registrar for registration. Clause 50 provides that the Registrar may make a protected address available for public inspection if communications with a director at the director's relevant correspondence address is not effective.
10. Members opined that disclosure of protected information, such as the identity card number and address of a director of a company, may be required for preparation of legal documents or during legal proceedings, and there should be procedures allowing such disclosure. The Administration advised that there would be subsidiary legislation prescribing the entities to whom protected information may be disclosed and the fee payable by the entities. Members were of the view that the entities should cover the relevant directors of the company. The Administration is requested to consider members' view and provide information about the relevant subsidiary legislation.
11. Members suggested that the Registrar should send a communication to the director at his correspondence address to verify the validity of the address when there were complaints about ineffective communication with the director at the address. Such action of the Registrar should be set out in the relevant practice note of the Companies Registry. The Administration is requested to consider members' suggestion.