

PART 2

REGISTRAR OF COMPANIES AND REGISTER

Introduction

1. Part 2 deals with the general functions and powers of the Registrar. It groups the existing provisions relating to the office of the Registrar and the register being maintained by the Registrar under a distinct part and expressly states the functions of the Registrar. The amendments introduce new provisions, which aim primarily at providing the Registrar with necessary powers to maintain and safeguard the integrity of the register, having regard to the development of the CR's information system which will enable the electronic delivery of documents to or by the Registrar. In addition, some of the CR's existing administrative practices will be put on a statutory footing to improve transparency and provide greater clarity in relation to the CR's operations.

- The significant changes to be introduced under this Part are highlighted below:
 - (a) **Clarifying and enhancing the Registrar's powers in relation to the registration of documents, such as specifying requirements as to the authentication of the documents to be delivered to the CR and manner of delivery and withholding registration of unsatisfactory documents pending further particulars; and**
 - (b) **Clarifying and enhancing the Registrar's powers in relation to the keeping of the register, such as rectifying typographical or clerical errors, making annotations, and requiring a company to resolve any inconsistency or provide updated information; and**
 - (c) **Introducing a new court-based procedure for removing from the register information that is inaccurate, forged or derived from anything invalid, ineffective or done without the authority of the company.**

Significant Changes

(a) Clarifying and enhancing the Registrar's powers in relation to the registration of documents

Background

2. At present, under section 2A of the CO, the Registrar has the power to specify the form of documents to be delivered to the CR. Moreover, under section 347 of the CO, the Registrar may accept the information delivered to her in a form approved by her. This will enable documents to be delivered to the CR in electronic form after the CR's new information system comes on stream in late 2010/early 2011. Nevertheless, it would be desirable if the Registrar's powers to specify the form of documents and the form of delivery is clarified to include requirements as to authentication and the manner of delivery of documents.
3. Under section 348 of the CO, the Registrar may refuse to register a document if it is manifestly unlawful or ineffective, or is incomplete or altered; or any signature on the document, or digital signature accompanying the document is incomplete or altered. It is not entirely beyond doubt whether the grounds for refusal could cover cases, for example, where the information contained in it is internally inconsistent or inconsistent with information already on the register. It is proposed that the grounds of refusal should be set out in clearer terms. In addition, the current right of a person aggrieved by the Registrar's decision to refuse registration to appeal to the court under section 348(3) should be limited to situations where the document is regarded as unsatisfactory. Where the Registrar refuses to receive the document (for reasons other than that the document is regarded as unsatisfactory) or where the document is not properly delivered, no right of appeal is proposed on the grounds that the Registrar's decision is mostly based on objective considerations.

Proposal

4. **Clause 2.12** gives the Registrar a power to specify requirements about form, authentication and manner of delivery of documents, including the physical form and means of communication, the format and the address to which they are to be sent, and where appropriate, technical specification. **Clause 2.12(5)(a)** empowers the Registrar to require the document to be in hard

copy form, electronic form or any other form. But **Clause 2.12** does not empower the Registrar to require a document to be delivered to the Registrar only by electronic means (see **Clause 2.12(6)**). The power to require delivery by electronic means lies with the Financial Secretary with regulations made under **Clause 2.15**.

5. **Clause 2.17** makes it clear that if the Registrar refuses to accept a document under certain circumstances, the document is to be regarded as not having been delivered to the Registrar for registration. **Clause 2.18** empowers the Registrar to refuse to register a document delivered to her if the document is not properly delivered or is unsatisfactory. If the Registrar refuses to register a document, the document is to be regarded as not having been delivered to the Registrar for registration. Under **Clause 2.21**, the Registrar may send a notice of the refusal and the reasons for the refusal to the person who delivered the document for registration. **Clause 2.19** further provides that the Registrar may withhold the registration of an unsatisfactory document and request the person who delivered the document to take certain remedial actions within a specified period, such as producing further information or evidence, amending or completing the document or applying for a court order. The conditions for a document to be considered as “properly” delivered to the Registrar and the situations where a document is considered to be unsatisfactory are set out in **Clause 2.11** and **Clause 2.16** respectively.

(b) Clarifying and enhancing the Registrar’s powers in relation to the keeping of the register

Background

6. Regarding the power on the part of the Registrar to rectify any documents on the register, the Registrar presently adopts an administrative measure to accept the filing of “amended” documents and explanatory or correction letters from companies to rectify documents containing errors. It would be preferable for such power to be put on an express statutory footing.
7. It is proposed that the following powers be provided for expressly:
 - (a) power to annotate information on the register to provide supplementary information such as the fact that the document in question has been replaced or corrected; and

- (b) power to request companies or their officers to resolve inconsistencies in information on the register or to provide updated information.

Proposal

- 8. **Clause 2.24** gives the Registrar power to, either on her own initiative or on an application by a company, rectify a typographical or clerical error contained in any information on the register. If the rectification is made upon an application by a company, the Registrar may rectify the error by registering a document showing the rectification delivered by the company. **Clause 2.27** provides that the Registrar may make a note in the register for the purpose of providing information in relation to such a rectification.
- 9. **Clause 2.22** enables the Registrar to notify a company of an apparent inconsistency in the information on the register and to require it to take steps to resolve the inconsistency within a specified period. **Clause 2.23** empowers the Registrar to require a person to update his or her information on the register. Under both clauses, failure of the company and every responsible person concerned to comply with the Registrar's requirements is an offence.
- (c) **Introducing a new court-based procedure for removing information on the register that is inaccurate, forged or derived from anything invalid, ineffective or done without the authority of the company**

Background

- 10. At present, it is unclear if the court has general inherent jurisdiction to order the Registrar to remove information which has been provided in compliance with statutory requirements. There is no clear means for a company to remove from the register information which has been placed on the register but subsequently proves to be inaccurate and misleading. As the Registrar is not in a position to determine whether a piece of information is inaccurate or forged, a new court-based procedure for ensuring that such information can be removed is called for.

Proposal

- 11. **Clause 2.25** provides that the court may, on application by any person, direct the Registrar to rectify any information on the register or to remove

any information from it, if the court is satisfied that the information is inaccurate or forged, or derives from anything that is invalid or ineffective or that has been done without the company's authority. When making an order of removal of any information from the register, the court may make any consequential order that appears just with respect to the legal effect, if any, to be accorded to the information by virtue of its having appeared on the register.

Other Changes

(a) Registrar empowered to issue guidelines

12. **Clause 2.6** provides that the Registrar may issue guidelines indicating the manner in which the Registrar proposes to perform any function or exercise any power, or providing guidance on the operation of any provision of the CB. The guidelines are not subsidiary legislation, but may be admissible in evidence in any legal proceedings if they are relevant to determine a matter in issue. Non-compliance with them would not of itself result in any civil or criminal liability, but may be relied on by any party to any legal proceedings as tending to establish or negate the matter to which they are relevant.

(b) Registrar may agree with a company that documents to be delivered by the company for registration would be delivered by electronic means on terms specified in the agreement

13. **Clause 2.14** provides that the Registrar may agree with a company that documents to be delivered by the company for registration would be delivered by electronic means on such terms as specified in the agreement. The clause allows the Registrar to agree with a company detailed arrangements or requirements (e.g. electronic payment of fees) for the electronic delivery of documents to the Registrar. The clause is different from **Clause 2.12** which sets out the general provisions for the Registrar to require documents to be delivered in electronic form and/or, by electronic means.

- (c) **Financial Secretary may make regulations requiring delivery of documents to the Registrar by electronic means**
14. **Clause 2.15** provides that the Financial Secretary has a new power to provide for electronic delivery of documents by regulations subject to the approval of LegCo. This allows for flexibility for the future introduction of electronic delivery of certain classes of documents.
- (d) **Registrar to certify delivery or non-delivery of documents**
15. **Clause 2.31** provides that the Registrar may, on his or her initiative or on request by a person upon payment of a fee, issue a certificate as to whether a document has or has not been delivered to the CR on a particular date for registration. The certificate shall be admissible as prima facie evidence of the fact of delivery or non-delivery of the document in question in any proceedings but will not be taken as evidence of compliance or non-compliance with an obligation under the Bill.
- (e) **Rules on discrepancy between an original and a certified translation of a document delivered to the Registrar**
16. The Registrar may, from time to time, receive documents in a language other than English or Chinese, such as documents comprising the constitution from a non-Hong Kong company. Such documents are required to be accompanied by a certified translation. **Clause 2.34** sets out the rule where there is a discrepancy between the document and its certified translation. It provides that the company cannot rely on the translation where there is a discrepancy as against a third party whereas a third party may rely on the translation if he has actually relied on the translation and has no knowledge of the true contents of the document.
17. The new rule aims at promoting the accuracy of translations submitted by companies and at protecting members of the public from being misled by any discrepancy in a translated document on the register.