



公 司 註 冊 處
COMPANIES REGISTRY

香港金鐘道六十六號
金鐘道政府合署十五樓

QUEENSWAY GOVERNMENT OFFICES
15TH FLOOR, 66 QUEENSWAY
HONG KONG.

覆函請註明本處檔號：

In reply please quote this Ref.: CR HQ/1-50/15 Pt. 3

來函檔號 YOUR REF.:

電話 TEL.: (852) 2867 4570

傳真 FAX: (852) 2869 6817

電郵 E-MAIL: crenq@cr.gov.hk

網址 WEBSITE: www.cr.gov.hk

12 November 2010

COMPANIES REGISTRY EXTERNAL CIRCULAR NO. 1/2010

Commencement of Parts 1, 3, 4, 6 and 8 of Companies (Amendment) Ordinance 2010

This circular announces that, **with effect from 10 December 2010**, Parts 1, 3, 4, 6 and 8 of Companies (Amendment) Ordinance 2010 (“Amendment Ordinance”) will come into operation. Companies (Amendment) Ordinance (Commencement) Notice 2010 (L.N. 132 of 2010) was published in the gazette on 15 October 2010.

Major Changes

2. The main purposes of the amendments introduced in Parts 3, 4, 6 and 8 of the Amendment Ordinance include:-

- (a) expediting the company name approval process and empowering the Registrar of Companies (“the Registrar”) to direct a company to change its name pursuant to a court order or under other specified circumstances, including those where the use of a name may constitute a criminal offence or is considered to be offensive or contrary to the public interest;
- (b) empowering the Registrar to replace a company name by the company’s registration number if the company in question fails to comply with the Registrar’s direction to change its name;
- (c) expanding the scope of statutory derivative actions by allowing a member of a related company to bring a statutory derivative action on behalf of the company; and
- (d) facilitating companies to communicate with any person other than the Registrar through electronic means, including the websites of the companies.

3. Particulars of the major changes are outlined at **Annex 1**. To facilitate companies to comply with the requirements specified in the new Part IVAAA of the Companies Ordinance on “Communications by Company to Another Person (Other than Registrar)”, a guide summarising the statutory requirements is at **Annex 2**. The guide is also available on the Companies Registry’s website at www.cr.gov.hk.

New Specified Form NC4

4. The Registrar has specified a new form, Form NC4 on “Notification of Court Order Restraining Company from Use of Name”, for use under section 22(3B) of the Companies Ordinance with effect from 10 December 2010. The form was published in the Gazette on 12 November 2010 (G.N.7050).

5. Form NC4 can be downloaded from the “Public Forms” – “Specified Forms” section on the Registry’s website at www.cr.gov.hk. Hard copy of the form is available for purchase on the 14th floor of the Queensway Government Offices, 66 Queensway, Hong Kong. A complete set of the Registry’s specified forms, including the new form, is also available in the form of a CD-ROM for purchase at the above address.

Enquiries

6. Enquiries concerning this circular should be directed to:-

Regarding amendments relating to company names in Part 3 of the Amendment Ordinance	Ms Fanny LAM, Assistant Registry Manager (New Companies)	(852) 2867 4790 fannylam@cr.gov.hk
Regarding amendments introduced in Parts 4, 6 & 8 of the Amendment Ordinance	-	crenq@cr.gov.hk

Ms Ada LL CHUNG
Registrar of Companies

c.c.: CR HQ/8-1/5/3 Pt.2
CR HQ/8-1/64 (C) Pt.6

**Parts 3, 4, 6 and 8 of the Companies (Amendment) Ordinance 2010
To come into effect from 10 December 2010**

Part 3 – Company Names

1. In order to expedite the company name approval process, a company name will be accepted for registration if it satisfies certain preliminary requirements, namely, that it is not the same as another name on the register and does not contain certain specified words or expressions. If the company's name is subsequently found to be objectionable, the Registrar of Companies ("the Registrar") will be empowered to direct the company in question to change its name under the new sections 22(3A) and 22A(1A) of the Companies Ordinance ("CO").

2. The Registrar will be given new powers to enhance enforcement against abuses of the company name registration system, including the power to act upon a court order under section 22(3B) of the CO to direct a company to change its infringing name and, under section 22AA, the power to replace that name with the company's registration number if it fails to comply with the Registrar's direction to change name. The same power to replace the name of a company will be given to the Registrar where a company fails to comply with a direction to change its name which is too like that of another company on the register; gives the impression that the company is connected with the Central People's Government or the Government of Hong Kong Special Administrative Region; the use of which constitutes a criminal offence; or is offensive or contrary to the public interest.

3. Section 20(2A) provides that, except with the Registrar's consent, 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 Amendment Ordinance, namely, 10 December 2010.

Part 4 – Multiple Statutory Derivative Actions

4. The statutory derivative action ("SDA") procedures in the CO allow a member of a specified corporation, namely a company or non-Hong Kong company, to bring an action or intervene in proceedings on behalf of the specified corporation in respect of "misfeasance" committed against the specified corporation.

5. Amendments in Part 4 extend the scope of SDA to cover "multiple" SDA by allowing a member of a related company of a specified corporation to commence or intervene in proceedings on behalf of the specified corporation.

6. A related company of a specified corporation is defined in section 168BA of the CO to mean any company that is the specified corporation's subsidiary or holding company, or a subsidiary of that specified corporation's holding company.

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

7. Part 6 adds a new Part IVAAA to the CO to enable documents or information to be sent or supplied by a company to any person other than the Registrar through electronic means, including the website of the company.

8. A “Guide on Communications by a Company to Another Person Other than the Registrar” summarising the requirements under the new sections 168BAF, 168BAG and 168BAH is at **Annex 2**. The Guide is also available on the Companies Registry’s website at www.cr.gov.hk.

Part 8 – Miscellaneous Amendments

9. Part 8 makes minor amendments to certain provisions of the CO to rectify textual discrepancies. Section 99 of the CO is amended to allow a listed company to give notice in accordance with the Listing Rules, other than by advertisement in a newspaper, on the closure of registers of members and registers of debenture holders.

**Guide on Communications by a Company
to Another Person Other than the Registrar**

Companies (Amendment) Ordinance 2010 introduces a new Part IVAAA in the Companies Ordinance on communications by a company to another person other than the Registrar (the “recipient”), covering communications in hard copy form, electronic form and by means of website. The relevant requirements are summarised below.

A. Communication in hard copy form (section 168BAF)

1. A document may be sent by hand or by post in hard copy form to an address specified by the recipient or an address as shown in the company’s registers of members and debenture holders, or register of directors and secretaries, as the case may be, or where the recipient is a company, its registered office address. If the company does not have the recipient’s address, the document may be sent to the recipient’s last known address;
2. A document sent in hard copy form is sufficiently authenticated if it is signed by an officer of the company;
3. Unless otherwise specified in the company’s articles of association (“articles”) (for members) or instrument creating the debenture (for debenture holders), or any other agreement (for other persons), a document sent by post to an address in Hong Kong is deemed to have been received by the recipient on the following working day after posting; and
4. If the document is sent by hand, it is deemed to have been received by the recipient at the time when the document is delivered.

B. Communication in electronic form (other than by website)(section 168BAG)

1. Communications by electronic means can be made by a company only with the recipient’s agreement to an address specified by the recipient;
2. A document sent in electronic form by a company is sufficiently authenticated if the identity of the company is confirmed in a manner as specified by the recipient; or the communication contains a statement of the company’s identity and the recipient has no reason to doubt the truth of that statement;
3. A document is deemed to have been received by the recipient 48 hours after it has been sent by a company by electronic means, or any longer period as specified in the company’s articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons), as appropriate;
4. A document sent in electronic form may also be sent by hand or by post (e.g. by sending a diskette or CD-ROM);

5. A recipient may revoke his/her agreement to communicate in electronic form by giving a notice of revocation of at least 7 days or such longer period as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons), as appropriate; and
6. A member or debenture holder may request information to be provided in hard copy form free of charge within 28 days from the date of receipt of an electronic copy and the company must send a hard copy of the document within 21 days of receiving the request. If the document requires an action to be taken by the member or debenture holder, the company must send or supply the hard copy within 7 days after the date of receiving the request.

C. Communication by means of website (section 168BAH)

1. If permitted by a company's articles, a members' resolution or an instrument creating the debenture, a company may communicate with its members or debenture holders by making the document or information available on a website if the member or debenture holder consents to such mode of communication. Members of a company are not allowed to communicate to the company by means of website;
2. A member or debenture holder is deemed to have agreed to website communication if he/she has not responded to the company's request for consent stating clearly the effect of a failure to respond within 28 days. Where a member or debenture holder has not agreed to accept website communication, the company should not make the request again within a period of 12 months from the prior request;
3. The company must notify the recipient of the posting of the document or information on the website, the address of the website, the place on the website where it may be accessed and how to access the document or information;
4. The information posted must be in a form which enables the recipient to read and retain a copy;
5. A document is deemed to have been received by the intended recipient 48 hours after its first posting or 48 hours after receipt of the notice of posting (whichever is the later) unless the company's articles have provided for a longer period;
6. The information must be kept posted on the website for the whole of any specified period or 28 days if no period is specified;
7. The recipient may revoke his/her agreement to website communication by giving a notice of revocation of at least 7 days or such longer period as specified in the company's articles (for members), the instrument creating the debenture (for debenture holders) or any other agreement (for other persons), as appropriate; and
8. A member or debenture holder may request information to be provided in hard copy form free of charge within 28 days from the date of receipt of the copy on the website and the company must send a hard copy of the document within 21 days of receiving the request. If the document requires an action to be taken by the member or debenture holder, the company must send or supply the hard copy within 7 days after the date of receiving the request.