

Companies (Amendment) Ordinance 2010

**Ms Ada Chung, JP
Registrar of Companies**

7 October 2010

(1) Electronic Company Incorporation and Expediting Company Name Registration Process [Sections 3-16]



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Electronic Company Incorporation

- Phase II of Integrated Companies Registry Information System (“ICRIS II”)
 - ◆ facilitates on-line applications for company incorporation
 - ◆ filing of company documents through electronic means
 - ◆ early 2011
- Time required for incorporation
 - ◆ reduced from four working days to less than one day



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Electronic Company Incorporation (2)

- allows the signing of incorporation forms using passwords
- removes the attestation requirements for signatures by founder members
- facilitates the issue of certificates of incorporation by electronic means



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Expediting Company Name Registration Process

- Company name will be accepted for registration instantaneously
 - ◆ ≠ another name on the register
 - ◆ does not contain certain specified words or expressions
- Objectionable company names
 - ◆ Registrar of Companies is empowered to direct the company to change its name within a specified period



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Enforcement Against Shadow Companies

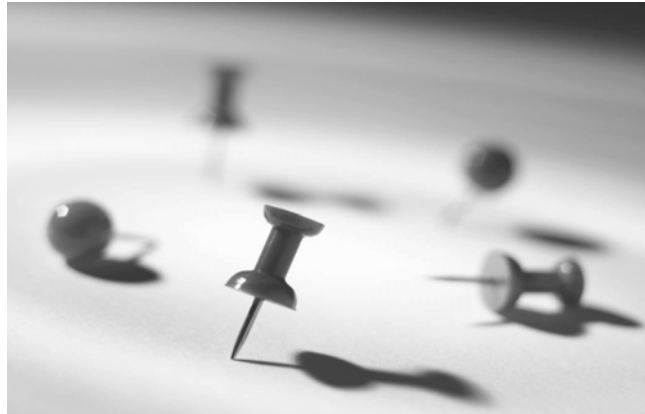
- Strengthens Hong Kong's company name registration system to enhance enforcement against possible abuses by "shadow companies"
- To act pursuant to court orders to direct a "shadow company" to change its name
- Substitutes the company name with its registration number where a company fails to comply with the Registrar's direction to change its name



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(2) One-Stop Service for Company Incorporation and Business Registration



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- Paper and electronic application for company incorporation
 - ◆ deemed to have applied for business registration
- Simultaneous application
 - ◆ on-line application for incorporation of a local company and business registration
 - ◆ completed through one procedure and within one day
- Certificate of incorporation and business registration certificate issued together



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(3) Providing for Multiple Statutory Derivative Actions [Sections 17-23]



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- Section 168BC(1) of the Companies Ordinance - “simple” statutory derivative action (“SDA”)
 - ◆ members of the company
 - ◆ right to bring an action or intervene in proceedings on behalf of the company
 - ◆ in respect of misfeasance committed against the company
- Waddington Ltd. v Chan Chun Hoo CACV No.220 of 2005 [2006] 2 HKLRD 896; [2008] 11 HKCFAR 370
 - ◆ members of a related company to commence or intervene in SDA on behalf of the company
- Amend section 168BC to expand the scope of SDA to cover “multiple” derivative actions

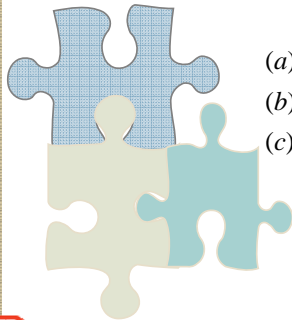


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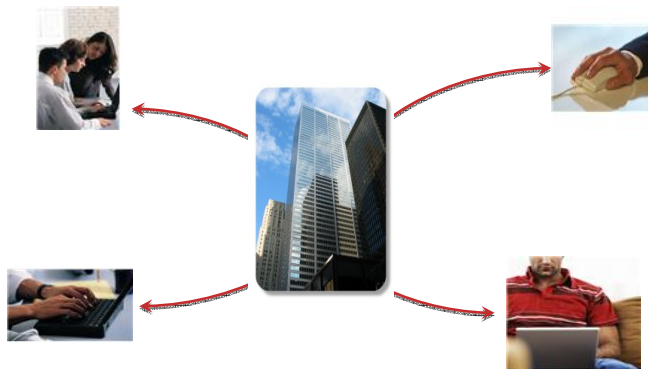
Related company in relation to a specified corporation

➤ “related company”, 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

(4) Facilitating Electronic and Website Communications [Section 35]



- Listing Rules of the Hong Kong Exchanges and Clearing Limited (“HKEx”)
 - ◆ allow a listed issuer to send corporate communications to its shareholders through its website
 - ◆ if the shareholder agree
 - ◆ deemed to have so agreed
- Amend the Companies Ordinance
 - ◆ Hong Kong companies may communicate with their shareholders through electronic means, including the companies’ websites



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Communication by a Company to its members or debenture holders



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Electronic Form

Service Address

With the recipient's agreement to an address specified by the recipient

Time of Receipt

- (1) 48 hours after the message has been sent
- (2) Any longer period as specified in the Company's articles (for members)
- (3) Any longer period as specified in the instrument creating the debentures (for debenture holders)
- (4) Any other agreement (for other persons)



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Website

Company => member
(consent to accept website communication)

- (1) If permitted by a company's articles or by members' resolution
- (2) Recipient deemed to agree => if he/she does not respond to the company's request for consent within 28 days
- (3) Recipient does not agree => company should not ask for consent again within 12 months from the prior request

Notification to Recipient

Must contain: -

- (1) Posting of the document or information on the website
- (2) Address of the website
- (3) The place on the website where it may be accessed
- (4) How to access the document or information

Time of Receipt

- (1) 48 hours after its first posting
- (2) 48 hours after receipt of the notice of posting
- (3) Any longer period as specified in the company's articles



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(5) Exempting Listed Companies from Giving Notice of Closure of Register of Members by Advertisement in a Newspaper [Section 57]

- Company incorporated in Hong Kong to give notice of closure of its register of members/debenture holders
 - ◆ Section 99(1) of the CO : by advertisement in a newspaper
 - ◆ Listing Rules : on HKEx's website
- ⇒ both in newspaper and on the HKEx's website
- Amend the CO to follow the requirements under the Listing Rules.



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(6) Technical Amendments Paving the Way for Scripless Holding and Transfer of Shares or Debentures [Sections 40–52]

- To develop a scripless market in Hong Kong
- Removes the requirements for paper documents of title and paper instruments of transfer in relation to shares and debentures of listed companies
- The Securities and Futures Commission, HKEx and the Federation of Share Registrars are considering the operational model
- Enhance market efficiency and investor protection
- Amendments to:
 - ◆ the requirements for an instrument of transfer (Section 66)
 - ◆ the requirement to issue share/debenture certificates (Section 70)
 - ◆ share certificates to be prima facie evidence of title (Section 71)



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Thank you



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