



Companies (Amendment) Ordinance 2010

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

29 November 2010

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



公司註冊處
COMPANIES REGISTRY

Electronic Company Incorporation

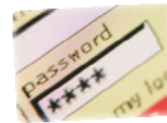
- Phase II of Integrated Companies Registry Information System (“ICRIS II”)
 - ◆ facilitates on-line applications for company incorporation
 - ◆ filing of company documents through electronic means
 - ◆ early 2011
- Time required for incorporation
 - ◆ reduced from four working days to less than one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



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



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



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
 - ◆ which is too like that of another company on the register
 - ◆ which gives the impression that the company is connected with the Hong Kong SAR Government or the Central People's Government
 - ◆ the use of which constitutes a criminal offence or
 - ◆ which is offensive or otherwise contrary to the public interest



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



- 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



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



➤ 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

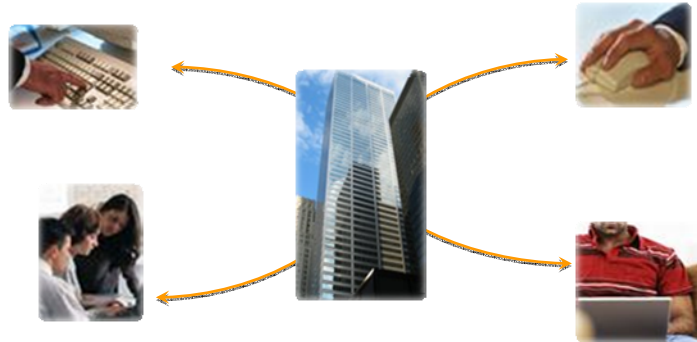
Related company in relation to a specified corporation



➤ “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

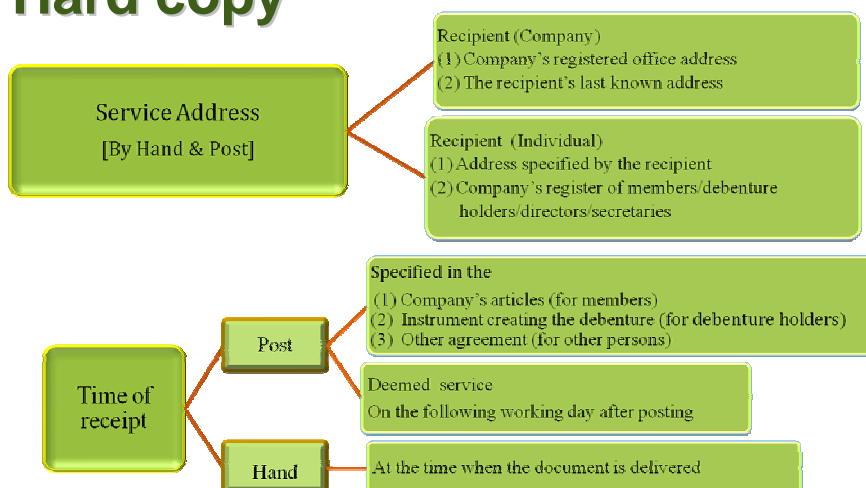
- ◆ Hong Kong companies may communicate with their shareholders through electronic means, including the companies’ websites



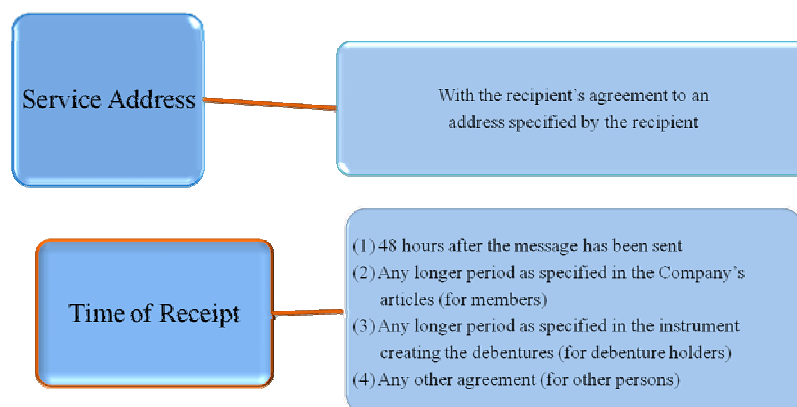
Communication by a Company to its members or debenture holders



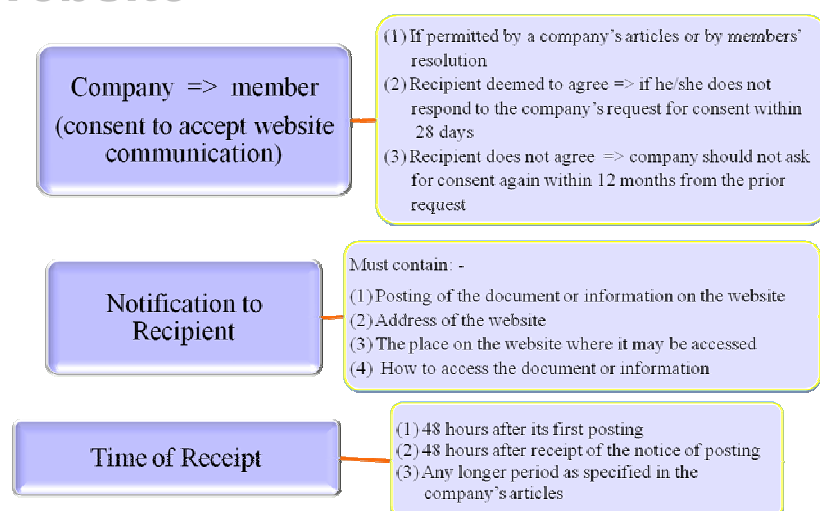
Hard copy



Electronic Form

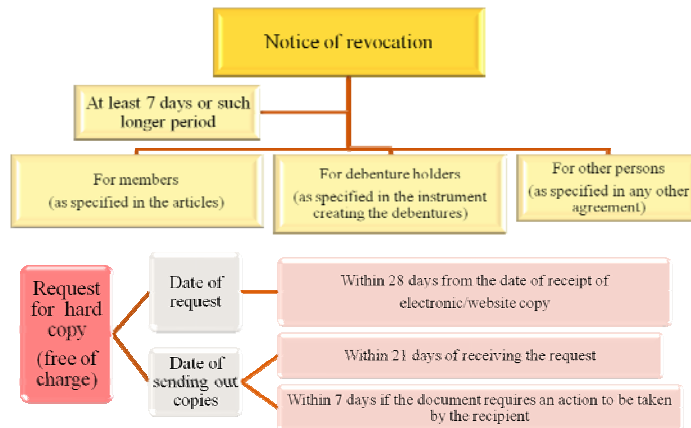


Website

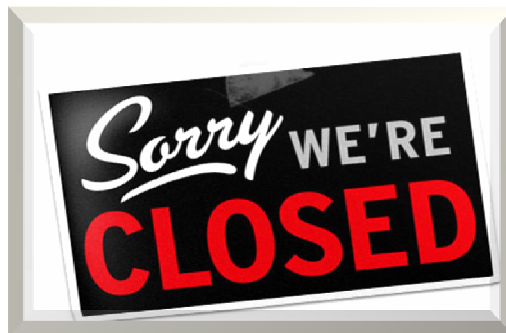


Electronic Form & Website

[Revocation & Request for hard copy]



(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.



(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)



Thank you