Companies (Amendment) Ordinance 2010

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Registrar of Companies

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


- 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
  - No application to service of legal documents
Communication by a Company to its members or debenture holders

**Hard copy**

**Recipient (Company)**
1. Company’s registered office address
2. The recipient’s last known address

**Recipient (Individual)**
1. Address specified by the recipient
2. Company’s register of members-debenture holders or directors-secretaries
3. Company’s last known address

**Specified in the**
1. Company’s articles (for members)
2. Instruments creating the debenture (for debenture holders)
3. Other agreement (for other persons)

**Delivered service**
On the following working day after posting
At the time when the document is delivered

**Address**
[By Hand & Post]

**Time of receipt**
- Post
- Hand
Electronic Form

Address

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

Time of Receipt

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

Website

Company => member (consent to accept website communication)

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

- 48 hours after the first posting.
- 48 hours after receipt of the notice of posting.
- Any longer period as specified in the company's articles.
Electronic Form & Website
[Revocation & Request from member or debenture holder for hard copy]

Notice of revocation

At least 7 days or such longer period

For members (as specified in the articles)
Request for hard copy (free of charge)
Date of request
Date of sending out copies

For debenture holders (as specified in the instrument creating the debentures)
Within 28 days from the date of receipt of electronic website copy
Within 21 days of receiving the request
Within 7 days if the document requires an action to be taken by the recipient

For other persons (as specified in any other agreement)

(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)