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A BILL

To

Amend the Companies Ordinance and its subsidiary legislation to streamline the company formation procedures; to extend the powers of the Registrar of Companies to direct a change of company name; to enlarge the class of persons who may bring or intervene in statutory derivative actions under Part IVAA of the Ordinance; to provide for electronic communications with the Registrar; to provide for the modes of communications by a company to any person other than the Registrar; to remove obstacles to the introduction of paperless holding and transfer of shares and debentures; and to make related and miscellaneous amendments to the Ordinance and its subsidiary legislation and the Securities and Futures Ordinance.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Companies (Amendment) Ordinance 2010.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

PART 2

AMENDMENTS RELATING TO COMPANY FORMATION

3. Signature of memorandum

(1) Section 6(1) of the Companies Ordinance (Cap. 32) is amended by repealing everything after “founder member” and substituting “of the company.”.

(2) Section 6(2) is repealed.

4. Printing and signature of articles

(1) Section 12(1)(c) is amended by repealing everything after “founder member” and substituting “of the company.”.

(2) Section 12(2) is repealed.

5. Incorporation form

(1) Section 14A(2)(f) is amended by repealing “guarantee, the” and substituting “guarantee, the number of members with which the company proposes to be registered on its incorporation, and the”.

(2) Section 14A(2)(j) is amended by repealing “and”.

(3) Section 14A(2)(k) is repealed and the following substituted—

“(k) if the signatory is to be a director of the company on its incorporation, a statement by the signatory—

(i) that he or she has consented to be a director of the company; and

(ii) if the signatory is an individual, that he or she has attained the age of 18 years; and

(l) in relation to each person (other than the signatory) who is to be a director of the company on its incorporation—

(i) a statement by the person that he or she has consented to be a director of the company and, if the person is an individual, that he or she has attained the age of 18 years; or

(ii) a statement by the signatory that the person has consented to be a director of the company and, if the person is an individual, that the person has attained the age of 18 years.”.

(4) Section 14A(3) is amended by repealing everything after “signed by any” and substituting “person who is named in the form as a founder member.”.

(5) Section 14A is amended by adding—

“(5) In subsection (2), “signatory” (簽署人), in relation to an incorporation form, means the person who signs the form for the purposes of subsection (3).

(6) The Financial Secretary may, by order published in the Gazette, amend subsection (2).”.

6. Conclusiveness of certificate of incorporation

(1) Section 18(2) is amended by repealing everything after “statement of compliance” and before “shall” and substituting “specified in subsection (3)”.

(2) Section 18(2) is amended by adding “with all the requirements referred to in subsection (1)” after “evidence of compliance”.

(3) Section 18 is amended by adding—

“(3) The statement specified for the purposes of subsection (2) is a statement—

(a) certifying the company’s compliance with all the requirements referred to in subsection (1);

(b) certifying that the particulars contained in the incorporation form are accurate and consistent with those contained in the memorandum and articles of the company; and

(c) signed by the founder member who signs the form for the purposes of section 14A(3).”.

7. Section 18A added

The following is added—

“18A. Delivery of consent of director

(1) Each consent given for the purposes of section 14A(2)(l)(ii) in relation to a company intended to be incorporated must be delivered to the Registrar in the specified form not later than 14 days after the date of incorporation of the company.

(2) If subsection (1) is contravened, the company, every officer of the company who is in default, and the founder member who signs the incorporation form for the purposes of section 14A(3), commit an offence, and each is liable to a fine and, for continued contravention, to a daily default fine.

(3) In any proceedings against a founder member for an offence under this section, it is a defence for the founder member to establish that he or she took all reasonable steps to secure compliance with subsection (1).”.

8. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding—

“18A(2) Failing to deliver to the Registrar any consent to be a director Summary level 3 \$300”.

PART 3

AMENDMENTS RELATING TO COMPANY NAME

9. Restriction on registration of companies by certain names

(1) Section 20 of the Companies Ordinance (Cap. 32) is amended by adding—

“(2A) Except with the consent of the Registrar, 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 Companies (Amendment) Ordinance 2010 (of 2010).”.

(2) Section 20(3) is amended by adding “or (2A)” after “(1)(a) or (b)”.

10. Change of name

(1) Section 22 is amended by adding—

“(3A) If in the opinion of the Registrar a company has been registered by a name by which, at the time of the registration, the company must not be registered under section 20(2), the Registrar may in writing, within 3 months after the time of the registration, direct the company to change the name within the period specified by the Registrar.

(3B) The Registrar may in writing direct a company to change, within the period specified by the Registrar, a name by which the company has been registered if the Registrar receives, from a person in whose favour an order is made by a court restraining the company from using the name or any part of the name—

- (a) an office copy of the order; and
- (b) a notice in the specified form.

(3C) In subsection (3B), “court” (法院) means any court of the Hong Kong Special Administrative Region of competent jurisdiction.”.

(2) Section 22(5) is amended by repealing “or (4)” and substituting “, (3A), (3B) or (4)”.

11. Power of Registrar to require company to abandon misleading name

(1) The heading of section 22A is amended by repealing “**abandon misleading name**” and substituting “**change misleading or offensive name, etc.**”.

(2) Section 22A is amended by adding—

“(1A) If in the opinion of the Registrar a company has been registered by a name by which, at the time of the registration, the company must not be registered under section 20(1)(c) or (d), the Registrar may direct the company to change the name.”.

12. Section 22AA added

The following is added—

“22AA. Power of Registrar to replace company name in case of failure to comply with direction

(1) This section applies if—

- (a) on or after the commencement of the Companies (Amendment) Ordinance 2010 (of 2010), the Registrar directs a company to change a name under section 22(2), (3A), (3B) or (4) or 22A(1) or (1A); and
- (b) the company fails to comply with the direction—
 - (i) in the case of a direction under section 22(2), (3A), (3B) or (4), within the period specified by the Registrar or, if the period is extended under section 22(5), the extended period; and
 - (ii) in the case of a direction under section 22A(1) or (1A), within the period specified in section 22A(2) or, if a period is specified by the court under section 22A(3) for the direction, the period specified by the court.

(2) Without limiting sections 22(6) and 22A(4), the Registrar may replace the name with—

- (a) if the name is in English, a new name that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation;
- (b) if the name is in Chinese, a new name that consists of the Chinese characters “公司註冊編號” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation; or
- (c) if the name is both in English and Chinese, a new name in English that consists of the words “Company Registration Number” as its prefix, followed by the registration number of the company as stated in the certificate of incorporation, and in Chinese that consists of the Chinese characters “公司註冊編號” as its prefix, followed by that registration number.

(3) On replacing the name with a new name, the Registrar must enter the new name on the register in place of the replaced name.

(4) The replacement takes effect on the date on which the new name is entered on the register under subsection (3).

(5) Within 30 days after entering the new name on the register, the Registrar must—

- (a) by notice in writing notify the company of—
 - (i) the fact that a name of the company has been replaced with a new name; and
 - (ii) the date on which the replacement takes effect under subsection (4); and
- (b) by notice in the Gazette notify that fact and that date.

(6) A replacement of a name of a company under this section does not affect any rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings that could have been commenced or continued against the company by the replaced name may be commenced or continued against it by its new name.”.

13. Punishment of offences under this Ordinance

The Twelfth Schedule is amended, in the entry relating to section 22A(4), in the second column, by adding “or offensive, etc.” after “misleading”.

PART 4

AMENDMENTS RELATING TO STATUTORY DERIVATIVE ACTIONS

14. Definition

(1) Section 168BA of the Companies Ordinance (Cap. 32) is amended by repealing “requires, “proceedings”” and substituting—

“requires—
“proceedings””.

(2) Section 168BA is amended, in the English text, in the definition of “proceedings”, by repealing “court.” and substituting “court;”.

(3) Section 168BA is amended by adding—

““related company” (有關連公司), 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.”.

15. Members may bring or intervene in proceedings

(1) The heading of section 168BC is repealed and the following substituted—

“Bringing or intervening in proceedings on behalf of specified corporation”.

(2) Section 168BC(1) is amended by adding “or of a related company of a specified corporation” after “a specified corporation”.

(3) Section 168BC(3) is amended by adding “or on the application of a member of a related company of a specified corporation” after “a specified corporation”.

(4) Section 168BC(4) is amended by adding “, or any common law right of a member of a related company of a specified corporation,” after “a specified corporation”.

(5) Section 168BC(6) is amended by adding “, or of a related company of a specified corporation,” after “a specified corporation”.

16. Service of written notice

Section 168BD(1) is amended by adding “, or of a related company of a specified corporation,” after “a specified corporation”.

17. Court's power to strike out proceedings brought or intervention in proceedings by members under common law

(1) The heading of section 168BE is repealed and the following substituted—

“Court's power relating to proceedings brought or intervened in on behalf of specified corporation under common law”.

(2) Section 168BE(1) is amended by adding “, or of a related company of a specified corporation,” after “a specified corporation”.

18. Effect of approval or ratification

(1) Section 168BF(1)(a) is amended by adding “, or of a related company of the specified corporation,” after “the specified corporation”.

(2) Section 168BF(2) is amended by adding “, or of a related company of the specified corporation,” after “member of the specified corporation”.

19. General powers of court

Section 168BG(1) is amended by adding “, or of a related company of a specified corporation,” after “a specified corporation”.

20. Discontinuance or settlement

Section 168BJ is amended by adding “, or of a related company of a specified corporation,” after “specified corporation”.

PART 5

**AMENDMENTS RELATING TO ELECTRONIC COMMUNICATIONS
WITH REGISTRAR OF COMPANIES**

21. Interpretation

Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding—

““digital signature” (數碼簽署) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

“recognized certificate” (認可證書) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);”.

22. General provisions as to annual returns

(1) Section 109(1) is amended by repealing “signed by a director or the secretary of the company”.

(2) Section 109(1A) is amended by repealing “signed by a director or the secretary of the company”.

(3) Section 109 is amended by adding—

“(1C) A copy of an annual return forwarded for the purposes of subsection (1) or (1A) in relation to a company must—

(a) if forwarded in the form of an electronic record—

(i) be signed by a director or the secretary of the company; or

(ii) contain an acknowledgment, by a person who is authorized by the company to deliver any document under this Ordinance on the company’s behalf and whose authorization has been notified to the Registrar, to the effect that the person is authorized by a director or the secretary of the company to forward the copy; or

(b) if forwarded in paper form, be signed by a director or the secretary of the company.”.

23. Register of directors and secretaries

(1) Section 158(4AA) is amended by repealing “, signed by the person, that he has accepted the appointment and that he” and substituting “that the person has accepted the appointment and that the person”.

(2) Section 158 is amended by adding—

“(4AB) A statement sent for the purposes of subsection (4AA) in relation to a person appointed as a director of a company must—

(a) if sent in the form of an electronic record—

(i) be signed by the person; or

(ii) contain an acknowledgment, by another person who is authorized by the person to deliver any document under this Ordinance on the person’s behalf and whose authorization has been notified to the Registrar, to the effect that that other person is authorized by the person to send the statement; or

(b) if sent in paper form, be signed by the person.”.

(3) Section 158(5A) is amended by repealing “, signed by such person, that he has accepted his nomination and that he” and substituting “that the person has accepted the nomination and that the person”.

(4) Section 158 is amended by adding—

“(5B) A statement sent for the purposes of subsection (5A) in relation to a person nominated as a reserve director of a private company must—

(a) if sent in the form of an electronic record—

(i) be signed by the person; or

(ii) contain an acknowledgment, by another person who is authorized by the person to deliver any document under this Ordinance on the person’s behalf and whose authorization has been notified to the Registrar, to the effect that that other person is authorized by the person to send the statement; or

(b) if sent in paper form, be signed by the person.”.

(5) Section 158(8) is amended by repealing “(4A) or (5A)” and substituting “(4AB), (4A), (5A) or (5B)”.

24. Documents delivered to Registrar to conform to certain requirements

(1) Section 346(2) is amended by repealing “; and any such notice shall be served by registered post”.

(2) Section 346 is amended by adding—

“(2A) A notice under subsection (2) must be served on a person—

(a) by registered post addressed to the person; or

(b) if the person consents to the notice being served in the form of an electronic record—

(i) by electronic mail transmission to the person’s electronic mail address last known to the Registrar; or

(ii) by storing the notice in a system designated by the Registrar and by notifying the person that the notice is so stored.”.

25. Sections 346A and 346B added

The following are added—

“346A. Documents delivered to Registrar in form of electronic record

(1) Subject to subsection (4), where a provision of this Ordinance authorizes or requires a document to be delivered to the Registrar, the document is delivered for the purposes of the provision if it is delivered to the Registrar in the form of an electronic record that complies with any requirements that may be specified by the Registrar for the purposes of this section.

(2) Without limiting the powers of the Registrar under subsection (1), the Registrar may specify requirements regarding the following matters—

- (a) the format of an electronic record;
- (b) the manner in which an electronic record is to be authenticated, approved or certified; and
- (c) the system by which and the manner in which an electronic record is to be delivered.

(3) The Registrar may approve any sequence or combination of letters, characters, numbers or symbols selected by a person as a password for that person’s use in any system designated by the Registrar for the purposes of this section.

(4) The Registrar may, by order published in the Gazette, exclude any document from the application of subsection (1) in relation to a provision of this Ordinance that authorizes or requires a document to be delivered to the Registrar.

(5) In this section, a reference to delivering a document includes sending, forwarding or producing the document and, in the case of a notice, giving the document.

346B. Signature of documents delivered to Registrar in form of electronic record

(1) Where a provision of this Ordinance authorizes or requires a person to sign a document that is to be delivered to the Registrar and the document is delivered in the form of an electronic record, the document is signed for the purposes of the provision if the person, for the purpose of authenticating, approving or certifying the document—

- (a) affixes a digital signature of the person to the document; or
- (b) includes with the document a password of the person approved under subsection (4).

(2) For the purposes of subsection (1)(a), a digital signature must be—

- (a) supported by a recognized certificate;
- (b) generated within the validity of that certificate; and

(c) used in accordance with the terms of that certificate.

(3) For the purposes of subsection (2)(a), a digital signature is supported by a recognized certificate if it is taken to be supported by that certificate for the purposes of the Electronic Transactions Ordinance (Cap. 553) under section 2(2) of that Ordinance.

(4) The Registrar may approve any sequence or combination of letters, characters, numbers or symbols selected by a person as a password for that person's use in any system designated by the Registrar for the purposes of this section.

(5) In subsection (2)(b), "within the validity of that certificate" (在該證書的有效期內) has the meaning given by section 6(2) of the Electronic Transactions Ordinance (Cap. 553).

(6) In this section, a reference to delivering a document includes sending, forwarding or producing the document and, in the case of a notice, giving the document."

26. Power of Registrar to refuse to register certain documents

Section 348(1)(c) is amended by adding "password included with the document," after "on the document,".

27. Section 348BA added

The following is added immediately after section 348B—

"348BA. Registrar may issue certificates in any manner

(1) The Registrar may issue a certificate under this Ordinance in any manner the Registrar thinks fit.

(2) If a certificate is issued to a person in the form of an electronic record, the Registrar must send the record—

- (a) by electronic mail transmission to the person's electronic mail address last known to the Registrar; or
- (b) by storing the certificate in a system designated by the Registrar and by notifying the person that the certificate is so stored."

PART 6**AMENDMENTS RELATING TO COMMUNICATIONS BY COMPANY TO
ANOTHER PERSON (OTHER THAN REGISTRAR OF COMPANIES)****Division 1—Companies Ordinance****28. Right to receive copies of balance sheets and
directors' and auditors' reports**

Section 129G of the Companies Ordinance (Cap. 32) is amended by adding immediately before subsection (1A)—

“(1AA) For the purposes of section 168BAH(3)(c), a notification is to be sent not less than 21 days before the date of the general meeting concerned.

(1AB) The period specified for the purposes of section 168BAH(3)(d)(i) is the period beginning not less than 21 days before the date of the general meeting concerned and ending on the date of the following general meeting in which documents required to be sent under subsection (1) are required to be laid before the company under this Ordinance or in accordance with a direction of the court.”.

29. Subheading repealed

The subheading immediately before section 141CH is repealed.

**30. Circumstances in which listed companies may
comply with section 129G by use of
computer network**

Section 141CH is repealed.

31. Part IVAAA added

The following is added immediately after section 168B—

“PART IVAAA

COMMUNICATIONS BY COMPANY TO ANOTHER PERSON
(OTHER THAN REGISTRAR)**168BAA. Interpretation**

- (1) In this Part—
- “address” (地址) includes a number, or any sequence or combination of letters, characters, numbers or symbols of any language, used for the purpose of sending or receiving a document or information by electronic means;
- “applicable provision” (適用條文) means a provision of this Ordinance that authorizes or requires the document or information to be sent or supplied, in writing or not, by a company to another person;
- “business day” (營業日) means a day that is not—
- (a) a general holiday; or
 - (b) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);
- “document” (文件) excludes a document that is issued for the purpose of any legal proceedings;
- “information system” (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553).
- (2) In this Part—
- (a) a reference to sending a document—
 - (i) includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document; and
 - (ii) excludes serving the document; and
 - (b) a reference to supplying information includes sending, delivering, forwarding or producing the information.
- (3) For the purposes of this Part—
- (a) a document or information is sent or supplied in hard copy form if it is sent or supplied—
 - (i) in paper form; or
 - (ii) in a similar form capable of being read;
 - (b) a document or information is sent or supplied in electronic form if it is sent or supplied—
 - (i) by electronic means; or
 - (ii) by any other means while in electronic form; and

(c) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system.

(4) For the purposes of this Part, a person sends a document, or supplies information, by post if the person posts a prepaid envelope containing the document or information.

168BAB. Minimum period specified for purposes of sections 168BAG(4) and 168BAH(6)

(1) This section specifies the minimum period of the notice of revocation, in relation to an agreement between a company and another person, for the purposes of sections 168BAG(4) and 168BAH(6).

(2) The minimum period is whichever is the longer of the following—

- (a) a period of 7 days;
- (b) the period set out in subsection (3) or (4).

(3) If that other person is not a company, the period set out for the purposes of subsection (2)(b) is—

- (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
- (b) where that other person is a debenture holder of the company, the period specified for the purpose in the instrument creating the debenture; or
- (c) where that other person is not such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(4) If that other person is a company, the period set out for the purposes of subsection (2)(b) is—

- (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
- (b) where the company is a member of that other person, the period specified for the purpose in the person's articles;
- (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the period specified for the purpose in the instrument creating the debenture; or
- (d) where neither that other person nor the company is such a member or holder, the period specified for the purpose in any agreement between the person and the company.

**168BAC. Period specified for purposes of sections
168BAG(7)(a) and 168BAH(10)(b)**

(1) This section specifies the period, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 168BAG(7)(a) and 168BAH(10)(b).

(2) The period is whichever is the longer of the following—

- (a) a period of 48 hours;
- (b) the period set out in subsection (3) or (4).

(3) If that other person is not a company, the period set out for the purposes of subsection (2)(b) is—

- (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
- (b) where that other person is a debenture holder of the company, the period specified for the purpose in the instrument creating the debenture; or
- (c) where that other person is not such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(4) If that other person is a company, the period set out for the purposes of subsection (2)(b) is—

- (a) where that other person is a member of the company, the period specified for the purpose in the company's articles;
- (b) where the company is a member of that other person, the period specified for the purpose in the person's articles;
- (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the period specified for the purpose in the instrument creating the debenture; or
- (d) where neither that other person nor the company is such a member or holder, the period specified for the purpose in any agreement between the person and the company.

(5) In calculating a period of hours mentioned in subsection (2)(a), any part of a day that is not a business day is to be disregarded.

**168BAD. Time specified for purposes of sections
168BAF(5)(a) and 168BAG(7)(b)**

(1) This section specifies the time, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 168BAF(5)(a) and 168BAG(7)(b).

(2) The time is whichever is the later of the following—

- (a) the time at which the document or information would be delivered in the ordinary course of post;

- (b) the time set out in subsection (3) or (4).
- (3) If that other person is not a company, the time set out for the purposes of subsection (2)(b) is—
- (a) where that other person is a member of the company, the time specified for the purpose in the company's articles;
 - (b) where that other person is a debenture holder of the company, the time specified for the purpose in the instrument creating the debenture; or
 - (c) where that other person is not such a member or holder, the time specified for the purpose in any agreement between the person and the company.
- (4) If that other person is a company, the time set out for the purposes of subsection (2)(b) is—
- (a) where that other person is a member of the company, the time specified for the purpose in the company's articles;
 - (b) where the company is a member of that other person, the time specified for the purpose in the person's articles;
 - (c) where that other person is a debenture holder of the company or where the company is a debenture holder of that other person, the time specified for the purpose in the instrument creating the debenture; or
 - (d) where neither that other person nor the company is such a member or holder, the time specified for the purpose in any agreement between the person and the company.

**168BAE. Address specified for purposes of sections
168BAF(2)(b) and 168BAG(3)(b)(iii)**

- (1) This section specifies the address, in relation to a document or information sent or supplied by a company to another person, for the purposes of sections 168BAF(2)(b) and 168BAG(3)(b)(iii).
- (2) Subject to subsections (3) and (4), the address is—
- (a) an address specified for the purpose by that other person generally or specifically; or
 - (b) an address to which a provision of this Ordinance authorizes or requires the document or information to be sent or supplied.
- (3) If that other person (whether or not a company) is a member, debenture holder, director or secretary of the company, the address is—
- (a) the address specified in subsection (2); or
 - (b) the person's address as shown in the company's register of members, register of holders of debentures, or register of directors and secretaries.

(4) If that other person is a company and is not a person covered by subsection (3), the address is—

- (a) the address specified in subsection (2); or
- (b) its registered office.

(5) If the company is unable to obtain an address specified in subsection (2), (3) or (4), the address is that other person's address last known to the company.

168BAF. Communication in hard copy form

(1) This section applies if a document or information is sent or supplied, in hard copy form, by a company to another person other than the Registrar.

(2) The document or information is sent or supplied to that other person for the purposes of an applicable provision if the document or information is sent or supplied—

- (a) by hand to that other person; or
- (b) by hand or by post to an address specified in section 168BAE.

(3) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if it is signed by a director or secretary of the company or by an officer of the company authorized for the purpose.

(4) If the document or information is sent or supplied by a person on behalf of the company to another company, subsection (3) does not affect any provision of that other company's articles under which that other company may require reasonable evidence of the person's authority to act on behalf of the company for which the document or information is sent or supplied.

(5) If the document or information is sent or supplied to that other person for the purposes of an applicable provision, it is to be regarded as being received by that other person—

- (a) where the document or information is sent or supplied by post, at the time specified in section 168BAD; or
- (b) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

168BAG. Communication in electronic form

(1) Subject to subsection (2), this section applies if a document or information is sent or supplied, in electronic form, by a company to another person other than the Registrar.

(2) This section does not apply if the document or information is sent or supplied by the company to that other person by making it available on a website.

(3) The document or information is sent or supplied to that other person for the purposes of an applicable provision if—

- (a) that other person has agreed, generally or specifically, that the document or information may be sent or supplied to the person in electronic form and has not revoked the agreement;
- (b) the document or information is sent or supplied—
 - (i) by electronic means to an address specified for the purpose by that other person generally or specifically;
 - (ii) by hand to that other person; or
 - (iii) by hand or by post to an address specified in section 168BAE; and
- (c) the document or information is sent or supplied in a form, and by a means, that, in the company's reasonable opinion, will enable the recipient—
 - (i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and
 - (ii) to retain a copy of the document or information.

(4) That other person has not revoked the agreement for the purposes of subsection (3)(a) unless the person has given the company a notice of revocation of not less than the period specified in section 168BAB.

(5) For the purposes of an applicable provision that authorizes or requires the document or information to be authenticated, the document or information is sufficiently authenticated if—

- (a) the company's identity is confirmed in a manner specified by that other person; or
- (b) where no manner has been specified, the communication contains or is accompanied by a statement of the company's identity, and that other person has no reason to doubt the truth of the statement.

(6) If the document or information is sent or supplied by a person on behalf of the company to another company, subsection (5) does not affect any provision of that other company's articles under which that other company may require reasonable evidence of the person's authority to act on behalf of the company for which the document or information is sent or supplied.

(7) If the document or information is sent or supplied to that other person for the purposes of an applicable provision, it is to be regarded as being received by that other person—

- (a) where the document or information is sent or supplied by electronic means, at the end of the period specified in section 168BAC after it is sent or supplied;
- (b) where the document or information is sent or supplied by post, at the time specified in section 168BAD; or
- (c) where the document or information is sent or supplied by hand, at the time when the document or information is delivered.

168BAH. Communication by means of website

(1) Subject to subsection (2), this section applies if a document or information is sent or supplied by a company to another person other than the Registrar by making it available on a website.

(2) This section does not apply if the document or information is sent or supplied by a member of a company to the company.

(3) The document or information is sent or supplied to that other person for the purposes of an applicable provision if—

- (a) that other person—
 - (i) has agreed, generally or specifically, that the document or information may be sent or supplied by the company to the person by making it available on a website, or is regarded under subsection (4) or (5) as having so agreed; and
 - (ii) has not revoked the agreement;
- (b) the document or information is sent or supplied in a form, and by a means, that, in the company's reasonable opinion, will enable the recipient—
 - (i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with the eye with suitable corrective lens; and
 - (ii) to retain a copy of the document or information;
- (c) the company has notified that other person of the matters specified in subsection (8); and
- (d) the company has made the document or information available on the website throughout—
 - (i) the period specified by the applicable provision; or

(ii) where no period is specified, the period of 28 days beginning with the date on which the notification under paragraph (c) is sent to that other person.

(4) For the purposes of subsection (3)(a)(i), a person who is a member of the company is regarded as having agreed that the document or information may be sent or supplied by the company to the person by making it available on a website if—

- (a) the company's members have resolved, or the company's articles contain a provision to the effect, that documents or information generally may be so sent or supplied by the company to its members;
- (b) the company has individually requested the person to agree that documents or information generally, or the document or information, may be so sent or supplied by the company to the person and has not received a response to the request within 28 days beginning with the date on which the request was sent; and
- (c) the request—
 - (i) stated clearly the effect of a failure to respond within those 28 days; and
 - (ii) was sent at least 12 months after a prior request made to the person for the purposes of paragraph (b) in respect of the same or a similar class of documents or information.

(5) For the purposes of subsection (3)(a)(i), a person who is a debenture holder of the company is regarded as having agreed that the document or information may be sent or supplied by the company to the person by making it available on a website if—

- (a) the instrument creating the debenture contains a provision to the effect, or the equivalent debenture holders have resolved in accordance with the provisions of that instrument, that documents or information generally may be so sent or supplied by the company to those holders;
- (b) the company has individually requested the person to agree that documents or information generally, or the document or information, may be so sent or supplied by the company to the person and has not received a response to the request within 28 days beginning with the date on which the request was sent; and
- (c) the request—
 - (i) stated clearly the effect of a failure to respond within those 28 days; and

- (ii) was sent at least 12 months after a prior request made to the person for the purposes of paragraph (b) in respect of the same or a similar class of documents or information.

(6) That other person has not revoked the agreement for the purposes of subsection (3)(a)(ii) unless the person has given the company a notice of revocation of not less than the period specified in section 168BAB.

(7) For the purposes of subsection (3)(c), if the applicable provision specifies the time by which or the period within which the notification is to be sent, the notification must be sent by that time or within that period.

(8) The matters specified for the purposes of subsection (3)(c) are—

- (a) the presence of the document or information on the website;
- (b) if the document or information is not available on the website on the date of the notification, the date on which it will be so available;
- (c) the address of the website;
- (d) the place on the website where the document or information may be accessed; and
- (e) how to access the document or information.

(9) For the purposes of subsection (3)(d), a failure to make a document or information available on a website throughout the period mentioned in that subsection is to be disregarded if—

- (a) the document or information is made available on the website for part of that period; and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(10) If the document or information is sent or supplied to that other person for the purposes of an applicable provision—

- (a) it is to be regarded as being sent or supplied on whichever is the later of the following—
 - (i) the date on which the document or information is first made available on the website;
 - (ii) the date on which a notification under subsection (3)(c) is sent; and
- (b) it is to be regarded as being received by that other person at the end of the period specified in section 168BAC after whichever is the later of the following—
 - (i) the time when the document or information is first made available on the website;

(ii) the time when that other person receives a notification under subsection (3)(c).

(11) In subsection (5), “equivalent debenture holders” (相應債權證持有人), in relation to a person to whom a document or information is sent or supplied by a company, means the debenture holders of the company ranking equally for all purposes with the person.

168BAI. Member or debenture holder may require hard copy

(1) A member or debenture holder of a company may, within 28 days after the date of receiving from the company a document or information, otherwise than in hard copy form, request the company to send or supply to the member or holder the document or information in hard copy form.

(2) The company must send or supply to the member or holder the document or information in hard copy form, free of charge—

- (a) within 21 days after the date of receiving the request; or
- (b) if the document or information requires an action to be taken by the member or holder on or before a date, at least 7 days before the date.

(3) Subsection (2)(b) does not apply unless the member or holder makes a request under subsection (1) at least 14 days before the date mentioned in subsection (2)(b).

(4) If a company contravenes subsection (2), the company, and every officer of the company who is in default, commit an offence, and each is liable to a fine.”.

32. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding—

“168BAI(4) Company failing to send or supply documents or information in hard copy form	Summary	level 3	\$300”.
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Division 2—Companies (Revision of Accounts and Reports) Regulation**33. Distribution of revised accounts or directors' reports**

Section 12 of the Companies (Revision of Accounts and Reports) Regulation (Cap. 32 sub. leg. N) is amended by adding—

“(3A) For the purposes of section 168BAH(3)(c) of the Ordinance, a notification is to be sent within 28 days after the date of revision concerned.

(3B) The period specified for the purposes of section 168BAH(3)(d)(i) of the Ordinance is the period beginning on a date falling within 28 days after the date of revision concerned and ending on the date of the following general meeting in which relevant financial documents are required to be laid before the listed company under the Ordinance or in accordance with a direction of the court.”.

34. Notifying recipients of summary financial reports after revision of accounts

Section 13 is amended by adding—

“(4A) For the purposes of section 168BAH(3)(c) of the Ordinance, a notification is to be sent within 28 days after the date of revision concerned.

(4B) The period specified for the purposes of section 168BAH(3)(d)(i) of the Ordinance is the period beginning on a date falling within 28 days after the date of revision concerned and ending on the date of the following general meeting in which relevant financial documents are required to be laid before the listed company under the Ordinance or in accordance with a direction of the court.”.

35. Documents sent under section 12 or 13 by use of computer network

Section 14 is repealed.

PART 7

AMENDMENTS RELATING TO PAPERLESS HOLDING AND TRANSFER OF
SHARES AND DEBENTURES**Division 1—Companies Ordinance****36. Interpretation**

Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding—

- ““prescribed securities” (訂明證券) has the meaning given by section 397(5) of the Securities and Futures Ordinance (Cap. 571);
“Scripless Rules” (《無紙化規則》) means rules made under section 397(1A) of the Securities and Futures Ordinance (Cap. 571);”.

37. Nature of shares

- (1) Section 65 is amended by renumbering it as section 65(1).
- (2) Section 65(1) is amended by repealing “, transferable in manner provided by the articles of the company,”.
- (3) Section 65 is amended by adding—

“(2) The shares or other interest of any member in a company are transferable in the manner provided by the articles of the company subject, for shares or other interest that are prescribed securities, to the Scripless Rules.”.

38. Numbering of shares

Section 65A(3) is amended by repealing “the share certificates” and substituting “any share certificates”.

**39. Transfer not to be registered except on
production of instrument of transfer**

- (1) Section 66 is amended by renumbering it as section 66(1).
- (2) Section 66(1) is amended by repealing everything after “delivered to the company” and substituting a full stop.
- (3) Section 66 is amended by adding—

“(2) Subsection (1) does not apply to a transfer, made in accordance with the Scripless Rules, of shares or debentures that are prescribed securities.

(3) Subsection (1) does not affect any power of the company to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.”.

40. Transfer by personal representative

Section 67 is amended by repealing everything after “made by” and substituting “the member’s personal representative is as valid as if the personal representative’s name were, at the time of the transfer, entered in the register of members of the company as a holder of the share or interest.”.

41. Duties of company with respect to issue of certificates

(1) Section 70(1) is amended by repealing everything after “so allotted,” and substituting—

“unless—

- (a) the shares, debentures or debenture stock are prescribed securities that are allotted in accordance with the Scripless Rules; or
- (b) if the shares, debentures or debenture stock are not prescribed securities, the conditions of issue of the shares, debentures or debenture stock otherwise provide.”.

(2) Section 70(1A) is amended by repealing everything after “so transferred,” and substituting—

“unless—

- (a) the shares, debentures or debenture stock are prescribed securities that are transferred in accordance with the Scripless Rules; or
- (b) if the shares, debentures or debenture stock are not prescribed securities, the conditions of issue of the shares, debentures or debenture stock otherwise provide.”.

42. Certificate to be evidence of title

(1) Section 71 is amended by renumbering it as section 71(1).

- (2) Section 71 is amended by adding—
“(2) Subsection (1) does not affect section 102.”.

43. Register of members

- (1) Section 95 is amended by adding—
“(1A) If a company’s share capital is divided into different classes of shares and any of those shares are prescribed securities, the company must also enter in the register of members—
(a) a statement that its share capital is divided into different classes of shares;
(b) the nominal value of, and the voting rights attached to, the shares of each class;
(c) in relation to a class of shares (other than shares described as preference shares or preferred shares) the holders of which are not entitled to vote at a general meeting of the company, the words “non voting” or the Chinese characters “無表決權”; and
(d) any other matters that are required by the Scripless Rules to be entered in that register.”.
- (2) Section 95 is amended by adding—
“(5) Where a company makes default in complying with subsection (1A), the company, and every officer of the company who is in default, commit an offence, and each is liable to a fine and, for continued default, to a daily default fine.”.

44. Register to be evidence

Section 102 is amended by adding—

“(1A) Without limiting subsection (1), in the absence of evidence to the contrary, an entry in the register of members recording a person as holding any share is proof of the person’s title to the share.”.

45. Provisions relating to acquisition of minority shares after successful take-over offer

(1) Paragraph 7 of the Ninth Schedule is amended by repealing everything after “those shares” and substituting a full stop.

- (2) The Ninth Schedule is amended by adding—
“7A. An instrument of transfer is not required under paragraph 7(a) for—

- (a) any share for which a share warrant is for the time being outstanding; or
- (b) any share that is a prescribed security, if the transfer of the share is made in accordance with the Scripless Rules.”.

46. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding—

“95(5)	Company failing to enter the required matters in the company’s register of members	Summary	level 3	\$300”.
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Division 2—Companies (Winding-up) Rules

47. Forms

Form 73 of the Appendix to the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) is amended by repealing “. If you do not attend personally you must forward the share certificate” and substituting “of the shares or, if the shares are prescribed securities in uncertificated form within the meaning given by section 397(6) of the Securities and Futures Ordinance (Cap. 571), other evidence of your title to the shares. If you do not attend personally you must forward the share certificate or the evidence (as the case may be)”.

Division 3—Securities and Futures Ordinance

48. Rules by Commission

(1) Section 397 of the Securities and Futures Ordinance (Cap. 571) is amended by adding—

“(1A) The Commission may make rules to—

- (a) specify any listed securities not to be prescribed securities, and any other securities to be prescribed securities, for the purposes of rules made under this subsection;
- (b) provide for the maintaining of registers or other records in respect of holders of prescribed securities, or for otherwise recording or evidencing title to such securities;

- (c) specify the classes or descriptions of transfer of prescribed securities that may be made without an instrument of transfer;
- (d) provide for the transfer of prescribed securities without an instrument of transfer;
- (e) provide for the issuing of certificates on an allotment or transfer of prescribed securities; and
- (f) provide for the dematerialization and rematerialization of prescribed securities.

(1B) Rules may be made under subsection (1A)(c) only after consultation with the Financial Secretary.”.

(2) Section 397(2) is amended by repealing “subsection (1)” and substituting “subsections (1) and (1A)”.

(3) Section 397 is amended by adding—

“(5) In subsection (1A)—

“dematerialization” (去實物化) means the process of converting prescribed securities from certificated form into uncertificated form;

“prescribed securities” (訂明證券) means any securities—

(a) that are listed, except those specified by rules made under subsection (1A) not to be prescribed securities; or

(b) that are specified to be prescribed securities by rules made under subsection (1A);

“rematerialization” (復實物化) means the process of converting prescribed securities from uncertificated form into certificated form.

(6) For the purposes of subsection (5)—

(a) prescribed securities are in uncertificated form if the title to them is, in accordance with rules made under subsection (1A), recorded or evidenced otherwise than in paper form; and

(b) prescribed securities are in certificated form if they are not in uncertificated form.”.

PART 8

MISCELLANEOUS AMENDMENTS

49. Power to dispense with certain words in name of charitable and other companies

(1) Section 21(2) of the Companies Ordinance (Cap. 32) is amended by repealing “subsections (4) and (5)” and substituting “subsections (7) and (8)”.

(2) Section 21(8)(b) is amended by repealing “subsections (4) and (5)” and substituting “subsections (7) and (8)”.

50. Power of Registrar to require company to change misleading or offensive name, etc.

Section 22A(5) is amended by repealing “Subsections (4) and (5)” and substituting “Subsections (7) and (8)”.

51. Non voting shares and shares with different voting rights

Section 57A(1) is amended by repealing “and those words” and substituting “or the Chinese characters “無表決權” and those words or characters”.

52. Approval of company required for allotment of shares by directors

Section 57B is amended, in the Chinese text, by repealing subsection (7) and substituting—

“(7) 本條並不影響任何股份分配的有效性；此外，凡公司的創辦成員藉簽署章程大綱，同意承購公司股份，本條不規定須獲得批准，方可將該等股份分配予該等成員。”.

53. Power to close register of members and register of debenture holders

(1) Section 99(1) is amended by repealing “by advertisement in a newspaper circulating generally in Hong Kong” and substituting “in accordance with subsection (1A)”.

(2) Section 99 is amended by adding—

“(1A) A notice for the purposes of subsection (1)—

- (a) if the company is a listed company, is to be given—
 - (i) in accordance with the listing rules applicable to the stock market; or
 - (ii) by advertisement in a newspaper circulating generally in Hong Kong; and
 - (b) in the case of any other company, is to be given by advertisement in a newspaper circulating generally in Hong Kong.”.
- (3) Section 99 is amended by adding—
- “(5) In subsection (1A), “listing rules” (《上市規則》) means the rules made under section 23 of the Securities and Futures Ordinance (Cap. 571) by a recognized exchange company that govern the listing of securities on a stock market it operates.”.

54. Register to be evidence

- (1) The heading of section 102 is amended by repealing “**evidence**” and substituting “**proof**”.
- (2) Section 102(1) is repealed and the following substituted—
 - “(1) In the absence of evidence to the contrary, the register of members is proof of any matters that are by this Ordinance directed or authorized to be inserted in it.”.

55. Interpretation of provisions as to prospectuses

Section 343(2) is amended, in the Chinese text, by repealing “委託人” and substituting “主理人”.

56. Power to make regulations

- (1) Section 359A(4)(c)(i) is amended, in the Chinese text, by adding “第” before “129G”.
- (2) Section 359A(4)(c)(i) is amended, in the Chinese text, by adding “第” before “109”.

57. First Schedule amended

- (1) Regulation 92 of Part I of Table A in the First Schedule is amended, in the Chinese text, by repealing “抽籤” and substituting “抽籤”.
- (2) Article 1 of Table C in the First Schedule is amended, in the English text, in the definition of “Ordinance”, by repealing the full stop and substituting a semicolon.

(3) Article 1 of Table C in the First Schedule is amended, in the English text, in the definition of “seal”, by repealing the full stop and substituting a semicolon.

(4) Article 39 of Table C in the First Schedule is amended, in the Chinese text, by repealing “抽簽” and substituting “抽籤”.

Explanatory Memorandum

This Bill amends the Companies Ordinance (Cap. 32) (“the Ordinance”) and its subsidiary legislation for the following main purposes—

- (a) to streamline the company formation procedures;
- (b) to extend the powers of the Registrar of Companies (“the Registrar”) to direct a change of company name;
- (c) to enable statutory derivative actions to be brought or intervened in on behalf of a specified corporation, namely a company or non-Hong Kong company, under Part IVAA of the Ordinance by a member of a subsidiary or holding company of the corporation or by a member of a subsidiary of a holding company of the corporation;
- (d) to provide for electronic communications with the Registrar and for the modes of communications by a company to any person other than the Registrar;
- (e) to remove obstacles to the introduction of paperless holding and transfer of shares and debentures,

and makes related and miscellaneous amendments to the Ordinance and its subsidiary legislation and the Securities and Futures Ordinance (Cap. 571).

Part 1—Preliminary

- 2. Clause 1 provides for the short title of the Bill (when enacted).
- 3. Clause 2 empowers the Secretary for Financial Services and the Treasury to appoint a day for the Bill (when enacted) to come into operation.

Part 2—Amendments Relating to Company Formation

- 4. Clauses 3 and 4 amend sections 6 and 12 of the Ordinance respectively to dispense with the requirements that the signing of any memorandum of association and articles of association by a founder member must be witnessed.

5. Section 14A of the Ordinance presently provides that, if 2 or more founder members are named in an incorporation form, the form is to be signed by the 2 or any 2 of those members. Clause 5 amends that section to reduce the number of founder members required to sign an incorporation form from 2 to one. Also, clause 5 amends that section to require additional particulars to be given in an incorporation form and to empower the Financial Secretary to amend section 14A(2) of the Ordinance.
6. Clause 6 amends section 18 of the Ordinance to require the founder member who signs an incorporation form to sign the relevant statement of compliance and to certify as to the particulars contained in the form.
7. Clause 7 adds a new section 18A to the Ordinance. The new section requires consents given for the purposes of the new section 14A(2)(l)(ii) of the Ordinance to be delivered to the Registrar. Contravening the requirement is an offence under the new section 18A of the Ordinance. Clause 8 amends the Twelfth Schedule to the Ordinance to provide for the penalty level for the offence.

Part 3—Amendments Relating to Company Name

8. The main object of Part 3 is to extend the Registrar's powers to direct a change of company name. Clause 9 adds a new section 20(2A) to the Ordinance. The new section prohibits a company from being registered by a name that is the same as a name for which a direction has been given under section 22 or 22A of the Ordinance.
9. The Registrar currently has powers under sections 22 and 22A of the Ordinance to direct a company to change a company name. Clauses 10 and 11 amend sections 22 and 22A of the Ordinance respectively to empower the Registrar to give a direction in more circumstances.
10. Contravention of a direction to change a company name is currently an offence under the Ordinance. Clause 12 adds a new section 22AA to the Ordinance to provide that, as an additional consequence of a contravention, the Registrar may replace the relevant company name by a new name. Clause 13 amends the Twelfth Schedule to the Ordinance to incorporate the changed heading of section 22A of the Ordinance.

Part 4—Amendments Relating to Statutory Derivative Actions

11. Part IVAA of the Ordinance currently provides that proceedings against a specified corporation may be brought or intervened in by a member of the corporation. Clauses 14, 15, 16, 17, 18, 19 and 20 amend Part IVAA of the Ordinance to enable a member of a related company of a specified

corporation to bring or intervene in such proceedings. A related company of a specified corporation is a subsidiary or holding company of the corporation or a subsidiary of a holding company of the corporation.

Part 5—Amendments Relating to Electronic Communications with Registrar

12. Clause 21 amends section 2 of the Ordinance to add certain definitions. Those definitions are necessary for interpreting the provisions of the Ordinance as proposed to be amended by Part 5.

13. Clauses 22 and 23 amend sections 109 and 158 of the Ordinance respectively to provide for the signature of the documents required under those sections.

14. Clause 24 amends section 346 of the Ordinance to enable the Registrar to serve a notice under section 346(2) of the Ordinance on any person in the form of an electronic record.

15. Clause 25 adds new sections 346A and 346B to the Ordinance to provide for the delivery of documents to the Registrar in the form of an electronic record and for the signing of those documents.

16. Clause 26 amends section 348(1)(c) of the Ordinance to empower the Registrar to refuse to register or accept for registration any document delivered to the Registrar under the Ordinance if any password included with the document is incomplete or altered.

17. Clause 27 adds a new section 348BA to the Ordinance. The new section empowers the Registrar to issue a certificate under the Ordinance in any manner the Registrar thinks fit.

Part 6—Amendments Relating to Communications by Company to Another Person (other than Registrar)

18. The main object of Part 6 is to add a new Part IVAAA to the Ordinance to provide for the manner in which documents or information is to be sent or supplied by a company to any person other than the Registrar under the Ordinance or its subsidiary legislation.

Part 7—Amendments Relating to Paperless Holding and Transfer of Shares and Debentures

19. Part 7 amends the Ordinance, the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) and the Securities and Futures Ordinance (Cap. 571) to remove obstacles to the introduction of paperless holding and transfer of shares and debentures.

Part 8—Miscellaneous Amendments

20. Part 8 contains miscellaneous amendments to the Ordinance. Clauses 49, 50, 51, 54, 56 and 57 make textual amendments to certain provisions of the Ordinance. Clauses 52 and 55 seek to remove discrepancies in meaning between the English and Chinese texts of sections 57B and 343 of the Ordinance respectively. Clause 53 amends section 99 of the Ordinance to provide for an alternative means of closing the registers of members and registers of debenture holders under that section.