

立法會
Legislative Council

LC Paper No. CB(1)1183/20-21

Ref: CB1/SS/16/20

Paper for the House Committee

**Report of the Subcommittee on Seven Pieces of Subsidiary Legislation
Relating to the Implementation of the New Inspection Regime of the
Companies Register under the Companies Ordinance**

Purpose

This paper reports on the deliberations of the Subcommittee on Seven Pieces of Subsidiary Legislation Relating to the Implementation of the New Inspection Regime of the Companies Register under the Companies Ordinance ("the Subcommittee").

Background

2. The Companies Ordinance (Cap. 622) ("CO") was enacted in 2012. Most of the provisions of CO commenced operation on 3 March 2014. However, among others, provisions regarding the new inspection arrangements of the Companies Register ("the Register") concerning addresses of company directors and identification numbers of individuals etc. ("New Inspection Regime") are not yet in operation.

3. According to the Administration, there has been, in recent years, rising community concern over whether personal information contained in public registers are adequately protected, especially in the light of increased reported cases of doxxing and personal data misuse.¹ Having reviewed the situation, the Government considers that there is an imminent need to bring into operation the New Inspection Regime. Seven pieces of subsidiary legislation (L.N. 95 to L.N. 101 of 2021), which are made to implement the New Inspection Regime in three phases, were gazetted on 18 June 2021 and tabled before the Legislative Council ("LegCo") at its meeting of 23 June 2021 for negative vetting by LegCo.

¹ According to information of the Office of the Privacy Commissioner for Personal Data, it handled over 5 400 doxxing-related cases from June 2019 to the end of 2020, while it received around 1 100 to 1 900 complaints each year from 2010 to 2018 (including doxxing-related and other categories of complaints).

The seven pieces of subsidiary legislation

Companies Ordinance (Commencement) Notice 2021 (L.N. 95 of 2021)

4. Companies Ordinance (Commencement) Notice 2021 (L.N. 95 of 2021) is made by the Secretary for Financial Services and the Treasury ("SFST") under section 1(2) of CO to appoint 23 August 2021 as the day on which sections 643(1)(a)(ii), (2)(b) and (3)(b) (in so far as it relates to a correspondence address), 643(5), 644, 651 and 657(2)(g) of CO come into operation. These provisions relate to the requirements for the register of directors of a company to contain the correspondence addresses of its directors and (if applicable) its reserve directors. A company may, in the prescribed manner and to the prescribed extent, withhold the usual residential address ("URA") and the number of the identity card or passport of a director or reserve director contained in its register of directors, and the number of the identity card or passport of a company secretary contained in its register of company secretaries, from a person who inspects or requests for a copy of the register concerned.

Companies Ordinance (Commencement) (No. 2) Notice 2021 (L.N. 96 of 2021)

5. Companies Ordinance (Commencement) (No. 2) Notice 2021 (L.N. 96 of 2021) is made by SFST under section 1(2) of CO to appoint 24 October 2022 as the day on which certain provisions of CO come into operation, namely, Subdivision 2 of Division 7 of Part 2 (i.e. sections 53 to 59, except section 54(1)(a)(ii)), sections 645(5), 647(4) and (5), 791(4), 802(4) and (5), section 3(1)(a)(iii) and (2) of Schedule 2, and sections 3 and 4 of Schedule 6. In gist, these provisions relate to the requirements for the Registrar of Companies ("the Registrar") not to make the following information available for public inspection: (a) URA of a director or reserve director of a company and the full number of the identity card or passport of any person contained in a document that is delivered to the Registrar for registration under specified Ordinances including CO ("Protected Information"), subject to certain exceptions, such as a disclosure to a "specified person" upon application ("Section 58 Application"); and (b) URA and the full number of the identity card or passport of a director or reserve director of a company contained in an index of directors or reserve directors of a company required to be kept by the Registrar.

Companies Ordinance (Commencement) (No. 3) Notice 2021 (L.N. 97 of 2021)

6. Companies Ordinance (Commencement) (No. 3) Notice 2021 (L.N. 97 of 2021) is made by SFST under section 1(2) of CO to appoint 27 December 2023 as the day on which sections 47, 49, 50, 51 and 52 of CO come into operation. These provisions relate to the withholding from public inspection by the Registrar, upon an application made by a relevant person ("Section 49 Application"), such as a director or a former director of a company, the relevant

person's URA or full number of the identity card or passport contained in a document delivered to the Registrar for registration under specified Ordinances including CO before, on or after 27 December 2023 ("Withheld Information"). They also deal with the restriction on the use or disclosure of the Withheld Information by the Registrar subject to certain exceptions, such as a disclosure to a "specified person" upon application ("Section 51 Application").

Companies (Residential Addresses and Identification Numbers) Regulation (L.N. 98 of 2021)

7. Companies (Residential Addresses and Identification Numbers) Regulation (L.N. 98 of 2021) is made by SFST under sections 49(8) and (9), 51(5), 58(5) and 910(b) of CO mainly to: (a) provide for the information to be contained in, the form of, and the documents to accompany, a Section 49 Application; (b) provide for the information to be contained in, the form of, and the documents and fees (if applicable) to accompany, a Section 51 Application and to specify the persons to whom the Withheld Information may be disclosed, and to provide for the conditions in accordance with which the Withheld Information may be disclosed to those persons; and (c) provide for the information to be contained in, the form of, and the documents and fees (if applicable) to accompany, a Section 58 Application and to specify the persons to whom the Protected Information may be disclosed, and to provide for the conditions in accordance with which the Protected Information may be disclosed to those persons.

8. Parts 1, 4 and 5 (except section 13(1)) of, and the Schedule to, L.N. 98 of 2021 (i.e. provisions relating to Section 58 Application) come into operation on the day on which section 58(5) of CO comes into operation (i.e. 24 October 2022). Parts 2 and 3 and section 13(1) of L.N. 98 of 2021 (i.e. provisions relating to Section 49 Application and Section 51 Application) come into operation on the day on which sections 49(8) and (9) and 51(5) of CO come into operation (i.e. 27 December 2023).

Company Records (Inspection and Provision of Copies) (Amendment) Regulation 2021 (L.N. 99 of 2021)

9. Company Records (Inspection and Provision of Copies) (Amendment) Regulation 2021 (L.N. 99 of 2021) is made by SFST under section 657 of CO to amend the Company Records (Inspection and Provision of Copies) Regulation (Cap. 622I). It adds a new Part 5 to Cap. 622I to prescribe the extent to which a company may withhold the number of the identity card or passport of a director or reserve director in its register of directors, or that of a company secretary in its register of company secretaries, from inspection (e.g. in case the number comprises a sequence of an even number of alphanumeric characters, by withholding the number except the first half of the sequence).

10. L.N. 99 of 2021 comes into operation on the day on which section 657(2)(g) of CO comes into operation (i.e. 23 August 2021).

Companies (Non-Hong Kong Companies) (Amendment) Regulation 2021 (L.N. 100 of 2021)

11. Companies (Non-Hong Kong Companies) (Amendment) Regulation 2021 (L.N. 100 of 2021) is made by SFST under section 805 of CO to amend the Companies (Non-Hong Kong Companies) Regulation (Cap. 622J) to the effect that: (a) an application to the Registrar for registration as a registered non-Hong Kong company is required to contain a correspondence address of each of the company's directors who is a natural person; and (b) an annual return of a registered non-Hong Kong company which is required to be delivered to the Registrar is not required to contain URA of a director and the full identity card or passport number of a director, company secretary or authorized representative who is a natural person.

12. L.N. 100 of 2021 comes into operation on the day on which section 54(2) of CO comes into operation (i.e. 24 October 2022).

Companies Ordinance (Amendment of Schedule 11) Notice 2021 (L.N. 101 of 2021)

13. Companies Ordinance (Amendment of Schedule 11) Notice 2021 (L.N. 101 of 2021) is made by SFST under section 913(2) of CO to amend Schedule 11 to CO to provide for the transitional arrangements on: (a) the treatment of the correspondence address of the directors and reserve directors of certain companies and non-Hong Kong companies in the Register on the commencement of Subdivision 2 of Division 7 of Part 2 (except section 54(1)(a)(ii)) of CO (i.e. 24 October 2022); and (b) the requirement for a company's register of directors to contain a correspondence address with respect to its directors and reserve directors, for delivering a relevant notice to the Registrar for registration in respect of the correspondence address, and for containing the correspondence address in the company's annual return.

14. All provisions of L.N. 101 of 2021, except section 3(1), come into operation on the day on which section 643(1)(a)(ii), (2)(b) and (3)(b) (in so far as it relates to a correspondence address) of CO comes into operation (i.e. 23 August 2021). Section 3(1) of L.N. 101 of 2021 (i.e. the provision dealing with the transitional arrangements stated in (a) of the preceding paragraph) comes into operation on the day on which section 54(2) of CO comes into operation (i.e. 24 October 2022).

The Subcommittee

15. At the House Committee meeting on 25 June 2021, Members agreed to form a subcommittee to study L.N. 95 to L.N. 101 of 2021. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon CHAN Chun-ying, the Subcommittee has held one meeting with the Administration to examine the seven pieces of subsidiary legislation.

16. The Subcommittee has received a submission from the Privacy Commissioner for Personal Data ("PCPD") dated 2 July 2021 on the New Inspection Regime. At the request of the Subcommittee, the Administration has provided a written response [LC Paper No. CB(1)1106/20-21(02)] to the submission from PCPD. The Subcommittee has posted a notice on LegCo's website to invite the public to make written submissions on the subsidiary legislation, and no submission has been received by the specified deadline.

17. To allow more time for the Subcommittee to study the seven pieces of subsidiary legislation and prepare a report for submission to the House Committee, the Subcommittee Chairman moved a motion at the Council meeting of 14 July 2021 to extend the scrutiny period of the subsidiary legislation to the Council meeting of 18 August 2021. The motion was passed at that Council meeting.

Deliberations of the Subcommittee

18. Members of the Subcommittee generally support the implementation of the New Inspection Regime. The major deliberations of the Subcommittee are summarized in the ensuing paragraphs.

Phased implementation of the New Inspection Regime

19. Members note that the New Inspection Regime will be implemented in three phases as follows:

- (a) Phase 1 — from 23 August 2021, companies may replace URAs of directors with their correspondence addresses, and replace full identification numbers ("IDNs") of directors and company secretaries with their partial IDNs for public inspection on their own registers;
- (b) Phase 2 — from 24 October 2022, Protected Information on the Index of Directors on the Register will be replaced with correspondence addresses and partial IDNs for public inspection. Protected Information contained in documents filed for registration

after commencement of this phase will not be provided for public inspection. "Specified persons" could apply to the Companies Registry ("the Registry") for access to Protected Information of directors and other persons; and

- (c) Phase 3 — from 27 December 2023, data subjects could apply to the Registry for protecting from public inspection their Withheld Information contained in documents already registered with the Registry before commencement of Phase 2, and replace such information with their correspondence addresses and partial IDNs. "Specified persons" could apply to the Registry for access to Withheld Information of directors and other persons.

Ascertaining the identity of directors

20. Some members have expressed concern that there are circumstances where the partial IDNs as well as the full Chinese and/or English names of different directors of companies may be identical, such that a certain number of persons recorded on the Register may match a search under the New Inspection Regime. There are also cases where different patterns of the names of an individual director are shown on the Register which make it difficult for searchers to ascertain the identity of the director concerned.

Different directors with the same name and partial identification numbers

21. The Administration has advised that the Integrated Companies Registry Information System ("ICRIS") will undergo system modifications to cope with the requirements for full operation of the New Inspection Regime. In the circumstances of different directors having identical full name and partial IDNs shown on the Register, the enhanced ICRIS will provide additional digit(s) of the IDNs of the remaining redacted digits, so that the searcher will be able to see from the search results that the directors concerned are different individuals.

A director with different patterns of names appearing on the Register

22. Regarding cases where different patterns of names of an individual director are shown on the Register, the Administration has advised that upon implementation of the New Inspection Regime, the Registry will step up the monitoring of the current requirement that the name of a director stated in specified forms must be the same as that in his/her Hong Kong Identity Card ("HKID") or, if he/she does not hold an HKID, in his/her passport. Where any inconsistencies are identified, the Registry will seek clarifications from the directors concerned. It is an offence under CO if a director of a company fails to comply with the requirement of providing further information requested by the Registrar for the purpose of ensuring that his/her information on the Register is

accurate or up-to-date. The Administration has added that pending completion of the clarification process by companies and directors on the inconsistencies of directors' names already on the Register, the enhanced ICRIS will still be able to identify the records of directors having the same full IDN but with different formats of names kept on the Register, and will group these matched records for display in a consolidated manner by assigning the same group number to them to facilitate searchers to identify records of the same director more easily despite the difference(s) in patterns of the names of the director concerned.

Disclosure of Withheld Information/Protected Information and "specified persons"²

23. Some members have stressed the need to allow employees recovering outstanding payments from employers to access URAs of directors of their employer companies to enable timely delivery of notices served in connection with the civil proceedings at the Labour Department ("LD") and the Labour Tribunal ("LT") by employees. The members have suggested that labour unions, which often assist employees in labour dispute cases, should be included in the list of "specified persons" under the New Inspection Regime.

24. The Administration has pointed out that when deciding on the list of "specified persons", it is guided by the need for access to Withheld Information/Protected Information ("WIPI") of directors in the conduct of functions conferred/imposed upon the persons concerned by statutory provisions. Under the New Inspection Regime, LD, being a public body, is a "specified person" who can access WIPI of directors for carrying out public functions when necessary. Hence, the existing services and functions of LD in respect of protection of labour rights and benefits will not be affected. Besides, if the employees wish to recover outstanding wages from employers through civil proceedings in Court, the lawyers representing the employees are "specified persons" who can access WIPI of directors when necessary for the performance of their functions.

25. In response to a member's concern about invalid correspondence address of a director, the Administration has advised that searchers (including labour unions) can file a complaint with the Registry, and the Registry can make available that director's URA for public inspection upon clarification with the director concerned and confirming the invalidity, and such disclosure can last for five years. Labour unions may raise such invalidity as necessary at an earlier stage of labour dispute cases for the Registry to take follow-up action promptly. When handling complaints in regard to invalid correspondence address of a

² The lists of "specified persons" are set out in sections 8 and 12 of the [Companies \(Residential Addresses and Identification Numbers\) Regulation \(L.N. 98 of 2021\)](#).

director, depending on the circumstances of each case, priority will be given by the Registry to certain types of cases (e.g. recovery of outstanding wages due to business closure or liquidation) which are time sensitive.

26. Some other members have enquired if the Administration will consider including the media in the list of "specified persons" or making WIPI of directors recorded on the Register accessible to the media upon application on the ground of public interest so as to facilitate the conduct of journalistic investigations by the media. The Administration has responded that the Register is made available for public inspection for the purposes set out in CO, which does not include public interest. The Court may however, upon the application of any person appearing to the Court to have a sufficient interest, make an order for the disclosure by the Registrar of WIPI of directors. The Administration has advised that the New Inspection Regime has struck a reasonable balance between enhancing protection for personal information while ensuring that the public can continue to inspect the Register under CO, and can cater the needs of the other professionals and searchers not listed as "specified persons" to ascertain the identity of the directors concerned. The New Inspection Regime has not posed any unequal treatment on any persons, or attempted to limit press freedom.

Prevention of misuse of Withheld Information/Protected Information

27. Some members have called on the Administration to step up its efforts to prevent the misuse of WIPI obtained through the New Inspection Regime by "specified persons". The Administration has advised that "specified persons" are required to confirm that WIPI will only be used for the performance of their functions (e.g. implementing anti-money laundering and counter-terrorist financing measures). There may be legal consequences on a "specified person" for making misrepresentation on the purposes of conducting a search and misusing WIPI which has caused harm to the data subject.³ The Administration will continue to liaise with the Office of PCPD on the enforcement to secure the protection of privacy of individuals.

³ If any person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular under CO, including a statement made by a "specified person" in regard to his/her purpose of applying for access to WIPI under the Companies (Residential Addresses and Identification Numbers) Regulation (L.N. 98 of 2021), it may amount to a criminal offence pursuant to section 895 of CO. The person who is found to have committed such an offence is liable on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or on summary conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for 6 months. Besides, according to the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"), a person may violate Data Protection Principle 3 under PDPO if personal data is used for a new purpose which is different to the original purpose when collecting the data without the data subject's consent, and may be subject to civil liabilities to pay compensation to that data subject.

Recommendation

28. The Subcommittee has completed scrutiny of the seven pieces of subsidiary legislation. Both the Subcommittee and the Administration will not propose any amendments to the subsidiary legislation.

Advice sought

29. The Subcommittee Chairman gave a verbal report on the deliberations of the Subcommittee at the House Committee meeting on 16 July 2021. Members are invited to note this written report.

Council Business Division 1
Legislative Council Secretariat
5 August 2021

**Subcommittee on Seven Pieces of Subsidiary Legislation Relating to the
Implementation of the New Inspection Regime of the Companies Register
under the Companies Ordinance**

Membership List

Chairman	Hon CHAN Chun-ying, JP
Members	Hon Abraham SHEK Lai-him, GBS, JP Hon Starry LEE Wai-king, SBS, JP Hon CHAN Kin-por, GBS, JP Hon Paul TSE Wai-chun, JP Hon Christopher CHEUNG Wah-fung, SBS, JP Hon CHUNG Kwok-pan Hon Holden CHOW Ho-ding Hon SHIU Ka-fai, JP Hon CHEUNG Kwok-kwan, JP Hon LUK Chung-hung, JP Dr Hon CHENG Chung-tai

(Total : 12 members)

Clerk	Mr Boris LAM
--------------	--------------

Legal Adviser	Ms Wendy KAN
----------------------	--------------