立法會 Legislative Council

LC Paper No. CB(1)1199/20-21 (These minutes have been seen by the Administration)

Ref: CB1/SS/16/20

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

Minutes of the first meeting on Monday, 5 July 2021, at 2:30 pm in Conference Room 3 of the Legislative Council Complex

Members present: Hon CHAN Chun-ying, JP (Chairman)

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

Member attending: Hon Michael TIEN Puk-sun, BBS, JP

Public officers attending

: Agenda item II

Mr Sam HUI

Deputy Secretary for Financial Services and the

Treasury (Financial Services) Special Duties

Mr Desmond WU

Principal Assistant Secretary for Financial Services

and the Treasury (Financial Services)6

Ms Kitty TSUI
Acting Registrar of Companies

Ms Ellen CHAN Deputy Principal Solicitor (Company Law Reform) Companies Registry

Ms Marianna YU Registry Manager Companies Registry

Mr Jonathan LUK Senior Government Counsel Department of Justice

Clerk in attendance: Mr Boris LAM

Chief Council Secretary (1)3

Staff in attendance: Ms Wendy KAN

Assistant Legal Adviser 6

Miss Rita YUNG

Senior Council Secretary (1)3

Ms May LEUNG

Legislative Assistant (1)3

Miss Teresa HO

Clerical Assistant (1)3

Action

I. Election of Chairman

Ms Starry LEE, the Member who had the highest precedence in the Council among members 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") present at the meeting, presided at the election of Chairman of the Subcommittee. Ms LEE invited nominations for the chairmanship of the Subcommittee.

2. <u>Mr Holden CHOW</u> nominated Mr CHAN Chun-ying and the nomination was seconded by <u>Mr SHIU Ka-fai</u> and <u>Mr LUK Chung-hung</u>. <u>Mr CHAN</u>

accepted the nomination. There being no other nomination, Mr CHAN Chun-ying was declared Chairman of the Subcommittee. Mr CHAN then took the chair.

3. <u>Members</u> agreed that there was no need to elect a Deputy Chairman.

II.	Meeting with the Administration (L.N. 95 of 2021	 Companies Ordinance (Commencement) Notice 2021
	L.N. 96 of 2021	 Companies Ordinance (Commencement) (No. 2) Notice 2021
	L.N. 97 of 2021	 Companies Ordinance (Commencement) (No. 3) Notice 2021
	L.N. 98 of 2021	 Companies (Residential Addresses and Identification Numbers) Regulation
	L.N. 99 of 2021	 Company Records (Inspection and Provision of Copies) (Amendment) Regulation 2021
	L.N. 100 of 2021	 Companies (Non-Hong Kong Companies) (Amendment) Regulation 2021
	L.N. 101 of 2021	 Companies Ordinance (Amendment of Schedule 11) Notice 2021
	File Ref: CO/2/20C(2021)Pt.9	 Legislative Council Brief issued by the Financial Services and the Treasury Bureau
	LC Paper No. LS81/20-21	 Legal Service Division Report on subsidiary legislation gazetted on

18 June 2021

LC Paper No. CB(1)1077/20-21(01) --Marked-up copy of the relevant provisions of the Companies Ordinance (Cap. 622) and its legislation subsidiary to be amended by L.N. 99 to L.N. 101 of 2021 prepared by the Legal Service Division

LC Paper No. CB(1)1077/20-21(02) --Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1077/20-21(03) --Assistant Legal Adviser's letter July dated 2021 to the Administration

Privacy

LC Paper No. CB(1)1088/20-21(01) --Submission from the (English version only, tabled at the Commissioner for Personal Data meeting and subsequently issued on dated 2 July 2021) 6 July 2021)

Discussion

4. The Subcommittee deliberated and completed the examination of provisions of the seven pieces of subsidiary legislation relating to the implementation of the new inspection regime of the Companies Register under the Companies Ordinance (Cap. 622) ("the seven pieces of subsidiary legislation") (index of proceedings in the Appendix).

Invitation of public views

5. The Chairman advised that the Subcommittee had received a submission from the Privacy Commissioner for Personal Data ("PCPD") dated 2 July 2021 on the proposed new inspection regime of the Companies Register (LC Paper No. CB(1)1088/20-21(01)). The Subcommittee agreed to invite written submissions from the public on the seven pieces of subsidiary legislation.

(Post-meeting note: A notice was posted on the website of the Legislative Council on 5 July 2021 to invite the public to provide written submissions on the seven pieces of subsidiary legislation. The 18 District Councils were also notified of the invitation. No submission was received by the Subcommittee by the deadline on 9 July 2021.)

Legislative timetable

6. The Subcommittee completed the scrutiny of the seven pieces of subsidiary legislation. <u>Members</u> noted that the scrutiny period of the seven pieces of subsidiary legislation would expire at the Council meeting of 21 July 2021. <u>The Subcommittee</u> agreed that the Chairman would move a motion at the Council meeting of 14 July 2021 to extend the scrutiny period to the Council meeting of 18 August 2021. <u>Members</u> noted that, upon extension of the scrutiny period, the deadline for giving notice of motion to amend the seven pieces of subsidiary legislation would be 11 August 2021. <u>The Chairman</u> would make a verbal report on the deliberations of the Subcommittee to the House Committee at its meeting on 16 July 2021.

Meeting arrangement

7. <u>The Chairman</u> advised that pending the Administration's responses to the Assistant Legal Adviser's letter dated 2 July 2021 (LC Paper No. CB(1)1077/20-21(03)) and the submissions received from PCPD and the public (if any), he would decide whether the Subcommittee should hold a further meeting.

(*Post-meeting note*: The Administration's written responses to (i) Assistant Legal Adviser's letter dated 2 July 2021; (ii) the submission from PCPD dated 2 July 2021; and (iii) issues raised at the meeting on 5 July 2021 and Mr Holden CHOW's letter dated 8 July 2021 (LC Paper No. CB(1)1106/20-21(03)) were circulated to members vide LC Paper Nos. CB(1)1106/20-21(01), (02) and (04) on 9 July 2021. The Secretariat had not received by the deadline on 12 July 2021 any request from members for holding a meeting to discuss the Administration's responses.)

III. Any other business

8. There being no other business, the meeting ended at 4:12 pm.

Council Business Division 1
<u>Legislative Council Secretariat</u>
13 August 2021

Proceedings of the first meeting 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 on Monday, 5 July 2021, at 2:30 pm

in Conference Room 3 of the Legislative Council Complex

Time Marker	Speaker	Subject(s)	Action Required
Agenda it			
000428 – 000553	Ms Starry LEE Mr Holden CHOW Mr SHIU Ka-fai Mr LUK Chung-hung Mr CHAN Chun-ying	Mr CHAN Chun-ying was elected Chairman of the Subcommittee.	
Agenda it	em II –Meeting with	the Administration	
000554 – 001545	Chairman Administration	Briefing by the Administration on the following seven pieces of subsidiary legislation relating to the implementation of the new inspection regime of the Companies Register ("the Register") under the Companies Ordinance (Cap. 622) ("CO") ("the seven pieces of subsidiary legislation") (File Ref: CO/2/20C(2021)Pt.9): (a) Companies Ordinance (Commencement) Notice 2021 (L.N. 95 of 2021); (b) Companies Ordinance (Commencement) (No. 2) Notice 2021 (L.N. 96 of 2021); (c) Companies Ordinance (Commencement) (No. 3) Notice 2021 (L.N. 97 of 2021); (d) Companies (Residential Addresses and Identification Numbers) Regulation (L.N. 98 of 2021); (e) Company Records (Inspection and Provision of Copies) (Amendment) Regulation 2021 (L.N. 99 of 2021); (f) Companies (Non-Hong Kong Companies) (Amendment) Regulation 2021 (L.N. 100 of 2021); and	

Time Marker	Speaker	Subject(s)	Action Required
001546 -	Chairman	Mr LUK Chung-hung expressed the following views:	•
002440	Mr LUK Chung-hung Administration	(a) to avoid delay in the recovery of outstanding wages by employees, the Administration should allow employees to access the residential addresses 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; and	
		(b) the Administration should include labour unions, which often assisted employees in labour dispute cases, in the list of "specified persons" under the new inspection regime.	
		Mr LUK Chung-hung enquired about how the Companies Registry ("CR") would handle complaints in regard to invalid correspondence address of a director.	
		The Administration responded that:	
		(a) the Administration had communicated with relevant stakeholders, including the labour sector, with a view to refining implementation details of the new inspection regime;	
		(b) when deciding on the list of "specified persons", the Administration was guided by the need for access to the usual residential addresses and full identification numbers ("IDNs") ("Protected Information") of directors in the conduct of functions conferred/imposed upon the persons concerned by statutory provisions;	
		(c) under the new inspection regime, LD, being a public body, was a "specified person" who could access the Protected Information 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 would not be affected; and	
		(d) searchers (including labour unions) could file a complaint with CR in regard to invalid correspondence address of a director. CR could make available that director's usual residential address for public inspection upon clarification with the director concerned and	

Time Marker	Speaker	Subject(s)	Action Required
		confirming the invalidity, and such disclosure could then last for five years. Labour unions might raise such invalidity as necessary at an earlier stage of labour dispute cases for CR to take follow-up action promptly.	1
002441 – 003249	Chairman Mr Michael TIEN Administration	Mr Michael TIEN pointed out that at present, there were circumstances that an individual director had provided different patterns of names in the documents delivered for registration for different companies. He enquired how the new inspection regime could enable searchers to access the full list of directorship of an individual.	
		Mr Michael TIEN suggested that the Administration should make it a statutory requirement for company directors to use the full Chinese and/or English names as shown in the Hong Kong Identity Cards ("HKID") or passports (as appropriate) in providing information to be recorded on the Register so as to improve the reliability of the search services of the Register.	
		The Administration responded that: (a) upon implementation of the new inspection regime, CR would 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 HKID or, if he/she did not hold an HKID, in his/her passport. Where any inconsistencies were identified, CR would seek clarifications from the directors concerned. It was an offence under CO if a director of a company failed to comply with the requirement of providing further information requested by the Registrar of Companies ("the Registrar") for the purpose of ensuring that his/her information on the Register was accurate or up-to-date;	
		 (b) in addition, if a document delivered to the Registrar for registration was unsatisfactory because it contained information which was inconsistent with other information on the Register or other information contained in another document delivered to the Registrar, the Registrar might refuse to register the document concerned; and (c) pending completion of the clarification process 	

Time	Speaker	Subject(s)	Action
Marker		by companies and directors on the inconsistencies of directors' names already on the Register, the enhanced Integrated Companies Registry Information System ("ICRIS") would 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 would 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.	Required
003250 – 003740	Chairman Mr Holden CHOW Administration	Mr Holden CHOW expressed the following views:(a) he supported the implementation of the new inspection regime to combat the problem of doxxing and to enhance protection for personal data;	
		(b) the Administration should enable the public to understand the administrative measures to be adopted under the new inspection regime that the enhanced ICRIS would be able to identify the records of directors having the same full IDN but with different formats of names kept on the Register, and would group these matched records for display in a consolidated manner for searchers to identify records of the same director more easily despite the difference(s) in patterns of the names of the director concerned; and	
		(c) CR should step up monitoring of the current requirement that the name of a director stated in specified forms must be the same as that in his/her HKID or passport.	
		The Administration took note of Mr CHOW's views.	
003741 – 004319	Chairman Mr Christopher CHEUNG Administration	Mr Christopher CHEUNG welcomed the inclusion of authorized institutions under the Banking Ordinance (Cap. 155) and financial institutions (e.g. securities companies) regulated under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) in the list of "specified persons".	
		Mr Christopher CHEUNG enquired about:	

Time	Speaker	Subject(s)	Action
Marker		(a) the procedures of and time required for the application for access to the Protected Information of directors by "specified persons" under the new inspection regime; and	Required
		(b) how the Administration could prevent the misuse of the Protected Information obtained through the new inspection regime by "specified persons".	
		The Administration responded that:	
		(a) appropriate administrative mechanisms would be put in place for "specified persons" to access the Protected Information on the Register in a timely manner for the execution of their functions. Special accounts would be set up for "specified persons" to apply for disclosure of the Protected Information on the Register; and	
		(b) "specified persons" were required to confirm that the Protected Information would only be used for the performance of their functions (e.g. implementing anti-money laundering and counter-terrorist financing measures). Any misrepresentation on the purposes of conducting a search and misuse of the Protected Information by "specified persons" might be subject to criminal and/or civil liabilities.	
004320 - 004919	Chairman Mr CHAN Kin-por	Mr CHAN Kin-por expressed the following views:	
00.13.13	Administration	(a) he supported the implementation of the new inspection regime;	
		(b) the Administration should consider including labour unions in the list of "specified persons" under the new inspection regime; and	
	(c)	(c) the Administration should step up the efforts to tackle the problem of disclosing the personal data obtained through the inspection regime online.	
		Mr CHAN Kin-por enquired whether there were any stakeholders or specific sectors which had expressed concerns over the new inspection regime.	
		The Administration responded that:	

Time Marker	Speaker	Subject(s)	Action
Warker		(a) the Administration had communicated with relevant stakeholders with a view to refining implementation details of the new inspection regime. Amongst others, the labour sector and the media had expressed their requests for inclusion in the list of "specified persons";	Required
		(b) the new inspection regime had struck a reasonable balance between enhancing protection for personal information while ensuring that the public could continue to inspect the Register under CO, and could cater the needs of searchers not listed as "specified persons" to ascertain the identity of the directors concerned. When deciding on the list of "specified persons", the Administration was guided by the need for access to the Protected Information of directors in the conduct of functions conferred/imposed upon the person concerned by statutory provisions; and	
		(c) misuse of personal data by searchers obtained through the Register causing harm to the data subject might be subject to legal consequences. The Administration would continue to liaise with the Office of the Privacy Commissioner for Personal Data on enforcement to secure the protection of privacy of individuals.	
004920 – 005715	Chairman Dr CHENG Chung-tai	Dr CHENG Chung-tai expressed the following views:	
		(a) the implementation of the new inspection regime would hinder the conduct of journalistic investigations by the media; and	
		(b) the Administration should include the media in the list of "specified persons", or make the Protected Information of directors recorded on the Register accessible to the media upon application on the ground of public interest.	
		The Administration responded that:	
		(a) the new inspection regime had struck a reasonable balance between enhancing protection for personal information while ensuring that the public (including the media) could continue to inspect the Register under CO, and could meet the needs of searchers not listed	

Time Marker	Speaker	Subject(s)	Action Required
		as "specified persons" to ascertain the identity of the directors through enhanced administrative measures; (b) when deciding on the list of "specified persons", the Administration was guided by the need for access to the Protected Information of directors in the conduct of functions conferred/imposed upon the persons concerned by statutory provisions; and (c) the new inspection regime had not posed any unequal treatment on any persons, or attempted to limit press freedom.	
005716 – 010223	Chairman Mr LUK Chung-hung Administration	Mr LUK Chung-hung reiterated his views that the process of recovery of outstanding wages by employees would be delayed if they were unable to access the residential addresses of the directors of their employer companies recorded on the Register for timely delivery of notices served in connection with the civil proceedings. He opined that CR should expedite the process of handling of complaints in regard to invalid correspondence address of a director. The Administration responded that when handling complaints in regard to invalid correspondence address of a director, depending on the circumstances of each case, priority would be given by CR to certain types of cases (e.g. recovery of outstanding wages due to business closure or liquidation) which were time sensitive.	
010224 - 010704	Chairman Mr Michael TIEN Administration	In the circumstances of different directors having identical full name and partial IDNs under the new inspection regime, Mr Michael TIEN enquired about how CR could enable the searchers to ascertain the identify of directors effectively. Mr Michael TIEN repeated his view that the Administration should make it a statutory requirement that the name of a director stated in specified forms filed with CR must be the same as that in his/her HKID or passport. The Administration responded that: (a) in the exceptionally rare circumstances of different directors having identical full name and	

Time Marker	Speaker	Subject(s)	Action Required
		partial IDNs under the new inspection regime, the enhanced ICRIS would provide additional digit(s) of the IDNs of the remaining redacted digits, so that the searcher would be able to see from the search results that the directors concerned were different individuals; and (b) administratively, CR would 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 HKID, but the Administration might also explore in future whether there was a need to include in CO the requirement that the name of a director stated in specified forms filed with CR must be the same as that in his/her HKID or passport.	
010705 - 010950	Chairman Mr CHUNG Kwok-pan Administration	Mr CHUNG Kwok-pan enquired whether the Administration would consider making the Protected Information of directors recorded on the Register available for inspection upon application by the public and the media on the ground of public interest. The Administration responded that: (a) the Register was made available for public inspection for the purposes set out in CO, which did not include public interest; (b) the Court might, 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 the Protected Information of directors; and (c) the Administration noted and would not rule out exploring in future members' suggestion of making available the Protected Information of directors upon application on the ground of public interest.	
010951 – 011639	Chairman Dr CHENG Chung-tai Administration	Dr CHENG Chung-tai expressed the following views: (a) the process of recovery of outstanding wages by employees would be hindered if they were unable to access the residential addresses of the directors of their employer companies recorded on the Register for timely delivery of notices served in connection with civil proceedings; and	

Time Marker	Speaker	Subject(s)	Action Required
		(b) the Administration should consider allowing employees to access the residential addresses of the directors of their employer companies recorded on the Register under specific conditions (such as having obtained confirmation from LD about their labour dispute cases).	
		The Administration responded that:	
		(a) for a legal claim for outstanding wages through civil proceedings at the Labour Tribunal, the defendant would normally be the employer company rather than directors of the company. Therefore it was not necessary for the employees to obtain the residential addresses of the directors concerned for such civil proceedings;	
		(b) LD, being a public body, was a "specified person" who could access the Protected Information 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 would not be affected upon the implementation of the new inspection regime; and	
		(c) if the employees wished to recover outstanding wages from employers through civil proceedings in Court, the lawyers representing the employees were "specified persons" who could access the Protected Information of directors when necessary for the performance of their functions.	
011640 – 011750	Chairman	Completion of consideration of the policy aspect of the seven pieces of subsidiary legislation.	
[L.N. 95 to [Marked-to be amend	o L.N. 101 of 2021] up copy of the relevant	t provisions of the Companies Ordinance and its subsidiant. 101 of 2021 prepared by the Legal Service Division	• •
011751 – 012921	Chairman Mr Holden CHOW Administration	Briefing by the Administration on L.N. 95 to L.N. 97 of 2021	
		Companies Ordinance (Commencement) Notice 2021 (L.N. 95 of 2021)	
		Companies Ordinance (Commencement) (No. 2)	

Time Marker	Speaker	Subject(s)	Action Required
- IVIUI NCI		Notice 2021 (L.N. 96 of 2021)	required
		Companies Ordinance (Commencement) (No. 3) Notice 2021 (L.N. 97 of 2021)	
		Mr Holden CHOW referred to the existing practice in relation to the service of legal documents that a document would generally be taken as duly served on a recipient by delivering to the recipient's last known address. He enquired whether the implementation of the new inspection regime under which correspondence addresses of directors in place of their usual residential addresses were to be made available for public inspection would have any impact on the above existing practice.	
		The Administration responded that the implementation of the new inspection regime would not affect the existing practice in relation to the service of legal documents as referred to by Mr Holden CHOW.	
012922 – 013429	Chairman Administration Assistant Legal Adviser 6 ("ALA6")	Briefing by the Administration on L.N. 98 of 2021 Companies (Residential Addresses and Identification Numbers) Regulation (L.N. 98 of 2021)	
		Part 1 – Preliminary Part 2 – Application Made for Purposes of Section 49(1) of Ordinance	
		Part 3 – Application Made for Purposes of Section 51(3) of Ordinance	
		Part 4 – Application Made for Purposes of Section 58(3) of Ordinance	
		Part 5 – Exemption from Fees	
		Schedule	
		ALA6 referred to her letter dated 2 July 2021 to the Administration (LC Paper No. CB(1)1077/20-21(03)) seeking clarifications on certain issues relating to L.N. 98 of 2021. She would consider the Administration's response to be provided later by the Administration and report further to the Subcommittee if necessary.	

Time Marker	Speaker	Subject(s)	Action Required
013430 – 013907	Chairman Administration	Briefing by the Administration on L.N. 99 to L.N. 101 of 2021	
	ALA6	Company Records (Inspection and Provision of Copies) (Amendment) Regulation 2021 (L.N. 99 of 2021)	
		Section 1 – Commencement	
		Section 2 – Company Records (Inspection and Provision of Copies) Regulation amended	
		Section 3 – Part 5 added	
		Companies (Non-Hong Kong Companies) (Amendment) Regulation 2021 (L.N. 100 of 2021)	
		Section 1 – Commencement	
		Section 2 – Companies (Non-Hong Kong Companies) Regulation amended	
		Section 3 – Section 3 amended (particulars to be contained in application for registration)	
		Section 4 – Section 9 amended (particulars to be contained in annual return)	
		Companies Ordinance (Amendment of Schedule 11) Notice 2021 (L.N. 101 of 2021)	
		Section 1 – Commencement	
		Section 2 – Companies Ordinance amended	
		Section 3 – Schedule 11 amended (transitional and saving provisions)	
		ALA6 referred to her letter dated 2 July 2021 to the Administration (LC Paper No. CB(1)1077/20-21(03)) seeking clarifications on certain issues relating to L.N. 99 to L.N. 101 of 2021. She would consider the Administration's response to be provided later by the Administration and report further to the Subcommittee if necessary.	
013908 - 013940	Chairman	Members raised no further query. The Subcommittee completed the examination of	

Time Marker	Speaker	Subject(s)	Action Required
		provisions of the seven pieces of subsidiary legislation.	
013941 – 014023	Chairman Mr Holden CHOW	Invitation of written submissions from the public Submission from the Privacy Commissioner for Personal Data dated 2 July 2021 (LC Paper No. CB(1)1088/20-21(01))	
014024 – 014200	Chairman	Extension of the scrutiny period Legislative timetable Meeting arrangements	
014201 – 014511	Chairman Mr Holden CHOW Administration	Mr Holden CHOW reiterated his views that the Administration should enable the public to understand the administrative measures to be adopted under the new inspection regime to ensure that the identity of directors in the Register could be ascertained effectively, and that CR should step up monitoring of the current requirement that the name of a director stated in specified forms must be the same as that in his/her HKID or passport. The Administration responded that it would provide the relevant information in writing after the meeting.	
Agenda item III – Any other business			
014512 – 014529	Chairman	Closing remarks	

Council Business Division 1
Legislative Council Secretariat
13 August 2021