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

Background Brief

Purpose

This paper provides background information on the seven pieces of subsidiary legislation gazetted on 18 June 2021 and made under the Companies Ordinance (Cap. 622) ("CO") relating to the implementation of a new inspection regime of the Companies Register ("New Inspection Regime"). It also summarizes the major views and concerns expressed by members of the Panel on Financial Affairs ("FA Panel") when the Panel was consulted on the relevant legislative proposals at the meeting on 9 April 2021.

Background

2. Currently, under CO the Companies Register ("the Register") maintained by the Companies Registry ("CR") contains personal information made available for public inspection. Such personal information includes, amongst other data, the usual residential addresses ("URA") and full identification numbers ("IDN") of directors of registered companies, and full IDNs of company secretaries and some other individuals (such as liquidators and provisional liquidators). Similar personal information is also open for public inspection on the registers kept by companies themselves.

3. The new CO enacted by the Legislative Council ("LegCo") in July 2012 contains provisions concerning a new inspection arrangement for the personal information on the Register with a view to enhancing protection for personal information. A major feature of the new arrangement is that the URAs and full IDNs ("Protected Information") of directors, company secretaries and other relevant persons would only be made accessible to "specified persons" upon application.

The correspondence addresses of directors and the partial IDNs of these individuals would be made available for public inspection instead. A summary of the new arrangement is in **Appendix I**. As stakeholders and members of the public had divergent views on the then new inspection arrangement, the relevant provisions were not commenced when the new CO came into operation in March 2014.¹

4. According to the Administration, there has been rising community concern in recent years 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. The Office of the Privacy Commissioner for Personal Data published in 2015 its Report on Survey of Public Registers Maintained by Government and Public Bodies, and suggested, among other things, that the Government should implement the requirement for limiting the disclosure of IDNs and URAs of company directors filed with CR. The Administration has reviewed the situation and considers it appropriate to implement the New Inspection Regime under CO now.

5. The Administration has indicated that the full operation of the New Inspection Regime will involve substantial system and operation modifications of the Integrated Companies Registry Information System ("ICRIS"). As such, a phased commencement of the regime will be necessary to tie in with the revamp project for upgrading ICRIS with targeted completion in end 2023. Details of the phased implementation are as follows:

- (a) Phase 1 – from 23 August 2021, companies may replace URAs of directors with their correspondence addresses, and replace full IDNs of directors and company secretaries with their partial IDNs for public inspection on their own registers;

¹ In view of the public concern about the proposed new inspection arrangement of the Companies Register in 2013, the Administration consulted the Panel on Financial Affairs ("FA Panel") on 8 April 2013 on the proposed way forward. While some Panel members expressed support for the Administration's proposal to suspend the new inspection arrangement and conduct fresh consultation with stakeholders in improving the new arrangement, some members had reservation on concerns that the existing inspection arrangement was privacy intrusive and would breach the relevant data protection principle under the Personal Data (Privacy) Ordinance (Cap. 468), there were problems of abuse in using the information by a third party, and possible nuisances caused to directors and their families. Following the discussion at FA Panel, the Administration decided not to make the Companies (Residential Addresses and Identification Numbers) Regulation for the time being. The relevant provisions were also not included in the Companies Ordinance (Commencement) Notice 2013 for commencing the new Companies Ordinance (Cap. 622). Only provisions requiring company secretaries to provide correspondence addresses in place of their residential addresses under the new inspection arrangement were implemented in 2014.

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

The seven pieces of subsidiary legislation gazetted on 18 June 2021 and made under the Companies Ordinance relating to the new inspection regime of the Companies Register

6. The seven pieces of subsidiary legislation were gazetted on 18 June 2021 and tabled at LegCo on 23 June 2021 for negative vetting. The subsidiary legislation seeks to implement the New Inspection Regime in three phases outlined in paragraph 5 above. A brief description on the subsidiary legislation is given below and the details of the seven pieces of subsidiary legislation are set out in paragraphs 11 to 15 of the LegCo Brief (File Ref: CO/2/20C(2021)Pt.9 dated 16 June 2021), and in paragraphs 21 to 31 of the report of Legal Service Division of LegCo Secretariat ("LSD Report") (LC Paper No. LS81/20-21).

- (a) Companies Ordinance (Commencement) Notice 2021 (made by the Secretary for Financial Services and the Treasury ("SFST") under section 1(2) of CO) – to appoint 23 August 2021 as the commencement date of Phase 1;
- (b) Companies Ordinance (Commencement) (No.2) Notice 2021 (made by SFST under section 1(2) of CO) – to appoint 24 October 2022 as the commencement date of Phase 2;
- (c) Companies Ordinance (Commencement) (No.3) Notice 2021 (made by SFST under section 1(2) of CO) – to appoint 27 December 2023 as the commencement date of Phase 3;

- (d) Companies (Residential Addresses and Identification Numbers) Regulation (made by SFST under sections 49(8) and (9), 51(5), 58(5) and 910(b) of CO) – to (i) provide for the list of "specified persons" who can access Protected Information of directors and other persons, as well as the relevant requirements and fees; and (ii) provide that directors and other persons can apply to CR for withholding their Protected Information on registered documents from public inspection after implementation of Phase 3;
- (e) Company Records (Inspection and Provision of Copies) (Amendment) Regulation 2021 (made by SFST under section 657 of CO) – to provide that companies are still required to provide the first part of IDNs for public inspection if they replace full IDNs with partial IDNs on their registers;
- (f) Companies (Non-Hong Kong Companies) (Amendment) Regulation 2021 (made by SFST under section 805 of CO) – to provide that same as local companies, registered non-Hong Kong companies are also required to file correspondence addresses of directors with CR; and
- (g) Companies Ordinance (Amendment of Schedule 11) Notice 2021 (made by SFST under section 913(2) of CO) – to provide for the relevant transitional arrangements.

7. The Company Records (Inspection and Provision of Copies) (Amendment) Regulation 2021 and the Companies (Non-Hong Kong Companies) (Amendment) Regulation 2021 will come into operation on 23 August 2021 and 24 October 2022 respectively. As for the Companies (Residential Addresses and Identification Numbers) Regulation and the Companies Ordinance (Amendment of Schedule 11) Notice 2021, different commencement dates are set for different provisions with details provided in paragraphs 25 and 31 of the LSD Report.

Major views and concerns expressed by members of the Panel on Financial Affairs

8. The Administration briefed FA Panel on its proposal to enhance the protection of personal information on the Register at the meeting on 9 April 2021.

The major views and concerns expressed by members are summarized in the ensuing paragraphs.²

Implementation of the new inspection regime

9. Panel members supported the New Inspection Regime in general on grounds that it would strike a reasonable balance between protecting personal data and allowing adequate public access to necessary personal information in the Register. Noting that the Administration's proposals had aroused great public controversies, such as concerns from the business and labour sectors, media, etc., members stressed that the Administration should continue to communicate with stakeholders (including overseas investors) and enhance publicity of the New Inspection Regime, as well as step up its efforts to explain the details, clarify issues and address public concerns about the proposed arrangements. On the other hand, some members queried the need to tighten public access to the information on the Register as various sectors (e.g. the legal, banking, auditing and real estate sectors) would need to access the Protected Information for legitimate purposes when carrying out their work. There were also concerns that the Administration had political considerations in putting forward the proposals, and that the New Inspection Regime would encourage the setting up of shell companies for tax avoidance and money laundering which would have serious adverse impact on Hong Kong's status as an international financial centre.

10. The Administration advised that in recent years, there was increasing public awareness of the need to protect personal data and hence the Administration considered that there was an imminent need to bring the New Inspection Regime into operation, which was comparable to those practised in other jurisdictions like the United Kingdom and Singapore. As regards engagement with stakeholders on the New Inspection Regime, the Administration said that it had been maintaining close liaison with the commercial and financial sectors on the matter. It was noted that most business associations in Hong Kong including the Chamber of Hong Kong Listed Companies had indicated support for the New Inspection Regime. The Administration was aware that the public had concerns over the New Inspection Regime and appreciated that it would take time for the community to understand the operation and new arrangements. The Administration would also continue to keep in close contact with relevant trades to ensure smooth implementation of the New Inspection Regime.

² The Panel on Financial Affairs has also received a number of submissions from members of the public, most of which expressed reservation over the proposed new inspection regime on grounds including possible adverse impact on the transparency of the Companies Register, and increased risks of money laundering activities and frauds. The submissions are provided in the hyperlinks in **Appendix II**.

11. As for members' concern about possible money laundering activities, the Administration stressed that it was committed to upholding a robust and effective anti-money laundering and counter-terrorist financing ("AML/CFT") regime, and the Protected Information would still be made available to "specified persons" upon application, including financial institutions who had obtained consent from the data subjects, and public officers and public bodies overseeing matters and performing duties relating to AML/CFT. A list of "specified persons" would be set out in the relevant subsidiary legislation which would be subject to LegCo's negative vetting procedures.

12. Some members enquired how CR would ensure the accuracy and validity of the information filed by companies. The Administration advised that it was an offence under CO if a person provided any information to CR that was false or misleading in a material particular, and CR would refer suspicious cases to the Police for investigation.

List of "specified persons"

13. Some members pointed out that the banking and liquidation/bankruptcy sectors had expressed concerns about burden on their work and increase in operating costs arising from the implementation of the New Inspection Regime. These members called on the Administration to develop measures to facilitate access of Protected Information by genuine users with legitimate purposes, such as allowing liquidators to access the Protected Information of not only the company under liquidation but also its related companies as such information would be useful for the liquidators in performing their duties. Some other members considered that professionals including lawyers, company secretaries and accountants should be included in the list of "specified persons" to facilitate them in providing professional services to their clients.

14. The Administration advised that under the New Inspection Regime, the Protected Information would be made accessible to "specified persons" upon application. "Specified persons" would include the data subject, a liquidator, a trustee in bankruptcy, a public officer or public body, a law enforcement agency, etc. Hence, financial institutions might obtain consent from the data subjects for accessing the Protected Information when conducting the due diligence procedures. For professional bodies/professionals including lawyers, who required access to the Protected Information for discharging their duties, they might make an application to the court for the purpose. There were provisions under CO empowering the court to make an order for CR to disclose the Protected Information if the court was satisfied that it was appropriate to make the order (e.g. for persons appearing to the court to have a sufficient interest in the matter).

15. Some members stressed the need to allow employees to access the Protected Information of directors of their employer companies to enable timely delivery of notice of hearing to the employer concerned after the filing of a claim to the Labour Tribunal ("LT") by employees in order to avoid delay in the recovery of arrears wages. There were suggestions to include labour unions in the list of "specified persons" which often assisted employees in filing claims to LT, or empower LT to obtain the URAs of the directors from CR for the purpose.

16. The Administration advised that in a labour dispute, it was believed that employees, being persons having sufficient interest, could make an application to the court for making an order for the disclosure of the Protected Information of the employer. Moreover, CR might disclose the URA of the director if it could not effectively communicate with the director using the correspondence address provided. In addition, government departments and enforcement agencies, including the Labour Department, could also access the Protected Information for the purpose of executing their statutory duties. The Administration would further discuss with relevant stakeholders including the Labour Department, with a view to developing necessary procedures to facilitate them in accessing the Protected Information in a timely manner.

Identification numbers of directors

17. Some members of the public and stakeholders had raised concern that as the partial IDNs and the full Chinese and/or English names of different directors of companies might be identical, a certain number of persons in the Register might match a search under the New Inspection Regime and hence it would be difficult for searchers to ascertain the identity of the directors and other key officers of companies. Some Panel members urged that the Administration should address this concern. They suggested that the Administration should require company directors and key officers to use the full Chinese and/or English names as shown in their Hong Kong Identity Cards ("HKIDs") or passports (as appropriate) in providing information in the Register so that the number of similar matches could be reduced during a search, and hence would improve the reliability of the search services of the Register.

18. The Administration advised that CR had recently conducted a stocktaking exercise on the Register in regard to records of current individual directors of live companies holding HKIDs who might have identical full names (including Chinese and/or English) and partial numbers of HKIDs (i.e. the alphabet and the first three numbers). Results showed that, amongst some 588 000 current directors holding HKIDs, only eight pairs of them had identical Chinese and/or English full names, as well as the same alphabet and the first three numbers of HKIDs, equivalent to a chance of less than 0.003%. Company directors and key officers

were currently required to file their Chinese and/or English names as shown in their HKIDs or passports, and could also include their Christian or given names in the Register.

Latest development

19. At the House Committee meeting on 25 June 2021, Members agreed to form a subcommittee to study the seven pieces of subsidiary legislation.

References

20. A list of relevant papers is in the **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
2 July 2021

**Details of the new inspection regime of
the Companies Register ("the Register")
under the Companies Ordinance (Cap. 622)**

The new inspection regime, which if have been fully implemented, would render the following protection:

- (a) only correspondence addresses of directors and company secretaries and partial identification numbers ("IDNs") of directors, company secretaries and other relevant individuals will be shown in the Companies Register for public inspection for documents filed after commencement of the new inspection regime;
- (b) the usual residential addresses ("URAs") and full IDNs of the individuals ("Protected Information") will only be made accessible to "specified persons" upon application. The court may disclose such information if it considers appropriate, and the Companies Registry ("CR") may disclose URA if it cannot effectively communicate with the director using the correspondence address provided;
- (c) individuals whose Protected Information is contained in documents registered with CR before commencement of the new inspection regime can apply to CR for withholding such information from inspection; and
- (d) a company may withhold Protected Information.

Source: paragraph 4 of the Administration's paper entitled "Protection of Personal Information on the Companies Register" for the meeting of Panel on Financial Affairs on 9 April 2021. (LC Paper No. CB(1)737/20-21(07))

List of relevant papers

Date	Event	Papers/Minutes of meeting
12 July 2012	The Legislative Council ("LegCo") passed the Companies Bill	Hansard The Bill passed Report of the Bills Committee (LC Paper No. CB(1)2221/11-12)
7 January 2013	The Panel on Financial Affairs ("FA Panel") was consulted on the subsidiary legislation for implementation of the new Companies Ordinance	Administration's papers 1 and 2 (LC Paper Nos. CB(1)358/12-13(04) and CB(1)385/12-13(02)) Minutes (LC Paper No. CB(1)782/12-13) Administration's follow-up paper (LC Paper No. CB(1)508/12-13(01))
8 April 2013	FA Panel was briefed on the new arrangement for the inspection of personal information on the Companies Register under the new Companies Ordinance	Administration's paper (LC Paper No. CB(1)788/12-13(01)) Minutes (LC Paper No. CB(1)1654/12-13)
9 April 2021	FA Panel was briefed on the proposal to enhance protection of personal information on the Companies Register	Administration's paper (LC Paper No. CB(1)737/20-21(07)) Submissions from members of the public

Date	Event	Papers/Minutes of meeting
23 June 2021	Seven pieces of subsidiary legislation gazetted on 18 June 2021 and made under the Companies Ordinance were tabled at the LegCo	Content of the subsidiary legislation 1 , 2 , 3 , 4 , 5 , 6 and 7 Legislative Council Brief (File Ref: CO/2/20C(2021)Pt.9) Legal Service Division Report (LC Paper No. LS81/20-21)