

New Companies Ordinance

Briefing Notes on Part 2

Registrar of Companies and Companies Register

INTRODUCTION

Part 2 (Registrar of Companies and Companies Register) of the new Companies Ordinance (“new CO”) contains provisions relating to the Registrar of Companies (“the Registrar”), the Companies Register and the registration of documents by the Registrar.

POLICY OBJECTIVES AND MAJOR CHANGES

2. Part 2 contains initiatives that aim at improving regulation, facilitating business and modernising the law, namely, -

- (a) Clarifying the Registrar’s powers in relation to the registration of documents (paragraphs 4 to 6 below);
- (b) Clarifying and enhancing the Registrar’s powers in relation to the keeping of the Companies Register (paragraphs 7 to 10 below);
- (c) Providing expressly for removing information on the Companies Register (paragraphs 11 to 13 below); and
- (d) Withholding residential addresses of directors and company secretaries and full identification numbers of individuals from public inspection (paragraphs 14 to 24 below). [[Please see remarks on the last page](#)]

3. The details of the major changes in Part 2 are set out in paragraphs 4 to 24 below.

Clarifying the Registrar’s powers in relation to the registration of documents (Sections 31, 35 to 38)

Position under the Companies Ordinance (Cap. 32) (“Cap. 32”)

4. Under section 348 of Cap. 32, the Registrar may refuse to register a document if it is manifestly unlawful or ineffective, or is incomplete or altered; or if any signatures on the document, or digital signature accompanying the document is incomplete or altered. The scope for refusal of registration is not entirely clear.

Position under the new CO

5. The grounds of refusal are clarified to empower the Registrar to refuse to register an unsatisfactory document or to withhold registration of a document pending further amendments or provision of further particulars.

Key provisions in the new CO

6. **Section 31** sets out the situations where a document is considered to be unsatisfactory. It consolidates and clarifies the existing grounds on which the Registrar may refuse the registration of a document. For example, it is expressly provided that a document is unsatisfactory if it is internally inconsistent or inconsistent with the information already on the Companies Register. **Section 35** makes it clear that if the Registrar refuses to accept a document, has not received a document or refuses to register a document, the document is to be regarded as not having been delivered to the Registrar as required under the new CO. **Section 36** further provides that the Registrar may withhold the registration of an unsatisfactory document and request the person who delivered the document to take certain remedial actions within a specified period, such as producing further information or evidence, amending or completing the document or applying for a court order.

Clarifying and enhancing the Registrar's power in relation to the keeping of the Companies Register (Sections 39 to 44)

Position under Cap. 32

7. At present, the Registrar adopts administrative measures in appropriate cases to accept the filing of "amended" documents to rectify documents which contain errors and to annotate the information on the Companies Register so as to provide supplementary information.

Position under the new CO

8. The following powers of the Registrar are put on an express statutory footing and are provided for expressly -

- (a) power to annotate information on the Companies Register to provide supplementary information such as the fact that the document in question has been replaced or corrected; and
- (b) power to request companies or their officers to resolve inconsistencies in information on the Companies Register or to provide updated information.

Key provisions in the new CO

9. **Section 39** enables the Registrar to notify a company of an apparent inconsistency in the information relating to the company on the Companies Register and to require it to take steps to resolve the inconsistency within a specified period. **Section 40** empowers the Registrar to require a person to update his or her information on the Companies Register. Under both provisions, failure of the company and every responsible person concerned to comply with the Registrar's requirements is an offence. It is a defence to establish that the person took all reasonable steps to secure compliance with the requirements.

10. **Section 41** gives the Registrar power to, either on her own initiative or on an application by a company, rectify a typographical or clerical error contained in any information on the Companies Register. If the rectification is made upon an

application by a company, the Registrar may rectify the error by registering a document showing the rectification delivered by the company. **Section 44** provides that the Registrar may make a note in the Companies Register for the purpose of providing information in relation to such a rectification.

Providing expressly for the power of the Court to remove information from the Companies Register (Section 42)

Position under Cap. 32

11. There is no express provision in Cap. 32 on the court's power to order the Registrar to remove inaccurate or forged information from the Companies Register. However, it has been decided by the court that in an appropriate case, the court may direct the Registrar to remove a document from the Companies Register or to accept a document for registration.

Position under the new CO

12. An express provision has been introduced to provide that the court may order the removal of any information from the Companies Register.

Key provisions in the new CO

13. **Section 42** provides that the court may, on application by any person, direct the Registrar to rectify any information on the Companies Register or to remove any information from it if the court is satisfied that the information is inaccurate or forged, or derives from anything that is invalid or ineffective or that has been done without the company's authority. When making an order of removal of any information from the Companies Register, the court may make any consequential order that appears just with respect to the legal effect, if any, to be accorded to the information by virtue of its having appeared on the Companies Register.

Withholding residential addresses of directors and company secretaries and full identification numbers of individuals from public inspection (Sections 47, 49 to 59)

[\[Please see remarks on the last page\]](#)

Position under Cap. 32

14. Directors and company secretaries who are natural persons of companies incorporated in Hong Kong and registered non-Hong Kong companies are required by Cap. 32 to state their usual residential addresses and identification numbers (“ID numbers”) in documents delivered to the Companies Registry (“CR”) for incorporation and registration purposes. The ID numbers of other persons may also be required by Cap. 32 to be provided in documents delivered to the CR for registration purposes (e.g. the ID number of a liquidator). These documents containing usual residential addresses and ID numbers are available on the Companies Register for public inspection and copying. There are concerns over protection of personal privacy and possible misuse of personal data.

Position under the new CO

15. There is a regime in the new CO that strikes a balance between protecting privacy and the need for public access to personal information.

16. For directors, the new CO requires the provision of correspondence addresses in addition to usual residential addresses. It is proposed in the Companies (Residential Addresses and Identification Numbers) Regulation that only members of a company, public officers, public bodies, liquidators and other specified persons will be allowed access to the directors’ usual residential addresses kept on a confidential record of the CR. The directors’ correspondence addresses will be shown on the Companies Register. There are similar provisions regarding the ID numbers of individuals. Certain digits in the ID numbers will be masked and only partial ID numbers will be shown on the Companies Register. Access to the full ID numbers will similarly be restricted to members of a company, public officers, public bodies, liquidators and other specified persons. Related provisions which specify the addresses of directors and company secretaries to be provided in documents delivered to the Registrar for incorporation and registration purposes are set out in Parts 3, 12 and 16 of the new CO.

17. Under the new CO, company secretaries are no longer required to disclose their usual residential addresses and are only required to provide correspondence addresses for incorporation and registration purposes.

18. In view of the huge volume of existing records bearing usual residential addresses and ID numbers registered with the CR, the information already on the Companies Register will only be withheld from public inspection upon application and payment of a fee. It is proposed in the Companies (Residential Addresses and Identification Numbers) Regulation that access to the withheld usual residential addresses and full ID numbers will similarly be restricted to members of a company, public officers, public bodies, liquidators and other specified persons.

Key provisions in the new CO

19. **Section 49** allows the Registrar to withhold from public inspection the usual residential address of a current or former director or a current or former company secretary and the full ID number of any person in specified categories of documents which have been registered with the CR upon application by the persons concerned (“withheld information”). If a usual residential address of an individual is withheld from public inspection, the correspondence address provided by the individual in lieu of the withheld address will be made available on the Companies Register for public inspection. As for ID number, part of it will remain available on the Companies Register for public inspection.

20. **Section 54** provides that the usual residential address of a director and the full ID number of any person in specified categories of documents registered with the CR after commencement of the new CO will not be made available for public inspection (“protected information”). The director’s correspondence address and the partial ID number of the person will be shown on the Companies Register for public inspection.

21. **Sections 55 and 56** provide that, in case communication with a director at the director’s correspondence address is not effective, the Registrar may, after considering the representations of the director and the company concerned, put the director’s usual residential address on the Companies Register as the director’s correspondence address and thereby make it available for public inspection. The Registrar’s decision of putting the director’s usual residential address on the Companies Register will last for five years.

22. To ensure that the withheld and protected information will continue to be accessible by those who have a legitimate need, **sections 51 and 58** permit the use or disclosure of such information by the Registrar for specified purposes -

- (a) for communicating with the director, company secretary or individual;
- (b) for the performance of the Registrar's functions; or
- (c) for disclosure upon application to certain types of persons proposed in the Companies (Residential Addresses and Identification Numbers) Regulation, which include the person whose personal information has been withheld or protected and his authorized representative, a member of the company concerned, public officers, public bodies, a liquidator and other specified persons.

23. The Companies (Residential Addresses and Identification Numbers) Regulation also provides for the application procedures for the withholding of the withheld information and disclosure of the withheld or protected information.

24. Further, **sections 52 and 59** provide that a creditor of the company concerned or any other person having a sufficient interest may have access to the withheld or protected information by applying to the court for an order for disclosure by the Registrar of the withheld or protected information.

Companies Registry
February 2013

Remarks

As some members of the public have raised concerns about the new arrangement with respect to inspection of directors' personal information on the Companies Register, the Administration has submitted a paper on the proposed way forward to the LegCo Panel on Financial Affairs on 28 March 2013 ([LC Paper No. CB\(1\)788/12-13\(01\)](#)), whereas the Panel has subsequently discussed the matter at its meeting on 8 April 2013. Having regard to the discussion at that meeting and members' views, the Administration will accord priority to the tasks necessary for commencing the new CO in the first quarter of 2014 as scheduled, and consider matters relating to the new arrangement thereafter.

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