

**Legislative Council
Panel on Financial Affairs**

**New Arrangement for the Inspection of Personal Information on the
Companies Register under the new Companies Ordinance**

PURPOSE

This paper sets out the proposed way forward for the new arrangement for the inspection of personal information on the Companies Register under the new Companies Ordinance (“CO”).

BACKGROUND

2. The CO rewrite aims to provide a modernised legal regime for the formation and operation of companies in Hong Kong. In January 2011, we introduced the Companies Bill (“CB”) into the Legislative Council (“LegCo”) and a Bills Committee was formed to scrutinise the Bill. The CB was passed by LegCo on 12 July 2012 and it was subsequently gazetted as the new CO on 10 August 2012. In order to enhance Hong Kong’s competitiveness as a major international business and financial centre, it is important to commence the new CO as early as possible. Our target is to bring the new CO into operation in the first quarter of 2014.

THE NEW ARRANGEMENT

3. Among others, the new CO contains provisions concerning a new arrangement for the inspection of personal information on the Companies Register (“the new arrangement”), which seeks to strike a reasonable balance between satisfying public need to access information and the protection of privacy of over one million directors and company secretaries. The main features of the new arrangement are as follows –

- (a) directors will, as at present under the existing CO, be required to file their usual residential addresses and full identification numbers with the Companies Registry, but such personal information will not be made available on the

Companies Register for public inspection. Directors will also have to file their correspondence addresses with the Companies Registry. On the Companies Register, their correspondence addresses and partial identification numbers will be shown;

- (b) company secretaries will no longer be required to file their residential addresses with the Companies Registry, although they will still need to file correspondence addresses and full identification numbers. Same as for directors, the correspondence addresses and only partial identification numbers of company secretaries will be made available on the Companies Register for public inspection;
- (c) the residential addresses and full identification numbers of directors and company secretaries contained in company documents that were filed with the Companies Registry before commencement of the new CO will continue to be shown on the Companies Register for public inspection, unless the directors or company secretaries concerned make an application to the Companies Registry to mask the full personal information, in which case their correspondence addresses and partial identification numbers will be shown instead in those company documents; and
- (d) the full personal information of directors and company secretaries that are kept by the Companies Registry but not shown on the Companies Register will be accessible by (i) anyone who has obtained an order from the court; and (ii) persons to be specified by subsidiary legislation, who may make an application to the Registrar of Companies for the purpose.

4. The provisions on the new arrangement were included in the new CO after due consultation and legislative processes. In particular, in the First Phase Consultation on the Draft CB conducted in 2009-2010, from the perspective of privacy protection and in light of the experience of other countries which have amended their relevant laws, we specifically sought public views through the Consultation Paper¹ as to whether full personal information of directors and company secretaries should continue to be made available for public inspection. We also

¹ The consultation paper published in December 2009 is available at –
http://www.fstb.gov.hk/fsb/co_rewrite/eng/pub-press/doc/CB_Consultation_Paper_Full_e.pdf

asked the public that if their answers to the question were in the negative, whether the approach in the United Kingdom or that in Australia in that regard should be adopted. The outcome of the public consultation was that the majority of respondents supported not disclosing the full personal information on the Companies Register, and among them more respondents supported the approach in the United Kingdom, which involves putting the residential addresses of directors in a confidential register accessible only by public authorities, etc. upon application. Members were briefed on the Consultation Paper and the Consultation Conclusions² on 4 January 2010 and 1 November 2010 respectively.

5. Under the new arrangement, the Chinese and English name of a director, his/her partial identification number³ and correspondence address will be open for public inspection. The information should in most circumstances be sufficient to enable a member of the public to ascertain whether he/she is dealing with a particular company or a director. As mentioned in paragraph 3(d) above, specified persons and any person who have obtained an order from the court will continue to have access to the full personal information of directors.

6. The Bills Committee on CB has scrutinised the provisions on the new arrangement at seven meetings. In particular, the Bills Committee in its report tabled at the Council points out that there should be procedures allowing access to the full personal information of directors on legitimate need. In response to the request of the Bills Committee, we have submitted a draft list of proposed specified persons who may apply to the Registrar of Companies to gain access to the full personal information, and have reached consensus with the Bills Committee that the list should include the data subject and persons authorised by him/her, members of the company, public officers and public bodies (including the Labour Department and other law enforcement agencies), as well as liquidators and provisional liquidators. The CB, including the provisions on the new arrangement, was subsequently passed by LegCo and became the new CO.

7. To implement the new CO, it is necessary to enact a number of pieces of subsidiary legislation to provide for administrative, procedural and technical matters. We briefed Members on 7 January 2013 on the

² The consultation conclusions published in August 2010 are available at – http://www.fstb.gov.hk/fsb/co_rewrite/eng/pub-press/doc/ccfp_conclusion_e.pdf

³ It has been proposed in the relevant subsidiary legislation that half of the alphanumeric characters will be open for public inspection. In the case of Hong Kong identity card, the alphabet(s) and three digits will be shown.

subsidiary legislation to be made. In particular, for implementation of the new arrangement, we need to make the Companies (Residential Addresses and Identification Numbers) Regulation to specify the types of persons who may apply for access to the full personal information and the relevant procedures. A few other pieces of subsidiary legislation also contain technical provisions in relation to the new arrangement. These pieces of subsidiary legislation were originally scheduled to be tabled at LegCo in late May 2013 under the negative vetting procedures.

STAKEHOLDER ENGAGEMENT

8. Since we briefed the Panel on Financial Affairs in January 2013 on the subsidiary legislation to be made, some members of the public have raised concerns about the new arrangement with respect to inspection of directors' personal information on the Companies Register. In view of the concerns raised, we have been engaging stakeholders in the past three months to explain the rationale and operation of the new arrangement as well as the due consultation and legislative processes conducted leading to enactment of the relevant provisions in the new CO, and more importantly, listen to their views on the relevant issues which may not have been put forward during the earlier consultation and Bills Committee stage. We have met with, and received views from, LegCo Members, political groups, labour groups, professional bodies, media organisations, chambers of commerce and business organisations, as well as representatives from other sectors who have expressed interest in the new arrangement. After gathering the views from various stakeholders, we have exchanged views with the Privacy Commissioner for Personal Data ("Privacy Commissioner").

9. The latest round of views from different stakeholders are diverse. Some stakeholders objected to or expressed reservation about the new arrangement. Some of them are concerned that the new arrangement will hinder investigative reporting by the media, and may weaken protection for shareholders. There are also views that the new arrangement may increase the risk of money laundering activities. In particular, some media organisations do not accept expanding the scope of specified persons to cover the media and other sectors, as in their views it would not be sufficient to help protect the right of other members of the public to have access to the personal information of directors. These stakeholders are of the view that the status quo should be maintained, arguing that the existing regime has been working well, with no clear evidence of abuse of the personal information of directors on the

Companies Register.

10. Some of these stakeholders suggested that new safeguard measures can be introduced under the existing inspection regime to deter abuse, for example, the introduction of a registration system under which all persons who conduct company searches must first provide their personal information to the Companies Registry, such that their identity can be traced in case of complaints so as to deter unscrupulous inspections. Some went further and suggested that the directors with full personal information being accessed may request to be informed of the identity of the person having made the inspection.

11. On the other hand, some stakeholders maintained their support for the new arrangement, underlining the importance of protecting the directors' right to privacy of personal information. They noted that the advocacy of the right to privacy is commonly seen worldwide, and they opined that protecting directors' full personal information does not mean the public will have no recourse against directors or the companies they are with, as, for example, public authorities will continue to have access to the full personal information of directors in case there is a need to do so when pursuing against wrongdoers.

12. We have taken the opportunity to explain to stakeholders that the new arrangement will not affect our regulatory and enforcement work, and will not compromise the operations of financial institutions on the anti-money laundering front. It should be noted that we have brought into operation a new legislation on anti-money laundering in April 2012, which stipulates the preventive measures to be put in place by financial institutions and facilitates our financial regulators to combat money laundering and terrorist financing activities effectively. Financial institutions may, under the new arrangement, apart from verifying a director's identity with his/her correspondence address and partial identification number, also apply to the Companies Registry for inspecting the residential address and full identification number of a director upon authorisation by the director concerned in order to perform their role in anti-money laundering. Where necessary, regulators and law enforcement agencies may obtain full personal information of directors from the Companies Registry. We have also explained that under the new arrangement, Hong Kong would still be among the most transparent jurisdictions in terms of disclosure of directors' information on the Companies Register, given that in many jurisdictions there is no personal identification number for individuals and many company registers do not disclose or even collect information on directors'

residential addresses. We are not aware that the unavailability of directors' residential addresses or identification numbers on the company registers has caused major problems in those jurisdictions.

13. We note that the Privacy Commissioner has pointed out that the right to privacy is a fundamental right of individual, and the present system of public access to directors' full personal information is unsatisfactory in that it is privacy-intrusive. He cautioned that, from a data protection perspective, the risk of unrestricted access to personal data of directors on public registers by untrustworthy parties, which may cause distress and harm to the data subjects, identity fraud and possible financial losses, is real. Even though there may not be a huge number of cases of complaints about identity theft, it does not represent the total picture as not all aggrieved persons would lodge a complaint. There may also be difficulties in attributing a misuse of personal information of directors to a wrongful access to and use of the information from the public register. On the other hand, the Privacy Commissioner has also pointed out that the right to privacy is not absolute, which has to be balanced against other rights.

14. In this regard, we note that a number of stakeholders do not object to the new arrangement but proposed that the detailed arrangement be reviewed to ensure those who have legitimate needs to have access to the full personal information of directors on the Companies Register can continue to do so in future. Examples put to us include employees who may wish to locate the directors of their companies for recovering arrears of wages, and certain categories of professionals and businessmen who may need to verify and assess the status of their counterparties or clients. They suggested expanding the scope of specified persons with access to the full personal information of directors on the Companies Register to include the media and some other sectors, e.g. banks, labour unions, certain categories of professionals such as lawyers and accountants, etc. under the subsidiary legislation on implementation details of the new arrangement.

RELEVANT CONSIDERATIONS

15. We have carefully considered all views we received in the past few months. In particular, we note the Privacy Commissioner's advice that the existing regime is privacy intrusive and should be improved.

16. We will keep an open mind on the various broad ideas that different stakeholders have raised with us as highlighted in paragraphs 10 and 14 above. We believe that these broad ideas will form a useful basis for further analysis.

17. To take these broad ideas forward, we will need to address a number of complex issues, including those described below.

(a) Expanding the scope of specified persons

(i) *The media*

The key issue is how to define the scope of media. We note that under section 61(2) of the Personal Data (Privacy) Ordinance (“PDPO”), “news activity”⁴ is exempted from the application of Data Protection Principle 3⁵ regarding the disclosure of personal data provided that the person who discloses the data to the media has reasonable grounds to believe (and reasonably believes) that the publishing or broadcasting of the data is in the public interest. There is a suggestion that we can expand the scope of specified persons to cover those engaged in “news activity”. However, there may be concern as to whether this would result in that anyone can access the full personal information of directors by claiming to be engaged in “news activity”. In this respect, the Privacy Commissioner has pointed out that there must be effective sanctions to deter possible abuse of the system.

On the other hand, if a “public interest” test under

⁴ Under the PDPO, “news activity” (新聞活動) means any journalistic activity and includes –

- (a) the –
 - (i) gathering of news;
 - (ii) preparation or compiling of articles or programmes concerning news; or
 - (iii) observations on news or current affairs, for the purpose of dissemination to the public; or
- (b) the dissemination to the public of –
 - (i) any article or programme of or concerning news; or
 - (ii) observations on news or current affairs.

⁵ This principle requires that a data user must not use personal data for a new purpose except with the prescribed consent of the data subject. New purpose means any purpose other than the purpose for which the data was to be used at the time of collection of the data, or a directly related purpose.

section 61(2) of the PDPO is also to be adopted, it could mean that in processing each and every application for access to full personal information of directors, the Registrar of Companies would have to take a view on whether allowing access in each particular case is in the public interest. There will be questions as to whether it is appropriate for the Registrar of Companies in her official capacity to do so. There would also be time consideration as there are thousands of company searches each day at present. There would be concerns if the Companies Registry is required to divert considerable resources to handle applications for this purpose.

- (ii) *Other sectors, including for example banks, labour unions and certain categories of professionals*

As pointed out by the Bills Committee on CB, there should be procedures allowing access to the personal information of directors on legitimate need. The key question is whether access to full personal information of directors is a necessity or is merely for operational convenience for a particular sector. As advised by the Privacy Commissioner, the community has to pay a price for protecting the right to privacy. If access to full personal information of directors is merely for operational convenience, it has to be considered how it should be balanced against the protection of privacy.

(b) Introducing additional safeguard measures to deter abuse

- (i) *Collecting information from those inspecting the Companies Register for access to full personal information of directors*

The first question to be considered is whether such arrangement would provide an effective deterrence to abuse, noting that it is not uncommon that a person who inspects the relevant personal information of a director is only an agent performing the inspection on behalf of another person. Besides, we would need to consider the scope and extent to which personal information of those persons who inspect the Companies Register should be collected and for how

long the Companies Registry should keep the personal information. It is also necessary to consider whether the power of the Registrar of Companies under the new CO is sufficiently wide for her to collect the relevant personal information from those inspecting the Companies Register.

With thousands of company searches being conducted every day, this idea would involve the collection of a vast amount of personal information by the Companies Registry. This would give rise to a fundamental issue as to whether such collection would be considered as excessive and therefore unacceptable under the PDPO.

18. Apart from the considerations above, it should be noted that the above ideas, if considered feasible after further consideration, would require the Companies Registry to revisit its workflow and information system.

PROPOSED WAY FORWARD

19. The new arrangement seeks to strike a reasonable balance between satisfying the need to access information and the protection of privacy. We will endeavour to find the best way to achieve this objective and are open to the suggestions put forward by Members and stakeholders. However, as elaborated in paragraphs 17 and 18 above, there are complex legal, privacy and operational issues involved. We believe that we should not rush to solutions without giving more time for the community to build consensus on those issues.

20. In order to bring the new CO into operation in the first quarter of 2014 as scheduled, which is important for enhancing Hong Kong's competitiveness as a major international business and financial centre, it is necessary for the Administration, LegCo and all parties concerned to focus their efforts in the coming months on the preparatory work. We therefore propose to accord priority to the tasks necessary for commencing the new CO, and consider matters relating to the new arrangement thereafter. We do not plan to make the subsidiary legislation concerning the new arrangement at this stage, and will not include the relevant provisions in the commencement notice to be made in the fourth quarter of 2013 for commencing the new CO.

21. The stakeholders' concern focuses on the personal information of directors. Therefore, the new filing requirement for company secretaries' addresses as set out in paragraph 3(b) above will continue to be implemented, i.e. company secretaries will not be required to file residential addresses with the Companies Registry upon the commencement of the new CO. The disclosure of identification numbers of both directors and company secretaries as well as other individuals (e.g. liquidators) are dealt with in the same provisions in the new CO. Pending further deliberations on the new arrangement with regard to directors' personal information, the full identification numbers of company secretaries and these other relevant individuals will continue to be made available on the Companies Register.

22. Looking ahead, we will continue to listen to views and suggestions of Members and stakeholders on the new arrangement. After we have brought the new CO into operation, we shall formulate proposals on this subject for further engagement with Members and stakeholders.

Financial Services and the Treasury Bureau
28 March 2013