

Overview and Legislative Updates of Phase 2 of the New Inspection Regime

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公司註冊處
COMPANIES REGISTRY

Background

The Companies Register contains personal information available for public inspection:
Usual residential addresses (“URAs”) of directors
Full identification numbers (“IDNs”) of individuals

Relevant provisions of the Companies Ordinance (Cap. 622) (“CO”) concerning the New Inspection Regime of the Companies Register were passed by the Legislative Council in July 2012 but had not fully commenced

The relevant provisions were made with a view to enhancing protection of personal information while keeping up the transparency and usefulness of the Companies Register by allowing the public to continue inspecting the Companies Register for the purposes under the CO

7 pieces of subsidiary legislation have been made to implement the New Inspection Regime in 3 phases



The New Inspection Regime

Phase 1 (23 Aug 2021)

- Companies may replace URAs of directors with their correspondence addresses, and replace full IDNs of directors and company secretaries with their partial IDNs on their own registers for public inspection.

Phase 2 (24 Oct 2022)

- Protected Information on the Index of Directors on the Companies 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.

Phase 3 (27 Dec 2023)

- Data subjects could apply to CR for protecting from public inspection their Protected Information contained in documents registered with CR and replace such information with their correspondence addresses and partial IDNs.
- “Specified persons” could apply to CR for access to such information.



What is “Protected Information”?

Section 54(2) of the CO

an address contained, as the **usual residential address** of a director of the company, in any part of the document that is required by the Ordinance* under which the document is delivered to the Registrar for registration to contain that usual residential address

a number contained, as the **full number of the identity card or passport** of any person, in any part of the document that is required by the Ordinance* under which the document is delivered to the Registrar for registration to contain that full number

*The CO or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)



Access to Protected Information (1)

“Specified persons”

Companies (Residential Addresses and Identification Numbers) Regulation (Cap. 622N)

- Section 12(1):
 - a) a data subject
 - b) a person who is authorized in writing by a data subject to obtain the information
 - c) a member of the company
 - d) a liquidator
 - e) a trustee in bankruptcy
 - f) a public officer or public body
 - g) a scheduled person
 - h) a solicitor or foreign lawyer
 - i) a certified public accountant (practising)
 - j) a financial institution or Designated Non-Financial Business and Profession (“DNFBP”)

Access to Protected Information (2)

A **scheduled person** means a person specified in the Schedule to Cap. 622N –

- a) an **inspector** as defined by section 838(1) of the CO
- b) an **inspector** appointed under section 95(1) of the Trustee Ordinance (Cap. 29)
- c) a **recognized clearing house** as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571)
- d) a **recognized exchange company** as defined by section 1 of Part 1 of Schedule 1 to Cap. 571
- e) a **recognized exchange controller** as defined by section 1 of Part 1 of Schedule 1 to Cap. 571
- f) a **recognized investor compensation company** as defined by section 1 of Part 1 of Schedule 1 to Cap. 571
- g) a **person directed or appointed to investigate** any matter under section 11(1) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)



Access to Protected Information (3)

Statements to be made by certain “specified persons”

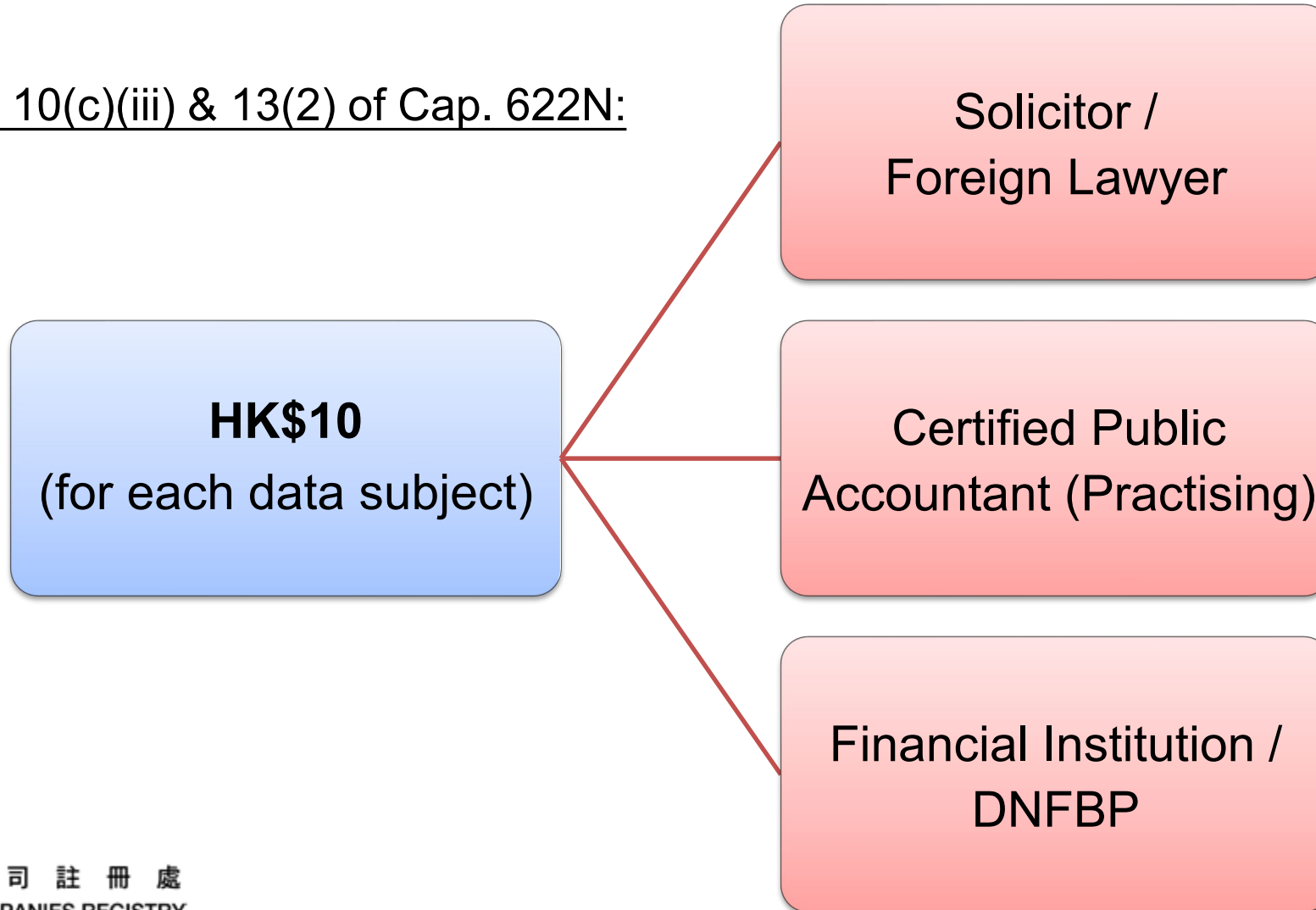
- Section 12(6)-(12) of Cap. 622N:
 - “Specified persons” (other than a data subject, a person authorized by a data subject and a member of the company) are required to make a statement confirming that the Protected Information is required for the purpose of the performance of their functions and would be used only for that purpose
 - Financial institutions (other than authorized institutions*) and DNFBPs under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”) are required to confirm that the Protected Information would only be used for the functions conferred or imposed on them under AMLO

*Authorized institutions are required to confirm that the Protected Information is required for the purposes of the performance of their functions.

Access to Protected Information (4)

Fees

- Sections 10(c)(iii) & 13(2) of Cap. 622N:



Revised Specified Forms

Major changes

- Revision of the relevant parts to facilitate the reporting of:
 - ✓ correspondence addresses of directors
 - ✓ partial IDNs of directors, company secretaries and other individuals
- PI-sheet (**NOT** for public inspection) for the reporting of:
 - ✓ URAs of directors
 - ✓ full IDNs of directors, company secretaries and other individuals



Revised Annual Returns

➤ Local companies (Form NAR1*)

The particulars to be contained will **no longer include**:

- ◆ URA and full IDN of a natural person director
- ◆ Full IDN of a natural person secretary

[sections 3 & 4 of Schedule 6 to the CO]

➤ Registered non-Hong Kong companies (Form NN3**)

The particulars to be contained will **no longer include**:

- ◆ URA and full IDN of a natural person director
- ◆ Full IDN of a natural person company secretary
- ◆ Full IDN of a natural person authorized representative

[section 9(2A), (2B) and (2C) of the Companies (Non-Hong Kong Companies) Regulation (Cap. 622J)]



What should a local company do? (1)

Register of directors must contain the **correspondence address** of all natural person director(s) (including reserve director) before the company's **first annual return date on or after the commencement of Phase 2** on 24 Oct 2022

[section 643(1)(a)(ii), (2)(b) or (3)(b) and section 115A(2) of Schedule 11 to the CO]

Penalty: The company and every responsible person of the company commit an offence, and each is liable to a **fine at level 4 (\$25,000)**, and in the case of a continuing offence, to a **further fine of \$700 for each day** during which the offence continues

[section 641(2) and (7) of the CO]



What should a local company do? (2)

- A company need not, for compliance with section 645(4) of the CO, deliver to the Registrar a notice (i.e. Form ND2B*) –
 - ◆ for entering in the company's register of directors a correspondence address of a natural person director before 24 Oct 2022;
 - ◆ for making any change to a natural person director's correspondence address contained in the company's register of directors before 24 Oct 2022; or
 - ◆ because the address of the company's registered office is regarded as a correspondence address of a natural person director under section 115A(6) of Schedule 11.

[section 115A(7) of Schedule 11 to the CO]

However, if immediately before 24 Oct 2022 –

- ✓ a natural person director's correspondence address was contained in the company's register of directors; and
- ✓ the address was not the address of the company's registered office

the company must, for compliance with section 645(4) of the CO, deliver a **Form ND2B*** to the Registrar in relation to the director's correspondence address **within 15 days after the commencement of Phase 2** on 24 Oct 2022.

[section 115A(8) of Schedule 11 to the CO]



What should a registered non-HK company do?

- For a non-HK company registered before 24 Oct 2022, the Registrar must record the address of the company's principal place of business in HK (which is shown on the Companies Register immediately before 24 Oct 2022) as the correspondence address of its natural person director(s)
- Thereafter, the Registrar must update the entry of such correspondence address with the latest address of the company's principal place of business in HK contained in subsequent registered Form NN9*, unless a Form NN7** in respect of a change of the director's correspondence address is delivered to and registered by the Registrar

[section 2A of Schedule 11 to the CO]

A natural person director who would like to use an address **other than the address of the company's principal place of business in HK** as his / her correspondence address should deliver a Form NN7** to report such correspondence address of the director

*Form NN9: Return of Change of Address of Registered Non-HK Company

**Form NN7: Return of Change in Particulars of Company Secretary and Director of Registered Non-HK Company



Thank you!



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