

Does Registry Ease Provide Opportunity to Defraud? *Case Study – Hong Kong*

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Protection of Personal Data (1)

Better protection of personal data

- Introducing new provisions for withholding residential addresses and full identity card/passport numbers from public inspection in order to foster the protection of personal data

Current CO

- Requires residential addresses of directors and company secretaries and full ID numbers of individuals on Companies Register to be open to public inspection



Protection of Personal Data (2)



New CO

- Only partial ID (say, A123XXX) will be disclosed
- Directors are required to provide correspondence addresses in addition to residential addresses (section 643 and Schedule 2 section 3)



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Protection of Personal Data (3)



New CO

- For registration of documents after commencement of new CO, directors' residential addresses will be withheld and directors' correspondence addresses will be disclosed (section 54)

(Note: Where or if the correspondence address is found to be ineffective, the Registrar will replace the correspondence address with the residential address on the public register)

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Protection of Personal Data (4)



New CO

- Company secretaries need not provide residential addresses and only their correspondence addresses are disclosed (section 650 and Schedule 2 section 5)
- For residential addresses and ID numbers in documents already registered on the Companies Register (section 49) – Masking procedures apply

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Protection of Personal Data (5)



New CO

- The residential addresses and full ID numbers withheld from public inspection are available to the Registrar and specified categories of persons, to be specified through subsidiary legislation (sections 51, 52, 58)
- Interested persons may apply for Court Order for disclosure of residential addresses and full ID numbers (section 59)

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Protection of Personal Data (6)



- Immense objection from the media, only after the new law has been enacted
- Relevant parties
 - Media
 - Employees, labour unions
 - SMEs
 - Lawyers
 - Members of the public

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Protection of Personal Data (7)



- Protection of Privacy vs Transparency
- Overseas experience: UK, Australia, Netherlands, Singapore, etc.
- Way Forward ?

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Shadow Companies (1)



- Companies with names which are very similar to existing and well established trademarks / brand names
- Companies registered in Hong Kong but operate in Mainland China



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Shadow Companies (2)



Company Name Registration in Hong Kong

- Company name can be in English or Chinese or both
- Except where the Registrar's consent is required, company name can be registered if not 'the same as' an existing name
- Registrar has power to direct a company to change name if it is 'too like' an existing name within 12 months

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Shadow Companies (3)



Number of incorporations and name complaints received in past 5 years

	2008	2009	2010	2011	2012
Total No. of companies incorporated	98,645	109,424	139,530	148,329	150,165
Total No. of name complaints received	153	297	365	416	648
Percentage of companies subject to name complaints	0.16%	0.27%	0.26%	0.28%	0.43%

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Shadow Companies (4)

Enhanced enforcement against abuses



Companies (Amendment) Ordinance 2010

- Came into operation on 10 December 2010
- Empowers the Registrar to direct a shadow company to change its name pursuant to a court order
- Disallows companies to register with a name which is the same as a name in respect of which a direction has previously been issued

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Shadow Companies (5)

Enhanced enforcement against abuses



Failure to comply with Registrar's direction to change name:

- Company name will be substituted by company registration number
- Maximum fine : HK\$100,000
- 6 months imprisonment and HK\$700 daily default fine
- Company name may be struck off the Companies Register

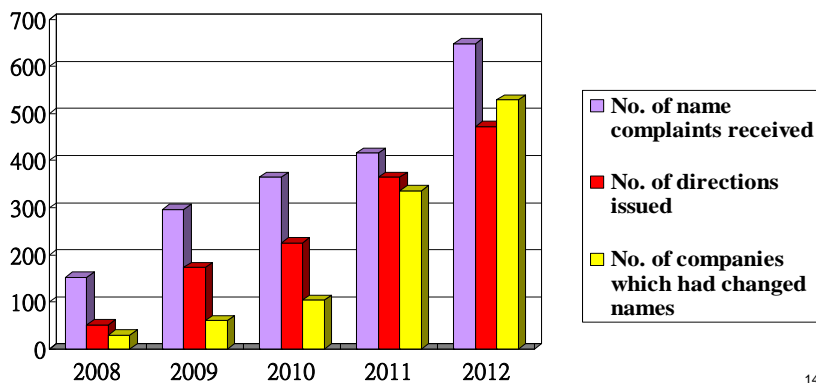


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Shadow Companies (6)



Number of directions issued and companies which had changed names (past 5 years)



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Other Measures to Combat Fraud



- User Registration at the e-Registry
- e-Submissions must be signed by e-Cert or PIN
- e-Monitor of company filings
- Require address proof of Registered Office Address?



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Thank You

Companies Registry : www.cr.gov.hk



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