

Company Law Guidance Note (Eighth Issue) – Promulgation of Companies Ordinance Provisions for a ‘New Inspection Regime’ to Enhance Privacy Rights of Directors and Other Officers – Phase 2 implementation’

Overview

The Institute published two guidance notes relating to the Companies Registry’s (CR’s) implementation of the ‘new inspection regime’ under the Companies Ordinance (CO)¹. The regime aims to protect usual residential addresses (URAs) of directors and full ID numbers (IDNs) of directors, company secretaries and other persons (for example, liquidators) (together **Protected Information**) from inspection under public searches over three phases from 2021 to 2023.

Phase 1 commenced on 23 August 2021 and allowed the option for Hong Kong incorporated companies (**HK Companies**) to restrict inspection of the Protected Information contained in their internal records.

Phase 2, which will commence on 24 October 2022, restricts inspection of Protected Information contained in CR filings of not only HK Companies’ but also registered non-Hong Kong companies’ (**Non-HK Companies**) filed after the Phase 2 commencement date. Nevertheless, ‘specified persons’, for example, Police and shareholders of the company, can continue to access the Protected Information upon application.

CR filings made before Phase 2 commencement remain available for inspection. With Phase 3 commencement on 27 December 2023, withholding applications can be made to achieve comprehensive protection of the Protected Information. The phased approach is necessary to coincide with the CR’s IT upgrade to support the new inspection regime.

1 <https://www.hkcg.org.hk/thought-leadership/publication-detail/2475> and <https://www.hkcg.org.hk/thought-leadership/publication-detail/2479>.

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Phase 2 implementation

For Phase 2 implementation of the new inspection regime, the CR issued several external circulars in 2022.

1. **CR External Circular 1/2022** provided 26 revised specified forms to be used from Phase 2 commencement to protect Protected Information. There will be a need to add the directors' correspondence address and the partial IDNs of directors and company secretaries under the applicable forms for filing purposes with the CR. There is a separate PI-sheet to report the Protected Information (URAs and full IDNs of directors; and full IDNs of company secretaries and other persons). This means additional work for the governance professionals, especially as pre-filled forms generated by the CR will require extra manual input.
2. **CR External Circular 3/2022** noted that starting with Phase 2 implementation from 24 October 2022:
 - a. The URAs and full IDNs of directors on the Index of Directors on the Register will be replaced with correspondence addresses and partial IDNs of directors for public inspection.
 - b. The URAs and full IDNs of directors, company secretaries and some other individuals (such as liquidators and provisional liquidators) contained in documents delivered to the Registry for registration will NOT be provided for public inspection.
 - c. Specified persons could apply to the Registrar of Companies (**Registrar**) for disclosure of Protected Information under section 12 of the Companies (Residential Addresses and Identification Numbers) Regulation (Cap. 622N) (**Regulation**).
3. **CR External Circular 4/2022** noted some significant filing requirements, which revolve around the abovementioned matters. Specifically of interest are:
 - a. Under sections 3 and 4 of Schedule 6 to the CO, starting from 24 October 2022, the particulars to be contained in the Annual Return of local companies (Form NAR1) will no longer include: (i) URA and full IDN of a natural person director; and (ii) full IDN of a natural person company secretary. Instead, only correspondence address needs to be reported for natural person directors, and partial IDNs for the director, company secretary and authorised representatives.
 - b. Under section 115A(8) of Schedule 11 to the CO, if, immediately before 24 October 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 October 2022.
 - c. As from 24 October 2022, the Registry will only accept the revised specified forms for registration. Existing version of the specified forms concerned will no longer be accepted and will be returned to those presenting them.
4. **CR External Circular 5/2022** noted some of the major changes in public search services:
 - a. The interesting point is that where different directors have identical full names and partial IDNs, extra digit(s) will be displayed for the partial IDNs of the

related groups where appropriate for easy differentiation of the directors. This deals with the concern as to how directors can be distinguished where their names and partial IDNs are substantially similar.

b. The fee for searches by specified persons of the Protected Information is either free or (in the case of a solicitor or foreign lawyer; certified public accountant (practising); and financial institution or Designated Non-Financial Business and Profession (DNFBP)) HK\$10.00.

c. The specified persons can conduct one-off online application at the Registry's 'Cyber Search Centre' or paper application or (in the case of a liquidator; trustee in

bankruptcy; public officer or public body; person specified in the Schedule to the Regulation; solicitor or foreign lawyer; certified public accountant (practising); and a financial institution or DNFBP) apply for a particular account.

5. **CR External Circular 6/2022** relates to handling of the Protected Information where documents filed need to be rectified through the use of a specified form (Form AD).

Phase 2 Action Points

To assist the governance professional to deal with Phase 2 implementation, we set out some action points.

Action		Comment
1	Confirm directors' correspondence addresses	We would expect, in most cases, this would involve asking directors to confirm if they are happy for their correspondence address to be the registered office address or the principal place of business in Hong Kong. If a third-party service provider provides this address, check if any extra fees apply. If another address is chosen, see step 3 below.
2	Include directors' correspondence addresses in the company's Register of Directors	For Hong Kong Companies, this must be done before their first annual return date on or after 24 October 2022. For Non-HK Companies, any requirements concerning updating company registers will be a matter of overseas law.
3	File Form ND2B / NN7 with the CR if a director's correspondence address in the Register of Directors is not the company's registered office address / principal place of business in Hong Kong	For HK Companies, this should be filed within 15 days after 24 October 2022 if, immediately before 24 October 2022, the correspondence address in the Register of Directors is not the registered office address. If the correspondence address is added to the Register of Directors after 24 October 2022, the filing deadline will be 15 days after its inclusion. For non-HK companies, the deadline is one month (instead of 15 days) if the correspondence address is not the principal place of business in Hong Kong.

4	Set up a duplicate of the Register of Directors and Company Secretaries with the Protected Information redacted	While the original registers should contain the Protected Information, the duplicate will assist with keeping the Protected Information private from searches of the company's records.
5	Use new specified forms from the CR website from 24 October 2022	The CR will only accept filings of the revised specified forms from the start of Phase 2
6	Start considering if an application to CR will be made to withhold any Protected Information contained in documents filed before 24 October 2022	Such applications can only be made from 27 December 2023 (Phase 3 implementation date) and must be tracked to individual filings.