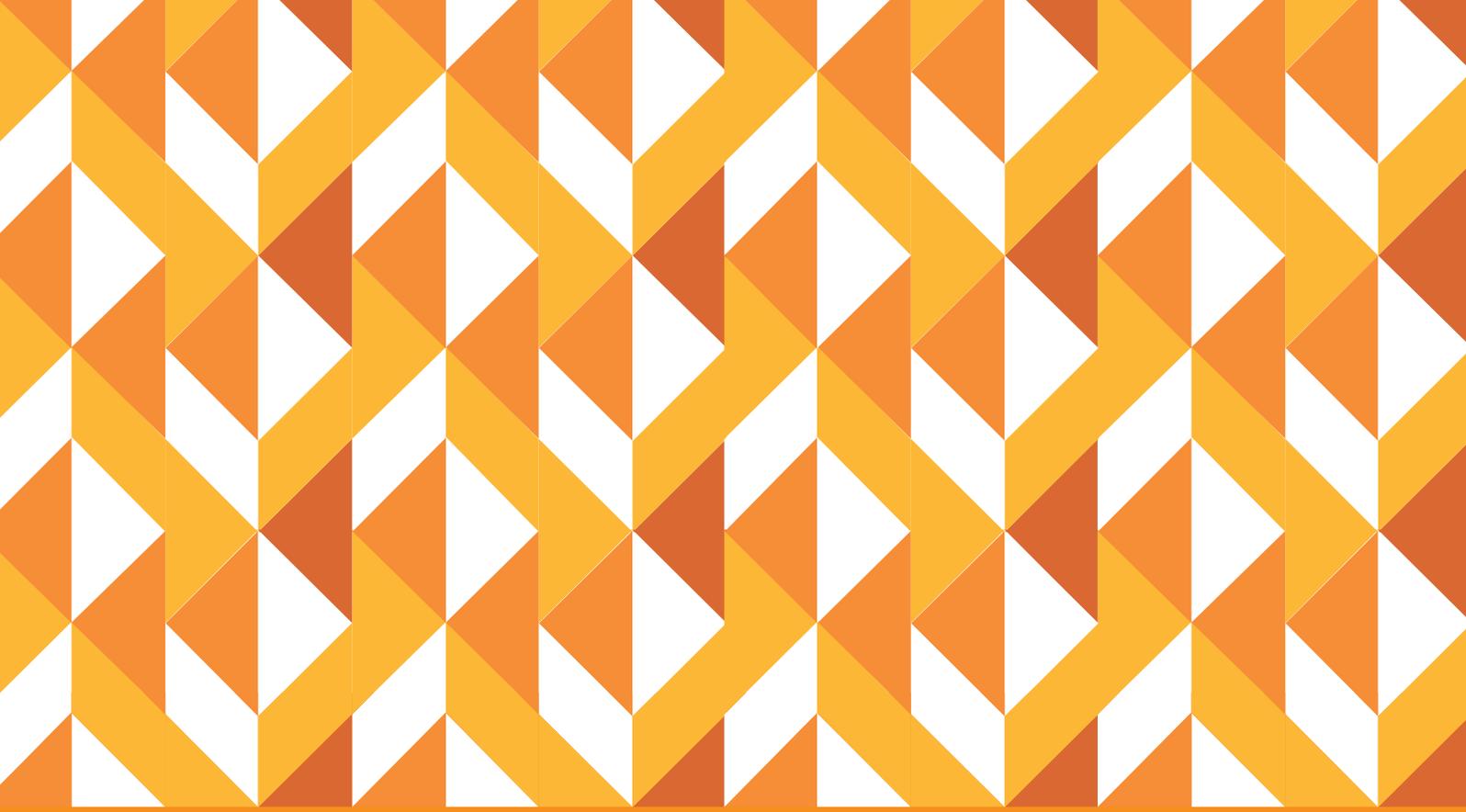


New Inspection Regime Toolkit for NGOs





New Inspection Regime for Personal Information on the Companies Register under the Companies Ordinance (Cap. 622)

Background

The Companies Register (“the Register”) maintained by the Companies Registry (“the Registry”) contains personal information available for public inspection under the Companies Ordinance (Cap. 622) (“CO”). Such personal information includes, among other data, the usual residential addresses (“URAs”) of directors of companies and full identification numbers (“IDNs”) (i.e. number of an identity card or a passport) of directors, company secretaries and some other relevant individuals (such as liquidators and provisional liquidators) of companies incorporated in Hong Kong and registered non-Hong Kong companies. Similar personal information is also contained in the registers kept by companies which are open for public inspection.

The relevant provisions of the CO concerning the New Inspection Regime were passed by the Legislative Council in July 2012 but had not been fully commenced. The provisions provide that correspondence addresses instead of URAs of directors and partial IDNs instead of full IDNs of directors, company secretaries and other relevant individuals would be made available on the Register for public inspection. The URAs and full IDNs (“Protected Information”) would only be accessible by “specified persons” upon application. Similarly, companies may withhold the Protected Information on the registers they have kept from public inspection.

The New Inspection Regime was introduced with a view to providing greater protection for personal information while ensuring transparency of the Register by allowing the public to continue inspecting the Register for the purposes under the CO.

To enhance good corporate governance of Non-Governmental Organisations (NGOs) and facilitate NGOs to comprehend the key features and compliance requirements of the New Inspection Regime, this New Inspection Regime Toolkit contains details of the phased implementation pursuant to the CO and some frequently asked questions (FAQs) which NGOs may often raise when taking necessary actions and measures to comply with the provisions relating to New Inspection Regime.



Details of New Inspection Regime

The New Inspection Regime is implemented in three phases. Details of the phased implementation are as follows:

Phase 1

From 23 August 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

From 24 October 2022, Protected Information on the Index of Directors on the Register maintained by the Registry is replaced with correspondence addresses and partial IDNs for public inspection. Protected Information contained in documents filed for registration after commencement of this phase is not provided for public inspection. “Specified persons” could apply to the Registry for access to Protected Information of directors and other relevant individuals.

Phase 3

From 27 December 2023, data subjects could apply to the Registry for protecting from public inspection their Protected Information contained in documents registered with the Registry (“Withheld Information”), and replace such information with their correspondence addresses and partial IDNs. “Specified persons” could apply to the Registry for access to Withheld Information of directors and other persons.

Given Phase 1 and Phase 2 of the New Inspection Regime have already come into effect, NGOs should take appropriate actions promptly to comply with the requirements under Phase 1 and Phase 2 of the New Inspection Regime for Hong Kong companies and registered non-Hong Kong companies as applicable.





FAQs

This section contains some common FAQs in relation to the New Inspection Regime to facilitate NGOs to understand the key features and actions required for compliance with the relevant provisions of the New Inspection Regime.

1. What are the key features of Phase 1 of the New Inspection Regime?

Under Phase 1 of the New Inspection Regime, companies may replace URAs of directors (including reserve directors) with their correspondence addresses, and replace full IDNs of directors (including reserve directors) and company secretaries with their partial IDNs on their own registers of directors and company secretaries for public inspection.

2. What does a Hong Kong company need to do after the commencement of Phase 1 of the New Inspection Regime on 23 August 2021 and when must it be done?

Upon the commencement of Phase 1, in accordance with section 643(1)(a)(ii), (2)(b) or (3)(b) (in so far as it relates to a correspondence address) and section 643(5) of CO, a company's register of directors must contain a correspondence address of its natural person director (including reserve director). Such correspondence address must not be a post office box number.

In relation to compliance with the above requirement, section 115A of Schedule 11 to the CO provides for the transitional arrangements that the register of directors maintained by a company need not contain a director's correspondence address before the company's first annual return date on or after the commencement date of Phase 2 (i.e. 24 October 2022), unless –

- a. the particulars of the director are first entered in the register of directors on or after the commencement date of Phase 2; or
- b. any change is made to the particulars of the director contained in the register of directors on or after the commencement date of Phase 2.

For case (a) above, the register of directors must contain the director's correspondence address beginning on the date on which the particulars are first entered in the register.

For case (b) above, the register of directors must contain the director's correspondence address beginning on the date on which the change is made.

3. Upon commencement of Phase 1, is it mandatory for a Hong Kong company to withhold from public inspection the URAs of directors and the IDNs of directors and company secretaries contained in its register of directors and register of company secretaries?

No, it is not mandatory. Pursuant to sections 644 and 651 of the CO, and the Companies Records (Inspection and Provision of Copies) (Amendment) Regulation 2021, a company may withhold from public inspection the URA and full IDN (except the first part) of a director (including a reserve director) contained in its register of directors, and the full IDN (except the first part) of a company secretary contained in its register of company secretaries. However, this is NOT a mandatory requirement.

Having said that, NGOs may consider at their discretion whether to take full advantage of the New Inspection Regime to protect personal information of directors and company secretaries who are natural persons by creating another set of registers of directors and company secretaries withholding the Protected Information of the natural person directors and company secretaries for public inspection purpose.

4. How to determine the first part of the IDN of a director or company secretary which is required to be made available for public inspection?

If the IDN of an identity card or a passport comprises a sequence of an even number of alphanumeric characters (excluding spaces, punctuation marks and symbols), the first half of the sequence must be made available for public inspection.

If the IDN comprises a sequence of an odd number of alphanumeric characters (excluding spaces, punctuation marks and symbols), the part that begins with the first character in the sequence and ends with the character that falls on the middle of the sequence must be made available for public inspection.

Below are some examples of the first part of the IDNs:-

Full IDN (Hong Kong Identity Card Number)	First part of the IDN
A123456(7)	A123
AB987654(3)	AB987
Full IDN (Passport Number)	First part of the IDN
ABC123456D	ABC12
#AB9876543(*)	AB987



5. What are the key features of Phase 2 of the New Inspection Regime?

Under Phase 2 of the New Inspection Regime, Protected Information (i.e. URAs and full IDNs) on the Index of Directors on the Register maintained by the Registry are replaced with correspondence addresses and partial IDNs for public inspection. Protected Information contained in documents filed for registration after commencement of this phase is not provided for public inspection. Only “specified persons” could apply to the Registry for access to Protected Information of directors and other persons starting from this phase.

A company’s register of directors is required to contain a correspondence address of its director (including reserve director) who is a natural person, no later than the first annual return date, or the dates the director’s particulars are first entered or updated in the register of directors on or after the commencement date of Phase 2, whichever is the earlier.



6. What does a Hong Kong company need to do after the commencement of Phase 2 of the New Inspection Regime on 24 October 2022 and when must it be done?

A Hong Kong company shall ensure that its register of directors contains the correspondence address of its natural person director(s). Even with the transitional arrangement provided under section 115A of Schedule 11 to the CO (see Q2 above), its register of directors must contain the correspondence address of all natural person director(s) (including reserve director) before its first annual return date on or after the commencement date of Phase 2 on 24 October 2022.

In addition, if a Hong Kong company entered a correspondence address of a director into its register of directors after commencement of Phase 1 on 23 August 2021, and the address was not the address of the company's registered office, the company is required to deliver a Form ND2B to the Registrar of Companies ("Registrar") reporting the director's correspondence address within 15 days **after** the commencement of Phase 2.

7. What is the consequence in case the register of directors of a Hong Kong company is not updated by adding the correspondence addresses of the natural person directors?

Pursuant to section 641(2) of the CO, a company must enter in its register of directors the required particulars specified in section 643 which includes the correspondence addresses. If the company contravenes the above requirement, the company and every responsible person of the company commit an offence, and each is liable to a fine at level 4 (i.e. HK\$25,000) and, in the case of a continuing offence, to a further fine of HK\$700 for each day during which the offence continues.

8. What does a registered non-Hong Kong company need to do after the commencement of Phase 2 of the New Inspection Regime on 24 October 2022?

For a non-Hong Kong company registered before 24 October 2022, the Registrar must record in the Index of Directors the address of the company's principal place of business in Hong Kong as the correspondence address of its natural person director(s) pursuant to the CO.

If a non-Hong Kong company subsequently files a Form NN9 with the Registrar reporting the latest address of the company's principal place of business in Hong Kong, the Registrar must update such principal place of business in Hong Kong as the correspondence address of natural person director(s) of the company, unless a Form NN7 reporting a change of director's correspondence address to an address other than the company's principal place of business in Hong Kong is delivered to and filed with the Registrar.

Hence, if a natural person director of a registered non-Hong Kong company would use an address other than the address of the company's principal place of business in Hong Kong as his / her correspondence address, the company is required to deliver a Form NN7 to report such correspondence address of the director to the Registrar.

9. Will the registered office address of a Hong Kong company / principal place of business of a registered non-Hong Kong company be regarded as correspondence addresses of natural person directors upon the commencement date of Phase 2?

Yes. The following address is recorded by the Registrar as the correspondence address of a director or reserve director of a company:-

- a. For existing Hong Kong company / a Hong Kong company formed and registered under CO before 24 October 2022 - the address shown, immediately before 24 October 2022, on the Register as the address of the company's registered office;

- b. For non-Hong Kong company registered before 24 October 2022 - the address shown, immediately before 24 October 2022, on the Register as the address of the company's principal place of business in Hong Kong (see Q8 above).

After the address is so recorded as the correspondence address of a director or reserve director of a company, the Registrar must update the entry of such correspondence address with:

- the latest address of the company's registered office contained in the subsequent registered Form NR1 unless a Form ND2B in respect of a change of the director's or reserve director's correspondence address is delivered to and registered by the Registrar.
- the latest address of the company's principal place of business in Hong Kong contained in the 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 (see Q8 above).

10. Is it acceptable to report the director's residential address as his/her correspondence address upon the commencement of Phase 2?

Yes. If the director would like to use his / her residential address as the correspondence address, the company is required to deliver a Form ND2B (for Hong Kong companies) / Form NN7 (for registered non-Hong Kong companies) with PI-sheet to report such change. However, please be reminded that the residential address so reported as correspondence address will be included in the Index of Directors as correspondence address of the director and will be made available for public inspection.

11. Is it a must for the director's correspondence address to be a Hong Kong address? If not, does it have to be in the same country / region as the director's URA?

No. It is not a must for the director's correspondence address to be a Hong Kong address or in the same country / region as his / her URA. However, the correspondence address must not be a post office box number.

12. What would happen if the Registry cannot reach a director by his or her correspondence address?

The Registry is empowered to use the Protected Information under the CO to carry out its statutory functions and responsibilities. If (a) communications sent by the Registrar to the director, and requiring a response within a specified period, remain unanswered; or (b) there is evidence that the service of documents by the Registrar at the relevant correspondence address of the director is not effective to bring them to the notice of director, the Registrar may make a protected address, i.e. URA of the director, available for public inspection.





FAQs

13. When should companies start using the revised specified forms? Will there be any transitional arrangement for delivery of specified forms to the Registry?

All revised specified forms are accepted for registration on or after the commencement date of Phase 2 (i.e. 24 October 2022). There is no transitional arrangement for delivery of specified forms to the Registry and only revised specified forms are accepted for registration by the Registry as from 24 October 2022.

NGOs may refer to the following link to obtain the 26 revised specified forms for use from 24 October 2022:-

<https://www.cr.gov.hk/en/legislation/nir/forms.htm>

14. What are the major changes in the specified forms?

The major changes in the 26 revised specified forms which pertain to the reporting of Protected Information for use starting from the commencement date of Phase 2 include:

- Modification of the relevant fields for reporting correspondence address of directors and partial IDNs of directors, company secretaries and any other individuals; and
- Introduction of a “PI-sheet” to individual form for reporting Protected Information of each of those individuals. The PI-sheet will not be made available on the Register for public inspection.

15. What are the main differences in the search results when I conduct image record search at ICRIS Cyber Search Centre upon commencement of Phase 2 of the New Inspection Regime?

Protected Information contained in documents filed for registration after commencement of Phase 2 will not be made available for public inspection. The revised specified forms for use after the commencement of Phase 2 will contain a “PI-sheet” to each relevant form for reporting Protected Information of individuals and the PI-sheet will not be provided on the Register for public inspection.

16. What are the main differences in the search results when I conduct searches on the Index of Directors upon commencement of Phase 2 of the New Inspection Regime?

Upon the commencement of Phase 2 of the New Inspection Regime, the URAs and full IDNs of natural person directors on the Index of Directors are replaced with correspondence addresses and partial IDNs for public inspection. The URAs and full IDNs of natural person directors are withheld.

17. Who are the “specified persons” that can apply to the Registrar for access to Protected Information after the commencement of Phase 2?

The following “specified persons” can apply to the Registrar for access to Protected Information of directors and other relevant individuals for the purpose of the performance of their functions specified in section 12 of the Companies (Residential Addresses and Identification Numbers) Regulation (Cap. 622N):-

1. data subject;
2. person who is authorized in writing by a data subject to obtain the information;
3. member of the company;
4. liquidator;
5. trustee in bankruptcy;

6. public officer or public body;
7. person specified in the Schedule to the Regulation;
8. solicitor or foreign lawyer;
9. certified public accountant (practising);
10. financial institution or designated non-financial businesses and professions (DNFBP).

For more information on the meaning of “specified persons”, you may refer to the Companies (Residential Addresses and Identification Numbers) Regulation (Cap. 622N).

18. I need to obtain Protected Information of a data subject but I am not a “specified person” as mentioned in Q17 above. In this case, how can I obtain Protected Information of the data subject?

You may consider asking the data subject to authorise you in writing for obtaining the Protected Information on the Companies Register. Alternatively, you may also consider seeking assistance from a solicitor who practices law in a law firm or a certified public accountant (practising) to apply for disclosure of Protected Information for the performance of functions.

19. What is the consequence if the company does not provide a register of directors for public to inspect?

According to section 7 of Company Records (Inspection and Provision of Copies) Regulation (Cap. 622I), a company must make available its company records, including register of directors, for inspection, by any person entitled to inspect those records under a relevant provision, during business hours (subject to any reasonable restrictions imposed by the company by resolution, as long as at least 2 hours per day are allowed for inspection). If the company fails to make its register of directors available for inspection by any person entitled to inspect the register of directors, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 (i.e. HK\$25,000).

20. What are the key features of Phase 3 of the New Inspection Regime?

Phase 3 of the New Inspection Regime will commence on 27 December 2023. Upon commencement of this phase, data subjects could apply to the Registry for protecting from public inspection their Protected Information (i.e. URAs and full IDNs) contained in documents previously registered with the Registry before commencement of Phase 2, and replace such information with their correspondence addresses and partial IDNs by making application to the Registry.

Pursuant to section 49(4) of the CO (not yet in operation), data subjects including a director, reserve director or company secretary, or a former director, reserve director or company secretary of a company can make application to the Registry to withhold from public inspection the URAs contained in a document registered with the Registry before commencement of Phase 2. Any person can apply to the Registry to withhold full IDNs contained in a document registered with the Registry before commencement of Phase 2 from public searches.

Similarly, only “specified persons” could apply to the Registry for access to Withheld Information of directors and other relevant persons.

More information will be released by the Registry closer to the commencement date of Phase 3.

For more details in relation to the New Inspection Regime, you may refer to the website of the Registry: -

<https://www.cr.gov.hk/en/legislation/nir/overview.htm>



If you have any questions about this Toolkit, please contact:

Pian Tang

Director
Tax – Corporate Services
pian.lp.tang@hk.pwc.com

Alice Cheng

Senior Manager
Tax – Corporate Services
alice.sl.cheng@hk.pwc.com

Lydia Lin

Senior Manager
Tax – Corporate Services
lydia.sw.lin@hk.pwc.com

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