

**Comment of the Committee on Company Law on
Bringing into Effect in Phases Part 2 Division 7 of the Companies Ordinance**

1. The Hong Kong Bar Association (“the Bar”) reiterates the importance of transparency of the information recorded on the public register, which compliments the existing system and relative ease of incorporation in Hong Kong, and in turn contributes to Hong Kong’s competitiveness as an international business centre.
2. At the same time, the Bar notes the powers conferred on the Registrar to require information to be submitted, and his corresponding duty to make the same available for public inspection, are only for the purposes stated in section 45(1), which are directed at facilitating the public verifying they are dealing with a particular company, or persons associated with such company, and the particulars of such company and persons.
3. The Bar understands that Part 2 Division 7 was enacted in 2012 with the object in mind of striking a balance between relevant information (in the form of usual residential address and HKID card number) submitted to and kept by the Registrar for his use and discharge of functions under Cap.622, while providing mechanisms (through application to the Registrar or the Court) for the same to also be made available to parties whose basis for requesting such information falls within the purpose of section 45(1).
4. The above was, even back in 2012, consistent with the trend in various commonwealth jurisdictions, including the United Kingdom and Australia, towards some form of protection to personal information of persons associated with companies, when they are otherwise compelled to provide such information for regulatory purposes. The Bar understands that Singapore, Hong Kong’s main competitor as an international business hub, is also moving towards that direction by recent amendment to its laws. In around 2014, ACRA (Singapore’s Corporate

Regulator) started to allow individuals to provide an alternate address for their residential address that is used in the company's profile stored within the ACRA register: see s 173(3) of the Singapore Companies Act (Cap. 50). To adopt this option, s 173(13) of the Companies Act provides that the following requirements must be satisfied:

- (1) Each individual can register only one alternate address.
- (2) The alternate address must not be the residential address of the individual.
- (3) The person must be reachable at the alternate address.
- (4) The alternate address cannot be a post office box number.
- (5) The alternate address must be located in the same jurisdiction as the individual's residential address.

5. When the Bar last commented on this issue in 2010, it was given to understand that there was no issue of abuse of the pre-existing system, whether with respect to usual residential address or HKID number. For that reason, the Bar supported Administration's recommendation of maintaining the existing regime.
6. However, one cannot ignore the fact that the current circumstances are quite different from those in 2010. Although the social unrests in 2019 may be said to have subsided, "creative" and hitherto un-think-of methodologies of misuse of the personal information have been devised (eg using someone's HKID number to sign up for miscellaneous matters online as a means to harass the individual) and have become known and widely publicized (on occasions by the court decisions that sanction such conduct). On any view of the matter, such uses of the personal information are outside the purposes of section 45(1) and should not be allowed. The question is how to address this and prevent the misuse.
7. In these circumstances, the Bar considers that a re-think of the underlying rationale for Part 2, and specifically whether it is apposite to bring into effect Division 7, is called for.

8. If the premise is to ensure that the information submitted to the Registrar is only used for the purpose of section 45(1) (which it must be), then some form of system of vetting and protection must necessarily follow, and the issue may properly be one of ensuring, in the subsidiary legislation, certain classes of persons or entities who would clearly have an interest to inspect and which interest is consistent with the statutory purpose in section 45(1) are provided with ready access to such information, while the remainder would be considered on a case-by-case basis (by the Registrar and if appropriate by the Court), with the guiding principle being consistency with section 45(1). The Bar also suggests that consideration be given to a mechanism whereby persons who reasonably fear that their registered information may be misused, may apply for exemption from their records (or specific parts of such records) being obtainable by the general public from the Companies Registry.

Hong Kong Bar Association

16 May 2021