



香港個人資料私隱專員公署
Office of the Privacy Commissioner for Personal Data, Hong Kong

Our Ref.: PCO/8/2 pt.9
Your Ref.: C2/1/57/3(04) Pt.7

27 April 2004

Secretary for Financial Services and the Treasury
Financial Services Branch
Financial Services and the Treasury Bureau
18/F, Admiralty Centre Tower 1
18 Harcourt Road
Hong Kong

By Fax & By Post

(Attn: Ms Shirley LAM)

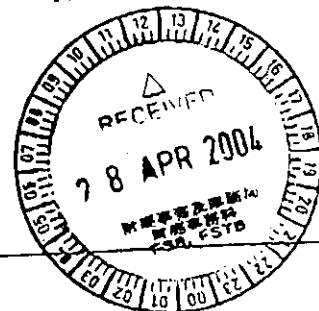
Dear Sir,

**Consultation Paper on Statutory Derivative Action
in the Companies (Amendment) Bill 2003**

I refer to your letter of 22 April 2004 inviting comments on the above

Under the proposed section 168BF (1)(c), the court has general powers to order the specified corporation or an officer of the specified corporation to do or not to do any act and we are given to understand that this is one of the channels through which information or documents which involves personal data may be discovered. Also, when independent person is appointed by court pursuant to the proposed section 168BF (1)(d) for the purpose of investigating and reporting on matters related to the specified corporation, it is likely that information or documents containing personal data may for that purpose be collected, retained or used by the said independent person as data user.

From the perspective of personal data protection, due regard should be given to the requirements of the Personal Data (Privacy) Ordinance, Cap 486 ("the Ordinance") on the collection, holding, processing or use of the data. Paragraph 15 of the above Consultation Paper has mentioned that the shareholder could also apply for the inspection of documents under the proposed section 152 FA. Whilst it is noted that the proposed sections 152 FA to 152 FE have clearly provided for the permitted purposes of use of these information and documents and the need to comply with the requirements of the Ordinance, such are not found in the said section 168 BF (1)(c) and (d). In the interest of clarity, it may be appropriate to reconsider the drafting in the light of the aforesaid.



I enclose herewith for your ease of reference a copy of our letter dated 16 September 2003 to the Bills Committee setting out our comments on, *inter alia*, the proposed sections 152 FA to 152 FE (section IV therein refers). We hope the above would assist and the comments given above are without prejudice to the exercise of the functions or powers of the Commissioner conferred under the Ordinance.

Yours faithfully,



(Margaret CHIU)
Legal Counsel
for Privacy Commissioner for Personal Data

encl.



香港個人資料私隱專員公署
Office of the Privacy Commissioner for Personal Data, Hong Kong

專員用箋

From the desk of the Commissioner

Our Ref. : PCO/8/2/ pt.8
Your Ref. : CBI/BC/18/02

16 September 2003

Mr Matthew LOO
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

By Hand

Dear Mr LOO,

Companies (Amendment) Bill 2003 ("the Bill")

Thank you for your letter dated 24 July 2003. Pursuant to Section 8(1)(d) of the Personal Data (Privacy) Ordinance, Cap 486 ("the Ordinance"), we are pleased to provide our comments on the captioned matter for further deliberations by Members of the Bills Committee.

- I. **The public inspection of contract or memorandum containing personal data**
Under the existing paragraph 17 of the Third Schedule of the Companies Ordinance, it provides that the dates of, parties to and general nature of every material contract shall be specified and included in the prospectus. The Bill, however, goes further by requiring the company under the proposed Sections 38D (3A) and 342C(3A) to make available for public inspection such contract or memorandum for not less than 14 days from the date of publication of the prospectus. Without limiting the contents of such contract or memorandum that are disclosable, it therefore appears that the amount of information to be made available for public inspection can potentially be more than that covered by the said paragraph 17.

Whilst it is appreciated that the transparency of material company information is beneficial to the investing public, it raises privacy concern in relation to the disclosure of

contract or memorandum containing personal data of individuals (which may incidentally involve personal data belonging to individuals other than parties to the contract or memorandum). In order to protect these personal data obtained by members of the public against subsequent use for illicit or other purposes, it is advisable that the express purpose for disclosing and making them available for public inspection be clearly stated in the Bill and that the personal data collected as a result are subject to the observance and compliance with the requirements of the Ordinance.

II. **The collection of personal particulars of director and secretary**

The proposed section 14A provides that the application to the Registrar for incorporation shall be in the specified form. For director and secretary who are individuals, their former and present names, alias, residential address and HKID number or in the absence of such number, the number and issuing authority of any passport held by them are required to be submitted under the specified form. Similar requirement for submission of the aforesaid personal particulars or changes thereof in specified form upon change or appointment of director or secretary is found in the proposed amendments to section 158(4) and (5). For non-Hong Kong company that establishes places of business in Hong Kong, it is also required to file the said personal particulars of each director and secretary in specified form under the proposed amendments to sections 333(2)(d) and 334(3)(g) to the Registrar.

Although the kind of personal data required to be submitted is sufficiently defined, the data subjects should nonetheless be explicitly informed of the matters mentioned in Data Protection Principle ("DPP") 1(3) such as the purpose for collection of the data, the classes of persons to whom such data may be transferred and the right to access to and request for correction of the data, particularly in view of the fact that such personal particulars are made available for public inspection in the public register kept by the Registrar. The notification usually takes the form as a Personal Information Collection Statement ("PICS"). It is therefore a recommended good practice for PICS to be included in the specified form on or before collection of the personal data if such administrative measures are not yet put in place.

The filing of the prescribed personal particulars of person(s) authorized to accept service or process upon establishment of place of business in Hong Kong and the appointment of liquidator in specified forms upon commencement of liquidation by non-Hong Kong company are also proposed under section 333(2)(e) and section 337A(1)(d)(iv) respectively and in this respect, please refer to our comments on DPP1(3) and PICS in the preceding paragraph.

III. The public register

The suggestion for inclusion of the purpose statement for a public register was raised by us during the bill stage of the Companies (Amendment) Bill 2002. We are pleased to note that the Financial Services and Treasury Bureau has taken step to incorporating it in the Bill. The specified purposes for ascertaining the particulars of the directors or other officers or former directors are set down in the proposed new subsection (1A)(a) of section 305. It is however doubtful whether the documents available for public inspection may include personal particulars of persons other than director, former director and other officers covered by the said subsection (1A)(a), such as, for instance, the receiver or manager or person who enters into possession of the property (see section 87 of the Companies (Amendment) Ordinance No.28 of 2003), the provisional liquidator and the liquidator (see sections 228A(10) and 253 of the said Ordinance No. 28 of 2003). If such is the case, the purpose statement laid down in the proposed section 305(1A) may need to be reviewed to apply to all other categories of data subjects whose personal data are made available for public inspection by the Registrar.

In order to ensure that members of the public who have obtained such public records shall not use the personal data collected for purposes unrelated to the specified purposes laid down by statute, we suggest that further thought be given to the imposition of sanction upon breach as a means of effective enforcement.

Also, in accordance with the advice given in Guideline (F) of the Memo dated 30 December 2000 issued by the then Secretary for Home Affairs (on the topic of "Review of Public Register" (ref. (47) in HAB/II/6/32III)) to all heads of bureaux and departments, we trust that due regard would be given to the implementation of administrative measures to ensure that all persons accessing the register are aware of the specified purposes and the need to confine the subsequent usage of the data to such purposes.

IV. Inspection of company records by shareholders

The proposed new sections 152FA and 152FB empower the Court to grant order for inspection of company records upon application by a member of the company. The proposed new section 152FC provides for circumstances under which the disclosure of information collected are permitted. Albeit the apparent wide powers conferred aforesaid which might impact upon the protection of personal data privacy, we are pleased to note that the exercise of the said enabling powers are necessarily confined by the proposed new section 152FE which stipulates clearly that nothing in the said enabling sections shall authorize the collection, retention and use of personal data in contravention of the Ordinance. Rights, redress and remedies conferred and available under the Ordinance are therefore unaffected.

I hope that the Chairman and Members of the Bills Committee will find the above submissions helpful in their further deliberations. As requested, a softcopy of the English and Chinese versions of this letter is also enclosed herewith for your ease of reference.

Yours sincerely,



(Raymond TANG)
Privacy Commissioner for Personal Data

Encl. ^{MC} (✓) reply slip and ✓ softcopy of this letter)

c.c. The Secretary for Financial Services and the Treasury
(Attn.: Mr. Esmond LEE, File Ref: C2/1/54(03) Pt.4)