

CB(1)74/03-04 (03)

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

14 October 2003

Ms Anita SIT
Clerk to the Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

By Hand

Dear Ms Sit,

Companies (Amendment) Bill 2003 (“the Bill”)

I refer to the letter dated 2 October 2003 from the Secretary for Financial Services and the Treasury to us seeking further comments on their responses to our written submission. Having perused the information contained in the said responses, I have the following observations to make.

I. The public inspection of contract or memorandum containing personal data

While acknowledging the existing requirements under sections 38D(3)(b)(i) and 342C(3)(b)(i) of the Companies Ordinance for material contracts or memorandum of the terms of such contract to be endorsed onto or attached to the application for registration of prospectus with the Registrar making them available for public inspection, the proposed amendments obliging the company to make available for public inspection of such documents at its registered office in Hong Kong provide an additional channel for inspection akin to a public register. It is our concern that personal data disclosed as a result shall be adequately protected by the Personal Data (Privacy) Ordinance especially against use for unrelated purposes. The provision of a purpose statement specifying the use of the personal data in the proposed legislation is thus regarded as appropriate and effective to quell uncertainty over their permitted use. This is also consistent with the rationale behind the provision of public register found in other ordinances and regulations, such as the Securities and Futures Ordinance and the Electoral Affairs Commission (Registration of Electors)(Legislative Council Geographical

Constituencies)(District Council Constituencies) Regulation, etc. It is hoped that members of the Bills Committee will duly consider the issue of incorporating such purpose statement in the bill to better protect the lawful use of those personal data of individuals that are disclosed as a result.

II. The collection of personal particulars of director and secretary

We are pleased to note that administrative measures will be implemented for the provision of PICS in the relevant specific forms and the display of the same in the public search area as well as on CR's website. From a regulatory perspective, we would however add that a data user should take all reasonably practicable steps to ensure that the notification is sufficiently brought to the attention of the data subjects and in this respect, the prominence and location for display of such notice are relevant factors for consideration.

III. The public register

Given that the class of persons whose personal data are statutorily required to be filed with the Registrar is not confined to directors (whether former or present) and other officers covered by the proposed section 305 (1A), for the sake of clarity, we opine that the purpose statement be clearly phrased to extend and cover such class of persons whose personal data will be made available for public inspection. A fine-tuning of the proposed amendments in this respect may seem necessary, as the members see fit.

Save as aforesaid, I have no further comments to add and the above are submitted for your kind consideration.

Yours sincerely,

(Raymond TANG)
Privacy Commissioner for Personal Data

Encl.: a soft copy of the English and Chinese versions of this letter

c.c. The Secretary for Financial Services and the Treasury
(Attn.: Ms Shirley LAM, File Ref: C2/1/57(03) Pt.8)