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Urgent By Email (desmondwu@fstb.gov.hk)

2 July 2021

Mr Desmond WU
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)6
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway, Hong Kong

Dear Mr WU,

**Companies (Residential Addresses and Identification Numbers)
Regulation (L.N. 98)
Company Records (Inspection and Provision of Copies) (Amendment)
Regulation 2021 (L.N. 99)
Companies (Non-Hong Kong Companies) (Amendment)
Regulation 2021 (L.N. 100)
Companies Ordinance (Amendment of Schedule 11)
Notice 2021 (L.N. 101)**

We are scrutinizing the captioned items of subsidiary legislation with a view to advising Members on their legal and drafting aspects. To facilitate Members' consideration of the subsidiary legislation, we should be grateful if you could clarify the issues set out in the ensuing paragraphs.

L.N. 98

It is noted that L.N. 98 deals with the following three types of applications regarding the new inspection arrangements of the Companies Register under the Companies Ordinance (Cap. 622) ("New Inspection Regime"):

- (a) an application under section 49(1) of Cap. 622 ("Section 49 Application") to the Registrar of Companies ("Registrar") for withholding from public inspection a relevant person's usual residential address or full number of the identity card or passport contained in a document delivered to the Registrar for registration under specified Ordinances before, on or after 27 December 2023 ("Withheld Information");
- (b) an application under section 51(3) of Cap. 622 ("Section 51 Application") to the Registrar for disclosure of the Withheld Information to a person specified in section 8(1) of L.N. 98; and
- (c) an application under section 58(3) of Cap. 622 ("Section 58 Application") to the Registrar for disclosure of the usual residential address of a director or reserve director of a company and the full number of the identity card or passport of any person contained in a document that is delivered to the Registrar for registration under specified Ordinances ("Protected Information") to a person specified in section 12(1) of L.N. 98.

Information and documents required for applications

In relation to a Section 49 Application, Section 51 Application and Section 58 Application, section 3(1)(b)(ii) and (c) and (3)(b) and (c), section 6(b) and (c)(i), and section 10(b) and (c)(i) of L.N. 98 respectively provide that the application concerned must contain any other information or any information specified by the Registrar, and must be accompanied by any documents specified by the Registrar for the application. Sections 4, 7 and 11 of L.N. 98 further provide that the Registrar may require a person who makes the application concerned to provide additional documents and information to the Registrar for the purposes of determining such application. Please provide examples of what such additional information or documents would be. Please also clarify the reason(s) for not prescribing such additional information or documents in L.N. 98. In so far as the information or documents would involve or contain personal data as defined under the Personal Data (Privacy) Ordinance (Cap. 486), please also clarify whether, and if so how, Data Protection Principle 1(1) under Cap. 486 would be complied with.

Prescribed fees for applications

It is noted that no fees are prescribed under L.N. 98 for a Section 49 Application, despite section 49(7)(c) of Cap. 622 provides that a Section 49 Application must be accompanied by a fee prescribed by regulations made under section 49(8)(c) of Cap. 622. It is also noted that with respect to a Section 51 Application or a Section 58 Application, section 13 of L.N. 98 provides that for persons to whom the Withheld Information or the Protected Information could be disclosed ("Specified Persons"), only some of them (i.e. those specified in sections 8(1)(a) to (g) and 12(1)(a) to (g) of L.N. 98) are exempted from the fees prescribed for the application concerned. Please clarify the reason(s) for prescribing such different requirements.

The lists of Specified Persons

Sections 8(1) and 12(1) of L.N. 98 list out the Specified Persons to whom the Withheld Information or the Protected Information could be disclosed by the Registrar upon a Section 51 Application or a Section 58 Application respectively. Please clarify the rationale for specifying the categories of persons in the lists of Specified Persons.

Under sections 8(1)(h) and 12(1)(h) of L.N. 98, a solicitor and a foreign lawyer are categories of Specified Persons to whom the Withheld Information or the Protected Information could be disclosed. Pursuant to section 2 of L.N. 98, a solicitor or foreign lawyer must be one who practises the relevant law in a Hong Kong firm or a foreign firm as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159). For a solicitor or foreign lawyer not practising in such a firm and not falling within other categories of Specified Persons (for example, DNFBP as defined in section 2 of L.N. 98 (which includes an accounting professional and a legal professional)), such a solicitor or foreign lawyer (for example, an in-house lawyer) has not been included in the lists of Specified Persons. Please clarify the reason(s) for not including such a solicitor or foreign lawyer as a Specified Person.

Under sections 8(1)(i) and 12(1)(i) of L.N. 98, a certified public accountant (practising) is also a category of Specified Persons. Pursuant to section 2 of L.N. 98, a certified public accountant (practising) means a certified public accountant holding a practising certificate. A certified public accountant who does not hold a practising certificate or fall within other categories of Specified Persons, such as DNFBP, has not been included in the lists of Specified Persons. Please clarify the reason(s) for not including such a certified public accountant as a Specified Person.

According to paragraph 19 of the Legislative Council Brief (File Ref: CO/2/20C(2021)Pt. 9) issued by the Financial Services Branch of the Financial Services and the Treasury Bureau on 16 June 2021, it is noted that the Administration has communicated with relevant stakeholders to listen to their views with a view to refining implementation details of the New Inspection Regime. Please clarify whether there is any category of persons as proposed by such stakeholders who has not been included in the lists of Specified Persons. If so, please also clarify the reason(s) for not including so. By providing that only the Specified Persons could apply for the disclosure of the Withheld Information or Protected Information, please clarify whether, and if so how, Parts 3 and 4 of L.N. 98 are in conformity with Article 25 of the Basic Law and Article 22 of the Hong Kong Bill of Rights, and Article 27 (in respect of freedom of the press, given that journalists have not been included in the lists of Specified Persons) of the Basic Law.

Disclosure of Withheld Information or Protected Information to a scheduled person, financial institution or DNFBP

Under sections 8(9) and 12(9) of L.N. 98, the requirements relating to the statements of confirmation to be provided to the Registrar and the permitted use of the Withheld Information or Protected Information by a scheduled person are that the information is required for the purpose of, or in connection with, the performance of the functions conferred or imposed on the person under any enactment and that the information would be used only for that purpose. Please clarify why the information could be required and used "in connection with", but not just "for the purpose of", the performance of such functions, as in the case of section 8(6), (7), (8), (10) and (11), and section 12(6), (7), (8), (10) and (11) of L.N. 98. Please also clarify why the functions to be performed are conferred or imposed on the person under any enactment, instead of the enactment concerned (i.e. those enactments as referred to in the Schedule to L.N. 98).

Under section 8(12)(a)(i) and (b) and section 12(12)(a)(i) and (b) of L.N. 98, the requirements relating to the statements of confirmation to be provided to the Registrar and the permitted use of the Withheld Information or Protected Information by a financial institution as defined in section 2 of L.N. 98 or DNFBP are that the information is required for the purpose of, or in connection with, the performance of the institution's or DNFBP's functions conferred or imposed on the institution or DNFBP under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("Cap. 615 Functions"), and that the information would be used only for that purpose. Please clarify why the information could be required and used "in connection with", but not just "for the purpose of", the performance of such functions, as

in the case of section 8(6), (7), (8), (10) and (11) and section 12(6), (7), (8), (10) and (11) of L.N. 98.

Pursuant to section 8(12)(a)(ii) and (b) and section 12(12)(a)(ii) and (b) of L.N. 98, if a financial institution is an authorized institution as defined in section 2 of L.N. 98, the requirements relating to the statements of confirmation to be provided to the Registrar and the permitted use of the Withheld Information or Protected Information by such an institution are that the information is required for the purpose of the performance of the institution's functions other than the Cap. 615 Functions and that the information would be used only for that purpose. Please clarify why with respect to an authorized institution, the information could be required and used for the purpose of the performance of the institution's functions other than the Cap. 615 Functions.

Legal consequence(s)

Please clarify the legal consequence(s) on the relevant person concerned if any of the following documents submitted to the Registrar in connection with a Section 51 Application or a Section 58 Application contains a misleading, false or deceptive information or confirmation:

- (a) documentary proof of the authorization given by the data subject concerned for disclosure of the Withheld Information or Protected Information to an applicant under section 6(c)(ii) or 10(c)(ii) of L.N. 98; and
- (b) the statements of confirmation referred to in section 8(5) to (12) and section 12(5) to (12) of L.N. 98.

Please also clarify the legal consequence(s) on the relevant person concerned if there is a breach of the condition for the use of the Withheld Information or Protected Information as prescribed in section 8(6)(b), (7)(b), (8)(b), (9)(b), (10)(b), (11)(b) or (12)(b), or section 12(6)(b), (7)(b), (8)(b), (9)(b), (10)(b), (11)(b) or (12)(b) of L.N. 98.

L.N. 99

Under sections 644 and 651 of Cap. 622, a company may, in the prescribed manner and to the prescribed extent, withhold the usual residential address and the number of the identity card or passport of a director or reserve director contained in its register of directors, and the number of the identity card or passport of a company secretary contained in its register of company

secretaries, from a person who inspects or requests for a copy of the register concerned. It is noted that L.N. 99 only prescribes the extent to which a company may withhold such number of the identity card or passport. Please clarify the reason(s) for not prescribing in L.N. 99 the manner in which a company may exercise the power to withhold such usual residential address or number of the identity card or passport.

L.N. 100

In section 4 of L.N. 100, please consider whether "(1)" before "在第 9(2)條之後 —" in the Chinese text should be deleted for consistency with its English text.

L.N. 101

The new section 2A(3) of Schedule 11 to Cap. 622 (as added by section 3(1) of L.N. 101) contains a reference to a reserve director of a non-Hong Kong company. It appears that in Part 16 of Cap. 622, the Companies (Non-Hong Kong Companies) Regulation (Cap. 622J) and the Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation (Cap. 622M), no references are made to a reserve director of such a company. Please clarify the reason(s) for the above difference.

We would appreciate it if you could let us have the Administration's response in bilingual form as soon as practicable, preferably by 9 July 2021.

Yours sincerely,



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