

香港特別行政區政府
財經事務及庫務局
財經事務科
香港金鐘道六十六號
金鐘道政府合署十五樓



FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
15TH FLOOR
QUEENSWAY GOVERNMENT OFFICES
66 QUEENSWAY
HONG KONG

電話 TEL: 2528 6384
圖文傳真 FAX: 2869 4195
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9 July 2021
(By Email)

Ms Wendy KAN
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms KAN,

**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)**

Thank you for your letter dated 2 July 2021 regarding the captioned pieces of subsidiary legislation. The Government's consolidated reply is as follows –

L.N. 98

Information and documents required for applications

2. Any additional information or documents that may be required by the Registrar of Companies (“Registrar”) under sections 4, 7 and 11 of L.N. 98 in relation to applications respectively under section 49(1), section 51(3) and section 58(3) of the Companies Ordinance (Cap. 622) (“CO”) would depend on

the circumstances of each application and the actual information or documents provided by the applicant. For example, the Registrar may require an applicant to produce additional documentary evidence for the purpose of verification of the applicant’s identity and eligibility for handling the three types of applications above.

3. In so far as the information or documents may involve or contain personal data as defined under the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”), the Companies Registry (“CR”) will ensure that the collection of the personal data is necessary for or directly related to the purpose of the relevant application and that the data is adequate but not excessive in relation to that purpose, in compliance with Data Protection Principle 1(1) under the PDPO. Besides, the CR will also prepare a Personal Information Collection Statement to inform data subjects of the purpose for which their personal data is to be used, the classes of persons to whom the data may be transferred or disclosed and their rights and means to request access to and correction of the data.

Prescribed fees for applications

4. To facilitate the data subject to protect his / her personal information on the Companies Register after the implementation of the new inspection regime, thereby achieving the purpose of the establishment of the regime, the CR will automatically redact usual residential addresses (“URAs”) and full identification numbers (“IDNs”) (“Protected Information”) in all documents to be registered with the CR upon commencement of Phase 2, and directors can also make application to withhold their URAs and full IDNs under section 49(1) of the CO (“Withheld Information”) from public inspection upon commencement of Phase 3, without the need to pay a fee. We will review the fee arrangement after full implementation of the new regime at a suitable juncture.

5. “Specified persons” under sections 8(1) and 12(1) of L.N. 98 may request for access to the Withheld Information or Protected Information (collectively as “WIPI”) under sections 51(3) or 58(3) of the CO. A service fee is imposed since the request would entail the production of a specific report which contains particulars of directors or other individuals by the Integrated Companies Registry Information System of the CR. However, those of the “specified persons” stipulated under sections 8(1)(a) to (g) and 12(1)(a) to (g) of L.N. 98 are exempted from the fee due to the following policy considerations –

- (a) data subjects are owners of their own WIPI on the Companies Register (“Register”), thus data subjects and their authorized persons are exempted;
- (b) the WIPI originates from documents filed by companies with the CR, which members of companies should be entitled to inspect;
- (c) public officers/public bodies require the WIPI for discharge of their public functions, e.g. enforcement and regulatory work; and
- (d) other specified persons/organisations¹ also require the WIPI for their execution of statutory functions.

The lists of Specified Persons

6. When deciding on the list of “specified persons”, we are guided by the need for access to WIPI of directors in the conduct of functions in relation to statutory procedures (e.g. handling liquidation and bankruptcy procedures), statutory obligations (e.g. implementing anti-money laundering and counter-terrorist financing (“AML/CTF”) measures including customer due diligence (“CDD”) pursuant to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”)) and law enforcement (e.g. criminal investigation and asset recovery). When carrying out the above functions, it may not be appropriate or possible for the relevant persons/organisations to communicate with the directors concerned directly to obtain their consent for accessing their WIPI. In view of the need to ensure the robustness of the financial, commercial and corporate governance systems of Hong Kong, and proper conduct of law enforcement, the list of “specified persons” includes (a) a public officer or public body; (b) a person/organisation appointed or provided under statute who needs to use the WIPI for execution of statutory functions¹; (c) a solicitor who practises law in a Hong Kong firm and a foreign lawyer who practises foreign law in a Hong Kong firm or a foreign firm under the Legal Practitioners Ordinance (Cap. 159); (d) a certified public accountant (practising) under the Professional Accountants Ordinance (Cap. 50) (“PAO”); (e) an authorized institution under the Banking Ordinance (Cap. 155); and (f) a “financial institution” (e.g. an authorized institution (“AI”), a securities firm, an

¹ Including liquidator and provisional liquidator under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); provisional trustee or trustee of the property of a bankrupt, as well as an interim trustee of the property of a debtor or of any part of the property under the Bankruptcy Ordinance (Cap. 6); an inspector as defined by section 838(1) of the Companies Ordinance; an inspector appointed under section 95(1) of the Trustee Ordinance (Cap. 29); a recognized clearing house, a recognized exchange company, a recognized exchange controller and a recognized investor compensation company as defined by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); and a person directed or appointed to investigate any matter under section 11(1) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).

insurance company, a money service operator, a stored value facility operator, etc.) and a “designated non-financial business and profession” (“DNFBP”) (including an accounting professional, a legal professional, an estate agent, and a trust or company service provider) regulated under the AMLO. Furthermore, data subjects as the data owners should be entitled to access their own data, so be their authorized persons. On the other hand, the WIPI originates from documents filed by companies with the CR, which members of companies should be entitled to inspect.

7. A *solicitor* practising law at a *Hong Kong firm* or a *foreign lawyer* practising *foreign law* at a *Hong Kong firm* or a *foreign firm* normally needs to handle different legal services and court proceedings, e.g. checking whether certain person is a director of a company, and conduct CDD for financial, commercial transactions, etc. In some cases, it may not be appropriate or possible for him/her to communicate with the directors concerned directly to obtain their consent for accessing their WIPI. Therefore there is a need to include such a *solicitor* as one of the “specified persons”. On the other hand, given the normal scope of work duties of a *solicitor* not working at a *Hong Kong firm* (who is normally an in-house lawyer) do not need to serve any client but his employer, we consider that there is no need for in-house lawyers to be further specifically listed as one type of “specified persons”.

8. As for accountants, a certified public accountant (practising) under the PAO, as well as an accountant within the meaning of “accounting professional” which is included as a DNFBP under AMLO is a “specified person”. Under the AMLO, the definition of “accounting professional” includes a certified public accountant as defined by section 2(1) of the PAO, hence he/she is also a “specified person” for the purpose of, or in connection with, the performance of his/her functions conferred or imposed on him/her under the AMLO.

9. Under the new inspection regime, any person who is authorized by the data subject is a “specified person”. In addition, all searchers will be able to inspect the correspondence address, partial IDNs and the full list of directorship of the directors on the Register. In the exceptionally rare circumstances of different individuals having identical full name and partial IDN, the CR will provide additional digit(s) of the IDNs to ensure that searchers could identify the directors effectively, and consolidate the information of a director for easy perusal by the searchers, including for cases in which different patterns of the name of an individual are shown on the Register. Furthermore, all searchers could file a complaint with the CR in regard to invalid correspondence address of a director, and the CR could make available that director’s URA for public inspection after confirming the invalidity. In addition, the Court may, upon the

application of a creditor of a company or any other person appearing to have a sufficient interest, make an order for the disclosure by the Registrar of the WIPI of directors, including their URAs. These arrangements seek to strike a reasonable balance between enhancing protection for personal information while ensuring that the public could continue to inspect the Register under the CO, and can cater the needs of the other professionals and searchers not listed as “specified persons” to ascertain the identity of the directors concerned. Furthermore, any persons meeting the criteria stipulated in paragraph 6 above are also “specified persons”. The new inspection regime has not posed any unequal treatment on any persons, or attempted to limit press freedom, and is in our view in conformity with Articles 25 and 27 of the Basic Law, and Article 22 of the Hong Kong Bill of Rights.

10. We have explained the arrangements stipulated in paragraph 9 above to stakeholders whom we have engaged, including labour unions and media organisations.

11. In particular, under the new inspection regime, the Labour Department (“LD”), being a public body, is a “specified person” who could access the WIPI of directors for carrying out public functions when necessary. Hence, the existing services and functions of LD in respect of protection of labour rights and benefits will not be affected. Furthermore, if the employees wish to recover outstanding wages from employers, which are companies formed and registered under the CO, through civil proceedings at the Labour Tribunal or the Minor Employment Claims Adjudication Board, under the established requirements, the relevant claim forms will generally be taken as duly served on a defendant company by addressing them to the company’s registered office address. Hence, there is no need to serve the claim forms using the residential addresses of directors for the processing of the above civil proceedings.

Disclosure of WIPI to a scheduled person, financial institution or DNFBP

12. For sections 8(9) and 12(9), and section 8(12)(a)(i) and (b) and section 12(12)(a)(i) and (b) of L.N. 98, the reason why a scheduled person and a financial institution or DNFBP as defined under the AMLO may be allowed to obtain the WIPI “in connection with” the performance of the relevant functions conferred or imposed on the person under the enactment (or “any enactment” in the case of scheduled person) in addition to “for the purpose of” the performance of such functions is that when discharging their functions as investigators, regulatory authorities or entities with statutory AML/CTF obligations pursuant to the relevant statute, it may be necessary for them to further verify the

properness of the relevant transactions, and to take follow-up actions, for example reporting any irregularities detected to the law enforcement agencies.

13. Apart from discharging their AML/CTF obligations under the AMLO, AIs may require the WIPI for other purposes relevant to the safeguarding of integrity of our financial system, for example ensuring legitimate and proper discharge of capital transfer, cross-border transactions, etc. Thus, AIs may obtain the WIPI for the performance of their functions other than the functions relevant to AMLO.

Legal consequence(s)

14. If any person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular under the CO, including a statement made by a “specified person” in regard to his/her purpose of applying for access to the WIPI under L.N. 98, it may amount to a criminal offence pursuant to section 895 of the CO. The person who is found to have committed such an offence is liable on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or on summary conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for 6 months.

15. Meanwhile, section 45(1) of the CO has clearly stipulated the purposes for which public inspection of the Register is allowed, such as for ascertaining the particulars of a company’s directors or other officers, or the particulars of a person who is appointed as the liquidator or provisional liquidator in the winding up of a company, and the relevant sections in L.N. 98 impose additional conditions on applications for access to the WIPI by different categories of “specified persons”. According to the PDPO, a person may violate Data Protection Principle 3 under the PDPO if personal data is used for a new purpose which is different to the original purpose when collecting the data without the data subject’s consent, and may be subject to civil liabilities to pay compensation to that data subject.

L.N. 99

16. Pursuant to our engagement with the stakeholders, we consider that restricting the extent to which a company may withhold the number of the identity card or passport, namely except the first part of the number, would be sufficient to ensuring transparency of the Register, while offering adequate protection of personal information. We do not consider the need to further

restrict the manner in which a company may exercise the power to withhold URAs or numbers of identity card or passport at this stage. This would allow flexibilities for companies to decide on and use in a manner that is suitable to them.

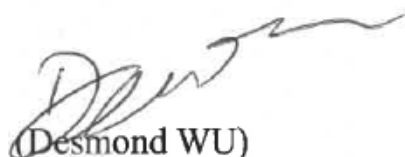
L.N. 100

17. The purpose of section 4 of L.N. 100 is to amend section 9 of the Companies (Non-Hong Kong Companies) Regulation (Cap. 622 sub. leg J) (“principal Regulation”). The observation made in the incoming letter does not affect the operation of that section 4 and will not be reflected in the principal Regulation (as amended by L.N. 100).

L.N. 101

18. The observation made in the incoming letter will not affect the legal effect nor the actual operation of the new section 2A(3) of Schedule 11 to the CO (as added by section 3(1) of L.N. 101).

Yours sincerely,



(Desmond WU)
for Secretary for Financial Services and the Treasury

c.c. Department of Justice
(Attn: Mr Jonathan LUK, Senior Government Counsel)
(Attn: Miss Selina LAU, Senior Government Counsel)
Legal Adviser
Senior Assistant Legal Adviser 1
Clerk to Subcommittee
Registrar of Companies (Attn: Ms Marianna YU)