



By Email: pid@legco.gov.hk and courier

URGENT

3 May 2021

Chairman and Members of
the Panel on Financial Affairs, Legislative Council
c/o Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Sirs,

Protection of Personal Information Under the Companies Register

We refer to our letter dated 7 April 2021, a copy of which is attached. The enclosure to the letter spells out our grave concern about the provisions in question when the amendment bill of the Companies Ordinance was with the Legislative Council in 2013.

2. On LC Paper No CBID 737/20-21/07 put forward by the Administration in March, we should like to point out certain issues requiring careful thought.

3. Footnote 3 in Paragraph 5 of the Paper states that the Office of the Privacy Commissioner for Personal Data received 1,036 doxxing complaint cases in 2020. According to information on hand, the number of doxxing related complaints received by the Commissioner which involve disclosure of addresses and/or Hong Kong identify card numbers was 750 and 134 respectively in 2019 and 2020. It may be asked on what basis the Administration considers there is an “imminent need” to bring the proposals into operation.

4. The Administration says in the Paper, to quote, “the new inspection regime will strike a reasonable balance by continuing to allow adequate public access to the necessary information to ascertain the particulars of the directorship and other key affairs of companies, and enabling only the specified persons who has legitimate means to access the full Protected Information”. This statement is questionable because i)

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through the new regime, public access to full information is unreasonably restricted to allow conducting a sensible search for due diligence, and ii) access to full information is further restricted by confining the right to certain groups of persons, but enterprises needing the information for daily business are barred from doing so. Moreover, if the object is to protect the information of the persons on the Register, the Administration could seek ways to prevent or penalize those who access with immoral or malicious purposes, rather than blanket denial to public access to full information. The balance is rather between protection and abuse of information.

5. The document by the Financial Services & Treasury Bureau to the Legislative Council dated 28 March, 2013 says, inter alia

“The new arrangement seeks to strike a reasonable balance between satisfying the need to access information and the protection of privacy. We will endeavour to find the best way to achieve this objective and are open to the suggestions put forward by Members and stakeholders. However, as elaborated in paragraphs 17 and 18 above, there are complex legal, privacy and operational issues involved. We believe that we should not rush to solutions without giving more time for the community to build consensus on those issues... We therefore propose to accord priority to the tasks necessary for commencing the new CO, and consider matters relating to the new arrangement thereafter. We do not plan to make the subsidiary legislation concerning the new arrangement at this stage, and will not include the relevant provisions in the commencement notice to be made in the fourth quarter of 2013 for commencing the new CO.... Looking ahead, we will continue to listen to views and suggestions of Members and stakeholders on the new arrangement. After we have brought the new CO into operation, we shall formulate proposals on this subject for further engagement with Members and stakeholders.”

However, in its Paper dated 29 March 2021, the Bureau says, inter alia

“In recent years, there has been rising social concern over whether personal data contained in public registers are adequately protected, especially in the light of increased reported cases of doxxing and personal data misuse.³ We consider that there is an imminent need to bring into operation the new inspection regime of the CO.” Footnote 3 says “For example, the Office of the Privacy Commissioner for Personal Data received 1,036 doxxing complaint cases in 2020.”

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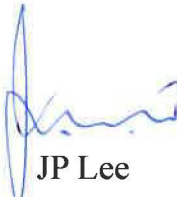
There is no explanation why there has been such a change of heart, and little weight is now placed in the legitimate need to access information. Nor are we aware of the Administration's suddenly proceeding to take action on the issue. Public consultation if any by the Administration is unknown too.

6. Hong Kong is a free economy, and anyone can start a commercial venture by taking up business registration with the government. Some choose to register their businesses under the Companies Ordinance. There may be other reasons why an enterprise prefers to be registered under the Ordinance, but one thing not to be overlooked is that in so doing, the owners and/or operators of the enterprise will have limited liability in contrast to persons which otherwise have unlimited liability. It is a matter of risk management to learn discreetly more than less about the company with which a person is or will be dealing with. It may be suggested a limited company enjoys certain advantage, and is it too much to seek more information about the company? It is just business sense if nothing else. Likewise a publicly listed company has to provide more information to the public because it has the right to raise/borrow funds from the public.

7. We earnestly hope our submission now and in 2013 show the present push by the Administration is premature and untimely, and the case for change is yet unproven. Introduction of the proposals will erode Hong Kong's favourable business environment detrimental to sustaining the economy. Therefore the present proposals should be rescinded.

8. Thank you for your attention.

Yours faithfully,



JP Lee
Chairman

Cc: the Chairman and other members of the Legislative Council

Enc.

國際商會 - 香港區會



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7 April 2021

Chairman and Members of the Panel on Financial Affairs, Legislative Council
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1 Legislative Council Road
Central, Hong Kong

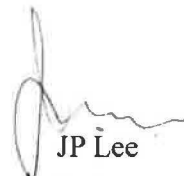
Dear Sirs,

Public Access to Information to Government departments and other Public Registers

We write with reference to the Administration's proposals which are on the agenda of the Panel's meeting on Friday, 9 April 2021.

2. It is only when we read in the news on 30 March that we become aware of what was in the pipeline. We were neither informed nor our views were sought by the Administration. Presumably the Administration would have known on record public concern about the same issues back in 2013 when the Legislative Council considered the amendments to the Companies Ordinance. We enclose herewith a copy of our letter to the Secretary of Financial Services and the Treasury and copied to Members of the Legislative Council at that time.
3. Given the time available before your meeting on 9 April, we are unable to present to you further views. We are at a loss for the eagerness to push through the measures with seemingly disregard the adverse consequences as a result to Hong Kong's business environment and to maintaining Hong Kong to be an attractive city for investment and trade.

Yours faithfully,


JP Lee
Chairman

Cc: Chairman and Members of Legislative Council

Enc.

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The world business organization

By Email: sfst@fstb.gov.hk and by Hand

20 February 2013

Prof. K C CHAN, GBS, JP
Secretary for Financial Services & the Treasury
24/F, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

Dear Sir,

**Amendment to the Companies Ordinance
regarding personal information of Directors & Other Persons, 2012**

Our attention is drawn to the new provisions of the amended Companies Ordinance (and the relevant draft Regulations), by which certain personal information of the directors and company secretaries will be restricted for public access, in contrast to existing practice. The reason advanced for the change is to give privacy to the parties concerned.

2. While personal privacy is a matter of general interest, it has to be weighed against the purpose and the importance of governing limited companies. In this context, we believe it is a matter of public interest to retain public access to the names, addresses and identification numbers of the directors and company secretaries of a company.

3. The government has claimed it is a priority to promote Hong Kong as an international financial and business centre. This is rightly so; for without sustained economic growth through government's providing a favourable business environment, the community would suffer in terms of employment and quality of life. However, the new provisions of the Ordinance and Regulations at issue will bring into question whether Hong Kong's legal framework would provide transparency and fair play in business operation, and whether corporate governance would be clouded with resultant illicit



dealings. More, normal conduct of business would be compromised by being handicapped seriously in due diligence and status checking (eg. trade or financial credit). The people who need the information are those who are engaged in day-to-day running of business and their need is much greater than that of those listed under the Schedule of the Regulations. Hong Kong would be a market with less fair play, because the new provisions tend to condone clandestine and doubtful activities at the expense of normal dealings. One may even ask if the government unwittingly instead encourages corruption, money laundering and fraud.

4. The government has been making significant effort to let the world business community and overseas jurisdictions know that Hong Kong spares no effort to eradicate money laundering, and is not a tax haven as has been alleged overseas in recent years through legislative changes. In this context, the changed provisions of the Ordinance and Regulations is contrary to government's effort to safeguard Hong Kong's reputation. Indeed, they are challenging the requirements laid down on listed companies under separate legislation.

5. The new provisions take a narrow view on the need for personal privacy and business operation. Many non-profit or charity organizations are incorporated under the Companies Ordinance. When the community is concerned about public fund raising under false pretence (c f the Consultation Paper on Charities by the Charities Subcommittee of the Law Reform Commission), the new provisions would provide a shelter for such deception. Further, many non-profit bodies or charities receive government funding, and there is reason that their governance should be more transparent rather than shielded by the new provisions.



6. The underlying assumption of the change in law is that all businesses under company registration demand personal privacy. This is questionable. Firstly, law-abiding businesses would have no fear of opening up information of their directors and officers to the public, as this has been the case in the past decades. Secondly, as an alternative to the proposals, if a company wants denying the public of such information, it can apply for permission. In other words, company records will be publicly accessible except for those businesses which will apply to the Companies Registrar for imposing restriction on public access, provided their arguments are reasonable, lawful in terms of Privacy Ordinance, and the request is proportional to the alleged need.

7. The Ordinance allows limited liability to those ventures registered, and it is reasonable that they should be subject to a fair degree of public scrutiny. The identity of those responsible or owning the ventures should be available to the public. There is a real risk that the new provisions will be abused and taken advantage of weakening the protection of the consumer public, and to the detriment of the normal conduct of business, ultimately leading to a drop in investor' and trading partners' confidence in Hong Kong where an unfair and non-transparent framework would favour the bad but not safeguarding the interest of the good.

8. If the government insists on the new provisions, one can only conclude that there is evidence that the government may adopt the same principle in respect of other policy areas and legislation. This will be a signal for all legitimate business to strengthen their risk management, if feasible, or to decide staying or leaving Hong Kong. There will be no confidence that Hong



Kong will provide a suitable framework for legitimate business to grow, and there will be no guarantee that fair play will prevail.

9. We hope the government will review the Ordinance and deal with the draft Regulations suitably to avoid such a doomed future of Hong Kong, including no longer being counted as a favoured destination for international business.

Yours faithfully,

George Cautherley
Vice Chairman

Cc: Members of the Legislative Council