To: <jeffrey@jeffreylam.hk>

From: "HKIFA" <hkifa@hkifa.org.hk>

Date: 05/14/2021 09:51AM

Cc: <panel_fa@legco.gov.hk>

Subject: Response from HKIFA with respect to the Govt's proposal as outlined in the LegCo paper: fa20210409cb1-737-7-e.pdf (legco.gov.hk)

(See attached file: hkifaCR0520210002.pdf)

(See attached file: Appendix 1-HKIFABackgrounder_eng.pdf)

Attn: Hon Jeffrey Lam Kin-fun, GBA, JP, Chairman, Panel on Financial Affairs, Legco of HKSAR

Dear Mr Lam

Response from HKIFA with respect to the Govt's proposal as outlined in the LegCo paper: fa20210409cb1-737-7-e.pdf (legco.gov.hk)

On behalf of the Hong Kong Investment Funds Association, I wish to share a copy of our submission sent to FSTB re our thoughts about the proposal. We would exhort the Government to conduct a public consultation re the proposal.

The captioned proposal is underpinned by the need to find a balance between the protection of personal information and transparency of information on company directors. We fully understand that it is not an easy task and appreciate the Government's effort on this. However, we are concerned that the proposal may mean that Hong Kong cannot maintain a level of transparency that would commensurate with its position as an IFC. We are committed to lending support to the Government to bolster HK's position as an IFC. We would welcome the opportunity to work together to come up with an optimal solution that can address privacy concerns and at the same time, ensure the uniqueness of the identification information so as to satisfy a basic, yet fundamental, information need.

Regards

Sally Wong

Hong Kong Investment Funds Association

2537-9912

HK IFA 香港投資基金公會

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May 12, 2021

Mr Christopher Hui, JP
Secretary for Financial Services & the Treasury
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Christopher

Response from HKIFA with respect to the Govt's proposal as outlined in the LegCo paper: fa20210409cb1-737-7-e.pdf (legco.gov.hk) [legco.gov.hk]

On behalf of the Hong Kong Investment Funds Association (pls. refer to Appendix 1 for the backgrounder), I wish to share our thoughts about the proposal and would exhort the Government to conduct a public consultation re the proposal.

The captioned proposal is underpinned by the need to find a balance between the protection of personal information and transparency of information on company directors. We fully understand that it is not an easy task and appreciate the Government's effort on this. However, we are concerned that the proposal may mean that Hong Kong cannot maintain a level of transparency that would commensurate with its position as an IFC. We are committed to lending support to the Government to bolster HK's position as an IFC. We would welcome the opportunity to work together to come up with an optimal solution that can address privacy concerns and at the same time, ensure the uniqueness of the identification information so as to satisfy a basic, yet fundamental, information need.

The proposal can potentially affect fund managers on two fronts:
(1) as investors – negatively affair managers' investment and stewardship team to monitor the investee companies. Amongst others, the proposals would potentially obscure related party transactions, and reduce the effectiveness of disclosures.
(2) as providers - impair managers' ability to effectively conduct client due diligence.

Potential implications of the proposal to tighten access to the companies register

The gist of the issue is that under the proposed regime, there is a lack of *unique* identification information.

(1) The lack of a unique identifier could pose challenges to identify or distinguish directors in the due diligence process by investors, auditors, other professionals.

By reducing transparency in the system, the proposal potentially obscures related party transactions from the market. Tightened access to information on the companies register could weaken oversight and undermine the effectiveness of disclosures. The Hong Kong market is already dominated by large controlling shareholders, cross-directorships and connected party transactions.

Having access to definitive identification data is pivotal to enable managers to have visibility to the ownership structure. This is even more pertinent for companies which have (or seek) a secondary listing through the Joint Policy Statement or the Chapter 19C routes, in respect of which notifiable transaction and connected transaction requirements (chapters 14 and 14A) are currently waived, so transparency is already limited.

Time and again, we have found that residential addresses can be used as an effective means for identifying relationships among directors and relevant stakeholders. The proposal would potentially have a negative impact on the work of the investment and stewardship teams (and their proxy advisors) which may rely on inputs from auditors and other service providers to identify and assess the risks of related party transactions. Ultimately, this would undermine the interests of end clients if these risks cannot be properly identified and assessed.

(2) The proposal will impair the ability of FIs to effectively conduct KYC and for client due diligence purposes pursuant to the HK requirements:

- Account opening process - typically, a manager will check the Annual Return from the Company Registry to review the company status, director and shareholder's identity information.
- Name screening process - if there's potential hit with the name of director/shareholder when a FI checks its internal system the name against third party checklist during the account opening process/ongoing screening, the residential address and ID number from the CR could be a source for verification.
- But with this new proposal (withhold inspection of director's home addresses and full ID), managers will have to approach the investors or some other sources for information.
- We understand that a simple reliance on a register, whether it contains detailed data or not is not sufficient. Additional information may be requested from customers on a case by case basis. But for all intent and purposes, the CR register is arguably the most authoritative and comprehensive source for identification data. One must remember that different persons having the same name are quite common in Hong Kong. Though the Government has said that the probability of persons having the same name and

the same 4 digits on the ID card is miniscule, the gap, albeit miniscule, would mean that it would be difficult to make a definitive match. And this is far from ideal.

Apart from meeting the HK requirements, managers have to observe overseas requirements. A large percentage of funds managed by our members are domiciled in overseas jurisdictions (such as Luxembourg and Ireland). According to home jurisdiction rules on KYC, the level of details in the information to be collected is determined on a risk-based approach (depending on whether the customer is subscribing directly in the fund or through an intermediary and the case may be the type of intermediary). But the Regulations will typically have requirements on the information of the beneficial owner of the customer and on the members of its Board of directors to be collected - generally would include the following: full name, date and place of birth, nationality and *full postal address of the main residence, and if applicable the national ID number.* This may be adapted if the entity concerned presents a low risk of money-laundering/terrorist financing risk (for example a financial institution or entities listed on the stock exchange). Depending on the assessments made by overseas transfer agents/custodians, there may be issues re the identification data as made available from the CR. There are already some members which indicate that their overseas transfer agents opine that such identification data would not be sufficient to meet their KYC requirements.

More generally, some managers have queried whether the proposed measure is in line with the FATF recommendations, such as R24 as the directors often have the 'control' over the companies.

We should take reference from international best practices. Singapore provides full ID number and nationality of directors in public records, which together serve as a unique identifier. Whilst it has been pointed out that the residential address is no longer shown in the UK register, it must be noted that the information can be requested by credit agencies. More generally, a person needs to pay when he/she conducts a company search in HK whereas access to to the UK register is free. HK still does not have an Ultimate beneficial Owners register which is already behind other countries. Some members have indeed raised whether over a longer term, the proposal may negatively affect HK's status as an IFC, and potentially result in HK being risk-rated as higher risk countries under AML risk assessment.

Suggestions

As information availability and transparency is the bedrock of an IFC, we believe that this exercise should be treated with extreme caution. And we would respectfully request the Government to conduct a public consultation on the proposal.

We should explore more options, e.g. if the HK government does not wish to disclose the full ID number of directors, can we consider taking reference from other markets, e.g. Australia which has required directors to be registered and assigned with a unique Director Identification number (DIN)? The DIN regime has been introduced to promote good corporate conduct and combat illegal phoenixing activity. More importantly, DIN enables directors to be uniquely identified, without having to make reference to their personal ID number. We are not advocating a particular model at this stage, but we believe that this subject has major ramifications; and there should be deliberations by the community so that we can work together to come up with a solution that can strike the appropriate balance; and be appropriate for HK as an IFC.

If you require further information or wish to have discussions, please don't hesitate to contact me on 2537-9912.

Your sincerely

Sally Wong
Chief Executive Officer

c.c.:
Mr Ashley Alder, SBS, JP, Chief Executive Officer, Securities and Futures Commission
Hon Jeffrey LAM Kin-fung, GBS, JP, Chairman, Panel on Financial Affairs, Legislative Council of HKSAR

Hong Kong Investment Funds Association

Hong Kong Investment Funds Association - Introduction

The Hong Kong Investment Funds Association ("HKIFA") is an industry body that represents the fund management industry in Hong Kong. It was incorporated in 1986 as a company limited by guarantee.

The HKIFA has two major roles, namely consultation and education. On consultation, it acts as the representative and consulting body for its members and the fund management industry generally in all dealings concerning the regulation of unit trusts, mutual funds, retirement funds and other funds of a similar nature. Towards this end, it reviews, promotes, supports or opposes legislative and other measures affecting the fund management industry in Hong Kong. Another very important task is to educate the public about the role of investment funds in retirement planning and other aspects of personal financial planning.

The HKIFA has four categories of members, namely full member, overseas member, affiliate member and associate member. A fund company can qualify as a full member or an overseas member if it is either the manager or the investment adviser of at least one Investment Fund.

An "Investment Fund" means

- an authorized unit trust/mutual fund; or
- a pooled retirement fund authorized under the Code on Investment-Linked Assurance Schemes or the Code on Pooled Retirement Funds; or
- a retirement scheme registered under the Occupational Retirement Schemes Ordinance; or
- a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance; or
- a closed-end investment company listed on a recognized exchange.

A full member must be a company incorporated in Hong Kong or if it is incorporated outside Hong Kong, has established a place of business in Hong Kong whereas an overseas member must be a company incorporated outside Hong Kong.

An affiliate member is a company that has obtained a licence from the Hong Kong Securities and Futures Commission for type 9 regulated activities or it is a fund company incorporated in the People's Republic of China; and its primary business is fund management including the management of discretionary accounts, segregated portfolios or providing investment management services for non-collective investment schemes or the manager or investment adviser of any fund investment company or arrangement not included as an Investment Fund.

An associate member is a company conducting or providing any service of accounting, legal, trustee, custodian, administration, banking, distribution, and technological support to the fund management industry or any related professional services.

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