



22 March 2013

Our Ref.: C/CB, M88050

Ms. Ada Chung
Registrar of Companies
Companies Registry
15th Floor, Queensway Government Offices
66 Queensway, Hong Kong

Dear Ada,

**Subsidiary Legislation to be made under the new Companies Ordinance –
Companies (Residential Addresses and Identification Numbers) Regulation**

Thank you for meeting representatives of the Hong Kong Institute of CPAs on 1 March to discuss the above regulation.

You noted at the meeting that in responding to the first phase consultation on the draft Companies Bill in 2010, the Institute did not see any pressing need to change the current disclosure regime in relation to personal identification ("ID") numbers for directors unless misuse of personal identification number was a significant problem. We also were not aware that there had been threats to directors' safety in Hong Kong from the inclusion of their residential addresses on the public register and hence, did not see any strong grounds for making changes to the current arrangements for directors' residential addresses. That said, we appreciate that other respondents were in favour of not including directors' full ID numbers and residential addresses on the public register, due apparently to concerns of privacy and possible identity theft.

The members from our Small and Medium Practitioners Leadership Panel who were present at the meeting explained that, while they understood the rationale for the proposals to restrict information on the public register, the proposed regulation would in practice hinder the efforts of auditors to access data that some rely on for confirmation and verification of information relating to audits, or would impede other investigation work which they may be engaged to undertake.

In addition, I mentioned at the meeting that, earlier the same day, the Institute's Forensics Interest Group management committee had also discussed the draft regulation and had expressed serious concerns about the impact of the proposed changes on the investigatory work carried out by forensics practitioners.

Under the circumstances, if it decided that the proposed restrictions on public access to directors' ID numbers and residential addresses should not be removed, and that access to "withheld" or "protected" information ("undisclosed data") will be confined to certain specified types of persons, we would request that Certified Public Accountants ("CPAs"), as defined under the Professional Accountants Ordinance (Cap.50) ("PAO"), be included amongst the specified persons, when they are carrying out professional work.

CPAs need to make use of but are not collectors of personal data for other purposes. They are required to comply with the Code of Ethics for Professional Accountants ("code of ethics"), including the principle of confidentiality, and also with financial reporting, auditing and assurance standards, etc. published by the Institute, which are converged with, or adopt, standards published by relevant international bodies. CPAs are subject to the Institute's regulatory and disciplinary regime and complaints of serious non-compliance with professional standards, or professional misconduct against CPAs, if substantiated, may render them liable to sanctions, including a penalty of up to \$500,000 and removal from the Institute's register of members, or removal of a practising certificate, either permanently, or for such period as a disciplinary committee thinks fit.

Indicated below are further specific areas of work where CPAs may require access to undisclosed data in order to discharge their professional duties.

- In accordance with the Companies Ordinance (Cap. 32), financial statements of Hong Kong-incorporated companies are required to be audited annually. CPAs need to conduct "know your client" background checks on prospective clients, and the undisclosed data could be important in carrying out this exercise. Public records filed with the Companies Registry ("CR") are the primary source of information about companies and their directors, as information contained in CR records is generally regarded as being reliable. If CPAs are not on the schedule of the parties to whom undisclosed data may be disclosed, this would make CPAs' work more difficult, as authorisation to gain access to such data may not always be given by potential clients during the acceptance stage.
- CPAs who are company auditors are required to comply with various procedures and steps set out in auditing and assurance standards and the code of ethics in order to fulfil their professional and legal obligations. Access to the undisclosed data is of particular importance in carrying out audit procedures on related party transactions to ascertain whether entities or individuals are related to one another, as it allows auditors, making reference to the full ID numbers of directors, to conduct searches which will facilitate identification of other companies in which the directors have an interest. For the sake of certainty, the full ID number of an individual is required, as this provides a unique identifier. Given the very few unique names in the Chinese language and the use of aliases, the availability of names, partial ID numbers and correspondence addresses would not be sufficient to establish the facts with complete confidence.
- In addition, when carrying out the audit step of sending confirmations to the debtors and creditors of their audit clients, access to the undisclosed data would enable company auditors to verify with greater assurance the identities of those parties. This would help to ensure that disclosable related party transactions are disclosed and that third parties dealing with companies in good faith are better protected.

Rightly or wrongly, it is an international trend that an increasingly wide range of duties and responsibilities are being placed on the shoulders of accountants in the name of the public interest. A recent exposure draft issued by the International Ethics Standards Board for Accountants proposing changes to the code of ethics on the reporting of suspected illegal acts is another example of this. If accountants are

to be able to discharge these duties effectively, they should not be asked to do so potentially with one hand tied behind their backs.

Apart from audit procedures, having access to the undisclosed data is an integral component of conducting meaningful due diligence, fraud investigations, conflict of interest checks, and asset and person tracing, which are other professional services provided by CPAs who carry out forensic work.

Conflict of interest frauds are a prevalent form of malfeasance in Hong Kong and across Asia. CPAs are often asked to investigate allegations that officers of one company have been abusing their position and, for example, diverting business to another company which they control or in which they have an interest. Successful fraud investigations also rely on the availability of personal identifiers to detect links between suspects and build evidence against them. Likewise, public records filed with the CR are a key tool in the armoury of an investigator in these circumstances. Removal of the facility to gain access to undisclosed data would make it very difficult to identify relationships that have helped uncover fraudulent accounting (e.g., round-tripping schemes) and other conflict of interest frauds, corrupt activities, etc. In relation to investigation work, other specific examples are given below.

- ID numbers of individuals can also be used on:
 - land transactions, bankruptcy and other regulatory checks;
 - marriage licence searches;
 - elimination of name matches for litigation, regulatory and sanctions records worldwide; Hong Kong and overseas (including Mainland China) corporate records, etc.;
 - establishment of the bona fides of an individual via various Hong Kong-based professional registers, such the Insurance Agents Register;
 - approximation of an individual's age;
 - understanding whether an individual is a permanent resident or born in Hong Kong.
- Directors' residential addresses are most often used to assist CPAs to identify assets in asset tracing cases, in addition to assist with the identification of connected/ related parties.
- Access to full residential addresses could also help with:
 - understanding the potential size of an individual's assets (via land search records);
 - matching transaction dates, prices and parties to identify possible evidence of illicit wealth or corruption;
 - understanding more about the extent and intent of an individual's presence in Hong Kong (e.g., a service apartment address, a rental apartment, a self-owned residence)
 - identifying an individual's affiliated entities (people and companies) linked to him/ her by address

The Administration has accepted the need for liquidators to be able to gain access to undisclosed data and, in the same vein, we would argue, forensics practitioners should also be granted access in the context of conducting a range of internal investigations and civil claims.

Given Hong Kong's role as a major clearing house for inbound investment from the rest of the world, forensic investigators regularly work with foreign clients who have a limited ability to access and understand local situations. Limiting bona fide access to complete public records might discourage inbound investors who increasingly seek higher levels of transparency and corporate governance, partly as a result of the introduction of legislation such as the United States' Foreign Corrupt Practices Act and the United Kingdom's Bribery Act, which have come into force within the past few years.

Further consideration would suggest, therefore, that the proposal not to include directors' full particulars on the public register could also have the effect of making it easier for people using corporate vehicles to engage in fraudulent activity to go undetected, which, given Hong Kong's open and highly liquid markets, could ultimately have an adverse impact on Hong Kong's standing as an international commercial and financial centre.

More generally, while recognising an individual's right to privacy and the arguments for enhancing protection of personal information, one of the quid pro quos for allowing directors to limit their civil liability through limited liability vehicles has traditionally been the right of stakeholders, such as actual and potential trading partners and potential investors in companies to be able to access a certain amount of information about the companies and directors that they are, or are contemplating, dealing with.

In the light of the above, we consider that it would be a retrograde to introduce privacy provisions that would have the effect of preventing those who, for legitimate reasons, would wish to access and make use of full information on directors' ID numbers and residential addresses.

Under the circumstances, we hope that you will reconsider the proposal reflected in this draft regulation and either suspend its implementation until such time as there is clear evidence of problems with the existing arrangements or, if it is decided to proceed with it, extend the list of specified persons who may access the undisclosed data, to include CPAs when carrying out professional work.

If you have any questions on the above, please contact me at tel. 2287 7084 or by email at < peter@hki CPA.org.hk >.

Yours sincerely,

Peter Tisman
Director, Specialist Practices

PMT/ML/ay