

## CHAPTER 7

### DISCLOSURE OF DIRECTORS' RESIDENTIAL ADDRESSES AND IDENTIFICATION NUMBERS OF DIRECTORS AND COMPANY SECRETARIES

- 7.1 At present, directors and secretaries of companies incorporated or registered in Hong Kong (including non-Hong Kong companies) are required by the CO to provide their residential addresses and identity card or passport numbers (“identification numbers”) to the CR for incorporation and registration purposes. Such information is considered important for regulatory authorities or relevant stakeholders (such as shareholders, creditors and liquidators) to locate the directors and company secretaries, particularly in cases where service of documents and legal proceedings is involved. However, as such information is available on the CR’s register or can be inspected and copied by members of the public, by paying a small fee, there may be concerns over data privacy and possible abuses. While we consider that there is no longer a need to require company secretaries to disclose their residential address, we would like to hear public views before deciding on the disclosure of directors’ residential addresses and identification numbers of directors/ company secretaries.

#### **Background**

##### *Current Position*

- 7.2 There are various sections in the CO which require the disclosure of and provision for inspection of information covering residential addresses and identification numbers of directors and secretaries of a company incorporated in Hong Kong, namely:
- (a) section 14A stipulates that an incorporation form submitted to the Registrar should contain, among other information, the usual residential address and identification number of each of the prospective directors and the prospective company secretary;
  - (b) section 158 requires every company to keep a register of its directors and secretaries, containing such particulars such as their names, usual residential addresses and identification numbers, and to allow the inspection of the register by members of the company free of charge and by non-members upon the payment of a fee; and also every company must send to the Registrar such information containing the

particulars specified in the register within 14 days from the appointment of a new director/secretary or from the occurrence of any change in the particulars of the company's directors/secretaries that are contained in the register;

- (c) section 158C stipulates that the Registrar shall keep and maintain an index of directors of companies containing their name, address and latest particulars. The index is open for inspection by any person upon the payment of a prescribed fee;
- (d) sections 107 and 109 require every company to submit a return to the Registrar annually containing all particulars of its directors and secretaries that are required to be kept in the register of the company; and
- (e) section 305 provides that any person may inspect a copy of documents kept by the Registrar subject to the payment of a fee.

7.3 Non-Hong Kong companies registered under the CO are subject to similar requirements as stipulated under sections 333, 333C, 334 and 335 of the CO.

7.4 In the interest of protection of personal data in public registers, section 305 of the CO has been amended so that the purposes for which documents kept or maintained by the Registrar under the CO are made available for public inspection are stated in sub-section (1A). The CR has also implemented various measures to comply with the requirements of the Personal Data (Privacy) Ordinance (Cap 486), including stating a Personal Information Collection Statement in each specified form, its homepage and information leaflets to publicise the purposes of the register and the collection of personal data.

### *Concerns*

7.5 While there are occasional complaints to the CR concerning the disclosure of personal data of directors/company secretaries in the public register, there have not been major problems thus far concerning the misuse of personal data. Nevertheless, as it is now relatively easy to access the personal data through the Internet and as there is increasing public concern over protection of personal data, there is a case to review the need for disclosure of directors/company secretaries' personal data on the public register.

## *Other Jurisdictions*

7.6 Other comparable jurisdictions such as the UK, Australia and Singapore have provisions in their company law governing the disclosure of personal data of directors and company secretaries to the public. These provisions are summarised below.

### Singapore

7.7 Singapore adopts a disclosure regime very similar to that in Hong Kong. The identification and usual residential addresses of directors and the identification of company secretaries are disclosed in the public register<sup>91</sup>.

### Australia

7.8 The ACA requires the personal particulars of new directors and company secretaries, including their name, date and place of birth and usual residential address to be lodged with the Australian Securities and Investments Commission (“ASIC”) (there is, however, no requirement for a passport number or other identification). Such information collected is on the public register kept by the ASIC and available for public inspection. Section 205D(2) of the ACA, however, allows a director/company secretary to have an alternative address to be substituted for his usual residential address if the ASIC determines, upon application of the director, that including his residential address in the public register will put at risk the director or his family members’ personal safety.<sup>92</sup>

7.9 A person taking advantage of the alternative address provisions is still required to lodge with the ASIC notice of his usual residential address (as well as any change in the address subsequently) and information concerning his usual residential address may be disclosed to the court for purposes of enforcing a judgment debt ordered by the court.

### The UK

7.10 In the UK, the issue of disclosure of directors and company secretaries’ residential addresses had been reviewed and hotly debated in its recent company law review. As there had been a number of cases of directors of companies, and in some cases members of their families, being harassed or

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<sup>91</sup> Section 173 of the SCA.

<sup>92</sup> Another alternative condition is the director/secretary’s name is already on an electoral roll under the Commonwealth Electoral Act 1918 but this is not directly relevant to our consideration.

intimidated by extremists (e.g. animal rights activists), the UK Companies Act was amended twice in the past decade:

- (a) in 2002, a scheme of confidentiality orders was introduced to protect those directors and company secretaries who could show that they were at serious risk of violence and intimidation. A director or company secretary might apply to the Secretary of State for a confidentiality order. If the order is granted, he might substitute the usual residential address with a service address in the public register although the order would have no retrospective effect (i.e. the authority was not obliged to remove an address from existing records);
- (b) there were concerns that the scope of protection was not wide enough, for example, it did not protect directors of companies whose customers or suppliers became controversial.<sup>93</sup> Under the UKCA 2006<sup>94</sup>, every director is given the option of providing a service address for the public record with the residential address being kept on a separate record to which access is restricted to specified public authorities and credit reference agencies.<sup>95</sup> Existing addresses already on the public record would be purged upon application.<sup>96</sup> Similar protection is provided for directors' residential addresses in respect of overseas companies.<sup>97</sup> Meanwhile, the requirement to file the company secretaries' residential addresses has been abolished.

## Considerations

### *Company secretaries' residential addresses*

7.11 We will maintain the existing requirement in section 154 of the CO that a company secretary, being an individual, should ordinarily reside in Hong Kong.<sup>98</sup> However, unlike directors, company secretaries do not owe fiduciary duties to the company and are not personally subject to legislation relating to disqualification. There does not seem to be any strong

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<sup>93</sup> For example, the supplier or customer of a company may be alleged of being engaged in controversial practices such as using forced or child labour or infringing animal rights.

<sup>94</sup> Sections 240-246 of UKCA 2006.

<sup>95</sup> Section 243 of UKCA 2006. "Public authority" includes any person or body having functions of a public nature and "credit reference agency" means a person carrying on a business comprising the furnishing of information relevant to the financial standing of individuals, being information collected by the agency for that purpose.

<sup>96</sup> Section 1088 of UKCA 2006. The UK government explained that since pre-2003 information is held on microfiche, it is therefore particularly difficult to remove and since many existing records held on a microfiche are of poor quality, the purging process will be likely to cause loss of information, not just that which is intended to be removed from the public record.

<sup>97</sup> Section 1055 of UKCA 2006.

<sup>98</sup> See **Clause 10.24(4)** of the CB.

justification for continuing the requirement for a company secretary's residential address to be publicly available. Under the CB, company secretaries may file a service address.

### *Directors' residential addresses*

7.12 There may be conflicting arguments as to whether the residential addresses of directors should continue to be publicly available. Some may prefer adopting either the Australian or the UK approach to restrict public access to directors' residential addresses as a means for protection of personal data.

7.13 On the other hand, there are arguments for maintaining the current disclosure requirement, including:

- (a) directors of a company are personally subject to legislation relating to disqualification, fraudulent trading, and other enforcement and regulatory actions but are not always contactable through the registered office. It is in the public interest that regulatory and enforcement agencies, and also stakeholders such as creditors and liquidators, be able to contact directors easily through their residential addresses, in particular when the company is being wound up or dissolved;
- (b) unlike in the UK where extremists' harassment and intimidation of directors of certain "controversial" companies has become a social concern, that is not a phenomenon or issue in the Hong Kong society;
- (c) there would be considerable practical problems involved in following either the Australian or the UK approaches. The Australian approach requires discretion as to whether particular addresses should or should not be placed on the public record. The CR staff would be put in a very difficult position to assess claims of personal safety risks. The scheme could easily be abused by those who do not have any genuine claim of safety risks;
- (d) the UK approach also presents tremendous practical challenges. First, it would be a considerable challenge for the CR to maintain a confidential register for a single category of information and to ensure that it is kept up to date. Many directors might fail, inadvertently or otherwise, to inform the CR of changes in their residential addresses. Second, it would be difficult for the CR to decide who should have access to information in the confidential register. If access is only

confined to public authorities and credit reference agencies, some current legitimate data users like creditors and liquidators will be disadvantaged. On the other hand, if the net is cast wide (e.g. covering also shareholders, creditors, employees who are owed outstanding entitlements and liquidators), the CR would have difficulty in handling numerous requests for access to the confidential register. We understand that the UK Companies House has encountered practical difficulties in handling such requests even though access to their confidential register is fairly restrictive; and

- (e) another major practical difficulty is how to deal with the numerous existing records of directors' residential addresses embedded in a huge number of documents filed with the CR over the past decades. These documents are kept either as scanned copies or microfiche. The removal of residential addresses would mean deleting the text from every public record held with the CR while retaining the information for the confidential register. Moreover, it would be wholly impracticable for the information stored on microfiche to be removed. The UK has tried to contain the problem by removing data only upon application. The workload would still be considerable if there is a large number of applications coming in at roughly the same time.

7.14 We have to strike a balance between protection of personal data and the need to allow access to such data by relevant stakeholders for legitimate purposes. Having considered the pros and cons of retaining the current disclosure regime and adopting the UK or Australian approaches, we are inclined to retaining the current regime. Nevertheless, we would like to listen to the views of all the stakeholders before taking a final view.

#### **Question 4**

- (a) Do you agree that directors' residential address should continue be made available for inspection on the public register?**
- (b) If your answer to (a) is in the negative, do you think that either:**
  - (i) the Australian approach (paragraphs 7.8 and 7.9); or**
  - (ii) the UKCA 2006 approach (paragraph 7.10(b)) should be adopted?**

**(c) If you consider that either the Australian or the UKCA 2006 approaches should be adopted, do you have any suggestions on how to tackle the practical problems highlighted in paragraph 7.13(c) to (e) above?**

*Identification numbers of directors and company secretaries*

7.15 There may also be conflicting arguments on whether identification numbers of directors and company secretaries should continue to be available for public inspection. The arguments for maintaining the status quo are:

- (a) in view of the fact that different persons having the same name are quite common in Hong Kong, restricting access to identification numbers may deprive the public of a means of uniquely identifying individuals, and might make it easier for the dishonest to escape creditors or otherwise engage in fraudulent activity. The option of masking 3 or 4 digits of an identification number would not serve the purpose of identifying a person as there are cases of persons with the same name having similar identity card numbers;
- (b) misuse of identification numbers is not perceived to be a major problem in Hong Kong;
- (c) similar to the problem regarding directors' residential addresses cited in paragraph 7.13(e) above, purging of or masking certain digits from all identification numbers embedded in existing records filed with the CR would present an insurmountable practical problem; and
- (d) it would be difficult for the CR to decide who should have access to the full identification numbers. Other than public and regulatory authorities who may need full identification numbers for enforcement actions, some private parties such as liquidators may also need the information for legitimate purposes.

7.16 On the other hand, there are arguments for masking certain digits in identification numbers at least in respect of new records of directors/company secretaries on the public register. These arguments are:

- (a) there is a risk that personal identification numbers could be misused as identity card numbers are often used in electronic or telephone transactions involving the verification of the identity of an individual;
- (b) purging of past records could be undertaken by a phased approach if this cannot be accomplished in one go; and
- (c) the CR can issue guidelines on who can have access to the full identification numbers upon application. If necessary, the guidelines can be put on a statutory basis.

7.17 We would like to hear public views on whether public availability of identification numbers is a major problem before deciding on the way forward.

**Question 5**

- (a) Do you think that there is a need to mask certain digits from the identification numbers of new records of directors and company secretaries on the public register?**
- (b) If your answer to (a) is yes, do you have any views on how to deal with personal identification numbers on existing records?**