

**PCPD’s Submissions in response to Public Consultation  
on Subsidiary Legislation for Implementation of  
the new Companies Ordinance – Phase Two Public Consultation**

This submission is made by the Office of the Privacy Commissioner for Personal Data (“PCPD”) in response to the public consultation carried out by the Financial Services and the Treasury Bureau in November 2012 on “Subsidiary Legislation for Implementation of the new Companies Ordinance”. The comments below made by the PCPD are solely from the perspective of protection of personal data privacy.

**Companies (Disclosure of Information about Benefits of Directors) Regulation (“C(DIBD)R”)**

2. The C(DIBD)R aims to prescribe the particulars to be disclosed in the notes to financial statements in respect of the following:-

- (a) Directors’ emoluments, retirement benefits, payments in respect of termination of services and consideration for directors’ services;
- (b) Loans, quasi-loans and other dealings in favour of directors;
- (c) Directors’ material interests in transactions, arrangement or contracts.

3. The above information to be disclosed, when combined with the name of the director concerned, will constitute “personal data” of the individual director within the definition of the Personal Data (Privacy) Ordinance (“PDPO”). Insofar as the information is of a financial nature, it is generally regarded as sensitive from the personal data privacy perspective. The PCPD appreciates that the disclosure of information will serve the purpose of promoting openness and transparency of the company as well as allowing the members of the company to have a better understanding of the affairs of the company in which they have invested. As regards the level of details of the information to be disclosed, the PCPD submits that it should not be excessive. It should only be limited to the extent necessary for the purpose. A balance has to be struck between members’ right to know and the directors’ right of privacy.

4. Under section 17 of the C(DIBD)R, the directors are required to disclose their “material interest” in transactions, arrangements or contracts which is “significant in relation to the company business”. However, there are no clear definitions on “material interest” and “significant in relation to the company business”. The determination is vested in the directors of company under sections 17(5) & (6). The PCPD considers that it is undesirable and suggests that more clearly defined situations should be specified which trigger the disclosure requirement.

#### Companies (Residential Addresses and Identification Numbers) Regulation (“C(RAIN)R”)

5. The C(RAIN)R aims to stipulate the detailed and procedural matters relating to the application for withholding personal information and the application for disclosure of any withheld or protected personal information.

6. The PCPD appreciates that personal data privacy will be much enhanced by removing unrestricted public access to the residential addresses and identification numbers (i.e. the withheld or protected information as the case may be) of directors and officers of the companies or other persons who are required to report the said information pursuant to the requirements under the existing Companies Ordinance.

7. From the perspective of personal data privacy protection, the PCPD’s views below will focus on the circumstances under which access to the withheld or protected information is permitted under the C(RAIN)R.

#### Sections 3 and 4

8. Section 3 of the C(RAIN)R concerns the application to withhold residential address or identification number from public inspection. The Registrar of Companies is conferred under section 3(1)(b) and (3) an unfettered discretion to specify any information to be supplied for an application. Section 4 further provides the residual power of the Registrar to require an applicant to supply additional information and documents for the purposes of determining the application. Insofar as the information to be specified or required by the Registrar may contain personal data of the applicant, Data

Protection Principle (“DPP”) 1(1)(b) and (c) of the Personal Data (Privacy) Ordinance (“PDPO”) requires a data user to collect only personal data which is necessary for the purpose and the data collected should be adequate but not excessive for the purpose. The PCPD submits that in order to be consistent with the requirement of DPP1(1)(b) and (c), it is desirable that the items of information to be required for the application be clearly spelt out in the section. While the PCPD understands that there may be justifiable reasons to retain a catch-all provision to cover any unforeseeable situations, the PCPD suggests that Section 4 be amended to restrict that the additional information and documents to be required by the Registrar should be “reasonably necessary” for the purpose.

#### Sections 6, 7, 10 and 11

9. With regard to the provisions that an application for the disclosure of withheld or protected information must contain any information specified by the Registrar and the residual power to obtain additional information and documents, the PCPD repeats its comments in paragraph 8 above.

#### Sections 8 and 12

10. Sections 8(1)(c) and 12(1)(c) permit the Registrar to disclose to members of the company the withheld or protected information. The disclosure is subject to the production of a written statement by the member confirming his/her membership under sections 8(5) and 12(5). In effect, it will confer on the members of a company the right to unrestricted access to the withheld or protected information. The PCPD considers that the reasons for applying for disclosure of the withheld or protected information should be specified for the Registrar’s determination of whether or not the application should be entertained.

11. Sections 8(6), (7) and (8) provides for the written statement to be given by the liquidators, trustees, public officers and public bodies to support the application to the Registrar for disclosure of the withheld information. The statement has to confirm that the information is required for the performance of their functions and that the information would be used only for the purpose. However, it is not necessary to specify the relevant laws pursuant to which the specific functions are performed. Similar provisions are

contained in sections 12(6), (7) and (8) where an application is made for the disclosure of the protected information. The PCPD suggests that revision be made to require the aforesaid applicants to specify the relevant laws pursuant to which their functions are performed. In addition, the written statement to be given by the applicants under sections 8(6), (7), (8), and (9) has to confirm that the information is “reasonably necessary” for the purpose. For the same reasons, similar revision is suggested for sections 12(6), (7), (8) and (9).

12. Sections 8(1) and 12(1) stipulate the persons to whom the Registrar may disclose the withheld and protected information. While this is apparently meant to be an exhaustive list, the PCPD reminds that under Part VIII of the PDPO, specific exemptions are provided for the disclosure of personal data for a new purpose (i.e. a purpose other than the original collection purpose or its directly related purpose) without the prescribed consent of the data subject.

13. The consultation document does not go into details the reasons why the scheduled persons listed in the Schedule are required to obtain the withheld or protected information for the purpose of performing their functions. Without these reasons, the PCPD is unable to assess whether the access to the information is necessary. To safeguard any abusive access to the withheld or protected information, the PCPD suggests that a mechanism be built-in for the Registrar to determine whether or not to supply the information after considering the reasons supplied in the application.

*Office of the Privacy Commissioner for Personal Data*  
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