

Chairman and Members of the Legislative Council of Hong Kong
Cc. Panel on Financial Affairs, Legislative Council
Cc. Christopher Hui, Secretary for Financial Services, Financial Services and the Treasury Bureau
Cc. Companies Registry

12 May 2021

Re: Disclosure of director details on the Companies Register

Dear Sir or Madam,

The Asian Corporate Governance Association (ACGA) is a non-profit membership association founded in 1999. We conduct research on corporate governance and ESG, and advocate at the regulatory and corporate level across Asia to improve standards and practices. ACGA is entirely funded by a network of 112 member firms, of which 70% are institutional investors with more than US\$40 trillion in assets under management globally.

We are writing in respect of the administration's proposal to restrict public access to key identifiers of company directors in Hong Kong, namely Hong Kong identification card numbers (HKID) and residential addresses.

The removal of unique identifying information from public view

The administration plans to withhold from public inspection the residential addresses and HKID of directors on the Companies Register. These are unique identifiers which enable accurate scrutiny of a directors' interests, particularly where an individual uses alternate spellings or translations of names, as well as nicknames or aliases.

By simply removing this information without providing alternative identifiers, it will be difficult to make a definitive match where a director has a common name or uses variations of his name in multiple filings. It creates a new loophole where company directors will be able to shield corporate interests from the public eye simply by engaging in creative name play.

Compromising the quality of open data in Hong Kong

ACGA is concerned this proposal will have adverse consequences on the overall quality and value of data on company ownership and control in Hong Kong. The free flow of reliable information is essential for a market dominated by large controlling shareholders, complex corporate structures, cross-directorships and myriad connected-party transactions. Investors, journalists and stakeholders require definitive data on market actors to check the bona fides of deals, hold companies that enjoy limited liability to account and identify abusive activity.

Transparency for a select few

Under the government's plan, select categories of "specified persons" would be able to access the directors' identifiers, including trustees in bankruptcy, a member of a company and liquidators. An application for the data would have to be made to the Companies Registrar. This not only creates new layers of bureaucracy but fails to reflect commercial reality. Stakeholders across the financial spectrum routinely seek directors' information, from the small business seeking to verify trading partners to large institutional investors conducting routine due diligence. It is standard practice to conduct rigorous checks on clients, creditors and counterparties not only as a matter of common sense, but for compliance and regulatory purposes.

Public views should be sought

Curtailling transparency in such a manner is an exceptionally regressive step for Hong Kong. That it is being done without public consultation or a practical consideration of alternatives is a major cause for concern, particularly given the history of the proposal.

The administration shelved plans to restrict access to directors' data in 2013 amid extensive opposition across the political, legal and financial spectrum. ACGA only learned of the proposal's resurrection in late March 2021 when it appeared on the agenda of the Legislative Council's Financial Affairs Panel. We note that subsidiary legislation relating to the proposal is already in the drafting stage and is to be completed by May 2021.

ACGA urges the government to withdraw the current proposal and conduct a thorough public consultation. Stakeholders' views should be canvassed and considered. Any change to the disclosure regime should be on the basis of market consensus and not undermine corporate transparency.

Global best practice is for greater transparency, not less

Developments in other markets should be taken into consideration: the issue of how to balance privacy and policy considerations in publishing directors' information is a global phenomenon. At the same time there is a growing recognition that markets should adapt and innovate rather than simply allowing directors to hide behind privacy concerns. Unique identifiers increasingly play a crucial role. Indeed, the Financial Transparency Coalition (FTC), an international network of civil society, governments and experts seeking to curb illicit financial flows, considers unique personal identifiers in company data to be a "gold standard."

Recent developments in Australia reflect this. Its database of companies does not require directors to disclose residential addresses or passport numbers, but this has led to problems with the use of dummy directors and phoenix activity. A new identification initiative is thus being introduced where every director will be issued with a unique identification number (a Director Identification Number, or DIN). The public will be able to view a director's profile, including historic relationships. There will be criminal penalties if directors deliberately give false identity information or apply for multiple DINs.

Other jurisdictions such as the UK are meanwhile moving toward greater transparency of company disclosure on public registers. Companies must provide details of significant ownership and corporate accounts. These are readily accessible by the public, at no charge. Further moves are also afoot to improve digital submission of accounts in machine-readable format.

A backwards step in corporate governance

ACGA has followed Hong Kong's corporate governance development for 20 years and it is deflating to see it take such a retrograde step. The proposal gives dishonest directors a free pass to shield their interests from scrutiny and only serves to damage Hong Kong's reputation as a transparent place to do business. Investors require a level playing field where bad actors are held accountable. Extensive company research and due diligence is a prerequisite for any business transaction or investment.

By inserting ambiguity into a routine company search, the veracity of data will suffer. As a result, Hong Kong may face the prospect of higher risk premiums, and ultimately lower valuations for capital assets.

We would be pleased to discuss our views with you further.

Yours truly,

A handwritten signature in black ink, appearing to read 'JA Allen', written over a horizontal line.

Jamie Allen
Secretary General

A handwritten signature in black ink, appearing to read 'Jane Moir', written over a horizontal line.

Jane Moir
Research Director, Hong Kong