
Hong Kong Hides Crucial Corporate Data

Contributed by Vanson Soo
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While wanting to pass a freedom of information act

Paradoxically, even as the Hong Kong government is proposing far-reaching changes to the Companies Ordinance that would bring due diligence and investigations to a stop, officials are also quietly studying the possibility of introducing a Freedom of Information Act.

A well-placed legal source said the proposed introduction of the freedom of information act was so carefully worded that the mainstream media appears to have missed it completely, and its significance overlooked in light of the ongoing fuss about the Companies Ordinance.

If that seems a contradiction, it is. The Hong Kong Securities and Futures Commission in December announced conclusions to consultation on the regulation of IPO sponsors which proposed, among other changes, introducing civil and criminal liability for sponsors violating the law while working on initial share sale prospectuses. That follows regulators' concerns about previous cases of substandard due diligence on listing applicants and the subsequent negative impacts on the investing public.

However, the Companies Ordinance amendments, either missed or ignored by the mainstream media when it was passed through the legislature earlier last year, will result in withholding from the public parts of the identification numbers and details of the residential addresses of company directors found in the Hong Kong company registration records - the very thing a freedom of information act is designed to facilitate. Personal identifiers including official full names, identity numbers and residential addresses collected or verified to facilitate subsequent checks for red flags, usually the first stop in any investigations and background checks, would be concealed

The damage runs much deeper than just to the public's right to know through the press. It extends to many facets and pillars of the economy that make Hong Kong the top global financial center it is today. It encompasses commercial banks that conduct similar checks on individuals and entities as part of their due diligence and know-your-client processes. The same applies to private banks and wealth management operations. The impact on investment banks is even more acute.

These amendments make it impossible for these sponsors to conduct proper due diligence to avoid violations and liabilities, eliminating the ability of investment banks and corporate finance entities to investigate the backgrounds to transactions like mergers and acquisitions, joint ventures and capital raising.

Insolvency and restructuring specialists also need company data to verify and confirm issues like "who owns what" and "who owes who."

Among others affected would be hedge fund managers who count on the assurance of the free flow of information to execute swift transactions with confidence. Lawyers often encounter long lists of litigation records associated with a given name and they pull the original writs to verify the true identities of those names. Those writs would be useless if personal identifiers were withheld.

Accountants and auditors also need to check for related-party transactions, insurance companies need to verify the identities of the insured and claimants and credit companies need to verify the identities of the borrowers. Property transactions can also be affected without proper verification.

However, the amendments also allow any parties to apply to the Registrar of Companies and provide their reasons for the request of withheld information.

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But the big issue is, why should, say, an investment bank make known what parties they are only considering to invest? There is a need-to-know basis that many businesses count upon for both competitive and regulatory reasons.

There is also the risk of some civil servants losing the data - of these applicants - stored in a flash memory stick. And if the Registrar considers those applications on a case by case basis, the level playing field is immediately distorted.

All considered, one wonders: why all these changes at all, especially since, at the same time this draconian crackdown on freedom of information is proceeding, the government is quietly introducing the possibility of a freedom of information act so carefully worded that the mainstream media appears to have missed it completely.

According to the Department of Justice homepage, the Secretary for Justice Rimsky Yuen said in a Jan. 14 speech at the Ceremonial Opening of the Legal Year 2013 that the Law Reform Commission "has in its meeting last month decided to establish two sub-committees to consider the topics of archives law and access to information."

Said the source: "It's all about checks-and-balances, to ensure there are ways for access to information, and not meant to be contradictory." adding that anyone outside the legal profession would view the situation differently.

The Freedom of Information Act in the US, for example, allows for the full or partial disclosure of previously unreleased information and documents controlled by the government. More than 90 countries have some form of freedom of information legislation. Hong Kong has nothing similar and no code that requires the government to archive information.

Different sectors of the public have become aware of the pending changes and have reacted with petitions and campaigns. But the extent and impact of the information being withheld are alarming and it appears the media has missed the implications altogether.

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