



創於 1913 年
Founded in 1913

香港華人會計師公會 The Society of Chinese Accountants & Auditors

(在香港註冊成立之有限公司)

(Incorporated in Hong Kong as a company limited by guarantee)

8 June 2012

Hon. Paul Chan Mo-po, MH, JP
Chairman
Bills Committee on Companies Bill
Room 805, Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Paul

Re : Companies Bill, Revised Clause 399 – offences relating to content of auditor's report

We are one of the long established professional bodies in Hong Kong and our members serve approximately 90% of SME of Hong Kong Business established. We act on behalf of our members and have concern for clause 399 of the Companies Bill which introduces a criminal offence in relation to omission of a statement required to be contained in an auditor's report under section 398(2)(b) or (3).

Our view on the revised clause on 399(1)(b) "knowingly or recklessly causes the statement to be omitted" is that the scope of the revised clause is too broad. In addition, it may not be fair and reasonable if omissions with proper justification are being penalised by the revised clause simply due to the inclusion of "knowingly" there.

We append below certain of our view points for your consideration:

- (1) Our audit is normally done in a risk-based approach on a sampling basis instead of a full 100% examination. If the management intends to defraud their auditor, the auditor may be innocent in the omission of such a statement in his auditor's report.
- (2) We agree that if an auditor is aware of the omission of the disagreement issue which has to be reflected in an auditor's report, he shall be deemed liable if he fails to do so.
- (3) There are cases and/or situations that the auditor might know the omission of such statement but might have reasons and/or justifications for such omission. However, apparently the current revised clause does not allow such justification.



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In view of the above and as urged by many of our members, we propose the following for your consideration:

- a. The clause should be fully withdrawn until more proper consideration and revision have been completed;
- b. Justification should be allowed as a valid ground for such omission in the clause;
- c. Dishonesty should be one of the thresholds to trigger the enforcement of the clause; or
- d. Simply "knowingly" to trigger the enforcement is too broad and too tough. It is better to consider whether "knowingly" should be dropped or both "knowingly" and "recklessly" are required to trigger the enforcement, i.e. amending "knowingly or recklessly" to "knowingly and recklessly".

If you have any question, please feel free to contact me at 2544 4098 or Mr Philip Fung, our Council member and Chairman of Accounting and Auditing Standard Committee, at 2526 5511.

Yours faithfully

Lam Chi Yuen, Nelson
President