

Your Ref.: CB1/BC/6/01

4th October, 2002

BY FAX (2121-0420) AND BY MAIL
TOTAL 3 PAGES

The Bills Committee,
Companies (Amendment) Bill 2002,
3/F., Citibank Tower,
3 Garden Road, Central,
Hong Kong

Attn: Mr. Matthew Loo

Dear Sirs,

Re: Companies (Amendment) Bill 2002 (“Bill”)

On behalf of the Society of Chinese Accountants & Auditors (“SCAA”), I thank you for your letter of 7 August 2002 inviting our comments on the captioned subject which is of great importance to members of our Society.

SCAA was established in 1913 and currently have over 500 members who are practising accountants, representing partners, proprietors and directors of more than 400 public accountancy firms in Hong Kong. Our members have been in the forefront for hastening the development of Hong Kong economy throughout these years. Since inception our avowed aim has been to uphold the virtues of the accountancy profession and it follows that any proposals to help improving this position would receive our support.

Our comments in relation to the Bill are set out as follows:

1. Specified Forms

We note that certain specified forms will be introduced as a result of the proposed amendments, such as Clauses 6, 7, 14 to 17, 19 to 23, 24, 36, 52, 61(1)(a), 72, 74, 76 and 79(1) to (5). We generally support the idea to streamline and tighten the filing requirements. However, we do not have a chance to review the proposed specified forms. Therefore, we have difficulties to assess the impact and comment on them. For example, the present Annual Return Form only has the prescribed word of “address” for directors to fill in their address’ details instead of “usual residential address” as specified in section 158 of the Companies Ordinance. As you can easily see from many of the annual returns filed that the directors’ addresses are the same as the Registered Offices. In the event that these directors needed to be contacted, like in the situation of compulsory liquidation, they are nowhere to be found. If you have previously circulated these draft forms or will circulate them in future for comments, we should appreciate that a copy of such circulation be made available to us. We believe our members are one of the few major groups of users of these forms.

2. Statutory Declaration

We understand that the proposed amendments seek to improve Hong Kong’s corporate governance. We are concerned that by replacing many of the requirements from statutory declaration to written statement may give the general public a false impression that the standard on the correctness of the information lodged with the Companies Registry has been relaxed. We, therefore, suggest that the social impact of such changes, especially to certain sections in the Companies Ordinance where the correctness of the information is of prime importance, should be carefully studied. At the same time, public should be educated and informed of the consequences of making a false statement to ensure that the said wrong impression will be mitigated.

3. One Director/Many Managers

We believe that in many small and medium enterprises (“SME”), with the enactment of the Bill, the composition of the board will likely be one director only. The single director will have total control of the company. As a result, the chance of the number of director being reduced to zero is greatly increased. We believe that the remaining officers of a company, i.e. the Secretary or the Manager will normally have practical difficulties, if not impossible, to install a director to put the board back from zero to one. The liability as sets out in the proposed section 153A(3) to hold them liable may not be fair or appropriate. Instead, the company could be held liable to rectify the situation. Furthermore, the new definition of “Manager” in clause 2 is too general. It may turn a lot of the SME employees into officers as the single director normally oversees most of the day to day operation of these type of organizations.

Apart from the abovementioned, we have no major comments to the amendments made to the Ordinance as indicated in the Bill. Should you require further clarification, please feel free to contact the undersigned or our Research and Current Issues Committee’s Chairman, Mr. Albert Chan.

Yours sincerely,

Kenny K.C. TAM
President