



Paper from **CMA Australia (Greater China)**  
for Bills Committee Meetings on  
Companies Bill to be held on 9 and 16 April 2011

**Company Bills:**

“Limiting the effect of the appointment of corporate directors by requiring every private company to have at least one natural person as director so as to enhance transparency and accountability. (clause 448);”

**Our major view:**

It is true that appointing one natural person as a company’s director can enhance the transparency and accountability. However, we do not recommend a mandatory requirement on the appointment of at least one natural person as a director of a Hong Kong company.

**Justifications:**

**1. To protect against privacy**

- For the nominee person, as a company’s director, he shall be individually or collectively liable for the consequences of the acts and/or negligence of the firm. Hence, it is required to show the public of the director’s personal information, including ID number, passport number as well as their residential address in the Company Registry. For example, a sensitive figure used to appoint a corporate

director to run a company. But now, they have no choice if the bill was passed, but to act the director by themselves so that their privacy will be revealed. If not, they have to hire a law firm or company secretary to find a natural person as the director so as to protect their privacy from the public.

- Actually, the best way to protect personal data is waiving the natural person's director role and to appoint a company as the director so that they can use the company's registered office address instead. If convenient, the Register of Directors can simply record that a director's service address is "the company's registered office" rather than each director giving the information separately.

## **2. Elevate the operating costs**

- For the Hong Kong companies in which a natural person is appointed as a director, many additional fees shall be incurred, including director fee, salaries, insurance and other expenses.
- Professional and consultant services fees for a law firm or company secretary to the nominee and the natural person director can also be very costly too due to the exposure of the liability and accountability.
- In case of the nominee director's decease, retirement and resignation, additional costs on the re-appointment of another one shall also be considered.

## **3. D&O insurance**

- Even if a person is willing to act as the company director, (s)he will definitely require the employing company to purchase a D&O insurance to indemnify themselves.
- The cost of D&O insurance can be huge for some small or private companies to

afford. Not only that, these D&O insurance are not readily available in the market, and this might be even more difficult for the small business to get insured.

#### **4. Commercial inconvenience**

- Extra time on Board meeting, AGM and EGM will be incurred if a natural person is additionally appointed as a director. And if the nominee director resides outside Hong Kong and/or not be familiar with the conference and meeting procedures, the board's decision making will be probably slowed down.

#### **Conclusion:**

##### **Nomination of a natural person has no help on anti-money laundering**

- Without a doubt, appointing a natural person as a director may make it easy to identify the liable person for the acts or the negligence of a company. On the other hand, Hong Kong has sufficient control from government authorities as well as a comprehensive banking system to trace back all the cash deposits and transfer to an individual level by asking all the detailed information for opening an account. If the banks can not obtain such information including the ultimate shareholders (showing individual owner) and the Letter of Incumbency for the corporate directors, they will not approve the account opening application.

##### **Maintain competitive advantage of Hong Kong**

- Many countries, taking Singapore as an example, have regulations on the appointment of a natural person as a director. However, keeping the registration easy and simple like those in BVI and Samoa, would definitely attract more

entrepreneurs around the world to incorporate new companies in Hong Kong, and also, bring in more businesses.

- If we can loose some policies within limits and provide a more flexible investment environment for the investors, Hong Kong can definitely stay competitive and continue to be a prominent international finance center.