



26 April 2012

Hon. Paul Chan Mo-Po, MH, JP
Legislative Councillor (Accountancy) and
Chairman of Bills Committee on Companies Bill
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Paul,

Companies Bill Clause 399 - Offences relating to contents of auditor's report

I refer to the email from Mr. Nick Au Yeung from the Companies Bill Team dated 10 April 2012 seeking our comments on the revised proposal on Clause 399 "Offences relating to contents of auditor's report" of the Companies Bill.

The Institute welcomes the Companies Bill Team's proposal to reduce the impact of Clause 399 by removing references to officer, partner, employee and agent of the auditor from the clause as persons who may be criminally liable for an omission in the audit report. However, the retention of the words "or who are eligible for appointment" means that any practicing certificate holder in the audit team, not being the signing partner, could be liable, and this still creates a concern.

Moreover, despite the wording concession mentioned above, the profession remains gravely concerned about the introduction of criminal sanctions that may be imposed against the auditor for recklessly omitting a required statement in the audit report without need for proof of any fraudulent intent. Accordingly, the Institute remains opposed to the proposal as it still doesn't address the fundamental issues we have brought up here, and previously as summarized below: -

- (a) We question why criminal sanctions are necessary or appropriate for a reckless omission of a required statement from the audit report without proof of any fraudulent intent. Currently, such omissions would lead to disciplinary actions against the auditor, and additionally under the existing legal system, if such omissions should prove to be fraudulent in nature arising from regulators or civil actions against the auditors, criminal sanctions may be imposed by the court. Clause 399 also raises concerns that a prosecution with elements which turn on professional judgment including but not limited to materiality of the omission will make the ambit of the criminal offence highly uncertain for the audit profession, and as a result the undesirable effect of criminal liability risk that is posed to the profession.
- (b) We note that similar legislation on criminal sanctions against auditors exists in the UK Companies Act, from which Clause 399 draws reference. It should be noted however that this provision was brought into the UK Companies Act by the UK Government as part of a package to bring auditors' liability reform into the 2006 amendment of the Companies Act. The Institute considers that Section 399 should not be introduced on its own into the Companies Ordinance when there is no similar liability relief given to the auditors in the current Amendment Bill.



The Hong Kong Institute of CPAs is happy to attend a meeting of the Bills Committee to explain its position. In the meantime, if you have any questions regarding any of the matters raised in this letter, please do not hesitate to contact me.

Yours sincerely,

Winnie C.W. Cheung
Chief Executive & Registrar

c.c. Ada Chung
Registrar of Companies

Darryl Chan
Deputy Secretary for Financial Services and the Treasury (FS)

Nick Au Yeung
Principal Assistant Secretary for Financial Services and the Treasury (FS)

Connie Szeto
Clerk to the Bills Committee