

立法會

Legislative Council

LC Paper No. LS 87/11-12

Note for Chairman of the Bills Committee on Companies Bill

The Administration issued a paper dated 28 June 2012 (CB(1)2287/11-12(02)) relating to clause 399 (Offences relating to contents of auditor's report) of the Companies Bill. This note sets out the views of the Legal Service Division on the matter for the Chairman's reference.

2. Clause 399(1) of the Bill provides that every person specified in subclause (2) commits an offence if the person knowingly or recklessly causes a statement required to be contained in an auditor's report under clause 398(2)(b) or (3) to be omitted from the report. Under subclause (2), the persons potentially caught by the offence are –

- (a) if the auditor is a natural person – the auditor, every employee and agent of the auditor who is eligible for appointment as auditor;
- (b) if the auditor is a firm – every partner, employee and agent of the auditor who is eligible for appointment as auditor; or
- (c) if the auditor is a body corporate, every officer, member, employee and agent of the auditor who is eligible for appointment as auditor.

3. Clause 384 provides that only a practice unit is eligible for appointment as auditor. Under clause 383, “practice unit” has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50) (PAO), which defines the term as –

- (a) a firm of certified public accountants (practising) practising accountancy pursuant to the PAO;
- (b) a certified public accountant (practising) practising accountancy on his own account pursuant to the PAO; or
- (c) a corporate practice.

4. The Administration is of the view that given the definition of “practice unit” as mentioned above, only natural person, who is a certified public accountant (practising) practising on his own account, is eligible for appointment as auditor. Thus, the offence created in clause 399 would apply only to such person. The Administration therefore concludes that the references to employee, partner, officer and member in the original clause 399(2)(a)(ii), (2)(b) and (2)(c) as drafted would appear to be redundant as only the firm, the sole practitioner, or the corporate practice would be a practice unit.

5. It is obvious that an employee or a member of an officer of a corporate practice could not personally be appointed as auditor while retaining the status as such employee, member or officer. This is equally true of a partner or an employee of a firm. This has all along been clear to the Legal Service Division.

6. In the course of the scrutiny of clause 399 by the Bills Committee, the common understanding of "eligible for appointment as auditor" has been that the expression refers to the professional qualification of a person. It does not depend on whether as a matter of fact the person is actually practising accountancy on his own account at the material time but whether he has the necessary professional qualification to act as auditor, i.e. a practising certificate to practice as a certified public accountant under the Professional Accountants Ordinance (Cap. 50). The problem as now asserted by the Administration in paragraph 5 of its paper did not arise. It is also upon such understanding that the Securities and Futures Commission has in its written submission dated 11 May 2012 to the Bills Committee expressed its view that clause 399 in the blue Bill is inadequate.

Prepared by

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