

香港經理秘書有限公司的信頭
Letterhead of HONGKONG MANAGERS & SECRETARIES LIMITED

CB(1)1143/98-99(01)

Facsimile Transmittal Sheet 圖文傳真

Attention 收件人 : Ms Estella Chan Date 日期 : 16th April 1999
Company 公司名稱 : Legislative Council
c.c. : Mr John Wong (Fax No. : 2815 0548)
 Chairman of the Technical Committee
 The Hong Kong Institute of Company Secretaries
City 城市 : Hong Kong Serial No.編號 :
Fax 傳真號碼 : 2121 0420 Page 頁數 1 of 2

From 發件人 : Annabella Choi 蔡潔玲小姐 Our Ref.檔案編號 : COBill/BC/jl

If pages are not received, please call (852) 2806-3606 Ext. 258/259. This fax is confidential and may also be privileged. If you are not the intended recipient, please notify us immediately; you should not copy it or use it for any purpose. nor disclose its contents to any other person.

Re: Companies (Amendment) Bill 1999 ("the Draft Bill")

First of all, I have to apologize for any inconvenience caused to you by my direct contact. While my other comments on the Draft Bill have been sent to the Hong Kong Institute of Company Secretaries, I would like to submit the following additional comment :-

Point 18

In referring to the current situation, we are of the opinion that it is necessary to repeal Sections 290A and 290B.

We interpret Section 290A as a penalizing clause in the sense that the Registrar of the Companies Registry ("CR") will initiate the process to strike off a company from the Register if that company fails to file the Annual Return with the CR for 2 consecutive years. However, with strict enforcement of Section 109 by the CR, the function to penalize a company no longer exists. An active company will not disregard filing of the Annual Return because the CR will issue reminding letter to them. In addition, with threatening of legal action against the company, the officer will definitely pay more attention to filing of the Annual Return. The existence of Section 290A only gives a point of argument to a company, which does not use a proper process to close the company. Such company may merely ignore complying with the company secretarial requirements and expect the CR to exercise the discretion and take initiative to strike the company off the Register.

.../Con't 2

Repealing of Section 290A will not affect a defunct company, which is still covered by Section 291.

Point 22

If a company ceases business, it can be closed by sending a confirmatory letter to the CR and invite them to consider closing the company under Section 291. Or else, the company can also go through a winding up process. On the other hand, the CR can take initiative to close a company by striking off. It is my understanding that the current system runs quite well. Thus, I do not see the need to add the new section for deregistration. I should be most grateful if you could enlighten me.

Nonetheless, assuming that there is a strong reason to make this change on the Companies Ordinance, I would like to add my following comments:-

- (1) The definition of “private company” in Section 291AA includes a company deemed to be a dormant company under Section 344A. It is recommended to include the exemption under Section 344A(4) to Section 291AA; i.e. exempt from complying with the requirements of Sections 107 to 111, 122 to 134, 140A to 141 and 141B to 141D. Or else, taking into consideration of the time lag from the date of submitting application for deregistration and the date when the company is deregistered, it may cause confusion in complying with the requirements abovementioned for company applying for deregistration from dormant status and that from normal status.
- (2) It gives an indication that the main concern of the CR is clearance of the liability with the Inland Revenue Department. As it is quite difficult to ascertain accuracy of the statements made in the application, we cannot deny the possibility of the new Section being abused. The protection under Section 291AB is not very appropriate to the ordinary creditors with small amount of outstanding sum because the anticipated legal cost may be quite substantial. To take care of the interest of the ordinary creditors, we would suggest changing the requirement to a Statutory Declaration instead of an application. It can then at least give a message to the applicant to be more serious and careful with their application.

We sincerely hope that the above few points are useful to you. Please feel free to contact us for any other queries.

Best Regards,

Annabella Choi