



THE HONG KONG INSTITUTE OF COMPANY SECRETARIES
香港公司秘書公會

24 May 2000

The Hon. Ronald Arculli
Chairman, Bills Committee on Securities and Futures Legislation
(Provision of False Information) Bill 2000
Legislative Council, Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Chairman,

**Bills Committee on
Securities and Futures Legislation
(Provision of False Information) Bill 2000**

Thank you for the invitation of 20 May 2000 to comment on the proposed provisions regarding the criminalisation of false, misleading and incomplete reporting to relevant regulatory bodies.

As compliance with the regulatory framework within which companies operate is among the principal responsibilities of company secretaries, The Hong Kong Institute of Company Secretaries has a keen interest in such consultancy exercises.

General

The Institute supports regulatory changes designed to increase the effective transparency and credibility of our financial markets - which are consistent with relevant international standards and appropriate for Hong Kong.

The Institute therefore supports the Bill in general as it is consistent with:

- the growing trend internationally of supporting and otherwise backing non-statutory regulatory frameworks for securities and investment activities with legislation;
- the need to put some teeth in existing securities regulation in Hong Kong, ie. with regard to exchange traded securities and otherwise, and the Institute view in general regarding the expansion of the regulatory framework, ie. the strengthening and enforcement of existing provisions is generally more effective and efficient than adding another regulatory layer;
- the Companies Ordinance provisions which criminalise false statements in general (s349), and specifically, as in provisions which criminalise untrue statements in prospectuses (s40A).

We were also pleased to see the draft provisions have been modified along the lines recommended by the Institute regarding scope and application, ie.

- the addition of actual reliance and intent elements
- the restriction of scope to one who 'provides' information, rather than to one who 'provides or makes available' information

<p>The Hong Kong Institute of Company Secretaries 22/F Prosperous Commercial Bldg, 54-58 Jardine's Bazaar, Causeway Bay, Hong Kong SAR Ph: 852-2881-6177 ~ Fx: 852-2881-5050 ~ Web: hkics.org.hk ~ Email: tashjian@hkics.org.hk</p>
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Concerns

1. While we appreciate the need to get at 'half-truths', perhaps the proposed provisions should be limited to false reports – given:
 - principal mischief regulators trying to address
 - procedures and penalties for criminal offences
 - difficulties of defining information that is 'misleading or incomplete'
2. Where misleading and incomplete, as well as false reporting is to be actionable, it would appear to be necessary:
 - a) to incorporate 'misleading and incomplete' in relevant headings and references, eg. title to statute and relevant sections, such as proposed s56A, 'Provision of False Information'; and
 - b) to add, in respect of misleading and incomplete information -
 - an interpretation clause similar to Companies Ordinance s41A; and
 - a provision that there be justifiable as well as actual reliance, eg. that misleading information would have misled a reasonable person in the circumstances.
3. The application of the provisions to one who 'provides ... any information':
 - may be more than necessary to achieve aims
 - may be too broad in practice, eg. perhaps a more limited scope, such as making or rendering 'statements' or 'reports' as in Companies Ordinance provisions (trigger points such as these may obviate problems associated with attempting to codify various ways in which one may 'provide' information); and
 - may have significant interpretation and application problems, especially with regard to the action of junior corporate officers and employees deemed to have provided false, misleading or incomplete information generated or provided for them by another.
4. Perhaps the effect of the proposed provisions on companies should be clarified, as the proposed provisions appear to be directed at natural persons only.

Thank you again for the opportunity to participate in this exercise. The Chinese translation of this comment will be submitted in due course. We look forward to discussing our views with the Bills Committee.

Regards,

Peter Tashjian
Chief Executive

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