

11 April 2011

Simon Cheung  
Clerk to the Bills Committee  
The Legislative Council  
8 Jackson Road  
Central Hong Kong

Dear Mr. Cheung

**Bills Committee on Companies Bill**

We are very pleased to see this Bill has been tabled promptly; but hope it can be tabled to come into effect sooner than the forecast date of 2014. The Chamber has already contributed detailed commentary on the three consultations leading up to the drafting of this Bill.

Our main concern now relates to the appointment of individual directors (Clause 448) and their statutory duty of care (Clause 456), and civil penalties for breach thereof (Clause 457). Matters relating to Informers (Clause 873) are new, and we are not sure that this Clause is a welcome development or whether it should be included in this Bill at all. With reference to Clause 448 – it is our understanding that this clause mirrors the UK position in requiring at least one natural person to be a director of a private company? Since Hong Kong is a territorial jurisdiction, we do not understand the point because if the person resides outside Hong Kong they cannot be prosecuted outside Hong Kong. We have previously disagreed with this requirement being introduced into the bill, and still disagree with it if it is unenforceable. With reference to Clause 456 - it is not clear at which point this duty of care ceases (as in the Singapore case, even a resigned/former director can be held accountable for company failure to file Annual Returns/prepare accounts etc). Additionally it is not clear how this duty of care applies to a corporate director - can this be clarified please? Finally with reference to Clause 457 it is not clear who is subject to the civil remedy in case of a breach by a corporate director?

I apologize for the late submission of our comments but this has been the ending of the financial year for most and many and this has occupied key members of our Financial Services Interest Group. I trust that the comments will be helpful to the Bills Committee.

Yours sincerely



Brigadier Christopher Hammerbeck CB.CBE.  
Executive Director

Cc: Kevin Taylor – Chairman  
Paul Brough – Vice Chairman  
Nick Sallnow-Smith – Vice Chairman  
Debbie Annells – Chair Financial Service Interest Group

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