



CB(1)2179/11-12(01)

BAKER TILLY
HONG KONG LIMITED
CERTIFIED PUBLIC ACCOUNTANTS

天職香港會計師事務所有限公司

2nd Floor, 625 King's Road
North Point, Hong Kong
香港北角英皇道625號2樓
Telephone : +852 2525 0171
Facsimile : +852 2810 1417
www.bakertillyhk.com
enquiries@bakertillyhk.com

12 June 2012

By email <bc_03_10@legco.gov.hk> and by post

Hon. Paul Chan Mo-po, MH, JP
Chairman
Bills Committee on Companies Bill
Room 805, Legislative Council Complex
1 Legislative Council Road,
Central, Hong Kong

Dear Paul,

Re : Companies Bill ("the Bill"), Clause 399 ("the Clause")

We refer to the Clause of the Bill proposing criminal offences relating to the content of an auditor's report.

In our view the proposals as currently drafted are flawed on a both conceptual and a practical level.

The concept of "recklessly" is being inappropriately applied to two statements (required by Clause 398(2)b and (3)) which are provided by the auditor as part of his statutory audit report. The statements will be provided by the auditor only if, based on his professional judgement at a particular time and in particular circumstances, the financial statements are defective as envisaged by Clause 398(2)b and (3). The omission of either or both these statements will, hence, be the result of a professional judgement and it seems inappropriate to us that criminal sanctions be applied to matters on which there may be differing professional opinions.

As to the practical matters:

- The criminal sanctions are not only inappropriate, they are also unnecessary as the regulation of the auditing profession in Hong Kong is amongst the most extensive and thorough in the world. The various regulators involved, and any other parties affected by a defective audit report under Clause 398, have a range of actions to pursue, and sanctions are available for any proven professional errors or misconduct.
- Another practical issue is that persons who may be criminally liable under the Clause are inadequately defined. At the moment, the Clause will capture those persons who commonly perform the underlying review work relating to Clause 398 in small firms and on small audits.

This situation, apart from being potentially unjust, will seriously complicate any action brought by the Authorities.

We trust that the Committee will give these observations due consideration and finds these comments of use.

Yours sincerely,

Andrew Ross
Managing Director
an independent member of
BAKER TILLY
INTERNATIONAL
represented in over 110 countries
worldwide

