

Prof. K.C. Chan, SBS, JP,  
Secretary for Financial Services and the Treasury,  
24/F, Central Government Offices,  
2 Tim Mei Avenue, Tamar, Hong Kong

1 July 2012

Dear Prof. Chan,

**Clause 399 of the Companies Bill**

The Association of International Accountants (AIA) is a global body for professional accountants. We aim to create world class accountants; through offering high-standard, relevant and innovative qualifications, and providing first-class, tailored and pertinent services for our members around the world.

Founded in 1928, the AIA has promoted the concept of 'international accounting' to create a global network of accountants in over 85 countries worldwide, who believe in opportunity, quality, diversity, accountability and transparency, and these principles are reflected in everything that we do. The AIA is supported by the Hong Kong Branch who provide technical expertise, membership advice and student support, in addition to organising structured technical and social events.

AIA has read the submissions of the Hong Kong Institute of CPAs (HKICPA) who have expressed serious concerns of the accounting profession on Clause 399 of the Companies Bill; AIA share these concerns and and consider that they need consideration. These concerns relating to Clause 399, are as follows:

- It will potentially criminalise conduct involving a high degree of professional judgment.
- It will lead to "defensive" auditing, which will increase costs and be disadvantageous to business in Hong Kong.
- As it will not be applicable to the bulk of listed companies, which comprises 75 percent (in value) of non-Hong Kong companies, it will result in unfairness and an uneven playing field in the Hong Kong market.
- It will create disparities between Hong Kong and non-Hong Kong companies that will affect the competitiveness of the former.
- In practice, it will place a disproportionate burden on small and medium-sized enterprises, for which costs and cash-flow are critical.

- The effect of this provision will be to cause good people to leave the profession and to discourage others from joining. This will ultimately have a negative effect on audit quality and the financial markets, which is not in Hong Kong's interests.
- To summarise, the Clause will not materially benefit companies or investors and this provision carries grave risks.

Whilst comparable legislation on criminal sanctions against auditors has been included in the UK Companies Act 2006, it has been adopted only as part of a "package deal" with the UK Government to introduce an amendment to auditors' liability reform into the 2006 Companies Act. Should Clause 399 be introduced in Hong Kong without the promise of the auditors' liability reform, it could have a detrimental impact on the Hong Kong accountancy and audit profession, and in turn Hong Kong's status as a leading financial centre.

Consequently, AIA would urge the Government to adopt the following course of action:

- Withdraw Clause 399 in order to enable the profession and the Government to further discuss how this legislative proposal can be modified to address the serious concerns of our profession.
- If it is considered that this is not feasible for the Government to do so at this late stage, then
  - withdraw the committee stage amendment to clause 399 put forward by the Government; and
  - put through the committee stage amendment proposed by the HKICPA to delete "or recklessly" in Clause 399(1).

Yours sincerely,

Kenny Chan  
President  
Hong Kong Branch  
The Association of International Accountants

c.c.

Mrs. Carrie Lam Cheng Yuet-ngor, GBS, JP, Chief Secretary for Administration, HKSAR  
Mr. John C. Tsang, JP, Financial Secretary, HKSAR  
The Hon. Jasper TSANG Yok-sing, GBS, JP, President of Legislative Council, HKSAR  
The Hon. Mr. Paul M P Chan, Legislative Councillor (Accountancy), HKSAR  
Dr. Tommy H L Tam, JP, Past President of AIA UK