

From: Dr. Eric Fok

To: Paul Chan

Sent: Tuesday, June 19, 2012

Dear Paul,

### **Section 399 making the rich wins**

I have to voice my personal and my company's opposition to this proposed section 399 of Companies Ordinance covering all companies that criminalising auditors without solid ground of dishonesty and fraud. It puts the blame of business failure solely to the auditors, not the perpetrators actually committing the fraud.

My company and myself are in management consulting, assisting Hong Kong SMEs and we came across literally thousands of SMEs in the last decade. We are very familiar with their current situation.

The SMEs that comprising the majority of the companies registered in Hong Kong are THE LIFEBLOOD of Hong Kong, NOT the large companies. They provide the growth and entrepreneurship that Hong Kong needs to grow right in here, not elsewhere. Section 399 is just another piece of wicked administration policy against them as it will lead to the following scenario:

1. It will definitely raise their audit fees sky high. It will tilt the field further against the SMEs in a further blow to the Hong Kong SMEs that are already in dire strait from the current economic environment.
2. It will drive auditors to qualify most of their financial statements as they are the ones that are the most behind in compliance of internal control and even basic record keeping. Unless they divert an extraordinary amount of resources from business operation to compliance to reach the status of very large companies, they will have their financial statements qualified as all auditors will be hesitant to give an unqualified opinion. Compliance does not generate any economic growth at all, it is a wastage of resources if overboard in this case.
3. When auditors are faced with Section 399, the supply of auditors for SMEs will dry up as the SMEs are the bottom in achieving quality of record keeping. No auditor in their right minds would charge SMEs the current fees if they have to undertake criminal liabilities.

4. It will further drive the registration of the new SMEs or the re-incorporation of SMEs to other jurisdictions like BVI to beat the sky high audit fees. Auditors would readily do BVI companies and only then audit according to BVI legislations, not Hong Kong legislation in a more reasonable fees and readiness. Why would this administration drive Hong Kong entrepreneurs out of its own jurisdiction because they find welcome mat elsewhere, but not in their home turf? This is the epitome of inept public policy making!
5. This will make getting financing by the SMEs more difficult when most financial statements are qualified despite any SME Financing Schemes SFGS. This will tilt the level in favour of the banks, the rich and the Oligarch to demand harsher terms and conditions despite such SFGS in place. The banks might further then abuse this provision by making use of the criminal proceedings against the auditors to try to recover their losses in civil actions from their bad credit decisions from the auditors who would then suffer under section 399. The section 399 makes the poor to shoulder the loss of the rich and gets poorer.

The whole thing will further favour the rich and the oligarchs, since the days of Donald Tsang as the Chief Executive. Just look at the published GINI Index by the Statistic Dept. today. We need the SMEs to survive. These SMEs provide most of the employment growth when the large employers retrench. Does the government wants to further tilt its policies towards the Oligarchs despite the next Chief Executive C Y Leung said otherwise? This Donald Tsang or even the in-coming C Y Leung administration should junk this piece of legislation perpetually as there is no other jurisdiction on earth is doing it.

Dr. Eric Fok

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