

15 June 2012

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

Dear Mr Chan

Companies Bill, clauses 398 and 399 – offences relating to content of auditor's report

We refer to the HKICPA's submissions on this subject dated 13 June 2012 and urging that this legislation be deferred to give time for further consultation and amendment. We respectfully support those submissions as the best way forward.

However, if that course does not commend itself to the government or to LegCo members, we believe it remains imperative that the text make clear that these offences should not be used to penalise an auditor for a bona fide professional judgment, even if with the benefit of hindsight that judgment turns out to have been wrong. For that purpose we would like to suggest the following addition (in red) to §399(1):

Every person specified in subsection (2) commits an offence if the person knowingly or recklessly causes a statement required to be contained in an auditor's report under section 398(2)(b) or (3) to be omitted from the report. **It shall be a defence for a person charged with an offence under this section to show that he acted honestly and with a reasonable belief that the audit report was not false in any material particular.**

We would ask you to move this by way of CSA as an additional option.

We are at your disposal if we can usefully elaborate on anything in this letter.

Yours sincerely

Deloitte Touche Tohmatsu