



梁繼昌議員 **Hon Kenneth Leung**

26 November 2013

Mr. Raphael Ding  
Chief Executive & Registrar  
Hong Kong Institute of Certified Public Accountants  
37<sup>th</sup> floor, Wu Chung House  
213 Queen's Road East  
Wanchai, Hong Kong

Dear Raphael

### **Regulatory Framework for Listed Company Audits**

I am writing to set out my view, as a non-practising member, on the paper (the "**Paper**") with the above caption issued by the Hong Kong Institute of Certified Public Accountants (the "**Institute**") on 8 October 2013.

### **Introduction**

The audit regulatory reform is an important step to overhaul the current regulatory system of auditors of listed companies and to bring Hong Kong in line with the regulatory culture of other major financial centres.

That said, I will regard the objective of the regulatory reform to be more to maintain the goodwill and reputation of Hong Kong as an international financial centre and to be a good global citizen. Any economic benefit flowing from the reform, I believe, will be more indirect and difficult to quantify at this stage.

Bearing this in mind, the reform should take on a bare minimum approach. Changes should be made only when it is absolutely required to meet the international benchmarking.



## **Regulation of Auditors of PIE**

As cited in the Paper (in paragraph 6) the two common essential criteria for a jurisdiction to be eligible for membership of the International Forum of Independent Audit Regulators ("IFIAR") and to be recognised as an equivalent regulatory system by the European Commission ("EC") are:

- Inspection of Public Interest Entity ("PIE") auditors must be the responsibility of and subject to oversight by an independent body; and
- Funding and governance of the oversight body must be independent of the profession.

## **Definition of PIE**

Since there is no universal definition of a PIE, I agree that the definition of PIE should only be confined to a listed company. Currently, there is no strong view from the investors in Hong Kong to demand an independent oversight on the auditors for PIE which are not listed companies. I also stress the importance of defining PIE in the main body of legislation itself (rather than in any subsidiary legislation) since any change in the meaning of PIE, however small, will materially affect the operations and sustainability of auditors who perform audit work for PIEs.

## **IFIAR versus EC**

I do not have a strong view on this. If there is indeed a bare minimum formula to attain membership/recognition under both IFIAR and EC, it seems that it will be more economical if membership of IFIAR and recognition under EC should be pursued.

I will next comment on the six key elements of regulation (registration, inspection, investigation, discipline, continuing professional development and standard setting).

### *Registration*

The Institute should remain responsible for maintaining a separate register of firms which audit listed companies and specified individuals in those firms,



subject to oversight by the independent body. Oversight should mean a minimal degree of intrusion - a reserve power for the independent body to intervene and rectify if anything goes wrong. I must emphasise that the term "oversight" when used in the Paper and this letter should be interpreted in this light throughout.

I agree that since the "fit and proper" criteria has to be met for admission to membership for the Institute and will also be applied to listed company auditors, registration criteria will only have to be re-confirmed as part of the annual renewal registration.

#### *Inspection*

I agree with the framework proposal set out in paragraphs 49 to 52 of the Paper. Some elements of inspection work should be delegated back to the Institute for the best use of resources and expertise.

#### *Investigation*

No further action is required.

#### *Discipline and sanctions*

This is the most important aspect of the regulatory reform. It is absolutely critical to have an independent tribunal to hear the cases brought by the independent oversight body.

The disciplinary process should be independent and also be seen to be so. Regulation of other service providers in the financial services industry and auditors of listed companies are two totally different concepts. It is inconceivable that there could be one model which can fit all.

The tribunal should maintain a small secretariat and employ a full-time legally qualified person to be its chairperson.

For hearings to be dealt with effectively and efficiently, I agree that a panel should comprise of the chairman and two other members. The qualifications



and background of the other two members can be decided at a later stage but should at least include a practising accountant.

A panel of technical advisers from overseas should also be shortlisted to provide technical backup to the tribunal when required. The drawing of expertise from overseas can avoid potential conflict of interest.

Any appeal from the decision of the independent tribunal should be on a point of law and should go directly to the Court of Appeal.

In addition, in order to rationalise the workload of the tribunal and to provide a chance for the auditor to avoid a full trial at the tribunal, the independent oversight body should be given the power to offer a sanction settlement. If such sanction settlement is accepted by the auditor, then there will not be any tribunal hearing. The range of sanction offers which can be made by the independent oversight body must be specified in the main body of legislation. The quantum of any fine which can be imposed by the tribunal will need to be looked into objectively and scientifically at a later stage. Again, I do not agree that one model can fit all.

#### *Standard Setting*

I agree that the Institute should remain the standard setting body with oversight from the independent oversight body.

#### *Continuing Professional Development (CPD)*

I agree that the Institute should remain the body designing and running CPD for its practising and non-practising members. Oversight from the independent body should take the least intrusive form.

#### **Conclusion**

After the conclusion of the consultation from the members, the public will be engaged for another round of consultation. In order to maintain the competitiveness, sustainability and viability of the auditing profession, it will be important to bring up the idea of professional liability reform to the public. The



professional liability reform should be the natural sequel to the regulatory reform.

I will be available for further discussion if required.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth Leung'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**Kenneth Leung**