Hong Kong Institute of Certified Public Accountants
香港會計師公會

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ACCOUNTING

Auditors want law change scrapped

Accountants say proposal under which they may face criminal liability is too harsh and should be amended

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The accounting industry faces an uphill struggle as it battles to convince lawmakers to scrap a law change under which accountants could face criminal liability.

The Hong Kong Institute of Certified Public Accountants (HKICPA) is lobbying lawmakers to scrap the provision, but government and the pro-Democrat legislators are determined to push the reform through.

A government spokesman said the new proposal was an important step towards enhancing the reliability of financial statements and improving the regulatory regime for auditors. Auditors have been in the spotlight in recent months after the Financial Reporting Council put 13 listed companies on watch for alleged auditing problems.

Under the Companies Bill, to be put to the vote on June 27, auditors would face criminal liability if, in the event of accounting fraud, their report failed to include a declaration that the financial statements were materially not in agreement with the auditor's accounting records. They would also face criminal liability if they failed to declare they could not obtain all the information or explanations needed for the audit.

"These two statements are crucial to assisting the users of a company's financial statements to take an informed view about the financial statements," the government spokesman said.

But HKICPA president Keith Pogson said the measure was too harsh and the institute was working with lawmakers to urge them to change the proposal to scrap the criminal liability clause, or to modify the prosecution threshold for auditors from the current suggestion of "knowingly or recklessly" not raising the alarm, to "dishonestly or with intent to defraud". "At the very least, the requirement should be that the act of omission was done knowingly and was not only an oversight," Pogson said.

Legislator Ronnie Tong Ka-wah said he might consider helping accountants seek an amendment but he had yet to make a final decision. "The new law would be too tough because criminal liability would bar auditors from the industry forever. The fine of HK$150,000 is not much but a criminal record would ruin their career," Tong said.

But many lawmakers supported the reform. Pan-democrat members, including Albert Ho Chun-yan, and some legislators representing the commercial sector are in no mood to go easy on accountants. During a bill committee meeting last month, they said the bill did not go far enough when they debated the proposal last month, as the provision only imposed a fine but no jail term.

Albert Au, the chairman and chief executive of accounting firm BDO, said the penalty for auditors might cause a brain drain. "The potential threat of criminal liability under the new law plus the unlimited personal liability borne by auditors under the existing framework will just make it impossible for the profession to retain talent," Au said.

"We have to note that audit is not equivalent to investigation. The implied push for more complicated auditing will put big pressure on fees. At the end of the day, the whole purpose of the proposed regulation – to enhance Hong Kong's position as the world's financial centre – would backfire," Au said.

Edward Chow Kwong-fai, deputy chairman of the Business and Professionals Federation of Hong Kong, said auditors who intentionally took part in fraud should face liability. "But those who make an omission unintentionally should not face criminal liability," he said.

While insisting on keeping the criminal liability clause, the government, however, has agreed to accept accountants' concerns that the new law would not be imposed on junior staff but only on accountants who sign the auditor's report. The managers in charge of an audit engagement could also be liable.

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> KEITH POGSON, HKICPA