

**STATEMENT 1.302
GENERAL GUIDANCE
FORMATION OF COMPANIES BY ACCOUNTANTS**

(Issued April 1985)

1. In assisting clients in the formation of companies, members should have regard to Section 47 of the Legal Practitioners Ordinance, Cap. 159, which provides as follows: -

"47 (1) Any unqualified person, not being a barrister or a notary public, who, unless he proves that the act was not done for or in expectation of any fee, gain or reward, either directly or indirectly -

- (a) draws or prepares any instrument relating to movable or immovable property or to any legal proceeding; or
- (b) draws or prepares any memorial or other document for the purposes of the Land Registration Ordinance, or the New Territories Ordinance or makes any application or lodges any testimony for registration under either of those Ordinances at the Land Office or at any District Land Office.

shall be guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars.

- (2) This section shall to extend to -

- (a) any public officer drawing or preparing instruments in the course of his duty; or
- (b) any person employed merely to engross or copy any instrument or proceeding.

- (3) For the purposes of this section, "instrument" does not include -

- (a) a will or other testamentary instrument; or
- (b) an agreement under hand only; or
- (c) a letter of power of attorney; or
- (d) a transfer of stock containing no trust or limitation thereof."

2. Under Section 2 of the Legal Practitioners Ordinance, an "unqualified person" means a person who is not a solicitor. For the purposes of Section 47 of the Ordinance, the memorandum and articles of association of a company and the statutory declaration of compliance are deemed to be 'instruments'. Accordingly, an accountant should not participate in the drawing up of such and other legal instruments for a fee or reward, but should refer the carrying out of these functions to legal practitioners. Neither should an accountant swear the statutory declaration of compliance of a company unless he acts in the capacity of a director or secretary of that company.

3. The Ordinance does not, however, preclude an accountant from doing any of the following for a fee or reward: -

- (a) advising his client on the taxation and other implications of forming a company;
- (b) instructing a solicitor on behalf of a client to draw up the memorandum and articles of association and giving his views as to the content, particularly on the clauses relating to accounts;

- (c) giving suggestions with a view to assisting the legal advisers in putting those suggestions into legal form; or
- (d) generally assisting the client in connection with the formation of a company.