

# Clause 399 – Past, Present & Future

24 September 2012



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## Original Clause 399

### Offences relating to contents of auditor's report

- (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.
- (2) The persons are—
  - (a) if the auditor who prepares the auditor's report is a natural person—
    - (i) the auditor; and
    - (ii) every employee and agent of the auditor who is eligible for appointment as auditor of the company;
  - (b) if the auditor who prepares the auditor's report is a firm, every partner, employee and agent of the auditor who is eligible for appointment as auditor of the company; or
  - (c) if the auditor who prepares the auditor's report is a body corporate, every officer, member, employee and agent of the auditor who is eligible for appointment as auditor of the company.
- (3) A person who commits an offence under subsection (1) is liable to a fine of \$150,000.

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## Original Clause 399: Problem

### Government Submission to Bills Committee – CB(1)2287/11-12(02):

- In the context of dealing with the Committee Stage Amendments (CSAs) in relation to clause 399, it came to our attention that the original clause 399 does not fully reflect the legislative intent and may give rise to implementation problem .....
- Given the definition of “practice unit”, we are advised that under the original clause 399, the offence only applies to persons who would be qualified to be appointed as auditor in his capacity as a certified public accountant (practising) practising on his own account.
  - The original clause 399(2)(a)(ii), (2)(b) and (2)(c) as drafted would appear to be redundant as only the firm, the sole practitioner, or the corporate practice would be a practice unit.
  - Hence, the references to employee, partner, officer and member would be redundant.
  - It is also inconceivable for the audit work to involve another sole practitioner (who would be covered by the section as drafted) as the agent of the auditor.

## Original Clause 399: Problem

### Government Submission to Bills Committee – CB(1)2287/11-12(02):

- In other words,
  - the offence would not apply to a firm or corporate practice, and
  - only an auditor who is a certified public accountant (practicing) practicing on his own will be subject to the offence.

# Original Clause 399: Problem

## Offences relating to contents of auditor's report

- (1) If a statement required to be contained in an auditor's report under section 398(2)(b) or (3) is omitted from the report, an offence is committed by each individual who—
  - (a) either—
    - (i) signs the auditor's report in accordance with section 400; or
    - (ii) performs managerial functions in relation to the auditing work in respect of the auditor's report under the immediate authority of the person mentioned in subparagraph (i); and
  - (b) knowingly or recklessly causes the statement to be omitted.”.
- (3) A person who commits an offence under subsection (1) is liable to a fine of \$150,000.

**Performs  
managerial  
functions**

# What Did We Do?

## Forum and Survey



# What Did We Do?

Facebook.com/Object.399



# What Did We Do?

Media and Blogger

財經 2012年06月29日 00:00 閱讀(502) 回應(2) 我的簡介

## 替《公司條例草案》第399條把把脈

近日看到不同方面的會計界朋友們，在Facebook上大聲疾呼，為《公司條例草案》第399條，對核數師的失職行為加入最高\$150,000罰款的刑事罰則，表示反對。他們反對的理由，大抵是：

- (1) 儘管英國公司法有相似的刑事罰則，英國法律中卻有合夥人有限責任條例，保障了核數師的最高民事責任。英國公司法加入相關的刑事罰則，是建基於不同的立法背景；
- (2) 倘香港的核數師失職，本身已經需要面對會計師公會的紀律聆訊，金錢上及名譽上的可能懲罰，曾比第399條所建議的刑事罰則為高，有關建議並沒有必要；
- (3) 相關條文是以「knowingly or recklessly」兩個字眼，來界定核數師沒有在核數報告內，詳述財務報表問題的刑事責任。兩個字眼的中文翻譯是「明知或罔顧」，知情尚可說得上責任難逃，罔顧倒是一個主觀的用語，核數師有被不幸定罪的危險；

石曉  
在皇后大道東成長的末期六十後，拒絕渾渾噩噩地工作，追求數字以外的滿足和體驗，從看書、攝影、電影、音樂，更積極投入人生。

文章分類

- 財經 (7)
- 政評 (47)
- 體育 (4)
- 生活隨筆 (18)
- 影視音樂 (7)
- 文化藝術 (37)
- 英文 (1)
- 其他 (14)

## What Did We Do?

**2012.07.04** Eight accounting bodies met with LegCo Councilors and Government Representatives



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## Original Clause 399: Problem

### Offences relating to contents of auditor's report

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  - (a) either—
    - (i) signs the auditor's report in accordance with section 400; or
    - (ii) performs managerial functions in connection with auditing work in respect of the audit of the company under the immediate authority of the person mentioned in subparagraph (i); and
  - (b) knowingly or recklessly causes the statement to be omitted.”.
- (3) A person who commits an offence under this clause is liable to a fine of \$150,000.



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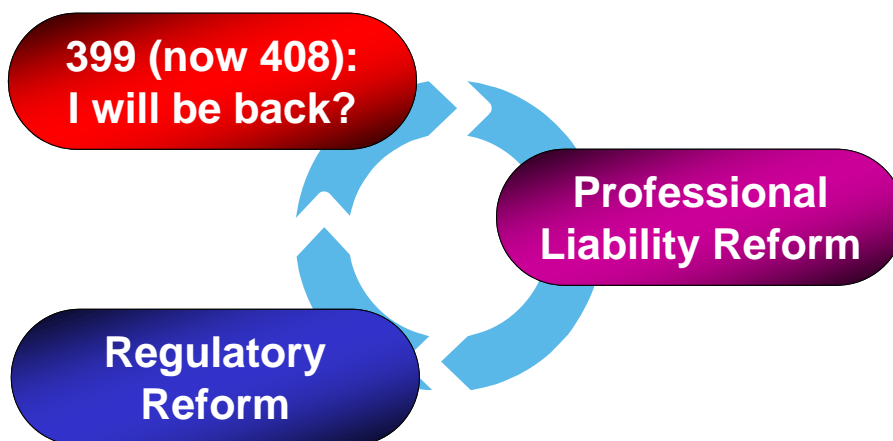
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## Clause 399 → Now Clause 408

### Offences relating to contents of auditor's report

- (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.
- (2) The persons are—
  - (a) if the auditor who prepares the auditor's report is a natural person—
    - (i) the auditor; and
    - (ii) every employee and agent of the auditor who is eligible for appointment as auditor of the company;
  - (b) if the auditor who prepares the auditor's report is a firm, every partner, employee and agent of the auditor who is eligible for appointment as auditor of the company; or
  - (c) if the auditor who prepares the auditor's report is a body corporate, every officer, member, employee and agent of the auditor who is eligible for appointment as auditor of the company.
- (3) A person who commits an offence under subsection (1) is liable to a fine of \$150,000.

## What's Next?



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