



THE

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Press Release

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US SARBANES – OXLEY ACT OF 2002

The Hong Kong Law Society notes with concern the recent large-scale corporate failings and accounting scandals that have affected the United States business community. These incidents have been the cause of significant turbulence in the US markets and we are deeply concerned that similar events do not happen in Hong Kong.

Hong Kong has not experienced corporate failures and accounting scandals of a magnitude similar to those experienced in the US recently. Nonetheless, there will be room for improving existing mechanisms and strengthening the control of corporate governance.

In this respect, the Law Society has noticed the public interest and concern over the Sarbanes – Oxley Act of 2002 (the “Act”) recently passed in the US. The Law Society and its Security Law Committee have studied the Act and the relevant provisions and discussed the matter with other members who may be interested in this particular area of the law. We have concluded that while we fully understand that many of the provisions in the Act may potentially affect Hong Kong companies, their directors, legal advisers and auditors, there is not sufficient clarity at this stage to determine their exact application. The Law Society understands that many provisions of the Act will only become operative when their underlying rules are adopted by the US Securities and Exchange Commission (“SEC”) or other relevant authorities. When these implementing rules and regulations are promulgated, the Law Society will consider them and their ramifications in detail.

At this stage the Law Society shares the concern with some other professional bodies over the provisions of the Act governing the powers of the Public Company Accounting Oversight Board. Some of them appear to conflict with the principles of public international law concerning the basis on which jurisdiction may be exercised over auditing firms established in Hong Kong which are properly subject to Hong Kong SAR laws and regulations.

The Law Society therefore supports the proposed action of the Hong Kong SAR government in seeking clarification from the US SEC and other authorities, in particular, in relation to the scope of exemptions available under the Act for Hong Kong entities. In the meantime, the Law Society will continue to watch any developments in the matter and, if required, is willing to work closely with the relevant government authorities including the SEC in order to ensure that cross-border concerns are addressed adequately and sensibly.

The President
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