

October 29, 1999

The Secretary
The Privacy sub-committee
The Law Reform Commission
20th Floor, Harcourt House
39 Gloucester Road
Wanchai, Hong Kong



Dear Sir or Madam,

Re: Proposed Press Council

The American Chamber of Commerce in Hong Kong ("AmCham") is pleased to provide our comments regarding the proposal to establish a press council.

In summary, AmCham believes that adoption of the proposed form of press council would significantly diminish Hong Kong's currently favorable international reputation for permitting freedom of speech and the free flow of information. We are opposed to the establishment of the proposed Press Council. We recommend establishment of a self-regulating media body instead.

The press council, as proposed by Hong Kong's Law Reform Commission's subcommittee on privacy, would be government appointed and would have broad enforcement powers. Among them would be the discretion to impose substantial fines and the right to demand publication of an apology or retraction. The council itself would be immune from lawsuits, although a newspaper could appeal a decision to the Court of Appeal.

AmCham appreciates that the proposal is a well-intentioned effort to protect personal privacy and is not intended by the Law Reform Commission to have a chilling effect on Hong Kong's press and Hong Kong's reputation overseas. However, we believe that the international business community would generally regard establishment of a press council as a step in that direction. In the eyes of international business, Hong Kong's current reputation for freedom of the press and free flow of information is a very attractive advantage over many other jurisdictions in Asia. If Hong Kong were to establish the proposed press council - even though well intentioned - it would undermine that advantage.

The concern of the international community is that the threat of press council fines and expensive litigation to obtain relief from the Court of Appeal would lead the media to be more restrained in its coverage of matters of legitimate public interest. AmCham, like the Law Reform Commission, would welcome greater media self-restraint in covering personal matters that have no conceivable public policy implication. However, the problem with any restraint on freedom of speech arises in attempting to draw the line between what is desirable and what is not, what has a public policy implication and what does not. In the United States two hundred years ago, the belief that freedom of speech was so important that it should not be restrained by regulatory bodies appointed by the government, led to the adoption of the First Amendment to the US Constitution. For similar reasons, AmCham believes that Hong Kong should not empower a government-appointed body to make these determinations and risk restraining legitimate public discourse.

AmCham recommends instead the establishment of self-regulating bodies. We recognize that elements of the Hong Kong media have resisted such an approach. AmCham calls on them to join the majority of the media who are willing to move forward with meaningful self-regulation.

Yours sincerely,

Jason Felton
Chairman