

**President's ruling on
Professional Accountants (Amendment) Bill 2004
proposed by Dr Hon Eric LI Ka-cheung, GBS, JP**

I have been requested by Dr Hon Eric LI to rule whether the Professional Accountants (Amendment) Bill 2004, which he intends to introduce into this Council, relates to the restrictions prescribed in the Council's Rules of Procedure. Before making a ruling on the Bill, I have invited the Secretary for Financial Services and the Treasury ("SFST") to offer his comments and Mr LI to offer his response. I have also sought the advice of Counsel to the Legislature.

Rule 51(3) and (4) of the Rules of Procedure

2. Rule 51(3) and (4), which governs the introduction of bills by Members, reads:

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

Purpose of the Bill

3. According to the Explanatory Memorandum of the Bill, its purpose is "to amend the Professional Accountants Ordinance (Cap. 50) and the Professional Accountants By-laws (Cap. 50 sub. leg. A) to change the name of the Hong Kong Society of Accountants ("Society"), membership structure, membership designations and practice units, to introduce self-regulation, to amend the disciplinary proceedings rules, to provide for enforcement of mandatory continuing professional development and to make a number of technical amendments".

The Administration's views

4. SFST is of the view that, for the purpose of Article 74 of the Basic Law, the Bill does not relate to public expenditure, political structure or the operation of the Government. However, it relates to Governments policies.

5. The Bill seeks to enhance the regulation of the accounting profession by altering the membership structure of the Hong Kong Society of Accountant's Council and Investigation and Disciplinary Committees to provide that the majority of the members will be lay persons. More specifically, the Bill seeks to amend government policies as reflected in the Professional Accountants Ordinance, for example:

(a) Change in composition of the Society's Council

Clause 10 of the Bill proposes to change the composition of the existing Council by amending section 10 of the Ordinance to, among others, add 4 lay members appointed by the Chief Executive to the Council and each for a term of 2 years subject to renewal.

(b) Change in composition of the Investigation Panel

Clause 45 changes the composition of the Investigation Panel by amending section 42B of the Ordinance to provide, among others, for 2 Investigation Panels from which an investigation Committee is formed. Investigation Panel A comprises not less than 18 lay members (non-accountants) appointed by the Chief Executive and Investigation Panel B comprises not less than 12 certified public accountants appointed by the Council; and the Chief Executive to appoint an Investigation Panel A member to be the Investigation Committee Convenor and another to be his alternate.

It is the Government's policy to regulate the accounting profession.

Response from Dr Hon Eric LI

6. Mr LI has informed me that he does not object to SFST's views.

Advice of Counsel to the Legislature

7. Counsel to the Legislature advises that the Ordinance was enacted in 1972. It is clear that the Ordinance reflects Government's policies on the regulation of professional accountants by their own professional body.

8. The expression "relates to Government policies" in Rule 51(4) of the Rules of Procedure means having a substantive effect on a Government policy or policies. The test of whether a bill should be classified as one having such effect is neither as high as requiring that the bill must have an important effect nor so low that it need merely have some tenuous link with a Government policy articulated by the Administration. A bill does not relate to Government policies simply because it seeks to amend an ordinance in order to address an issue which is merely incidental to a Government policy.

9. It is Counsel's advice that the Bill would have substantive effect on the Government policies set out by the Administration and summarised in paragraph 5 above.

My opinion

10. Having considered the advice of Counsel to the Legislature in the light of SFST's views on the Bill, and having regard to Mr LI's advice that he does not object to SFST's views, I consider that the Bill relates to Government policies for the purpose of Article 74 of the Basic Law.

Ruling

11. I rule that the Professional Accountants (Amendment) Bill 2004 relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure and requires the written consent of the Chief Executive for its introduction.

(Mrs Rita FAN)
President
Legislative Council

4 March 2004