

立法會
Legislative Council

LC Paper No. CB(1)3063/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/SS/13/10/1

**Subcommittee on
Professional Accountants (Amendment) Bylaw 2011**

**Minutes of the first meeting held on
Wednesday, 1 June 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Paul CHAN Mo-po, MH, JP

**Public officers
attending** : **Agenda item II**

Financial Services and the Treasury Bureau

Mr Maurice LOO
Principal Assistant Secretary
(Financial Services)

Department of Justice

Mr Allen LAI
Senior Government Counsel

Attendance by invitation : Agenda item II

Hong Kong Institute of Certified Public Accountants

Ms Winnie CHEUNG
Chief Executive and Registrar

Mr Johnny CHAN
General Counsel

Mr Patrick TAM
Director of Member and Corporate Services

Ms Madeleine LAM
Head of IT

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Eyelyn LEE
Assistant Legal Adviser 10

Mr Simon CHEUNG
Senior Council Secretary (1)9

Ms Christina SHIU
Legislative Assistant (1)4

Action

I Election of Chairman

Mr James TO, the member who had the highest precedence in the Council among members of the Subcommittee, presided over the election of Chairman of the Subcommittee. He invited nomination for the chairmanship. Mr Paul CHAN was nominated by Dr Philip WONG. Ms Emily LAU opined that since the subject matter of the Subcommittee concerned regulation of the accountancy profession, it would be more appropriate for a Member not returned from the accountancy constituency to be the Chairman. Mr Paul CHAN declined the nomination.

2. Nominated by Ms Emily LAU and seconded by Mr Paul CHAN, Mr James TO was elected Chairman of the Subcommittee.

II Meeting with the Administration and the Hong Kong Institute of Certified Public Accountants

- (L.N. 70 of 2011 -- The Professional Accountants (Amendment) Bylaw 2011
File Ref: FSB C2/2/44C Legislative Council Brief
LC Paper No. LS60/10-11 -- Legal Service Division Report
LC Paper No. CB(1)2338/10-11(01) -- Marked-up copy of the Professional Accountants (Amendment) Bylaw 2011
LC Paper No. CB(1)2338/10-11(02) -- Paper provided by the Hong Kong Institute of Certified Public Accountants
LC Paper No. CB(1)2338/10-11(03) -- Letter from Assistant Legal Adviser to the Administration dated 16 May 2011
LC Paper No. CB(1)2338/10-11(04) -- Administration's letter dated 17 May 2011 in response to letter from Assistant Legal Adviser (LC Paper No. CB(1)2338/10-11(03))

3. The Subcommittee was briefed by the Administration and the Hong Kong Institute of Certified Public Accountants ("HKICPA") on the Professional Accountants (Amendment) Bylaw 2011 ("the 2011 Amendment Bylaw"), and deliberated (index of proceedings at **Appendix**).

4. HKICPA was requested to provide the following information --

- (a) the policy and criteria to be adopted in applying voting by ballot on HKICPA Council matters through electronic means with the passage of the 2011 Amendment Bylaw;

- (b) the existing lists of matters for the decision of HKICPA Council which allowed voting by a show of hands and by ballot; and
- (c) the situation of members' attendance at meetings of HKICPA Council after the 2010 Bylaw amendment in terms of (i) those "physically" present, and (ii) those participating remotely through electronic means; and how the situation compared with that before the 2010 Bylaw amendment.

5. HKICPA undertook to reflect the following views and suggestions to its Council for consideration --

- (a) The present arrangements for holding election platform for candidates standing for the election of the President and Vice Presidents of HKICPA Council should be reviewed to allow interactive participation by the various candidates, including debate among candidates and question and answer sessions.
- (b) The procedures for the election of the President and Vice Presidents of HKICPA Council should allow disclosure of the number of votes received by each candidate.
- (c) Stipulating requirements for members of HKICPA Council to use electronic means to participate at meetings and to vote on matters. For example, prescribing the circumstances under which members may use electronic means for the above purposes, and setting a limit on the number of members allowed to use electronic means for each meeting.
- (d) The requirement for the majority of HKICPA Council members to agree on voting by ballot should be relaxed.

6. The Administration was requested to research on the relevant rules or practices of local self-regulatory professional bodies and provide the following information --

- (a) whether such bodies allowed their members to participate at meetings and vote on matters through electronic means, and if yes, the details; and
- (b) whether there were requirements or rules on members using electronic means to participate at meetings or voting on matters.

III Any other business

7. Members agreed to hold the next meeting of the Subcommittee on Tuesday, 14 June 2011 at 8:30 am.

8. There being no other business, the meeting ended at 10:18 am.

Council Business Division 1
Legislative Council Secretariat
4 October 2011

**Subcommittee on
Professional Accountants (Amendment) Bylaw 2011**

**Proceedings of the first meeting
Wednesday, 1 June 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001 – 000437	Dr Philip WONG Mr Paul CHAN Ms Emily LAU Mr James TO	<u>Election of Chairman</u>	
000438 – 000623	Administration	<p>The Administration's briefing that --</p> <p>(a) the Professional Accountants (Amendment) Bylaw 2011 ("the 2011 Amendment Bylaw") aimed to amend bylaw 8 of the Professional Accountants Bylaws to enable members of the Hong Kong Institute of Certified Public Accountants Council ("HKICPA Council") to vote by ballot through electronic means;</p> <p>(b) the 2010 Amendment Bylaw (which came into effect in July 2010) had enabled HKICPA Council members to participate in Council meetings and to vote through electronic means but it had made no provision for members to vote in "secret" ballot through electronic means; and</p> <p>(c) HKICPA had provided a written response to address concerns raised by LegCo Members at the House</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Committee meeting on 20 May 2011, including means to ensure the fairness and security of HKICPA's voting process, as well as alleged undue influence on members during the general election of HKICPA Council held in December 2010</p>	
000624 – 001044	The Hong Kong Institute of Certified Public Accountants	<p>HKICPA's briefing as follows --</p> <p>(a) The existing bylaws did not cater for HKICPA Council members to vote by ballot through electronic means in the annual election of the President and Vice-Presidents. The 2011 Amendment Bylaw would make provisions for voting by ballot.</p> <p>(b) HKICPA had procured the Webex, which was a global secure network (MediaTone) system for online communication with HKICPA Council members who were outside Hong Kong for meeting and voting purposes. The system would allow remote participation of HKICPA Council members in meetings and provide them with greater flexibility as they often travelled outside Hong Kong due to business and other commitments.</p> <p>(c) The system could put everyone on the same page even if some were elsewhere, and everyone could be heard and seen by others through live audio conferencing and webcam video streaming. Security</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>options, such as meeting password protection, were available to control and monitor the attendance of members and to ensure security of data.</p>	
001045 – 002456	Ms Emily LAU the Hong Kong Institute of Certified Public Accountants Mr Paul CHAN Chairman	<p>Ms Emily LAU's enquiry on how the Webex could ensure security in HKICPA Council elections which involved over 30 000 members, and how the system would ensure that the participation of members in meetings would be free from undue influence of a third party</p> <p>HKICPA's clarification that --</p> <p>(a) the 2011 Amendment Bylaw concerned voting in a meeting of HKICPA Council and was not related to the general elections of HKICPA Council which involved some 32 000 members of the Institute. Since 2004, HKICPA members were able to elect HKICPA Council members through paper ballot or on-line voting system;</p> <p>(b) the Webex online system providing web conferencing, videoconferencing and polling features could place HKICPA Council members who participated in a meeting in person and through electronic means on the same computer screen so that they could see and hear others, and be seen and heard by others;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) election of the President and Vice Presidents among HKICPA Council members was all along done through secret ballot. The Webex system would ensure all Council members had cast their votes in ballot;</p> <p>(d) given that the system provided specific passwords, web camera and microphone for HKICPA Council member attending through electronic means, the risk of these members being forced to act against their will would be low;</p> <p>(e) as an established practice, HKICPA Council members attending meetings through electronic means would be asked whether they were alone and safe. It was necessary to strike a balance between "security" and "trust" towards Council members; and</p> <p>(f) at present, there were no arrangements for candidates standing for the President and Vice President elections to interact with each other through debates and question and answer sessions</p> <p>Mr Paul CHAN supplemented that --</p> <p>(a) the annual elections of the President and Vice Presidents were held in strict confidence through a secret ballot;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) the Webex system would be used at meetings of HKICPA Council and would facilitate the annual elections of the President and Vice Presidents as it would enable all members to vote in the elections through electronic means even if they were outside Hong Kong; and</p> <p>(c) at present all HKICPA Council members were required to sign an undertaking agreeing to maintain confidentiality of all proceedings of Council meetings, failing which the member concerned would be subject to disciplinary actions of HKICPA</p> <p>The Chairman's concern that the Webex system could not prevent HKICPA Council member participating in meetings/elections through electronic means from acting under threat of other parties</p>	
<p>002457 – 003918</p>	<p>Dr Philip WONG The Hong Kong Institute of Certified Public Accountants</p>	<p>Dr Philip WONG's views that being trustworthy and professional persons, HKICPA Council members should have high integrity and the chance of them breaching the confidential undertaking was low; and his enquiry about the procedures for the elections of the President and Vice Presidents of HKICPA</p> <p>HKICPA's response as follows --</p> <p>(a) nominations for the President and Vice Presidents of HKICPA Council would be invited from the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>elected members of the Council. Only members who had served on the Council for at least three years and with the support of two members were eligible for nomination;</p> <p>(b) the elections of the President and Vice Presidents would be held in the presence of an external legal adviser to ensure that the established procedures were followed;</p> <p>(c) each candidate would be given five minutes for delivery of their platform, to be followed by a question-and-answer session; but there was no arrangement for interactive debates among candidates;</p> <p>(d) all members, including those physically present at the meeting and attended through electronic means, would then cast their votes through a preset computer programme. The external legal adviser and HKICPA's Chief Executive (as the Register of HKICPA and the Secretary to HKICPA Council) would operate the system, check and announce the voting result; and</p> <p>(e) only the names of the elected President and Vice Presidents would be announced but the numbers of votes received by each candidate would not be disclosed</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Dr Philip WONG's view that there should be interactive debates and question and answer sessions among candidates standing for the elections of the President and Vice Presidents</p>	
<p>003919 – 004413</p>	<p>Ms Audrey EU the Hong Kong Institute of Certified Public Accountants</p>	<p>Ms Audrey EU's enquiries about --</p> <p>(a) the allegation about undue influence by an accounting firm on its staff in the general election for HKICPA Council members in December 2010; and</p> <p>(b) features of the Webex system, including whether it could allow individual members to cast a blank vote or abstain from voting, to rectify casted votes and to trace the voting results after election</p> <p>HKICPA's response that --</p> <p>(a) the Governance Review Task Force of HKICPA had looked into the allegation and concluded that there was no evidence suggesting there was any undue influence exerted by the said employer;</p> <p>(b) the Webex system would require each member to check and confirm his decision prior to pressing a button for casting a vote;</p> <p>(c) if necessary, it was possible to trace the voting records of individual members. The Webex system provided various voting options for</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>members including blank votes and abstain from voting; and</p> <p>(d) e-voting was a global trend. The European Commission passed a directive in 2007 requiring member countries to allow e-participation at meetings and e-voting. E-voting had been incorporated into the United Kingdom Companies Act 2006</p>	
004414 – 005731	Ms Emily LAU the Hong Kong Institute of Certified Public Accountants Chairman Administration	<p>Ms Emily LAU's views that --</p> <p>(a) HKICPA should provide information on the attendance of HKICPA Council members at meetings in the past two years to enable the Subcommittee to better understand the situation of members' participation;</p> <p>(b) HKICPA should consider the suggestion to allow more interactive participation by the various candidates standing for the elections of the President and Vice Presidents, including debates and question and answer sessions amongst candidates;</p> <p>(c) in order to address public concerns, HKICPA should seriously look into complaints about undue influence on HKICPA members in the general elections of HKICPA Council members; and</p> <p>(d) it would be desirable for HKICPA to set a limit on the number of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Council members allowed to attend the Council meeting through electronic means</p> <p>HKICPA's response that --</p> <p>(a) HKICPA Council would consider Ms LAU's views/suggestions;</p> <p>(b) it would not be appropriate for HKICPA Council to prohibit emails from different accounting firms or individuals canvassing for their preferred candidates in the general elections of HKICPA Council; and</p> <p>(c) in order not to adversely affect the harmonious work relationships among Council members, the numbers of votes received by individual candidates in the elections of the President and Vice Presidents would be kept confidential</p> <p>The Chairman's views that while canvassing for candidates during election should be allowed, it would be inappropriate for senior members of an accounting firm to exert undue influence over their professional juniors in the elections; and his concern that some large accounting firms might manipulate the voting results by collecting proxies or even the log-in passwords of their accountant employees and vote on their behalf</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>HKICPA's response that --</p> <ul style="list-style-type: none"> (a) HKICPA did not allow proxy votes in general elections. To ensure fairness and confidentiality in voting, members of HKICPA would each be assigned a unique password and member number; (b) under the existing legislation, the quorum for a HKICPA Council meeting was 11 members and there was no restriction on the number of members attending a meeting through electronic means; (c) at present, only 20 members of HKICPA Council would participate in the elections of the President and Vice Presidents since the rest were appointed or co-opted members; (d) experiences showed that, at most, three to four members were out of Hong Kong and had to attend the pre-election meeting of the President and Vice Presidents through electronic means; and (e) HKICPA Council would take into consideration views/suggestions made by members of the Subcommittee 	
005732 – 010702	Chairman the Hong Kong Institute of Certified Public Accountants	The Chairman's concern that without setting any criteria for attending meetings through electronic means, e.g. prescribing the circumstances under which members could attend meetings through electronic means, or setting a	

Time marker	Speaker	Subject(s)	Action required
		<p>limit on the number of members that could attend a meeting through such means, increasing number of members might refrain from attending meeting physically. Since it would be difficult for HKICPA to control the environment of those members attending meetings at remote locations, these members might be subject to external threat or undue influence when casting their votes. As a result, the public might raise concerns over the integrity of HKICPA and fairness of the election</p> <p>The Chairman's view that HKICPA should disclose information on the number of votes received by each candidate in the elections of the President and the Vice Presidents</p> <p>HKICPA's explanation that the existing election arrangements for the President and Vice Presidents had been in place for years and proven effective. HKICPA would investigate any complaint that might affect its integrity and creditability. HKICPA would reflect the Subcommittee's views/suggestions for consideration by its Governance Review Task Force</p>	
010703 – 010817	Dr Philip WONG the Hong Kong Institute of Certified Public Accountants	<p>Dr Philip WONG's enquiry about audit trail for the votes and results of the elections of President and Vice Presidents of HKICPA Council</p> <p>HKICPA's response that the relevant ballot papers and records of the elections would be kept by HKICPA's lawyers for two months to facilitate</p>	

Time marker	Speaker	Subject(s)	Action required
		checking by members if necessary. So far, no voting results had been challenged.	
010818 – 011402	Ms Audrey EU the Hong Kong Institute of Certified Public Accountants	<p>Ms Audrey EU's views that --</p> <ul style="list-style-type: none"> (a) HKICPA Council, being the governing body of the accountancy profession, had autonomy in affairs relating to its operation and internal matters; (b) HKICPA should disclose the number of votes received by individual candidates in the elections of the President and Vice Presidents as candidates and voters had the right to be informed on the matter; (c) there was nothing wrong with senior members of HKICPA soliciting support for particular candidates during the general elections as long as no malpractices or element of threat were involved; (d) enabling electronic participation in meetings of HKICPA Council might discourage physical presence at meetings; and (e) whether members had to be out of Hong Kong to use electronic means to attend and vote at HKICPA meetings. <p>HKICPA's response that --</p> <ul style="list-style-type: none"> (a) e-voting was a global trend and 	

Time marker	Speaker	Subject(s)	Action required
		<p>enabling e-participation at meetings had provided greater flexibility to HKICPA Council members;</p> <p>(b) HKICPA had allowed participation in meetings by electronic means since 2004; and</p> <p>(c) meetings of HKICPA Council usually had a high physical attendance rate, and the number attending through electronic means was only three to four members at a time</p>	
011403 – 012132	Chairman The Hong Kong Institute of Certified Public Accountants Administration	<p>The Chairman's enquiry about whether the 2011 Amendment Bylaw was meant to cover voting by electronic means at HKICPA Council meetings</p> <p>HKICPA's clarification that --</p> <p>(a) the existing Bylaws had already made provisions for members to attend meetings and cast vote via electronic means;</p> <p>(b) the 2011 Amendment Bylaw sought to bring in supplementary provisions to cover the voting by ballot; and</p> <p>(c) while "vote by ballot" was at present confined to elections of the President and Vice Presidents, it might be extended to other matters for the decision of HKICPA Council in future where necessary</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that --</p> <p>(a) the Amendment Bylaw 2010 had already provided for participation at meetings of HKICPA Council and voting by members of HKICPA Council through electronic means. However, bylaw 8 did not specifically provide for voting electronically by ballot; and</p> <p>(b) under the Amendment Bylaw 2011, it was specifically provided that voting could be conducted electronically by ballot. The focus of the amendment was primarily on the President and Vice President elections as the existing bylaw 12(4) provided that these elections had to be determined by ballot</p>	
012133 – 013402	Mr Paul CHAN	<p>Mr Paul CHAN's comments that --</p> <p>(a) the proposed changes to the Professional Accountants Bylaws were in line with global trends in the accounting and related fields and had routed through the Financial Services and Treasury Bureau;</p> <p>(b) only elected members of HKICPA Council were eligible to stand for the elections of the President and Vice Presidents. Given the specific requirements on candidates on the length of service with HKICPA Council, manipulation or undue influence on members in the elections would be difficult;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) there were built-in checks and balances in HKICPA Council. Besides the elected members, the Council also included <i>ex-officio</i> members from the Administration and Government-appointed lay members;</p> <p>(d) meetings of HKICPA Council usually had a high physical attendance rate;</p> <p>(e) given the keen competition in the President and Vice President elections and in order to promote cooperation among members, it was an established practice not to disclose the number of votes received by individual candidates in the elections;</p> <p>(f) HKICPA Council had established the Governance Review Task Force to conduct regular reviews on the governance matters. The Task Force would make recommendations on changes for consideration of the Council</p> <p>HKICPA's supplement that --</p> <p>(a) the Governance Review Task Force, which acted in a highly independent manner under the leadership of a lay member appointed into HKICPA Council by the Government, had conducted a number of reviews on the arrangements for the election of the President and Vice Presidents;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) there was investigation and disciplinary mechanism within HKICPA for looking into any allegation of misconduct including allegation of coercion; and</p> <p>(c) the Task Force would consider the views and suggestions made by the Subcommittee, including interactive participation of candidates in the elections of the President and Vice Presidents, disclosure of the number votes received by each candidate in the elections, and the proposal to set limits for attendance through electronic means at meetings of HKICPA Council</p>	
<p>013403 – 014353</p>	<p>Ms Emily LAU the Hong Kong Institute of Certified Public Accountants Chairman</p>	<p>Ms Emily LAU's request for HKICPA --</p> <p>(a) to provide information on the attendance of members of HKICPA Council in the past with a breakdown on those attending physically and through electronic means;</p> <p>(b) HKICPA should consider stipulating the circumstances under which members could be allowed to attend meetings through electronic means;</p> <p>(c) to set a limit on the number of members who could participate through electronic means at a meeting of HKICPA Council;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(d) HKICPA should in no way allow senior members to exercise undue influence over junior members in the elections of members to HKICPA Council; and</p> <p>(e) the requirement for the consent by a majority of members to agree on voting by ballot should be relaxed. Vote by ballot should be allowed even when the relevant request was made by only one member</p>	
014354 – 014559	Ms Emily LAU Chairman	<p>The Chairman's view that frequent use of vote by ballot could jeopardize corporate transparency</p> <p>The Chairman's request for --</p> <p>(a) HKICPA to provide information on matters for the decision of HKICPA Council that would allow voting by "ballot" or by "a show of hands"; and</p> <p>(b) the Administration to research on the rules and practices of local self-regulatory professional bodies in conducting meetings and voting for the Subcommittee's reference</p>	<p>HKICPA</p> <p>Administration</p>
014600 – 014754	Chairman	Date of next meeting	