

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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

**Minutes of the second meeting held on
Tuesday, 14 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 I**

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 I

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

Action

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

(LC Paper No. CB(1)2450/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 1 June 2011

LC Paper No. CB(1)2450/10-11(02) -- Hong Kong Institute of Certified Public Accountants' response to issues raised by members at the meeting on 1 June 2011

LC Paper No. CB(1)2450/10-11(03) -- Administration's response to issues raised by members at the meeting on 1 June 2011

LC Paper No. CB(1)2338/10-11(02) -- Paper provided by the Hong Kong Institute of Certified Public Accountants)

The Subcommittee deliberated (index of proceedings at **Appendix**). The Administration and the Hong Kong Institute of Certified Public Accountants ("HKICPA") agreed to take the below follow-up actions --

- (a) In the light of the views of the Subcommittee, the Administration undertook to follow up with HKICPA in making a technical amendment to proposed bylaw 8(5) to the effect that when a member attended HKICPA Council meeting through electronic means, his voting on any question which required a show of hand could be done by casting a vote orally or by other means. The Administration was requested to provide the draft amendment for circulation to the Subcommittee.
- (b) HKICPA would reflect to the Governance Review Task Force the Subcommittee's suggestions on the election of the President and Vice Presidents of HKICPA Council: (i) to allow interactive participation by candidates standing for the election, including debate among candidates or question and answer sessions; and (ii) to allow disclosure of the number of votes received by each candidate in the election.
- (c) Given the importance of the election of the President and Vice Presidents of HKICPA Council and in order to uphold the integrity of the election and foster public confidence in the governance of HKICPA, HKICPA should consider setting a limit on the number of HKICPA Council members who could participate and vote in meetings through electronic means.
- (d) HKICPA Council should explore ways and measures to further enhance transparency in its operation, including increasing the disclosure of deliberations on decisions made by the Council, and reviewing the requirement for the majority members of the Council to agree on: (i) the demand for making a division on the votes, and (ii) voting by ballot.

- (e) HKICPA was requested to follow up on the above matters, and where appropriate, inform the Panel on Financial Affairs the progress in about a year's time.

II Any other business

- 2. There being no other business, the meeting ended at 10:02 am.

Council Business Division 1
Legislative Council Secretariat
4 October 2011

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

**Proceedings of the second meeting
on Tuesday, 14 June 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000001 – 000553	Chairman	Opening remarks	
000554 – 001259	the Hong Kong Institute of Certified Public Accountants	<p>Presentation by HKICPA as follows --</p> <p>(a) The 2011 Amendment Bylaw only concerned arrangements for HKICPA's Council meetings. Specifically, the amendment would enable HKICPA Council members, who could not attend meetings in person, to vote by secret ballot through a secured on-line voting system.</p> <p>(b) The existing Bylaw 12(4) specified that the elections of the President and Vice Presidents ("the P&VP elections") should be determined by ballot. No provisions in the Professional Accountants Ordinance and By-laws prescribed voting by ballot on other matters.</p> <p>(c) HKICPA Council members' attendance for meetings from January 2009 to May 2011 was provided at Annex to HKICPA's paper.</p>	

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		<p>(d) The Subcommittee's suggestions, including interactive participation by candidates in the form of debates and question and answer sessions in the P&VP elections and disclosure of the number of votes received by candidates in the elections would be reflected to HKICPA's Governance Review Task Force for consideration.</p> <p>(e) HKICPA Council members attending meetings through electronic means were required to sign an undertaking to the effect that they would attend the meeting in a private and secured environment free from disturbance and interference of any other persons, and maintain confidentiality of the proceedings throughout the meeting. Before conducting the ballot for voting, the convenor would reaffirm this point with the Council members concerned.</p> <p>(f) Given that electronic mode of presence had equal status as physical presence under Bylaw 8(3), the Subcommittee's suggestion to stipulate requirements for HKICPA Council members in using electronic means to participate in a meeting and to vote might contravene the principle of fairness.</p> <p>(g) It was a global trend in the commercial world to allow</p>	

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		<p>participation in meetings through electronic means. Having regard to the attendance patterns of past meetings of HKICPA Council, it was believed that enabling members to participate and cast vote remotely at meetings would not encourage absenteeism and increase the risk of vote manipulation.</p> <p>(h) Given that the limited scope of the 2011 Amendment Bylaw and the subject matter related entirely to HKICPA's internal process and had gone through HKICPA Council and HKICPA's Annual General Meeting, unless there was a fatal flaw in the Amendment Bylaw, HKICPA had reservation about introducing further amendments.</p> <p>(i) As regards the suggestion to relax the requirement for the majority members of HKICPA Council to agree on voting by ballot, HKICPA Council was of the view that secret ballot should not be encouraged and hence should only be adopted with the majority of HKICPA Council members' approval.</p>	
001300 – 001843	Ms Emily LAU the Hong Kong Institute of Certified Public Accountants Chairman	Ms Emily LAU's enquiry about the undertaking signed by HKICPA Council members	

Time marker	Speaker	Subject(s)	Action required
		<p>HKICPA's responses as follows --</p> <p>(a) HKICPA Council members and members of certain HKICPA committees were required to sign the undertaking each year that they would attend meetings in a private and secured environment and maintain confidentiality of the meeting proceedings. HKICPA would update the undertaking to cover attending meetings and voting through electronic means.</p> <p>(b) Before conducting the ballot voting, the convenor would reaffirm with HKICPA Council members to ensure that the prescribed conditions in terms of confidentiality were met.</p> <p>(c) HKICPA would initiate disciplinary proceedings against its members who had failed to comply with the undertaking as a breach of professional ethics.</p> <p>(d) Except for the P&VP elections, voting by members at HKICPA Council meetings were conducted by "a show of hands".</p>	
001844 – 003055	Chairman Mr Paul CHAN the Hong Kong Institute of Certified Public Accountants	<p>The Chairman's view that HKICPA Council should increase its transparency by disclosing members' votes on matters deliberated by the Council</p> <p>Mr Paul CHAN's sharing of his experience as a former member of</p>	

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		<p>HKICPA Council as follows --</p> <p>(a) Meetings of HKICPA Council were held closed-door. Matters were usually decided upon through discussion without resorting to voting. If voting was required, it was conducted through a show of hands, and dissenting members could request to record their views in the minutes of meeting.</p> <p>(b) In order to maintain the integrity of decisions made and promote cooperation among members, where matters were decided by voting, only the number of votes for, against or abstained were recorded without mentioning individual voting positions of members.</p> <p>(c) P&VP elections and the election of the co-opted members of HKICPA Council were conducted by voting in secret ballot. In order to avoid embarrassment and foster cooperation among members, the number of votes received by each candidate in these elections was not disclosed.</p> <p>HKICPA's responses as follows --</p> <p>(a) At present, if voting was conducted at HKICPA Council meetings, the relevant minutes of meeting would record the number of votes cast in support, against, or abstained, without recording the</p>	

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		<p>voting position of individual members.</p> <p>(b) Voting was carried out in accordance with Bylaw 8(1) which states that "<i>a question arising at a meeting of Council shall be decided by a majority vote of members present and voting</i>". Therefore, if a member requested to record the individual voting position of members, this could proceed with the agreement by a majority of the members. The arrangement had worked well and no dispute had arisen.</p> <p>(c) Individual members of HKICPA Council could request to put on record his objection/views on the matters.</p> <p>Ms Emily LAU's views that --</p> <p>(a) HKICPA should increase its transparency in operation in line with the rising expectation of the community;</p> <p>(b) the requirement for the majority of HKICPA Council members to agree on voting by secret ballot or to record individual voting positions of members should be relaxed; and</p> <p>(c) HKICPA's Governance Review Task Force should consider the above views</p>	

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		HKICPA's response that the Governance Review Task Force would consider the views to indentify areas for improvement in future	
003056 – 003746	Mr Paul CHAN The Hong Kong Institute of Certified Public Accountants Chairman	<p>Mr Paul CHAN's views that --</p> <p>(a) the Governance Review Task Force should consider the Subcommittee's suggestions on the conduct of voting at meetings of HKICPA Council, and amend its Standing Orders where necessary; and</p> <p>(b) HKICPA should strive to enhance its transparency and public accountability in line with the direction adopted by other self-regulatory professional bodies</p> <p>HKICPA's response to views expressed by Mr Paul CHAN and the Chairman that --</p> <p>(a) the Governance Review Task Force was considering the views and suggestions from members of the Subcommittee;</p> <p>(b) there was a mechanism under the Professional Accountants Ordinance (Cap. 50) on disciplinary proceedings for HKICPA members in relation to professional misconduct, under which a five-person Disciplinary Committee ("DC") comprising three non-accountant members would be appointed to look into a</p>	

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		<p>case; and</p> <p>(c) HKICPA Council members found to have conflict of interest with a case would be prohibited from voting on whether a DC should be set up for a particular case, and the DC operated independently of HKICPA Council.</p>	
003747 – 010153	<p>Ms Emily LAU Hong Kong Institute of Certified Public Accountants Mr Paul CHAN Chairman</p>	<p>Ms LAU's view that participation at meetings and voting through electronic means was not a common practice in Hong Kong's commercial sector</p> <p>HKICPA's response that it was modern commercial practice internationally to enable participation in meetings through electronic means and allow e-voting at meetings</p> <p>The Chairman's views that --</p> <p>(a) HKICPA was a self-regulating professional organization. As HKICPA had autonomy in its affairs, it should enhance its transparency to foster public confidence in its work and governance; and</p> <p>(b) HKICPA should strive to improve its transparency and public accountability and report the progress of its efforts in this regard to the Panel on Financial Affairs</p>	<p>HKICPA</p>
010154 – 011625	<p>Administration Ms Emily LAU The Chairman</p>	<p>Report by the Administration that it had researched into the relevant rules and practice of some local</p>	

Time marker	Speaker	Subject(s)	Action required
	HKICPA	<p>self-regulatory professional bodies and found that none of them currently provided for their members to participate at meetings or vote on matters through electronic means</p> <p>Ms Emily LAU's views that while HKICPA was ahead of other professional bodies in enabling members to participate in HKICPA Council meetings and to vote through electronic means, it was necessary for HKICPA as a forerunner to move in a prudent manner and to consider views of the Subcommittee, including increasing HKICPA's transparency, public accountability and creditability</p> <p>The Chairman's remarks that --</p> <p>(a) it was necessary for HKICPA to ensure that its operation would foster public confidence in its work and governance; and</p> <p>(b) while he would not vote against the Amendment Bylaw, he would express his reservation towards the proposal in other ways</p> <p>HKICPA's response that its Governance Review Task Force would consider the Subcommittee's views and, where appropriate inform the relevant LegCo Panel of the Task Force's decision in about a year's time</p>	HKICPA

<p>011626 – 013200</p>	<p>Chairman Hong Kong Institute of Certified Public Accountants Assistant Legal Adviser 10 Administration</p>	<p><u>Clause-by-clause examination of the 2011 Amendment Bylaw</u></p> <p>The Administration's briefing on the provisions in the 2011 Amendment Bylaw</p> <p>The Chairman's view that the drafting of newly added bylaw 8(5) should be reviewed as the present formulation could be interpreted as requiring all HKICPA Council members who participated in meeting by electronic means to cast their votes orally for voting on any question by a show of hands, and this could mean that such members were not allowed to vote by visually showing their hands on screen on the Webex system</p> <p>HKICPA's view that it had no objection to introduce a technical amendment to the newly added bylaw 8(5) as such amendment would not change the intent of the Amendment Bylaw and would not require approval of HKICPA members</p> <p>The Administration's explanation on the formulation of the newly added bylaw 8(5) and agreement to follow up with HKICPA to make a technical amendment to bylaw 8(5) in the light of the Chairman's comment</p> <p>Assistant Legal Adviser 10's view that she had no objection to the proposal</p> <p>Members' request that the Administration should provide the draft amendment for circulation to the</p>	<p>Administration</p>
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		<p>Subcommittee and agreement that the Administration would move a motion to amend bylaw 8(5) at the Legislative Council meeting of 6 July 2011</p> <p>The Chairman's remark that he would report the Subcommittee's deliberations to the House Committee at the latter's meeting on 24 June 2011</p>	
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Council Business Division 1
Legislative Council Secretariat
4 October 2011