

**For discussion
on 4 July 2011**

**The Legislative Council
Panel on Financial Affairs**

**The Hong Kong Institute of Certified Public Accountants’
Proposed Member’s Bill to amend
the Professional Accountants Ordinance (Cap. 50)**

INTRODUCTION

This paper outlines the Hong Kong Institute of Certified Public Accountants (“the Institute”)’s proposals to amend the Professional Accountants Ordinance (Cap. 50) (PAO), which will be implemented in a Member’s Bill to be introduced by the Hon. Paul Chan into the Legislative Council (“the proposed Bill”).

PROPOSAL

2. The Institute, with approval by its Council, proposes to amend the PAO –
 - (i) to enable a certified public accountant (practising)¹ to incorporate a company with only one director and shareholder, and register the company as a corporate practice, which is qualified to perform audits; and
 - (ii) to prohibit any company, not being a corporate practice registered with the Institute, to use the description “certified public accountant”, the initials “CPA” or the characters “會計師” in its name intended to cause, or which may reasonably cause, any person to believe that it is a practice unit.

¹ A certified public accountant is a person registered by the Institute as a certified public accountant by virtue of section 22 of the PAO. A certified public accountant (practising) means a certified public accountant holding a practicing certificate issued by the Institute under section 30 of the PAO. Only a certified public accountant (practising) is eligible to perform audits.

JUSTIFICATIONS

Single member corporate practices

3. Under section 28D of the PAO, accountancy practices are permitted to incorporate with limited liability, thus enabling certified public accountants (practising) to perform audits as directors and members (i.e. shareholders) of a corporate practice registered with the Institute, i.e. a limited company approved by the Institute to provide audit services to the public. All directors and shareholders of corporate practices must be certified public accountants, a proportion of which must be certified public accountants (practising).

4. Under sections 4(1) and 153 of the pre-2003 Companies Ordinance (Cap. 32), at least two directors and shareholders are required for the registration of a limited company and as a corporate practice is a limited company, it has to meet this requirement too. To enable sole practitioner firms to opt for incorporation and at the same time satisfy the pre-2003 Companies Ordinance requirements, the PAO allows the Institute's Council to permit a person who is not a certified public accountant or a certified public accountant (practising) to become a director and nominee shareholder of a corporate practice with two directors/shareholders if the other director/shareholder is a certified public accountant (practising) (thereafter referred to as "sole practising member corporate practice"). The PAO also contains provisions limiting the power and control which may be exercised by the non-certified public accountant appointee.

5. The Companies Ordinance was amended in 2003 to enable a single director and shareholder to incorporate a company. Accordingly, the requirement for a sole practising member corporate practice to appoint a non-certified public accountant as director/shareholder (such that the company will have at least two directors/shareholders) under the PAO has become obsolete and unnecessary. Therefore, the Institute **proposes** to amend the PAO to enable a sole certified public accountant (practising) to register a corporate practice with one director/shareholder in line with the Companies Ordinance.

6. As of 31 May 2011, among the 356 corporate practices registered with the Institute, 120 are sole practising member corporate practices (with a non-certified public accountant being appointed as director/shareholder). The Institute maintains the principle that all directors/shareholders of a corporate practice must be certified

public accountants and hence, there is no reason to allow existing sole practising member corporate practices to continue to appoint a non-certified public accountant as director/shareholder, given such appointment was required purely to comply with the requirements of the pre-2003 Companies Ordinance. Therefore, the Institute **proposes** to require all existing sole practising member corporate practices (with a non-certified public accountant being appointed as director/shareholder) to convert to either sole practising member corporate practices with only one practising member director/shareholder or multi practising member corporate practices with at least two practising member directors/shareholders. A transitional arrangement will be put in place to facilitate the existing sole practising member corporate practices in making the conversion.

Prohibition of the use of the description “certified public accountant”, the initials “CPA” or the characters “會計師” in the name of a company intended to cause, or which may reasonably cause, any person to believe that it is a practice unit

7. In recent years, it has come to the Institute’s attention that there are companies being registered with the Companies Registry not being CPA corporate practices registered with the Institute under the PAO, which use the description “certified public accountant”, the initials “CPA” or the characters “會計師” in their names, and by so doing misled the public into believing that the companies are practice units under the PAO qualified to provide auditing services (i.e. a CPA (practising) who practices on his own account, a firm of CPAs (practicing), or a corporate practice).

8. Under section 42(1)(ha) of the PAO, it is a criminal offence for a company, not being a corporate practice, to use the descriptions “certified public accountant (practising)”, “public accountant”, the initials “CPA (practising)”, “PA” or the characters “執業會計師”, “註冊核數師”, “核數師” or “審計師” in its name which are reserved names for professionals qualified to perform audits under the PAO.

9. However, as the current section 42(1)(ha) does not prohibit companies from using the description “certified public accountant”, the initials “CPA” or the characters “會計師” in their names, companies may be able to use such description/initials/characters with the intention of causing any person to believe that they are practice units.

10. For the avoidance of doubt, the Institute **proposes** to amend section 42(1)(ha)

of the PAO by adding a subparagraph prohibiting any company which is not a corporate practice from using “certified public accountant”, “CPA” or “會計師” in its name if the intention is to cause, or which may reasonably cause, any person to believe that it is a practice unit under the PAO.

CONSULTATION

11. Members of the Institute passed a resolution at its Annual General Meeting in December 2005 to propose amending the PAO, when the opportunity arises, to allow a sole certified public accountant (practising) to register a corporate practice.

12. Members of the Institute have been informed of the proposed amendments to prohibit the use of the description “certified public accountant”, the initials “CPA” or the characters “會計師” in the name of a non-corporate practice company upon approval by the Institute's Council in May 2011.

13. In accordance with Rule 51(2) of the LegCo Rules of Procedure, the Institute is in the process of obtaining the Law Draftsman's Certificate. In addition, arrangements will be made in due course to obtain the written consent of the Chief Executive as appropriate under Rule 51(4) of the LegCo Rules of Procedure should the President of LegCo rule that the Bill relates to government policy.

Hong Kong Institute of Certified Public Accountants
June 2011