

立法會
Legislative Council

LC Paper No. LS 59/11-12

Paper for the House Committee Meeting on 11 May 2012

**Legal Service Division Report on
Professional Accountants (Amendment) Bill 2012
(Member's Bill)**

I. SUMMARY

- 1. Objects of the Bill** To permit a sole certified public accountant (practising) to incorporate a corporate practice and to prohibit the use of certain misleading descriptions.
- 2. Comments** This is a Member's Bill introduced with the consent of the Chief Executive. The Member in charge is Hon Paul CHAN.

To facilitate a sole practitioner to set up a corporate practice, the principal ordinance allows the Institute of Certified Public Accountants (the Institute) to permit a person who is not a certified public accountant (practising) to become a director/shareholder if the other director/shareholder is a practitioner. However, the pre-2003 requirement for a minimum of 2 directors/shareholders to set up a company under the Companies Ordinance (Cap. 32) has since been relaxed to allow a single director/shareholder to form a company.

The Bill proposes to update the principal ordinance to allow a sole practitioner to incorporate his practice without the need for a second director/shareholder.

The Bill also proposes to prohibit a body corporate, not being a corporate practice, from using certain misleading descriptions in addition to those now specifically prohibited.
- 3. Public Consultation** The Institute passed a resolution in 2005 to propose the amendment allowing a sole practitioner to register a corporate practice. Members of the Institute were informed of the proposed amendment against the use of certain descriptions by a non-corporate practice upon approval by the Institute's Council in May 2011. No information about any public consultation is available.
- 4. Consultation with LegCo Panel** The Panel on Financial Affairs was consulted on 4 July 2011. A paper was provided by the Institute. Its representatives and the Member in charge helped to answer Members' queries on the need for prohibiting the use of certain misleading descriptions.
- 5. Conclusion** The Bill seeks to update the requirement for forming a corporate practice and to propose some additions to the descriptions that are now prohibited to be used by a non-corporate practice. It is ready for resumption of Second Reading debate, but Members may wish to confirm whether there is a need to set up a Bills Committee.

II. REPORT

Objects of the Bill

To permit a sole certified public accountant (practising) to incorporate a corporate practice and to prohibit the use of certain misleading descriptions.

LegCo Brief Reference

2. No LegCo Brief has been issued by the Member in charge.

Date of First Reading

3. 9 May 2012.

Comments

4. This is a Member's Bill introduced with the consent of the Chief Executive. The Member in charge is Hon Paul CHAN.

5. At present, accounting practices incorporated under the Companies Ordinance (Cap. 32) (CO) may register under that ordinance as a corporate practice with the Hong Kong Institute of Certified Public Accountants (the Institute). As there was a pre-2003 requirement under CO that a company must have at least two directors/shareholders, section 28D of the Professional Accountants Ordinance (Cap. 50) (PAO) allows the Council of the Institute to permit a person who is not a certified public accountant (practising) to become a director/shareholder (but only as nominee shareholder) if the other director/shareholder is a certified public accountant (practising). CO was amended in 2003 to allow a company to be incorporated with a single director/shareholder but no corresponding changes were made to PAO.

6. The Bill now proposes to amend section 28D of PAO by providing that a sole certified public accountant (practising) may incorporate a company with only one shareholder/director as a corporate practice. Consequential amendments are made to the other provisions of sections 28D and 42(5) of PAO and by-law 29(e) of the Professional Accountants By-laws (Cap. 50 sub. leg. A). The Bill also provides for transitional arrangements for the relevant corporate practices to transfer from the current regime to the proposed new regime and for some minor technical and drafting amendments.

7. The Bill also proposes to amend section 42(1)(ha) of PAO to prohibit a body corporate which is not a corporate accounting practice against using the description "certified public accountant", the initials "CPA" or the Chinese characters "會計師" in its name with the intention of causing, or which may reasonably cause, any person to believe that it is a practice unit registered under PAO. The effect is to make any contravention punishable with the same penalty as with any contravention of the existing prohibition against such descriptions as "certified public accountant (practising)", "public accountant" and "CPA (practising)".

8. The Bill as enacted will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury.

Public Consultation

9. The Institute passed a resolution in 2005 to propose the amendment allowing a sole practitioner to register a corporate practice. Members of the Institute were informed of the proposed amendment against the use of certain descriptions by a non-corporate practice upon approval by the Institute's Council in May 2011. No information about any public consultation is available.

Consultation with LegCo Panel

10. The Panel on Financial Affairs Panel was consulted on 4 July 2011. A paper was provided by the Institute. Its representatives and the Member in charge helped to answer Members' queries on the need for prohibiting the use of certain misleading descriptions.

Conclusion

11. The Bill seeks to update the requirement for forming a corporate practice and to propose some additions to the descriptions that are now prohibited to be used by a non-corporate practice. It is ready for resumption of Second Reading debate, but Members may wish to confirm whether there is a need to set up a Bills Committee.

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