

**President's ruling on
the Professional Accountants (Amendment) Bill 2011
intended to be introduced by Hon Paul CHAN**

Background

Hon Paul CHAN submitted to me on 27 September 2011 the Professional Accountants (Amendment) Bill 2011 (“the Bill”), which he intends to introduce into the Legislative Council (“LegCo”).

2. Rule 51(3) of the Rules of Procedure provides that 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. Rule 51(4) provides that in the case of a bill which, in the opinion of the President, relates to Government policies, the written consent of the Chief Executive (“CE”) is required for its introduction.

3. To assist me in considering whether Mr CHAN’s Bill is caught by Rule 51(3) and (4) of the Rules of Procedure, I invited the Administration to comment on the Bill and Mr CHAN to respond to the Administration’s comments.

The Bill

4. According to the paper¹ provided by the Hong Kong Institute of Certified Public Accountants (“the Institute”) to the Panel on Financial Affairs (“FA Panel”), the Bill seeks to amend the Professional Accountants Ordinance (Cap. 50) (“PAO”) to implement the following proposals approved by the Council of the Institute:

- (a) to enable a certified public accountant (practising)² to incorporate a company with only one director and

¹ The paper (LC Paper No. CB(1)2601/10-11(01)) entitled “The Hong Kong Institute of Certified Public Accountants’ Proposed Member’s Bill to amend the Professional Accountants Ordinance (Cap.50)” was issued by the Institute in June 2011 for discussion at the meeting of the FA Panel on 4 July 2011.

² A certified public accountant is a person registered by the Institute as a certified public accountant by virtue of section 22 of PAO. A certified public accountant (practising) means a certified public accountant holding a practising certificate issued by the Institute under section 30 of PAO. Only a certified public accountant (practising) is eligible to perform audits.

shareholder and to register the company as a corporate practice, which is qualified to perform audits; and

- (b) 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 registered under PAO.

The Administration’s comments

5. The Administration submits that the Bill does not relate to public expenditure, political structure or the operation of the Government, but relates to Government policies. The Administration points out that PAO, whose purpose is to establish the Institute and provide for the registration and control of the accountancy profession, reflects the Government’s policies on the regulation of professional accountants by the Institute. Clause 3 of the Bill which seeks to permit a sole certified public accountant (practising) to incorporate a company with only one shareholder and to register the company as a corporate practice follows the amendment to the Companies Ordinance (Cap. 32) (“CO”) in 2003 to abolish the requirement that a company must have at least two shareholders. The Administration argues that as clause 3 of the Bill is in line with the existing Government policy as reflected in the aforesaid amendment to CO in 2003, it relates to Government policy.

6. The Administration further submits that the regulation governing unqualified service-providers who present themselves as qualified corporate practices is set out in section 42 of PAO. Clause 4 of the Bill amends this section to specifically prohibit a body corporate, not being a corporate practice registered under PAO, from using the description “certified public accountant”, the initials “CPA” or the 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 Administration therefore argues that as it is the Government’s policy to support the regulation of unqualified service-providers who present themselves as qualified corporate practice, clause 4 of the Bill relates to Government policy.

Hon Paul CHAN's response

7. Hon Paul CHAN does not have any comments on the views of the Administration and agrees that written consent of CE is required.

My opinion

8. The Bill intended to be introduced by Hon Paul CHAN contains various amendments to PAO. The Administration submits that those amendments set out in clauses 3 and 4 of the Bill relate to Government policies within the meaning of Rule 51(4) of the Rules of Procedure and therefore the Bill may not be introduced without the written consent of CE.

9. I note that PAO was introduced as a Government Bill and enacted in 1972 to regulate the accountancy profession. Since then, it has been amended by the Administration from time to time, including those provisions now sought to be amended by the Bill. There is no doubt in my mind that the whole PAO represents Government policies with regard to the regulation of the accountancy profession. In my previous rulings, I have stated that in order for a bill not to be caught by Rule 51(4) of the Rules of Procedure, the bill must not have substantive effect on Government policies, which include policies reflected in legislation.

10. Counsel to the Legislature explains to me that at present, accounting practices incorporated under CO may register under PAO as a corporate practice with the Institute. As it was required under the pre-2003 CO that a company must have at least two directors and shareholders, in order to enable sole practitioner firms to opt for incorporation in compliance with such a requirement, PAO allows the Council of the Institute to permit a person who is not a certified public accountant (practising) to become a director and nominee shareholder if the other director/shareholder is a certified public accountant (practising). CO was amended in 2003 to allow a single shareholder to incorporate a company but no corresponding changes were made to PAO. Clause 3 of the Bill now proposes to amend PAO to provide that a sole certified public accountant (practising) may incorporate a company with only one shareholder and to register the company as a corporate practice. This proposed amendment not only relates to the Government policies on the regulation of the accountancy profession as reflected in PAO but also in my view, clearly affects a significant aspect of the requirements for registration of an accounting practice as a corporate practice set out in its

section 28D(2)(c) by altering the number of shareholders required for registration as a corporate practice.

11. Clause 4 of the Bill seeks to amend section 42(1)(ha) of PAO to prohibit a body corporate which is not a corporate practice from using the description “certified public accountant”, the initials “CPA” or the 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, with the effect of making any contravention punishable with the same penalty as with contravention of the existing prohibitions against such descriptions as “certified public accountant (practising)”, “public accountant” and “CPA (practising)”. These additional prohibitions also not only relate to Government policy as reflected in the offences and penalties provisions in PAO but also clearly have a substantive effect on what the Administration has described in its submission as “Government’s policy to support the regulation of unqualified service-providers who present themselves as qualified corporate practice” in that clause 4 has the effect of enhancing that policy in a material aspect by increasing the prohibitions against misleading descriptions.

12. Counsel to the Legislature also explains to me that the Bill contains other technical and drafting amendments to PAO. However, in view of my opinion expressed in paragraphs 10 and 11 above, I do not think it is necessary for me to deal with those amendments.

My ruling

13. I rule that the Bill intended to be introduced by Hon Paul CHAN relates to Government policies within the meaning of Rule 51(4) of the Rules of Procedure. The Bill may not be introduced without the written consent of CE.

(Jasper TSANG Yok-sing)
President
Legislative Council

2 November 2011