

Office of the Hon Kenneth Leung

**Background Brief on the
Professional Accountants (Amendment) Bill 2016**

INTRODUCTION

1. This paper sets out the background of the Hon Kenneth Leung’s proposal to amend the Professional Accountants Ordinance (Cap. 50) (“PAO”), which will be introduced as a Member’s Bill into the Legislative Council, namely the “Professional Accountants (Amendment) Bill 2016” (“the proposed Bill”).

PROPOSAL

2. The proposed Bill amends the PAO –
 - (i) to prohibit any company, not being a corporate practice registered with the Hong Kong Institute of Certified Public Accountants (the “Institute”) under the PAO to use in conjunction with its name with any written words, abbreviation of words, description, initials, or characters intended to cause, or which may reasonably cause any person to believe that it is a practice unit;
 - (ii) to prohibit any individual not being a certified public accountant holding a practicing certificate or not being a practice unit the firm name of which is registered with the Institute under section 28A of the PAO to use in conjunction with his name any written words, abbreviation of words, description, initials, or characters intended to cause, or which may reasonably cause, any person to believe that the person using the same is a certified public accountant holding a practising certificate or being a practice unit the firm name of which is registered with the Institute under the PAO; and
 - (iii) to increase the penalty level of offence to reinforce the deterrent effect against offences under Section 42(1) of the PAO.

JUSTIFICATION

3. The Hon Kenneth Leung introduced the Professional Accountants (Amendment) Bill 2013 to prohibit any company which is not a corporate practice from using the terms “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. The Bill passed on 30 October 2013 and came into force on 14 January 2014.
4. Under section 42(1)(ha) of the PAO, it is an offence for a company not being a corporate practice, to use the descriptions “certified public accountant (practising)” or “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 in connection with its business. Furthermore, it is an offence for a company not being a corporate practice, to use the descriptions “certified public accountant”, the initials “CPA” or the characters “會計師” with the intention of causing, or in a way which may reasonably cause a person to believe that it is a practice unit.
5. The current section 42(1)(ha) does not prohibit a company which is not a corporate practice, from using any written words, abbreviation of words, description, initials, or characters which may reasonably cause a person to believe that it is a practice unit, as long as its name does not use in conjunction with the descriptions, initials or characters stated in section 42(1)(ha) of the PAO.
6. Company searches have revealed that there are companies registered with the Companies Registry which are currently using terms such as “Professional Accounting and Secretary”, “Professional Accounting and Secretarial Services”, “Professional Accounting and Taxation”, and “Accounting and Professional Services” which may cause confusion and lead the public to believe that such companies are practice unit qualified to provide professional auditing service under the PAO.
7. In a reply to a written question raised by the Hon Kenneth Leung on 16 December 2015, the Secretary for Financial Services and the Treasury stated the Police were concerned about crimes arising from money lending activities, in particular, those with the involvement of financial intermediaries. Between August to October 2015, the Police received 235 reported case from the public concerning alleged illegal activities by financial intermediaries. Out of these cases, 61 cases had classified as criminal cases.

8. The Secretary for Financial Services and the Treasury has observed that there were cases under which financial intermediaries operating under the name of an “accounting firm”, a “law firm” or a “consultancy firm” claimed to be able to provide professional services including debt restructuring, stress test analyses, accounting advice, improvement in credit records for individuals.
9. It is in the public interest to enable the general public to identify easily whether a person or a company is a practice unit which is qualified to provide professional auditing service under the PAO. It is also important to prohibit unqualified company and individual to provide accounting and auditing services, as this practice may damage the reputation and integrity of the accountancy profession in Hong Kong.
10. According to information provided by the Institute, between 2010 and 2015, the police successfully prosecuted 16 cases of unlicensed practices, the majority of which involved an unlicensed practice holding itself out as a professional accountant to provide audit services in its website or other promotional materials, with the penalty ranging from \$2,000 to \$15,000.
11. The current pecuniary penalty provided in the PAO for the offences under Section 42(1) is a fine at level 4¹ and up to 12 months of imprisonment for individuals, and a fine at level 4 for firms. The current level of penalty has not been a successful deterrent to put offenders in check.

Office of the Hon Kenneth Leung
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¹ Cap 221 - Criminal Procedure Ordinance Section 113C specifies the penalty for a fine at level 4 to be \$10,001 to \$25,000. A fine at level 5 is specified to be \$25,001 to \$50,000.

Professional Accountants (Amendment) Bill 2016

A Bill To

Amend the Professional Accountants Ordinance to tighten up the usage of the term “Certified Public Accountant”.

Enacted by the Legislative Council.

Part 1

Preliminary

- 1. Short title**
This Ordinance may be cited as the Professional Accountants (Amendment) Ordinance 2016.
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Part 2

Amendments Relating to the Usage of the Term “Certified Public Accountant”

- 2. Professional Accountants Ordinance amended**
The Professional Accountants Ordinance (Cap. 50) is amended as set out in this Part.
- 3. Section 42 amended (Offences and penalties)**
 - (1) Section 42(1)(ha)(iii), after “ “審計師”, ” –
Add
“or any written words, abbreviation of words, description, initials, or characters intended to cause, or which may reasonably cause, any person to believe that it is a practice unit,”

- (2) Section 42(1)(ha)(iii), after “or permits the use of or uses such” –
Add
“written words, abbreviation of words,”
- (3) Section 42(1)(ha)(iv), after ““會計師”” –
Add
“, or any written words, abbreviation of words, description, initials, or characters”
- (4) Section 42(1)(ha)(iv), after “as part of the” –
Add
“written words, abbreviation of words,”
- (5) Section 42(1)(i)(ii), after ““審計師”, ” –
Add
“or any written words, abbreviation of words, description, initials, or characters intended to cause, or which may reasonably cause, any person to believe that he is a certified public accountant holding a practicing certificate, or being a practice unit the firm name of which is registered under section 28A”
- (6) Section 42(1)(i)(ii), after “the use of or uses such” –
Add
“written words, abbreviation of words,”
- (7) Section 42(1)(i), after “in the case of an individual, to a fine at” –
Repeal
“level 4”
Substitute
“level 5”
- (8) Section 42(1)(ii), after “or never registered in the register, to a fine at” –
Repeal
“level 4”
Substitute
“level 5”